



An Employer's Guide to **BREXIT**

Building and managing a post-Brexit recruitment strategy.

Introduction

The British Exit from the European Union, commonly referred to as Brexit, is one of the defining events of the UK's recent history. Officially, the United Kingdom (UK) left the European Union (EU) on 31 January 2020, and the impact has been huge, affecting every industry.

Legislation is changing fast, with new rules and regulations a continued level of uncertainty. Businesses need to be ready to adapt to ensure they stay compliant.

Brexit has meant a complete overhaul of the way British businesses employ EU nationals. Employers have a responsibility to be aware of the new systems and schemes to ensure that current employees and potential new starters have, and maintain, the right to work in the UK.

Executive summary

This e-book is designed to help you as an employer stay up to date with the effects Brexit may have on your business and recruitment, and the changes you may have to make.

Firstly, it is important for you to understand changes to right to work schemes, so that you can ensure compliance within your workforce. Workers who arrived before 31st December 2020 are eligible for the EU Settlement Scheme, whilst those arriving after that must apply via the Point-Based System. The most common route through the Point-Based System is with a Skilled Worker visa, and we will discuss the key requirements for this type of visa.

Secondly, we will look at how the two schemes may impact you as an employer. Until the end of the grace period (1st July 2020) there is little change in the right to work checks for EU nationals. Employers are encouraged to educate their current workforce around the new schemes, however, should be careful to avoid discriminatory behaviour when informing their employees of legislation changes.

Finally, we will discuss what we at Reed Screening feel will be the wider effects of Brexit on employers, including the short and long-term consequences to recruitment. For example, in the short-term employers may want to think about starting their application for a Home Office sponsorship license, to allow them to recruit directly from Europe going forward. In a long-term context, employers should ensure their hiring strategy fits into the on-going business priorities and hire for skills required both now and in the future.

Section 1: The new legislation



Before Brexit, EU nationals had the right to move to the UK to work and settle. However, as a major consequence of Brexit, the UK is putting an end to the freedom of movement of EU nationals to the UK, and has set out a number of immigration policies and legislations to help aid the smooth transition.

It is crucial that employers understand the new right to work legislation to ensure that they maintain compliance and understand how to continue to attract top talent from outside the UK.

The EU Settlement Scheme

The EU Settlement Scheme is designed to provide an easy transition through the Brexit process for those wishing to live, work, or study in the UK. To be eligible for this scheme, your candidate must be an EU national who entered the UK before 31st December 2020 or was already a UK resident.

The scheme provides EU nationals with a new visa status of either pre-Settled or Settled. It grants full access to UK healthcare and public services, including benefits and pensions if eligible.

Any EU nationals currently living in the UK who have not yet applied, and miss the deadline of 30th June 2021, will not be able to apply for this scheme. These individuals will not have legal right to remain or work in the UK unless they apply as an immigrant, which we will discuss later.

WHO IS ELIGIBLE?

This scheme applies to:

- EU citizens
- Citizens of Norway, Lichtenstein and Iceland (non-EU EEA citizens)
- Swiss citizens
- Eligible family members of all of the above
- Eligible family members of British citizens who have exercised a right to reside in another EU country.

The applicant must have entered the UK before 31st December 2020. It does not apply to Irish nationals, who can continue to live in the UK, or those who already have indefinite leave to remain.

Any children of the applicant who are under the age of 21, who were not born in the UK, are also eligible to apply, but must submit a separate application which can then be linked to that of their parent.

Pre-Settled Status

This visa status is available for applicants who have lived in the UK for less than 5 continuous years.

To receive pre-Settled Status, applicants must meet 3 conditions:

1. Their residence in the UK began before 11pm on 31 December 2020 (the end of the transition period).
2. They can prove they have been resident in the UK in the past six months.
3. They do not have a serious criminal record.

This visa grants 5 years of the UK Immigration Status 'Limited Leave to Remain'. When granted, the applicant is able to live, work, study and receive NHS healthcare. This status does not, however, extend to a "right to reside" for the purpose of welfare benefits.

To access the benefits system, an applicant must be able to show their "right to reside" under the EEA Regulations. This status can be lost after a period of 2 years absence from the UK, or if certain criminal offences are committed.

If the applicant holds pre-Settled Status, any children, even if they are born in the UK, are not automatically British Citizens. Unless either parent holds "Indefinite Leave to Remain", they must also apply for the scheme.

An applicant can apply for Settled Status after they have been a continuous resident in the UK for 5 years and meet the criteria. If they fail to apply, they will need to leave the UK at the end of this visa.

Applicants are unable to apply for British Citizenship under pre-Settled status.

Settled Status

This visa status is available for applicants who have lived in the UK for 5 continuous years or more.

To receive Settled Status, applicants must meet 4 conditions:

1. Their residence in the UK began before 11pm on 31 December 2020 (the end of the transition period).
2. They have been a continuous resident for at least 5 years.
3. During their previous 5 years of residency they have spent less than 6 months abroad in any 12-month period. Exceptions of compulsory military service, or an extenuating circumstance leading to an absence of 6-12 months, may be allowed).
4. They do not have a serious criminal record.

This visa grants the UK Immigration Status “Indefinite Leave to Remain”. This means the applicant can remain in the UK forever without having to re-apply.

This status grants the same rights to live, work and study in the UK as a British Citizen. This includes healthcare and welfare benefits (with the Settled Status acting as proof of right to reside). This status can be lost after a period of 5 years absence from the UK (4 years for Swiss Citizens), or if certain criminal offences are committed.

Under Settled Status, any children of the applicant who are born in the UK are automatically British Citizens. The applicant is also eligible to apply for British Citizenship, provided they meet the UK naturalisation requirements.

The UK's point-based system

If your candidate entered the UK after 31st December 2020, they need to meet specific requirements to be eligible to work or study in the UK.

This is a point-based system, which takes into account skills, qualifications, salaries and more. Your candidate will only receive a visa to work in the UK if they can get enough points and pass relevant checks such as UK criminal records checks.

There are many routes through the Point Based System, including both permanent and temporary worker routes. We will be focusing on the main route of entry - the Skilled Worker route. This is the route most important for employers to understand. It applies to EU nationals who want to begin to permanently reside, and have sought employment, in the UK, after the 31st December 2020.

SKILLED WORKER ROUTE

At the most basic level, to approach eligibility, applicants must:

- 1) Hold a job offer from an approved Home Office sponsorship licensed employer.
- 2) The job must be RQF3 or equivalent in its required skill level. This essentially translates to the role requiring A-level or equivalent qualification(s).
- 3) Be able to speak English at an intermediate level of at least B1 on the Common European Framework of Reference for Languages.

Completing these three essential requirements earns a candidate 50 points toward their application.

Overall, to be eligible, an applicant must meet 70 points from the following characteristics. A tradable characteristic is one which does not have to be fulfilled to meet the required points, but the applicant must achieve 70 points in some combination of the characteristics:

CHARACTERISTIC	TRADEABLE	POINTS
Offer of job by approved sponsor	No	20
Job at appropriate skill level	No	20
Speaks English at required level	No	10
Salary of £20,480 (minimum) - £23,039	Yes	0
Salary of £23,040 - £25,599	Yes	10
Salary of £25,600 or above	Yes	20
Job in a shortage occupation (as designated by the MAC)	Yes	20
Job in a listed health or education occupation with a salary that equals or exceeds £20,480 per year or the going rate for that occupation	Yes	20
Education qualification: PhD in subject relevant to the job	Yes	10
Education qualification: PhD in a STEM subject relevant to the job	Yes	20
New Entrant	Yes	20

Workers who qualify for this visa can be accompanied by their dependant. Spouses, partners, children under the age of 18, and in some cases other family members, may be classed as dependants.

Source: <https://www.gov.uk/guidance/the-uks-points-based-immigration-system-information-for-eu-citizens>

Other visa routes

Whilst the Skilled Worker route is the most common, it is by no means the only option for EU Nationals to work in the UK.

Under the Skilled Worker route, there are several more specialised visa options:

Health and Care Visa

Available for qualified doctors, nurses, health professionals or adult social care professionals, the Health and Care Visa requires a job offer from an approved UK employer and a minimum salary of £20,480.

Source: <https://www.gov.uk/health-care-worker-visa/your-job>

Temporary Creative and Sporting Visa

Open to those who have been offered work in the UK as a sports person or creative worker, meaning roles such as an actor, dancer, musician or film crew member, this Temporary Creative and Sporting Visa can be valid for up to 12 months. It can be applied for 3 months before the starting date of the work, and there is a fee of up to £244 per application.

There are also other routes which do not come under the Skilled Worker route.

Source: <https://www.gov.uk/temporary-worker-creative-and-sporting-visa>

Global Talent Visa

The Global Talent Visa is designed for leaders and potential leaders in academia or research, arts and culture and digital technology. To be eligible, the talented

and promising applicant must gain endorsement from one of the six bodies recognised by the UK Home Office. If approved, the applicant can remain in the UK for up to 5 years before needing to renew/extend the visa. Depending on their endorsement path, after 3-5 years they may also be able to apply for indefinite leave to remain.

Source: <https://www.gov.uk/global-talent>

Graduate Route

Opening for applications on 1st July 2021, this visa is designed for international students graduating from a UK university from the summer of 2021 onward. The Graduate Route will enable applicants to look for work and continue to live in the UK after their degree finishes, for up to 2 years (3 for PhD students). An employment sponsor is not required for this visa.

Source: <https://www.gov.uk/government/news/graduate-route-to-open-to-international-students-on-1-july-2021>

Intra-company Transfer Route

There are two types of the Intra-company Transfer Visa, and both require the employer to be an approved Home Office sponsor. There is a charge of up to £1408 per applicant, along with a healthcare surcharge of around £624, and the applicant must prove a bank balance of at least £1270 to show they can support themselves upon arrival.

Source: <https://www.gov.uk/intracompany-transfer-worker-visa>

Intra-company Transfer Visa

Designed for employees being transferred by their employer to a role in the UK, this visa is subject to a salary of £73,900, or if the employee has worked for the employer overseas for 12 months or more, £41,500. This visa allows the applicant to remain in the UK for up to 9 years in any 10-year period if above the higher salary threshold, and can then be extended for up to one maximum total stay.

Intra-company Graduate Trainee Visa

Designed for the transfer of an employee to the UK as part of a managerial/specialist graduate training programme, the applicant must have worked for the employer overseas for at least 3 months immediately before applying. The role must have a minimum salary of £23,000, and the maximum total stay is 5 years in any 6-year period. It cannot be extended, but the applicant can re-apply after working for their sponsor for another 3 months overseas immediately before submitting their application.

Temporary Seasonal Workers Visa

Allowing EU Nationals to come to the UK for farm work, the Temporary Seasonal Workers Visa requires a Home Office approved sponsor and proof of £1,270 in the applicant's bank account to show they can support themselves upon arrival. There is a fee of up to £244 per applicant and can last up to 6 months.

Source: <https://www.gov.uk/seasonal-worker-visa/eligibility>

Youth Mobility Scheme

The Youth Mobility Scheme is available for 18–30-year-olds with certain types of British Nationality from the following 8 countries:

- Australia
- Canada
- Hong Kong
- Japan
- Monaco
- New Zealand
- Republic of Korea
- San Marino
- Taiwan

Applicants must have at least £2,530 in savings to be eligible, and there is a fee of £244 as well as a healthcare surcharge. The scheme grants the applicant a visa to live and work in the UK for up to 2 years, and cannot be extended.

Source: <https://www.gov.uk/youth-mobility>

Frontier workers

Only open to those who began commuting to the UK for work before 31st December 2021, the Frontier Worker Permit allows an applicant to come to the UK to work whilst living somewhere else. Usually, they must have worked in the country at least once every 12 months since they began working here, and to continue doing so, must hold this permit before 1st July 2021.

Source: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/971527/Frontier Workers Leaflet.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/971527/Frontier_Workers_Leaflet.pdf)

Section 2: What this means for your business



Depending on your particular business and industry, these changes could be quite significant. So how should employers respond to the legislation changes?

In this section, we explain the potential implications for your business, and the actions you can take.

Maintaining compliance with current EU employees

We have passed the deadline for EU nationals arriving in the UK to be eligible for the EU Settlement Scheme. Action may be required to ensure that existing employees remain compliant if they have not taken advantage of this scheme.

Although there is no legal requirement for employers to ensure existing EU national employees are aware of the upcoming changes, it is sensible to make sure employees maintain their compliance by directing them to the government advice. A light-handed approach to reminding employees about legislation changes is essential, however. Employers need to avoid acting in a discriminatory fashion and must not target EU national employees with the guidance.

Employers should also not attempt to interpret information about the new legislation from the government for employees or provide immigration advice to employees unless they are qualified to do so. You also cannot force an employee to apply for the scheme or ask them to show their status under the scheme until after the grace period.

Checking EU employees' right to work

Checking an EU national's passport or ID during the grace period does not prove their right to work going forward. Your employee may be eligible for the EU Settlement Scheme and may or may not have applied or been accepted.

The question is, how can you as an employer know, and what should you do?

As it stands, anyone employed in the UK before the end of the grace period does not need a retrospective right to work check after 1st July 2021. We expect the Home Office to release further guidance on this nearer the end of the grace period.

The government guidance is also clear around currently permissible checks. During the grace period (1st January – 30th June 2021), employers can continue to solely check an EU citizen's national ID card or passport. This gives employers a statutory excuse against any potential legal issues surrounding the employment from a right to work perspective. However, if not carried out correctly, the employer may still be subject to criminal prosecution or civil penalty.

For new hires after 30th June, employers will be able to check EU national's status using an online immigration status checking service. Those who have received Settled or pre-Settled status can also generate a digital code and email that to their employer.

Source: <https://www.gov.uk/guidance/employing-eu-citizens-in-the-uk>

Employing EU nationals under the point-based system

For employees who entered the UK after 1st January 2021, the right to work process is more complex. To work in the UK, EU nationals must qualify for a point-based visa. Employers have more responsibility in facilitating this compared with the EU Settlement Scheme.

As we mentioned before, only certain roles are eligible for the Skilled Worker visa route. The employer does not decide which role meets the standards. Instead, the government publishes a list of approved roles and skills, and employers must determine where their roles may fit into these lists. This of course means that this route to a visa is not suitable for low-skilled or low-paid workers.

To apply for a Skilled Worker visa, a candidate requires a job offer from a registered sponsor. This means that businesses looking to employ candidates through this visa will need to hold a registered sponsorship status from the Home Office. If a business does not have sponsorship status with the Home Office, they cannot employ EU nationals. Depending on the role being recruited for, the employer must gain the appropriate type of sponsorship license. They may look to gain a permanent worker license, a

temporary worker license, or a license which covers both.

Once granted a license, the employer will receive an A-rating which allows them to assign certificates of sponsorship to EU nationals. However, there are several responsibilities as a sponsor. Should you fail to meet these, your licence may be downgraded to a B-rating. This bars the issue of new certificates but does allow you to retain and extend the contracts of currently employed EU nationals. By following an action plan, which costs £1,476, it is possible to upgrade the license back to an A -rating. However, if you fail to complete the required steps, you are at risk of losing your license all together. If you complete the action plan, but there are other improvements required, you may need to pay for a new action plan and will be assigned another B rating.

Employers should be aware that they are only allowed to receive 2 B-ratings within a 4-year period before their license is revoked. If revoked, an employer cannot appeal, but can reapply after 12 months.

Source: <https://www.gov.uk/uk-visa-sponsorship-employers/your-responsibilities>

Supplying EU workers to clients as an agency

Let's look at the example of recruitment agencies and umbrella companies, who currently supply EU workers to clients. This type of company should consider the extent to which the new immigration rules may affect their business model.

After 30th June 2021, they will no longer legally be able to supply clients with candidates who have not applied for, or achieved, Settled or Pre-Settled status, or who have not obtained any relevant visa. Individuals who do not meet the criteria, and who have been supplied on a permanent basis to a client, will no longer be able to take up work with the client.

It is therefore crucial for recruitment agencies and umbrella companies to fully understand the new legislation. They should also learn the extent to which they

are legally allowed to ask their EU national workers about their current immigration status, to avoid any possibility of discrimination.

Businesses are only able to get a sponsor license to employ people for their own business. This means that individuals are not generally able to be supplied to work for 3rd parties under the terms of a sponsor license. Consequently, the only way to supply clients with EU nationals under the points-based visa system is to ensure the client company holds the appropriate sponsorship license. They should also understand which of their roles are eligible under the Skilled Worker route, or any other route in the Point-Based system.

Section 3: The Brexit Effect



Beyond the effect on individual businesses, the recruitment industry as a whole can expect to see significant short and long-term changes from Brexit and the resulting changes in legislation.

So what will the wider effect on business and recruitment be?

Data and privacy

Movement of data/GDPR is a key issue in the recruitment sector, and is something which is subject to change due to Brexit.

As an EU Regulation, EU GDPR no longer applies within the UK, although it may still apply if your business operates in Europe. Instead, businesses must follow UK data protection law.

UK GDPR has been incorporated alongside The Data Protection Act 2018. Whilst this is essentially the same regulation, there are some technical differences which are worth checking up on to ensure you don't fall foul of any GDPR divergence. The ICO transition period FAQ's are a great place to start.

Source: <https://ico.org.uk/for-organisations/dp-at-the-end-of-the-transition-period/transition-period-faqs/>

Short term impact

In the short term (until the end of the grace period which lasts until 30th June 2021), there is little change for employers in terms of recruitment.

Compliance and right to work checks on EU nationals who have arrived in the UK before the end of 2020 remain the same until the end of the grace period. Employers are protected provided they have checked the EU citizen's national ID card or passport correctly.

Should an employer need to hire candidates directly from Europe in future, however, they will need to start the process to become a registered Home Office licensed sponsor, which must be done months prior to recruitment. The employer must fully consider the roles they are recruiting for, and ensure they are either skilled positions, fit a different category under the Worker license, or come under the roles accepted under the Temporary license.

The time required to gain approval for this license may cause a short-term delay in the recruitment of EU nationals directly from Europe, so Businesses may need to re-evaluate their immediate hiring needs. Could you find those skills within the UK, or could you delay recruitment for those roles until we receive approval of the license?

Source: <https://www.gov.uk/uk-visa-sponsorship-employers>

Long term impact

Brexit is creating a much smaller candidate pool, leading to an increasingly competitive hiring landscape. This poses a number of challenges to employers over the longer term.

360 Recruitment reported that the top factors impacting long-term hiring strategies as a result of Brexit are:

- The availability of talent (40%).
- Business uncertainty (38%).
- Reluctance of candidates to move to the UK (36%).
- Competition from international businesses (28%).

Source: <http://www.360recruitment.net/how-brexit-is-affecting-hiring-strategies/>

In line with that, in recent years we have seen a drop in international candidates seeking jobs in the UK. As the UK continues to move away from the EU

there will undoubtedly be further impact on the talent pool available from Europe.

During early Brexit negotiations during the first quarter of 2018, UK recruiters saw a decrease of candidates from key European markets:

- 37% from Italy
- 35% from France
- 35% from Germany
- 32% from the Netherlands
- 29% from Spain
- 33% from other EU countries.

And outside the EU: we saw a decrease in hires from South Africa (27%), Canada (27%), Australia (26%) and the USA (25%) too.

At that time, over two-fifths of candidates surveyed (44%) said the UK was now less attractive to EU candidates. Almost a third (28%) said that the UK was also now less attractive to the rest of the world.

Post-Brexit recruitment strategies

Whether because of more stringent regulations, a reduced level of interest in the UK as a place to work, or a combination of the two, it's clear that recruiting EU nationals is about to become much more difficult, and the recruitment market for many roles is about to become more competitive.

To thrive in a post-Brexit recruitment landscape, employers must go above and beyond to show not just European candidates, but all potential applicants, why they should work for them.

BE PROACTIVE

If you're expecting to need to recruit EU nationals post-Brexit, preparation is key. Registering as a Home Office Licensed Sponsor, and ensuring you're compliant with the requirements that go alongside this, can take many months, so starting this process early is essential.

If your business regularly employs EU workers via agencies or umbrella companies, it's particularly important to bring yourself up to speed on the new legislation and make alternative plans for sourcing new hires if required.

For existing employees, it can also be tempting to check compliance as early as possible. However, while it's reasonable to remind all employees about the upcoming changes and point them in the direction of further guidance, it's important not to put your company at risk of accusations of discrimination. In these situations, a light touch is best.

UPSKILL EXISTING WORKERS

Hiring strategies and workforce planning must align with long-term business priorities. A workforce development strategy should not only cover recruiting for skills that are needed now, but preparing for the skills that could potentially be required in 6 to 12 months' time.

As part of a long-term strategy, upskilling existing team members is not only a cost-effective way of developing a highly skilled workforce, but will increase employee retention, add value to your business, and improve your reputation as an employer. It will also make brand ambassadors out of your current workforce, which helps boost your employer branding. All of this not only helps you address future skills needs within your business but boosts your employer brand and helps you maintain access to top talent from the UK and abroad.

FOCUS ON EMPLOYER BRAND

To ensure your business is as attractive as possible to high-quality job applicants, it is important to focus on your employer branding. A strong employer brand effectively conveys the benefits associated with working in your business and keeps your organisation front-of-mind amongst potential candidates.

By conveying your culture, message and values in an authentic way, you can help potential candidates get to know your business and attract applicants who are

more aligned with your company, leading to better cultural fit, increased productivity and improved retention. Effective employer branding will also save you money when it comes to recruiting, by improving the quality of applications and reducing time-to-hire.

Building your employer brand presence online is vital. Creating a careers section on your website and using professional networks like LinkedIn to build an audience are great places to start.

How can we help?



With new legislation coming into play, it's never been more important to ensure that your business is protected from the compliance risks associated with recruitment. That's where we come in.

With over 60 years of experience in recruitment, and over 9 years' experience as screening specialists, Reed Screening is ideally placed to advise your business on the best way to bring in new hires safely and legally.



RECRUITMENT AND SCREENING EXPERTS

We have over 60 years' experience in recruitment, and in 2019 we screened over 120,000 clients. Our service is built for scale, no matter how many candidates you'll be welcoming on board.



BUILT AROUND YOUR CANDIDATES

Candidate experience is at the heart of what we do. We deliver an efficient and flexible screening process that reflects your employer brand and integrates seamlessly with your recruitment process.



THE UK'S FASTEST SCREENING, 24/7

Our 24-hour screening team of over 140 employees is proud to provide the UK's fastest pre-employment screening service, offering 8-day turnaround across over 500,000 checks.

If you have any questions, or just fancy a chat about your pre-employment screening needs, don't hesitate to get in touch:

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