

# The Impact of Brexit on Employers

Pam Loch – Employment Solicitor and Managing Director



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Pam set up Loch Associates in 2007 to provide pragmatic and commercial solutions for clients. From starting as an employment law firm, the business has evolved into the Loch Associates Group offering HR, employment law, wellbeing and mediation services.

As well as being the Managing Director of the Group, Pam has been a specialist, award-winning employment law solicitor for over 20 years. Unusually Pam is a dual qualified solicitor, being admitted as a solicitor in Scotland and England & Wales.

As well as providing strategic and creative solutions for clients, Pam is a seasoned commentator on the TV and radio on employment law and HR issues. She also writes articles for International Workplace and contributes to books- her most recent chapter is “Virtual Networking – an advantage for female lawyers?” appearing in “Business Development in the New Legal Ecosystem” edited by Alex Davies.

Pam is a member of the Employment Lawyers Association and has the following qualifications: BAdmin (Hons); LLB (Distinction); Dip LP and ACII.

Whilst proud of her Scottish heritage, Pam has lived in the South East for many years with Ellie, our office dog. She enjoys walking Ellie, spending time with her family and a glass of wine.

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Associates Group

People are our business

# People are our business

“We are experts in developing solutions to help organisations manage and look after their people”





## Employment Law

Award-winning employment lawyers providing employers with specialist advice to help protect your business



## Advise Me

Working with businesses on their day to day employee management and strategic HR support



## Wellbeing

Helping businesses to look after the physical and mental health and safety of their employees



## Mediation

Our mediators help resolve conflicts in the workplace and avoid the risk of costly exits and litigation

# The Impact of Brexit on Employers



# Status to Work in the UK

- ⚙️ All EU citizens who have resided in the UK lawfully for 5 years by 31 December 2020 will have to apply for “**settled status**” under the EU Settlement Scheme
- ⚙️ EU citizens who have been in the UK lawfully for less than 5 years by 31 December 2020 will have to apply for “**pre-settled status**” until they acquire 5 years continuous residency
- ⚙️ Deadline for submitting applications for these statuses is **30 June 2021**
- ⚙️ **Free to apply**

# Employee Status – What This Means For Employers



- ⚙️ **Communicate** with your current workforce to make sure they are aware of the deadline. If they do not apply to the EU Settlement Scheme, they will be “illegal immigrants”
- ⚙️ **Avoid** being seen to be giving immigration advice – direct staff to government information

# The Points-Based Immigration System

- ✿ From **1 January 2021** the UK introduced a points-based immigration system
- ✿ Does not apply to Irish citizens
- ✿ Migrants will need to obtain a visa to work in the UK
- ✿ To qualify for a visa, migrant workers have to gain a total of **70 points**
- ✿ There are **various different routes**



# The Points-Based Immigration System Routes

**Skilled Worker Route** – anyone from outside the UK will have to demonstrate:

- ✿ Have a job offer from a Home Office licensed sponsor
- ✿ Job offer is at required skill level (A Level and equivalent)
- ✿ Speak English to required standard
- ✿ Meet minimum salary threshold of £25,600 or specific salary requirement for their occupation

**Applicants** can trade characteristics, such as qualifications, against a lower salary to get the required number of points. E.g. If a salary is at least £20,480, could be eligible if applicants have:

- ✿ A job offer in a specific shortage occupation
- ✿ A PhD relevant to the job

# The Points-Based Immigration System

Characteristics	Mandatory/Tradeable	Points
Offer of job by approved sponsor	Mandatory	20
Job at appropriate skill level	Mandatory	20
Speaks English at required level	Mandatory	10
Salary of £20,480 to £23,039 or at least 80% of the going rate for the profession (whichever is higher)	Tradeable	0
Salary of £23,040 to £25,599 or at least 90% of the going rate for the profession (whichever is higher)	Tradeable	10
Salary of £25,600 or above or at least the going rate for the profession (whichever is higher)	Tradeable	20
Job in a shortage occupation as designated by the Migration Advisory Committee	Tradeable	20
Education qualification: PhD in a subject relevant to the job	Tradeable	10
Education qualification: PhD in a STEM subject relevant to the job	Tradeable	20

# The Points-Based Immigration System

## Alternative Routes

- ✿ **Global Talent route** – for most highly skilled, meets points requirement and sponsored
- ✿ **Graduate route** – graduate visa available to international students who complete a degree in the UK from Summer 2021. Can remain for 2 years. Un-sponsored.
- ✿ **Intra-company Transfer route** – allows multinational organisations to facilitate temporary moves into the UK for key personnel through their subsidiary branches. Graduate level roles. Minimum salary is at least £41,500 for an Intra-company Transfer or at £23,000 for an Intra-company Graduate Trainee.
- ✿ **Others** – start up and innovator, health and care visa, creative route, sporting route, seasonal workers pilot, youth mobility schemes.

# The Points Based System – What This Means For Employers



- Existing sponsors will **automatically** be granted a new skilled worker licence or ICT licence, including an expiry date consistent with their current licence, and receive an appropriate allocation of certificates of sponsorship
- Sponsorship license is valid for **4 years** before it needs to be renewed
- Can take **8 weeks** for Home Office to process

# Changes in Travelling For Work in the EU



- ✿ UK passport holders entering the EU will be required to have **at least six months** left on their passport. There is no reciprocal requirement for EU passport holders entering the UK
- ✿ UK passport holders can visit most EU countries for a combined total of up to 90 days in any 180-day period
- ✿ EU passport holders can visit the UK for up to six months at a time
- ✿ **Increased prices** for telephone calls and data roaming when employees travel abroad

# Changes in Travelling For Work in the EU



- You may need a visa, work permit or other documentation if you're planning to stay for longer than 90 days in a 180-day period, or if you'll be doing any of the following:
  - transferring from the UK branch of a company to a branch in a different country ('intra-corporate transfer'), even for a short period of time
  - carrying out contracts to provide a service to a client in another country in which your employer has no presence
  - providing services in another country as a self-employed person

# Status of UK Nationals Working in Europe



- ⚙️ UK citizens no longer have an automatic right to live or work in the EU
- ⚙️ Some employees might be able to apply for an EU Blue Card, which gives highly qualified workers the right to live and work in an EU country
- ⚙️ The mutual recognition of most professional qualifications has ended
- ⚙️ UK driving licence holders may need extra documents in order to drive or hire a car in Europe



# Status of UK Nationals Working in Europe – What This Means for Employers

- ⚙️ Check individual country's immigration rules
- ⚙️ Ensure professional qualifications of employees are still recognised where they will be working in Europe
- ⚙️ Factor in that short term business trips can only be up to 90 days in any 180 day period



# Vaccination Passports



- ✿ Although not confirmed, it's likely the UK will create vaccine passports for travellers
- ✿ Health Secretary Matt Hancock has said that in the future, some countries will require proof of vaccination to allow entry and the Government "obviously wants to make sure that Brits can fulfil that"
- ✿ Employees being vaccinated – concerns around compelling staff to have vaccinations could lead to unlawful discrimination in the workplace

# Vaccination Passports – What it Means for Employers



- Employers can encourage but cannot force staff to be vaccinated
- Seek legal advice on how to manage your staff in regard to vaccination passports to avoid discrimination claims
- As well as vaccination passports, face coverings also need to be considered when travelling for work and in the workplace (if needed to provide a safe environment)
- One Tribunal case reported so far - **Deimantas Kubilius v Kent Foods Ltd** an unfair dismissal claim was dismissed after an employee was dismissed for not wearing a mask

# What the Future Holds - Legislation



- ⚙️ Any UK enactment or rule of law passed or made on or after the end of the transition period is primary
- ⚙️ **New UK law trumps any EU law** (section 5(1), European Union (Withdrawal Agreement ) Act 2020)
- ⚙️ **However**, supremacy of EU law will continue to apply in **the UK** in certain situations where the EU law was established pre the end of the transition period.
  - If there are questions on interpretation for any inconsistency the EU directive is favoured
  - Where domestic legislation modifies existing legislation – any new domestic legislation is to be interpreted according to the principle of supremacy of EU law

# What the Future Holds - Legislation



- ⚙️ **European Court of Justice ruling on collective consultation rules** - Must be followed if an employer plans 20 or more redundancies at the same workplace within 90 days. This is 90 rolling days
- ⚙️ **National Minimum Wage** rates increasing again from 1 April 2021
  - ⚙️ The **age workers** become entitled to the National Living Wage is also changing. Now individuals aged 23 and over (as opposed to 25 and over, as it is currently) are entitled to £8.91 per hour - 40 hour working week = salary of £18,532.80.
- ⚙️ **Off-payroll working rules** (IR35) come into effect in April 2021 after a delay from April 2020 due to Covid-19

# What the Future Holds - HR Trends

- ⚙️ Increase in **flexible working** - changes to hours worked, hours or workplace/homeworking
- ⚙️ Evidence suggests that more employers are considering a “**hybrid**” home working pattern
  - ⚙️ A survey of 1,000 UK employees by HR solutions provider the Adecco Group UK and Ireland, found that **77%** considered that hybrid working was the best way forward after the pandemic



# What the Future Holds - HR Trends

- Employers who decide to formalise homeworking arrangements need to address a range of practical issues, including:
  - Tailoring employment contract clauses to cover homeworking and reviewing policies
  - Taking steps to protect confidential information and personal data
  - Reviewing health and safety implications of the arrangements, including carrying out a risk assessment
  - Deciding if any special equipment should be provided
  - Considering if any special planning or insurance arrangements are required
  - Reviewing management and supervision – carry out a remote working psychometric test
  - Review the remuneration packages of staff who have relocated from London





**Questions?**

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