

How to ‘Brexit-proof’ your workforce

We will obviously not be able to cover all the aspects and details of the new rules, but seek to provide headlines that you and your business can use to process these significant changes to the law and how it might effect your business.

CHECK YOUR CURRENT WORK FORCE

Europeans already here will need pre-settled or settled status

Does your current work force know what to do? Have you provided them with any information?

The **current** rules are clear: Anyone who is in the UK who is an EEA national has a right to work, and anyone who is the family member of an EEA national also does, but in the latter example an employer has a right to request further information and proof of the relationship.

31 December 2020 is the cut off point for many things, this includes any worker who is wishing to come to the UK and still use the government's EU Settlement Scheme (EUSS) which is based on the pre-existing 'Free Movement' rights.

If a European has arrived before 31 December 2020 and wishes to continue working and living in the UK then they must apply for **pre-settled** or **settled status** under the **EU Settlement Scheme**. How long you have been in the UK determines which you should apply for. If you have lived here for 5 years or longer, or rely (as a dependant) on another European who has, then you should apply for Settled status. If you have been in the UK less than 5 years then you must apply for Pre-settled status, and then after you have been in the UK for 5 years you will become eligible for Settled status.

Europeans must apply before 30 June 2021. If you are a European in the UK after 30 June 2021 without having applied under the EU settlement scheme, you will be deemed as being illegally in the UK, (unless you have come as part of the new skilled worker route).

As an employer, you have a right to ask for someone's proof of right to work. As you can probably see, after 30 June 2021 this will require more than simply a European passport or ID card, as previously.

Please note: You do not need to make retrospective checks in relation to someone's right to work. For e.g. if you have already checked they were an EU citizen before 30 June 2021.

PREPARING FOR POST BREXIT

Anyone coming to the UK from the EEA (primarily to work) will need to be sponsored under the new Skilled Worker route after June 2021

Gone are the days of people freely moving between European borders to work: All new workers from Europe will require sponsorship under the new skilled worker route. The government have launched their new Points Based System. This is much the same as the old one, but has slightly different rules in relation to salary, capabilities, qualifications etc, and it also has some requirements that are interchangeable (so for example, what you lack in salary you might make up for in degree levels).

Please note: Those who came before 30 June 2021 and have applied through the EUSS will not have physical documentation to prove their right to work, so it may require you to use the UK Visa and Immigration (UKVI) employers online checking service.

When considering whether to get a sponsor licence, you may wish to carry out a cost-benefit analysis

These are the main fees involved in sponsorship, as it stands at the moment, (all indications are that this will remain the same for the upcoming year):

- The cost of the sponsor licence itself: between £536 and £1476 depending on whether you are deemed as a small or medium/large business respectively;
- Certificate of Sponsorship (per worker) £199
- Immigration Skills Charge – as above, this drops after 12 months: For a ‘Small’ business sponsor it would be £364 dropping to £182 for every 6 further months and for a ‘Medium/Large’ sponsor it would be £1000 dropping to £500 for every 6 further months.
- After all of the above the applicant worker would apply and pay a fee for the application (these vary immensely) and a fee of £624 for every year that their visa lasts for the Immigration Health Surcharge (unless you are a skilled worker on a Health and Care visa).

Only you will know your business and know whether these sums could be part and parcel of the price of recruitment or whether they are not sustainable long term.

Is it worth getting a new ‘Points based system’ Sponsor Licence? Some other factors for your business to consider

This is a decision that has to be done very much with your business in mind: Every business has its own priorities; its own demographic of work force; its own amount of capital that it can afford to invest etc.

There are some advantages that can be seen of applying for a Sponsor Licence now, that were not there before: The amount of people within its scope is now anyone outside of the UK so it may be money better spent; The UKVI have abolished the Resident Labour Market Test, which necessitated them employing a UK or European worker as a priority; The UKVI team that operate the Sponsor Licence system will have more pressure to improve its operations and efficiency as there will be many more people using it and therefore business and industry throughout the UK will need it to work. On this basis, we would presume, the government will have mounting pressure to ensure it does just that.

Sponsor licences allow you to employ new Europeans workers after June 2021, provided the salary and level of skill for the job are high enough

The basic process of obtaining a sponsor licence are:

1. **Check your business is eligible** (this includes background checks on directors and whether you have sufficient management structure/ HR team to administer the licence);
2. **Choose between a (long term) ‘worker’ and/or ‘temporary worker’ licence.** This all depends on the duration of the work tasks you have in mind. The temporary sponsorships are for a variety of activities, from ‘creative and sporting’ (2 years) to ‘seasonal workers’ (up to 6 months).
3. **Decide who will manage the sponsor licence.** This is usually someone who is responsible for HR in any business. There are a few different roles, but the responsibilities include: keeping an eye on workers

attendance; and issuing certificates of sponsorship (see below).

4. **Apply online with your fee and supporting documents, and wait...**
5. **You are granted with an A or B rating (or refused with reason).** Those with B ratings are given the opportunity to improve, are given an improvement plan by the UKVI and can therefore upgrade to an A rating after improvements made.
6. **You should now be able to issue a Certificate of Sponsorship to a non-UK worker:** These are 'defined' or 'undefined'. Defined are for those outside of the UK, and undefined for those already in the UK (usually previously working for another sponsor or just finishing degree level study).
7. **Immigration Skills Charge** The fee you pay for this depends on the size of your business and will drop once someone has worked for you for 12 months. There are some exemptions, such as when someone comes to work for you after recently graduating from a UK university.
8. **The job offer must have suitable rate of pay and skill.** The minimum rate of pay is currently either the minimum salary (known as the 'going rate') for the occupation code relevant to their role, or the overall minimum salary for their circumstances, whichever is the highest.
9. **Once the Certificate of Sponsorship has been given to the worker (by way of a code) they apply for their skilled worker visa.**

DON'T FORGET YOUR NON-EUROPEAN WORKERS

The fines for illegal employment of non-Europeans are still alive and well

You still have a legal duty to check all non-European workers permission to work in the UK. It is easy to see that the focus on European workers may mean that some employers may take their eye off the ball in relation to their other workers. Should you need assistance with this, we offer an auditing service whereby we can check the legality of your entire workforce for a price per employee.

Please note: All policies, practices and procedures must avoid discrimination if at all possible. If you try and assist your European employers in getting them sorted legally in time for 30 June 2021, always remember you must offer this to the entire work force, unless you are only contacting those you **know** to be European.

Please do check www.gov.uk for more details and/or check in with us at Williamsons Immigration department if you want bespoke advice. We can guide you through this process and this extremely confusing time for UK business and employers.

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