

## BREXIT-RELATED IMMIGRATION ALERTER - UK / THE NETHERLANDS

In this Brexit-related immigration alerter, we set out what is currently known about the work-related immigration regime, in both the Netherlands and the UK, in relation to the UK's intended exit from the EU ('Brexit').

If you have a business in the UK employing EU nationals, and/or a business in the Netherlands employing UK nationals, the upcoming changes and proposed transitional arrangements may be relevant to you and your employees. This alerter provides an overview of the key rules in the UK and the Netherlands, as well as recommendations on what your business can do now to prepare.

### ROLL OUT OF THE EU 'SETTLEMENT SCHEME'

The new 'Settlement Scheme', under which EU citizens living in the UK can apply to stay after Brexit, is now open for public testing, and will be fully open by 30 March 2019. Whilst nothing is confirmed until everything is confirmed, the proposal is that:

- EU citizens and their families who arrive in the UK before midnight on 31 December 2020 (or 29 March 2019 in the event of a 'no deal' Brexit) and who have been continuously and lawfully living in the UK for five years will be allowed to stay indefinitely by obtaining 'settled status' (with limited exceptions).
- EU citizens and their eligible family members who arrive before midnight on 31 December 2020 (or 29 March 2019 in the event of a 'no deal' Brexit) but have not been in the UK for five years will be able to apply for temporary permission to stay until they have been here for five years, at which point they will be able to apply for settled status.
- Settled status and pre-settled status (pre-settled status is for those who are not yet able to apply for settled status) afford the same rights of residence, access to work, health-care, pensions, and other benefits, as EU nationals currently receive under freedom of movement provisions.
- The deadline to apply will be 30 June 2021 (or 31 December 2020 in the event of a 'no-deal' Brexit), although it may be possible to apply after this date if joining a family member in the UK.

#### Key points if there is a deal: UK

- EU nationals residing in the UK before 1 January 2021 will be able to continue their residence and apply for 'Settled Status' once they meet the criteria.
- EU nationals who hold a document certifying permanent residence will only need to swap their document for settled status.

#### Key points if there is no deal: UK

- The UK government will seek to end free movement **as soon as possible**.
- EU nationals arriving in the UK **after** 30 March 2019 wishing to stay for longer than 3 months will need to apply for 'European Temporary Leave to Remain', which would be valid for 3 years.
- EU nationals residing in the UK **before** 30 March 2019 will be able to continue their residence and apply for 'settled status' once they meet the criteria.

- EU nationals who already possess a document certifying permanent residence under the European Economic Area (EEA) Regulations, will only need to swap their document.
- It will be free to apply.

**In the event of 'no deal' Brexit, the government will seek to end free movement promptly following the UK's exit.** That said, EEA citizens (including Swiss citizens) and their family members that arrive in the UK on or after 30 March 2019 will still be able to come to the UK for visits, work or study and enter the UK as they do now for a transitional period. To stay longer than 3 months, they will need to obtain 'European Temporary Leave to Remain', which would be valid for 3 years. To stay for longer than 3 years, permission under the new skills-based future immigration system, which is set to begin in 2021, will be needed. **As mentioned above, this does not apply to those in the UK before exit day** as their rights to live and work will be protected by the EU Settlement Scheme.

EEA citizens arriving after midnight on 31 December 2020 would need to meet the requirements of UK domestic immigration laws (see note below). This is unlikely to impact those coming for a holiday or a business trip, but those coming to work or study in the UK may need to apply for a visa under the Points Based System in the same way as non-EU nationals.

To prepare for Brexit, employers can ensure (where possible) that every new appointment of a worker from the EU is finalised before 29 March 2019 in the short term, and 31 December 2020 in the long term.

Employers can also undertake an internal audit of their workforce to identify which workers rely on the UK's membership to the EU to work in the UK. This will help identify possible areas of vulnerability.

Once the audit is complete, employers can consider budget and determine their policy on the level of support they intend to provide to their workforce. This policy should be kept under review as the Brexit negotiations develop.

Although not mandatory, employers can reach out to their workforce with information and support on applying for either a registration certificate, a document confirming permanent residence or pre-settled status/settled status once the scheme is fully open for applications.

## **NEW IMMIGRATION SYSTEM AFTER BREXIT - THE UK**

The UK government's recent White Paper<sup>1</sup> sets out the requirements of the new immigration system following Brexit and the end of free movement, and it includes the following:

- There will be one system for all nationalities, which means there will no longer be separate systems for EU nationals and non-EU nationals.
- Everyone will be required to obtain permission if they want to come to the UK and to work or study.
- Skilled migrants will be prioritised.

### **Points to check as part of internal audit**

Employers should check:

- Name
- Nationality or nationalities
- Contact details
- Length of employment
- Length of residence in the UK
- Whether they have a registration certificate
- Whether they have permanent residency
- Whether they have any family members dependent on their immigration status
- How long they have been working in the UK
- To what extent they travel for business and to which countries
- Whether they intend to continue working in the UK post Brexit

<sup>1</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/766465/The-UKs-futureskills-based-immigration-system-print-ready.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/766465/The-UKs-futureskills-based-immigration-system-print-ready.pdf)

- There will be a transitional and temporary short-term workers route.

The new system will not come into force immediately after the UK leaves the EU. Instead, it will be phased in and will be fully in place by 01 January 2021.

## BREXIT RELATED IMMIGRATION RULES - THE NETHERLANDS

On 12 December 2018, the Dutch Immigration and Naturalization Service (IND) issued its first Brexit newsletter for British nationals in The Netherlands. In the newsletter the IND announced that it will inform British citizens who live in the Netherlands by post about the arrangements which the IND will make for their residence in the Netherlands after 29 March 2019. British citizens who wish to receive this letter must be correctly registered in the Personal Records Database (BRP) of the Dutch municipality where they live.

IND's website has a section on Brexit setting out the residence options in the Netherlands after Brexit ([www.ind.nl/en/Pages/Brexit.aspx](http://www.ind.nl/en/Pages/Brexit.aspx)). It is also possible to subscribe to a Brexit newsletter for migrants.

On 7 January 2019, the Dutch Minister of Foreign Affairs wrote to the Dutch parliament describing **the arrangements it envisages for UK citizens residing in the Netherlands in a 'no deal' scenario**. The letter addresses various topics, including the right to reside and work in the Netherlands for UK citizens who can no longer rely on their EU-citizenship. The Dutch government's proposal provides for a transitional period of 15 months following Brexit.

UK citizens who legally reside in the Netherlands before Brexit will retain their right to reside, study and/or work in the Netherlands during this transitional period. This will be the same for their family members who do not have EU nationality.

During the transitional period, the IND will invite eligible UK citizens to apply for a residence permit on the basis of the requirements that apply to EU citizens:

- UK citizens that have legally resided in the Netherlands for more than 5 years at the time of Brexit will be eligible for a permanent regular residence permit; and
- UK citizens that have legally resided in the Netherlands for less than 5 years at the time of Brexit, will be eligible to apply for a temporary regular residence permit.

This means that for UK nationals with legal residence in the Netherlands prior to Brexit, no work permit requirements will apply.

UK citizens who want to move their main residency to the Netherlands after Brexit will need to apply for residence and work permits (or combined permits), similar to the requirements that currently exist for non-EU/EEA or non-Swiss nationals. A separate temporary provisional residence permit (*machtiging voorlopig verblijf, MVV*) for entering the Netherlands will not be required for this group of UK citizens. A similar exemption currently applies to US, Canadian, Japanese and South-Korean nationals.

### WHAT CAN BUSINESSES DO NOW TO PREPARE? UK/ THE NETHERLANDS

- Complete an internal audit identifying the key workers that the business relies on and the skill level of these roles.
- Assess future business needs and identify any roles for which they may need to rely on migrant workers.
- Decide strategy (both long and short term) for how the business will deal with post Brexit scenarios.
- Put processes and policies in place to manage the potential impact of Brexit on both the day to day and future needs of the business.
- Explore the work-related immigration requirements for positions to be filled with migrants after Brexit and/or the related transitional period.

For more detail on the immigration requirements that currently apply for third-country nationals, which may become relevant for UK nationals in The Netherlands and/or EU nationals in the UK in the period after Brexit, please contact us.

## CONTACTS



**Stephanie Dare**  
Chartered Legal Executive,  
Immigration

**T** +44 207006 1965  
**E** stephanie.dare  
@cliffordchance.com



**Chris Goodwill**  
Partner

**T** +44 207006 8304  
**E** chris.goodwill  
@cliffordchance.com



**Sara Schermerhorn**  
Senior Advisor

**T** +31 20 711 9332  
**E** sara.schermerhorn  
@cliffordchance.com



**Floris van de Bult**  
Partner

**T** +31 20 711 9158  
**E** floris.vandebult  
@cliffordchance.com

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

[www.cliffordchance.com](http://www.cliffordchance.com)

Clifford Chance, Droogbak 1A, 1013 GE  
Amsterdam, PO Box 251, 1000 AG  
Amsterdam

© Clifford Chance 2019

Clifford Chance LLP is a limited liability partnership registered in England and Wales under number OC323571. Registered office: 10 Upper Bank Street, London, E14 5JJ. We use the word 'partner' to refer to a member of Clifford Chance LLP, or an employee or consultant with equivalent standing and qualifications. Clifford Chance LLP is registered in the Netherlands with the commercial register of the Chamber of Commerce under number 34360401. For our (notarial) third party account details, please see [www.cliffordchance.com/nlregulatory](http://www.cliffordchance.com/nlregulatory)

Abu Dhabi • Amsterdam • Barcelona • Beijing •  
Brussels • Bucharest • Casablanca • Dubai •  
Düsseldorf • Frankfurt • Hong Kong • Istanbul •  
London • Luxembourg • Madrid • Milan •  
Moscow • Munich • Newcastle • New York •  
Paris • Perth • Prague • Rome • São Paulo •  
Seoul • Shanghai • Singapore • Sydney •  
Tokyo • Warsaw • Washington, D.C.

Clifford Chance has a co-operation agreement with Abuhimed Alsheikh Alhagbani Law Firm in Riyadh.

Clifford Chance has a best friends relationship with Redcliffe Partners in Ukraine.