

## Attys Brace For Post-Brexit Burdens On EU Immigrants

By **Nicole Narea**

*Law360 (October 4, 2018, 8:51 PM EDT)* -- The U.K.'s recent announcement that, post-Brexit, it won't give preferential immigration treatment to European Union nationals has employers and attorneys scrambling to take stock of staffing and prepare for headaches.

British Prime Minister Theresa May announced Monday that high-skilled workers would get preference over low-skilled workers with no special consideration for nationals of the EU over those from the rest of the world under a "single immigration system." She also set a goal of keeping immigration levels below 100,000 per year and left the door open to future trade agreements with the EU that could address the "mobility" of workers and potential waivers of visa requirements.

In doing so, May largely adopted recommendations from a 140-page report published by the government's Migration Advisory Committee on Sept. 18 outlining recommendations for the post-Brexit immigration system, which also notably urged the U.K. government to eliminate a 20,700 cap on high-skilled workers. May acknowledged that she would consider eliminating the cap, but made no immediate promises.

"It will be a skills-based system where it is workers' skills that matter, not where they come from," May said in a statement. "It will be a system that looks across the globe and attracts the people with the skills we need."

The U.K. government has confirmed its commitment that all of the nearly 3 million EU immigrants currently living in Britain can remain even if the U.K. leaves the EU bloc with no agreement in place. EU nationals who have residence in Britain as late as Dec. 31, 2020, will have legal status so long as they register for "Indefinite Leave to Remain," also known as settled status, or "Leave to Remain," also known as pre-settled status, by June 2021.

EU nationals residing in the U.K. for less than five years would be able to apply for pre-settled status, while those residing in the U.K. for more than five years would be eligible for settled status.

The principal import of the prime minister's Monday announcement is that after 2020, EU nationals will need to apply for formal admission requirements in advance of moving to Britain, and may also face travel visa or pre-registration requirements, Elizabeth Espin Stern, a partner at Mayer Brown LLP, said. She added that there has been speculation as to whether Britain will adopt "U.S.-style" visas for travel and work.

"What these requirements will ultimately translate to will depend on continued negotiations and the input

of key business sectors like the Migration Advisory Committee,” she said.

Jennifer Stevens, a partner at Laura Devine Attorneys, said May’s comments do not come as a surprise in light of the committee’s September report, but that they are still concerning. Businesses only have till late 2020, the end of a projected transitional period, to implement new practices, she said.

“It doesn’t give business much time to plan,” she said. “It’s still all very uncertain.”

Stevens said the transition could involve enormous costs for British businesses. For each EU national seeking a Tier 2 skilled worker visa allowing them to work in the U.K. for six months or more, a firm would have to pay up to a £1,000 annual “immigration skills charge.” They would also have to ensure that foreigners meet the minimum salary requirements, which for skilled workers would be at least £30,000.

“It’s pretty costly,” she said. “And it has a disproportionate effect on smaller businesses that may not be able to afford to raise salaries.”

Moreover, if the British government ultimately decides not to eliminate the cap on skilled workers, Tier 2 workers — who Stevens’ corporate clients most often employ — would be particularly hard hit. Her clients have already been concerned that they would not be able to get certification under the category, which has been oversubscribed between December 2017 and July.

The Migration Advisory Committee had advised in its report that Tier 2 workers would bolster Britain’s economy and public finances.

In light of the newly announced plans for EU nationals and the potential skilled worker cap, employers should be “closely evaluating their current EU pool in Britain and the likely fluidity of travel and work assignments in the next 18 months,” Stern said. They should also facilitate employees’ applications for settled status and pre-settled status to ensure that key personnel are protected in the near term, she said.

Nicholas Hobson, a partner in Morgan Lewis & Bockius LLP’s immigration and global mobility team, said employers should be identifying employees who are EU nationals, to determine how long they have been in the U.K. and decide whether they will support employees in obtaining permanent residence by paying their application fees. They should also start gathering documentation, given that many EU nationals likely came to the U.K. before the Brexit vote and did not anticipate needing particular paperwork.

Moreover, Stern said attorneys should educate their corporate clients on derivative family member rights, which allow non-EU citizens who are the carers, relatives and legal guardians of EU citizens to stay in the U.K. She said that doing so will be “highly useful to future planning.”

But Hobson said that beyond taking stock of their current workforce, employers will simply have to wait out the last round of Brexit negotiations with the EU.

“We kind of have to hold fire for the next couple of months,” he said.

--Editing by Pamela Wilkinson and Kelly Duncan.