

**Brabners**  
we make the difference

# The Brexit Effect on Recruitment

# What does Brexit mean for recruitment businesses?

---

**Changes to free movement rights will have a significant impact on all sorts of recruitment businesses; whether they place permanent staff or temporary staff with end users, or act as umbrella companies or intermediaries engaging a client's workforce.**

The UK has now formally left the European Union (EU) and we are currently in a transition period, with "*business as usual*" until **31 December 2020**.

From **1 January 2021** free movement for all EU nationals (apart from the Irish who are subject to different rules) will come to an end. From this date, EU nationals will be subject to the same visa requirements as their non-EU counterparts.

Recruitment businesses have some key questions to get to grips with in the run up to this deadline:

- What does this mean for my existing workforce?
- What does this mean for my temporary workers and candidates?
- How will it impact on my relationships with my clients?
- What are the new rules around work permits after 1 January 2021?
- Are there any specific problems for me as a recruitment businesses?
- What about alternative visa routes?



# What do these changes mean for your existing workforce and candidates?

---

**EU nationals who have residency in the UK before 31 December 2020, can continue living and working in the UK so long as they apply for (and successfully obtain) Settled or Pre-Settled Status, under the EU Settlement Scheme (the Scheme). The deadline for applications under the Scheme is 30 June 2021.**

When they apply, any individual who can establish 5 years' continuous residence in the UK will be granted **Settled Status**. Anyone who cannot meet this requirement, but is nevertheless eligible under the Scheme, will be awarded **Pre-Settled Status**. (Continuous residence is, broadly speaking, showing no more than 6 months' absence from the UK in any 12 month period.)

Individuals who obtain Settled Status will establish their rights to continue living and working in the UK indefinitely, so long as they are not absent from the UK for a five year period. On the other hand, Pre-Settled Status gives EU nationals a continued right to live and work in the UK for the 5 year validity period only. This visa status is slightly more precarious, as it lapses after 2 years' absence from the UK.

This is relevant to individuals employed directly by recruitment businesses and their candidates or temps.

*For example, a French national engineer is registered with an umbrella company and wants to remain living and working in the UK after 31 December 2020. She should apply under the Settled Status Scheme as soon as*

*possible. She must apply before the deadline of 30 June 2021.*

*If she obtains Settled Status, she will be able to continue working in the UK indefinitely. If she has absences from the UK, she would need to make sure she returns to the UK at least every 5 years, or her visa will lapse.*

*If she obtains Pre-Settled Status, she will be able to continue working in the UK for the next 5 years. If she is absent from the UK, she would need to make sure she returns to the UK at least every 2 years or her visa will lapse. But, at the end of her Pre-Settled Status visa, if she wants to apply to change into Settled Status, she will need to make sure she has "continuous residence" over the full 5 year period. Practically, this might prove more challenging, especially where staff or candidates are working on an international basis.*

Recruiters need to be aware of the fact that Settled Status and Pre-Settled Status **are not optional applications**; it is a mandatory requirement to apply for this visa status before the deadline.

## **What happens if your employees or candidates don't obtain Settled Status?**

EU nationals who fail to make the application by the deadline will be undocumented migrants and could face deportation/removal from the UK. They will no longer have the right to work in the UK.

Recruitment businesses who employ these individuals in their own businesses would be

employing them unlawfully (leaving the business exposed to significant fines and other criminal sanctions).

In relation to candidates or temporary workers, recruiters will not be able to place them with end user clients, because these individuals will not have the legal right to work.

Recruiters should be mindful that EU candidates/temporary workers on their books who hold Pre-Settled or Settled Status will no doubt be more sought after for placements (permanent or otherwise) going forwards.

However, it's important to remember that, because the requirements have not yet changed, recruiters can't currently insist that their staff, candidates or temps hold Settled or Pre-Settled Status. If recruiters take action on this basis, for example, by refusing to place an EU candidate because they don't yet have Settled/Pre-Settled Status, this is likely to amount to unlawful discrimination.

## **What do recruiters need to do right now to get ready for these changes?**

- Audit your employees, temps and candidates to assess who are EU nationals
- Actively communicate about the Settled Status Scheme to staff, temporary workers and candidates.
- But, be careful not to give immigration advice. This is a regulated activity and giving advice if you are not qualified is potentially a criminal offence.

# What does the future hold for recruitment businesses?

---

With effect from 1 January 2021, new visa requirements will apply to all EU and non-EU nationals alike. This means that from 1 January 2021, most EU nationals who do not already hold Settled/Pre-Settled Status will require a **work permit** in order to be employed in the UK. In order to access the work permit visa route, recruitment businesses will need to obtain a Sponsor Licence.

## Can the recruitment business sponsor its staff, temps or candidates?

Becoming a sponsor involves obtaining pre-approval from the Home Office that the organisation is genuine and trustworthy and can meet their responsibilities under the immigration rules. Once obtained, a Sponsor Licence means that recruitment businesses will be able to assign Certificates of Sponsorship to individuals (assuming relevant eligibility requirements are met). This is the employer side of the work permit requirements. Individuals then use the Certificate of Sponsorship to make a visa application to work in the UK.

Perhaps the biggest issue for recruitment businesses is that the current guidance generally only allows employment agencies (which includes employment businesses and umbrella companies) to apply for a sponsor licence to sponsor migrant workers who will be **directly employed** by them in connection with the running of their business (such as their own employed recruitment consultants).

This poses obvious issues for recruitment businesses where they are looking at supplying international candidates or temporary workers to a client/end-hirer. (Notwithstanding this, a simple google search highlights a number of recruitment businesses who appear to be sponsoring migrants in contravention of these requirements.)

But there are some grey areas in the current Guidance – depending on the structure of the business it might be possible for recruitment businesses to sponsor temporary workers or contactors on their books. Recruitment businesses should take specific strategic advice on whether this might be possible based on their business model.

## How is your business model affected by these changes?

Recruitment businesses who place temps will need strategic advice to assess and, if necessary, adapt, their business model, particularly where they have a high reliance on EU candidates. Umbrella companies will need to carefully assess whether they are eligible to sponsor non-UK national contractors who want to go on their books going forwards.

Not all roles are eligible for sponsorship under the new regime, and there are minimum skill levels and salary levels which must be met. This is likely to be a particular problem for temporary work agencies who supply labour in lower skilled and lower paid roles, most notably in relation to warehouse operatives, logistics and the supply chain. This problem will be exacerbated by the high reliance of EU nationals in these roles.

On the flip side, recruiters who typically recruit for skilled roles and may already be used to dealing with migrant candidates, may find the changes to under the new immigration routes (such as the reduction in skill level, salary requirements and the abolition of specific requirements to advertise roles in a prescribed manner) opens up significant opportunities.

In all cases, the new visa process will result in a significant increase to the costs of recruiting a sponsored individual, which means that the costs of recruiting EU nationals who do not hold Settled/Pre-Settled Status will increase.



## **How can recruiters work with their clients to navigate these changes?**

For recruitment businesses who place candidates to be employed by their clients, they will need to make sure that their clients have a good understanding of the new requirements for EU national candidates.

In some industries, where end users are familiar with the existing visa regime in relation to non-EU nationals, this may not prove particularly onerous. For other businesses who have never had to navigate these requirements, this will be a revelation.

Recruiters who can present “visa ready” candidates and facilitate their clients with understanding the sponsorship process, will no doubt have a significant commercial advantage over those who do not.





## Are there any other options?

---

If the work permit route is not available/viable, recruitment businesses will need to try and find alternative visa routes. If they cannot find one, the individual will not be able to work in the UK.

In terms of alternative options, these are limited. **One potential option which might be worth considering is the new Frontier Worker Permit.** Broadly speaking, this is designed for EU nationals who live outside of the UK and essentially commute into the UK for work. Once granted, visas are valid for 5 years for workers or 2 years for the self-employed (but individuals need to continue working in such a way as to retain their frontier worker status or risk the visa being revoked). From what we know

there are no minimum salary/skill level requirements.

*As an example, an agency worker who resides in Poland but who travels to the UK periodically to take up warehouse operative assignments, might be eligible under the scheme for a Frontier Worker Permit.*

*Similarly an EU national contractor who is providing IT consultancy services in the UK and other countries on a self-employed basis (and therefore is unlikely to be eligible for sponsorship as this generally assumes an employed model) could meet the requirements for the Frontier Worker Permit.*

*Of course, the temp/consultant might also be eligible for Settled/Pre-Settled Status.*

*The new Frontier Worker Permit is likely to be particularly useful for those who are not eligible for Settled/Pre-Settled Status for some reason, such as those who miss the 30 June 2021 application deadline.*

The devil will be in the detail but it will certainly be worth exploring this visa route for those businesses who are struggling to find an appropriate route for EU nationals under their current business model. However, the requirement for workers to have begun working in the UK prior to 31 December 2020 means that this will not be a viable option for recruitment businesses in the long term.

# Conclusion

---

Brexit means that recruitment businesses will have to reassess, and potentially adjust, their business models to adapt to these changes. These changes will no doubt present challenges, but there are also opportunities for recruitment businesses who have a full understanding of the issues affecting themselves and their clients.

## Takeaway Points:

- Recruitment businesses should familiarise themselves with the details of the EU Settlement Scheme and, if they aren't already doing so, they should be communicating with their employees, candidates and temps to make sure they understand the need to make applications under the EU Settlement Scheme well in advance of the deadline of 30 June 2021. Ideally, we would recommend these applications are made in advance of the end of this year when the Brexit transition period ends.
- If recruitment businesses want to use the work permit route (and are able to do so under the rules), they should make an application to become licensed sponsors as soon as possible.
- Recruitment businesses whose model involves placing candidates should work with both candidates and their clients to ensure they understand the new requirements. If recruiters can present their candidates as being "visa ready" and facilitate solutions for their clients, this will give them a competitive advantage.
- Recruiters should pay close attention to developments around the new visa requirements, particularly the Frontier Worker Permit, if this might provide an alternative visa route for their workers/candidates.
- The legal position and the impact on the various different business models operated within the recruitment sector is complicated. Recruiters should evaluate their current business model and take specific advice on the impact of these changes as they apply to them.



# The Team



**Simon Whitehead**  
**Partner, Head of the Recruitment Sector**  
**E:** [simon.whitehead@brabners.com](mailto:simon.whitehead@brabners.com)  
**T:** 0161 836 8811  
**M:** 07976 513 907



**Laura Darnley**  
**Legal Director, Business Immigration**  
**E:** [laura.darnley@brabners.com](mailto:laura.darnley@brabners.com)  
**T:** 0161 836 8880  
**M:** 07876 880 656



**Hannah Morrison**  
**Associate**  
**E:** [hannah.morrison@brabners.com](mailto:hannah.morrison@brabners.com)  
**T:** 0161 836 8849  
**M:** 07342 998 089



**Heena Kapadi**  
**Solicitor**  
**E:** [heena.kapadi@brabners.com](mailto:heena.kapadi@brabners.com)  
**T:** 0161 836 8841  
**M:** 07557 393 346