

CONTINUITY PLANNING FOR HR

Brexit and beyond

Guide
March 2019



The CIPD is the professional body for HR and people development. The not-for-profit organisation champions better work and working lives and has been setting the benchmark for excellence in people and organisation development for more than 100 years. It has 150,000 members across the world, provides thought leadership through independent research on the world of work, and offers professional training and accreditation for those working in HR and learning and development.



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Guide

Continuity planning for HR – Brexit and beyond

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1 Introduction

Identifying risks and planning for contingencies are essential activities for any business. While various parts of an organisation will make different contributions towards these, HR professionals have the obligation to advise their organisations on the people aspects of any crisis and to put plans in place to minimise any negative impacts.

Assessing the critical issues that could jeopardise a business's operational capability and establishing a process to deal with them is otherwise referred to as continuity planning. It is usually put in place to address situations such as extreme weather, transport strikes or terrorism, where your employees' inability to get to work or a serious outage to your IT system, for example, prevents regular business function. However, events such as the financial crisis or Brexit can also have a significant and long-lasting impact on an organisation's ability to maintain operations.

'All companies manage risk, every day. Weighing options and uncertainty is what we do, particularly with global markets. But no single policy change has ever had as far reaching an impact as [Brexit]'.¹

A survey of over 300 businesses by the Confederation of British Industry (CBI) found that a majority are devoting time at leadership level and diverting significant resources to assess and manage the potential risks to their organisations associated with Brexit. While continuity planning in the current context is made difficult by ongoing uncertainty,



¹ CBI. (2018) *How businesses are preparing for Brexit*. London: Confederation of British Industry.

people professionals can take concrete actions to support their organisations by focusing on several key considerations and activities. These, done in conjunction with dedicated [workforce planning](#), will give businesses the best prospect of navigating successfully through Brexit and beyond.

Continuity planning considerations for HR

- Supporting EU/EEA/Swiss employees in the UK
- Higher wage bill from currency fluctuations
- Reducing staffing to offset increased costs and delays
- Continuing operations in the EU
- Need for business relocations
- Keeping communications open with staff

2 Supporting EU/EEA/Swiss employees in the UK

A clear risk for business is the loss of EU citizens from their workforce and the priority for HR is to provide support for them to continue their stay in the UK and employment with their organisation. The Government has introduced the [EU Settlement Scheme](#) (EUSS) to help transition from EU free movement to a [domestic system of skills-based immigration](#) for future migrants. Under the EUSS, all EU nationals (along with EEA and Swiss citizens) living in the UK have the right to register for pre-settled or settled status, which would allow them to continue living and working in the UK. Settled status gives the same rights to EU/EEA/Swiss citizens as they currently enjoy under free movement, and can be obtained if/when they have lived continuously in the UK for five years.

If the UK ultimately leaves the EU without an agreement, temporary rules would be in place to allow EU/EEA/Swiss citizens to enter the UK without a visa for short-term visits of up to three months for work, study or leisure. To extend their stay for up to another 36 months, they will need to apply for a [European Temporary Leave to Remain](#), which cannot be extended further and would include identity, criminality and security checks.

For stays longer than three years, new EU/EEA/Swiss arrivals will need to apply for permission under the skills-based immigration system set to take effect in January 2021.

Employers should examine their current workforce to identify who is likely to need support with obtaining pre-settled or settled status, and ensure they obtain evidence of status over time to meet future right-to-work requirements.

Applying for pre-settled or settled status

With some [exceptions](#)², EU/EEA/Swiss nationals currently living in the UK who want to remain after Brexit will need to apply for pre-settled (resident less than five years) or settled (residency of five years or more) status under the EUSS.

² Those with British or Irish citizenship, or indefinite leave to enter or remain in the UK, do not need to apply.



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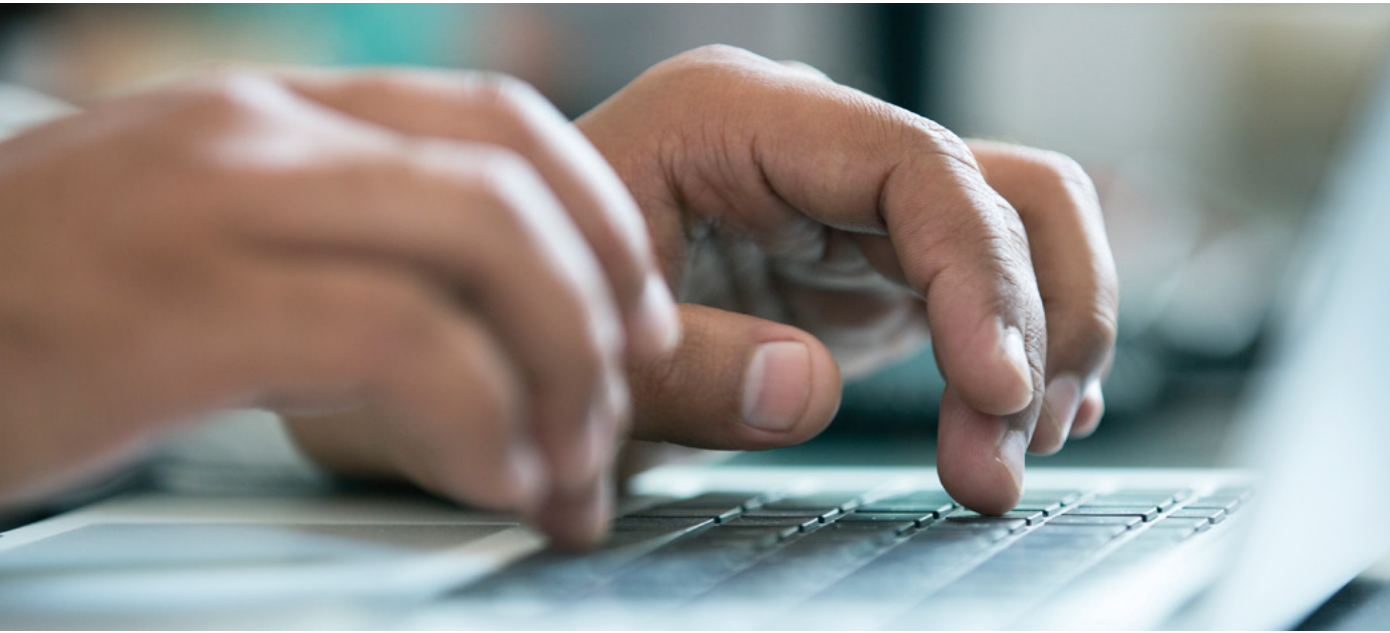
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Those who receive pre-settled status can stay in the UK for a further five years and apply for settled status once they have accrued five years' residency. Those granted settled status can stay indefinitely and apply for British citizenship after 12 months if they wish.

Both pre-settled and settled status give the right to:

- work in the UK
- use the NHS
- enrol in education or continue studying
- access public funds such as benefits and pensions (subject to eligibility)
- travel in and out of the UK.

EU/EEA/Swiss nationals living outside the UK but who want to join their family in the UK can attach their application to the UK-based family member's/members' application up to December 2020. If they have the right documentation and eligibility, they will be able to live in the UK. After this date, EU/EEA/Swiss family members will only be able to obtain a family visa to visit.

For anyone arriving in the UK after 31 December 2020, there will be a new, skill-based immigration system in place. This could make it more difficult for EU/EEA/Swiss nationals to come to the UK to work, particularly where low-skilled roles are concerned, as the UK does not have express provisions for low-skilled migration after Brexit. Businesses will need to factor this into their workforce planning and reconsider recruitment channels if they anticipate a shortage of applicants in certain roles going forward.

An offer of employment is subject to the right of a potential employee to work in the UK. From 1 July 2021, employers will need to update their right-to-work procedures and checks to ensure that every EU employee has pre-settled or settled status or has a skills visa permitting them to work in the UK.



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3 Higher wage bill from currency fluctuations

The economic impact of Brexit may be difficult to pinpoint, but if, as a result, the pound drops in value, it will increase not only the costs relating to the payment of international suppliers, but also staff costs if any salaries are paid in other currencies.

If you already engage an international payments provider or foreign exchange specialist to pay salaries in other currencies, seek their advice regularly on the best rates and the appropriate time to move monies. If not, consider consulting one now.

In either case, an option for making future payments would be to set up a forward contract with the payments provider or exchange specialist. This will provide a fixed currency rate for up to two years, provided your organisation can pay a deposit up front. The cost of the deposit will be offset by the savings made as your employees (and suppliers) are paid at the fixed rate over the two-year period.

Another alternative would be to negotiate with your employees to pay them in sterling. As this would involve a change to their contract of employment, you would need to consult first and obtain their written consent. However, if employees are receiving their salary in pounds and incurring living costs in another currency, fluctuations could mean an effective pay cut. To make this a credible option for employees, you will need to offer them a funds transfer arrangement with a foreign exchange specialist.





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4 Reducing staffing to offset increased costs and delays

If the UK ultimately leaves the Customs Union or defaults to World Trade Organization (WTO) arrangements with its trade partners, tariffs on goods will be higher, leading to increased business costs.

Meanwhile, without free movement between the UK and the EU, full customs checks and controls at the border will mean significant delays, particularly with the flow of goods across the Channel.

As increased costs and disrupted deliveries take their toll on business, organisations may need to revise their people strategies. It may be necessary to consider staff reductions while retaining business-critical skills and talent. HR will need to explore the most suitable options for their respective organisations. Depending on your contracts of employment, it might be possible to consider cutting overtime or reducing certain benefits. Other options include:

- lay-offs and short-time working
- scaling down on agency and temporary workers
- redundancies.

Lay-offs and short-time working

Laying off staff or short-time working can help avoid redundancies when there is pressure to reduce staff costs. It may be possible to ask employees to stay at home or take unpaid leave (lay-off) when paid work cannot be given temporarily – as long as the employment contract allows this.

Similarly, if the contract terms make allowance for it, an employee can be asked to work reduced hours each day or fewer contractual days over the course of a week (short-time working).

However, it is essential that employers have agreed these arrangements with staff first. Provisions for this agreement may be found in:

- the employment contract
- a national agreement for the industry
- a collective agreement between the employer and a recognised trade union.





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If these provisions are not in place, employers will need to come to a separate agreement with the relevant employees to amend their employment contracts to allow laying-off or short-time working. Such an amendment may not automatically give employers the power to lay off without further consent from the employee in the future.

Any such amendment is a variation of contract and requires consultation with the employee and mutual agreement. Otherwise, employers face the risk of an employee making a claim for constructive dismissal through a breach of contract, trust and confidence.

Employees are entitled to statutory lay-off/short-time working pay if employers do not provide them with a full day's work during the time they would normally be required to work. The maximum payable is £28 a day for five days in any three-month period (total of £140). If employees earn less than £28 per day, they would receive their usual daily rate, and for part-time workers the amount is to be worked out proportionally. It is advisable not to lay off staff or cut working time for four or more weeks in a row or for six weeks in any 13-week period, as employees could then make a claim for redundancy pay.

Scaling down on agency and temporary workers

Employers can scale down on their use of agency or temporary workers. This may impact permanent staff and require them to take on additional workload. If this is the case, work with the relevant managers to ensure that this is as collaborative a process as possible and that employees have a chance to discuss any concerns.

Redundancies

If it is anticipated that a reduced workforce or salary bill is needed for more than four weeks, an employer may need to consider redundancies, which should be seen as a last resort. These can either be voluntary or compulsory. However, it needs to be borne in mind that redundancy can be one of the most distressing events an employee can experience. As such, it requires sensitive handling to ensure fair treatment of the redundant employee and the maintaining of productivity and morale of the remaining workforce. Redundancy legislation is complex, and employers need to understand their obligations, including employees' rights and the correct procedures to follow. The CIPD's factsheet on redundancy contains further advice and details.

5 Continuing to operate in the EU

Organisations that employ UK nationals for work within EU countries will need to be aware that those employees will become subject to third-country, full immigration requirements after free movement comes to an end – when this could be may still be subject to change. UK nationals will need to comply with the relevant residency controls within the respective EU country and obtain the necessary permits or visas to live and work there. Other practicalities such as driving licences and health insurance will also need to be considered as EU-wide arrangements will no longer apply to the UK after Brexit. Employers should provide as much support for their EU-based employees as possible in relaying relevant information, advising on the processes and potentially covering the financial costs involved in necessary applications.

UK employees working in the EU may be required to apply for residency in the EU member state where they live and work. Each EU country has its own regulations, but generally, foreign nationals will need to have lived there for five years to qualify for permanent residence or indefinite stay. The important action for UK workers in an EU country is to register as a resident if they wish to remain there. The appropriate time to register can depend on whether an exit deal is agreed and the provisions for settlement made in the respective countries.



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Example

Joe has been working for your company in Spain for the last six months and has decided that he wants to remain in Spain. After his contract expires, he plans on applying for another position in the area to continue living and working in Spain. Your contract with Joe is for 12 months. You do not know currently whether there will be an opportunity to extend it, so it remains likely that Joe will need to return to the UK after his posting is finished.

While Joe is in Spain on a work permit, you may want to advise him to investigate whether he should register as a resident to begin to accrue time towards residency. He will need to have a work permit from his next employer (and will need to remain in employment of at least £23,000–30,000) while he accrues his residency term. Joe's professional qualifications and expertise are in short supply in Spain, so it is unlikely that he would become unemployed.

Permits and visas

After free movement comes to an end, UK citizens will need a work permit or visa to work in an EU member state. Each country will have its own visa policies reflecting their respective labour or skills needs.³ It could take up to 12 weeks to obtain these permits or visas, so make sure you allow enough time.

Recognised professional qualifications

Where professional qualifications have already been recognised by EU member states, those qualifications will continue to be recognised after Brexit. The European Commission has advised holders of qualifications obtained in the UK before 29 March 2019 to obtain recognition in an EU27 member state before this date. The processes and requirements can vary depending on the profession and whether it is regulated in the EU country. The European Union website contains an [easy-to-use tool](#) to help workers determine whether they need to apply and, if so, how.

Tax payments

The UK and the EU have committed to not changing the current double taxation arrangements, whereby a British national in an EU country would only pay tax once on their income and gains.

Driving licences

Holders of UK driving licences who expect to continue living and working in an EU country after 29 March 2019 are [advised](#) to exchange their UK licences for one from that country ahead of this date, to avoid the risk of being required to retake a driving test after this date.

An EU driving licence will allow holders to drive in the UK, and may be [re-exchanged for a UK licence](#) if the holder decides to return to the UK.

If it is part of an employee's job requirement to drive or if driving is needed to get to and from work, UK employers should provide support to help their employees obtain the relevant local driving licence.

EU licence holders living in the UK after Brexit can continue to drive in the UK on their EU licences.

³ See [Schengen Visa Info](#).



Health insurance

The European Health Insurance Card (EHIC) entitles holders to medical treatment free or at a reduced cost within EEA countries and Switzerland. If an exit agreement is in place when the UK leaves the EU, the continued availability of the EHIC entitlement will depend on the transitional provisions.

If Brexit occurs without an agreement, EHIC will no longer be valid for UK holders and UK workers will no longer receive equivalent healthcare in the countries covered by the EHIC. Therefore, if you employ UK nationals to work in any of those countries, you will need to consider arranging private health insurance for them (and potentially for their families) as a duty of care.

6 Business relocations

A survey of over 1,200 company directors by the Institute of Directors showed that nearly one in three businesses in the UK have shifted or plans to shift at least some of their operations abroad in preparation for Brexit. If your organisation is considering relocating operations to the EU or elsewhere, you will need to consider a number of HR matters:

- relocation packages
- recruiting locally
- redundancies.

Relocation packages

If relocating with the business is provided for by a 'mobility clause' in the employment contract, or if it is subsequently agreed with staff,⁴ relocation packages will need to be considered, if even for a short time, until employees become established in their new environment. This may include housing, travel costs to and from the UK, education, insurance, tax advice and language training. Some visas require foreign nationals migrating for work to be an integral part of the community and will favour those that speak the language or have an intention to learn the language. Alongside these, other terms and arrangements that will need to be negotiated and agreed with the employee include:

- length of relocation
- how wages will be paid and in which currency
- arrangements at the end of the relocation period
- responsibility for repatriation costs (if applicable).

⁴ As with any variation of contract, employers must consult with employees and obtain their written consent. Failure to do so will risk an employee making a claim for constructive dismissal through a breach of contract, trust and confidence.



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Recruiting locally

If the organisation is relocating some of its operations abroad, you will likely need to recruit locally. Some priority actions for HR include establishing contacts with recruiters and conducting market mapping to understand talent availability and the relevant market rates for reward. The CIPD's [workforce planning](#) and [talent management](#) factsheets set out other key considerations and recommendations.

Redundancies

Unless you plan to keep the same jobs operating from your UK establishment, you would, in effect, be putting all of the staff in your UK business at risk of [redundancy](#). If the business does decide that fewer staff are needed in the UK establishment, HR will need to prepare the redundancy criteria, determine selection pools and enter into [consultation](#) with employees.

Employers could offer employees alternative positions within the relocated operations, but it will be necessary to first discover what the skill shortages are in that country and what the likelihood is of acquiring the relevant visas and work permits. If employees do not wish to relocate, they would be entitled to redundancy payments. As in any kind of redundancy scenario, this needs to be dealt with fairly, lawfully and sensitively.

7 Keeping communications open with staff

In times of uncertainty, HR together with senior leadership should take the lead in acknowledging change, assuring and demonstrating to employees that the business is preparing for critical issues, and are evolving policies and practices to show that they care about the implications for their employees. Messages from the top that show appreciation to employees and galvanise them around the organisation's core purpose and values will be important. In addition, employers will do well to provide up-to-date information and maintain open, two-way dialogue by holding HR surgeries or drop-ins, for example, so that employees can talk confidentially about their concerns or ask questions. Supporting employees on how to take any of the actions required gives them confidence and builds their trust and respect for both HR and the overall business.





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8 Conclusion

Brexit and its ongoing implications can critically impact an organisation's ability to sustain its business as usual. However, by focusing on the relevant people-related contingencies, planning ahead and taking action for what needs to be done to address them, HR professionals can provide vital support for their organisation's business continuity, whatever the manner of Brexit that may result.

In considering the people aspects of your organisation's continuity planning, have you:

- ☐ Conducted a workforce audit to identify which employees may need support with pre-settled and settled status applications?
- ☐ Discussed with EU nationals in your workforce about their intentions as to accrue time towards residency in the future, or whether they plan to leave the UK?
- ☐ Reviewed your workforce planning for low-skilled roles and considered future recruitment channels?
- ☐ Spoken to a payroll specialist regarding international payments through a forward contract or made other arrangements with a currency specialist?
- ☐ Reviewed payment clauses for international staff to ensure their pay is unaffected by fluctuating exchange rates?
- ☐ Reviewed employment contracts to see whether you can implement lay-offs, short-time working or relocations, or else consulted with them to introduce such provisions?
- ☐ Updated your redundancy policies should you need to reduce your workforce?
- ☐ Considered other options for reducing staff costs and voluntary redundancies ahead of compulsory redundancies?
- ☐ Ensured your processes for obtaining work visas and permits for employees you wish to send to work in the EU are up to date and fit for purpose?
- ☐ Ensured your UK citizen staff have applied for recognition of their qualifications or driving licences as relevant if working in an EU state?
- ☐ Reviewed your obligations towards your employees (and their families) who work in the EU, such as tax advice or health insurance?
- ☐ Agreed the terms of any relocations, including responsibilities for expatriation arrangements and costs, length of relocation and pay?
- ☐ Given reassurance about any ongoing uncertainty and kept staff up to date with information concerning them and the business?
- ☐ Provided any opportunities where employees can talk confidentially about their concerns or ask questions?
- ☐ Put in place the relevant measures for supporting employees through anticipated changes and communicated them?



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