

The Effect of EU Migration on the UK Consultancy and Engineering sector Post-Brexit







Introduction

People are at the heart of our industry; without them we have no businesses. Anything that impacts on the ability of consultancy and engineering firms to hire the best and most talented staff will impact on the ability of the sector to compete globally and efficiently deliver the UK infrastructure pipeline.

Britain has taken the decision to leave the European Union and triggered Article 50, beginning the two-year process by which this exit is to be undertaken. A key concern that has arisen, however, is over the status of non-UK EU nationals in the UK, who contribute enormous amounts to the economy, the culture, and the society of the nation.

Recognising this, the government has launched its first major investigation into migration from the EU in order to lay the foundations for a new immigration system.

ACE and Penningtons Manches have embarked upon a piece of research that aims to clarify the contribution made to the consultancy and engineering sector by EU nationals. This paper will form the basis of ACE's engagement with the independent Migration Advisory Committee. By working in collaboration and ascertaining the numbers of EU nationals in member firms, we aim to better inform government policy making and highlight the difficulties the sector will encounter in recruitment and retention in a post-Brexit world.

The impact of Brexit itself is already beginning to have an effect according to respondents, with the on time and on budget delivery of infrastructure under threat as skills become scarcer and more competitively fought over.

Conversations with ACE members have shown they are experiencing drops in the number of applications from nationals of other countries. Scepticism was expressed, though, that while it was possible that the UK population could provide the skills necessary, it might not do so.

Infrastructure is the key enabler of growth and the driver of the UK economy improving peoples' lives and our national prosperity. The government understands the link between economic growth and infrastructure investment as shown by the creation of the National Infrastructure Commission and the Industrial Strategy.

None of this will be possible, however, without a skilled and trained workforce. The UK is facing an aging workforce with a declining pipeline of new entrants into the industry with the result that skilled staff are becoming more sought after and expensive.

The future of our profession is characterised by complexity and rapidly changing skills requirements. It is only by recognising this challenge and working in partnership with the government that our industry can meet the challenge of our times.

This report highlights the importance of the EU nationals to our industry and the importance of ensuring that consultancy and engineering firms continue to have unfettered access to EU staff following Brexit.

A handwritten signature in black ink, appearing to read 'Nelson Ogunshakin', written over a horizontal line.

**Dr Nelson Ogunshakin OBE,
Chief Executive of Association for Consultancy and Engineering**

Executive Summary

The construction industry in the UK has a long history of employing foreign workers including those from EU member states. The reality of Brexit has raised the question of how dependent is the UK construction sector on EU nationals. While broad official data from the Office of National Statistics (ONS) *Labour Force Survey* is available on the percentage of non-UK workers in the industry, more granular data on each sector within the construction industry has been extremely limited.

Association for Consultancy and Engineering (ACE) has identified this as a problem for its members as they grapple with this issue internally and seek to influence policy makers during the Brexit negotiations. In the light of Brexit and potential future limitation on labour flows, especially from the EU, ACE has worked with Penningtons Manches to determine the effect Brexit will have on consultancy and engineering firms and the wider UK infrastructure pipeline.

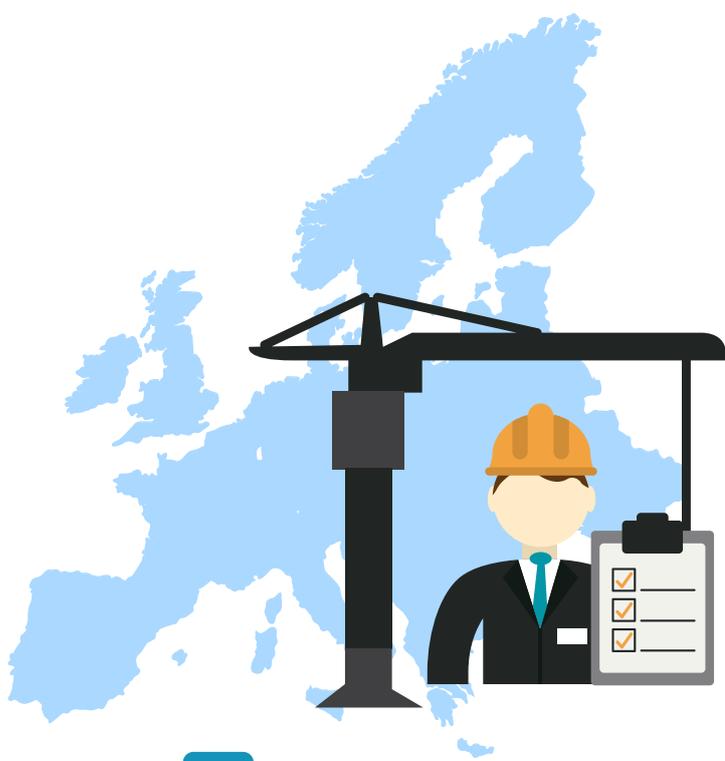
This report is intended to help consultancy and engineering firms of all sizes, policy makers, institutions and clients understand the extent to which EU nationals contribute to the sector with a view to improving workforce planning and skills development.

The basis of this report is a series of members' surveys conducted by ACE over the last year analysing members' views on Brexit and the importance of EU nationals to their businesses. We have then taken these findings and compared them to the data available on the industry as a whole to determine the extent to which consultancy and engineering firms conform to the industry standard.

The results show that broadly the consultancy and engineering sector is in line with the wider industry as the workforce is largely home grown but migrant labour plays a crucial role, particularly in London.

The report's key findings are:

- ★ Continued unfettered access to EU skilled nationals is of high importance to consultancy and engineering firms
- ★ The robustness of the UK infrastructure pipeline is key to staff retention in the UK following Brexit
- ★ 22% of large consultancy firms will consider moving jobs out of the UK if it becomes more difficult to move staff around Europe
- ★ On average 10% of consultancy and engineering firms' staff are from EU member states which is higher than the industry average of 6%
- ★ 67% of EU staff work in London and the South East which is higher than the industry average
- ★ UK workers in the sector are younger than the industry average
- ★ EU nationals are younger than their UK counterparts
- ★ 83% of EU nationals in consultancy and engineering firms are aged 30-39 which makes them older than the industry average
- ★ EU nationals have been used to help manage the UK's engineering skills gap
- ★ 50% of EU nationals are fee earners
- ★ Continued recognition of UK qualifications will be important to the retention of EU nationals



67%
of EU staff
work in
London and
the South East



ROBUST PIPELINE

83% of EU nationals in
consultancy and engineering aged 30-39
Older than the industry average

On average

10%

of consultancy and
engineering firms' staff
are from EU member
states which is higher
than the industry
average of 6%

**UK
workers
younger than
industry
average**



50%
of EU nationals are
Fee earners

22%
Firms considering
moving jobs out of UK

Overview of EU Migration in the Industry

The UK has one of the most ambitious national infrastructure programmes in Europe. With projects such as HS2 and Crossrail underway and Heathrow expansion, Hinckley C and Crossrail 2 in development, the debate in the industry has moved away from commissioning to delivery of this pipeline. The scale of UK ambition for infrastructure investment has led to a realisation that the industry is facing a skills shortage as companies draw on a shrinking pool of talent to deliver projects.

In 2015, the Institution of Civil Engineers (ICE) published a report on skills in the industry which identified that the industry was facing pressure on both sides of the employee supply chain with an ageing workforce and declining levels of entry to the profession.¹ The report showed that the industry was facing a 9% fall in the number of 18 year olds entering the profession between 2012 and 2022.

Combined with an ageing workforce, the report estimated that by 2020 the UK would require 450,000 more science, engineering and technology (SET) technicians just to remain at current levels of capacity. There has been a historical lack of attractiveness towards technician occupations, combined with increasing numbers of students progressing to further education, that has led to declining numbers of entrants to the profession.

Into this vacuum stepped EU nationals who have been increasingly filling the gaps within the industry. The supply of EU nationals has not been enough, however, for an industry that has seen the number of UK nationals properly equipped to deliver the government's investment plans continue to fall. Since 2008 the industry had seen a fall in employment of 15% due to the large number of people leaving the industry. It has been estimated that the UK must recruit 400,000 people each year to deliver in line with the country's housing and infrastructure needs. This equates to hiring one person every 77 seconds.²

40% of employers have stated that they are having difficulty filling jobs. Employers admitted they were experiencing the most marked tech talent shortages in a decade, with them singling out engineers as one of the most difficult roles to fill.³ Targeting millennial workers has been identified as crucial as they currently comprise 50% of the workforce but long-term retention has proven difficult as millennial workers are proving to be less loyal and patient than previous generations.

So, whilst apprenticeship schemes are a crucial component to increasing domestic labour supply, there is no guarantee that staff will stay in the industry once they are trained. The Royal Institution of Chartered Surveyors (RICS) has highlighted this by showing that 20% of employers feel that apprentice schemes are not effective to solve the problem.



Employers are, thus, concerned that the labour shortage in the industry cannot be solved without some use of non-UK labour. Yet, while some overseas professionals are regarded as critical by the government and prioritised in visa applications, construction professionals have not been added to the 'UK Shortage Occupations List'. This has led to a reliance on EU labour markets.

Brexit

On 23 June 2016, however, the UK voted to leave the European Union in a referendum which brought the issue of EU nationals within the UK's construction industry centre stage. How the UK exited the EU became of crucial importance for determining the continued level of access to valuable labour forces in coming years. Some in the industry argued that a complete break with the EU in the form of a hard Brexit could cost the UK up to 214,542 skilled workers whereas a soft Brexit could lead to a net gain of up to 136,081 skilled workers. ⁴

Labour Force Surveys have shown that between 1998 and 2016 there has been a significant increase in foreign-born employment in the UK construction industry from 4.1% to 12% equating to 252,000 people. ⁶

Concerns over access to EU nationals rapidly topped the list of the issues of most concern to businesses in the construction industry with reports that reduced access to EU nationals could lead to a catastrophic skills shortage in the UK. RICS revealed that 51% of the industry had stated that skills shortages were a constraint on future growth following Brexit.⁵

In such an environment, it has become important to determine the true extent of the UK's reliance on EU nationals in the construction industry.

It is the case that during a period of reducing domestic supply of skilled labour construction, the industry has responded by increasing the number of foreign workers in the labour force. The Office of National Statistics (ONS) *Labour Force Surveys* have shown that between 1998 and 2016 there has been a significant increase in foreign-born employment in the UK construction industry from 4.1% to 12% equating to 252,000 people. ⁶

However, this has not been either a consistent approach across the whole of the UK or out of line with employment practices in other industries. London has been the predominant destination of most migrant workers accounting for 54% of the total which corresponds to the centrality of the city to the UK economy and its continuing economic performance in relation to other regions of the country. Likewise, the proportion of the UK workforce that utilises migrant labour is consistent with the industry approach with both being around 12%.

Excellence in the Built Environment

The Chartered Institute of Building (CIOB) responded to an enquiry from the All Party Parliamentary Group for Excellence in the Built Environment into the impact of Brexit on future skills needs in the construction industry in October 2016 with a report that published more hard data about the nature of the UK construction workforce. Accepting the ONS figures for foreign workers in the UK, the report broke migrants down into EU and non-EU migrants and showed that 6% of the UK construction workforce was from EU countries which equated to 126,000 people. ⁷

These migrant workers were overwhelming to be found in the London and the South East which comprised 63% of the total number. If the East of England is also included with this group due to the economic effect of the capital in that region along the Cambridgeshire corridor then this number increase to 72% of the total number. No other region of the UK sees more than 8% of the workforce from overseas. Overwhelmingly, these workers are occupied in the building sector with 65% of the total so employed. It is also worth noting that the percentage of migrant labourers in building construction was greater than the percentage of UK labourers in the same sector. This was the only sector to show this result.

CITB: the Labour Force Survey

Recognising that there was a need for more granular information on the sector than was provided by the *Labour Force Survey*, Construction Industry Training Board (CITB) commissioned a comprehensive study of the role of non-UK workers in construction. The aim of the study was to provide more detailed information on the number of non-UK workers in UK construction, what roles they were performing, their skills and why employers hire them.⁸

Broadly, the CITB report mirrored the data presented by the *Labour Force Survey* results in the CIOB report highlighting that the construction workforce is still overwhelmingly British in make up with only 12.5% of workers being non-UK. The picture was not consistent across the UK, however, as London was overwhelmingly dependent of non-UK workers with half of all workers born overseas while dependence on non-UK workers for other areas of the UK fell sharply to 10% or less.

Most common countries by birth for non-UK workers are EU states, and EU nationals are more commonly placed by agencies than non-EU nationals. This is partly due to the speed of response to labour market needs and lack of bureaucracy involved. This is important as migrant workers often work as self-employed, based on entry routes and informal networks, enabling them to move between projects easily with an ability to be flexible on hours and earn more. Comparison between UK and non-UK workers highlight that 57% of non-UK workers are self-employed compared with 38% of UK workers.

The migrant workforce is younger with a significantly higher proportion (36%) aged 25-34. Most migrants (44%) are, however, aged between 35-49. To some extent this is masking the issues posed by an ageing construction workforce. There is a much higher concentration in these age bands than among UK-born construction workers, where comparative figures in 2015 were 24% aged 25-34 and 35% aged 35-49. UK-born workers were much more likely to be aged 50+ (30%) compared with migrant workers (14%).

The CITB also found that non-UK workers were also more likely to be in skilled construction and building trades (49% vs. 39%), or in elementary trades and related occupations, which include such roles as labourers, hod carriers and groundworkers (10% vs. 7% among UK-born construction workers).

What is clear from this study is that the bulk of non-UK workers in construction are skilled manual labourers with a smaller percentage in the professional services. The CITB quoted IFF Research figures showing that only 8% of non-UK workers were civil engineers compared to 12% as general labourers and 15% as carpenter or joiners.⁹



Impact of Brexit on Consultancy and Engineering Firms

In the lead up to and following the Brexit vote, ACE recognised the importance of non-UK workers to the consultancy and engineering sector but has struggled to determine the extent to which the sector is exposed to the loss of access to the wider EU nationals labour force.

ACE, therefore, in conjunction with Penningtons Manches determined to build a number of surveys to collect qualitative data on members' views on Brexit and the importance of EU nationals to their businesses.

The first of these was held in March 2016 to gauge the importance of EU membership to UK professional consultancy and engineering sector.¹⁰ The results mirrored the views of the nation closely with 55% saying that EU membership was not important compared to 45% feeling it was. The divide in membership was not based on the size of the member firm, with both large and small firms on both sides of the argument. Rather, the debate centred on the merits of global trade compared to EU specific trade.

Firms that were against EU membership felt that the UK had opened domestic markets to EU competition to a far greater degree than other EU companies with the result that UK firms were at a disadvantage commercially compared to EU rivals. Thus, far from bringing advantages to the UK, EU membership was detrimental to UK consulting engineers who faced internal trade barriers in other EU countries that were not present in the UK. Given this, a focus on global trade where the UK was a market leader in consultancy and engineering services was seen as a more viable strategy.

Firms that supported EU membership, whilst acknowledging these disadvantages, recognised the inter-connectivity of supply chains, staffing, and finance a greater benefit to UK firms. There was also a recognition that common EU standards and procurement rules were of considerable benefit to UK firms both within and outside the EU. The high market standing of UK consultancy and engineering services was based on this solid foundation and made global exports more likely.

Regardless of whether a company felt that EU membership was a benefit or a detriment, all member firms recognised that the professional consultancy and engineering sector depended on access to a skilled workforce if they were to continue to be profitable and market leaders. As a result, ACE campaigns for unfettered access to EU nationals as a key part of any agreement between the UK and EU.

Collaboration with Penningtons Manches

Working with Penningtons Manches, ACE held a large consultancy dinner in November 2016 to discuss the importance of EU nationals to large consultancy firms.¹¹ During that dinner a poll was conducted of members' views to see how far they had shifted in the six months following the EU referendum.

Access to EU skills remained a vital consideration for members with 79% rating the issue as very important to them while only 10% felt the issues was not that important to their company's future. Recognising that consultancy and engineering firms move their staff around, ACE enquired if the inability to move staff easily around Europe will lead to job losses in the UK. 55% of members stated that they would not move jobs to the EU following Brexit but 22% felt they may have to consider such an approach if access to the EU market was too restricted.

All ACE members, however, agreed that the defining issue in this debate was continued investment in infrastructure projects by the UK government. The more robust and secure the infrastructure pipeline was, the more likely the industry was to invest in the UK and retain its staff in the UK.



Survey Results

Seeking to gain more granular detail on members' views and use of EU nationals, ACE surveyed members on EU nationals specifically in the run up to the anniversary of the EU referendum.¹²

The survey was conducted by an online questionnaire and follow up conversations with member firms. Respondents reflected the sector with 50% being SME firms, 17% medium size firms and 33% being large consultancy. ACE was also keen to ensure a representative regional coverage of members across the UK to ensure there was no regional bias.

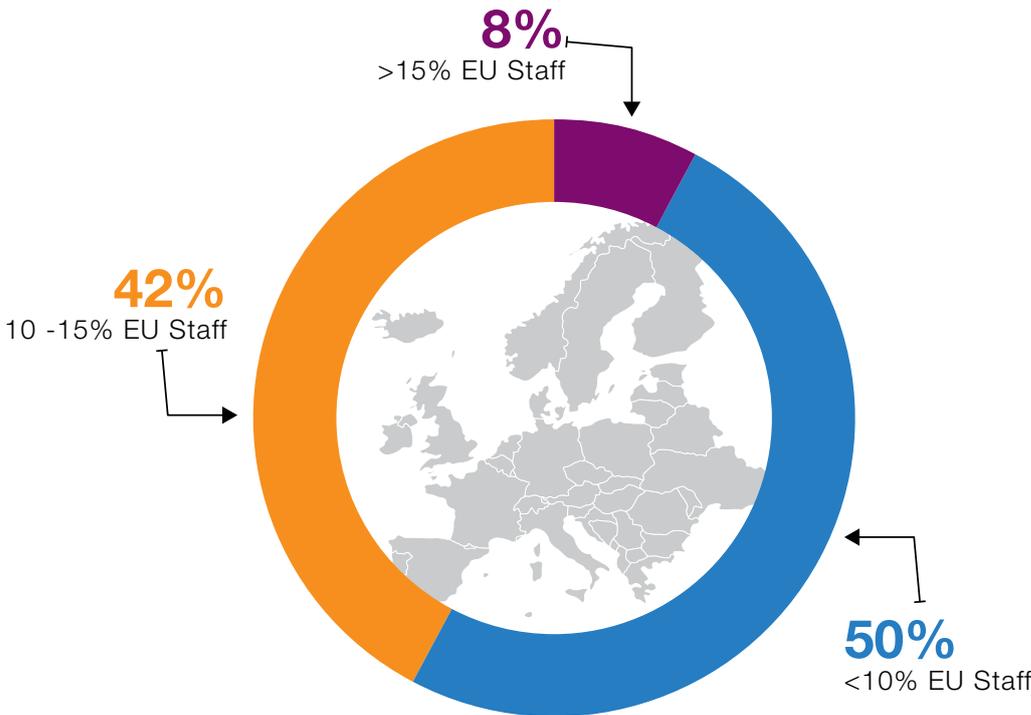
The ACE survey corresponded in many ways to the CITB survey but there were noticeable differences that will affect the way the sector responds to Brexit in the coming months and years.

For instance 91% of members stated that the retention of unfettered access to EU skilled staff post-Brexit was important or very important to their business. This reflected the views that had been expressed before that EU nationals were important to the running of UK consultancy and engineering firms.

Unlike the rest of the construction industry, the professional consultancy and engineering sector is more dependent on non-UK workers and is more akin to architects than contractors. The sector has a clear split between those who have more than 10% of their workforce from the EU and those with less than 10% from the EU.

While 50% of members stated that less than 10% of their workforce was comprised of EU nationals, 42% stated that 10-15% of their staff were EU nationals and 8% stated that more than 15% of their staff were from the EU. This is significantly higher than the industry standard of 6% and shows that consultancy and engineering firms have more EU nationals than other sectors in the industry.

Percentage of EU staff working for ACE members



“Most consultancy and engineering firms are not heavily dependent on EU nationals to the point where they will be facing considerable labour shortages without access to EU labour markets.”

The overall percentage of staff, however, is not as high as senior management of member firms had estimated when questioned. They often felt that EU nationals comprised between 15-20% of staff. This highlights that the impact of the loss of EU nationals on members firms is psychologically greater for senior management than the reality would seem to indicate. It may also reflect that most large consultancy and engineering firms have their headquarters in London where the highest proportion of EU nationals are located. Most consultancy and engineering firms are not heavily dependent on EU nationals to the point where they will be facing considerable labour shortages without access to EU labour markets.

Age Profile

The age profile of the sector is also younger than the construction industry as a whole with only 16% of the sector stating the average age of UK workers as over 49, compared to 30% for the industry as a whole. Members stated that the bulk of their UK workforces average age was (42%) 30-39 years of age or (42%) aged 40-49 which is double the industry average.

As with other sectors in the construction industry, EU nationals in the consultancy and engineering sector are younger than UK workers but are on average older than other sectors. Only 17% of EU nationals are under 30 years of age while the clear majority (83%) are aged 30-39. As with other sectors, the reality of the ageing workforce is masked by EU nationals.

This age difference is further highlighted when the sector is broken down by fee earners with 80% of UK workers classed as fee earner compared to only 50% of EU nationals. This highlights that half of EU nationals employed by members are in the process of achieving their chartered certification which may account for the importance senior managers place on EU nationals. EU nationals are an asset that have yet to mature and so comprise a future source of fee generation that currently cannot be accessed and could be lost if these EU nationals leave the UK following Brexit.

Regional Breakdown

The regional spread of EU staff in the UK also reflects the wider industry with London comprising the bulk of non-UK workers. 67% of members stated that more than 40% of their EU nationals were based in London with a quarter of members stating that all their EU staff were located in the capital which is higher than the industry average. Wales and Northern Ireland are the areas of the UK less affected by EU nationals with only 16% of members stating they had any staff in these nations which is lower than the industry average. The East Midlands, however, is more affected for the professional consultancy and engineering sector with 17% of firms stating they had more than 20% of staff from the EU in this region. The rest of the country is broadly similar with the construction industry as a whole, with less than 10% of EU nationals located in the other regions. There is no guarantee that staff will stay in the industry once they are trained. RICS has highlighted this by showing that 20% of employers feel that apprentice schemes are not effective to solve the problem.

Current position of the UK Government to EU Migration

Background

Until the UK formally leaves the EU, EU law will continue to apply and so the rights of EU nationals and their family members to live and work in the UK remain unchanged. The question of what happens to EU nationals resident in the UK and UK citizens resident in EU member states following Brexit was identified early on as one of the biggest issues that will face both the UK and EU negotiators.

Following a UK withdrawal from the EU, the current intention is the UK will no longer be subject to the supremacy of the European Court of Justice (ECJ). Free movement of person rights will no longer apply and therefore cannot be exercised by EU nationals under a post-Brexit immigration law regime. Any future movement rights of UK and EU nationals will be dependent on the commitments that are jointly agreed by the UK and EU as part of a withdrawal agreement or by unilateral action by the government.

Following the referendum, there were wide ranging calls for the Article 50 negotiations to focus, as a priority, on the post-exit position of EU nationals now living in the UK and UK nationals living in other EU countries. It was felt that those citizens should be put first and not used as “bargaining chips” between the UK and EU. Instead they should be provided with reassurance that they will continue to have access to the same rights and services as they did before the EU referendum result.

EU’s position on citizens’ rights

The European commission was first to publish its position on citizen rights when it brought forward its recommendations for the EU negotiation position to the European Council in May 2017.

The Commission’s recommendations highlighted three key areas for negotiations to ensure an orderly withdrawal from the Union. These were citizens’ rights, the financial settlement and new external borders with a special emphasis on the Irish border.

The European commission’s recommendations stress that the objective of the negotiating directives is to allow EU nationals to continue to live in the UK and vice versa and to protect not only those who live and work in the UK or Europe today but those who have resided or lived here in the past and who will do so in the future as well. The guidelines not only cover the right to reside but also the rights to access the labour market, education, healthcare and recognition of qualifications.

Guarantees to that effect should be reciprocal and should be based on the principle of equal treatment among EU and between EU and UK citizens. These rights should be protected as directly enforceable vested rights for the lifetime of those concerned. To ensure these rights the ECJ will continue to be the final arbiter and protector.

UK’s position on citizens’ rights

At the EU summit in June 2017, the UK responded with its own proposals for EU and UK nationals that would be subject to an agreed cut-off date. The aim of the proposals was to ensure that EU nationals had rights “almost equivalent to British citizens.” The date before which EU nationals would need to have arrived in the UK to qualify for the offer would be no earlier than 29 March 2017, when Article 50 was triggered, but could be at the end of the Brexit process.

Under UK proposals EU nationals and their families lawfully resident in the UK prior to the cut-off date will be able to continue to reside in the UK and can then apply for “settled status”. This will entail freedom of residence and the ability to undertake any lawful activity, to access public funds and services and to apply for British citizenship.



To qualify for settled status, EU nationals must have been resident in the UK before a the cut off date and must have completed a period of five years' continuous residency in the UK before they apply for settled status. These arrangements will be enshrined in UK law and the will be enforceable by the UK courts not the ECJ. EU nationals who have arrived/arrive in the UK after the cut off date will need to apply to stay under the transitional arrangements that will be put in place.

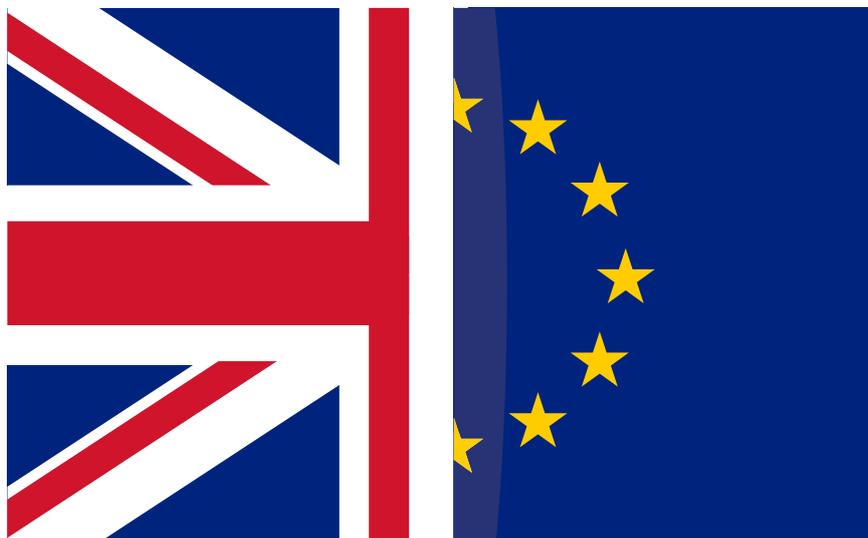
The proposals will be "without prejudice" to the Common Travel Area arrangement between the UK and Ireland (and the crown dependencies), and the right of British and Irish citizens in each other's countries will remain in place as set out in the Ireland Act 1949.

“The date before which EU citizens would need to have arrived in the UK to qualify for the offer (on settled status) would be no earlier than 29 March 2017, when Article 50 was triggered, but could be at the end of the Brexit process.”

The Brexit coordinator of the European Parliament has responded to the British proposals by stating that they are not acceptable to the European Parliament, which must approve any withdrawal agreement. He states that the UK's opening offer on citizens' rights falls short of both the EU proposals and the language used by the Leave campaign in the referendum. His concern is that UK proposals risk creating second-class citizens out of EU nationals who are being treated as a new class of immigrant rather than a group in possession of existing citizen rights.

He states that "The European Union has a common mission to extend, enhance and expand rights, not reduce them. We will never endorse their retroactive removal. The European Parliament will reserve the right to reject any agreement that treats EU nationals, regardless of nationality, less favourably than they are at present. This is a question of the basic fundamental rights and values that are at the heart of the European project."

Central to this must be the retention of the ECJ as the final court of arbitration which is a position that the UK Government has stated on numerous occasions it cannot accept.



Employment and Immigration Law Review

Following the EU referendum result and subsequent political events in Westminster, the UK construction market has witnessed much uncertainty. Following the triggering of Article 50, the UK and EU have just two years to negotiate the terms of the departure. This period can only be extended by agreement with the UK and by a unanimous vote of EU member states. If terms are not concluded within two years, the UK will cease to be a member of the EU and the right of freedom of movement enjoyed by workers within the European Economic Area (EEA) and Switzerland to come to work in the UK and bring their family (and the rights of British nationals to work in the EEA and take their family to work) will no longer be automatic.

Currently, EU nationals are entitled to visit the UK for an initial period of up to three months providing that they hold either:

- ★ A valid national ID card issued by an EEA state or Switzerland
- ★ A valid passport issued by an EEA state or Switzerland

EU nationals automatically acquire an extended right of residence beyond the initial three months when they engage in activities that bring them within the scope of European rights of free movement. Furthermore, EU nationals who have lived continuously in the UK for five years as a “qualified person” automatically acquire a right of permanent residence. With an estimated two to three million EEA nationals currently resident in the UK, ACE members will naturally be concerned to understand what the future holds, as employees from 27 EU countries will be affected.

It is self-evident that there will need to be changes to the UK immigration system to accommodate transitional arrangements and to put in place a new system for employers to employ EU nationals. At the time of writing, it is still unclear what a new regime will look like.

The government’s July 2016 statement (see UKVI: Statement: the status of EU nationals in the UK (12 July 2016)) and a policy paper in June 2017 (see UKVI, Safeguarding the position of EU nationals living in the UK and UK Nationals Living in the EU) states that:

- ★ There will be a “cut-off date” which is to be agreed, but will be no earlier than 29 March 2017 (the date Article 50 was triggered) and no later than the date the UK leaves the EU.
- ★ Qualifying EU citizens resident in the UK before the “cut-off date” will be able to apply for residence status under a new scheme.
- ★ Qualifying EU citizens will be granted “settled status” under the Immigration rules. They would be free to live in the UK in any capacity and undertake any lawful activity, to access public funds and services and to apply for British citizenship. To qualify, they must have been resident in the UK before the “cut-off date” and have completed five years’ continuous residence in the UK.
- ★ EU citizens who became resident before the “cut-off date” but do not have five years’ continuous residence at the time of the UK’s exit will be able to apply for temporary status to remain in the UK until they have five years residence, when they will be eligible to apply for settlement.
- ★ EU citizens who arrived in the UK after the “cut-off date” will be able to remain in the UK for a period (anticipated to be two years) and may become eligible to settle permanently, depending on their circumstances and the relevant immigration system put in place, but are not guaranteed settled status.

Furthermore, in July 2017, the home secretary announced that the government is launching its first major investigation into the impact on the UK labour market of the UK's exit from the EU in order to lay the foundations for a new immigration system. The independent Migration Advisory Committee (MAC) has been tasked with carrying out a detailed analysis of the economic and social contributions and costs of EEA nationals in the UK.

The analysis will not be published until September 2018 – seven months before the UK is set to formally exit the EU in March 2019. The MAC however has been asked to produce interim reports to guide Home Office officials attempting to draw up a post-Brexit immigration regime that will bring an end to free movement but will not cause economic damage or vital skills shortages. The MAC will also be asked to assess:

- ★ Which sectors are most reliant on EEA labour and in what job roles/skill levels.
- ★ The impact of a reduction in EEA migration and the ways in which both business and the government could adjust to this change.
- ★ Whether there is any evidence that the availability of unskilled labour has led to low UK investment in certain sectors.
- ★ Whether there are advantages to focusing migrant labour on high-skilled jobs.

The recent leaked paper indicated that there is a three phase process to be put in place after Brexit, and that preferential treatment will be afforded to “Highly Skilled Migrants” with those filling “low skilled” roles being subject to a possible two year limit on their stay. It should be stressed however that the leaked paper contained only early draft proposals, and that the final proposals would take into account the MAC's recommendations.

In September 2017, the prime minister gave a speech in Florence and set out proposals for a two year transitional period after the UK leaves the EU in March 2019. Reference was made to a post Brexit immigration systems, which suggested during the implementation period, ‘people will continue to be able to come, live and work in the UK, but there will be a registration system’.

Then in October 2017, the prime minister issued an open letter to EU citizens in which she gave further assurances to those living in the UK stating “EU citizens living lawfully in the UK today will be able to stay”. She also set out what form the implementation process will take and explained that there will be:

- ★ A streamlined digital process for those applying for settled status in the UK in the future.
- ★ The cost will be kept to as low as possible and no more than the cost of a UK passport.
- ★ The criteria applied will be simple, transparent and strictly in accordance with the Withdrawal Agreement.
- ★ People applying will not have to account for every trip they have taken in and out of the UK and will no longer have to demonstrate comprehensive sickness insurance as they currently have to under EU rules.
- ★ For any EU citizen who holds permanent residence (PR) under the current scheme, there will be a simple process put in place to swap their current PR status for UK settled status.



EU citizens working for ACE members can therefore decide to wait and see what new system will be implemented and apply at that stage or may decide that they want more certainty now in which case they can:

- ★ Apply to the Home Office for a document that evidences their UK residence status under the current European Regulations, producing the necessary evidence of exercising treaty rights:
 - ★ a registration certificate (for EEA nationals) or residence document (for non-EEA national family members); or
 - ★ a document certifying permanent residence (for EU nationals) or a permanent residence card (for non-EU nationals) if they have lived in the UK for five years
- ★ Apply to naturalise as a British citizen if eligible. The impact that this may have for current nationality and tax status and non-EU family members should be assessed before proceeding. Please also note that a document confirming PR status will be required prior to proceeding with a British citizenship application.
- ★ Keep a record of any absences from the UK – the prime minister has stated that they will not be required to account for every trip in and out of the UK. However, this will be required if they aim to qualify to naturalise as a British citizen where the residential criteria is more stringent).
- ★ Retain documents to prove their continuous residence as a “qualified person” exercising a right of free movement since they entered the UK (e.g. P60s or tax returns).

Currently, EU nationals exercising their EU right of free movement do not need a Home Office residence document to prove they have the right to live and work in the UK, indeed the UK government is discouraging EU nationals from making such an application as it is anticipated that they will be required to apply for new residence status once the UK exits from the EU.

While holding a Home Office residence document will not guarantee protection following Brexit, those who have such a document and are logged on Home Office records may be at an advantage when it comes to proving prior residence in the UK when free movement ends. That said, the Home Office has reported being overwhelmed by applications for proof of residence by EU nationals concerned to protect their future status. Penningtons Manches understands that, currently, about a third of applications are being rejected.

As for employment law considerations, ACE members appreciate that a significant proportion of the UK’s existing employment law comes from the EU, including discrimination rights, collective consultation obligations, transfer of undertakings regulations, family leave, working time regulations and duties to agency workers. Our view is that EU law will continue to exercise a significant influence, even after Brexit. There are various reasons for this:

- ★ Some EU employment laws merely subsumed protections that were already provided by UK law. For instance, UK equal pay, race and disability discrimination laws preceded EU anti-discrimination obligations. It is improbable that the government would want to limit these existing protections.
- ★ Much employment law, such as discrimination rights and even the right to paid holiday is regarded by both employers and employees as a good thing.
- ★ The need to stay in a relationship with the EU. The price of a trade agreement with the EU is likely to be adherence to a certain amount of EU employment law and social protection.

The lack of agreement and clarity as to what the new immigration system will entail is still causing uncertainty which in turn has led to some ACE members experiencing a drop in applications from EU nationals. It is accepted that freedom of movement will come to an end in its current form. However, any new system needs to ensure that it addresses the needs of the sector and it cannot be the case that EU workers are simply made to fit into the current immigration system. This is because the current system does not deal with the need for low/medium skilled labour; it does not cater for those who are self-employed/working on a freelance basis working as contractors and it is both costly and time consuming for both the employer and the prospective worker.

Conclusion

The retention of EU nationals in the consultancy and engineering sector is vital for the maintenance of a globally successful sector. EU nationals make up a small but significant part of the sector that companies depend on for their future growth.

Although consultancy and engineering firms do not see a significant Brexit effect on the industry in the short term, 40% of firms expected specific impacts as a result of Brexit in the medium term with a further 40% unsure what the impact of Brexit will be in the long term.

Regional location of consultancy and engineering companies and the percentage of EU nationals they employ all determine how likely the company is to anticipate Brexit impacts over the next five years. Firms in London and the South East are those who are most engaged with the Brexit debate, while those firms located in the regions are least engaged.

The prevalence of EU nationals in London also influenced the extent to which employers expected Brexit to impact them in the future, with 70% of London firms expecting to be affected in some way by Brexit.

This picture is mitigated by the actions of EU nationals in the sector. The evidence shows that most EU nationals in the sector are planning to stay in the UK in the next 12 months (90%), and most are also planning to continue within the industry. Although there was some evidence of uncertainty (12% were unsure of their plans), only 3% reported that they definitely intended to leave the UK in the next 12 months.

This corresponds to the industry average as EU nationals with qualifications (82%) were more likely than those without them (67%) to say they would continue to work in the UK construction industry in 12 months, as they were older workers and had already lived in the UK for some time.

The extensive UK project pipeline is also attractive to EU nationals as the projects are some of the largest and most challenging in Europe and have the potential to define careers.

Despite this, the UK government must not lose sight of the predicament the industry finds itself in. The UK is facing an ageing workforce with a declining pipeline of new entrants into the industry with the result that skilled staff are becoming more sought after and expensive.

It is, therefore, imperative that any agreement between the UK and the EU should ensure that the UK construction industry continues to be able to access skilled European labour and that future immigration policies accept that skilled immigrant labour is vital to the continued economic success of UK plc.



ROBUST PIPELINE



55%
of ACE members
don't feel EU
membership is
important



79%
of ACE
members
state it is
very
important
to have
access to
EU staff

83%

of EU staff in
ACE member
firms are
age 30-39,
ten years
younger than
the average

50%

of ACE members
have less than
10% EU staff

50%

of EU nationals
are fee earners



22% Firms considering moving jobs out of UK



67%
of EU workers are
located in London



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A joint paper with WSP that explores the infrastructure needs of our cities, how investment can improve growth and the importance in of political and fiscal devolution.

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Performance of PFI

This paper is the first in ACE's latest infrastructure series and reviews the performance of historical PFI data to learn lessons for the development of new financing models.

Footnotes

- 1 *Institution of Civil Engineers Skills Report 2015- Perspectives on capability and capacity: key risks and opportunities.*
- 2 *Arcadis Talent Scale: The real extent of Britain's construction labour crisis 2017*
- 3 *Infrastructure Intelligence 31 May 2v017*
- 4 Ibid
- 5 *RICS Construction Market Survey October 2016*
- 6 *ONS Labour Force Surveys 2009-2017*
- 7 *CIOB The impact of Brexit on future skills needs in the construction industry and the build environment professions, 30 November 2016*
- 8 *CITB Migration and Construction: The view from employers, recruiters and non-UK workers, June 2017*
- 9 *IFF Research Non-UK Worker Survey (Base: 248)*
- 10 ACE EU Membership Survey, March 2016
- 11 Penningtons Manches EU labour survey, 22 February 2017
- 12 ACE EU Labour Survey June 2017

About ACE

As the leading business association in the sector, ACE represents the interests of professional consultancy and engineering companies in the natural and built environment, large and small, in the UK. Many of our member companies have gained international recognition and acclaim and employ over 250,000 staff worldwide.

ACE members are at the heart of delivering, maintaining, and upgrading our buildings, structures, and infrastructure. They provide specialist services to a diverse range of sectors including water, transportation, housing, and energy.

The ACE membership acts as the bridge between consultants, engineers, and the wider construction sector that together make an estimated contribution of £15bn to the nation's economy, with the wider construction market contributing a further £90bn.

ACE's powerful representation and lobbying to government, major clients, the media, and other key stakeholders, enables it to promote the critical contribution that engineers and consultants make to the nation's developing infrastructure.

Through our publications, market intelligence, events and networking, business guidance and personal contact, we provide a cohesive approach and direction for our members and the wider industry. In recognising the dynamics of our industry, we support and encourage our members in all aspects of their business, helping them to optimise performance and embrace opportunity.

Our fundamental purposes are to promote the worth of our industry and to give voice to our members. We do so with passion and vision, support and commitment, integrity and professionalism.

About Penningtons Manches LLP

Penningtons Manches LLP is a leading UK law firm which provides high quality legal advice tailored to both businesses and individuals. We address the specific objectives of each client through our flair and technical expertise and offer a personal service founded on a strong team ethic.

Today, we have UK offices in the City of London, Basingstoke, Cambridge, Guildford, Oxford and Reading, with 105 partners and over 600 people in total. We have also established a presence in San Francisco. Our main areas of practice are dispute resolution, corporate and commercial, real estate, private client and family.

We have several multi-disciplinary teams concentrating on a variety of industry sectors, including construction and infrastructure, technology, life sciences, education, social housing, retail and international wealth. In these areas, we're acknowledged for our unparalleled market insight.

Our commitment to excellence is backed by a track record which dates back 300 years. We pay great attention to matching your requirements with the right skills, delivered cost effectively and within the appropriate timescale.

We have a broad international focus supported by well-established links with law firms throughout the world. Penningtons Manches is a member of Multilaw and the European Law Group, networks with representatives in over 70 countries, and many of our lawyers play leading roles in various international bodies.

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This paper uses the term 'EU migration', however it is important to note some impacts discussed affect the wider European Economic Area (EEA). The EEA includes Norway and Iceland, and is only applied provisionally to Croatia. The government's Migration Advisory Committee is focused on EEA migration impacts from Brexit, instead of those relating to EU member states only

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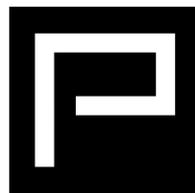
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