



Countdown to Brexit Series

What should you be doing now?

The first in our series of Countdown to Brexit - Immigration

The government's recent statement that free movement will end immediately on 31 October 2019 has increased the uncertainty surrounding the rights of EEA citizens and the UK's immigration practices. We have set out the latest position in this note.

Settled status

EEA nationals who are living in the UK or arrive in the UK before the exit date (currently set to be 31 October 2019) should apply for “settled status” (or “pre-settled status” if they have been in the UK for less than five years) under the [EU Settlement Scheme](#) as soon as possible. The Home Office recently reported that over 900,000 EEA nationals have already applied and successfully obtained either settled or pre-settled status. However, this means that there is still a significant amount of the reported 3.6 million EEA nationals living in the UK who are yet to apply.

Deal or no deal

It is perhaps artificial to set out what the position will be in a “deal” and “no deal” scenario. This is because the “deal” we are referring to below is the deal that was negotiated by Theresa May. The “no deal” scenario is largely based on what Theresa May’s government had indicated would happen in the event of a no deal Brexit. However, we have also taken into account the government’s recent comments, but given how frequently and quickly things seem to be changing, unfortunately, there is a lack of clarity and certainty as to where we may end up.

Deal

- EEA nationals can continue arriving, working and settling in the UK until 31 December 2020.
- Anyone who arrives before that date will have the right to apply to stay in the UK using the settled status scheme.
- After the 31 December 2020 “cut-off” date, EEA citizens arriving to live in the UK would need to obtain a work visa under a new immigration system.
- The deadline for applications under the settlement scheme would be 30 June 2021 (i.e. there would be a six-month ‘grace period’ after the 31 December 2020 “cut-off date”).

No deal

- Freedom of movement would end on 31 October 2019.
- The government has indicated that it will continue to run the settlement scheme for a limited time. However, the cut-off date for arriving in the UK would be the exit date (i.e. 31 October 2019, as things stand).
- The government has indicated that the deadline to apply under the settlement scheme would be 31 December 2020. Although we don’t have clarity on this, the implication is that the scheme would only be open to those who arrived prior to 31 October 2019.
- EEA nationals who arrive after 31 October 2019 will not be able to freely enter the UK. How this will be controlled/managed is not yet known.
- EU Citizens who are already in the UK prior to 31 October 2019 will not be allowed to freely re-enter the UK should they leave the UK before 31 October 2019 and re-enter after 31 October 2019. Again, how this will be controlled/managed is not yet known. However, if an individual has confirmation that they have settled or pre-settled status, we expect that this will assist them in re-entering the UK.



What should you be doing now?

1. Ensure that you are communicating with your European employees and encouraging them to make an application under the settlement scheme – this is even more crucial given the government's latest statements.
2. Particular care should be taken with European employees who are currently on or contemplating going on an assignment, trip or holiday out of the UK. If individuals are returning to the UK after the exit date, they may face difficulty re-entering – particularly if they have not obtained a settled or pre-settled status under the settlement scheme. In addition, time outside of the UK could affect an employee's eligibility for settled/pre-settled status and this should form part of the planning conversations to ensure that everyone who expects to return and work in the UK in the future is able to do so.
3. Care should also be taken if you have plans to bring European employees into your workforce after 31 October 2019. The basis upon which you can do this, and the rights of those employees, is not yet clear. If you aren't able to bring EEA citizens who you want to hire into the UK before 31 October 2019, then there is almost certainly going to be some other form of immigration control which applies to those EEA citizens. As things stand, we have no information from the government about that system, or the associated requirements/timings. However, you should prepare for significant controls over the recruitment of any EEA citizens after 31 October 2019.
4. Keep up to date with information about EEA citizens' rights and proposed new immigration systems.





Immigration rules for EEA citizens after the exit date

It is not clear on what basis EEA citizens who arrive in the UK after the exit date but before a new immigration system is implemented will be able to enter and remain in the UK. Based on the government's most recent statement, EEA nationals who arrive after 31 October 2019 will not be able to freely enter the UK. However, how this will be controlled/managed is not yet known. There has previously been talk of a "temporary leave to remain" scheme (as a temporary system for use before more permanent rules are implemented), for EU nationals who want to stay in the UK for longer than 3 months – therefore the government could possibly implement something like this (albeit it is difficult to see how it would implement a new immigration system that would be ready to use in two months' time).

The government has stated that it will "introduce a new, fairer immigration system that prioritises skills and what people can contribute to the UK, rather than where they come from." While we do not know what that system will be, there is some suggestion that the current Points Based System which is applicable to non-EEA nationals could be extended to cover EEA nationals, which may mean that businesses who want to employ EEA nationals will require a sponsor licence. The indication had previously been that such new immigration rules would be in place by 1 January 2021 (hence the confusion over what will happen in the period between 31 October 2019 and 1 January 2021).

Right to work checks and documents

As it stands, the rules in relation to right to work documents remain unchanged, for now. An EEA passport or residence card will remain a valid document for the purpose of confirming an individual's right to work until either: (a) a new immigration system is implemented; or (b) new rules are issued by the government stating that something more needs to be done in respect of EEA citizens (e.g. obtaining proof of settled status).

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