

Deal or no deal?

How different Brexit deals could affect employment and immigration

March 2019 update



> Brexit has been delayed. An extension has been granted with the main question being how long this will last. However “no deal” very much remains on the table. The Prime Minister’s deal has been resoundingly defeated twice and questions remain as to whether it can even return to Parliament to be voted on again. Will the deal survive? In terms of “no deal”, Parliament has expressed its view but it nonetheless remains a possibility, either in April or in May. In the meantime, promises on workers’ rights are front and centre of the Prime Minister’s attempts to persuade MP’s to back her deal. So far this has not been successful.

Employment law

Deal



- 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.
- 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.
- the Government has offered to increase trade union and business consultation on the future of UK employment law and its relationship with future EU law. Parliament would be given a vote on whether to adopt new EU employment legislation as each piece of legislation emerged. More dynamic alignment with EU law would potentially result.
- how would UK law truly keep pace with EU law when there is no overarching oversight by the CJEU? How would UK case law continue to track the EU? For example 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.
- current direction of travel suggests that UK employment law may even become more progressive than currently in certain key respects.

Immigration law

Deal



- 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.
- 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).
- 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 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/ date of leaving EU to be eligible and applications must be made before 31 December 2020. In the event of a short extension to the date of Brexit it is not expected that the date for applying will be extended.
- EEA nationals who arrive in the UK after 29th March/date of leaving EU 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 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. As an alternative employers who are Tier 2 sponsors may consider Tier 2 sponsorship if the relevant criteria for Tier 2 are met.
- 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.

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 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?

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

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