

The Impact of Brexit on UK Employment Law

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With contribution on the impact of Brexit on UK immigration law, from Laura Devine Solicitors

Background to Brexit

1. The run up to the shock UK referendum outcome on 23 June 2016, in which the UK voted by 51.9% to leave the EU, so called "Brexit", was marked by political posturing and divisive rhetoric.
2. Conflicting and controversial arguments about the pros and cons of Brexit flew both ways between leave and remain campaigners. Leave campaigners made claims that Brexit would allow the UK to take back control of its borders and reduce EU immigration and associated pressures on schools, the NHS and housing; reclaiming an alleged EU contribution cost of Eur350 million a week, to use on the NHS, and ending the EU's supremacy over UK law. On the remain side key arguments against Brexit included that the EU brings many benefits including tariff free access to EU markets and claims that for every pound the UK put into the EU it got £10 back; leaving the EU would negatively affect the UK economy, leading to spending cuts; and further, if the UK left the EU it was argued that any deal it negotiated would still require it to be subject to EU rules but without the ability to influence the law-making process. Whatever the outcome of the referendum, the UK Government promised that it would respect and deliver the will of the people. However, very few people (including those who voted for Brexit) at that stage anticipated that Brexit would become a reality.
3. The reasons behind the Brexit vote are complex and cannot be distilled to one cause. But, in the post-mortem analysis, many commentators considered that the Brexit vote was an indictment by a mix of disillusioned voters, including the economically marginalised, middleclass Eurosceptics and the older working class, of what they viewed as a bureaucratic, anti-democratic and costly EU system. Such views about Brexit voters have also driven a post-Brexit narrative by high profile Leave supporters that the Brexit vote was a vote against unsustainable EU immigration, inequality of income, opportunity and power; and a vote to regain control over the UK's legal, economic, political, and social system. At the same time the UK Government has been adamant that *"the referendum result was not a vote [for the UK] to turn [its] back on Europe. Rather, it was a vote of confidence in the UK's ability to succeed in the world – an expression of optimism that [its] best days are still to come"*.¹ It is expected that these themes will therefore play a big part in the Brexit process.

¹ HM Government, *The United Kingdom's exit from and new partnership with the European Union* (White Paper, Cm 9417)

<https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/589191/The_United_Kingdoms_exit_from_and_partnership_with_the_EU_Web.pdf>

A summary of the journey so far

The road to Brexit is an untested one, and has so far included many unprecedented twists and turns with many more expected along the way. First came a constitutional challenge to the UK Government's initial proposal to rely on its executive prerogative powers to commence the formal Brexit process. This led to a UK Supreme Court judgment handed down on 24 January 2017 requiring the UK Parliament to give permission to the UK Government to trigger Article 50 of the Treaty of the European Union ("Article 50") and begin the formal Brexit process by passing an Act of Parliament.

4. The required Act of Parliament (European Union (Notification of Withdrawal) Act 2017 ("Withdrawal Act")) journeyed swiftly through the UK's two Houses of Parliament with relative ease, with the exception of proposed amendments in the House of Lords – one to protect the rights of EU workers in the UK and the other to ensure that Parliament has the opportunity to vote on the terms of any deal negotiated with the EU on the terms of the EU's exit. Both amendments were voted down, which seemed to support the view that parliamentarians on both sides of the Brexit fence did not want to frustrate the will of the people, and thus the Withdrawal Act was duly passed on 16 March 2017 giving the UK's Prime Minister, Theresa May, the power to formally trigger Article 50.
5. Mrs May accordingly gave the Article 50 notification on 29 March 2017, beginning the two year period for the UK to negotiate the terms of its exit from the EU. This means that Brexit could be complete by 28 March 2019. In the absence of a deal in this two year period, the time limit can be extended, with the unanimous agreement of the 27 remaining member states. However the UK Government have stated that they are confident that the UK can reach a positive agreement about its future relationship with the EU in the two year period. The UK Government have promised to put any final deal agreed between the UK and the EU to a vote in both Houses of Parliament.
6. The UK Government have also proposed a "Great Repeal Bill" to provide legal certainty by ensuring that all EU law currently in force in the UK will be converted to domestic law, so that as far as possible the same rules will apply immediately post-Brexit as pre-Brexit. Thereafter the UK Parliament will be able to decide which elements of that EU-derived law to keep, amend or repeal once the UK has left the EU.
7. The Great Repeal Bill would repeal the European Communities Act 1972 ("ECA") which incorporates EU law into domestic UK law, convert the body of existing EU law into domestic law, and create powers for Parliament to make secondary legislation and allow the UK Government to rectify problems as they arise which occur as a consequence of leaving the EU. The Government have published a white paper setting out their plans for the Great Repeal Bill, but it is not expected to be introduced into Parliament until mid-2017 and its Parliamentary process will run in parallel with the Brexit negotiation process under Article 50, to allow the Government to also implement any necessary contents of the withdrawal agreement reached with EU into the UK's domestic law.²

² Department for Exiting the European Union, *Legislating for the United Kingdom's Withdrawal from the European Union* (White Paper, Cm 9446) <

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8. In a further unexpected move on 18 April 2017 Theresa May called for a UK general election due to take place on 8 June 2017. It is thought that one of the reasons behind this decision to call a snap election is to strengthen Theresa May's hand in the Brexit negotiations, by giving her the opportunity to obtain a larger majority for her party (the Conservative Party) in Parliament and thereby reduce the chances of Brexit negotiations being hampered and any Brexit deal she secures from being rejected or frustrated by cross party politics and division.
9. This new development has given the UK's main political parties another opportunity to set out their proposed plans for Brexit, should their party secure a majority in the general election. Although at the time of writing, the major UK parties have yet to officially launch their manifestos, there have been some indications from politicians about what these Brexit plans might be. The Conservative party, who are currently hold the majority in the UK Parliament and who have had the task of commencing the current Brexit process and plan, have said that they will deliver on the referendum result. Whereas the Liberal Democrat party are positioning themselves as the only real opposition to stop a "hard" Brexit Conservative Government agenda (of which more below, but in essence would involve the UK giving up access to the Single Market and Customs Union). If elected Liberal Democrats have indicated that they would seek to negotiate a Brexit that keeps the UK in the Single Market. It has also been reported that the Liberal Democrats will offer the UK a second referendum on the terms of the final terms of the negotiated Brexit deal, which could possibly allow the UK to reverse its decision altogether and stay in the EU.
10. The Labour party have indicated that in Brexit negotiations they would prioritise trade with the EU and even consider staying in the customs union, however they would still end free movement; give EU citizens a unilateral guarantee that they could stay on in Britain; and abandon the current UK Government plans for a Great Repeal Bill and would instead commit to keeping not just existing EU laws guaranteeing worker rights and environmental standards, but also adopting future EU laws covering these areas. Whereas the right wing UKIP (the party who is credited by some as having strongly campaigned for and driven the Brexit vote) have positioned themselves as the only party with a policy for leaving the EU quickly, cleanly and completely.
11. The Scottish Nationalist Party (SNP) have a very different agenda for Scotland, which voted by 62 percent to stay in the EU. The SNP are of the view that as Scotland voted to stay in the EU, then before Brexit does happen they should get the opportunity to have a second referendum on the question of Scotland's independence from the rest of the UK (in the first 2014 Scottish referendum, Scotland voted to remain in the United Kingdom by a 55 percent majority). The First Minister of Scotland, Nicola Sturgeon, won the vote in the Scottish Parliament to pursue her plans for a second independence referendum. However, if Scotland gain their

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/604516/Great_repeal_bill_white_paper_accessible.pdf >

independence, they would likely then hope to negotiate to re-join the EU, once the rest of the UK has left.

The intermediate position on UK employment law during the Brexit process

12. The current position is that during the Brexit process and until formal exit has taken place the UK will remain a full member of the EU and all the rights and obligations of EU membership will remain in place.
13. EU law is currently implemented in the UK into domestic UK law through direct effect (EU regulations which apply automatically in the UK) and EU directives which are transposed into the UK through domestic legislation passed by the UK Government. Thus during the Brexit process EU regulations with direct effect and UK domestic laws derived from the EU will still have to be followed in the UK, new EU directives will need to be transposed into UK law (provided the time limit for doing so fits with the exit timetable), and the UK courts will continue to have regard to the decisions of the European Court of Justice.
14. Therefore there will also be no immediate changes to employment law in the UK resulting from Brexit, and cross-border employers will need to continue to comply with all UK employment law (including EU derived law) in the two year negotiating period.

Theresa May's priorities for the Brexit negotiation

15. Theresa May has indicated that in the negotiations the UK will be seeking a "hard" Brexit, which means not just an exit from the EU but a complete exit from the Single Market, which currently allows the free movement of people, services, goods and capital between EU member states, and allows the same freedoms (with some exceptions) between EU member states and Iceland, Liechtenstein, Norway and Switzerland. If there is a hard Brexit, new agreements and arrangements will be required between the UK, the EU and the other states in the Single Market to deal with issues such as immigration and trade and customs.
16. In January 2017³ Theresa May set out her twelve objectives and driving principles for the Brexit negotiations, which included:
 - i) Providing certainty and clarity;
 - ii) Taking control of the UK's own laws;
 - iii) Strengthening the Union;
 - iv) Protecting the UK's strong historic ties with Ireland and maintaining the Common Travel Area;
 - v) Controlling immigration;
 - vi) The UK's exit from and new partnership with the European Union
 - vii) Securing rights for EU nationals in the UK and UK nationals in the EU;

³ <https://www.gov.uk/government/speeches/the-governments-negotiating-objectives-for-exiting-the-eu-pm-speech>

- viii) Protecting workers' rights;
- ix) Ensuring free trade with European markets;
- x) Securing new trade agreements with other countries;
- xi) Ensuring the UK remains the best place for science and innovation; Cooperating in the fight against crime and terrorism; and
- xii) Delivering a smooth, orderly exit from the EU

17. Many of these priorities will impact workers and employers with UK operations, which appears to be high on the Prime Minister's agenda, including assurances to guarantee the rights of EU nationals who are already living and working in the UK and the rights of British nationals living and working in the EU as soon as possible before the Brexit process is completed. This would give businesses some certainty in relation to their existing workforces and would allow them time to plan their future recruitment needs.
18. Additionally where the UK is currently one of the leading financial centres in the world, and indeed London having been ranked once again in the 2016 Global Financial Centres Index, ensuring that the financial services sector retains the freedom to provide its services across European borders has also been emphasised by Ms May as a key priority in the Brexit negotiations. Currently passporting rights allow UK financial institutions to provide financial services across the EU under a common set of rules and a single authorisation from their regulator. If the UK were to stay in the Single Market but leave the EU it would retain these passporting rights, but as Theresa May has said that staying in the Single Market is not on the table, it is likely that these rights will be lost. Instead Ms May has suggested that the UK Government will seek the freest possible trade in financial services between the UK and EU Member States in the new agreement with the EU after Brexit. Over 75 per cent of the EU's capital market business is conducted through the UK, and it is thought that it would be in the interests of the UK and the EU to try and maintain this access and avoid market fragmentation and the possible disruption or withdrawal of services.
19. The Prime Minister will also prioritise implementing controls on immigration from Europe in the Brexit negotiations, but will also focus on keeping the UK an open and welcoming country that country welcoming to migrants. The UK Government have said that they will carefully consider the options that are open to the UK to gain control of the numbers of people coming to the UK from the EU and as part of that, will seek the views of businesses and communities to enable them to have a thorough understanding of the impacts on the different sectors of the economy and the labour market.
20. In relation to trade, the Prime Minister wants the UK to be free to pursue trade deals with EU member states and also any other countries it chooses. The Government will therefore prioritise securing the freest and most frictionless trade possible in goods and services between the UK and the EU.

What might UK employment law look like after Brexit?

a. Reduced red tape

21. UK employment law that derives from the EU (in whole or part) currently includes: collective consultation obligations, holiday, agency workers, fixed-term employee and part-time worker protections, health and safety, works councils, discrimination and certain family-related rights. However after Brexit (and subject to any requirements that may be imposed or required by virtue of any agreement reached with the EU about the terms of the UK's future relationship with the EU) the UK's future employment laws will no longer have to be compatible with those passed in the EU.
22. It is not anticipated that this will result, at least initially, in the UK Government removing a whole host of EU derived employment legislation, as this would likely face public and political opposition. In fact many of the UK's EU derived employment law go further than EU requirements, making it unlikely that these would be repealed. The Government have also already indicated that they want to maintain workers' rights, with Theresa May saying that "they will be guaranteed as long as [she] is Prime Minister".⁴ There may even be an appetite to enhance workers' rights post Brexit, with the Prime Minister specifically mentioning the objective of getting the voices of workers heard on boards of public limited companies in her January 2017 speech.⁵
23. Further, some UK MPs have tried to protect EU-derived workers' rights post-Brexit through new legislation. In September 2016, the Labour MP Melanie Onn introduced a Private Members' Bill to Parliament. The Workers' Rights (Maintenance of EU Standards) Bill calls for the UK to safeguard workers' rights derived from EU legislation after Brexit, but also for ECJ case law to continue to have binding authority in respect of such legislation and for any new post-Brexit legislation to be compliant with EU law relating to workers' rights. Although the Bill initially showed positive signs of cross-party support on its introduction and was voted through unopposed, it is a Private Members' Bill, which bills very rarely become law. Indeed the Bill was due for a second reading on 13 January 2017, but was filibustered by Conservative MPs. The second reading has been postponed several times and is now scheduled for 12 May 2017.
24. However where the UK Government may eventually decide to make changes to UK employment law is where it considers it necessary to enhance the attractiveness of the UK as a competitive country to base businesses. It has therefore been suggested that the UK Government may take the opportunity of Brexit to get rid of red tape which are particularly disliked by businesses, including:

⁴ <http://press.conservatives.com/post/151239411635/prime-minister-britain-after-brexit-a-vision-of> and <http://press.conservatives.com/post/151378268295/prime-minister-the-good-that-government-can-do>

⁵ <https://www.gov.uk/government/speeches/the-governments-negotiating-objectives-for-exiting-the-eu-pm-speech>

- Changes to the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) which protects jobs when businesses are bought and sold, to remove strict rules about harmonisation of terms and conditions after a transfer.
- Amending certain aspects of the Working Time Regulations in respect of certain provisions such as accrual of annual leave during long term sickness and maternity leave, holiday pay calculations, and employees' ability to opt-out of the regulations. These have been criticised as imposing unnecessary burdens on business.
- Scrapping Agency Workers Regulations which have been largely unpopular.
- Introducing a cap on discrimination claim awards (similar to that for unfair dismissal claims) which is currently prohibited by EU legislation.

b. Involvement of the Court of Justice of the European Union (CJEU)

25. The UK Government have clearly stated that on leaving the EU, the jurisdiction that the CJEU has had over the UK courts will end. Following Brexit the UK Supreme Court will have ultimate supremacy over the interpretation of UK law and will not be required to consider the CJEU's case law when interpreting any UK law post Brexit.
26. However in circumstances where many EU derived laws will continue to apply to the UK after Brexit as a result of the Great Repeal Bill there were questions around the approach that the UK courts should take to interpretation of those laws where pre-Brexit CJEU case law had already determined the relevant issue. For example the UK's domestic holiday pay law derives from EU law and CJEU case law has held that contractual commission (and other similar payments intrinsically linked to the performance of the workers' contractual duties) must be included in the calculation of holiday pay to ensure compatibility with EU law. In this regard the UK's domestic holiday pay law was incompatible with EU law and the UK courts have had to use purposive interpretation tools to try and give effect to the CJEU's rulings in the UK. However this position has been unpopular with business and certain commentators, as well as fraught with uncertainty and subject to appeals on various grounds in the domestic courts. Thus in a post Brexit world where CJEU law did not have to be followed, it would be open (and possibly attractive) to the UK courts to depart from previous decisions which were based on CJEU case law.
27. The UK Government has now confirmed that, in order to maximise legal clarity, any question after Brexit as to the meaning of EU derived law will be determined in the UK courts by reference to the CJEU's case law as it exists on the day the UK leaves the EU. However to provide flexibility, pre-Brexit CJEU case law will also be given the same binding status as decisions of the UK Supreme Court, whose decisions are usually binding on itself and may only be departed from where it appears right to do so (which is a rare occurrence). The UK Government have said that they would expect the UK Supreme Court to take a similar sparing approach to departing from CJEU case law and have also indicated that they may provide some guidance on the circumstances in which such a departure might occur. Parliament will

also, as usual, be free to address in legislation any Supreme Court case law where it is felt that the Supreme Court's interpretation on a particular piece of EU derived law was incorrect.

c. How are employers and employees preparing for and responding to Brexit?

28. The uncertainty that comes with Brexit and its potential myriad of implications has made it difficult for businesses to take measures to prepare for potential changes. In fact a recent survey of 250 business decision-makers from UK organisations with annual revenue of £50 million found that 44 percent of businesses have yet to begin their Brexit planning.⁶ This is despite the fact that 77 percent of those polled stated that they were concerned about the potential negative impact of Brexit, including on the increased cost of materials and services and exchange rates. On the other hand 1 in 3 (29 percent) business decision-makers said that the decision to leave the EU had positively impacted their organisation already.
29. A third of respondents said that they did not trust anyone to know what will happen post-Brexit. 40 percent felt that this knowledge and guidance should come from the CEO of the company, but only 20 percent actually trust the CEO to provide this. Survey respondents displayed an even lower level of trust in the views of 'experts' outside of their organisations, including industry analysts (26 percent), the UK Government (26 percent), and the Bank of England (25 percent). Therefore there appears to be a need for informed and trusted leadership.
30. Despite the uncertainty there are steps that employers have been advised to take now to prepare for Brexit, including:
 - a. reviewing all their policies and processes to identify those that may need to be amended post-Brexit;
 - b. auditing their workforce to obtain data about which employees are EEA nationals in the UK or British nationals in the EEA and may be affected by Brexit;
 - c. deterring bullying and harassment on the grounds of race or nationality, and also because of a worker's Brexit views (which may qualify as a protected philosophical belief under discrimination law),
 - d. ensuring clear equality policies are in place, which explain what can amount to discrimination and set out the processes for workers to follow in the event that they consider they have a complaint.
31. Employers may also consider regularly reviewing their communication plans as and when better information becomes available over time, in regards to consulting and communicating with key clients, staff and stakeholders about potential changes to the business structure, processes and provision of products or services which may be affected by Brexit. If a message

⁶Anaplan, *How prepared are UK businesses for Brexit?* <https://www.anaplan.com/wp-content/uploads/2017/03/Resource_WhitePaper_Brexit_IndustryReport_v1-1.pdf>

is agreed, it should be used consistently and clear guidelines should be given for commenting on Brexit and its implications, especially if the workforce is active on social media.

32. Further nominating a person with direct reporting lines to management, such as the HR director, to whom staff can turn to ask questions and express concerns or even suggest ideas. Ideally the selected person would be able to provide some guidance on the business's strategic approach to Brexit, or just provide reassurance that it will be business as usual for the immediate future. Employers could also consider creating a team to monitor and assess the implications of Brexit as information becomes available over time, or even using their employee representatives or European Works Council for this purpose.

d. How are employers responding to the immigration situation as a result of Brexit?

33. If the UK leaves the Single Market post-Brexit and there are changes to immigration rules, this will have a huge impact on cross-border workplaces which employ both UK and EU workers either in the UK or in another EU country (see more about this in the Appendix to this Paper by Laura Devine Solicitors). They will likely be concerned about the effect Brexit may have on the ability of the business to maintain and recruit suitably skilled workforce in the countries in which they operate.
34. Many EU workers in the UK are employed in lower paid low skilled jobs, and companies' are worried that if they are forced to leave, there will not be enough willing UK workers to fill their jobs. A Resolution Foundation report found that manufacturing, agriculture and domestic service jobs are most likely to be severely affected by a reduction in the supply of migrant labour supply post Brexit. However statistics from the Labour Force Survey for the final quarter of 2016 has revealed that the biggest decrease in the number of EU migrants in the UK have actually occurred in the public, finance and construction sectors and not, as might have been expected, other sectors that mainly rely on relatively low skilled EU workers.
35. UK Industries most reliant on EU migrant workers are reported⁷ to include the following:
 1. Manufacture of food products: 31% of total workers
 2. Domestic personnel (housekeepers and carers): 23%
 3. Accommodation (hotels/tourism): 21%
 4. Crop, animal production, hunting: 16%
 5. Mining of metal ores: 14%
 6. Warehousing and support for transport: 15%
 7. Services to buildings and landscape: 14%
 8. Food and beverage service activities: 13%
 9. Manufacture of leather and related: 12%
 10. Manufacture of textiles: 11%

⁷ <http://www.independent.co.uk/news/business/news/brexit-latest-immigration-migrants-freedom-of-movement-labour-industries-trade-hit-hardest-a7118856.html>
<http://www.resolutionfoundation.org/media/blog/first-signs-of-falling-migration-after-the-brexit-vote/>

36. Although it is a little too early to speculate on the long-term outlook on the basis of this data it may be that the UK will need to prepare for a wider range of sectors to experience worker shortages as a result of Brexit and those sectors will require different strategies to combat these changes.
37. In anticipation of changes to UK immigration law as result of Brexit, some companies are looking at strategies to address the possible reduction of available workers in the market, including by reviewing pay, reward, and progression to attract more UK workers. Other responses by employers to a potential reduced supply of EU migrants include rethinking their business models, including by increasing investment in skills and technology.
38. Additionally during the negotiation period and prior to Brexit formally coming into effect, some employers are trying to retain staff by working with them to understand questions such as whether they are currently eligible for citizenship or permanent residence, or whether they would get work permits under the current system in the UK, with some employers even covering costs of immigration law advice. These questions would also need to be explored by employers in relation to UK staff posted elsewhere in the EU.
39. Employers should also bear in mind that it is unlawful under UK discrimination law to discriminate, harass or victimise employees and workers (including some categories of self-employed workers) on the grounds of race (which includes nationality and ethnic origins). Thus employers who may decide not to hire EU nationals because of uncertainty about their future immigration status may be unlawfully discriminating against them. Equally if an employer needs to make organisational changes or redundancies as part of its post-Brexit strategy, there should be fair and documented decision-making processes referring to objective business reasons as well as careful management of how this is communicated to staff, in order to minimise the risk of complaints that such decisions might have been made based on a worker's EU nationality.

Data Protection

40. One of the biggest EU-lead changes which is expected to affect cross border workplaces operating in the UK during the Brexit process is the EU's General Data Protection Regulation ((EU) 2016/679) (GDPR). The GDPR is a Regulation and as such it will be directly applicable in all EU member states with effect from 25 May 2018. The UK Government confirmed in November 2016 that the UK will adopt the GDPR to secure unimpeded data flows between the UK and the EU and underpin free trade. The UK Government have also confirmed that in order to ensure that duplication or inconsistencies with the GDPR do not arise when it becomes directly applicable in the UK, current domestic law that implements current EU data protection law in the UK (the Data Protection Act 1998) will be brought forward for repeal beforehand.
41. The GDPR will therefore likely come into force before Brexit and the new relationship terms with the EU are finalised and employers (particularly multinationals) would therefore be well advised to continue to prepare for compliance with it.

42. Many of the principles in the new GDPR are similar to the UK's current Data Protection Act 1998. However the GDPR also introduces important new concepts, approaches and sanctions, including the following.

- i)* expanded territorial scope to EU data controllers and data processors that offer goods or services to data subjects in the EU irrespective of whether payment is received and monitor the behaviour of data subjects' (where that takes place within the EU).
- ii)* Increased enforcement powers and maximum fines: up to 2% of annual worldwide turnover of the preceding financial year or 10 million euros (whichever is the greater) for violations relating to internal record keeping, data processor contracts, data security and breach notification, data protection officers, and data protection by design and default; and up to 4% of annual worldwide turnover of the preceding financial year or 20 million euros (whichever is the greater) for violations relating to breaches of the data protection principles, conditions for consent, data subjects rights and international data transfers.
- iii)* Consent, as a legal basis for processing, will be harder to obtain. Consent will need to be freely given, by informed and unambiguous clear affirmative action. Businesses will bear the burden of proof to show that consent was validly obtained such as by a written (including electronic or oral) statement. Data controllers cannot rely on consent as a legal basis for processing if there is a "clear imbalance" between the parties (for example, the employer and employee relationship) as consent is presumed not to be freely given.
- iv)* Individuals will have the right to request that businesses delete their personal data in certain circumstances (for example, the data are no longer necessary for the purpose for which they were collected or the data subject withdraws their consent).
- v)* Businesses must reply to data subject access requests within one month from the date of receipt of the request and provide more information than was required under the Data Protection Directive.

What is the UK Government proposing with regard to immigration going forward?

43. Please see the contribution on the impact of Brexit on UK immigration law in the Appendix to this Paper, kindly provided by Laura Devine Solicitors.

Conclusion

44. Whatever the Brexit deal looks like, what does seem clear is that it will be business as usual until two years from the triggering of Article 50 (and potentially during any additional transitional period agreed with the continuing EU members) or until an earlier deal with the EU is reached, including in relation to UK employment law. The UK Government has made it clear that any Brexit induced changes would in any event be phased in gradually, hopefully avoiding sudden disruption for businesses. It also seems clear that the UK Government hopes

to achieve a deal which will enhance the UK's trade and international relations, with countries both inside and outside the EU.

Contact us:

For further information on the implications of Brexit for multinational employers and senior executives please visit our website at www.cm-murray.com or contact Clare Murray or Wonu Sanda on +44 (0) 207 933 9133 or at clare.murray@cm-murray.com wonu.sanda@cm-murray.com

Appendix:

With many thanks to Laura Devine Solicitors for the annexed contribution on the impact of Brexit on UK immigration law

Summary of immigration implications following Brexit

Has the triggering of Article 50 changed the law for EEA nationals?

No. The UK remains a member of the European Union (EU) with all of the rights and obligations that entails. European Economic Area (EEA) nationals continue to hold full Free Movement rights in the UK (and similarly British citizens in the EU) until the UK ceases to be an EU member state, the earliest of which would be 29 March 2019 (and may also continue to do so during any transitional period agreed). However, it is prudent to start planning for changes that may occur in the future.

What will happen to EU nationals wishing to come to the UK once it is no longer in the EU?

This will very much depend on the outcome of the UK's exit negotiations with the EU.

It is likely that there will be transitional arrangements for a period after exit, which may preserve aspects of Free Movement during that time.

It is yet to be determined what the new arrangements would be, following exit and the conclusion of any transitional arrangements, but it is most unlikely that Free Movement would continue. It is possible that EEA nationals may benefit from special provisions (less generous than Free Movement, but more generous than the UK Immigration Rules), such as a simple worker registration scheme. It would otherwise be necessary for nationals of EU member states to meet the requirements of UK domestic immigration laws. In this event, for those simply visiting the UK for leisure or business there is unlikely to be a significant impact, but for those seeking to work or study in the UK, entry clearance applications would be required, in much the same way as non-EU nationals. It is also likely that there will be changes to the current Immigration Rules and procedures as the system would need to be adapted to accommodate different needs and volumes that exiting the EU will create.

What action should EEA nationals and their family members take?

To be put in the strongest position when Brexit finally bites, EEA nationals (and family members) who are already in the UK exercising Treaty rights should consider applying to the Home Office for documents recognising that they have acquired permanent residence (if exercising treaty rights for at least five years) or currently have a right of residence.

Those who have resided in the UK for at least five years and have held permanent residence for at least one year (or will have done so by the date of exit from the EU) may wish to consider applying to naturalise as British citizens.

An online application service for EEA residence documentation is now available to some EEA nationals and their family members, usually providing faster processing times than paper applications. Online applicants may also be able to use the European Passport Return Service, which allows migrants to submit a copy of their passport with their application rather than the original, enabling them to continue to travel while the application is pending.

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What action should employers take?

There is a number of ways in which employers can support and reassure their EU workforce and plan ahead to protect the business from future changes, including analysing the business' workforce composition and identifying affected migrants, running seminar sessions for staff, supporting applications where appropriate with proof of employment letters, duplicate payslips and P60s, as well as planning on how to support employees once domestic immigration arrangements change after the UK leaves the EU, for example if company sponsorship becomes a requirement.

For further information on the implications of Brexit for employers and EEA nationals, and our Brexit services, visit our website www.lauradevine.com or contact enquiries@lauradevine.com.

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