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BREXIT IMPACT ON EMPLOYMENT

As a labour market analyst with over 30 years' experience of providing employment reports for the Court, Keith Carter, Principal of Keith Carter & Associates, gives Lawyer Monthly his view as to some of the challenges facing lawyers following Brexit.

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What is clear from the outset is that Brexit:

(i) Will have a much wider impact than on the currently 2.9 million estimated EU nationals living in the UK and,

(ii) It is impossible to know about (and therefore difficult to advise on) employment issues until more is known about likely future policies.

Given the current absence of information and before considering the range of possible scenarios for EU nationals in the UK ➜ EU nationals wanting to come to the UK and ➜ the UK workforce, it is helpful to consider the basic data and employment by industrial sector. *(See Table 1 below)*

particularly in sectors such as health care, public services, hotel and catering, etc.

David Davis (Secretary of State for Exiting the EU) has indicated in an interview that a "generous settlement" would be negotiated for EU migrants living in the UK and British citizens living in Europe. However, he warned that this may attract a surge of EU citizens coming to Britain and so those who arrive after a set date (which has not been decided) could be blocked from being given indefinite right to remain.

The above introduces further imponderables in how compensation should be calculated. If "compensation" is based on domestic earning

the EU we fully expect that the legal status of EU nationals living in the UK and that of UK nationals living in member states will be properly protected".

The flaw in the above, which will undoubtedly be tested by lawyers, is what constitutes "proper protection?"

Advice on immigration issues, employment and benefit rights currently does not exist. When accessing the website for the Department for Exiting the EU, there is a section for "Corporate Information" and then a heading for "Access our Information." Indicative of the current problems, the page is then blank. There is no telephone number or (worryingly, as it would seem work has not even

Table 1:
Selected Examples of Industry by Country of Birth

EU Country	All categories: Industry	Agriculture, forestry and fishing	Manufacturing	Construction	Distribution, hotels and restaurants	Transport and communication	Public administration, education and health
France	79,725	159	5,143	1,959	16,306	8,786	18,571
Germany	161,305	589	12,122	7,310	31,035	15,000	51,217
Italy	74,091	209	4,463	2,808	22,300	7,132	14,230
Portugal	51,206	379	4,893	2,466	16,180	4,185	8,979
Poland	413,185	5,258	76,344	39,393	109,878	40,242	50,912

The above high numbers of EU workers in unskilled (semi-skilled) jobs takes on added significance when looking at current unemployment rates across the UK, which is at an 11 year low (4.9%).

The above clearly illustrates an absence or reduction in EU employees and without UK job seekers (I make the distinction between actual jobseekers and the long term unemployed) to fill the vacancies, there will almost certainly in the future be a critical labour shortage,

capacity compared to the UK, it would be weighted against the more developed economies and UK nationals. *(See Table 2, overleaf)*

A statement from the Government on Brexit recently recorded "When we do leave

yet started) even reference to the fact that the site is "under construction."

With no information (and possibly no policy until close to 2020), one can only speculate on possible scenarios and to base this on what we know.

Firstly, the Government recently stated that EU nationals who had lived continuously in the UK for at least 5 years automatically have a right to reside (ie the right to live in the UK permanently). Those who have lived in the UK for at least 6 years are eligible to apply for British Citizenship.

For those who do not meet the criteria or want to come to the UK, one suggestion is that the criteria for non-EU applicants is applied (although exit agreements with the EU may well include preferential treatment for EU nationals). To come to the UK a non-EU national is required to gain a Tier 2 visa. This is a points based system for those who have a job offer for a skilled job or for a job which is listed as a shortage occupation.

> *"Research undertaken by the Migration Observatory (Oxford University) found that 75% of EU citizens working in the UK would not meet the current visa requirement for non-EU overseas workers"*

Types of Tier 2 visa are currently as follows:

- skilled job offer for up to 3 years
- shortage occupation for up to 3 years
- skilled job offer for more than 3 years
- shortage occupation for more than 3 years

To be eligible for a visa the applicant needs:

- To be sponsored by an employer before applying
- Have a salary of at least £20,800 p.a. gross for a new entrant
- Have savings of at least £945 which have been in their bank account for at least 90 days

For the shortage occupation visa the job needs to be listed in the Government's Shortage Occupation List.

The salary criteria are however about to change and will increase to £25,000 in Autumn 2016 and then £30,000 in April 2017 for experienced workers. It will still be £20,800 for new entrants.

Research undertaken by the Migration Observatory (Oxford University) found that 75% of EU citizens working in the UK would not meet the current visa requirement for non-EU overseas workers. They note further that the hotels and restaurant sectors had 94% that would not meet the existing criteria and 96% of the agricultural sector would not meet current visa requirements for non-EU overseas workers.

Matthew Elliott, Chief Executive of Vote Leave has noted that the current visa requirements for non-EU citizens was restrictive due to the unlimited immigration from the EU. He noted that on leaving the EU the UK could have a flexible migration policy which would allow "talent" to be brought into UK businesses (while ensuring there was border control).

This is in fact in place, the pre-requisite salary for pre-registration nurses (Band 3 of the NHS Agenda for Change pay scale) being reduced to meet a skill shortage to £16,271 (as opposed to £20,800).

The problem for the future however is that it is not necessarily the "talent" that is missing to meet labour requirements (although this is a concern) but lower skilled positions in the service and health care sectors. If the same approach was adopted to meet lower level skill requirements, as applied in the case of nurses, then the minimum living wage may become the criteria for a visa application (in line with Agenda for Change Band 1) £13,853 p.a. assuming a 37-hour week for an employee over 25 years of age and £12,891 p.a. if aged up to 25. This would however, open the gate for entry application for almost all jobs.

The above of course does not answer the question (often an area of dispute) as to what happens after 3 years?

The Citizens Advice Bureau's published advice for EU nationals living in the UK suggests that their rights (to work and receive benefits) will not change unless or until the Government passes new legislation. David Davis has indicated that Article 50 would not be triggered until early next year (2017) following which there would be a 2-year (possibly longer) exit period. This leaves those giving advice/ counsel in an extremely difficult position.

The current message (informed by absence of information) is "Business as normal." Business however, in terms of looking to assess and in some cases "value" employment, is anything but "normal."

Some possible outcomes of the above that may require legal counsel and/or influence a lawyer's assessment in regard to employment issues would be:

- Employers are likely to experience a labour shortage (not necessarily in high skill areas)
- Without automatic right to work, an employer when engaging employees may need advice when considering immigration issues (salaries; job descriptions to ensure they match visa guidelines, etc)
- EU nationals in employment in the UK (including those on zero-hour or short-term contracts) will need advice as to their right to remain both short-term and long term
- Job seekers (already in the UK; with families in the UK or wanting to come to the UK) will require advice on their rights
- If losing a job (redundancy; injury; discrimination, etc) how will this affect the EU national (recently arrived or with 3-years+ residency)?

Even more difficult questions which will tax the legal mind arise when one considers accrued pension rights; the need to ensure EU nationals receive "proper protection" in respect to their rights and benefits and figures that might be appropriate in terms of "compensation" for those who are not allowed to remain.

While answers are currently not available, the likely "questions" that will need to be addressed by lawyers in the coming months are mounting, with the present "quiet" (while we wait for Article 50 to be evoked) obscuring the forthcoming "storm."

So what is the way forward?

Sadly (and in many cases frustratingly) Brexit; employment and the way forward can only be guessed at. This said, while it is only possible to speculate on the future, with access to labour market data it is at least informed speculation.

Table 2:
National Minimum Wage and Unemployment

	Unemployment Rate	National Minimum Wage (sterling equivalent)*
UK	4.9%	£14,040
Poland	8.8%	£4,431
Republic of Ireland	7.8%	£15,327
Italy	11.6%	None
Portugal	10.8%	£5,462
Spain	20.0%	£6,788
Latvia	10.3%	£3,813

**Annual gross income assuming a 37.5 hour week*

About Keith Carter

Keith has for many years been writing employment reports acting as the bridge between labour market information and the court. He has looked at handicap on the labour market; altered careers (including landmark cases) as well as undertaking equal value assessments and giving careers advice.

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