

# BREXIT IMMIGRATION COUNTDOWN: WHAT EEA NATIONALS AND EMPLOYERS NEED TO DO NOW

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## AFTER A LONG PERIOD OF UNCERTAINTY, BREXIT HAS TAKEN PLACE AND THE UK LEFT THE EUROPEAN UNION ON 31 JANUARY 2020.

It has now entered a transition period that will last until 31 December 2020, commencing a countdown for EEA nationals and their family members to secure their long term right to live and work in the UK.

The transition period preserves existing immigration rights for EEA nationals and their family members until the end of this year. There is also some much-needed clarity for them and their employers on how they should secure their right to live and work in the UK for the long term.

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### IMMIGRATION RIGHTS OF EEA NATIONALS

All EEA nationals (including nationals from the EU, Iceland, Liechtenstein, Norway and Switzerland, but excepting Irish nationals) and their family members will need to register under the EU Settlement Scheme in order to continue to live and work in the UK, unless they are naturalised as UK citizens. Below we have set out a summary of the key provisions:

- EEA nationals can continue to travel freely to and from the UK until 31 December 2020 – exercising de facto free movement rights.
- EEA nationals and their family members who are resident in the UK on or before 31 December 2020, including those with permanent residence under the current EEA Regulations, will need to apply under the EU Settlement Scheme by 30 June 2021 if they wish to stay in the UK.
- Employers must ensure all staff who are eligible apply under the EU Settlement Scheme in time.

The type of status available under this scheme is dependent on the term of the applicant's UK residence:

- Those who have been continuously resident in the UK for a minimum of five years may be eligible for "settled status". This is a form of permanent residence in the UK and "settled status" holders will be exempt from UK immigration restrictions indefinitely (subject to not being absent from the UK for five years).

- Those who do not have five years' continuous residence in the UK can apply for "pre-settled status", a temporary visa valid for five years. They may be able to apply for "settled status" after five years.

EU Settlement Scheme applications are submitted online using a bespoke Android and iPhone app and an integrated application form. We have found that the time to process these applications has risen to several weeks and this may increase as application numbers swell during the transition period.

## STEPS BY EMPLOYERS

Employers face challenges as they try to establish the best immigration options to retain and hire staff. Although ultimately it is the responsibility of their employees to apply under the Scheme, if EEA national staff and their family members do not register to stay in the UK, an employer will not be able to employ them and may face potential fines if they do so.

We therefore recommend that employers conduct an audit of their staff to determine who is required to apply under the EU Settlement Scheme and when is the best time for them to apply, and also plan international transfers with the key dates in mind. We also recommend (in most cases) that applications under the EU Settlement Scheme are made as soon as possible to avoid experiencing unnecessary delays in future.

## THE NEW IMMIGRATION SYSTEM – A NEW LOOK ON THE HORIZON

On 1 January 2021 a new UK immigration system will come into effect to govern EEA nationals entering the country from that date. Whilst the mechanics of the new route are still subject to Government approval, we now know broadly how this new system will operate. Described by the Government as "a single immigration system for all nationalities, focussed on talent and skills", the new system will mark the most significant immigration reform in over a decade.

The existing Tier 2 Skilled Worker sub-category of the Points-Based Immigration System will likely be retained for workers with a UK job offer, whilst a modified points-based route for other applicants will afford those without a job offer the opportunity to qualify for a UK visa. We anticipate that points will be awarded under numerous criteria including skills, age and academic qualifications. The Government will also consider introducing a new pilot visa to facilitate employment in 'remote' areas of the UK, whereby lower salary thresholds than the current Tier 2 limits would apply.

This heralds a pivotal time for the UK immigration landscape, with the next 12 months certain to reshape the Points-Based Immigration System as we know it and revamp the longstanding Tier 2 visa route as EEA nationals fall under the same Immigration Rules as non-EEA nationals for the first time in decades.

Should you wish to discuss any of the issues raised in this article, please do get in touch with Devan Khagram or Elliott Marsh or your usual contact at Watson Farley & Williams.

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