

This document was updated on 16th June 2021. [Please see updated information in blue.](#)

This document has been prepared following the recent publication by the Home Office of the new immigration rules for the UK's points-based system (to also be used for new EU entrants to the UK wishing to work in the UK from 1st January 2021) and aims to provide practical guidance for employers on what they should be doing now and in the coming months if they wish to continue to employ employees [who are EU citizens with and without settled status](#).

1. Background

Under the EU Settlement Scheme, EU citizens [who were residing](#) in the UK by 31st December 2020 can apply for status to continue residing in the UK after 30th June 2021.

EU citizens should have lodged their application to remain in the UK by 30th June 2021. [If the deadline is missed then the individual will become unlawfully resident in the UK from 1st July 2021. The Home Office have said that they will consider late applications from people who miss the deadline for a “good reason”. The Home Office has provided some examples of good reasons for missing the deadline, such as children whose parent or guardian do not apply on their behalf, those in abusive or controlling relationships who are prevented from applying or accessing the documents that they need to do so and those who lack the physical or mental capacity to apply. The Home Office may not accept an individual’s reason for missing the deadline so EU Citizens who wish to remain in the UK from 1st July 2021 are strongly advised to apply for settled status immediately.](#)

Under the EU Settlement Scheme, where the EU citizen had been a resident in the UK for five years (as at 31st December 2020), they will normally be allowed to stay indefinitely by being granted “**Settled Status**”, also referred to as “indefinite leave to remain”.

EU citizens who at the 31st December 2020 were already living in the UK but had not been resident in the UK for five years at 31st December 2020 are eligible for “**Pre-Settled Status**”, also referred to as “limited leave to remain” enabling them to stay in the UK until they have resided in the UK for five years at which point they can apply for “**Settled Status**”.

If an EU citizen chooses to apply for settled status, it is significant to note that they do not have to demonstrate that they have been working, studying or economically self sufficient for five years as is currently the case for an EU citizen to acquire “Permanent Residence” status. They just have to show that they have been resident in the UK for a continuous five year period.

EU citizens with settled status or pre-settled status have the same rights to work in the UK as they did before the UK left the EU as well as access to public services such as health care, schools, public funds and pensions.

Subject to identity and criminal record checks, EU citizens who have been granted pre-settled status will be given five years pre-settled status but will be eligible to apply for settled status on completion of five years continuous residence in the UK.

The following individuals need to apply for either settled or pre-settled status:

- EU and EFTA citizens

- Family members of EU and EFTA citizens who are not themselves EU and EFTA citizens

The above should apply even if they...

- Were born in the UK but are not a British citizen
- Have a UK “Permanent Residence” document (referred to above)
- Are a family member of an EU or EFTA citizen who does not need to apply
- Have a British citizen family member

Those with “Indefinite Leave to Enter the UK” or “Indefinite Leave to Remain in the UK” or British or Irish citizenship do not need to apply under the Settlement Scheme.

To obtain settled or pre-settled status, the EU citizen needs to:

- Prove their identity (normally using their passport)
- Complete a short online application
- Confirm their residency in the UK by providing their National Insurance Number (or alternative prescribed documents)
- Declare any criminal convictions

EU citizens who have been granted “Settled Status” are able to apply for British citizenship immediately if they have lived in the UK for a continuous period of three years and are the spouse or civil partner of a British citizen.

There is a new “frontier worker” scheme for those who work in the UK but live elsewhere. Frontier workers who were already working in the UK prior to 31st December 2020 can apply for free for a frontier worker permit, and will need a permit to continue to work in the UK from 1st July 2021. Individuals who were not working in the UK prior to 31st December 2020 will need to apply for a visa in line with any other worker coming to the UK.

2. Employing EU Nationals who were NOT already living in the UK prior to 1st January 2021

An EU citizen who entered the UK on or after 1st January 2021 will need to be sponsored by their employer under the UK’s points-based system. The current points based system (for employing non EU nationals) has been adapted and a summary of the key changes is provided below.

For UK employers wishing to employ EU citizens who were not resident in the UK prior to 31st December 2020, employers will need to have gained Home Office approval to hold a sponsorship licence, paid the relevant fees and will be subject to the existing stringent audits by the UKVI to maintain their sponsorship licence.

3. The modifications made to the UK points-based system – a summary

It is important to remember that the UK points-based system does **not** apply to EU citizens who were already resident in the UK prior to the 31st December 2020. However, they will only be able to continue residing and working in the UK if they have been granted either “settled status” or “pre-settled status” by 30th June 2021. [EU Citizens who are ineligible for settled status will need to obtain a visa to be able to live and work in the UK.](#)

The key changes to the UK points system are as follows...

- The new scheme is an adaption of the existing Tier 2 points -based system. Employers who do not already have a sponsorship licence are advised, (if they wish to sponsor new entrant EU citizens) to apply for their licence as soon as possible. Employers who already hold a Tier 2 (General) sponsor licence were automatically granted a new “Skilled Worker” licence when the system launched.

The employer’s cost to obtain a sponsorship licence is as follows...

| Type of licence | Fee for small or charitable sponsors | Fee for medium or large sponsors |
|-----------------|--------------------------------------|----------------------------------|
| Tier 2 | £536 | £1,476 |

The cost to sponsor a single candidate is made up of the following three components...

a) Immigration Skills Charge (effective 1st January 2021)

| Period | Small or charitable sponsors | Medium or large sponsors |
|--------------------------|------------------------------|--------------------------|
| First 12 months | £364 | £1,000 |
| Each additional 6 months | £182 | £500 |

b) Health Surcharge (effective 27th October 2020)

The Immigration Health Surcharge increased from £400 a year to £624 a year per sponsored employee.

c) Certificate of Sponsorship Fee

The certificate of sponsorship fee is £199 per applicant.

Total Cost for Five Year Sponsorship

The employer’s cost for employing an EU citizen who does not have “Settled Status” or “Pre-Settled Status” (for a medium or large employer) excluding any contribution the employer may wish to make to the “application fee”, for the five year period (assuming the EU citizen continues to work for the employer until they can obtain British citizenship) will be at least £8,300 based on the current rates above.

- The resident labour market test (RLMT) [which was a requirement of the old points based immigration system has been removed](#). Positions no longer need to be advertised first to show that there are no suitable candidates already living in the UK who have applied and are capable of fulfilling the role.
- The general salary threshold under the new Skilled Worker route has been reduced from £30,000 to £25,600. [However, if the role is on the skilled shortage list, the applicant has a PhD in a subject relevant to the job or the applicant is a new entrant the salary threshold level will be a lower limit of £20,480. A new entrant is defined as a candidate who is switching from a student or graduate](#)

visa to a skilled worker visa, is under the age of 26 on the date of application or is working towards recognised professional qualifications (subject to eligibility criteria).

- The £35,800 salary threshold for “Indefinite Leave to Remain” has been removed.
- The skills threshold under the new Skilled Worker route has been reduced from RQF 6 (graduate and above) to RQF3 (A level/equivalent and above).
- Applicants need to demonstrate that they have a job offer from an approved sponsor; that the skills threshold is at least RQF3 and they speak English.
- The 12 month “cooling off period” and six-year maximum length of stay has been removed.
- The cap on the number of Tier 2 (General) visas granted each year (currently 20,700) has been removed.
- There is no general low-skilled or temporary work route. Assuming the minimum salary threshold of £25,700 and skills level are not met, this will have a significant impact on businesses heavily reliant on low paid, low skilled labour.
- The points-based system is now open to applicants.
- There are other visa routes that could be used to work in the UK. These include:
 - Intra-Company Transfers and Intra-Company Graduate Trainees – accommodates temporary moves for workers of international companies to move between branches
 - International Agreement - for those coming to provide a service covered under international law
 - Creative - for applicants in the creative industry to enter the UK for contracts of up to 12 months
 - Charity – for applicants to enter the UK to undertake unpaid voluntary work for a registered UK charity advancing the charity’s primary purpose
 - Ministers of Religion and Religious Workers – includes a longer term visa for faith leaders and a temporary short-term visa for those undertaking non-pastoral roles supporting the activities of religious institutions
 - Sports – includes both temporary and long-term arrangements for professional sportspeople
 - Youth Mobility Scheme – temporary route for young people from participating countries, valid for up to two years
 - Government Authorise Exchange – temporary route to undertake training and work experience

4. What we need to be doing now ...

We suggest the following steps are taken for employers who have EU citizens working within their organisation:

If you are considering employing EU citizens direct from the EU

- Where possible, ensure that any new EU citizen employed by you was resident in the UK before 31st December 2020
- Decide whether it is strategically necessary for your organisation to apply for a Sponsorship Management Licence, if the roles you are likely to need to resource meet the minimum requirements (in particular salary and skill levels) and you do not believe you will be able to fulfil your requirements from within the resident labour market. Consider the financial as well as operational impacts.

- Obtaining a Sponsorship Management Licence requires in depth information to be provided and can take four to six weeks to obtain. This is likely to become extended if a large number of employers submit applications.

If you wish to ensure existing EU citizens working for you who were already residing in the UK on 31st December 2020 have the right to work after 30th June 2021

- Continue to communicate with existing EU citizens about the need to apply for pre settled or settled status. **The deadline to apply is 30th June 2021, and therefore to avoid becoming unlawfully resident EU citizens must submit their applications as soon as possible. A draft communication has been prepared and is set out below. Please speak to your HR contact if you would like the communication to be issued through Cezanne.**
- Employers must not require EU citizens **who were employed before 1st July 2021** to prove they have obtained either settled status or pre-settled status.
- Where EU citizens voluntarily offer confirmation of their settlement status under the EU Settlement Scheme this can be recorded but not actively sought.

If you wish to employ EU citizens from 1st July 2021

- From **1st July 2021** Irish citizens can continue to use their passport or passport card to prove their right to work. All other EU citizens will no longer be able to use their passport or national identity card to prove their right to work. You'll need to check their right to work online using a share code, provided to you by the employee, and their date of birth. You can also check someone's original documents instead if they do not have a UK immigration status that can be shared digitally – we are awaiting further guidance on the original documents that will be accepted.
- Whilst employers will from **1st July 2021** need to ask applicants for roles if they have settled status or pre-settled status (or be prepared to sponsor them if they do not), **they must not carry out retrospective checks on existing employees. Where an EU citizen starts work before 30th June 2021, employers will not be fined if they do not have settled status, providing the current right to work checks are completed by the employer.**

Where an employer **knowingly** employs someone who arrived in the UK from 1st January 2021 and does not have the right to work under the points scheme or under the EU Settlement Scheme, employers should not offer employment, to avoid financial penalties or risking the suspension of their Sponsorship Licence if they have one. Employers are not required to carry out retrospective checks on existing employees, but if an employer becomes aware that an employee has not applied for settled status ahead of the 30th June deadline, then the employer cannot lawfully continue to employ that individual. Specific advice should be sought in these circumstances.

5. Next steps

A copy of our **updated HR Made Simple Guidance for Managers** should be shared with line managers reminding them of the EU Settlement Scheme; the restrictions on employing EU nationals going forwards; key dates and what they should/should not be asking at interviews (or of existing employees) to avoid potential discrimination claims. Care should be taken in rejecting EU citizen applicants purely on the grounds associated with their nationality to avoid discrimination claims as the “high cost of sponsorship only” argument has not been tested at employment tribunal. **While sponsorship can be expensive, the added cost alone may not be a sufficient excuse to avoid a discrimination claim. Courts**

and tribunals will examine factors such as the financial pressures faced by the employer and whether the actions taken were proportionate, in assessing whether the discrimination complained of may be legitimately justified.

Draft Communication to Employees

Dear Colleague,

The deadline for EU Citizens to apply for settled status is now almost upon us. Our guidance document is attached as a reminder of what to do if this affects you. If you miss the deadline without a good reason then you may no longer have the right to live and work in the UK from 1st July, so if this affects you and you have not yet applied please read the attached and make your application as soon as possible. Remember you may also need to make an application for your children.

If you have any questions or concerns please contact your line manager in the first instance.

Human Resources