29 January 2019

To: Heads of Institution, HR Directors
Please distribute to: Staff immigration specialists

Planning for a ‘no deal’ Brexit

Executive summary
The Government announced today that in the event of a ‘no deal’ Brexit, EU citizens will be able to enter the UK to visit, work or study on or after 30 March 2019. For stays longer than three months, however, European Temporary Leave to Remain will be required. As previously advised Universities UK (UUK) has published guidance and information on a comprehensive range of implications and suggested mitigations for HEIs of a ‘no deal’ Brexit. This Update provides further information about the Government’s announcement, the UUK ‘no deal’ guidance and further work in progress.

EEA citizens entering the UK on or after 30 March
The Government announced today that if the UK leaves the EU without agreeing a deal it will seek to end free movement as soon as possible and has introduced an Immigration (EU Withdrawal) Bill to achieve this.

There will be time-limited transitional arrangements in place between the end of free movement and the introduction of the future border and immigration system (outlined in the Immigration White Paper). These are set out in a policy paper which confirms that, in the event of a ‘no deal’ scenario, for the period from 30 March 2019 until 31 December 2020, EEA citizens and their EEA family members, will still be able to come to the UK to work, study or visit without a visa for up to three months. However, if they want to stay any longer, they will need to apply online for European Temporary Leave to Remain.

The Guidance on European Temporary Leave to Remain confirms that if there is a ‘no deal’ Brexit:

- EEA citizens arriving in the UK who wish to stay longer than three months and apply for European Temporary Leave to Remain will be subject to identity, criminality and security checks before being granted permission to stay for three years (including permission to work and/or study).
- European Temporary Leave to Remain will be non-extendable and temporary. It will not give indefinite leave to remain (ILR), lead to EU settled status or make EEA citizens eligible to stay in the UK indefinitely. Those who wish to stay for longer will need to apply for an immigration status in due course under the future border and immigration system arrangements, which will come into effect from 1 January 2021.
- Non-EEA family members who wish to accompany an EEA citizen under these arrangements will need to apply in advance for a family permit.
- EEA citizens will be able to enter and leave the UK as they do now, using e-gates when travelling on a biometric passport.
- The initial three months’ leave to enter for EEA citizens will be free of charge but applications for European Temporary Leave to Remain will need to be paid for. Fees will be set out at a later date.
- Irish citizens will not need to apply for European Temporary Leave to Remain and will continue to have the right to enter and live in the UK under the Common Travel Area.
Please note that today’s announcement does not affect those EEA citizens who are currently residing in the UK before the UK’s exit from the EU, who will still be able to apply for settled or pre-settled status (see UCEA Updates 18:053 and 18:064). In addition, EEA citizens who arrive in the UK after 29 March 2019 but were previously living in the UK before 29 March 2019, can also apply for EU settled status.

With regards to checking immigration status, today’s policy paper states that until settled status has been granted to EEA nationals already resident before 29 March 2019, it will not be possible for employers and universities to distinguish between pre-exit EEA residents who are eligible to remain in the UK on broadly the same terms as now, and post-exit EEA arrivals. Therefore, the Government will not ask employers, universities or other third parties to start distinguishing between EU citizens who were resident before exit and post-exit arrivals, until after the end of the transitional period. As such, from 1 January 2021, once the new border and immigration system is introduced, HEIs will need to check the status of staff and students from the EU, using the Home Office’s Digital Status Checker, but not retrospectively. Until 2021, EU citizens will continue to be able to evidence their rights to work using a passport or national identity card, and non-EU family members will use a biometric residence document.

UUK guidance on ‘no deal’ planning
UUK is continuing to make it clear through its lobbying activities and work with other organisations that a ‘no deal’ scenario is highly undesirable. Nevertheless, it is essential that HEIs continue to plan for a possible ‘no deal’ scenario. UUK is leading work in this area and has established a bi-monthly ‘no deal’ planning meeting which is attended by a range of representatives from the higher education sector (HE) including UCEA and GuildHE. UUK has published information and guidance on the main implications and potential mitigations of a ‘no deal’ Brexit; measures taken in the event of a ‘no deal’ Brexit by the Government to date to provide certainty in the event of ‘no deal’; and remaining areas of uncertainty and recommended actions. These include recommended actions for HEIs in relation to citizens’ rights, future immigration rules and recognition of professional qualifications.

UUK is currently developing three risk registers for HEIs to use as part of their no deal planning on immigration rules, research and student mobility. UUK is also in the process of developing a comprehensive grid or matrix setting out the immigration requirements of individual EU states (where these are known), for example, how workers and students will be treated by individual states, which is likely to be of particular interest to UCEA members. Further materials about other key areas are also being developed, for example, template models for institutional Erasmus agreements and template letters on data movement to ensure compliance with the EU General Data Protection Regulation (GDPR).

Members are encouraged to access UUK’s webpages regularly to support their planning for a ‘no deal’ Brexit scenario. The key UUK contacts are Steph Harris (stephanie.harris@universitiesuk.ac.uk) and Dan Hurley (Daniel.Hurley@universities.ac.uk).

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