



Unilateral transition period announced for EU nationals who arrive in the UK after 29 March 2019 under a "no-deal" Brexit

Many employers are worried about the uncertainty created by Brexit and the drip feeding of information from the UK Government on the continued rights of EU nationals¹ to live and work in the UK.

The EU Settlement Scheme, designed to register over 3 million EU nationals living in the UK, is undergoing its third beta phase and is expected to be made available to those eligible EU nationals living in the UK before 29 March 2019 in a no-deal scenario.

The White Paper published in December 2018 outlined the future immigration rules to be implemented for EU nationals from 1 January 2021, incorporating many recommendations from the Migration Advisory Committee in order to facilitate the employment of all migrant workers regardless of their nationality.

However, it has been unclear until now how the UK Government was going to treat EU nationals who arrive after 29 March 2019, but before 31 December 2020, in a no-deal scenario. Such group of people do not qualify under the EU Settlement Scheme (as they will arrive after 29 March 2019). That same group is also not subject to the new UK Immigration Rules for EU nationals (these are expected to be implemented from 1 January 2021).

¹ *For purposes of this article, EU nationals also include nationals of Norway, Iceland, Lichtenstein and Switzerland.

The UK Government has just announced that it intends to unilaterally introduce a European Temporary Leave to Remain in the UK scheme ("TLR") for EU nationals who arrive in the UK during the transition period (from 30 March 2019 to 31 December 2020) in a no-deal scenario.

This is a significant concession by the Government as in effect it allows EU nationals to come and work in the UK after Brexit without being subject to the new UK Immigration Rules until 31 December 2020. It is good news for many employers who rely on EU national workers as this gives them time to adjust their workforce.





Key points for consideration

Under a no-deal scenario, EU nationals will be admitted under UK Immigration Rules (and not under free-movement provisions) once the Immigration and Social Security Co-ordination (EU Withdrawal) Bill is passed by the Parliament.

EU nationals who arrive in the UK after 29 March 2019 and wish to stay in the UK for longer than 3 months will need to apply for TLR within 3 months of arrival.

There is no need to apply for TLR if the EU national does not plan to stay in the UK for longer than 3 months.

If an application is granted, an individual will be given 36 months of TLR in the UK.

TLR cannot lead to settlement and is non-extendable - it does not give Indefinite Leave to Remain ("ILR"), status under the EU Settlement Scheme or eligibility for indefinite stay in the UK.

Those who wish to stay beyond 36 months will need to apply under the new UK Immigration Rules which are scheduled to come into effect on 1 January 2021.

EU nationals who may wish to ultimately settle in the UK may wish to seek alternative arrangements under the UK Immigration Rules as time spent under TLR will not count towards ILR.

Inevitably, this also means some EU nationals in possession of TLR may not qualify to stay under the new UK Immigration Rules and will need to leave the UK.

Non-EU family members will need to apply for a family permit to accompany EU nationals who have TLR.

The TLR scheme does not apply to EU nationals who qualify under the EU Settlement Scheme.

EU nationals who arrive in the UK after 29 March 2019, but who previously lived in the UK before 29 March 2019 (and can document this), can also apply to the EU Settlement Scheme.

EU nationals can continue to use the e-gates at Passport Control when entering the UK until 31 December 2020.

For legal right to work check purposes, employers are not expected to distinguish between EU nationals who arrived before or after 29 March 2019. EU nationals can continue to use their passports and national ID cards to prove their legal right to work in the UK until 31 December 2020.

While the TLR scheme is not perfect, it is designed to give flexibility and time for employers to adjust to the new legal landscape for EU national employees. It is high time for employers to plan ahead and engage with the specific groups to ensure that they can continue to attract and retain key EU national employees as part of their global talent strategy.

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