



# Employing foreign nationals following Brexit

Preventing People Problems

# Employing foreign nationals following Brexit

There's lots to consider when taking on staff, from job specifications to interviewing. One task that has always been there but has got more complicated since Brexit, is checking that someone has a right to work in the UK – either by being a British citizen or a qualifying overseas national.

The rules have changed significantly, no longer giving newly arriving EU citizens an automatic right to work. Instead, there is a points-based immigration system with a few fast-track options which supplement it.

For EU citizens already settled in the UK before Brexit, an exemption scheme called the EU Settlement Scheme is in place.

## The EU Settlement Scheme

In 2019 the Home Office launched the EU Settlement Scheme. This allowed EU citizens already living in the UK to apply for permanent residency after Brexit. As of June 2021, over 5.4 million people had applied.

The final deadline for applications was 30th June 2021. However, the Home Office will consider late applications if there is a good reason for the delay. More information is available on the [government website](#).

This is how the straightforward application process works.

Applicants are required to scan the biometric chip on their EU ID card and then complete an online form. A postal option is also available. There are three main criteria that every applicant must meet:

- They must be able to prove their identity.
- They must be able to prove that they currently reside in the UK.
- They must pass a criminal record check. (This only applies to major offences such as terrorism or organised crime. Minor offences will not affect the application).

Successful applicants are granted one of two residency statuses:

### Settled status

EU citizens who were resident in the UK for five continuous years before 31st December 2020 will receive settled status. This allows them to remain in the UK indefinitely and apply for British citizenship if they wish. Settled status is revoked if a person spends more than five continuous years outside the UK.

### Pre-settled status

EU citizens who started living in the UK before 31st December 2020 but have been here for less than five years will be granted pre-settled status. This allows them to stay in the UK for a further five years and apply for settled status after five continuous years of residence.

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## Employer obligations under the EU Settlement scheme

Broadly speaking, as an employer you should not get involved in the EU Settlement Scheme:

- You are not expected to monitor the settlement status of your staff. However, it is a good idea to make employees aware of the rules and direct them to relevant government resources. For example, you could provide posters in the workplace to publicise the scheme.
- You should not ask employees about their settlement status, and they are not obliged to inform you of their progress.
- If you are taking applications for a new position, you must not discriminate based on settlement status.
- Note that Irish nationals do not need to apply for settlement in the UK.

## Become a sponsor to hire overseas nationals

Under the new system, you will have to [apply for a sponsor licence](#) for any overseas workers you wish to employ (excluding those from Ireland). This can be done via the gov.uk website and takes about 30 minutes. The sponsorship fee is typically £536 per worker for smaller companies, or £1,476 for larger companies. This fee applies even if you don't end up employing the person you are sponsoring.

## Right to work

Right to work checks are long established, but COVID sparked some modifications to the way you carry them out. Temporarily you could do it via video call and scanned documents, but from 1st September 2021 full checking is required as outlined below.

EU nationals who have been granted settled or pre-settled status will automatically receive the right to work in the UK. For those who moved to the UK on or after 1st January 2021, it is more complicated.

New recruits must now demonstrate their right to work by proving their immigration status rather than their nationality. This can be done through the government's [online right to work checking service](#).

Irish nationals can continue to freely enter, live and work in the UK and do not need any explicit permission such as a visa to do so.

Further guidance can be found in the Understanding your right to work in the UK: EU, EEA and Swiss [citizens leaflet](#) available on the government website.

## Right to work obligations for employers

Unlike the EU Settlement Scheme, right to work legislation requires you to take certain actions. You must check that anyone recruited after 1st July 2021 has the right to work in the UK. Failure to comply can result in a fine of up to £20,000 for each illegal employee.

This can be done by using the [Home Office online system](#) if the candidate has given you a share code, or by thoroughly checking physical documentation. When checking a physical document you should see that photographs and dates of birth are consistent and that any time-limited permissions have not expired. You must make a good quality copy.

Examples of acceptable documents include a passport to prove British or Irish nationality, or for most foreign nationals it will be a biometric immigration document, as it is immigration status rather than nationality that is important. A full list of the exact government requirements can be found [here](#).

You are not required to carry out retrospective checks on EU workers employed before 1st July 2021.

## Points-based immigration system

The points-based immigration system treats EU and non-EU citizens equally.

Workers from overseas must meet certain criteria for which they are awarded points.

A total of 70 points are needed to qualify. 50 of these points come from meeting mandatory criteria: a skilled job offer from an approved sponsor and speaking English at the required level. The other 20 are tradeable, meaning that they can be obtained in a number of ways.

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Characteristics	Mandatory/Tradeable	Points
Offer of job by approved sponsor	Mandatory	20
Job at appropriate skill level	Mandatory	20
Speaks English at required level	Mandatory	10
Salary of £20,480 to £23,039 or at least 80% of the going rate for the profession (whichever is higher)	Tradeable	0
Salary of £23,040 to £25,599 or at least 90% of the going rate for the profession (whichever is higher)	Tradeable	10
Salary of £25,600 or above or at least the going rate for the profession (whichever is higher)	Tradeable	20
Job in a shortage occupation as designated by the Migration Advisory Committee	Tradeable	20
Education qualification: PhD in a subject relevant to the job	Tradeable	10
Education qualification: PhD in a STEM subject relevant to the job	Tradeable	20

There are several fast-track immigration routes available:

- **Skilled worker route.** This applies to skilled workers who have a job offer from an approved sponsor. To qualify for this route, employees must have a required skill of A-level equivalent or above. They must also speak English and earn a salary of at least £25,600.
- **Highly skilled worker route.** Certain highly skilled workers can enter the UK without a job offer if they are endorsed by an official body recognised by the Home Office.
- **Graduate route.** As of 1st July 2021, graduates can enter the UK if they are sponsored by a higher level institution. They can remain in the UK for two years while they look for work. If they find a skilled job, they can switch categories.

There are also immigration routes available for specialist occupations, students, seasonal workers and Hong Kong British nationals. More information can be found on the [government website](#).

### Hire with confidence

Employment law can be confusing at the best of times. Following Brexit it has become more complicated to hire foreign nationals.

If you're unsure about employing foreign nationals, don't hesitate to get in touch. Our experts know the law inside out and can advise you on everything from sponsoring an employee to checking their right to work.

We can work with you on a retained basis or as a one-off project.

Contact your local HR Dept office today.



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