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3HR Legal Weekly

Employment

Immigration Law Impacts of Brexit

The full impacts of "Brexit" are of course still unknown. Indeed, given that negotiations between the UK and the EU may last for up to 2 years before the UK actually leaves (from the date that formal notice of leaving is given to the EU, which still has not happened yet) it may be that we will not know the full impacts for a long time.

Now

The first thing to note is that at the moment there is **no change** to Immigration Law, whether for EU nationals or non-EU nationals. The same right to work checks still apply; EU nationals are still entitled to come to work in the UK without a visa and non-EU nationals are still required to have the appropriate visa depending on what they will be doing here. Currently therefore, it is business as usual.

Future

As ever, the future is not certain. The current Prime Minister, David Cameron, is highly unlikely to take any active steps regarding Immigration Law now that he has given notice of resignation and we do not yet know who his successor will be. We should know by September this year. In respect of EU migrants currently in the UK, whilst some politicians are suggesting they should be given the right to continue to live and work in the UK, others are suggesting that such rights will be a matter for negotiation with the EU.

It seems likely in our view that for the foreseeable future at least, EU migrants already within the UK will be permitted to stay. However, once the UK has actually left the EU it may be expected that any future EU migrants will need to apply for a visa to work in the UK and therefore would generally need to use the current Tier 2 visa system.

In respect of non-EU migrants, there does not appear to be any reason why there should be any significant impact. Non-EU migrants are already required to obtain a visa in order to work in the UK and this is of course expected to continue. There may be some effect in terms of greater demand for the limited Tier 2 (General) Restricted Certificates of Sponsorship. Whether that will actually make it more difficult for non-EU migrants to obtain Tier 2 (General) visas in future remains to be seen and is in no way guaranteed simply as a result of Brexit.

A possibility of course is that the situation may lead to more substantial changes to the current Tier 2 and Tier 5 visa system in the UK. However, any substantial changes seem to us to be unlikely. The current system already provides that migrants working in the UK must be carrying out a skilled job – the level required is NQF 6, which is the equivalent of degree level skills and it would seem unlikely that the UK government would seek to impose a higher standard than this. It would also seem undesirable to make the Tier 2 (Intra Company Transfer) route more restrictive, since arguably post-Brexit the government will be keener than ever to secure international investment into the UK, and it is long understood that such investment requires that overseas companies are able to bring their expatriate managers to their UK subsidiaries. Indeed, recently we have seen proposals to make the Tier 2 (ICT) system simpler for example by removing the 12 month employment requirement for those earning salaries of around £75,000 and above (this is still a proposal at this stage, and is not yet in place).

Conclusion

Overall, we do not envisage any immediate negative impacts of Brexit on our clients from an Immigration Law perspective. Even in the long-term, we expect that the Tier 2 (ICT) system (by far the most popular choice for the majority of our clients) will be largely unaffected.

For more detailed advice on any aspect of Immigration Law, please do not hesitate to contact our expert team.

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