Staffing implications

Outside of the Single Market, the introduction of some form of visa requirement, possibly similar to Tier 2 for full-time employment or Tier 5 for temporary work, might possibly discourage a number of applications to school posts from EU/EEA countries. At the same time, the shift of focus away from recruitment in Europe may potentially open up availability for work visas for citizens on non-EEA countries, such as those in the Commonwealth.

Figures from the General Teaching Council of Scotland (GTCS) for 2018 show a substantial drop in applicants from EU countries. Only 14 EU teachers applied for GTCS registration up until June 30 2018, with 128 in 2015, 159 in 2016 and 186 in 2017. In July 2018, GTCS chief executive Ken Muir told the Scottish Parliament:

“Having maintained numbers pretty high from the EU, they are falling off a cliff, and that’s absolutely down to Brexit.”

There are significantly fewer language teachers in Scotland than in 2008. There were 722 French teachers last year in the state sector, compared with 1070 in 2008. Over the same period the number of German teachers has almost halved, to 100, while the number of Spanish teachers has increased from 64 to 107.

A key issue for teaching staff following withdrawal will be the recognition of teaching and other qualifications from other jurisdictions. The general system of recognition of professional qualifications, including teaching, is provided for within Directive 2005/36/EC, which enables the free movement of professionals within the EU with professional qualification recognised in another EU country.¹

Recognising existing qualifications of residents and frontier workers, and those in the process of being recognised, will continue as at present up until December 2020. Thereafter, the UK Government aims to achieve an “ambitious agreement” on the mutual recognition of professional qualifications. The Commission has confirmed that:

“Subject to any transitional arrangement that may be contained in a possible withdrawal agreement, as of the withdrawal date, the EU rules in the field of recognition of professional qualifications no longer apply to the United Kingdom.”

For school staff from other EU countries, there are other issues that remain to be settled which could have a substantial impact on decision to relocate. Most EU Member States currently have bilateral double taxation agreements in place.² Under these, the amount of tax paid in the country of work will be offset against the tax owed in the country of residence,


or income earned in the country of work might be taxable only in that country and exempt in the country of residence.

The UK Government is planning to continue workplace protections whether a deal is in place on withdrawal or not. The workplace rights and protections from EU law cover a range of areas, including Working Time Regulations and family leave entitlements, of key importance to teaching and support staff, as well as parents. While the EU (Withdrawal) Act 2018 transfers the powers from EU Directives so that workers in the UK will continue to be entitled to the rights they have under UK law, covering those aspects which come from EU law.

There is now a requirement that when applying for a UK visa an applicant may need to pay a charge for healthcare services, called the 'immigration health surcharge (IHS)'. This is not required if applying for a visitor visa, or indefinite leave to remain. However it is required when applying from outside of the UK for a visa to work, study or join family in the UK for more than 6 months (but not applying to remain in the UK permanently); or as a national of a country outside the European Economic Area (EEA). As such, it is not yet clear what the expectation will be on EEA citizens once the UK leaves the EU and EEA. In June 2018, the UK Government published details of the Settlement Scheme which it intends to use to for EU citizens and families to obtain settled status in the UK.

At present, Disclosure Scotland is able to check criminal history information held in the UK, as well as country of nationality for 12 EU Member States. Renewed arrangements will need to be made following withdrawal. Likewise, while the UK may not stay under the conditions of the European Arrest Warrant – given the refusal to accept any European Court of Justice jurisdiction - a new “stream-lined” extradition process is under discussion. For the same reason, the European Commission has stated that the UK will not have automatic access to EU-only police databases or passenger name records.

School pupil implications

At present, two of the five most popular countries of origin for pupils to the Scottish independent school sector are EU Member States – Germany and Spain. Students from the European Economic Area (EEA) can come to the UK to study with minimal requirements. Those from outside the EEA can come to the UK to study using a Tier 4 visa, either (Child) student visa, or (General) student visa. Those on a Tier 4 visa must be sponsored by a licenced institution and meet minimum English language requirements. They may be eligible to extend their visa to remain in the UK for further study, or may meet the requirements to switch to a work related visa.

The report of the Migration Advisory Committee (MAC), on the impacts of international students in the UK published on 11 September 2018,³ states that “the UK leaving the EU poses additional challenges” to students in higher and further education, and in independent language schools….Our main competitors require a visa for all international students so it is not impossible for the sector to thrive even if EU students were brought within the non-EU student visa system. We do not, though, see any upside for the sector in leaving the EU: any barriers to student mobility are likely to have a negative impact.” The report lists Scotland as one of the popular UK destinations for international students.

School implications

In April 2018 a letter from UK schools organisations called on the UK’s Brexit negotiating teams not to underestimate the potential impact of leaving the European Union on schools and pupils. The signatories were the British Council, the Association of School and College Leaders, the National Association of Head Teachers and the National Education Union.

“Similar to the effects on the health service, we are seriously concerned that Brexit will exacerbate the already challenging teacher shortages in the UK. Therefore, the post-Brexit visa regime must ensure that those already living and working here have their rights protected and feel secure; it must be straightforward for schools to recruit teachers from European countries.

It is also important that the prospects and opportunities for school pupils in the UK are not reduced by the UK leaving the European Union. The benefits of exchange programmes and foreign trips for pupils are widely accepted, and so visa arrangements must enable straightforward international visits and exchanges, rather than school children visiting Boulogne for the day having to apply for visas.

Britain’s future prosperity and place in the world depends on a new generation of outward looking, multilingual, globally minded young people who are prepared to live, work and thrive in the global economy.”

Aside from issues of labour supply, there are a range of issues for schools to consider. The end of the free movement of goods and services may well affect the supply chain for schools in a range of areas from construction or equipment supply to catering. If there is a ‘no deal’ scenario in March 2019 there may be disruption in supply for both consumers and food processors/logistics suppliers. Disruption in supply might make them temporarily unavailable (if no agreed rules to allow these imports) or considerably more expensive (due to tariffs being applied, or scarcity). The same may apply to some medical products if mutual recognition of standards was not in place.

The most substantial impact could be the decisions taken by individual families and companies in terms of employment and recruitment in Scotland and the UK, and the direct impact on pupil numbers. For example, recent figures indicate that 161,000 jobs in Scotland are based in the financial services industry, large parts of which will be affected by “passporting” arrangements for financial services, compatibility of pension regulations and other aspects of cross-border trading.

Although the UK is not a member of the ‘Schengen’ visa-free area, British citizens can currently travel visa-free across the EU for a maximum of 90 days, which is reciprocated for EU passport holders travelling in the UK. It remains unclear what form of visa regime or passport check will be required post-withdrawal, given that border control was one of the key issues in the referendum. This may have a considerable impact on future school trip in terms of administration and cost.

The European Commission is currently finalising an electronic travel authorisation system4 for visitors similar to that in place in the United States. Visitors from some countries

that are currently not part of the EU have been granted visa free access to the EU and Schengen member countries through virtue of their good track record on security issues. The system may well require that UK citizens wishing to travel within the EU to pay €7 to submit a travel pre-authorisation application as well as entering the EU through 3rd country immigration channels.

The UK Department for Transport has indicated that it is an aim to reach an agreement with the EU for mutual driving licence recognition post-withdrawal, as current automatic recognition will not continue. One option may be the extension of the existing International Driving Permit which covers 140 third countries, should the UK ratify the United Nations Vienna convention on road traffic.

The European Health Insurance Card (EHIC) – which covers pre-existing medical conditions as well as emergency care - will no longer be automatically valid after UK withdrawal. To date the UK Government and EU have provisionally agreed that rights on healthcare and the EHIC would continue beyond withdrawal, with the same applying for EU citizens in the UK.

It is unlikely that the current arrangements for shared EU consular services in third countries will be extended to UK citizens post-withdrawal.

The UK Government has tabled a Sanctions and Anti-Money Laundering Bill to ensure that the UK can continue to impose, update, and lift sanctions and AML regimes. Many of current sanctions regimes are established via powers in the European Communities Act. The European Union (Withdrawal) Bill does not provide the powers necessary to update, amend or lift sanctions after the day of withdrawal.

There will be specific changes to the VAT rules and procedures that apply to transactions between the UK and EU Member States. The UK will continue to have a VAT system after it leaves the EU. The VAT rules relating to UK domestic transactions will continue to apply to businesses as they do now. There are reports that HM Treasury is taking an “active role” in designing new EU VAT regulations for the next decade, leading to speculation that it is planning for the UK to remain inside the EU VAT area, even after the transition period ends in December 2020. This would mean that it would not be necessary to collect VAT at the border (including any online sales), thus retaining existing VAT arrangements; although it would also require compliance with rules overseen by the European Court of Justice.

The European Commission’s view is that the UK’s Information Commissioner Office (ICO) cannot remain on the European Data Protection Board (EDPB) after withdrawal. Although the UK implementation of the General Data Protection Regulation (GDPR) is intended to remain unchanged after withdrawal, questions remain over how an infringement against the United Kingdom in the case of misapplication of the GDPR could be launched, or which body will ensure that the UK updates its data legislation every time the EU updates the GDPR. The UK Information Commissioner supports a treaty or an agreement on data protection, as opposed to an adequacy decision by the European Commission. A bespoke agreement or treaty would provide mutual acknowledgement of data protection systems on both sides.