

The immigration white paper, and UK and EU no deal preparations

The government has published its white paper setting out proposals for immigration policy post-Brexit. This briefing summarises those proposals, and we expect to provide a fuller analysis in due course.

Both the UK and EU have increased their work to prepare for a no deal Brexit scenario. Their respective plans are also summarised below.

Immigration white paper

The paper is focused on ending free movement, and sets out how the UK government will “take full control of migration”. The core objectives of the UK’s future border and immigration system are said to be the same: creating strong borders and reducing annual net migration, alongside supporting an open, global economy with a highly skilled and productive workforce. The key difference in approach will be to have a single immigration system for EU and non-EU citizens, with migrants treated differently only as a result of their skills, the risk presented or international / bilateral agreements.

Significant emphasis is also placed on skill levels in determining immigration status. The paper sets out that the UK will have two new work routes:

- “one for skilled workers entitled to stay longer periods, to bring dependants and in some cases to settle permanently, who will mainly be sponsored by an employer – this will be open to migrants from all countries; and
- another for temporary short-term workers at all skills levels, not sponsored, but subject to tightly defined conditions. This will be a transitional route and will only be open to migrants from specified low-risk countries.”

The paper works on the basis that the Withdrawal Agreement will be ratified and there will be an implementation period. Under those circumstances, the new system would start from the end of the implementation period (ie, after 31 December 2020). In the meantime, the UK will implement the EU settlement scheme (which establishes the principle that EU citizens must obtain a specific, individual permission to stay on in the UK). Irish citizens will not need to apply. The Common Travel Area will continue to function as now.

The white paper will be implemented through the Immigration and Social Security Co-ordination (EU Withdrawal) Bill. Detailed arrangements for how EU migration will be controlled once the UK leaves the EU will continue to be set out in Immigration Rules and secondary legislation. Ahead of this, a year-long engagement programme will now be launched.

Summary of proposals

1. A single immigration system for EU and non-EU migrants, but with the potential for different treatment on grounds such as skill, immigration and security risk, and international or bilateral agreements.
2. Mobility provisions will be discussed with the EU. The UK will aim, for example, not to impose a visa requirement for short-term visits, to explore arrangements for research and study, and to facilitate legitimate border crossing.
3. Border security will be tightened through, for example, stricter criminality thresholds, an Electronic Travel Authorisation (ETA), and applying different processes based on risk.
4. The government does not intend to require visitors who are citizens of current EU Member States to obtain a visit visa in advance of travel. Tourists will be able to spend up to six months in the UK.
5. Those coming to the UK, including EU citizens, who intend to work or study or join family will need permission to do so, normally in the form of an electronic status which must be obtained before coming to the UK. This means everyone coming the UK will have an individual immigration status which will form the basis of our immigration controls.
6. Relating to workers
 - a. Under the new system, there will be a single route which gives access to highly skilled and skilled workers from all countries. They will need employer sponsorship.
 - b. The current system for non-EU workers imposes controls through minimum skill and salary levels, with a cap on numbers and the need to test for local workers. The new route will reform these to support flexibility.
 - c. There will be no cap on the number of skilled workers.
 - d. Employers of skilled migrants will not need to carry out a resident labour market test as a condition of sponsoring a worker.
 - e. The government will review the administrative burdens on employer sponsors to ensure that they are proportionate to the objective of minimising immigration abuse.
 - f. Nationals of the lowest risk countries will be able to apply for a work visa in the UK, ie, without leaving the UK and making return journeys.

- g. The new skilled route will include workers with intermediate level skills (Regulated Qualification Framework [RQF] 3-5 level; A level or equivalent) as well as graduate and post-graduate. The MAC recommended retaining the minimum salary threshold at £30,000 and the government will consult on what salary threshold should be set.
 - h. The MAC is reviewing the Shortage Occupation List (SOL), including for occupations at RQF levels 3-5. They will report in spring 2019.
 - i. The MAC did not recommend a route specifically for low skilled workers and the government intends to accept that recommendation.
 - j. Low-skilled migrants:
 - i. The government recognises that some employers, including social care, have become reliant on lower skilled workers from the EU. It also recognises that it would be difficult to adapt immediately without these workers.
 - ii. The government therefore proposes “as a transitional measure, also to institute a time-limited route for temporary short-term workers”. “This route will allow people to come for a maximum of 12 months, with a cooling-off period of a further 12 months to prevent people effectively working in the UK permanently.”
 - iii. The paper also states that the government is “committed to working with key sectors to help facilitate the change needed to reduce demand for low skilled migrant labour.”
 - iv. This route will not carry entitlements to access public funds or rights to extend a stay, switch to other routes, bring dependants or lead to permanent settlement.
 - v. This route will only be open to nationals of specified countries, for example, low risk countries with which the UK negotiates migration commitments and mobility proposals.
 - vi. This approach will be kept under review, and criteria may be tightened or numerical caps imposed. The route may also be closed if economic conditions warranted it.
 - vii. Sectoral labour schemes – with the possible exception of seasonal agricultural work – will not be opened.
7. Students will generally need to obtain permission before they travel to the UK, with the exception of non-visa nationals who can be granted entry as a short-term student for a course up to six months without permission to travel – as is currently the case. In future, once introduced, non-visa national short-term students will require an Electronic Travel Authorisation to enter the UK.

8. The government does not intend to change significantly the rules for family migration and permanent settlement. Under the future system, all individuals who are settled in the UK and want to bring family members to live with them, will need to meet the UK's family Immigration Rules, or come to the UK under another immigration category to work or study. Financial independence means meeting a minimum income requirement of £18,600 for sponsoring a partner to come or remain here, which rises to £22,400 for sponsoring a partner and non-British or settled child, and an additional £2,400 for each further child.
9. The government is developing digital status checking services to provide a quick and secure verification of status.
10. EU citizens in the UK at the end of the Implementation Period must apply for the EU Settlement Scheme by the end of the grace period (expected to end on 30 June 2021), if they intend to stay beyond that point. Those who do not, will not have leave to remain here and will not be able to demonstrate their rights to access work, benefits and services.
11. Income generation through fees and charges will continue to underpin the future system, contributing significantly towards funding. Since the Immigration Health Surcharge was introduced in 2015 it has raised approximately £600 million for the National Health Service.
12. The Economic Appraisal estimates these changes for skilled workers could result in an 80% reduction in inflows of long-term workers from the EU and the European Economic Area.

The full white paper is available here:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/766465/The-UKs-future-skills-based-immigration-system-print-ready.pdf

UK planning for a no deal scenario

On Tuesday, the Cabinet agreed to increase its contingency planning for a no deal exit, and plans will start to be implemented in full. We understand that:

- £2bn contingency planning funding has been approved to go to government departments for 2019/20, with the priority areas being borders, security and international trade
- There are 320 no deal work streams across Whitehall, with multiple plans likely to sit within each
- Letters will be sent to 140,000 firms updating them on no deal planning, and around 80,000 emails will be sent to key business stakeholders setting out what no deal means for them – a 100 page 'Partnership Pack' will support this communication
- Public service announcements to inform individuals of how to prepare for no deal are to be made in the coming weeks – for example, in relation to booking flights and using credit cards. These announcements will encourage people to prepare in line with the no deal technical notices and further, more detailed advice to be issued shortly

- 3,500 armed service personnel are being held in readiness "in order to support any government department on any contingencies they may need"

In addition, it may be that the social care green paper and reforms will be delayed. In order to allow for no deal Brexit planning, a number of manifesto pledges are being put on hold, with social care reported to be one of them. Some staff from the Department of Health and Social Care have already been redeployed to Brexit preparations. However, in response to these reports, Matt Hancock tweeted, "Don't recognise this at all. Putting finishing touches on the Social Care Green Paper ready for publication in the New Year". It may therefore be that the green paper is published, but subsequent work is slowed.

EU planning for a no deal scenario

The European Commission has published its plan for a no deal Brexit.

A number of steps will be taken by the EU regardless of the nature of the UK's exit, for example, legislation relating to UK travel and transport in the EU, the re-emergence of a maritime border in the North Sea and in the North Atlantic, disconnection of the UK from EU databases and IT systems, and the relocation of and other preparedness measures by the European Medicines Agency (EMA). The Commission also asks that EU member states refrain from bilateral discussions and agreements with the United Kingdom to avoid undermining EU unity.

However, in the event of a no deal Brexit, the Commission envisages that the UK abruptly become a third country would mean that certain steps would need to be implemented quickly, along with some specific measures being required and involving implementation in advance. The Commission states that "the overall approach to contingency should reflect the fact that in a no-deal scenario the United Kingdom as from 30 March 2019 would not be bound by any EU rules and could rapidly start diverging from them", and in its view, contingency measures adopted at all levels should comply with the following general principles:

- "Contingency measures should **not replicate the benefits of membership of the Union**, nor the terms of any transition period, as provided for in the draft Withdrawal Agreement;
- Contingency measures will in general be **temporary in nature**, and should in principle not go beyond the end of 2019;
- Contingency measures will be adopted **unilaterally** by the European Union in pursuit of its interests and can therefore, in principle, be revoked by the European Union at any time;
- Contingency measures must be adopted respecting the **division of competences** provided for by the Treaties as well as the principle of subsidiarity within the European Union;
- National contingency measures must be **compatible** with EU law, including the international obligations of the Union; and
- Contingency measures **will not remedy delays** that could have been avoided by preparedness measures and timely action by the relevant stakeholders."

Specific arrangements described for a no deal scenario include:

- **Citizens:** periods of legal residence of UK citizens in an EU27 Member State before the withdrawal date should be considered as periods of legal residence. This will help them to obtain long-term resident status in due course, as well as to have the same treatment as nationals around access to employment, education, and core social benefits, as well as family reunion rights and potentially the right to reside in another member state. The Commission also notes Theresa May's reassurance that the rights of EU citizens in the UK will be protected and "now expects this assurance to be formalised soon so that it can be relied upon by the citizens". The Commission will amend visa regulations, if the UK does similarly, to exempt UK nationals from visa requirements for short stays in the EU.
- **Air transport:** as long as the UK applies equivalent steps, measures will be proposed to ensure that UK air carriers can fly over the EU, make technical stops, land in the EU, and fly back to the UK, and similarly proposals will be made to ensure continued validity of safety certificates for a limited period while new approvals are sought.
- **Road transport:** UK hauliers would have limited market access rights, as current EU law does not allow for extending these rights.
- **Customs:** goods moving between the UK and EU will be treated as imports and exports, such that all relevant EU legislation will apply, including "the levy of certain duties and taxes (such as customs duties, value added tax and excise on importation), in accordance with the commitments of the European Union under the rules of the World Trade Organisation". In addition, "The need for customs declarations to be presented to customs authorities, and the possibility to control shipments will also apply". The Commission acknowledges that "Ensuring a level-playing field and smooth trade flows will be particularly challenging in the areas with the densest goods traffic with the United Kingdom".

Also covered are arrangements for financial services, Sanitary/phytosanitary requirements, personal data and EU climate policy.

To ensure timely adoption of the necessary legislative measures, the Commission intends to propose all necessary legislative measures and adopt all delegated acts before 31 December 2018. This will allow the European Parliament and Council to complete their procedures and control functions before March 2019. The Commission will also submit draft implementing acts by 15 February.

The full European Commission document and annexes are available here:

<https://eur-lex.europa.eu/legal-content/EN/TXT/DOC/?uri=CELEX:52018DC0880&from=EN>

NHS Providers view

Responding to the white paper on a new immigration system published by the government, the deputy chief executive of NHS Providers, Saffron Cordery said:

“We are deeply concerned about how some of the measures outlined in the white paper will impact the ability of the health and care sector to recruit the number of people it needs to safely staff services and meet the future healthcare demands of the population.

“High skilled does not equal highly paid. Any salary threshold must be realistic about the starting pay for a number of vital health and care roles including nurses, paramedics, social care workers, porters, cleaners and junior doctors. These roles are critical to the sustainability of health and care services.

“The confirmation that the cap on tier two visas for doctors will no longer apply is welcome. It is also vital that a new immigration system is flexible in its approach to skills and salary levels to ensure that critical health and social care roles can be filled.

“The effect this could have on the social care sector, which is already suffering from severe workforce challenges, will be profound. The relationship between health and social care is key so this must be a consideration in a future immigration system as well as the longer term workforce strategy for health and care.”