



Business Immigration

LEGAL UPDATE

Absolute Client Focus

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What's New

Update on Brexit and Citizens' Rights

In the last edition of this update we reported on the agreement that had been reached between the UK Government and the EU on citizens' rights as part of the negotiations ahead of the UK's exit from the EU (see [here](#)).

For details on the current position regarding the EU Settlement Scheme please see our full article [here](#).

Since we published these articles the UK Cabinet has approved an agreement in principal with the EU in respect of the UK's exit from the EU. Whilst this is still subject to approval by the EU Council as well as the UK and EU Parliaments, it appears that the EU Settlement Scheme will be fully rolled out as planned.

Given the potential option of a no deal Brexit, concerns have been raised regarding the rights of EU citizens to remain in the UK. In response, the government has just released a Policy Paper which confirms the UK's position that EU citizens' rights would be protected, even in a no deal scenario. However, the Policy Paper does suggest that such rights to stay in the UK would be watered down in the event of a no deal Brexit. For further detail as to the proposals, please see our full article [here](#).

The MAC Report on EU Migration

In September 2018 the Migration Advisory Commission (MAC) published its report into EU migration into the UK. The report was a response to the request by the government for the MAC to gather evidence in respect of the patterns of EU migration into the UK and the impact of that migration, ahead of the UK's exit from the EU next year. The intention was that, having collated such evidence the MAC could report back its findings and provide recommendations as to how immigration could be dealt with post Brexit.

In summary the MAC reported that, if future migration does not form part of the exit negotiations with the EU before Brexit, no preferential treatment should be given to EU workers and that the current

points based system should be extended to cover EU workers as well as non EU workers with preference afforded to higher skilled roles.

For further details please see our full coverage [here](#).

Changes to the UK Immigration Rules announced

On 11 October 2018, the government published a Statement of Changes in respect of the Immigration Rules.

Under the new rules:

- Applicants can be given the opportunity to rectify mistakes on their applications which may previously have led to their automatic rejection.
- Points based system applicants will be able to submit copies of supporting documents rather than originals (unless requested for verification purposes).
- EU nationals and their family members will be able to apply for an administrative review if their application under the EU Settlement Scheme is refused on grounds of eligibility.
- Home Office officials will have greater scope to request documentation which is missing from an application before refusing it.

These changes are beneficial to employers and employees as they should make the application process a bit easier. The changes came into force on 1 November 2018.

WHAT TO LOOK OUT FOR

Review of the Shortage Occupation List

On 9 November 2018 the Government launched a call for evidence to assist the MAC in its review of the shortage occupation list and what, if any, jobs should be added to that list.

The shortage occupation list is a list of occupations and job titles that are held to be in short supply in the UK. Where an employer wants to fill a shortage occupation role, the requirements in respect of recruiting for such roles with individuals from outside the UK via the points based system are relaxed slightly. For example, if a role is on the shortage occupation list employers are not generally required to go through the resident labour market test to prove that they have sought to fill the role with a settled worker before recruiting a migrant worker.

Over recent years the shortage occupation list has been criticised for not accurately reflecting the roles that are desperately needed in the UK. This can make recruitment very difficult for employers as they are forced to go through the hoops required under Tier 2 of the points based system. This brings with it uncertainty for employers as to whether their application for sponsorship of a worker will be successful, despite there being such a shortage of UK labour for the role they are recruiting into. One key example of this relates to NHS staff. Originally nurses were not included on the shortage occupation list but, as a result of the clear shortage in supply, nurses were added to the shortage occupation list as a temporary measure.

The problems faced in the health care sector regarding labour shortages highlights the need for the shortage occupation list to be reviewed, and there are of course other less high profile sectors that are also struggling with shortages in labour supply. Further, given that it is expected that Tier 2 will be rolled out to cover EU staff from December 2020, labour shortages are going to be an even bigger problem unless this issue is addressed.

The MAC are therefore requesting that employers provide evidence in respect of the job titles for which they have experienced difficulties in recruiting suitable workers, the likely terms that would apply to those roles, the impact that the labour shortage has had on business and the reason why employers believe that recruitment in these areas are difficult. Following the call for evidence, the MAC is expected to report back in Spring 2019, following which it is hoped that a number of roles will be added to the shortage occupation list in order to assist businesses.

The call for evidence is due to close on 6 January 2019 and anyone wishing to submit evidence should do so [here](#).

Immigration Health Surcharge to double

In the last update we reported that the government had confirmed that the Immigration Health Surcharge would be increased from £200 to £400 per year and the discounted rate for students and those on the Youth Mobility Scheme would increase from £150 to £300 a year. It has now been confirmed that, subject to government approval, this increase will take effect from December 2018.

For more information on any issues discussed in this update please contact either [Lynne Adams](#) or [Gemma Hill](#).



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