

Immigration rules post Brexit

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Free movement between the UK and the EU ended on 31 December 2020. Since 1 January 2021, a new points-based immigration system applies to all migrants wanting to come to the UK, whether they are EU citizens or not. This system means that all non-UK citizens will now need to meet specific requirements in order to work or study in the UK. The points-based system facilitates the entry of skilled workers while making it difficult for employers to recruit from overseas for low-skilled or low-paid vacancies.

Irish citizens continue to be protected as a result of the Common Travel Area; therefore, their rights remain unaffected.

EU citizens resident in the UK on or before 31 December 2020 are eligible to protect their free movement rights by applying to the EU Settlement Scheme. They must do so by the deadline date of 30 June 2021.

EU national visitors to the UK for up to 6 months may do so without a visa, however there are exceptions i.e. they will not be able to work. It is important that the individual's activities are assessed in line with what the UK Visas & Immigration (UKVI) have permitted to ensure their visit amounts to a 'business visit' rather than 'work in the UK' which would require a work visa under the points based system.

Employers will need to:

- **Be aware of the changes and processes** to employ migrant workers & business activities to potentially avoid illegal working. The penalties for employing migrant workers or not checking work permission are severe and outlined further [here](#).
- **Consider recruitment needs:** recruitment of migrant workers can be complex, expensive and time consuming. Employers need to go through a sponsorship and visa application process with each individual which can be costly (approx. £8000 per worker)
- **Communicate with existing staff:** It is vital those in the UK based on current EU free movement rights secure their ability to remain by applying under the EU settlement scheme. The onus is on individuals & Employers should communicate to their workforce to ensure they are aware of the EU Settlement Scheme (EUSS) and that they have protected their right to work in the UK in advance of the application deadline of 30 June 2021.

Employers should consider and provide sufficient support; the UKVI have provided useful information on their website on the EUSS and a [toolkit](#) for employers as a useful resource to signpost employers when communicating with their EU population.

- **Check or get a sponsor licence:** Since January 2021, it is a mandatory requirement for every migrant national requiring a work visa to have a job offer and a sponsoring employer.

Sponsoring organisations will need a UKVI approved sponsor licence before they are able to sponsor or offer a job to a migrant worker. Therefore, organisations who do not already hold a licence should really consider getting one before they can recruit any non-UK nationals. Employers may have avoided this so far as they have needed to recruit migrant workers, however, will now have to consider this for all overseas talent.

- **If employer already has a licence:** Likely to be making greater use of it from January 2021. Good practice to Health check the licence to ensure immigration processes and procedures are sufficiently robust and licence holders are aware of their compliance duties and that they are adhering to them. They must do so to maintain their licence and avoid losing it as the UKVI do audit licence holders and with the increase in licence holders from January 2021, compliance audits are also likely to increase.

- **Right to work checks & prevention of illegal working:** Right to work checks will continue the same way for EU nationals from January 2021 until June 2021, i.e. still check passport and EU ID card. It is not clear what will happen after this date.

The UKVI link [states](#) employers should continue to check the same way until June 2021 before employment commences and if carried out properly, it will give a statutory excuse against potential illegal employment where checks were carried out according to the employer guidance linked below. Where a compliant right to work check is not carried out before the employment starts, employers can be subject to a civil penalty or criminal prosecution.

Furthermore, the right to work check guidance at Annex B section 8 (page 37) in the link [here](#) confirms this. There is no requirement for retrospective checks to be undertaken on EU, EEA or Swiss nationals who were employed on or before 30 June 2021.

The UKVI are not asking employers to check the status of EU nationals under the EUSS and there is a duty not to discriminate against EU nationals, therefore employers:

- Cannot require they inform employer of EUSS application or outcome;
- Cannot make offer of employment or continue employment depending of an application being made.

Any communication to employees needs to keep this in mind and be sensitive and non-discriminatory.

New guidance on how to conduct right to work checks on EU, EEA or Swiss nationals after 30 June 2021 will be issued in advance of this date.

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