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**SMITH
STONE
WALTERS**

UK Immigration Practice

INSIGHT

UK IMMIGRATION NEWS & VIEWS
FROM SMITH STONE WALTERS
SPRING 2019

End of freedom
of movement:
a brave new world?





BRAVE NEW WORLD

Once the UK leaves the EU, freedom of movement will end and every EU citizen who wishes to stay living and working in the UK will have to register their immigration status.

The EU Settlement Scheme will open fully at the end of March, Deal or no-Deal. The available options are binary: ‘settled’, for those who have been here for five years or longer before 29 March, and ‘pre-settled’ for those who have been here less than five years.

Anyone who has not applied for the EU Settlement Scheme by 2021 is likely to lose their legal right to work, rent or access public services like the NHS. Those awarded pre-settled status will be expected to convert to settled status to avoid the same complications.

While there is no doubt that the government has been preparing for the task ahead by setting aside millions of pounds in resources and employing more staff, there are concerns that it may have not learnt all the lessons of the recent past.

HISTORY REPEATING ITSELF?

In the late 1940s and 1950s, Commonwealth citizens – the Windrush generation – were invited to move to the UK to rebuild the country after the war, taking jobs in construction and transport. They did not need to apply for a visa or to prove their immigration status.

But the landscape changed in 2010 with the introduction of the government’s hostile approach to immigration enforcement. This policy was engineered by the then-Home Secretary Theresa May to make it as difficult as possible for illegal immigrants to remain in the UK. For instance, the DVLA were given powers to revoke driving licences; banks and building societies could refuse to offer accounts; and landlords had to check someone’s right to rent before offering a property. These measures were introduced to force illegal migrants without correct documentation to leave the country.

However as we know now, many legal migrants were caught up in needing to prove their right to residence or were subjected to all manner of hostility. As a result, large groups of people were mistakenly penalised, made to feel they weren’t welcome and some even deported without reason.

It’s not difficult to see, unless the EU Settlement Scheme is managed responsibly that the government’s mistakes of the past could resurface on an unenviable scale.

TOO BIG TO FAIL

Firstly, the Scheme is unprecedented in its

scale. It’s the biggest administrative project for the Home Office in living memory - registering three million or so people over two years, in addition to their ordinary workload. That’s an average of 6,000 people a day. And that’s if everyone is aware of their obligation to apply.

The second, bigger difficulty will be reaching every EU national. Some may wrongly assume they already have British citizenship when they don’t, and others may find it difficult to prove continuous residence.

Not everyone, for instance, holds a National Insurance number and will need to provide alternative documents of evidence. Younger EU nationals who were not registered by their parents may find they are effectively without status once they become adults.

In addition, the status itself isn’t a physical document – it’s a digital acknowledgement only. This makes some people fear that their records could be deleted or the technology to retrieve it superseded, whereas a piece of paper or a booklet is more likely to be kept for years. Finally, once an EU national has registered, it will be their responsibility to maintain their ‘right of residence’

via the government’s on-line portal. Up to date information and access to the portal will be fundamental to an EU national evidencing their legal status to prospective employers and landlords. Keen not to end up with a huge group of undocumented migrants, nicknamed ‘Windrush on steroids’ by MP Yvette Cooper, the government has set aside a £9 million fund. This is for community organisations to provide support to vulnerable groups and communicate the law effectively.

The Home Office has also waived the fees to apply for the Scheme and as a result lost out on hundreds of millions of pounds in revenue. But this is a small price to pay to reassure Europeans that they are needed, and welcome, in the UK after Brexit.

SMITH STONE WALTERS

In this latest edition of Insight, we report on the contingency plans for immigration in the event of a no-Deal Brexit and the government’s proposals for a new skills-based immigration system. We also examine the latest migration statistics.

IMMIGRATION IN NUMBERS

The latest Home Office statistics provide the most up-to-date figures on people who are subject to UK immigration controls. EU net migration, while still adding to the population as a whole, has fallen to a level last seen in 2009. More people from Central and Eastern Europe are leaving than arriving.

Please note the figures presented here are estimates relating to the year ending December 2018, unless otherwise stated.



VISITORS



(Year ending June 2018)

The total of visitor visas granted to the UK rose by seven per cent to 2.2 million. The number of visitor visas issued to Chinese nationals increased by 11% to 587,986.

2.2 MILLION

STUDY



The overall number of people arriving in the UK to study has increased to 229,488, with non-EU student immigration at its highest level since 2011.

8% UP

WORK



The total number of work-related visas granted (including dependants) increased by seven per cent to 176,126. The vast majority (95%) of work-related visas are granted.

176,126

PASSENGER ARRIVALS



There were 142.8 million passenger arrivals in the UK, including returning UK residents. This is the highest figure on record.

142.8M

CITIZENSHIP



The number of people granted British citizenship was 158,795, an increase of 12% than the previous year. EU nationals make up 30% of all applicants (compared with 12% in 2016).

12% UP

FAMILY



There were 151,953 visas granted for family reasons in 2018, 14 per cent more than in the previous year.

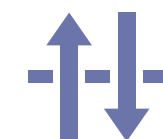
14% UP

NET MIGRATION

(Year ending September 2018)

Net migration is the difference between the number of people arriving and the number of those leaving. It totalled an estimated 283,000 in this period. The biggest increase comes from non-EU citizens, particularly from India and China.

283,000



LIVING IN THE UK AFTER NO-DEAL?

THIS IS WHAT EU CITIZENS NEED TO KNOW



The government has announced an immigration policy if the UK leaves the EU without a deal in March. European Temporary Leave to Remain is for citizens for the European Economic Area (EEA) and Switzerland who intend to live in the UK for longer than three months.



If there is no-Deal Brexit, EEA and Swiss citizens will still be able to enter the UK as they do now (until 2021) but they will need to apply for European Temporary Leave to Remain if they wish to stay longer than three months.

European Temporary Leave to Remain should be applied for within three months of arriving in the UK. Those EU nationals with a serious or persistent criminal record or who are deemed to be a threat to national security will not be eligible.

Being granted European Temporary Leave to Remain (after a 'no Deal' Brexit) will enable EEA and Swiss citizens to stay in the UK for 36 months from the date it is granted. Given the temporary nature of this arrangement, it is a non-extendable immigration status.

If EEA and Swiss citizens want to stay in the UK for more than 36 months, they will need to apply for an immigration status under the UK's new immigration system, which will come into effect from 1 January 2021.

Close family members will need to apply for a family permit before accompanying or joining their EU relative in the UK.

While this announcement will affect thousands of EEA and Swiss citizens in

the event of 'no Deal', many more will not need to worry about applying for any new immigration status or visa so long as they do not intend to stay in the UK for more than three months.

Irish citizens will also not need to apply for European Temporary Leave to Remain. They'll continue to have the right to enter and live in the UK under Common Travel Area arrangements.

European Temporary Leave to Remain should be applied for within three months of arriving in the UK'

LIVING IN THE UK BEFORE A NO-DEAL BREXIT?

In the event of a 'no Deal', those EEA or Swiss citizens who entered the UK before Brexit should still apply to the EU Settlement Scheme to continue living in the UK.

Furthermore, EEA or Swiss citizens who arrive in the UK after 29 March, but were previously living in the UK before 29 March, should also seek to apply to the EU Settlement Scheme rather than submitting an application via the European Temporary Leave to Remain route.

For further information, please contact us.



SHOW SUPPORT TO YOUR EU WORKERS

The EU Settlement Scheme will open fully by 30 March 2019 and each of your EU workers will need to assess if and when to apply. UK employers should therefore be asking themselves the following three questions:

- Are we aware of how many EU nationals we have recruited within our organisation and their individual family status?
- Are we ready and able to answer questions from our EU employees regarding their immigration status and those of their family members?
- What level of support do we intend to provide our EU employees in relation to securing their long-term status under the EU Settlement Scheme?

‘EU citizens will be required to submit evidence of residence to substantiate their claim to settled status’

A CLEAR STRATEGY

The government’s aim is to make the EU Settlement Scheme process as simple as possible. However, as we have already seen during the pilot, many EU citizens will be required to submit evidence of residence to substantiate their claim to settled status.

To provide your EU employees with the reassurance and clarity they need at this time, UK employers should be articulating a clear strategy aimed at supporting their workers. By conducting a workplace audit of your EU staff and communicating the level of assistance and information you intend to make available to each employee you will confirm the value you place on your EU population.

WE CAN HELP

Smith Stone Walters will work with you to communicate with your EU workers, assess their individual circumstances and submit settled status applications on their behalf. Talk to us today about how our Brexit Immigration Service can support your business.

‘Talk to us today about how our Brexit Immigration Service can support your business’



10 THINGS WE'VE LEARNT ABOUT THE EU SETTLEMENT SCHEME

Although the EU Settlement Scheme does not open fully until 30 March 2019, the pilot of the application process that EU citizens will use when the Scheme opens is underway. On behalf of our clients, Smith Stone Walters has successfully filed a number of EU Settlement Scheme applications during this test phase. In doing so, this is what we have learnt:



01

Applicants must download the EU Exit: ID Document Check app via Google Play store. At the moment, you can only download the app via Android devices. The government is working with Apple to make the app available on iPhones.

02

Following the Prime Minister's announcement on Monday 21 January, the £65 fee required to make the application has been withdrawn. However, the pilot scheme has yet to be updated and therefore still asks applicants to make payment and seek a subsequent refund.

03

Once proof of identity has been completed via the app, applicants may find it easier to log on using a desktop computer to finalise their pending application.

04

If applicants are over 18, the Home Office will check they have not committed serious or repeated crimes, and that they don't pose a security threat.

05

A National Insurance number should help the majority of applicants demonstrate whether they qualify for settled or pre-settled status. If residence cannot be proven automatically, additional evidence of UK residence will be requested via the app.

06

Based on your answers submitted, the app will tell applicants what status they will be considered for. Applicants can accept this result if they agree, or add evidence of their residence if they disagree.

07

If applicants receive settled status this means there is no time limit on how long they can stay in the UK. This is also known as indefinite leave to remain in the UK.

08

If applicants receive pre-settled status this means they can stay in the UK for a period of five years. This will allow applicants to remain in the UK until they are eligible to apply for settled status.

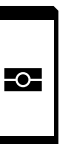
09

It usually takes about 30 minutes to complete this application. Applicants will receive email communications from the Home Office to confirm the status of their application.

10

During this test phase, Smith Stone Walters received Home Office decisions within a few hours of the Scheme application being fully filed.

Need further information regarding the EU Settlement Scheme? Then speak to one of our EU specialists at Smith Stone Walters.





IMMIGRATION SERVICES AFTER BREXIT



After a valuable session in October, when a Home Office spokesman explained the EU Settlement Scheme and its implication for employers, Smith Stone Walters will be holding another Brexit seminar in late April (date and venue to be confirmed).

We will be able to advise about the best way for your business to remain compliant after Brexit, and explain any changes in the rules regarding recruiting and retaining staff from overseas including those who are originally from Europe.

For further information, please email claire.murphy@smithstonewalters.com

CORPORATE SOCIAL RESPONSIBILITY

Smith Stone Walters conducts its business in an ethical way, taking account of our social, economic and environmental impact and consideration of human rights. We have committed to raising £4,500 every year for Rainbow Trust Children's Charity. They support families who have a child with a life-threatening or terminal illness and need the emotional and practical support.

UPCOMING EVENTS

In addition to our usual fundraising, this quarter some of our team volunteered to help behind the scenes at Rainbow Trust's flagship fashion event and will participate in a Fire Walk across hot coals.

At the Grosvenor House Hotel in London in late March, the fashion event welcomed 250 guests who enjoyed a Champagne reception and a pop-up boutique shopping experience. They were entertained during lunch with a catwalk show headlined by Harvey Nichols with Boodles' fine jewellery and more. The event was hosted by comedian and actress Ronni Ancona.

Also in March, a couple of intrepid SSW staff members will attempt to successfully complete a Walk of Fire. This adrenaline-fuelled event, also to be held in London, will raise funds and awareness for Rainbow Trust. Our colleagues will challenge their perceptions and, after an intense coaching workshop, walk across coals that reach temperatures up to a scorching 1,200 degrees F.

RAINBOW TRUST
CHILDREN'S CHARITY



WHAT OUR CLIENTS SAY ABOUT US



At Smith Stone Walters, we work hard to keep our clients informed of new policies, proposals and potential changes that affect their business. We were delighted to receive the following positive feedback in the past three months.

'I am very pleased with the service Antonia (SSW UK) provided, very professional and quick'
International investment firm

'Ania (SSW UK) was a delight to work with, kept me very informed and apprised all through the process and eliminated all guess work with her very clear communication. She was very prompt in responding to queries and very personable to work with. Having worked with immigration lawyers over the years on behalf of others as an employer, and myself, I must say your firm ranks right on top'
Tax and audit consultancy

'Jack (SSW New York) has always been professional and helpful! His technical knowledge is extensive and he is always willing to go the extra mile to ensure client satisfaction'
Global financial services

'The whole process so far has been painless. Even though I missed some information in my application, Kaming, Tess and Adele (SSW Hong Kong) helped walk me through making amendments'
Award-winning games developer

'Ragini's (SSW Mumbai) availability during the visa appointment was very assuring and her quick clarifications to my queries helped calm my nerves. Her efforts persuaded me to think SSW as a long term partner in Immigration services'
International online retail firm



“

PROFESSIONAL

PROMPT

PERSONABLE

PAINLESS

ASSURING

”

The government's future skills-based immigration system

In this edition, we focus on the new route post-Brexit for skilled workers from all countries, and the six key areas in which the scheme will be based.

What is the current system for admitting highly skilled workers?

The current immigration system is centred on admitting only highly skilled workers from outside the EU, and workers of all skill levels from the EU. It imposes controls through minimum skills and salary levels, a cap on numbers and the need to test the availability of local workers before recruiting abroad.

When were the proposed changes announced?

The Immigration White Paper was published in December last year. It introduces the government's plan for a new, single immigration system and the end of free movement for EU nationals. The proposals incorporate a number of significant reforms aimed at ensuring that the future UK immigration system supports a flexible labour market. Once created, the new route for skilled workers will apply to migrants from all countries including the EU, and will be centred on the existing Tier 2 route used for skilled migration.

When will the proposed new system be introduced?

The planned implementation of the new system is set for 2021. However, if there is a no-Deal Brexit then the government's current timetable could be brought forward.

What are the proposed changes?

The government plans to shape the new Tier 2 route around the following characteristics:

■ 1 NO CAP ON THE NUMBER OF WORKERS

This is a meaningful change. Currently the main high skilled route (Tier 2 General) is capped at 20,700 places a year. However, the government has confirmed they do not intend to have a cap on the new skilled worker route.

Significantly this will remove the current requirement for a monthly panel to decide who is awarded a visa, and enable visas to be issued continuously throughout the year, rather than in monthly cycles. This change alone will remove delays in UK employers' current recruitment process.

■ 2 OPEN TO ALL OCCUPATIONS WITH A SKILL LEVEL ABOVE RQF3

Currently, workers from outside the EU with intermediate skills (RQF3-5, or A level) are unable to come to the UK on the current high-skilled Tier 2 route. The existing route is limited to occupations at RQF6 and above (essentially graduate-level jobs).

The new skilled route will include workers with intermediate level skills at RQF3 as well as graduates and post-graduates.

■ 3 SALARY THRESHOLD OF £30,000

Although the proposed new skilled route will be expanded to include intermediate skills, the current minimum salary threshold of £30,000 will be maintained.

The government has assured that, in some circumstances where skills are in shortage, there would be some flexibility to allow migration at lower salary levels. However, this part of the new scheme is set for a further lengthy period of consultation given the number of low-paid key workers who would automatically be excluded from qualifying.

■ 4 NO RESIDENT LABOUR MARKET TEST

Employers will no longer be required to carry out a resident labour market test (RLMT) prior to sponsoring a skilled worker from overseas.

The government accepts analysis that the RLMT is ineffective in ensuring that settled workers have the first opportunity to fill any vacancy. This is another significant change to the current Tier 2 route.

■ 5 SPONSORSHIP

Those coming to the UK on the Tier 2 route, or switching into this route, will need an employer to sponsor them. While the existing principles of sponsorship will remain, the government intends to reform the system to minimise the burden on employers, particularly small and medium-sized enterprises (SMEs).

Currently, 30,000 UK-based firms hold a sponsor licence. Under the new proposals, many thousands more will need to do so if they want to employ overseas migrants.

■ 6 INCREASED FLEXIBILITY

Skilled workers on this route will be allowed to bring dependants, extend their stay, switch to other routes and in some cases, settle in the UK permanently.

Will low-paid workers from overseas be eligible to work in the UK?

The White Paper contains an additional proposal to alleviate concerns surrounding the ability of UK businesses to recruit low-skilled paid workers under the new system. This is a transitional measure for low-skilled workers earning less than the highly skilled threshold.

This would allow people with lower-paid jobs to come to the UK 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.

This is another significant change to the existing system. Those employers currently used to engaging low-paid EU nationals on a permanent basis will need to prepare for this change and modify future recruitment campaigns accordingly.

Will the future skills-based immigration system cost employers more?

Undoubtedly. Once the scheme is introduced and future EU nationals need to be recruited via the new Tier 2 route,

the changes currently associated with this scheme will apply. The Immigration Skills Charge that is already levied on employers is currently set at £1,000 (or £364 for SMEs or charities) per year of a worker's employment with a sponsor. The Immigration Health Surcharge, another compulsory fee which is often paid for by the employer as a gesture of goodwill towards migrant workers, is set at £400 per year.

Whereas no fee is currently applied when employing an EU national in the UK for five years, under this future scheme charges will amount to £7,000 (excluding visa fees) for each new employee.

What impact will these changes have on your business?

The changes will have a significant impact on your approach to the recruitment and retention of workers. By partnering with Smith Stone Walters we will provide your company with the support and knowledge to meet these challenges head-on. Please contact us today for more information.



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