

POST-BREXIT IMMIGRATION

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THE UK'S POST-BREXIT IMMIGRATION RULES ARE TO BE IMPLEMENTED AFTER THE END OF THE BREXIT TRANSITION PERIOD, FROM 1 JANUARY 2021, LEADING TO THE BIGGEST OVERHAUL IN UK IMMIGRATION POLICY IN OVER A DECADE.

If the Immigration and Social Security Co-ordination (EU Withdrawal) Bill (the “Bill”) goes on to receive Royal Assent, it will terminate rights to free movement for citizens of EU countries from 2021 onwards (as well as repeal other EU immigration law), enabling the introduction of a revamped ‘points-based’ immigration system for entry to the UK. Details of the legal framework for a points-based system will be set out in the secondary legislation and in the new Immigration Rules. The general principle is that visas will be awarded to those workers who have the required number of points. A total of 70 points will be required to apply to work in the UK.

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The Bill will see all citizens from around the world (looking to work in the UK) placed on ‘equal footing’, whether from within the EU or European Economic Area (EEA), or outside of it.

THE ‘SKILLED WORKER’ ROUTE

As of 1 January 2021, workers coming to the UK would need to demonstrate the following:

- a job offer at the appropriate skill level (now “A level” or equivalent) from a Home Office approved sponsor;
- English language skills to the required standard; and
- a salary of at least £25,600.

A salary falling below the threshold can be ‘traded in’ for points acquired for other characteristics, notably a job offer in a specific shortage occupation or a PhD of particular relevance. Applicants may therefore achieve the requisite points despite a lower salary, provided this still surpasses a baseline minimum threshold of £20,480.

Sponsorship of those that meet the criteria will fall within the existing Sponsorship Licence and Tier 2 visa regime.

WHAT IS THE POSITION FOR WORKERS WHO DO NOT MEET THE SALARY OR SKILL REQUIREMENTS?

There is currently no sponsored immigration route proposed specifically for those workers who do not meet the salary or skills threshold required for the 'skilled' worker route set out above. Various initiatives are proposed for graduates, NHS workers and scientists, and further detail in respect of these should follow in the coming weeks.

From summer 2021, international students who have completed their degree level studies in the UK will be able to remain in the UK, working at any skill level, for a period of two years after graduation. A dedicated work visa programme for seasonal agricultural workers will also be implemented.

Employers of workers on lower wages (i.e. those who do not qualify for the 'skilled worker' route) could look to hire new foreign workers via non-work routes (for example, workers from outside the resident labour market could potentially come to the UK to join family members already living here). Short term visa schemes may also be an option as a temporary measure; there is a chance that the 'Youth Mobility Scheme', which currently facilitates the movement of workers from countries such as New Zealand and Australia, may extend to EU countries in future.

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HOW CAN BUSINESSES PREPARE?

Businesses should consider the implications of the end of free movement on their employment practices, particularly with regard to recruitment cost and approach; workforce planning, and mobility.

If businesses consider that they may wish to sponsor 'skilled' migrants (including from the EU) from 2021, they should apply to the Home Office for a Sponsorship Licence as soon as possible. Applications pre Covid-19 typically took around eight

weeks to process. It may also be necessary to seek advice in respect of the associated compliance obligations, and budget for any related costs.

It should be noted that an employer does not need to be a sponsor to employ a European worker with an existing right to work in the UK, and this will include any EU citizen with settled status. When hiring EU nationals not already in the UK, employers may wish to bring forward recruitment plans to beat the 31 December 2020 cut off for EU nationals, thereby avoiding having to bring them in under the new rules.

If you have any questions or queries in respect of the above, please do not hesitate to contact a member of Watson Farley & Williams' immigration practice.

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