


# Brexit – Workforce Implications within the Health Sector

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International staff make up around 13% of the NHS hospital and community services workforce, with 5.5% of NHS staff in England being EU nationals. The percentage of EU nationals in certain staff groups – such as nurses and health visitors – is known to already have dropped following the EU referendum. In this update, we look at how Brexit may impact further on the recruitment (and retention) challenges being faced.

## The EU Settlement Scheme (the Scheme)

The Scheme is the mechanism by which all eligible EU, EEA and Swiss workers (and their close family) can apply to live and work permanently in the UK following Brexit. Those who have indefinite leave to remain in the UK do not need to apply.

Under the Scheme, EU, EEA and Swiss nationals residing in the UK when the UK leaves the EU can apply for settled or pre-settled status. The key dates, however, will be different depending upon whether the UK leaves with a deal or not:

Deal	No Deal
Residency is required by 31 December 2020	Residency is required by the date of exit
Last date to apply for settled/pre-settled status is 30 June 2021	Last date to apply for settled/pre-settled status is 31 December 2020

## No Deal – what happens after Brexit?

Any EU national arriving in the UK after Brexit can apply online for European Temporary Leave to Remain. This will allow them to live and work in the UK for 3 years. They would then need to apply under the new immigration system in place at the time, and, if they do not qualify, would need to leave the UK when their European Temporary Leave to Remain expires.

## New Immigration System

Any eligible EU citizens who have not applied under the Scheme or for European Temporary leave to Remain by the relevant cut-off date will need to apply under the proposed new system (or will need to leave the UK). Under current proposals, the free movement of workers from the EEA will end and the same immigration system will apply regardless of nationality. Permission (through a sponsorship system)

will be required before a worker can come to the UK, and only those undertaking skilled roles or roles that are in shortage will be permitted.

Minimum salary thresholds are likely to apply – these are currently set at £30,000 although there have been concerns raised that this level is prohibitive for some sectors – for example, the current threshold is likely to affect roles in the health sector such as health care assistants and porters. The Government has therefore committed to further consultation on this level.

The process won't be cheap – there are costs associated with licences, certificates of sponsorship, visa applications and Immigration Skills Charges.

## Employment Law Changes Ahead?

Will workers still have the same rights following Brexit? In a word, yes. Legislation has been introduced to maintain the status quo following Brexit. It is not, therefore, the case that Brexit – whether with a deal or without – will bring an immediate end to the workforce obligations currently resulting from European legislation. Many UK rights are also either purely domestic (such as unfair dismissal rights) or actually exceed the rights required by European legislation (such as in respect of maternity leave) – such rights are therefore unlikely to be affected by Brexit.

There may well be future changes ahead in due course for purely European rights – and the extent of those changes is highly likely to be affected by whether a deal is agreed and, if so, the terms of that deal. Such changes would also be affected by the future political make-up of Parliament.

Some areas which may be more susceptible to changes include:

- TUPE – wholesale changes would seem to be unlikely (given that in some respects greater protection is given than is required by Europe); however, changes could be made to make it easier to harmonise terms and conditions of employment after any transfer.
- Discrimination – protection from discrimination is now so embedded in our culture that it is highly unlikely that there would be any serious proposals to remove any of the existing protected characteristics. However, the inability to cap discrimination compensation stems from EU law and so there may be moves to introduce a cap to align discrimination claims with unfair dismissal claims.
- Working Time – again, it seems highly unlikely that there would be drastic changes. There is some debate between political parties as to the length of the working week – with both suggestions that the 48 hour maximum working week should be removed and, conversely, that the maximum working week should be reduced. There may also be a greater appetite to reverse the recent trend in respect of EU holiday pay decisions – these changes could affect both the circumstances in which leave can be carried over and how holiday pay should be calculated.
- Agency Workers – this is an area where we may see some repeals – the Agency Workers Regulations 2010 have not been that popular and changes here may be less controversial than in other areas.
- Collective redundancy consultations – we are unlikely to see this being brought to an end (given the substantial union challenges which would result) but there may be further adjustments to the thresholds for which collective consultation is required.

## Steps To Consider

Although it remains unclear whether a deal will be struck, health sector organisations should be continuing their preparations to ensure that current EU workers are taking steps to apply for settled or pre-settled status to try to limit the proportion of current workers who need to apply through any new immigration system. This should help to reduce future costs, and alleviate the risk of current workers being unable to remain in the UK.

If recruitment processes are ongoing with EU workers at this time, organisations should consider whether it is possible to conclude these prior to the current cut-off of 31 October 2019 – or, if a deal is struck, by 31 December 2020 - so that new recruits can be resident prior to this date.

For recruitment after a no deal Brexit, or in the event of a deal, after 31 December 2020, health organisations will need to factor in the additional recruitment time and expense that will be required for recruiting EU workers, including keeping up to date with any changes to right-to-work checks to ensure that the organisations remain compliant.

Lastly, organisations should be mindful that the impact that no deal may have on other areas – such as the supply of medicine or food - will also impact on the existing workforce who will remain the face of the organisation to the public. Good communication and support will be key to ensure that staff morale in already stretched organisations does not take a hit.

We will continue to keep you updated with proposed changes to employment law. If you would like to discuss further how Brexit may affect your workforce and the support we can offer, please contact [Jacqui Atkinson](mailto:jacqui.atkinson@brownejacobson.com).

## Contact



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