

Deal or no deal?

How different Brexit deals could affect employment and immigration

January 2019 update - 14/01/2019



> The Prime Minister's deal looks unlikely to pass through the UK parliament. Predicting what will happen next is far from an exact science. However, we have had further clarity on proposals for EU citizens who live and work in the UK in the event of no deal. Our regular update examines what has changed recently in light of the current political uncertainty when it comes to employment and immigration law. This compares any deal (whether the Prime Minister's current one or otherwise) with no deal, which is a very real risk.

Employment law

Deal



- no plans to change UK employment law - legislation flowing from the EU Withdrawal Act seeks to maintain current statute book where not already under UK law and the proposed deal means that the ECJ retains a role in enforcing this during any transition period and, to a certain extent, afterwards.
- direct pipeline of EU law into UK law would be 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.
- would "non regression" be enforced through a joint UK/EU quasi judicial body with subsequent enforcement through binding arbitration?
- no significant employer friendly liberalisation of UK employment law any time soon.

No deal



- 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.

Immigration law

Deal



- the EU Settlement Status Scheme has under gone two pilots and will be open to a large number of EU nationals in the UK from 21 January 2019. Those who arrive in the UK before 31 December 2020 will be eligible. Application must be made by the end of June 2021.
- the White Paper largely accepts the key recommendations of the Migration Advisory Committee with regard to EU workers after any transition period ends. There will be a lengthy period of consultation about the proposed changes and it is unlikely this will be introduced prior to 2020. Under consultation is the use of Tier 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 in the region of £30,000 per year).
- arrangements are now being announced for the processes to be followed for UK nationals in Europe on a country by country basis.

No deal



- the EU Settled Status 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.
- free movement will be preserved immediately after 29 March 2019 but the UK will have the ability to make changes from that date. It is likely that the White Paper consultation will continue and free movement will end when the new framework is in place.
- EU 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.

Questions

We are gradually receiving more clarity, particularly in respect of immigration law at the point we leave the EU. However, huge uncertainty continues.

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?

While EU citizens 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 EU citizens to live and work here after that? Have you now decided to put contingency plans in place to move operations outside the UK?

If you are concerned about the impact of Brexit on your organisation, we might be able to help.

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