

# Deal or no deal?

## How different Brexit deals could affect employment and immigration

February 2019 update



> The Conservative party appears to be enjoying a rare period of unity and the Prime Minister has been back to Brussels to renegotiate her deal. Predictions as to whether any deal can be agreed pre 29 March remain hazardous however and our theme of “deal or no deal” remains valid. Workers’ rights are increasingly on the radar though as trade unions and certain Labour MPs are courted by the government. Despite that continuing uncertainty, we have received some further clarity on the position for UK residents in the EU and on EEA nationals who arrive post 29 March and wish to live and work here before the new UK immigration system comes into force. Our regular update provides you with the current information that you need.

Employment law	Immigration law	Questions
<b>Deal</b>	<b>Deal</b>	<p>We are gradually receiving more clarity, particularly in respect of immigration law at the point we leave the EU. However, huge uncertainty continues.</p> <p>Do recent government proposals on the “Good Work” report give us an idea of the post Brexit direction of UK employment law? How would the continuing relationship (if any) between EU and UK law work, whether as part of a “non regression” deal or otherwise?</p> <p>While EEA nationals here on Brexit day will now definitely be able to continue to live and work in the UK post Brexit, how difficult will it be for EEA nationals to live and work here after that? Have you now decided to put contingency plans in place to move operations outside the UK?</p> <p>If you are concerned about the impact of Brexit on your organisation, we might be able to help.</p> <p><b>For further details please contact:</b></p> <div style="display: flex; justify-content: space-between;"> <div style="text-align: center;">   <b>Tom Bray Partner</b>                      T: +44 29 2047 7772                      tombray@eversheds-sutherland.com                 </div> <div style="text-align: center;">   <b>Audrey Elliott Partner</b>                      T: +44 121 232 1523                      audreyelliott@eversheds-sutherland.com                 </div> </div>
<ul style="list-style-type: none"> <li>no plans to change UK employment law - current statute book maintained and the proposed deal means that the CJEU retains a role in enforcing this during any transition period and afterwards.</li> <li>direct pipeline of EU law into UK law broken, but the UK will agree to broadly keep pace on a “non regression” basis with future EU employment law under the terms of any future free trade deal.</li> <li>would “non regression” be enforced through a joint UK/EU quasi judicial body with subsequent enforcement through binding arbitration? Will the government make firmer promises on a more dynamic alignment with EU law on a “regression lock” basis to sway Labour MPs?</li> <li>no significant employer-friendly liberalisation of UK employment law any time soon</li> </ul>	<ul style="list-style-type: none"> <li>the EU Settlement Scheme is now in the public testing phase and is open to most EU nationals and non EU family members. Identity is checked via the EU Exit: ID Document Check App on an Android device. The scheme will open fully by 30 March. EEA nationals (Norway, Iceland and Lichtenstein) will also be able to apply at this time. Application must be made by the end of June 2021.</li> <li>the White Paper largely accepts the key recommendations of the Migration Advisory Committee with regard to EEA workers after any transition period ends. There will be a lengthy period of consultation about the proposed changes. Changes are expected from January 2021. Under consultation is the use of Tier 2 for skilled workers; lower-skilled workers could qualify for a visa which lasts for 12 months only, with most others requiring a role with a minimum salary (expected to be circa £30,000 per year).</li> <li>arrangements are now being announced for the processes to be followed for UK nationals in Europe on a country by country basis.</li> </ul>	
<b>No deal</b>	<b>No deal</b>	
<ul style="list-style-type: none"> <li>as above, except UK will have more freedom to implement whichever employment laws it chooses as no formal agreement with the EU on “non regression” will apply.</li> <li>current direction of travel suggests that UK employment law may even become more progressive than currently in certain key respects.</li> </ul>	<ul style="list-style-type: none"> <li>the EU Settlement Scheme will be used but the dates are shorter in a no deal scenario: individuals must be in the UK before 29 March 2019 to be eligible and applications must be made before 31 December 2020.</li> <li>EEA nationals who arrive in the UK after 29th March but before the new immigration regime is in place will be permitted to enter the UK for three months to visit, work and study. For stays longer than three months is now a visa called European Temporary Leave to Remain will be required. This is an online process where identity and criminal record are checked. This leave will be valid for a maximum of 3 years. EEA nationals who wish to stay at the end of this period will need to apply under the rules that are expected to come into force in 2021.</li> <li>EEA countries have also started to consider the position of UK nationals in Europe in a no deal scenario. It is likely that most will follow the theme of the UK allowing those in country to remain if they arrived before Brexit.</li> </ul>	