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BREXIT: WHAT ARE THE PEOPLE IMPLICATIONS?

The UK is currently scheduled to leave the EU by 31 January 2020, with or without a deal unless a further extension is agreed with the EU. The UK Prime Minister has agreed a revised draft UK-EU Withdrawal Agreement with the EU, which contains similar people provisions as those set out in the original draft of the Withdrawal Agreement. The UK's Parliament has decided to call a general election on 12 December 2019; the new Parliament will then decide whether to approve the revised deal. We have summarised below the likely implications of a 'No-deal' Brexit, as well as the likely people implications if the revised draft of the Withdrawal Agreement is approved.

Summary of people implications of Brexit

- Little change is expected to UK employment rights in the immediate to short term on Brexit whether or not a deal is reached.
- A 'No-deal' scenario is likely to have an immediate impact on employee mobility and European Works Councils but not on employment rights more generally.
- In a 'No-deal' scenario, EU citizens in the UK on or before Exit Day will be able to apply to remain using the new EU Settlement Scheme, but there will be no EU-wide scheme for dealing with UK nationals in the EU who will need to check what arrangements have been put in place by their host jurisdiction.
- If a deal is reached, there will be a transition period during which all EU employment law and free movement rights will continue to apply.
- Despite long term scope for future watering-down or dismantling of EU-derived worker rights, this is not the current UK government's stated intention and any future trading agreement may involve some form of continuing commitment to shared employment standards.

Issue	Deal	No-Deal	Key implications for UK employers
When will the UK leave the EU?	31 January 2020 (or 31 December 2019 if ratified by then) unless an extension is agreed with the EU.	31 January 2020 unless an extension is agreed with the EU.	
Will EU-derived employment laws and ECJ Judgments still form part of the UK's legal system once the UK leaves the EU?	Yes. During the transition period, EU employment law will continue to apply in the UK. This includes any new laws that are passed and ECJ judgments that are handed down during the transition period. The transition period is set to end on 31 December 2020, but it can be extended if the UK and EU agree. Any extension must be agreed by 1 July 2020 and may be for either one or two years, which would take the end of the transition period to 31 December 2022 at the latest. After the transition period, the 'No-deal' position will apply, except as agreed under the revised protocol on Northern Ireland or under any future trading agreement.	Yes. The EUWA (see 'Key Terms') will convert EU law as it stands at the moment of exit into UK law. This includes both EU laws and ECJ judgments. EUWA provides that UK courts are expected to decide cases concerning retained EU law in accordance with pre-exit ECJ decisions. However, the Supreme Court can depart from ECJ decisions if it appears right to do so.	If a deal is approved, be aware that the UK will need to implement any new Directives which take effect during the transition period.
Will the UK courts need to pay any attention to future decisions of the ECJ?	ECJ decisions made during the transition period will be binding on the UK, and will become part of the retained EU law to be incorporated into UK law. Cases registered with the ECJ during the transition period will continue through the ECJ hearing process until completion. For up to four years after the end of the transition period, the European Commission can also bring infringement cases against the UK for breaches of EU law which occurred before the end of the transition period. After the transition period, the 'No-deal' position is likely to apply, except as agreed under the revised protocol on Northern Ireland or if any future trading agreement says anything further about the ongoing influence of the ECJ.	Under the EUWA, Courts and tribunals may 'have regard to' anything done on or after Brexit by the ECJ and the EU, but are not obliged to apply future EU laws and decisions.	We are likely to see ongoing debate about the situations in which the courts can and will depart from ECJ decisions once EU law ceases to apply.

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Issue	Deal	No-Deal	Key implications for UK employers
Is the UK government likely to start repealing EU-derived employment laws once the UK leaves the EU?	The draft UK implementing legislation currently requires any minister introducing draft primary legislation to make a statement saying that it will not result in the laws of England, Wales or Scotland failing to confer worker's retained EU rights (known as a statement of non-regression), or alternatively that although such a statement cannot be made, the government wishes Parliament to continue with the draft legislation. The minister must consult with employer and worker representatives before making the statement.	We consider it unlikely that there will be substantive changes in the immediate to short term, although the government may look to depart from some principles of EU-derived law at a later date. In the revised Political Declaration, the UK and EU agree that they will uphold the common high standards applicable at the end of the transition period in specified areas that include social and employment standards.	Employers should continue to plan on the basis that there is unlikely to be any significant repeal of EU-derived employment law rights.
What will happen to EWCs?	The EWC regime will continue in its current form during the transition period but will be unable to continue in its current form after that without EU agreement. The Withdrawal Agreement does not say anything about EWCs, but this will need to be covered as part of any future trade deal.	The European Commission has published a note setting out its views on the operation of EWCs in the event of a 'No-deal' Brexit. Following exit day, as the UK will no longer be a member state, if central management or the representative agent is currently situated in the UK, this will change – unless a new representative agent has been designated by the employer, the default representative agent will be the member state employing the greatest number of employees. The same applies in respect of the governing law applicable to the EWC agreement, if it is currently UK law. UK representatives will no longer be entitled to be represented unless this is permitted under the EWC agreement terms. Further, if the employer ceases to employ at least 1000 employees in member states, it will cease to be subject to the EWC Directive even if an EWC is already established although the EWC may continue to exist under domestic law.	If an employer's central management/representative agent is based outside the UK then it could adopt a wait and see approach to determine the impact of Brexit before determining what changes need to be made (if any). If the central management/ representative agent is in the UK it would be sensible to take advice now to consider the scope for future proofing e.g. the desirability and feasibility of moving central management. Advice should also be sought if an employer is in the process of setting up a new EWC. If the central management/ representative agent is located in another member state, advice should be sought on what will happen to any UK representatives following Brexit.
What is the revised protocol on Northern Ireland and what effect will that have on employment law if it comes to play?	The revised protocol replaces the controversial Northern Ireland backstop in the previous draft Withdrawal Agreement. At the end of the transition period, if the UK and EU have not been able to agree a new future relationship agreement, Northern Ireland will remain aligned to a limited set of Single Market rules to avoid a hard border with Ireland but will leave the EU customs union with the rest of the UK. This would enable it to benefit from future Free Trade Agreements that the UK may conclude with third countries. The protocol will continue for as long as it has the democratic support of the Northern Ireland Assembly, which will be asked to vote on the continuation of the protocol at the end of the transition period and every 4 years thereafter. In the revised Political Declaration, the UK and EU agree that they will uphold the common high standards applicable at the end of the transition period in specified areas that include social and employment standards.	N/A	The revised protocol is controversial and it remains to be seen whether it will be accepted by the UK and EU Parliaments.

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Issue	Deal	No-Deal	Key implications for UK employers
What will happen with EU citizens who are currently living in the UK (and vice versa)?	EU citizens who are lawfully residing in the UK, or who start residing in the UK during the transition period, will be allowed to remain here on a long term basis. Once they have been living here for 5 years they will qualify for settled status. The same rules apply to UK citizens living in the EU. The right to settled status will only be lost if the individual leaves their country of residence for a period of 5 years or more. The UK government has implemented these provisions through a new EU Settlement Scheme. EU citizens can apply for 'settled' status if they have been here for 5 years or longer. If they have been here for less than 5 years, they can apply for 'pre-settled status' to take them up to the point when they can apply for settled status. All EU nationals in the UK (except Irish nationals) will have to apply for their status before the end of the transition period even if they have existing documentation. Citizens of the Republic of Ireland do not have to apply for settled status as their right to live and work in Britain is guaranteed under separate bilateral arrangements. The UK scheme involves an online platform and has been designed to be simple, straightforward and fast. 'Frontier workers', who are individuals working in the UK but living in another Member State or vice versa, will be able to obtain status under the Withdrawal Agreement allowing them to continue with their working and living arrangement, although there is uncertainty as to how the UK intends to deal with such individuals in practice.	The government has indicated that even if a deal isn't reached, EU citizens already living in the UK will still be able to apply to remain under the EU Settlement Scheme. However, as there will beno transition period in the event ofa 'No-deal' scenario, EU citizens will need to be lawfully residing in the UK on or before 31 January 2020. The position for British nationals living in the EU will be dependent upon the 'no-deal' arrangements that have been put in place by their host country. The EU Commission has called upon member states to take a 'generous approach'to protecting the rights of British Citizens if there is no deal and most have now announced their plans on this front. British nationals generally benefit from a transition period (which varies in length from country to country) during which time they will be able to apply to convert their status and apply for long-term residency. More information regarding the requirements that apply in each member state can be found using the following link: https://www.gov.uk/uk-nationals-living-eu.	Employers should seek to reassure EU citizens working in the UK that they will be able to stay, even in a 'No-deal' scenario. Some employers are going further and offering sessions on a group or individual basis where EU citizens are given information about how to secure their right to remain in the UK. Similar sessions may also be offered to UK citizens working in the EU, although their position in the event of a 'No-deal' Brexit is less clear. Employers should consider taking steps to identify which key employees may be impacted and to consider offering assistance to them. This includes UK nationals working in the EU, or travelling there for business, who may have to fulfill additional immigration requirements in the event of a deal not being reached.

BREXIT: WHAT ARE THE PEOPLE IMPLICATIONS?

Issue	Deal	No-Deal	Key implications for UK employers
What about EU citizens who want to work in the UK in future (and vice versa)?	The UK and EU have signed a Political Declaration setting out a framework for the final deal, which makes it clear the UK has decided free movement will cease at the end of the transition period. The White Paper published by the UK government in December 2018 provides that EU nationals would then be treated in the same way as non-EU nationals, i.e. in order to work in the UK they would need to be sponsored by a UK employer under the Points Based System. It is still possible that if a wider trade deal is signed with the EU that this may include some preferential treatment for EU nationals coming to the UK or British citizens going to the EU, but failing that we will fall back upon the local immigration requirements in each jurisdiction. The Political Declaration states that the new system for dealing with mobility should be based upon the principle of 'non-discrimination between the Union's member states and reciprocity' which suggests that the negotiators would prefer to deal with mobility issues at an EU level rather than to fall back on the local requirements in each country.	The UK government has confirmed that if there is no deal, EU nationals arriving after 31 January 2020 would not qualify for status under the EU settlement scheme. Instead, for a limited period up to the 31 December 2020, they will be able to enter the UK for visits, work or study – in much the same way as they do now – but crucially if they wish to remain beyond 31 December 2020 they will need to apply for European Temporary Leave to Remain. Under this new category of leave, which has been created specifically for a 'No-deal' scenario, EU nationals will be granted permission to remain for a 3 year period. The EU hasn't yet provided any assurances regarding the position of UK nationals arriving in EU countries after 31 January 2020. However, it is most likely that they will need to apply for a work visa under the local immigration requirements of their host country.	If employers think that they may face skills shortages in the UK post-Brexit, they should make sure that their sponsor licences (usually used to sponsor non-EEA nationals) are in good order and that the business is up to date with its compliance obligations.
What ongoing protection against discrimination will EU and UK citizens have?	The Withdrawal Agreement provides that, after the transition period, EU citizens working in the UK, and UK citizens working in the EU must have lifelong protection from discrimination on grounds of nationality as regards employment, remuneration and other conditions of work and must have equal treatment in respect of employment conditions. These provisions are intended to be directly effective. The Equality Act 2010 already prohibits discrimination on grounds of national origin. It remains to be seen if the UK government will provide additional specific protection for EU citizens as part of the proposed EU Withdrawal Bill. It also remains to be seen if EU member states would introduce specific legislation to protect UK citizens or rely on the direct effectiveness of the Withdrawal Agreement. Under the Withdrawal Agreement, the UK must set up an independent authority to monitor compliance with citizens' rights with power to make enquiries, receive complaints and bring legal claims before UK courts. Arrangements for this body are due to be included in the EU Withdrawal Bill.	In the UK, all employees are protected against discrimination on grounds of nationality under the Equality Act. EU citizens working here after Brexit would continue to benefit from this provision in the event of a 'No-deal' Brexit, but it does not protect EU citizens specifically. UK citizens working in the EU may not have the same protection, depending on local law. The current EU Race Equality Directive provides protection on grounds of racial and ethnic origin but not nationality.	Employers should be careful to ensure that they do not reject EU citizens for current vacancies on the basis of their nationality. Employers that are considering running training or awareness-raising on harassment or discrimination could consider whether to refer to the position of EU citizens. Employers may ultimately need to update diversity policies (for example to specifically mention EU citizens) but should wait until there is more clarity before doing so.

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Issue	Deal	No-Deal	Key implications for UK employers
What about business travel?	During the transition period EU citizens will be able to travel for business purposes in the normal way. The Political Declaration sets out a desire to agree visa free travel for short visits post-Brexit. (It also sets out a desire to agree special arrangements for research, study, training, youth exchanges and for short term business purposes in defined areas). However, whatever is finally agreed the new system will likely be more restrictive than it is at present.	The EU has now confirmed that subject to the UK not applying any visa restrictions on EU nationals, British Citizens will be able to travel to the EU visa free under the Schengen arrangements. This means they will be able to enter the Schengen area for business visits for up to 90 days without a visa, but will not be able to work whilst there. They will need a passport issued in the last 10 years and which is valid for at least 3 months after their planned return date from the Schengen area. EU nationals will be able to enter the UK for business trips of any length up to 31 December 2020. They will also be free to work in the UK during this period (unlike British citizens going to the EU).	Employers may want to consider undertaking an audit of the travel requirements within the business and the impact of the restrictions that will apply in the event of a 'No-deal' scenario.
What will happen in relation to the recognition of professional qualifications?	Individuals who have had their professional qualifications recognised in a different member state will be able to continue to rely on that during and after the end of the transition period. If someone has applied for (but not obtained) the recognition of their professional qualifications before the end of the transition period, their application will be processed domestically in accordance with the EU rules applicable when the application was made.	For EEA qualified lawyers to continue to be able to carry out all of the same activities as UK qualified lawyers, they will need to have registered as a Registered European Lawyer with the Solicitors Regulation Authority before 31 January 2020.	If employers have employees whose professional qualifications have not been recognised in the UK, they should encourage those employees to seek formal recognition prior to exit day, and should consider providing them with support in relation to the process. Also bear in mind that new EU citizens who come to work for them after exit day (or the transition period), will be subject to a new recognition system.
How might Brexit impact pension benefits provided under UK occupational arrangements?	Provided sponsoring employers can continue to meet their ongoing funding obligations to the scheme, there will be no direct impact on the pension benefits which current and former employees receive under these arrangements.	Provided sponsoring employers can continue to meet their ongoing funding obligations to the scheme then, subject to the following exceptions, there will be no direct impact on the pension benefits which current and former employees receive under these arrangements. If employers have an occupational DC scheme and at retirement annuities are purchased, the comments below in relation to non-occupational pension schemes will apply. It is also possible that the current (favourable) tax treatment for employees seeking to transfer their pensions out of the UK to another EU country (for example as a result of relocation), could be adversely affected by a 'No-deal' Brexit at some point in the future, although this would not be an automatic impact at the date of exit.	Employers with concerns about meeting funding obligations (e.g. because of any proposed restructuring or downsizing), should seek advice on those obligations, consider contingency plans and be ready to engage with trustees of DB schemes to discuss future financial support to the scheme.

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Issue	Deal	No-Deal	Key implications for UK employers
How might Brexit impact pension benefits provided under non-occupational arrangements - e.g. contract based Group Personal Pension Plans into which the employer contributes	No direct impact	Subject to the following exceptions there will be no direct impact on the pension benefits which current and former employees receive under these arrangements. It is possible that individuals living outside the UK who are in receipt of annuity payments or a life assurance benefit from an insurance provider could face some disruption to the payment of benefits. However, this would be for insurance providers, rather than employers, to address. The UK government has indicated that most providers should have put in place contingency plans to address this and that if the current or former employees are concerned, they should contact the provider. It is also possible that the current (favourable) tax treatment for employees seeking to transfer their pensions out of the UK (for example as a result of relocation), could be adversely affected by a 'No-deal' Brexit at some point in the future, although this would not be an automatic impact at the date of exit.	No direct impact for employers. Employers who receive questions from employees about benefit continuity issues should refer employees to the relevant provider. Employees with queries about potential tax issues should be referred to an independent financial/ tax adviser.
Does Brexit impact an employer's ability to employ UK workers via an EU entity (and vice versa)?	No. UK law does not require there to be a local UK employing entity for UK workers and this is not impacted by Brexit. In (limited) other jurisdictions with rules on the identity of the employing entity this is not typically impacted by whether the entity is in the EU or not.	(See Deal column)	Employers should not need to change employing entities.

KEY TERMS

"**Withdrawal Agreement**" – Draft Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, as agreed at negotiators' level on 17 October 2019.

"**EUWA**" – The European Union (Withdrawal) Act 2018 (EUWA). This is the UK legislation which ends the supremacy of EU law in the UK and prepares the UK's legislative framework for withdrawal from the EU.

"**EU Withdrawal Bill**" – The European Union (Withdrawal Agreement) Bill 2019-20. This is the legislation through which the UK plans to implement the Withdrawal Agreement into domestic law.

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Issue	Deal	No-Deal	Key implications for UK employers
Employee Share Schemes	No direct impact for employees as the employee share scheme exemption from the prospectus requirements was widened on 21 July 2019 to cover all employee share schemes regardless of where the company is headquartered or listed.	External providers involved in financial products, related to share plan such as savings-arrangements, may see their services & permissions impacted. Companies should check with their administrators, particularly for any savings-related share option plans.	No direct impact for employers.
How might Brexit impact social security?	The Withdrawal Agreement contains rules regarding social security co-ordination for UK citizens working in the EU (and vice versa). The EU social security rules will continue to apply to employees up until the end of the transition period. Under these rules, EU workers can be posted by their employer to a different member state, but remain on their home state social security regime for a limited period. These rules will continue to apply after the end of the transition period to any employee posted before the end of the transition period. The position in relation to workers posted after the end of the transition period is currently unclear. The principle of aggregation of periods of contribution in any EU/EEA state when calculating entitlement for future allowances, such as state pension, will continue to apply during the transition period. Periods of contribution, both before and after the end of the transition period, will be taken into account for the purposes of aggregation when calculating entitlements after the transition period ends.	The social security position in relation to employees posted abroad at Brexit will revert to any relevant social security agreement or the default rules. The European Council and Parliament have passed a regulation that guarantees the principle of aggregation in relation to periods of contribution before Brexit. Whether employees' social security contributions in the UK would be taken into account when calculating their entitlements to future allowances in another EU/EEA state (or vice versa) in relation to periods of contribution post Brexit would be a matter for individual negotiation between the UK and that state. The UK government has committed to continue uprating the UK State Pension for UK nationals living in the EU in 2019 and 2020 but has not committed to provide uprating beyond this point.	When the EU rules cease to apply (either at the end of the transition period or on 31 January 2020), the country in which social security contributions are due may change. Employers should update their withholding and payroll processes to reflect this once we have further clarity on what will happen.

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Brexit

How We Can Help

Baker McKenzie's dedicated team can help you assess the impact of Brexit on your business.

We have identified the key challenges that you should be considering as part of your Brexit strategy.

Please contact one of our specialists for further information.

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