

The logo for K&L GATES, featuring the text in white on an orange rectangular background. The background of the slide is a colorful, abstract pattern of diagonal lines in shades of red, orange, yellow, green, blue, and purple.

K&L GATES

Louisa Cole, K&L Gates LLP

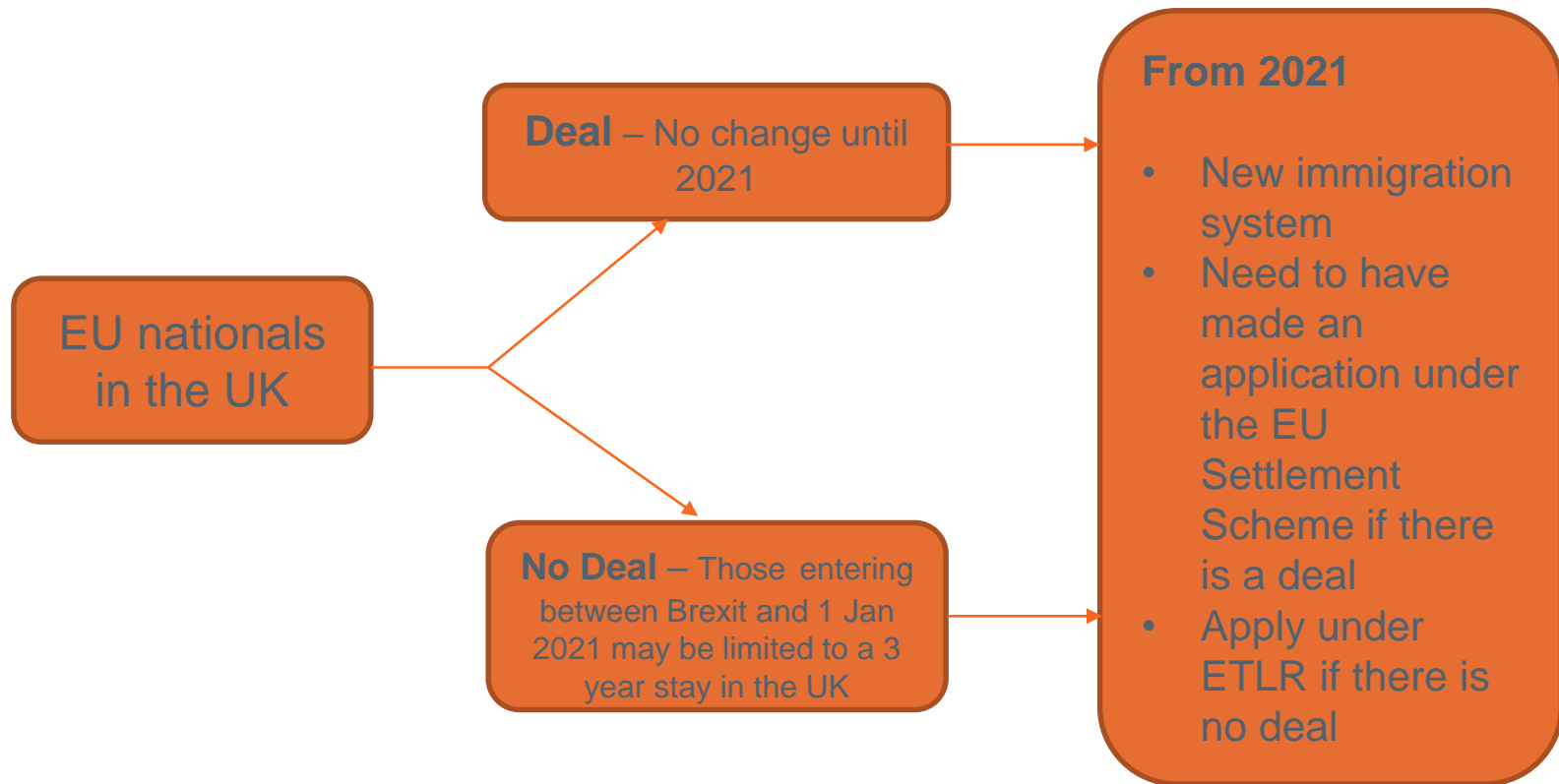
BREXIT – WHAT NOW?

31 October 2019, Barbican, London

AGENDA

- Key considerations for employers in a deal or no deal Brexit
- EU Settlement Scheme
- European Temporary Leave to Remain
- The new immigration system from 2021
- Our advice

EU NATIONALS IN THE UK



KEY CONSIDERATIONS FOR EMPLOYERS

- Plan for the impact of Brexit on EU employees in the UK and UK employees in the EU;
- Brexit should not mean that employees lose their residence rights in the UK and the EU but they may need to make an application;
- If we **leave with a deal** – very little will change between now and 1 January 2021, will still be able to move people around the UK and EU without work permission;
- If we **leave without a deal** – disruption for our UK and EU employees, EU nationals entering the UK after Brexit are limited to 3 years' stay if they are in lower skilled jobs;
- This could particularly impact roles in the tourism industry;
- UK nationals moving to work in the EU will need work permissions - a complex and slow process even where they qualify for a work permit; and
- UK and EU business travellers working in the EU or the UK may need a work permit, even if only for a few days.

DEAL – EU SETTLEMENT SCHEME

- Application for settled status under a new process;
- Settled or pre-Settled Status depending on time spent in the UK;
- EU citizens and their family members who, by 31 December 2020, have been continuously resident in the UK for 5 years will be eligible for “settled status” enabling them to stay indefinitely;
- EU citizens and their family members who arrive in the UK by 31 December 2020, but have not yet been continuously resident in the UK for 5 years, will be eligible for “pre-Settled Status”, enabling them to stay until they have reached the 5 year threshold. They can then also apply for “Settled Status”;

- Compulsory if EU citizens and family members want to stay in the UK and have access to public services, schools, healthcare, public funds and pensions;
- Electronic status – not physical document;
- Free to apply;
- In a deal scenario EU nationals have until 30 June 2021 to apply provided you were resident in the UK by 31 December by 2020; and
- In a no deal scenario EU nationals have until 31 December 2020 to apply and must be resident in the UK by the time the UK leaves the EU.

NO DEAL – EUROPEAN TEMPORARY LEAVE TO REMAIN

- EU nationals can enter the UK freely until 31 December 2020 during which time they must apply for European Temporary Leave to Remain (ETLR);
- Secure their status in the UK for a further period of 3 years;
- Free to apply;
- Deadline to apply – 31 December 2020;
- May be eligible to remain longer-term under the new Points Based System (PBS), or will have to leave the UK;
- Some will not be eligible under the new PBS depending on the skill, salary, scarcity of their role and the rules in place at the time; and
- Time spent in the UK under ETLR will count towards any qualifying period of settlement in any future immigration system.

MIGRATION ADVISORY COMMITTEE

Invited to consult on two things by January 2020:

- Future salary thresholds
 - Mechanism for calculating future salary thresholds
 - Regional salary thresholds
 - Exceptions to salary thresholds

- Australian-style points-based system
 - Focus on characteristics of the migrant
 - Levels of migration to be carefully calibrated according to demand for different industries and professions
 - Points awarded for experience, qualifications and professional expertise
 - Visas not specific to an employer
 - Works must have a 'skills assessment'

2021 – FUTURE IMMIGRATION SYSTEM

- Application of the UK Immigration Rules to EU and non-EU workers alike;
- Salary and skill level to be prioritised;
- Scrapping the overall cap on sponsored work visas, currently branded as Tier 2 (General) and the Resident Labour Market Test;
- Lowering the skills threshold from level 6 (degree) to level 3 (A-level) allowing roles such as Hotel Manager to be eligible for a visa;
- Expansion of Tier 5 Youth Mobility Scheme for EU nationals;
- “Low-Skilled” workers limited to a 12-month working visa. Restrictions on nationalities, duration and possibly numbers;
- The Government envisages that a lower salary threshold for graduates and those 25 and under (currently £20,800) would be retained; and
- No requirement for employers to undertake retrospective right to work checks on existing EU employees.

“LOW SKILLED” ROLES

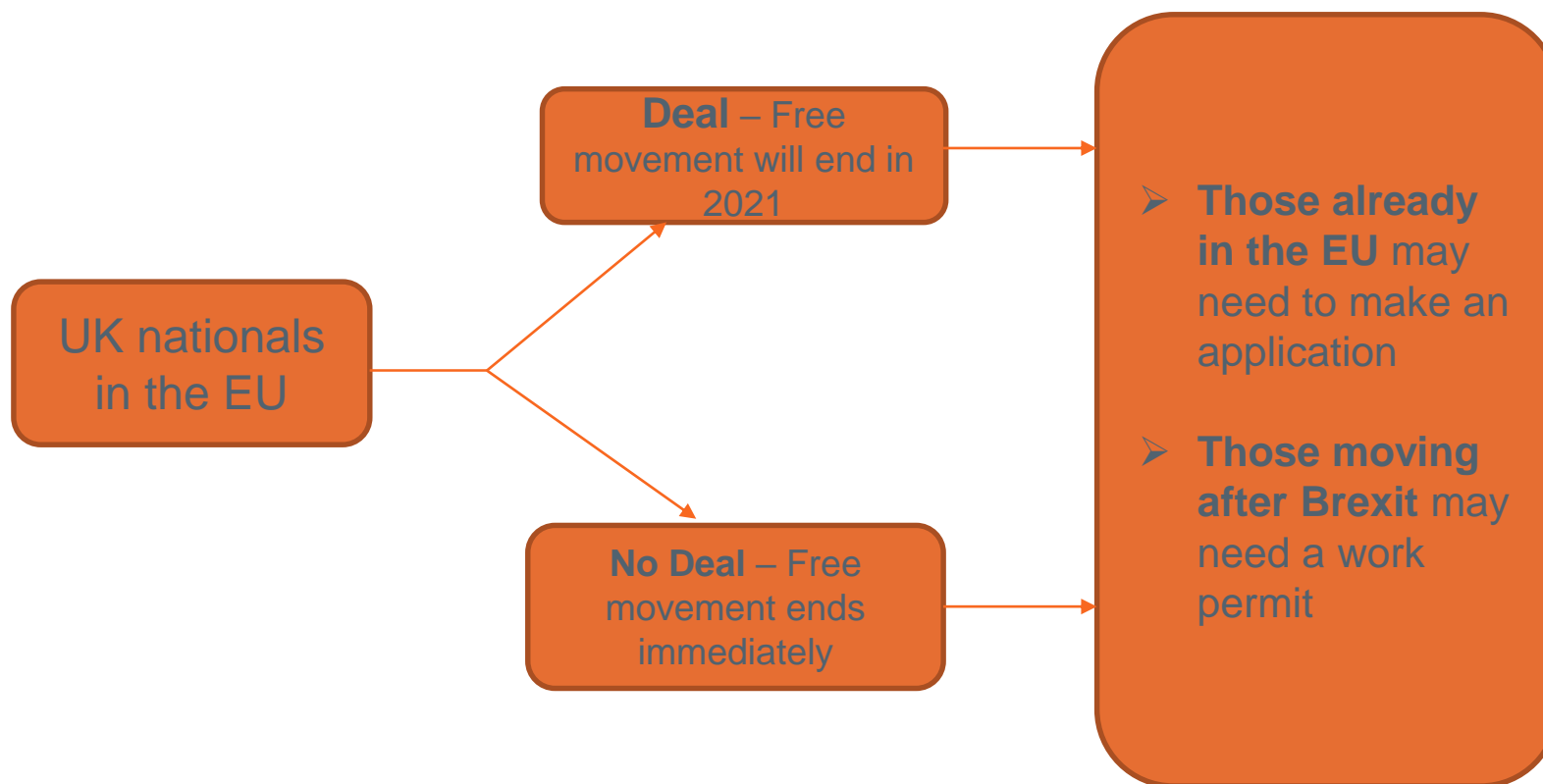
6219 Leisure and travel services occupations not elsewhere classified

- Bus conductor
- Holiday representative
- Information assistant (tourism)
- Steward (shipping)
- Tour guide

6212 Travel agents

- Reservations clerk (travel)
- Sales consultant (travel agents)
- Travel adviser
- Travel agent
- Travel consultant

UK NATIONALS IN THE EU



UK CITIZENS IN THE EU - NO DEAL

- Separate guidance has been published by both British Government and European Commission;
- Guidance and 'Living in' Guides updated regularly as and when further information is available.

<https://www.gov.uk/guidance/advice-for-british-nationals-travelling-and-living-in-europe>

<https://www.gov.uk/government/collections/overseas-living-in-guides>

OUR ADVICE

- Consider how the proposals will impact your ability to fill roles with EU or non-EU citizens in the future;
- Take into account skill levels, salary threshold and staff turnover;
- Consider eligibility of employees for other routes – including nationality options or alternative visa routes;
- Contingency plan to fill skills shortages in workforce;
- Identify EU national employees, and also non–EU national employees who have family members that are EU national working in the UK;
- Identify UK nationals working in other EU states;
- Speak to those employees about their immigration options in the UK and elsewhere in the EU (as applicable); and
- Encourage eligible employees to apply for Settled Status, or pre-Settled Status.

Questions?