

UK: EMPLOYMENT INSIGHT IN-DEPTH – JULY 2017

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Brexit has dominated the headlines in the UK since June 2016, when the country voted to leave the EU. A major talking point has been the likely impact on the estimated three million European Economic Area (“EEA”) nationals (and their families) residing in the UK and the million or so British nationals living on the continent.

With the triggering of Article 50, the process for the UK’s departure from the EU has been set in motion and the landscape can be expected to change considerably over the next two years. The UK Government delivered its first proposals for EEA nationals in Prime Minister Theresa May’s announcement on 22 June 2017, with the detailed proposals published on 26 June 2017.

In summary, the UK has proposed that:

- EEA nationals and their family members who have already lived in the UK for five years when the UK leaves the EU, or at the end of the “grace period” (see below), will be able to apply for “settled status”.
- Those who are resident in the UK at the “cut-off date” (which is yet to be determined but which should be between 29 March 2017 and the date the UK leaves the EU) but who do not have five years’ UK residence when the UK leaves the EU or at the end of the “grace period” will be able to apply for temporary permission until they achieve the five years’ stay required for “settled status”.
- Those arriving in the UK after the “cut-off date” will need to apply under whatever new immigration system is implemented.
- There will be a “grace period” of up to two years after the UK leaves the EU to make these applications.
- “Settled status” will be a new type of immigration status equivalent to the permanent residence visa that non-EEA nationals can currently apply for (Indefinite Leave to Remain).

The EU has met the proposals with scepticism, with its chief negotiator, Michel Barnier, calling for “more ambition, clarity and guarantees” from the UK. Theresa May, on the other hand, claimed “the UK’s position represents a fair and serious offer”.

When considering the detail, EEA nationals in the UK should welcome some aspects of the proposals. For example, the proposals to scrap the requirement for self-sufficient EEA nationals and students to demonstrate that they hold “comprehensive sickness insurance” will come as welcome relief to those who could not apply for permanent residence because of this requirement.

In addition, the Government has indicated that the new immigration system will be more streamlined, with a shorter form, potentially making the application process easier from a documentary perspective than the current system. However, this is offset by the controversial proposal that these requirements will extend to anyone already holding an EEA permanent residence card, meaning that those who have applied under the current arrangements for EEA nationals will likely have to re-apply in some form in the future.

It must be stressed that this is only a proposal at this stage and the terms are open to negotiation with the EU. Many differences remain between the EU and UK's positions and these were highlighted in a jointly agreed "technical note" following Brexit Secretary David Davis' meeting with Michel Barnier on 21 July. The specifics within the proposals are likely to change in the coming months and the uncertainty for EEA nationals in the UK will therefore continue for a while longer. What is certain is that a new immigration system will be implemented for EEA nationals, although how this will work in practice is unknown.

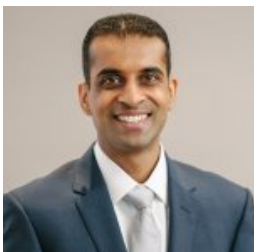
THE OPTIONS AVAILABLE

Importantly, it is not possible to apply for this new "settled status" or under any new EEA immigration system at present. Therefore, for the time being, the options available to EEA nationals remain the same.

For many EEA nationals in the UK the recommendation remains that they and their families apply for registration certificates, residence cards or permanent residence to confirm their existing right of residence. There is still time for many EEA nationals to progress to British nationality, meaning they will not have to worry about any future proposals. Employers may wish to bring forward recruitment plans to beat the "cut-off" date and employ EEA nationals under the current system. Also, those employers seeking to send their EEA national employees outside of the UK on secondment may wish to secure their UK status prior to leaving given the future uncertainty.

Certainly many employers and EEA nationals are making contingency plans now to try and anticipate the final agreed position, and will continue to keep a keen eye on developments in the meantime.

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