



Government's controversial immigration bill pulled from second reading in the Commons

Given the way of the world currently, it is difficult to contemplate how the future may look once the current health emergency subsides. Many employers are juggling the impact of the COVID-19 pandemic and dealing with the fallout from lockdown, furloughing employees, temporary contract variations, and changing working patterns.

Despite this, on 9 April 2020, the government issued guidance reminding us that we needed to continue our preparations for their proposed changes to the UK's immigration landscape, following the UK's departure from membership of the European Union, on 31 January 2020.

Proposed changes to the current immigration regime

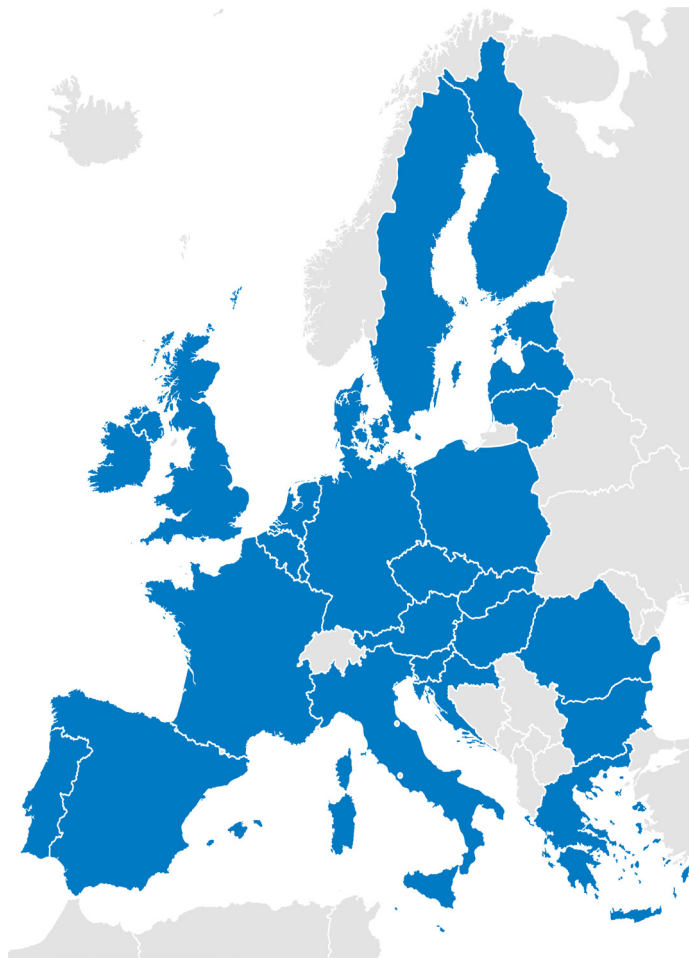
This guidance confirmed that the free movement of workers from within the European Economic Area (excluding Ireland), Liechtenstein, Iceland, Norway and Switzerland (referred to generally as "EU nationals" for the purposes of this article), will end under the Immigration and Social Security Co-ordination (EU Withdrawal) Bill 2019-2021 (**Bill**).

The purpose of the Bill was to repeal EU free movement of persons and other related EU-derived rights in UK law, and make EU nationals subject to UK immigration controls. The Bill itself does not specify or set out the proposed immigration system to apply to non-UK nationals, but the intention was that this would be provided for in Immigration Rules, as currently.

Government guidance issued earlier last month, and a policy statement issued in February this year, proposed that, from 1 January 2021, EU nationals who did not have settled or pre-settled status under the EU settlement scheme, would be treated equally to all other non-UK nationals: subject to UK immigration controls.

As a result, all such EU nationals would need to apply to live, work and study in the UK under a "new" points-based system. EU nationals already in the country by 31 December 2020 have until 30 June 2021 to apply for settled or pre-settled status under the EU settlement scheme.

As a transition measure for these EU nationals, it was proposed that employers could continue to accept the passports and national identity cards as evidence of their right to work up until 30 June 2021.



Impact of ending free movement

It has been estimated that ending the free movement of workers could affect more than 450,000,000 EU nationals, who would otherwise have been able to freely live, work and study in the UK. Inevitably this will also impact on many of the more than 2.31 million EU nationals already living, working and studying in the UK (figures up to date at February 2020 – source: Office of National Statistics).

The government's focus of the changes to the UK's immigration system were stated to be to: "Reduce overall levels of migration and give top priority to those with the highest skills and the greatest talents: scientists, engineers, academics and other highly-skilled workers... including routes were global leaders and innovators."

The "new" points-based system and Bill has received widescale criticism for seeking to limit so-called "low-skilled" migrants from living, working and studying in UK. This would include (under the current drafting of the new points based system and Policy Statement) swathes of key workers, including NHS staff, social care and other essential workers who are integral to the country's ongoing efforts to battle coronavirus.

Additionally, these proposals and the Bill clearly have huge and wide-reaching potential ramifications for employers and their considerations for talent pooling and workforce planning.

Progress of the Immigration and Social Security Co-ordination (EU Withdrawal) Bill 2019-2021

The Bill was due to be read in the House of Commons for a second time on 21 April 2020, before progressing through the House of Lords and eventually for Royal Assent as "new" legislation. This second reading was pulled from the Commons' agenda on 21 April in light of the global pandemic, in a move which has been welcomed by many.

The Bill itself has not, however, been withdrawn and it is likely that this is a mere delay to the progress of the Bill (in its current or an amended form) becoming primary legislation: rather than the complete withdrawal. We anticipate that the Bill may be tabled for a second reading in the House of Commons over the coming months and will keep you posted about this.

Sponsoring migrants

The new immigration routes were due to open from this autumn for applications to work, live and study in the UK from 1 January 2021. In order to employ or sponsor anyone who requires immigration permission under the points-based system, employers require a sponsor's licence to do so.

A sponsor's licence is permission from the Home Office to hire skilled workers. Similar provisions apply for educational establishments, where they sponsor students to study with them in the UK.

In order to apply for a sponsor's licence, employers and education establishments must make an application to the UK Visa and Immigration Authority (UKVI) (the part of the Home Office responsible for visa and residence permit decisions) to evidence their eligibility by:

1. providing original documents to prove that their organisation is genuine (which can involve an audit from the UKVI);
2. appointing key personnel to manage the license;
3. meeting extremely strict reporting and record-keeping of the UKVI; and
4. demonstrating excellent housekeeping and internal policies and procedures in relation to HR processes and procedures, including right to work checks and the prevention of illegal working.

A substantial volume of employers and education establishments are likely to need to apply for a sponsor's licence if and when the free movement of EU nationals ends. Current processing times are already 8 – 12 weeks for each application.

It is therefore likely that, if and when the Bill is reintroduced, there will be a stark increase in the number of applications for sponsor licences and these processing times may increase significantly.

Following the acquisition of a sponsor licence, the sponsoring organisation must request and issue a certificate of sponsorship/certificate of acceptance of studies to the non-UK national, who must then make their own individual application for permission to live, work or study in the UK.

These procedures and processing times could impact upon recruitment timetables for new employees who are non-UK nationals. In light of this, it is sensible for employers and other sponsoring organisations to start giving thought to their requirements now.

It would also be sensible to consider any changes or updates to internal policies and procedures which may be required if and when the free movement of workers from the UK, does come to an end. We'll keep you posted as these matters progress.

How we can help

We regularly advise organisations on their immigration requirements and are experienced in providing advice and support on applications for sponsor licences.

If you have any queries about business immigration, the proposed changes to the immigration landscape and how this may impact on your organisation, please contact our [Amy Sergison](#) on 0191 211 7995 or amy.sergison@muckle-llp.com.



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