

Bird & Bird & Business Immigration

*'No deal' Brexit: practical guidance for employers of
EU workers*



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'No deal' Brexit: practical guidance for employers of EU workers

As the UK Government struggles to get Parliament's approval on the terms of our divorce from the EU, many employers are facing the grim reality of a "no deal" Brexit scenario.

What will 'no deal' mean for EU nationals?

In the event of no deal, there will be no formal transition period. This will mean that EU nationals who are currently present in the UK are at risk of losing their EU-derived rights to live, work and move freely after 29 March 2019. To obtain new rights to remain in the UK, EU nationals and their family members will need to apply under the EU Settlement Scheme ("Scheme") by 31 December 2020.

Whilst the Home Office and the Department for Exiting the European Union ("DExEU") have attempted to offer assurances to those already residing in the UK in the event of a "no-deal", the status of EU nationals who arrive in the UK between 30 March 2019 and 31 December 2020 remains unclear. The recently published policy paper by the DExEU on citizens' rights in a "no-deal" scenario remains vague on the entitlements of these individuals.

This is a crucial period as those EU nationals will not qualify to obtain new rights under the Scheme as they will not be present in the UK on 29 March 2019. However, they will also not be subject to the new UK Immigration Rules scheduled to be implemented from 1 January 2021.

How will this work in practice?

It will be practically impossible for the Home Office to distinguish between EU nationals (and their family members) who qualify under the Scheme but have yet to make an application and EU nationals who do not qualify under the Scheme having arrived after 29 March 2019.

Reading between the lines, it appears there will be some type of "deemed leave" in which the Home Office will treat such EU nationals as having permission to live and work in the UK but not eligible for settlement under the EU Settlement Scheme.

The DExEU policy paper states that EU nationals will be able to continue using their passports and ID cards for employment purposes until 31 December 2020. This effectively replicates freedom of movement and the right to work for EU nationals until the end of 2020, without formally having a transition period in place.

What next?

If the UK Government wants to reassure businesses, it should clearly state that a transition period will be in place *regardless of whether there is a deal*. We would also expect to see unequivocal confirmation that EU nationals arriving after 29 March 2019 (but before 1 Jan 2021) will:

- Be allowed to work based on holding an EU passport or ID card;
- Be given a path to settlement once the new Immigration Rules apply to EU nationals from 1 Jan 2021; and
- Be required to apply for further leave to remain under the new Immigration Rules after 1 Jan 2021.

Employers should take this small window of opportunity to fine-tune their contingency plan for the transfer of key EU national executives and employees to the UK before 29 March 2019 in the event of a no-deal Brexit. For any employees who will transfer to the UK after 29 March 2019, employers should be flexible and ready to adapt to any new proposed rules limiting their right to work in the UK that may come into place before 1 January 2021.



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