

Brexit: Immigration

Brexit has substantial implications for immigration between the UK and the EEA/Switzerland (excluding Ireland). Businesses and individuals should use 2020 to plan how to deal with the new immigration requirements that will apply from 2021.

Following the UK's departure from the EU on 31 January 2020, there is an 'implementation period' ending on 31 December 2020. During the implementation period, EEA/Swiss nationals and their family members are able to enter, reside and work in the UK on the same basis as before exit.

The Withdrawal Agreement provides for the implementation period to be extended on one occasion, by 1 July 2020, for either one or two years, however the UK Government legislated against extending the implementation period. Further primary legislation would be required before an extension request would become possible as a matter of UK domestic law.

The future relationship between the UK and the EU will be negotiated during the implementation period and will be taken into account in the new immigration system due to be in place from 1 January 2021. The timeline for concluding the negotiations is however very short, so it is possible that the immigration system will need to be adjusted after 1 January 2021 to fully reflect the final arrangements negotiated with the EU and other relevant countries. The Government is expected to publish an Immigration White Paper in March 2020, which will outline the proposed system in detail, including responding to the recommendations made by the Migration Advisory Committee in January 2020.

Key points to note for EEA/Swiss nationals travelling to the UK

- The arrangements between the UK and Ireland will not substantially change following Brexit, due to the continuing existence of the Common Travel Area. These rights are expected to be further formalised in the UK in a future Immigration Bill
- EEA/Swiss nationals will be eligible to apply under the EU Settlement Scheme (EUSS) if they arrive in the UK by the end of the implementation period
- Irish nationals are able to apply under the EU Settlement Scheme but are not required to do so
- The main deadline for applying in the UK under the EU Settlement Scheme is 30 June 2021
- Close family members of EEA/Swiss nationals with status under the EUSS who are living abroad will be able to apply under the EU Settlement Scheme after the end of the implementation period, with no deadline, provided the relationship existed before the end of the implementation period and still exists at the time they apply

- Children born to an EEA/Swiss either in the UK or abroad after the end of the implementation period will be eligible to apply under the EU Settlement Scheme with no deadline
- All other EEA/Swiss nationals arriving in the UK for the first time on or after 1 January 2021 will need to meet the requirements of the post-Brexit immigration system

Key points to note for British nationals returning to the UK after living in the EEA or Switzerland

- Only British nationals who exercised rights of free movement in the EEA or Switzerland before exit will be able to use EU case law (known as the Surinder Singh route) to bring their non-British family members with them when they return to the UK
- In order for a family member to be eligible under the EUSS, the British national and the family member must return to the UK by 29 March 2022 and make the EUSS application for the family member by this date

Key points to note for Turkish workers and businesspeople travelling to or living in the UK

- The UK will no longer be bound to observe the European Community-Turkey Association Agreement and its protocols (Turkish ECAA) after the implementation period
- From 1 January 2021, those who have not previously relied on the Turkish ECAA as the basis of their residence in the UK will need to meet the requirements of the post-Brexit immigration system
- The UK Government has not yet published details of the arrangements that will apply for Turkish workers, Turkish businesspersons and their family members who have made applications relying on the Turkish ECAA that are outstanding at the end of the implementation
- Confirmation is also awaited on what the position will be for those who are residing in the UK in accordance with the Turkish ECAA and whose leave will expire before they become eligible for indefinite leave to remain under the Immigration Rules, Appendix ECAA

Key points to note for British nationals travelling to the EEA and Switzerland

- British nationals will be able to enter, reside and work in the EEA/Switzerland under free movement rules until the end of the implementation period. Those who intend to continue to reside in the EEA/Switzerland after implementation will need to comply with the requirements of the national government in the relevant country
- Immigration to the EEA/Switzerland for British nationals after the implementation period will be negotiated with the EU and the other relevant countries

- British nationals intending to visit the EEA (other than Ireland) or Switzerland after the implementation period will need to have at least six months remaining on their current passport (excluding any period the passport is valid for in excess of ten years) and must ensure they do not stay in the Schengen area for more than 90 days in any 180-day rolling period. The Schengen area currently includes Austria, Belgium, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden and Switzerland
- Once the European Travel Information and Authorisation System (ETIAS) is implemented in early 2021, British nationals will need to obtain authorisation under the system prior to travelling to the Schengen area, including paying a fee of €7 for an authorisation period of three years or the expiry date of their passport, whichever comes earlier

What actions can be taken from a UK immigration perspective?

- Wherever possible, anticipated moves to the UK should be scheduled so that the EEA/Swiss national's first entry is before the end of the implementation period. This will allow them the opportunity to settle permanently in the UK under the EU Settlement Scheme
- EEA/Swiss nationals and their family members who are resident in the UK should ensure they apply under the EU Settlement Scheme before the relevant deadlines
- Employers should review their workforce planning and recruitment budgets to take into account the need for EEA/Swiss nationals and their family members to apply under the post-Brexit immigration system from 1 January 2021. Consideration should be given to applying for a sponsor licence or increasing the allocation of Certificates of Sponsorship under an existing licence, including timing and cost
- Employers should consider the implications for frontier workers and check whether they can apply under the EUSS or will need to consider a frontier worker permit.
- Employers should consider participating in stakeholder engagement opportunities offered by the Government as part of its planning for the new immigration system
- British citizens and their non-British family members should plan to be in a position to return to the UK and make an application for the relevant family members under the EUSS by 29 March 2022
- Turkish workers should ensure they make any application relying on the Turkish ECAA before the end of the implementation period. They should also monitor UK Government announcements for any transitional arrangements relating to how Turkish workers may remain in the UK after the implementation period but before becoming eligible for indefinite leave to remain under the Immigration Rules, Appendix ECAA
- Turkish businesspersons should ensure that they make applications relying on the Turkish ECAA before the end of the transition period. They should also monitor for UK Government announcements relating to how Turkish businesspersons may remain in the UK after the implementation period but before becoming eligible for indefinite leave to remain under the Immigration Rules, Appendix ECAA

What actions can be taken from an EEA/Swiss immigration perspective?

- British nationals and their family members who are living in the EEA or Switzerland before the end of the implementation period should ensure they understand the visa/residence permit requirements to enable them to remain after 31 December 2020, including timing and cost
- British nationals intending to visit the EEA or Switzerland after the implementation period should ensure they understand the requirements, including any restrictions on passport validity, activities and length of stay
- British nationals and their family members intending to enter the EEA or Switzerland for non-visit purposes after the implementation period should ensure they understand the visa/residence permit requirements, including timing and cost, before travelling

How can we help?

We are able to offer advice to individuals on their immigration options in the UK and across the EEA and Switzerland after Brexit. We also offer a range of Immigration services designed to ensure that businesses are fully informed and prepared for what lies ahead. As part of our broader Immigration solutions for HR, we can help businesses and their individual employees to understand the EU Settlement Scheme and the implications of Brexit so that EEA/Swiss nationals can continue to be employed lawfully in the UK both in the short and long term. We can also suggest strategies to maintain British employees' ability to work on the continent.

For more information



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