



Immigration update

Chetal Patel

Partner at Bates Wells



Chetal Patel

Immigration – Bates Wells

- Chetal is a Partner at Bates Wells. She regularly advises charitable organisations and specialises in corporate immigration matters. Chetal has substantial experience on immigration compliance, Brexit, sponsorship matters, the prevention of illegal working and the impact of the “hostile environment”. In the current COVID-19 pandemic, she is providing high level strategic advice on managing UK workforces.
- She is widely recognised as a leader in her field and is listed in a number of legal directories, including Who’s Who Legal, Chambers and Partners and Legal 500.

T +44 (0)20 7551 7751

E c.patel@bateswells.co.uk

L <https://www.linkedin.com/in/chetal-patel-9540b180/>

Agenda

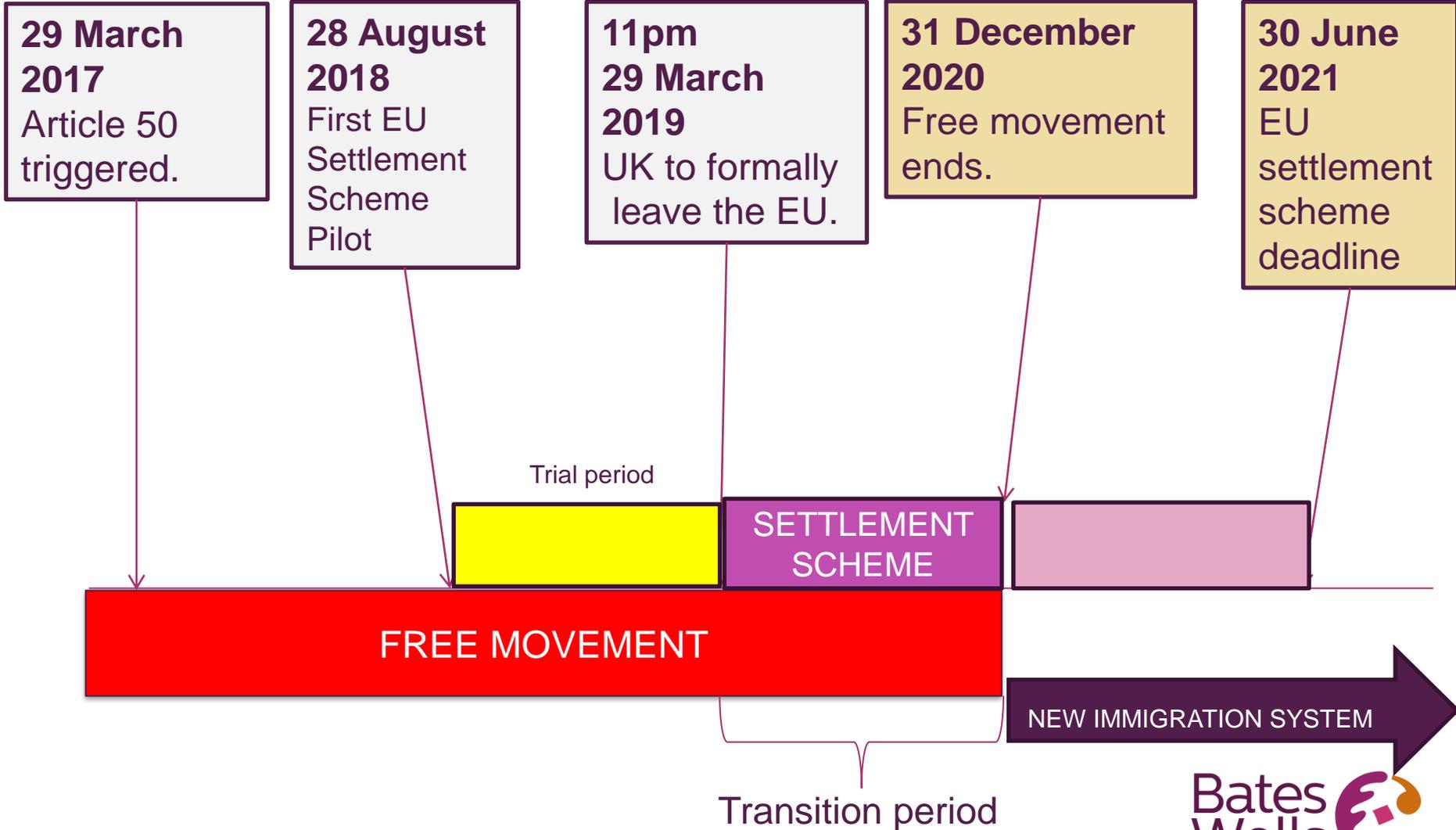
- General Immigration Update
- Brexit
- Immigration categories
- Prevention of illegal working
- Right to work checks
- Covid-19 update
- Looking to the future

General Immigration Update

The last 12 months

- Migration Advisory Committee report
- Changes primarily aimed at the global elite
- Expansion of the Shortage Occupation List (only relevant to sponsors)
- Brexit

Brexit Key Dates



Brexit

- Brexit has been the largest focus of the government in recent years until COVID-19.
- Currently the transition period will end on 31 December 2020.
- Arriving in the UK before 31 December 2020
 - If resident apply for settled status or pre-settled status through the EUSS.
 - Applications must be made by 30 June 2021.
- Arriving in the UK from 1 January 2021
 - A visa will be needed in order to live and work in the UK.
 - Consider options under the *new* UK immigration system.

EU Settlement Scheme

- Right to reside in the UK under EU law replaced by the EUSS
- Process is not automatic
- All EU nationals residing in the UK will need to apply
 - Even those with PR
 - Not British citizens
 - Those with ILR can choose to apply
- Simple, streamlined application process (online, app)
- £0
- Three main requirements:
 - Identity (fall within its scope);
 - UK residence; and
 - Criminality (suitability)

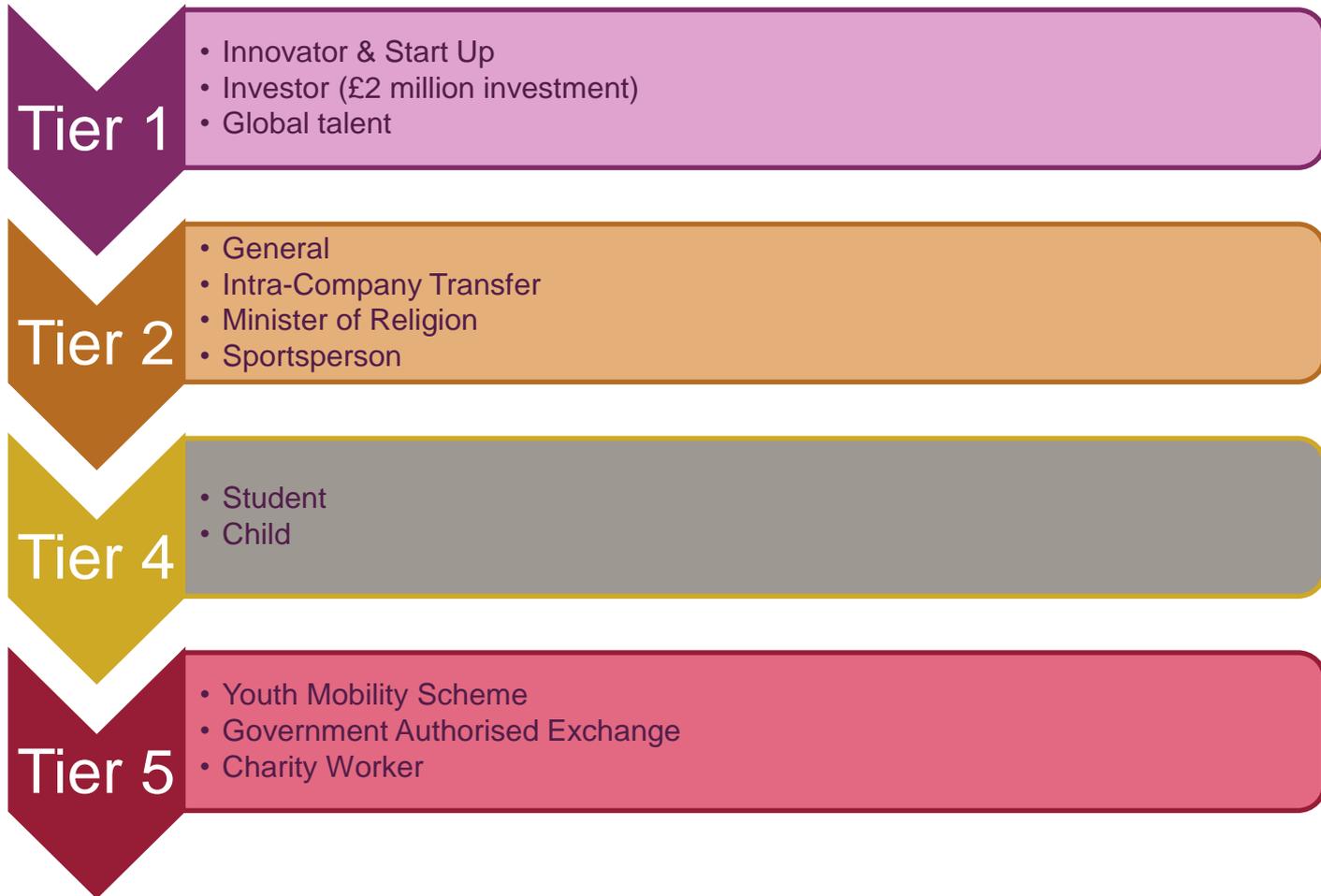
EU Settlement Scheme - Scope

- EU citizen resident in UK by 31 December 2020
- Family members of EU citizens
 - Spouses, civil partners, durable partners
 - Children under 21 or who are dependent
 - Parents, grandparents
 - Other dependant relatives (if in UK under the Regulations)
- Family members can join EU citizen in UK after 31 December 2020 provided the relationship:
 - Existed on 31 December 2020; and
 - Continues to exist when family member comes to the UK

Brexit – Steps to take now

- **Conduct immigration audit on your workforce**
 - Who is affected?
- **Support your workforce**
 - Provide drop in immigration surgeries
 - Signpost key government guidance documents
- **Consider communication**
 - Reaffirm your commitment to your workforce
 - Recognise the importance and value of a diverse organisation
- **Plan for the future**
 - Fine tune contingency plans

Points-based worker categories



Other UK Immigration Categories



The prevention of illegal working

Section 35: Employers

An employer is committing an offence if they **know, or have reasonable cause to believe** that their employee does not have the right to work in the UK.

Section 34: Workers

A person is committing an **offence** if they work in the UK and **they know, or have reasonable cause to believe** that they are disqualified from working in the UK.

A person is disqualified from working in the UK if:

- (a) They have not been granted leave to enter or remain in the UK
- (b) Their leave to enter or remain in the UK:
 - i. is invalid,
 - ii. has ceased to have effect (whether by reason of curtailment, revocation, cancellation, passage of time or otherwise), or
 - iii. is subject to a condition preventing the person from doing work of that kind.

The prevention of illegal working

“Employer”

A person who employs an individual under a contract of employment.

- Contract does not have to be in writing
- May be a contract of service or apprenticeship
- Does **not** apply to those with self-employed status

“Worker” (Immigration Act 2016)

A person that is working:

- Under a contract of employment or apprenticeship
- Under a contract personally to do work
- For a purpose related to a contract to sell goods
- As a constable, of Crown employment, or as member of House of Commons or House of Lords staff

“Employment” (Immigration Rules)

Unless the contrary intention appears, this includes:

- Paid or unpaid employment
- Paid or unpaid work placements
- The above undertaken as part of a course or period of self-study and engaging in business or any professional activity

Right to work checks

- When do the checks need to be done?
 - New starters - pre-employment
 - Existing staff – follow up checks – when permission expires?
- What needs to be checked?
 - List A or List B documents
- Who should conduct the checks?
 - Member of HR team
- Why is this important?
 - More stringent requirements (although a temporary, limited concession is currently in place due to COVID-19)
 - Serious consequences of getting it wrong!

The right to work checks - manual

How do you conduct the *manual* right to work checks?

Obtain: Obtain original versions of one or more acceptable documents

- Are the documents on list A or B of acceptable documents?



Check: Check the document's *validity* in the *physical* presence of the holder

- Are the names, photographs and dates of birth consistent?
- Are there any restrictions on work?
- Have the expiry dates passed?



Copy: Make and retain a clear copy and record the date the check was made

- Make a copy of the passports and any other documents, store safely in format that cannot be altered later
- Diarise dates of expiry and set reminders in advance

The right to work checks - online

How do you conduct the *online* right to work checks?

Use: Use the Home Office online right to work checking service on Gov.uk

- Make sure you access the 'view a job applicant's right to work details' page and type in the share code and date of birth



Check: Check that any photograph on the online right to work check is of the individual presenting themselves for work

- Consider the ear lobe test



Retain: Retain a clear copy of the response provided by the online right to work check

- Save or print the profile page and store securely
- Diarise dates of expiry and set reminders in advance

Repercussions

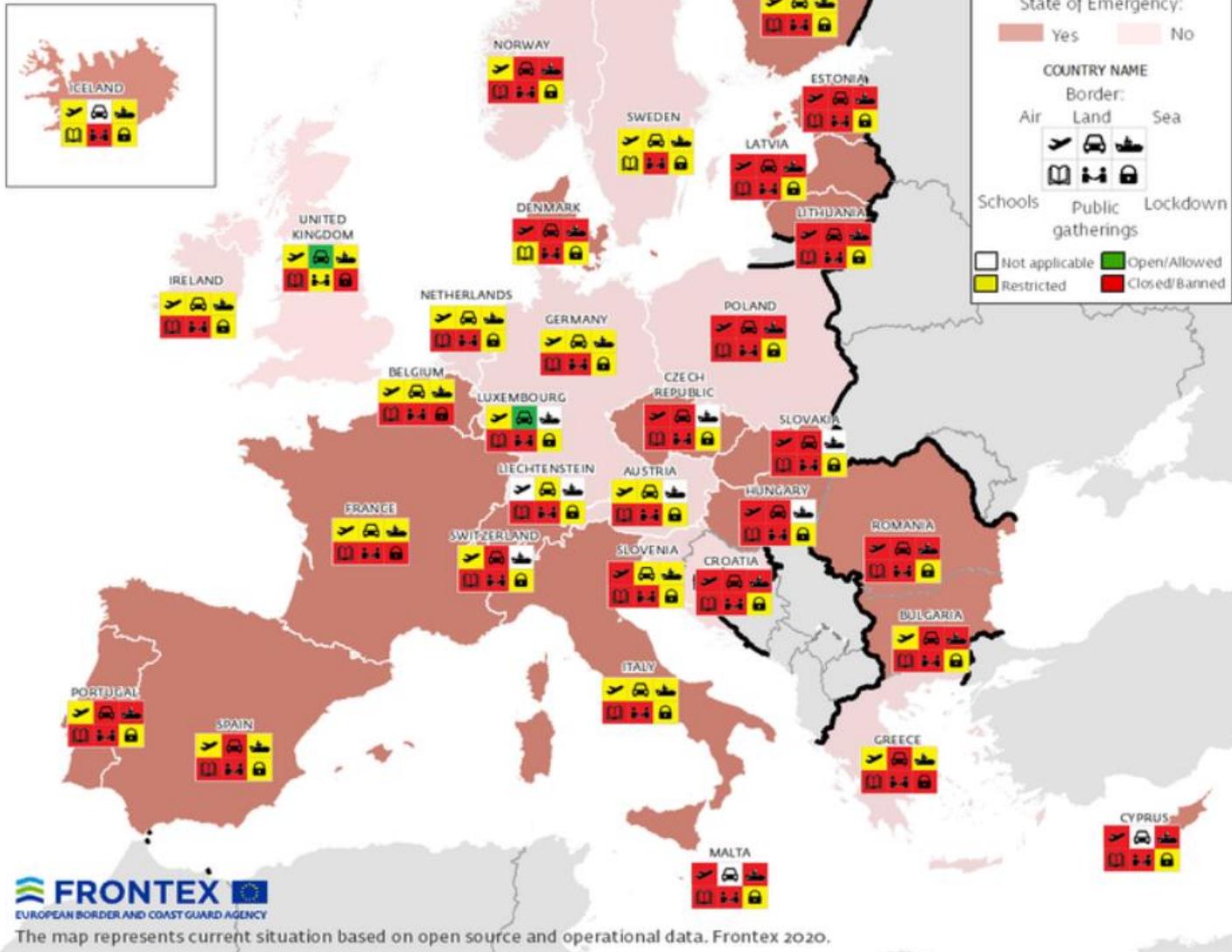
- Up to £20,000 fine per employee found to be working illegally
- Criminal offence if you **know, or have reasonable cause to believe,** an employee does not have the right to work in the UK
- Director disqualifications
- Notification to Charity Commission
- Adverse publicity
- Impact on funding
- Named and shamed on UKVI website
- Employment Tribunal claim



COVID-19 General Update

Key issues	Key considerations/actions
Travel restrictions and self-isolation preventing ability to travel to the UK or leave the UK	For those stuck in the UK, apply for an extension until 31 May 2020
<ul style="list-style-type: none">- Closure of visa application centres in and outside of the UK- Suspension of expedited visa services	<ul style="list-style-type: none">- Delay in decision- Impact on right to work?
Expiry of entry clearance vignettes	Awaiting Home Office update on this
For sponsored workers – changes to working practices, absences and reductions	<ul style="list-style-type: none">- Do the changes need to be reported?- Check temporary COVID-19 guidance
Furlough	<ul style="list-style-type: none">- Foreign nationals eligible<ul style="list-style-type: none">- Not a public fund- Additional considerations for sponsored workers
No access to public funds	Awaiting Home Office update on this

COVID-19 Restrictions



What does the future hold?

- New “Points Based Immigration System” from January 2021
- EU nationals arriving in the UK from January 2021 be subject to immigration control
- Anticipated changes to the Tier 2 skilled worker visa route
 - Applicants will have to score points for characteristics
 - Minimum skill level to be reduced to RQF Level 3 (A-level)
 - Minimum salary requirement to be reduced to ~£25,600 for experienced workers or ~£17,920 for new entrants **or** the “going rate” for the job
 - No Resident Labour Market Test
 - Additional points for shortage occupation jobs/PhD in relevant subject or STEM
- No lower skilled visa route

How to prepare

- Assess future recruitment needs and whether jobs will meet RQF level 3
- Consider applying for a sponsor licence
- Review HR systems
- Can recruitment plans be brought forward?
- Consider alternative immigration options for “lower skilled” jobs (e.g. understand individual immigration statuses)

Questions?

Coronavirus and UK Immigration: FAQs

<https://bateswells.co.uk/2020/04/coronavirus-and-uk-immigration-faqs/>