

New visa procedures for travelling and working between the EU and the UK



March 2021

Newland Chase
A CIBT COMPANY

With You Today

from Newland Chase – *a CIBT company*



Tony Butterworth

Managing Director, UK
Newland Chase



Ben Sookia

Global Immigration Advisor
Newland Chase



Today's Agenda

EU nationals to the UK

End of the Transition Period

Sponsorship, Skilled Workers and the
Points Based System

Sponsor Licensing - process, compliance
and related matters

Business Visitors into the UK

UK nationals to the EU

The Withdrawal Agreement

EU-UK Trade Deal –short term visitors-

Schengen travel restrictions

Work & Residence Permits in the EU

Q&A

A wide-angle photograph of the London skyline across the River Thames. The London Eye is the central focus, a large white Ferris wheel. To its left is a tall, modern skyscraper. To its right is a large, historic building with many windows. The sky is blue with scattered white clouds. In the foreground, the dark water of the river is visible. A red circle is in the top right corner, and a red and grey vertical line is on the left side of the white background below the title.

Business After Brexit – EU Nationals to UK

Brexit, EU Settlement Scheme (EUSS) and New Rules

- Withdrawal Agreement signed Jan 2020
- Free movement rights under the transitional arrangements following Brexit (“Transition Period”) came to an end at 23:00 on 31 December 2020.
- EU nationals residing in the UK on or before 31 December 2020 with an intention to remain in the UK must apply for Pre-Settled or Settled status under the EU Settlement Scheme.
- The deadline to apply under the EU Settlement Scheme is 30 June 2021.
- EU nationals travelling to the UK after 31 December 2020 will need to obtain a visa prior to arrival for all categories other than as a short term visitor (both business or leisure).
- Now considered 3rd Country nationals

Those arriving in the UK for work purposes from 1 January 2021 will require a work visa under the new ‘Skilled Worker’ system, replacing the existing Tier 2 system.

Post-Brexit Immigration rules

Skilled Worker (permanent hires)

- No advertising
- No annual limits
- Minimum salary reduced
- Skill level reduced to “A” Level equivalent
- English language requirement
- Path to permanent residence

Intra Company Transfer (temporary assignments)

- No advertising
- Minimum salary £41,500
- Skill level set at Degree equivalent
- Limit of 5 years in any six on a rolling basis
- English language exempt
- No path to settlement

“Frontier Workers”

- EU, EEA or Swiss citizens
- Worked in the UK BUT living elsewhere
- Work must have been “genuine and effective”
- Must be active pre 1 January 2021
- Must possess FW permit from 1 July 2021
- Valid for 5ys can be renewed



UK Sponsor License requirements

All UK companies must hold a Sponsor License

Applying now

- Pre-requisite to employing foreign nationals
- Gather significant company documentation
- Requires appointment of Key UK based Personnel
- Understand compliance obligations
- Build robust processes to manage obligations
- Submit a “perfect” application
- Lead time approx. 6-8 weeks





Sponsor Licence Refresh

Existing Sponsor License holders ensure your licence is fit for purpose

- Key personnel remain in place and have access
- Overseas entities are linked to the license
- UK offices are linked to the license
- Sufficient certificates of sponsorship to manage expected spike in applications
- Do you have both Skilled Worker and Intra Company Transfer tiers on the license
- Keep an eye on License renewal date
- Ensure in-house teams are au fait with new immigration landscape

Processing times are typically 10-18 weeks (limited expedited services)

Don't get caught on the back foot!



Business Visitors

From 1 January 2021, EU nationals are subject to immigration rules inc Business Visits.

Overview

- End of free movement represents a marked *shift* in working culture of European operations
- EU nationals **DO NOT** require a Business Visa
- Potential immigration compliance risk
- Greater scrutiny of intra-office business travel from EU to UK offices will be paramount
- Risks
 - Individual's refused entry, removed and banned
 - Direct impact on sponsor status, including loss of licence and sponsored skilled workers
 - Findings of illegal employment (attracting penalties of up to £20,000 for each illegal worker)
 - Reputational damage



Business Visitors – General principles

Visitors can.....

- Travel to the UK for “reasonable” periods of time
- Conduct ‘permissible activities’
- Travel to the UK frequently
- Keep in contact with their overseas employer while in the UK
- Receive reasonable travel & living expenses from sources in the UK but **must** remain on overseas payroll



Business Visitors – Permissible Activities

Attend meetings, conferences, seminars, interviews

Give a one-off or short series of talks and speeches provided these are not organised as commercial events and will not make a profit for the organiser

Negotiate and sign deals and contracts provided any work agreed to is carried out either outside the UK, or by UK colleagues with the correct work permission to do so

Attend trade fairs, for promotional work only provided you are not directly selling

Carry out site visits and inspections

Gather information for employment overseas – this can include discussions with clients or UK colleagues

Be briefed on the requirements of a UK based customer provided any work for the customer is done outside the UK

Intra-Corporate Activities

Intra-corporate activities, i.e. where employed by a group company overseas, may include:

- Advise and consult
- Troubleshoot
- **Provide Training** on internal matters (**not** training to clients);
- **Share skills and knowledge internally**
- **Provide *internal* regulatory or financial audits at a UK entity of the same group of companies as the visitor's employer overseas**

Intra-corporate activities should be:

- A short duration (1+ month could attract suspicion of perceived abuse);
- Linked to a specific project
- Not involve the visitor directly working with or for clients
- Should be based mainly at the UK company offices and not at client sites, unless attending meetings with clients

Business Visitors – Prohibited Activities

Business Visitors cannot.....

- Take employment in the UK
- Establish/run a business either as self-employed or on behalf of an overseas employer
- Undertake a work placement or internship
- Provide temporary cover/ short term cover for a UK role
- Sell goods directly to the public
- Provide services unless otherwise “permitted”
- Where the visitor is already employed and paid outside the UK, they must remain so.

Practical Tips for successful business travel

EU nationals (including nationals of Iceland, Liechtenstein, Norway, or Switzerland) will not require a visa prior to travel.

Evidence to carry during visit:



Valid passport (with validity remaining to enable ongoing travel)



An EU national ID card up (until 1 Oct 2021 only)



Justification for travel (e.g. letter from UK business confirming nature of 'permissible activities')



Evidence of financial means for duration of stay



Itinerary – including details of accommodation and outbound travel

Impacts, Considerations & What To Do Now.

Impacts

- Ease of travel changing significantly Free Movement vs Immigration Rules
- Significant visa costs
- Timelines longer when seconding
- Start dates impacted/hiring process much longer
- Added scrutiny around Business travel
- Mind-set shift

Considerations

- Assess the need for a Sponsor License
- Re-evaluate in-house resources/capacity
- Sponsor compliance is more critical than ever to maintain access to EU talent

What to do now

- **Apply for a Sponsor License** to ensure continued ability to hire talent from outside the UK
- **Review** of existing Sponsor License
- **Educate** internal stakeholders - GM, HR, Travel & Recruitment Teams
- **Review/Develop processes** to build-in discussion around proposed Business Visitors to include an assessment of the proposed business activities to ensure compliance with UK immigration rules

Remember that all work, no matter how short the proposed period is for, cannot be undertaken as a Business Visitors



Business After Brexit

UK nationals to the EU



The Withdrawal Agreement

1. Protected by the Withdrawal Agreement
UK nationals residents and cross border commuters before the end of the transition period – if on local contract or self-employed in-country

Country-specific processes apply to obtain a new residence status under the Withdrawal Agreement

Uncertainty around UK nationals residing in EU countries before the end of the transition period on assignment (**posted workers**)

2. Not Protected by the Withdrawal Agreement

UK nationals arriving to the EU for business, work or/and residence purposes post 1st January 2021

New Immigration Landscape: Business Travel

❑ *Immigration framework for third country nationals:*

UK nationals = third country nationals as of 1st January 2021

- ***Long Stay (over 90 days):*** work & residence permit categories in each EU country national immigration system
- ***Entry and short stay (up to 90 days in any 180 day period):*** Schengen Regulations
- ***Short term activities (up to 90 days):*** May require work permit-Subject to each EU country national Immigration system

❑ *EU-UK Trade and Cooperation Agreement - applicable to UK nationals:*

- ***Short term activities (up to 90 days in any six-month period):***

-Business visitors for establishment purposes

-Permissible activities for short term business visitors

EU-UK TCA -Business visitors for establishment purposes

Natural persons working in a senior position within a legal person of a Party, who:

- i) are responsible for setting up an enterprise of such legal person in the territory of the other party;
- ii) do not offer or provide services or engage in any other economic activity; and
- iii) do not receive remuneration from a source located within the other Party;

The permissible length of stay is 90 days within any six-month period (exception Cyprus)

EU-UK TCA- Short-term business visitors

Short-Term Business visitor DOES NOT:

- sell goods or supply services to the general public;
- receive remuneration from within the country where they are staying temporarily; and
- supply services in the framework of a contract with a consumer in an EU country where not established unless that provision of services is a permitted activity listed in the EU-UK TCA

EU-UK TCA-Permissible Activities (Annex SERVIN 3)

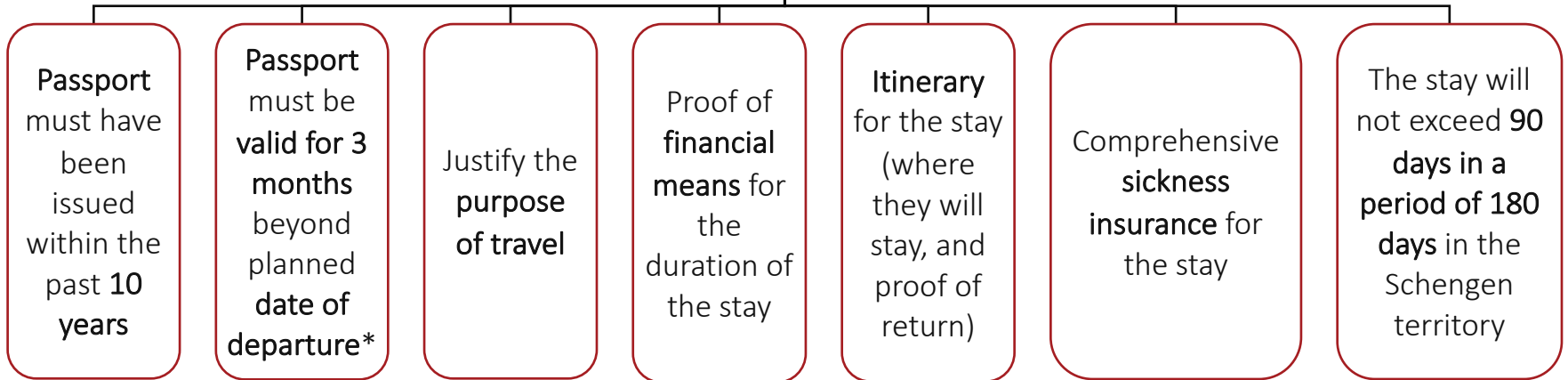
(List is applicable to short term business visitors, including for establishment purposes and intra corporate transferees)

- ✓ Attending meetings or conferences
- ✓ Consultations with business associates
- ✓ Technical, scientific and statistical research
- ✓ Marketing research
- ✓ Receipt of training in techniques and work practices used in host country
- ✓ Attending trade fairs and exhibitions for promotional purposes
- ✓ Sales activities (without delivering goods or services) – no sales to general public
- ✓ Purchasing of goods or services (for use by/to be carried out for company in home country)
- ✓ After-sales or after-lease service
- ✓ Commercial transactions (management, supervisory and financial services personnel)
- ✓ Tourism personnel : Attending tourism conventions and accompaniment of tours starting in home country
- ✓ Translators and interpreters

Several EU member states' reservations to the above exist; and all subject to country specific interpretation.

Schengen Short Stay Entry Requirements

UK NATIONALS Schengen Visa-Free Entry



** 6 months validity at time of entry is recommended*



Short stay-Entry Requirements

- UK nationals no longer able to use the designated lanes at Border Crossing Points (EU, EEA, CH);
- UK passports subject to stamping upon entry and exit from the Schengen Area;
- UK nationals subject to checks against databases upon entry and exit;
- UK travellers subject to the COVID 19 Schengen travel ban

Also note that:

- A new exit and entry system through e-Gates will eradicate the current system of passport stamping when travelling to the Schengen Area beginning next year and will facilitate enforcement of the 90 days in any 180-day rule
- Electronic travel authorisation system called ETIAS similar to the ESTA of the USA or the eTA of Canada to be implemented in the EU by 2022

Challenges for UK Business Travellers

EU-UK TCA applicability

Uncertainty around how each EU country will interpret the permissible activities provisions

Short term permitted activities by the same individuals across the Schengen Area

Residence permit required if exceeding 90 days in any 180 day in the Schengen Area

90 / 180 days stay restriction in Schengen Area*

Tracking of stay in Schengen Area required (including personal stay)

Travel restrictions due to Covid-19

Travel restrictions to travellers from the UK will continue until the UK is included in the corridor list to the EEA+ (EU plus EEA and Switzerland)

Increase of Working Inspections due to the new European Labour Authority

More important than ever to be compliant with posted workers rules and social security obligations

** and non-Schengen EU countries (per country)*

EU Work & Residence Permits Process Overview

Each EU country has its own national immigration rules and work & residence permit categories

Most of long-term assignment and local hire immigration routes consist of the following steps:

1. Work & Residence Authorisation

2. Residence visa/Schengen visa application (although visa free in some EU countries for certain nationalities)

3. Residence Card

Post-Arrival process also available in some EU countries (not possible now due to current travel restrictions)


Not always distinction between immigration processes for **short and long term stay**.

How to Adapt to New Immigration Landscape

- **Create awareness** of changing immigration landscape
- **Get familiar with the various work authorisation procedures in each EU country.**

Consider: 1) The EU ICT Permit for UK nationals locally employed in the UK on assignment to an EU entity within the same group or 2) Vander Elst for UK nationals locally employed and residing in an EU country requiring to provide short term services in other EU countries

- **Adjust budgets and timelines to account for work authorisation processes**
- **Assess short term activities and check periods of stay**
- **Ensure business visitors are aware of 90/180 days total stay limit in Schengen Area** (and non-Schengen EU countries) and how to calculate this
- **Employ EU nationals in positions which require short work trips and/or very frequent business travel to/within the EU**



Questions & Answers

Company-specific questions or scenarios?

Email us:

enquiries@newlandchase.com