

Immigration and Brexit



10 September 2019

'No deal' arrangements for EU citizens post-Brexit and Migration Advisory Committee's commission extended

This Update covers the following policy topics: *Immigration and Brexit*

To: *Heads of Institution, HR Directors and all recipients of Employment Policy and Law Updates*

Executive summary

- The government has published a policy paper and guidance on the immigration arrangements for EU citizens and their families moving to the UK after Brexit on 31 October 2019 in the event that the UK leaves the EU without a deal.
- The immigration arrangements include the establishment of a new European Temporary Leave to Remain Scheme.
- The government has asked the Migration Advisory Committee (MAC) as part of its current work on potential salary thresholds for the future immigration system to undertake a review of the Australian immigration system (and similar international systems) and to advise on what best practice can be used to strengthen the UK labour market.
- The MAC has confirmed that it will start the call for evidence for the extended review shortly, and report by January 2020.

Action for UCEA

- To inform members when further information about the MAC review is available including any call for evidence.

Immigration arrangements for EU citizens and their families coming to the UK after Brexit

The government has published a [policy paper](#) and updated [guidance](#) on the arrangements that will apply to EU citizens and their families who move to the UK after Brexit on 31 October 2019 in the event that the UK leaves the EU without a deal. These arrangements replace those set out in the policy paper published on 28 January 2019 and will also apply to citizens of the EFTA states (Iceland, Liechtenstein, Norway and Switzerland). Although free movement as it stands will cease on 31 October 2019, the legal framework will remain in place under the EU (Withdrawal Act 2018) until Parliament passes primary legislation to repeal it.

The key aspects of the policy paper are outlined in turn below.

Future Immigration System

The government will introduce a new Australian-style points-based system from January 2021 and has commissioned the MAC to undertake a review of the Australian system and other international systems (please see below for more information on the extended MAC commission).

EU citizens who are resident in the UK before Brexit on 31 October 2019

EU citizens and their family members resident in the UK on or before 11pm on 31 October 2019 are eligible to apply for the [EU Settlement Scheme](#) and have until 31 December 2020 to apply to the Scheme in the event of a 'no deal' Brexit.

Euro TLR Scheme

If the UK leaves the EU without a deal, EU citizens who move to the UK after this date for the first time will be able to apply for a 36-month temporary immigration status under a new voluntary immigration scheme – the Euro TLR Scheme. Applications to the new scheme will be free and will need to be made by 31 December 2020. Successful Euro TLR applications will result in a period of 36 months' leave to remain in the UK, running from the date the leave is granted. The application process will be online, with identity, security and criminality checks. Applications can be made after the arrival in the UK.

EU citizens may use the evidence of this immigration status to establish their entitlements to work and rent property during the transitional period until December 2020. If they subsequently qualify under a route that leads to settlement in the UK under the future immigration system, the time they have spent in the UK with a Euro TLR status **will** count towards the qualifying period for settlement.

EU citizens who hold Euro TLR status and who wish to remain in the UK will only be required to apply for status under the new immigration system when their 36-month Euro TLR expires. They may apply earlier for status under the new points-based immigration system if they wish. If they do not meet the requisite criteria under the new immigration system they will be expected to leave the UK when their Euro TLR expires.

EU citizens who move to the UK after Brexit who do not apply to the Euro TLR Scheme will need to apply under the new immigration system by 31 December 2020 if they wish to remain in the UK after that date.

Enforcement

EU citizens and their family members who move to the UK after 31 October 2019 will need to have applied for immigration status, whether Euro TLR or under the new immigration system by 31 December 2020, otherwise they will be deemed to be in the UK unlawfully and subject to enforcement action, detention and removal as an immigration offender.

Employers **will not** be required to distinguish between EU citizens who moved to the UK before or after 31 October 2019 until the new immigration system is introduced in January 2021. This means that until 31 December 2020 the right to work checks for an EU citizen should be undertaken as they are now and all EU citizens can evidence their rights using their passport or national identity card. EU citizens will also be able to evidence their right to work using their digital status under the EU Settlement Scheme or Euro TLR.

When the new points-based system is introduced in January 2021, employers will need to check that an EU citizen has a valid UK immigration status when she or he applies for a new job, for example, but this check will not have to be done retrospectively.

Non-EU family members accompanying EU citizens

EU citizens who move to the UK after 31 October 2019 may be accompanied by their non-EU citizen family members, which includes direct family members such as spouse, civil partners or children and extended family members such as "durable" partners and dependent relatives. Close family members (spouses/partners/dependent children under 18) will also be able to apply under the Euro TLR scheme in the same way as EU citizens once their EU citizen sponsor has applied. The period of their Euro TLR will not exceed the end date of the Euro TLR of their EU citizen sponsor. A close family member who does not obtain a Euro TLR by 31 December 2020 and who does not have a right to remain in the UK will be expected to leave at that point.

Irish citizens and the Common Travel Area

The associated rights of British and Irish citizens under the Common Travel Arrangements mean that Irish citizens will continue to have the right to enter, live and work in the UK without requiring permission. This will be reflected in legislation ahead of the new immigration system. Close non-British or non-Irish family members of Irish citizens arriving in the UK after Brexit may apply for the Euro TLR. Those who do not will need to apply under the new immigration system if they wish to remain in the UK after 31 December 2020.

Other changes

The government has introduced a number of other changes in the interim including:

- Introducing a tougher criminality threshold at the border to keep out and deport EU citizens who commit crimes.
- Removing the blue EU customs channel so that all travellers will have to choose the red or green channels.
- Removing the right for post Brexit arrivals to acquire permanent residence under retained EU law and the right of UK nationals who move to the EU after Brexit to return to the UK with their family members without meeting UK family immigration rules.
- Phasing out EEA national identity cards for travel to the UK during 2020.

Commission to the MAC

The MAC previously recommended retaining the existing salary minimum threshold of £30,000 for the new skilled workers route detailed in the Immigration White Paper. UCEA Update 19:066 provided details of the MAC's [commission](#) by the government to look further at potential future salary thresholds and the range at which they could be set, before deciding the level of future thresholds.

At the end of last week, the government [commissioned](#) the MAC to undertake a review of the Australian immigration systems and similar international systems in order to advise on best practice to strengthen the UK labour market and attract talented migrant workers as part of its work on future potential salary thresholds. Specifically, the government has asked the MAC to consider:

- **Additional Flexibility** – how additional flexibility could be part of the operation of salary thresholds through the awarding of “points” to prospective migrants for particular attributes or skills such as educational qualifications, work experience, language proficiency, willingness to work in particular areas and occupation and the degree to which points in one area should make up for lack of points in another.
- **Prioritising characteristics** – which migrant characteristics should be prioritised within the immigration system to produce the most beneficial outcomes for the UK.
- **International comparators** – what best practice might be learnt from international comparators, including the Australian immigration system, to strengthen the UK labour market.

The MAC will consider these points in addition to the scope originally set by the government in June, which concern potential future salary thresholds and the range at which they could be set:

- **The mechanism for calculating future salary thresholds** – the MAC has been asked to consider whether this should be:
 - a single minimum salary threshold.
 - the current arrangement or a combination of a minimum salary threshold and a ‘going rate’.
 - an approach which focuses on the ‘going rate’ for particular roles.
- **Salary threshold levels** – the MAC will review where the minimum salary thresholds and/or ‘going rates’ should be set in the future immigration system in the context of the impact they will have on annual net migration, the resident workforce, migrant workers, the supply of labour and the short, medium and long term effects on public finances and the economy.

- **Regional salary thresholds** – the MAC has been asked to consider whether there is a need for greater regional variation. The MAC has previously recommended against regional salary thresholds.
- **Exceptions to the salary thresholds** – the MAC is asked to advise further on the impact of exemptions from minimum salary thresholds including:
 - what impact salary thresholds might have on sectors that provide high public value to society and the economy, but which might not necessarily pay high wages.
 - whether roles on the Shortage Occupation List (SOL) should qualify for lower thresholds.
 - the role of further expanding the scope for non-cash remuneration to count towards salary thresholds including benefits in kind such as accommodation.
 - whether part-time workers should benefit from a pro-rata salary threshold.
 - any exceptions for new entrants to an occupation and the length of time that such exceptions should be in place for any individual before they should meet an experienced worker threshold.

Consultation

The MAC has responded to the extended commission to confirm that it will engage with stakeholders shortly to conduct an evidence-based response by January 2020. The process by which the MAC will undertake the review is not known at present but UCEA will inform members when further information is available including the call for evidence or consultation and will submit a response from the HE sector as appropriate.

UCEA workshop

Our popular **Immigration: Key considerations when recruiting from overseas** workshop examines, from an immigration perspective, how to recruit staff from overseas. The date of the next run of the workshop is **Thursday 21 November** in central London. For fuller information visit the [UCEA website](#).

Enquiries

For any queries relating to the consultation please contact Nicola Carter (n.carter@ucea.ac.uk) or Alison McGrand (a.mcgrand@ucea.ac.uk).

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