



IMMIGRATION AND FREEDOM OF MOVEMENT

What does the proposed post Brexit immigration and freedom of movement regime mean for workers and employers?

There are widespread concerns that the cost and complexity of the immigration regime will increase once the UK leaves the EU. Employers in some sectors (such as construction, manufacturing, hospitality, leisure and the care sector) fear they will be unable to source sufficient low-skilled labour from the UK labour market post-Brexit.

The 2018 White Paper (see below) offers little comfort on the first issue. Organisations that currently employ skilled workers from outside the EU bear a very high cost when visa fees, the increased immigration health surcharge, and the immigration skills charge are taken into account.

The Immigration Law Practitioners Association has estimated the total cost of sponsoring a migrant worker for five years under Tier 2 at £8,631, with the figure jumping to £18,927 for a migrant worker coming to the UK under Tier 2 for the same period with a spouse and two children.

These estimates do not include any costs associated with conducting a resident labour market test, meeting UKVI's English language requirements or having a Tuberculosis (TB) test. These estimates include the cost of the application itself, which is currently £1,220 per applicant for a five year visa. Although an employer can require the employee to cover the cost of this application fee, total sponsorship costs are substantial.

Of course, many intermediate and even skilled roles currently filled by EU workers, like nurses, midwives and even junior doctors, currently attract a salary of less than £30,000. Unless salary thresholds are reduced following consultation, employers may need to increase base salaries for some roles significantly if they wish to continue to recruit EU workers. This is likely to impact employers outside of London disproportionately.

If you rely on low-skilled labour from within the EU you may be disappointed that no designated entry route for low skilled workers is planned. While the white paper states that the temporary, short-term route is intended to ease pressure on the most impacted sectors, it may just push the problem further down the road.

Where training may be required (for example drivers) a 12-month period of work may be of limited use. This transitional arrangement has very few benefits (for example, workers cannot



bring family members) and is likely to attract far fewer EU workers than current arrangements. It may not afford UK employers the steady flow of low-skilled workers and the workforce continuity required.

The key outstanding issue is whether salary thresholds for skilled migrants should be reduced post-Brexit. It is also important to note that the White Paper proposals may still be subject to change as the final legislation is developed and negotiations with the EU evolve.

The proposed new roles will not apply immediately on the UK's exit from the EU. It is envisaged that current rules will continue to apply during an implementation period. This will run from exit day until 31 December 2020, unless there is negotiated Brexit. The proposed new regime will apply from 1 January 2021 and will be: 'phased in to give individuals, government systems and businesses time to adapt'.

The Government has promised to carry out 'extensive engagement' with stakeholders to finalise the new immigration rules. There may still be an opportunity for employers to have some input into key aspects of these proposals, such as minimum salary thresholds for skilled workers. Also occupations considered to be in 'shortage' may qualify for less onerous immigration requirements.

Post Brexit regime - Immigration and freedom of movement

In December 2018, the Government published its long-awaited white paper, The UK's future skills-based immigration system, setting out the proposed new post-Brexit immigration regime. The White Paper draws on the recommendations of the Migration Advisory Committee (MAC) and proposes to adopt most of the Committee's suggestions contained in its report published in September 2018.

The new regime, which the White Paper describes as: 'the most significant change to the immigration system in more than 40 years', will be built around a single skills-based immigration route for intermediate to highly skilled workers from outside the UK (with no preferential treatment for EU citizens).

At present there will be no dedicated entry route for low-skilled work, although the paper proposes a limited, temporary, entry route for all skill levels for nationals from specific countries. This is intended to partially ease labour shortages in the immediate post-Brexit period.



Currently, the UK has a dual system of immigration, generally admitting only highly skilled workers from outside the EU and workers of all skill levels from within the EU (under current free movement rules).

The key proposals set out in the White Paper to replace the current system are:

- A single route for skilled workers (both from outside and within the EU) to enter the UK. Workers entering via this route will need to be sponsored by an employer. This will mean that a far greater number of employers than before will require a sponsor licence and will have to meet associated compliance obligations.
- The necessary skills threshold for skilled migrants to enter the UK is currently very high (covering graduate and post-graduate level jobs only). However, under the new regime, this threshold will be lowered to include roles requiring intermediate skills (at A level or equivalent).
- The Government will consult on whether Tier 2 salary thresholds (currently £30,000 or £20,800 for new entrants) should be reduced, given the extension of the skilled workers route to jobs requiring intermediate skills. This will be important for many employers outside London and the South East as this minimum salary threshold may significantly restrict the kind of jobs eligible for sponsorship.
- The immigration skills charge (currently an upfront cost of £1,000 per year for large sponsors) will be retained under the new regime. This can add a total cost of £5,000 to the standard visa costs involved in sponsoring someone. This charge may make sponsorship unviable for certain jobs.
- The Tier 2 immigration cap (which currently allows a maximum of 20,700 skilled migrants to enter the UK each year) will be scrapped. There will be no limit on the number of skilled migrants that can enter the UK on an annual basis. This will make the sponsorship process faster and simpler.
- The white paper proposes a 'temporary, short term workers route', which will allow workers at all skills levels, including low skilled roles, to come to the UK for a maximum of 12 months (with a cooling off period of a further 12 months to prevent workers stringing together a number of short term stays and effectively working in the UK permanently). The White Paper stresses that this will be a transitional arrangement only and will be kept under review. Interestingly, the White Paper does not close down the possibility of this route continuing or becoming permanent if successful. This route will only be open to applicants from specified, low-risk countries (likely to include EU countries) and employer sponsorship will not be required.
- The Resident Labour Market Test (RMLT), which currently requires an employer to advertise a job for four weeks and to consider applications from resident workers before offering it to a migrant, will also be scrapped. This is on the basis that it extends

recruitment process time and does not offer effective protection for UK workers. This will also make the sponsorship process quicker and simpler for employers.

- As currently, visitors will be permitted to spend up to six months in the UK, provided they are not working or carrying out prohibited activities. Visitors coming to the UK for short-term business reasons will continue to be able to carry out a limited range of business related activities, including some permitted paid engagements. The Government will consult on whether these arrangements can be improved to reflect business need. Intra-company transfers will still be permitted under the Tier 2 (ICT) route. There is no proposal to reduce skills or salary thresholds for intra-company transfers.
- The new immigration regime will apply across the UK and there will be no regional variation. However, the Government will consider whether the composition of the Shortage Occupation List (SOL), which sets out those occupations in relation to which there is a skills shortage in the UK, needs to look different for Northern Ireland and Wales than the rest of the UK. There is already a separate SOL for Scotland. There will be no special sectoral labour schemes (except potentially for seasonal agricultural workers)