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**SMITH  
STONE  
WALTERS**

UK Immigration Practice

# INSIGHT

UK IMMIGRATION NEWS & VIEWS  
FROM SMITH STONE WALTERS  
AUTUMN 2019



*Beyond the horizon*  
What are the  
immigration  
arrangements  
after Brexit?

# BEYOND THE HORIZON

*By the time you read this, there will be fewer than 40 days to go before the UK potentially crashes out of the EU. Mercifully, our government has reaffirmed that Free Movement rules will continue if the UK leaves the European Union without a Deal on 31 October, if only for the time being...*

*A statement from the Home Secretary Priti Patel earlier this month confirmed border crossing arrangements will not change overnight on 31 October 2019. Existing rules governing the entry and residence of EU citizens will effectively remain in place from 1 November 2019.*

Aside from the introduction of stricter criminality checks, EU citizens moving to the UK after a no-Deal Brexit will continue to retain the right to live, work and study in the UK until the new skills-based immigration system is introduced at the start of 2021.

#### *'Best before' date*

All EU nationals residing in the UK before 31 October 2019 will continue to be entitled to remain permanently in the UK and to register this right via the EU Settlement Scheme any time prior to 31 December 2020.

However, for those EU nationals and their close family members entering the UK after 31 October 2019 the possibility of securing 'settled status' beyond 2021 is a little less transparent. What we do know at this time is that, until the introduction of new immigration rules in 2021, newly arrived EU nationals will be offered access to a new, and free of charge, temporary immigration status entitled European Temporary Leave to Remain (Euro TLR).

Registration under Euro TLR, issued in the form of a digital status, will enable EU nationals to evidence their entitlement to work and rent property during the transitional period.

With a shelf life of 36 months, this temporary scheme is likely to prove more attractive to those transient Europeans seeking to work and reside in the UK in the short term. For those seeking to live and work in the UK on a permanent basis, the uncertainty of not being able to fully plan for the future will be a new and unpleasant feature to living in the UK.

#### *What comes next?*

All eyes will be firmly fixed on the introduction of the future immigration system at the start of 2021 as every Euro TLR holder will have to transition into the new (and still indeterminate) immigration system if they wish to remain in the UK.

Where an individual does not meet the requisite criteria under the new immigration system, they will be expected to leave the UK when their Euro TLR expires. Euro TLR will therefore only provide a temporary stay in the UK for some EU citizens. Will this 'feature' be made clear to those applying for the Euro TLR? We have our doubts.

While the fog continues to sit densely over both Brexit and the shape of the UK's future immigration rules, many EU nationals will remain confused and unsure of their UK residency rights for months if not years to come.

Our advice remains clear - for those wishing to secure an automatic claim to the right of residence in the UK, enter the country before 1st November 2019 and apply via the EU Settlement Scheme immediately.

#### *Graduate route in the pipeline*

Despite the future immigration system being undecided, Ms Patel has chosen to announce the re-introduction of an old immigration route previously ditched by Mrs May.

The UK's new Graduate immigration route mirrors the previous Post-Study Worker scheme (ended in 2012), which did so much to ensure that international students chose the UK as their preferred place of study.

Following its introduction, all international students successfully completing a course of study at undergraduate level or above will have the opportunity to work in the UK for two years. The scheme will also open the opportunity for students to transition into a work based visa status on completion of the 24 month period.

According to the government's press release, the decision to re-introduce this immigration route builds on their approach to help recruit and retain the best and brightest

global talent. It is also welcome news for those UK universities looking to attract international students.

So what's the catch? Well, disappointingly, the scheme will only become available from the 2020/21 intake of students and therefore prevents a significant number of international students currently based at our universities up and down the country from applying.

Perhaps it should be of little surprise that the introduction of this Graduate route has been deferred. Just like the details of the future immigration scheme, this scheme will remain elusive for some time yet.

## SMITH STONE WALTERS

*Also in this issue of Insight, the latest migration statistics show a decrease in those arriving for work and a big increase in those claiming citizenship; and we look at the new rules surrounding the retention of documents if you are a sponsor of a migrant worker.*

# IMMIGRATION IN NUMBERS

*These are the latest long-term international migration statistics for the UK from the Office for National Statistics (ONS).\**

The ONS has recently admitted to underestimating figures from the mid-2000s to 2016. Using data from sources such as the International Passenger Survey, the Annual Population Survey and the Department of Work and Pensions, their estimates are based on samples, not precise numbers and not all data sources are comparable. As a result, these statistics are now deemed to be 'experimental' not 'official'.

\* Please note: figures represented here are estimates relating to the year ending March 2019, unless otherwise stated.



## NET MIGRATION

This is the difference between the amount of migrants entering the UK minus those who left. This is a fall from its peak in 2015 of 343,000.

226,000

## ← ARRIVING

612,000

## LEAVING →

385,000

## EU WORKERS



The number of EU citizens arriving for work fell to 92,000, less than half of its peak (190,000) in the year ending June 2016. Tier 2 skilled work visas account for 59% of work-related visas granted.

92,000

## PASSENGERS



An estimated 144.7 million passengers arrived in the UK during the year ending June 2019. This includes returning UK residents, and those arriving as tourists. This is the highest figure on record.

144.7 MILLION

## SETTLEMENT



There were 89,406 applications to settle in the UK for the year ending June 2019. Of those, nearly all (85,931) decisions resulted in success.

96% GRANTED

## EU NET MIGRATION



EU net migration is at its lowest since 2013. But still more citizens from the EU arrive in the UK than leave each year – 59,000 during this reporting period.

59,000

## STUDY



The International Passenger Survey estimated 218,000 people arrived in the UK intending to stay for a year or more for formal study, remaining among the highest levels recorded since 2011. Over the last year, there has been an increase in non-EU immigration for study, particularly from Asian citizens. Of those, the vast majority (85%) have a sponsored study visa and are arriving to take up a place in higher education/university.

85% UNIVERSITY

## CITIZENSHIP



Applications made by non-EU nationals increased by 19% to 120,590, following falls in the previous two years. Applications from Jamaican nationals doubled from 2,618 to 4,667 mainly due to applications via the Windrush scheme.

19% INCREASE



# SETTLEMENT SCHEME RADIO AD 'MISLEADING'



*In August, the Advertising Standards Authority (ASA) upheld a complaint against the Home Office. The ASA ruled that the government's radio ad about the EU Settlement Scheme was misleading. The ad wrongly claimed that all EU citizens needed to do to successfully apply was to produce their passport or ID card.*

The ASA said: 'In 27 per cent of decided adult cases, applicants had been asked to provide documents as evidence of residence. Furthermore, some applicants were also asked for other documents, such as evidence of a family relationship.'

'We considered that the actual proportion who were asked to submit further documents was likely to go beyond what the audience was likely to understand from the claim.'

Latest figures show that a million and a half EU nationals have already been granted settled or pre-settled status under the Scheme.

Application is mandatory for every EU citizen who wishes to remain living or working in the UK after Brexit.

The radio ad is banned from being broadcast again. The Home Office said it completely disagreed with the ASA's decision as it had complied with all necessary clearance processes.

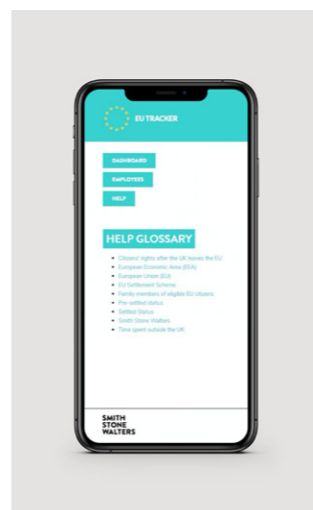
*We can help*  
While there is ongoing confusion about the end of Free Movement and the rights of EU nationals in the event of No-Deal (see p2 for more), we urge you to ensure that all of your EU employees apply as soon as possible. Smith Stone Walters has

created a helpful 'how-to' video that explains how to access the Scheme via the phone app or online. It is available here: <https://vimeo.com/330496248/c3443022e6>

For those employers seeking to support their EU workforce, we have also created an EU Tracker, a secure software platform which provides each business with a real-time overview of the current progress made by each European staff member towards settled status.

*'Smith Stone Walters has created a helpful 'how-to' video'*

If you would like a demonstration of the EU Tracker, or would like to discuss any other aspects of our services, then please contact us.



## EUROPEAN TEMPORARY LEAVE TO REMAIN:



### THINGS YOU SHOULD KNOW

1

*What is European Temporary Leave to Remain (Euro TLR)?*

In the event that the UK leaves the EU without a deal, EU citizens who move to the UK will be able to apply for a 36 month temporary immigration status - European Temporary Leave to Remain (Euro TLR). This new voluntary immigration scheme will be open for applications until 31st December 2020 thus providing European nationals a route to remain lawfully resident in the UK up until December 2023.

2

*What happens if you do not apply for Euro TLR?*

As mentioned, this scheme is voluntary. However, EU citizens who move to the UK after Brexit and choose not to hold Euro TLR will need to apply under the new immigration system by 31 December 2020 if they wish to remain in the UK beyond that date.

3

*How do you apply?*

There will be no need for EU citizens travelling to the UK after Brexit to make any special arrangements in advance. According to the government's press release, applications to the new Euro TLR scheme will be simple and free and will be made after the European national's arrival in the UK.

4

*How much does Euro TLR cost?*

The application is free of charge.

5

*What is your status after securing Euro TLR?*

Successful applicants to the Euro TLR scheme will be granted a period of 36 months' leave to remain in the UK, running from the date the leave is granted. Similar in approach to the EU Settlement Scheme, evidence of this UK leave

will be issued in the form of a secure digital status. EU citizens may choose to use this on-line evidence, rather than their passport or national identity card, to establish their entitlements to work and rent property in the UK.

6

*What does Euro LTR entitle you to?*

For the duration of the temporary leave to remain, European citizens registered under the Euro TLR will be able to:

- work in the UK
- use the NHS
- enrol in education or continue studying
- access public funds such as benefits and pensions, if you're eligible for them
- travel in and out of the UK

7

*What about family members of EU, EEA or Swiss citizens?*

Non-EU, EEA or Swiss close family members (that is, spouses, partners and

dependant children under 18) will also be able to apply for Euro LTR and remain in the UK alongside their EU family member.

8

*What you will need to do before the expiry of your Euro TLR?*

The government will introduce an entirely new immigration system from January 2021. Those EU citizens in possession of Euro TLR will still be required to apply to the new immigration system before their 36 months' Euro TLR leave expires.

Where an individual does not meet the requisite criteria under the new immigration system, they will be expected to leave the UK when their Euro TLR expires. It is important to therefore note that Euro TLR will only provide a temporary stay in the UK for some EU citizens and does not guarantee a route to UK permanent residence.

# WHAT OUR CLIENTS SAY ABOUT US



*We strive to deliver the WOW factor to our clients. Every member of our global team at SSW has been working hard to produce successful results and offering superb service despite some challenging circumstances. Here is some of the feedback we have been happy to receive during the past three months.*

*'I'm so grateful for the excellent support. The entire team is awesome, supportive and very professional. Wishing you the very best.'*  
*Global financial services*

*'Extremely good support from Sonia (SSW India) for every single point of query. She resolved everything in a very prompt way.'*  
*Multinational investment bank*

*'I appreciate the prompt responses to my concerns and the friendly interaction of the team (SSW Hong Kong).'*  
*International investment bank*

6  
FAST ANSWERS  
THOROUGH  
SUPPORTIVE  
EXCELLENT  
9

*'We really appreciate all the help from SSW UK and fully recommend to anyone that require immigration consultancy and legal services.'*  
*Property development company*

*'Kaming, Ekaterina and Anthony (private client team, SSW UK) deliver excellent results with detailed work. Their professionalism and support is much appreciated.'*  
*Global financial services*

*'Susan (SSW UK) was incredibly knowledgeable and I had confidence in her advice. She was calm and able to prove fast answers.'*  
*Multinational investment bank*

*'Jenna (SSW UK) was extremely quick and easy to contact. I really appreciated her help with the process and her timely responses.'*  
*Multinational financial services*

*'Ross (SSW New York) and Abigail (SSW UK) were lovely to work with. Both were very helpful, prompt and thorough during the visa process - thank you.'*  
*Pan-Atlantic management consultancy*

# CORPORATE SOCIAL RESPONSIBILITY



*As part of our corporate social responsibility (CSR) initiative, SSW donates to Rainbow Trust Children's Charity, which helps families who have a child under 18 with a life threatening or terminal illness.*

There are an estimated 49,000 children and young people in the UK living with a life-limiting or life-threatening condition who may require palliative care and need the bespoke support Rainbow Trust offers.

SSW enjoyed a flurry of fundraising activity in the Spring, as well as our ongoing office-based endeavours. Our CSR year ends on 31 October and we are delighted to say that we have already reached our target three months early.

One of our immigration consultants, Sage, recently participated in the gruelling South Coast Challenge. Sage trained by walking up to around 25 kms per session, slathering her feet in Vaseline and buying 20 pairs of socks to find the right ones. She powered through the first 12 kms, climbing up to the Seven Sisters when she was rewarded with some amazing views. Even though an injury



forced her to stop after 38kms, she should be justly proud of her achievement, raising nearly £490 for the charity so far.

In November, SSW's Admin Team Lead Kerry will take on the Grate48 challenge. This is a chance to climb one of the UK's tallest structures,

the Leadenhall Building in the city of London. This endurance test sees participants race up over 1,200 steps, across 42 floors finishing over 737 feet above street level. It promises spectacular views from the top and is a great way to raise money for Rainbow Trust families.





## FOCUS

# KEEPING DOCUMENTS: NEW GUIDANCE FOR SPONSORS



*In this Focus, we are looking at the recent revisions made to the Home Office's Appendix D and the documents that must be retained under Tiers 2, 4 and 5 of the points-based system. Appendix D was revised in August of this year.*

### What does Appendix D cover?

It is an appendix to the full policy guidance on sponsoring a worker or student. It lists the documents sponsors must keep to fulfil their sponsorship duties.

Compliance officers visiting your office premises will refer to this document and expect its contents to be adhered to.

The latest edition of 'Appendix D: guidance for sponsors on keeping documents' can be viewed here: <https://www.gov.uk/government/publications/keep-records-for-sponsorship-appendix-d>

### How long should I keep documents?

All documents relating to a migrant you sponsor must be kept throughout the period that you sponsor them and until:

- one year has passed from the date on which you end your sponsorship of the migrant, or
- the date on which a compliance officer has examined and approved them, if this is less than one year after you ended your sponsorship of the migrant.

### What documents do I need to keep?

Part one of Appendix D lists the specific documents you are required to retain if you are sponsoring a migrant under Tier 2 (skilled worker), Tier 4 (student) or Tier 5 (creative and sports).

For example, the type of evidence mentioned in part one includes: a copy of each sponsored migrant's current passport as well as the migrant's National Insurance (NI) number unless they are exempt from requiring one.

### If I have employed someone via a Resident Labour Market Test (RLMT), what additional information should I retain?

Part two of Appendix D concentrates on those migrants who have been recruited following a RLMT.

It explains what evidence you must retain including details of the settled workers who were rejected for the post in favour of the migrant worker and what online information you must gather.

For instance, you must keep a screenshot of the website hosting your advertisement. Unless the website clearly shows the date the vacancy was first advertised on, the screenshot must be taken on the day the vacancy is first advertised.

### How do I demonstrate to a compliance officer that the migrant worker has the required skill level to carry out the role?

If, as part of your recruitment programme, you specified a certain skill or experience level or a particular qualification, then you must keep a copy of any documents that confirm this. Examples include a degree certificate or references from a previous employer.

### Once the migrant worker commences employment, what additional documents am I expected to retain?

You must retain evidence of the migrant worker's salary, its frequency and whether or not the figure is in line with what you originally stated on their certificate of sponsorship.

Part three of Appendix D also stipulates that, where a migrant receives any allowances as part of their salary package, evidence of the value of those allowances

*'You must always check the date on which the migrant entered the UK, to ensure they entered during the validity of their visa.'*

must be kept unless they are clearly shown in a contract of/for employment/services, or on the migrant's payslips.

### Do I need to check the migrant's date of entry to the UK?

Yes, you must always check the date on which the migrant entered the UK, to ensure they entered during the validity of their visa and therefore they have permission to work for you.

### What if they entered before the 'valid from' date?

If they entered before the 'valid from' date, they will not have permission to work. In that case, you must advise them to leave the Common Travel Area (UK, Guernsey, Jersey, Isle of Man and Ireland) and re-enter the UK once their visa is valid.

In most cases, you can check the date of entry by looking for an entry stamp, in the form of a wet ink stamp, from an immigration officer

### How do I check dates of entry when a migrant has entered the UK via the new ePassport gates?

Since May 2019, it has been possible for nationals from various countries including New Zealand, Canada, Australia and Singapore to enter the UK through an automated eGate, if they have a valid visa or biometric residence permit. In these cases, they will not have an entry stamp in their passport.

Appendix D confirms that you must still check their date of entry by asking to see other evidence such as, but not limited to, e-tickets or a boarding pass. You must then record the date the migrant entered the UK, but you do not need to retain evidence of the date of entry.

If you prefer that your migrant staff verify their first date of entry via a wet ink immigration stamp being placed in their passport, you should recommend they approach a Border Officer rather than an automated eGate upon their first arrival in the UK.

### How Smith Stone Walters can help

*Smith Stone Walters understands the complexity of UK immigration processes, the legal requirements and the issues that cause problems. Our bespoke immigration audit service is tailored to meet your business needs and budget while helping you to avoid incurring penalties. Let our team support you in remaining compliant.*



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