

Business Visitors After Brexit

Immigration Impacts Explained



EU Nationals in the UK

Free movement rights under the current transitional arrangements following Brexit (“Transition Period”) ended on 31 December 2020.

EU nationals residing in the UK on or before 31 December 2020 with an intention to remain in the UK, must apply for Pre-Settled or Settled status under the EU Settlement Scheme. The deadline to apply under the EU Settlement Scheme is 30 June 2021.

EU nationals travelling to the UK after 31 December 2020 will need to obtain a visa prior to arrival for all categories other than as a short-term visitor (both business or leisure).

Those arriving in the UK for work purposes from 1 January 2021, including EU nationals and their families, will require sponsorship.

‘Skilled Worker’ – New Points Based System

The new ‘Worker’ system replaces the Tier 2 system and opened on 1 December 2020.

Skilled Worker – no advertising or cap, minimum salary threshold of £25,600, skill level at A Level or above, no maximum limit on stay however applicants must hold an English language qualification to apply.

Intra Company routes – no advertising or cap, minimum salary threshold of £41,500, skill level at Graduate level, maximum limit of five years in any six on a rolling basis (unless a high earner), no English language qualification required.

‘Skilled Worker’ applications must be submitted to the UK authorities prior to travelling to the UK.

Business Visitors to the UK

From 1 January 2021, EU nationals are subject to immigration rules applicable to visitors and workers.

The change represents a marked shift in the working culture of European operations, and highlights the potential immigration compliance risk. Education and scrutiny of intra-office traffic across EU offices is paramount.

Visitors may travel to the UK for up to six months (but note risks of perceived abuse for lengthier and/or frequent visits) and conduct ‘permissible activities’ that are directly linked to their overseas employment and activities carried out as a visitor are mostly incidental.

Permissible activities include, but are not limited to, attending meetings, conferences, or trade fairs; negotiating and signing deals and contracts; and site visits and inspections.

Intra-Corporate Activities

Intra-corporate activities, i.e. where employed by a group company overseas, may include:

- ✓ advising and consulting, providing this is on internal matters with UK colleagues;
- ✓ troubleshooting on internal matters;
- ✓ providing training on internal matters (not training to clients);
- ✓ sharing skills and knowledge on a specific internal project with UK employees of the same corporate group, provided no work is carried out directly with clients.

Intra-corporate activities should be of a short duration (1+ month attracts Home Office suspicion of perceived abuse); linked to a specific project; and not involve the visitor directly working with or for clients.

Prohibited Activities

Visitors must not intend to work in the UK, including, but not limited to taking employment in the UK or establishing or running a business as a self-employed person. Additionally, where the visitor is already employed and paid outside the UK, they must remain so.

If any prohibited activities are undertaken by visitors on behalf of a UK employer, this could result in the individual’s removal and a travel ban. Furthermore, there is a direct impact on sponsor status, including loss of licence and sponsored skilled workers.

Findings of illegal employment attract penalties of up to £20,000 for each illegal worker.



UK Nationals in the EU Protection Pursuant to the Withdrawal Agreement

The Withdrawal Agreement aims to protect the rights of all those UK nationals who made use of the freedom of movement of people before the end of the transition period.

UK residents, cross-border commuters on local contracts and new arrivals before the end of the transition period continue to be protected after the transition period, whether temporary or permanent residents.

This protection is extended to family members.

Posted Worker Red Flag: Residence rights of UK Posted Workers who are residing in an EU country are protected.

However, some countries have announced that it will be necessary to obtain work authorisation to be able to continue working on behalf of their employer in the UK. Others have indicated that a work authorisation will be required only if required to extend stay beyond the initial period of posting

Business visitors prior to and after the end of the Transition Period are not protected under the Withdrawal Agreement.

Schengen Area

UK nationals are visa-free nationals.

Visa-free nationals to the Schengen Area are still required to prove their eligibility for admission at the Schengen border crossing and must also evidence that the stay will not exceed 90 days in a rolling period of 180 days in the whole of the Schengen territory.

An electronic authorisation system called ETIAS, similar to the U.S. Electronic System for Travel Authorization (ESTA) or Canadian eTA is expected to be implemented by the end of 2022.

UK Business Visitors in the EU from 1 January 2021

Business travel for UK nationals into the EU poses specific challenges and it is important for companies to adapt to the new restrictions affecting any UK upcoming moves to the EU:

1. COVID-19 Schengen/EU Travel restrictions: The UK is no longer an EU country and its residents will continue to be subject to the current Schengen travel ban in the future *unless*:

- ✓ the UK is included in the current travel corridor list of third countries whose residents can enter the Schengen Area
- ✓ they are also EU nationals or residents in the EEA+
- ✓ they qualify under a Schengen travel ban exemption that enables them travel

2. No more EU free movement: UK nationals no longer have the freedom to work, study, start a business or live in the EU.

The new EU-UK Trade and Cooperation Agreement (TCA) approved on 24 December 2020 aims to facilitate short-term business trips. To this end, activities such as *attending meetings or conferences; technical, scientific, statistical and marketing research; receiving training; prospecting sales or purchases; attending trades and exhibitions; or after-sales and lease service*, among others, are considered permitted activities for short-term business visitors subject to some requirements and conditions.

There is some uncertainty surrounding the applicability of the above activities. Some EU countries have expressed reservations in confirming the TCA list of activities as permitted in their territory. However, the EU-UK TCA is only being provisionally applied until February and must still be fully ratified before then.

Each activity would need to be reviewed at national level and the views of each EU member state understood in order to gain a full understanding on the interpretation of the applicability of the Agreement in the EU27.

Any other short-term activity not included in the Trade and Cooperation Agreement is subject to each country's immigration regulations. This means that a) assessment of activities will be required per EU country and b) activities which are allowed on business status in one country may require work authorisation in another.

Adapting to the New Immigration Landscape - What You Can Do to Prepare

- ✓ **Allocate** budget for work authorisation applications.
- ✓ **Optimise** your current UK Sponsor Licence by conducting a Brexit Licence Refresh prior to the end of the transition period.
- ✓ **Register** at immigration authorities in the EU, where this is required for, or facilitates easier, immigration processes.
- ✓ **Educate** your teams about what a Business Visitor is lawfully able to do in the UK and in EU member states, and when work authorisation may be required.
- ✓ **Develop processes** around proposed Business Visitors to include an assessment of the proposed business activities to ensure compliance with immigration rules.
- ✓ **Keep track** of, and assess the activities of, all employees regularly travelling in the UK and EU.
- ✓ **Ensure** Business Visitors in the EU know how to calculate their 90 days in any 180-day period after the transition period.
- ✓ **Ensure that you are up to date** on business permitted activities in light of the new EU-UK Trade and Cooperation Agreement
- ✓ **Get familiar** with the work permit procedures for third-country nationals per EU member state

Schedule Your Brexit Consultation

With the complex, fast-changing nature of Brexit, and the impact on our clients, Newland Chase has formed a dedicated Brexit Team to address our clients' concerns and support them throughout this turbulent time.

[Contact us](#) to schedule a consultation to learn how having Newland Chase as your trusted business advisor can help your business succeed post-Brexit. Finally, keep up-to-date with the latest Brexit travel and immigration updates at our [online Brexit resource](#).

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