

ALL CHANGE WITH SEASONAL LABOUR POST BREXIT

As Harold Wilson once said, ‘a week is a long time in politics...’ and government attitude to EU migratory labour seems to be a case in point. A few weeks ago, with the government having abandoned its post Brexit solution of a temporary migratory scheme, the only solution left for those wanting to come in after 31 October 2019 was to show that they had ‘settled’ or ‘pre-settled’ status. Thankfully, the Home Office has listened to industry and common sense has prevailed. So, what is the current position?

Existing EU nationals and their families wishing to return to work in the UK need to either:

1. Apply under the government’s Settled Status Scheme (the “SSS”) which should then give them the best opportunity to position themselves to live, study and work in the UK after 31 December 2020 (no deal) or 30 June 2021 (if a deal is done). There is no fee payable for any SSS application; or
2. If an individual does not or cannot apply under the SSS then the government’s recent U-turn on EU immigration policy announced on 4 September in the event of a no deal Brexit should enable EU citizens to arrive, live and work in the UK as they do now for a fixed three-year period under European Temporary Leave to Remain.

SETTLED STATUS SCHEME

If a deal is achieved, then the SSS will be open to anyone coming into the UK up to 31/12/20; but with no deal, the qualifying residence/work in the UK must be pre 31/10/19. For further information see: www.gov.uk/settled-status-eu-citizens-families

Following a successful application under the SSS, there are two possible classes of Settled Status that an EU national will get being either “Full” settled status or “Pre” settled status. The former applies where an employee can show that they have been “continuously resident” in the UK for at least five years (and “continuous residency” means [from a farmer employer’s perspective] that your employee’s HMRC records show that they have been employed for at least six months in any 12 month period); and Pre-Settled Status where the employee is not able to show continuous residency for the full five year period. Note that when the application is made, the applicant does not need to say which category of settled status he or she is applying for.

Once an employee has (Full) Settled Status, then

they can come and go to the UK as they please – as long as they return at least once in any five-year period. Where an employee has Pre-Settled Status, then they can come and go as they please for a maximum of five years; and unless within that period they can show five years continuous employment and so convert to Settled Status, their Pre-Settled Status will lapse at the end of that period.

EMPLOYEES WHO HAVE BEEN IN THE UK BEFORE A NO DEAL BREXIT ON 31 OCTOBER

If resident in the UK before 23:00 on 31 October 2019, employees can apply to the SSS to obtain either Settled or Pre-Settled Status. This policy remains the same as before and means that workers can apply even once absent from the UK using the online process as long as they can show that they have lived in the UK at some point over the last six months (before the no deal Brexit date).

EUROPEAN TEMPORARY LEAVE TO REMAIN - EMPLOYEES COMING TO THE UK AFTER A NO DEAL BREXIT

Importantly, where a worker does not qualify under the SSS, from 31 October 2019 - 31 December 2020, EU citizens and their families that meet enhanced criminality criteria (see below) will otherwise be able to move to the UK to live, study and work as they do now. Those that wish to stay beyond 2020 will need to apply to the European Temporary Leave to Remain Scheme (TLR). This will involve “a simple online process and identity, security and criminality checks.” There will also be no fee for this application.

If successful in applying to this scheme, individuals will be able to stay in the UK with the right to live, study and work for up to 36 months under TLR. This period will commence from the date that their status to remain under the scheme is granted. There is now no time limit once an employee has arrived in the UK within which EU citizens need to apply to this scheme. The implication is that as long as citizens are granted TLR before 31 December 2020, they will be able to live, study and work in the UK beyond this date until their TLR status expires.

Freedom of Movement currently allows EU citizens the automatic right to move to the UK to live, work or study. If the UK leaves the EU with no

deal on 31 October, technically this will cease to operate at that point.

The following extra conditions will then be implemented for EU citizens arriving in the UK after 31 October:

- Tougher criminality checks and thresholds to achieve entry to the UK.
- All EU nationals travelling to the UK will have to make a customs declaration (even if there is nothing to declare).
- EU nationals will not have the right under retained EU law to acquire permanent residence – such an application will instead only be possible once the new immigration policy is in place.
- EU nationals will still be able to travel to the UK using a passport or identity card, but the UK will phase out the use of EEA national identity cards sometime in 2020.

The obvious conclusion to all of this is that, whether or not a deal is done, any EU qualifying national currently in the UK should think seriously about applying under the SSS now. This policy applies even if they have Indefinite Leave to Remain (ILR) at present, because gaps of up to five years are permissible for someone with Settled Status, whereas someone with ILR must return within two years.

If a SSS application is not an option, then – until post Brexit immigration policy is fully up and running – the only solution is to apply for European Temporary Leave to Remain. Looking further into next season and beyond though – given that in any event the EU labour pool continues to dry up – we must have the Seasonal Agricultural Workers Scheme Pilot rolled out on a ‘Commercial’ level as soon as possible; and by that token even Sarah Calcutt’s suggestion (SEF September ‘Lobby your MP about Seasonal Worker Permits’) that we need 30,000 permits seems very conservative!



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