



# Migration

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There are estimated to be over two million EU nationals currently working in the UK, accounting for around 7% of the workforce, with around one million UK citizens living and working in other EU countries. The ease with which EU citizens can come to live and work in the UK, and vice versa, is therefore a significant concern for employers, employees and expatriates whose access to skilled workers, jobs, healthcare and pensions could be impacted by a UK exit from the EU.

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## Position for migration and business travel post-Brexit/any transition period

Under the principle of free movement, EU nationals have an automatic right to live and work in the UK. In its [2017 White Paper](#), the UK Government clearly stated that it intends, post-Brexit, no longer to abide by this principle and instead to impose UK controls over EU citizens wishing to come and work in the UK after any agreed transition period. This was confirmed in the [UK Government's White Paper](#) detailing its proposal for the future relationship between the UK and the EU published on 12 July 2018. The White Paper stated that any mobility arrangements after any transition period will be consistent with the ending of free movement and with the UK taking back control of its borders and controlling and reducing net migration into the UK.

The UK Government's commitment to end free movement is noted in the [Political Declaration](#) on the future relationship between the EU and UK which accompanied the draft [Withdrawal Agreement](#) endorsed by the EU Council on 25 November 2018. The Political Declaration states that mobility arrangements must therefore be established to include non-discrimination between the EU's member states and full reciprocity, along with visa-free travel for short-term visits. These arrangements would be in addition to commitments on the temporary entry and stay of individuals for business purposes and without prejudice to the Common Travel Area arrangements between the UK and Ireland.

This last point addresses an area of concern for businesses relying on cross-border secondments and business travel. The position is likely to be the same in the event of a no-deal Brexit. but with effect from the earlier date of 1 November 2019 (rather than the end of the

**The section is part of our  
Brexit Legal Guide.**

## No deal

- If the [Withdrawal Agreement](#) endorsed by the EU Council on 25 November 2018 or the [Political Declaration](#), or some version of both, are not approved by 31 October 2019 and there is no change to the exit date, the UK will cease to be a member state on that date without any transitional period.
- The body of EU law in force at that time will be imported into UK law (with necessary amendments) under the [European Union \(Withdrawal\) Act 2018](#) and UK legislation made to implement EU law will be retained, with suitable amendments – this is called 'retained EU law'.
- A lot of the secondary legislation to adjust retained EU law for the post- Brexit world has already been made, see the accompanying section: [The UK's new legal order post-Brexit](#)

transition period). The EU has now approved a [Regulation](#) which will include UK nationals in the list of nationals exempt from the requirement to have a visa when crossing the external borders of the Schengen area for short-stay visits to apply from the end of any transition period or, on a no-deal exit, from 1 November 2019. This means that UK citizens will not need a visa when travelling for up to 90 days in any 180-day period to an EU member state (except Ireland) or a Schengen Associated Country (Iceland, Liechtenstein, Norway, Switzerland). As Ireland does not participate in the Schengen acquis on visas, the bilateral travel arrangement between the UK and Ireland is not affected by this proposal. This arrangement is conditional on the UK granting reciprocal and non-discriminatory visa-free travel for all EU member states. The UK Government's July 2018 White Paper and guidance on its website [here](#) confirmed its intention to make reciprocal arrangements for short-term visits, without visa requirements.

Another area which will be impacted is recognition of professional qualifications. On a no-deal Brexit, after 31 October 2019 professionals seeking recognition will no longer be able to rely on EU rules and will need to comply with relevant domestic rules, as explained in the UK Government's technical notice [here](#) and the European Commission's technical notice [here](#). If the draft Withdrawal Agreement is approved, EU citizens or UK nationals will continue to be able to rely on professional qualifications, which were recognised before the end of the transition period in the country where they reside or work, to carry on activities in that country. The Political Declaration simply states that the UK and EU should develop appropriate arrangements on those professional qualifications that are required for regulated professions, where in the parties' mutual interest.

In terms of what will replace free movement in the UK, on 19 December 2018 the Government published its much-delayed [White Paper](#) setting out its plans to introduce a new single, skills-based immigration system for all nationalities (save for Irish citizens, whose rights will continue as now). Under these proposals, the new regime will operate from the end of the transition period, subject to flexibility to adjust the arrangements as part of trade agreements. The current cap on the number of skilled workers will be removed, as will the requirement to carry out a resident labour market test, and instead a minimum salary threshold will be set (at a level to be consulted on). For lower skilled workers, there will be a transitional arrangement for nationals of low-risk countries to obtain a visa to come

for a maximum of 12 months followed by a 'cooling-off' period of a further 12 months. The White Paper confirmed plans to permit short-term business trips to the UK. It also confirmed that, on moving to the new system, employers will not be required to undertake retrospective right to work checks on existing EU employees.

Of course, these proposals were set out by Theresa May's government. Boris Johnson has expressed support for an Australian-style points-based immigration system and has announced plans for a fast-track visa route for scientists, but is yet to provide any further detail. Home Secretary Priti Patel has commissioned the Migration Advisory Committee to review the Australian and similar immigration systems and report by January 2020.

### Existing migrants

A key area of concern for employers is the position of EU citizens currently living and working (or in the process of being recruited to work) in the UK and UK nationals living and working in an EU member state. In March 2018, the UK Government reached agreement with the EU that, in the event of a final deal being agreed, it will introduce a new 'settled status' for EU citizens who have been resident in the UK before 31 December 2020 (those arriving between 1 November 2019 and 31 December 2020 will need to register, if they stay for longer than 3 months). Settled status will only be available to those with five years' residence, but individuals resident in the UK before 31 December 2020 but without five years will be able to apply for a temporary residence permit to cover the period until they have accumulated five years. The Government has suggested that EU citizens who already have a permanent residence card will be allowed simply to exchange this for settled status without having to go through the full application process. Immigration rules providing for settled and pre-settled status were implemented in July 2018 and applications for settled status can be made now and must be made by 30 June 2021. (The Government has so far resisted calls from the Commons Home Affairs Committee to legislate to grant settled status to eligible EU citizens rather than require individuals to apply and produce evidence of entitlement.)

UK nationals in the EU will have reciprocal rights, and the UK Government hopes to secure onward movement opportunities for these UK nationals, should they decide to change their EU member state of residence. These arrangements are reflected in the terms of the proposed Withdrawal Agreement endorsed by the EU Council on 25 November

- Means:
  - EU citizens resident in UK as at 31 October 2019 able to claim settled status by 31 December 2020. Reciprocal arrangements for UK citizens working in EU member states are expected and have already been confirmed by some member states and by the EFTA States.
  - New immigration regime for migrants arriving in UK after 31 October 2019, although EEA and Swiss citizens arriving before the new regime is in place will be able to apply for 3 years' European Temporary Leave to Remain (but not acquire settled status).
  - New skills-based regime subject to minimum salary threshold (to be confirmed).
  - Transitional scheme for 12 month visas for lower-skilled (to be confirmed).
  - Visa-free short-term travel.

### Deal/transitional period

- If approved by the UK Parliament, the Withdrawal Agreement, or some version of it, will set out arrangements for the UK's withdrawal from the EU - when the UK will cease to be a member state
- A transition period will follow the date of the UK's EU exit up till at least the end of 2020, possibly the end of 2021 or 2022
- During transition, EU law will continue to apply in and to the UK and the UK will continue to trade as part of the Single Market
- The Withdrawal Agreement will be accompanied by the Political Declaration on the future relationship between the UK and the EU. This will comment on the future trading relationship between the EU and the UK
- Whether or not the Withdrawal Agreement or the Political Declaration, or some version of both, are approved by

2018. The EU Commission has published a Q&A on the rights of EU and UK citizens as outlined in the withdrawal agreement [here](#). The Government has secured similar protections vis-a-vis the EFTA states.

The position will be different in the event of a no-deal. Although the Government will not be obliged to maintain the settled status regime, both Theresa May's government (see its [policy paper](#) published on 6 December 2018) and Boris Johnson's government (see the Home Office [media factsheet](#) dated 19 August 2019) have committed to doing so. However, EU and EFTA citizens will need already to be resident in the UK by 31 October 2019 (and not December 2020) to be eligible to claim settled status if the UK leaves without a deal. They will need to apply for the new status by 31 December 2020 (rather than 30 June 2021). Theresa May set out proposals to allow those individuals to rely on their passport or national ID card to evidence their right to reside in the UK, and confirmed that employers would not have to differentiate between those arriving before or after 31 October 2019. EU and EFTA nationals arriving after 31 October 2019 and before the end of 2020 would need to apply for European Temporary Leave to Remain, if they intended to stay for longer than 3 months. This would enable them to remain in the UK for 3 years but not to obtain settled status. In August 2019 the new Home Secretary Priti Patel rejected this proposal and announced that freedom of movement would end immediately on a no-deal Brexit but, following warnings that this would be impossible to implement, on 4 September she confirmed that she would revert to Theresa May's plan to provide a European Temporary Leave to Remain scheme (see the [Home Office press release](#)).

The UK would also continue to honour the right of those who obtain settled status under the scheme to be able to leave the UK for up to five years without losing their right to return.

The December 2018 Policy Paper also called on the EU and member states to offer reciprocal protection for the rights of UK nationals living in the EU in the event of a no-deal scenario. These have already been confirmed by some EU member states. Mirror protections for EFTA nationals resident in the UK and UK nationals in one of the EFTA states as at 31 October 2019 have also been agreed.

### Practical steps

In terms of practical steps to take now, employers should bear Brexit in mind when agreeing terms for recruitment or secondment of employees cross-border. They should also have audited the extent, location and immigration status of their migrant workforce and the workforces of the businesses in their supply chains, with a view to:

- communicating with employees, particularly those who might be affected by changes in immigration law, and keeping them informed as the position becomes clearer;
- considering if any current EU citizen employees working in the UK can apply for British citizenship or permanent residence now and/or supporting these employees' applications for settled status, and providing similar support for British employees working in the EU; and
- formulating contingency resourcing plans and keeping a close eye on the progress of the negotiations. A no-deal Brexit on 31 October 2019 could obstruct any plans to recruit EU nationals to come and work in the UK after that date, given that those nationals will not be eligible to acquire settled status and will be subject to new, as yet unspecified, immigration rules following any period of Temporary Leave to Remain.

31 October 2019, the UK will cease to be an EU member state on that date, unless the date for the UK to leave the EU is extended again by agreement between the UK and the EU27 or the Article 50 notice is withdrawn. If there is an approved deal and the UK enters transition, as explained above, the legal position during transition will be very similar for businesses as if the UK were still an EU member state

- Means:
  - Free movement continues during the transition period; plus some recognition of professional qualifications.
  - EU citizens resident in UK by 31 December 2020 able to claim settled status by 30 June 2021; mirror arrangements for UK citizens working in EU member state (although onward movement rights not yet secured).
  - New immigration regime for migrants arriving on or after 1 January 2021. Visa-free short-term travel.

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