

Preparing for the EU Settlement Scheme **application deadline**

And the implications for right to work checks



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Introduction and background

The [EU Settlement Scheme](#) remains open for European Economic Area (EEA) and Swiss nationals (referred to in this guidance as EEA nationals) and their family members, to apply to secure continued right to work in the UK. Those individuals who arrived in the UK before 11pm on 31 December 2020 have until 30 June 2021 to submit their application. Irish nationals are not required to apply for the scheme, they will continue to have the right to work.

This resource provides guidance on supporting individuals to remain in the UK as we approach the application deadline of the EU Settlement Scheme.

It identifies:

- what the implications are for the right to work in the UK and the checks you can conduct
- how you can minimise the risk of employing an individual without permission to work
- how you might approach any subsequent situations of staff with no continued right to work in the UK after 30 June 2021.

We have worked alongside the UK law firm Capsticks to prepare this guidance. However, it is important that you engage your local legal team and staff side representatives when considering your approach to preparing EEA staff for the EU Settlement Scheme application deadline. This is to ensure you are compliant with requirements under Home Office rules, data protection and other employment law. Engaging with your communications team will also be essential to ensure messages are clearly communicated and understood by all staff who may be impacted.

This guidance should be read in conjunction with the NHS Employers [Right to Work Employment Check Standard](#) and the Home Office [EU Settlement Scheme: introduction for employers](#).

You can use the checklists and scenarios included to identify gaps in your understanding or organisational approach.

Please get in touch with us at workforcesupply@nhsemployers.org to highlight any issues you are facing, or to identify any further support you would find helpful.

EU Settlement Scheme and right to work checks – key dates

- The UK left the European Union on 31 January 2020.
- The EU exit transition period and free movement ended on 31 December 2020.
- The application deadline for the EU Settlement Scheme is 30 June 2021.
- A right to work transitional period runs from 1 January 2021 to 30 June 2021, during this period employers can continue to accept a passport or national identity card from EEA nationals as evidence of right to work. Employers are not permitted to insist on any further information to confirm right to work during this period.
- Evidence of permission to work in the UK, other than a passport or national identity document, becomes a requirement when employing EEA nationals from 1 July 2021.
- Further right to work guidance from the Home Office is expected in spring 2021.

Understanding the rights of EEA nationals to work in the UK

Freedom of movement between the UK and EEA countries ended on 31 December 2020, at the end of the EU exit transition period. This means from 1 January 2021 EEA nationals fall into two groups:

Group one – Those living in the UK on or before 31 December 2020 (they arrived before the end of the EU exit transitional period). People in this group are currently able to travel in and out of the UK without a visa, but they must apply for settled or pre-settled status under the EU Settlement Scheme by 30 June 2021 in order to have continued permission to live and work in the UK from 1 July 2021. Your existing EEA staff will most likely fall into this group. New EEA recruits could also fall into this group if they were already living in the UK prior to the 31 December 2020.

Group two – Those who have moved or are moving to the UK on or after 1 January 2021. People in this group must have a visa under the new points-based immigration system to work in the UK. New EEA recruits to your organisation could fall into this group.

While it is important to be aware of the different arrangements based on the individual's arrival date in the UK, as we approach the 30 June 2021 application deadline for the EU Settlement Scheme, it is imperative that your employment policies and practices continue to adhere to the principles of the [withdrawal agreement](#) on the fair treatment of EEA nationals.

This means that until 30 June 2021, transitional arrangements are in place for right to work checks to ensure that both prospective and current employers do not discriminate against EEA nationals. You cannot make an offer of employment, or continued employment, dependent on an individual having made an application to the EU Settlement Scheme. As such, all EEA nationals can continue to evidence their right to work by showing a passport or national identity card and you are not permitted to insist on any further information to confirm right to work from existing staff or new recruits until after 30 June 2021.

You will also find that until the 30 June 2021, when you use the Home Office Employer Checking Service to check a settled status share code, it will confirm right to work but will not differentiate between those granted pre-settled or settled status. Provided that you have carried out a valid right to work check in line with Home Office guidance, you will have a continuous statutory excuse against liability for a civil penalty in the event that the employee is later found not to have the right to work.

Preparing for the EU Settlement Scheme deadline

On the approach to the 30 June 2021 application deadline for the EU Settlement Scheme, there are preventative actions you can take to avoid situations where existing and new EEA staff find themselves without permission to work in the UK from 1 July 2021.

New EEA recruits

From 1 January 2021 until 30 June 2021, transitional arrangements are in place for right to work checks for EEA nationals. This means that EEA nationals you recruit during this grace period can continue to evidence their right to work by showing a passport or national identity card. You are not permitted to insist on any further information to confirm their right to work. By seeing, authenticating, and recording either a passport or national identity card, you will have a statutory excuse against a civil penalty if you were later found to be employing an individual without permission to work, according to [Home Office rules](#). It is important that this check is done at the pre-employment stage.

If an individual volunteers information about their immigration status and you can verify this through the preemployment checking process, you can record this in the electronic staff record (ESR) or other monitoring system.

We understand that some employers may have concerns about employing EEA nationals during the right to work transitional period, based on only seeing a passport or national identity card. However, guidance from the Home Office is clear that if you have conducted right to work checks in line with the requirements at the time of recruitment, you will have a statutory excuse against a civil penalty for the duration of the individual's employment.

To minimise the risk to the individual you are employing, we would strongly encourage you to help EEA nationals to understand their rights to live and work in the UK during the recruitment process. To support you to do this, the Home Office has prepared an [information leaflet](#) that you can issue to individuals to help explain when, how and what they need to consider before accepting employment.

Checklist

- From 1 January 2021, you can continue to accept a passport or identity card from an EEA national as proof of right to work until 30 June 2021.
- If an EEA national volunteers information about their immigration status and this is confirmed, record this in ESR or other monitoring system.
- Issue guidance to EEA nationals during the recruitment process to help them understand if they have the right to work in the UK and the options available to them if not.

Existing EEA staff

Many employers have already been communicating to staff about the requirement to apply for the EU Settlement Scheme by 30 June 2021. Your existing eligible EEA staff must have made an application to the scheme by the deadline to continue to have permission to work from 1 July 2021.

Now is the time to keep momentum going on your communications, review your existing materials and ensure all staff and their families know about the scheme and the deadline for applying.

It will be important that your communication is clear about:

- timescales and eligibility for EU Settlement Scheme applications for EEA nationals and family members
- requirements from 1 July 2021 when permission to continue to work in the UK (other than passport or national identity card) will be required
- your approach to right to work checks and the process
- support that is available for individuals both internally and externally to make an application for the EU Settlement Scheme
- how you are recording and tracking Settlement Scheme take-up and a call for EEA staff to voluntarily share their pre-settled or settled status share code to be recorded.

To support you with your communications, the Home Office has published [communication materials](#) in 26 different European languages, with guidance on how to apply. There is also an [employer toolkit](#). You can find additional promotional material on [GOV.UK](#) including posters, social media graphics and leaflets, which you can use to raise awareness and encourage applications.

Some staff in harder-to-reach roles like estates and facilities positions, community-based staff, staff that don't work regularly or who do not have frequent access to IT, may be at a higher risk of missing information on the scheme and not applying ahead of the deadline. We suggest working with staff side representatives and local managers to help ensure the scheme is promoted widely and effectively.

Read the [NHS Employers briefing](#) on encouraging your EEA workforce to apply for the Settlement Scheme for examples of what other employers are doing to support and communicate to their EEA staff.

Checklist

Make use of the promotional material provided by the Home Office.

- Consider how you can successfully reach all staff, including those in
- harder-to-reach roles.
- Work alongside staff side representatives and local managers to promote
- the scheme far and wide.



Recording and reporting on staff settlement status

You can now record settled status on ESR, as well as report on it.

While there is no obligation currently for staff to inform you that they have applied to the scheme, or the status of their application, as part of your communications to staff you can ask them to voluntarily share their pre-settled or settled status share code with you to help track take-up of the EU Settlement Scheme. Prior to 1 July 2021 it is unlawful to discriminate against an EU national on the basis that they have not applied for settled status, so you should take care to ensure that such information does not influence any recruitment or promotion decision.

You will also find that prior to 1 July 2021, when you use the Home Office Employer Checking Service to check a settled status share code, it will confirm right to work but will not differentiate between those granted pre-settled or settled status.

Where this information is made available, the functionality within ESR will support you to record right to work information. We recommend regularly auditing records of existing staff to track local take-up of the EU Settlement Scheme. This will highlight gaps in registration numbers across your EEA workforce, help you plan your approach from the 1 July 2021 and any associated workforce risks.

Checklist

- As part of your communications about the Settlement Scheme, ask staff to consider voluntarily sharing their pre-settled or settled status share code.
- Regularly audit records of existing staff to track take-up of the EU Settlement Scheme, to evaluate the impact of your communication, to highlight gaps in registration numbers across your EEA workforce and plan for associated risks.
- Identify EEA staff and encourage applications to the EU Settlement Scheme if they have yet to apply.

Right to work checks after the EU Settlement

Scheme deadline

EEA nationals risk losing their right to live and work in the UK if they do not successfully apply to the EU Settlement Scheme by 30 June 2021 and cannot obtain an alternative visa.

The transitional period for right to work also ends after 30 June 2021, so after this date EEA nationals must be able to evidence their permission to work under either the EU Settlement Scheme or the newly introduced points-based immigration system to work in the UK.

New EEA recruits

After 30 June 2021, EEA passports and national identity cards will no longer be sufficient proof of right to work. Instead, EEA nationals you recruit will need to show evidence of their status under either the new points-based immigration system or the EU Settlement Scheme as proof of right to work, or you will be required to obtain a certificate of sponsorship for them under the new points-based system.

Irish nationals will continue to have the right to work and prove their right to work as they do now. For example, using their passport (although their family members will not).

New guidance on how to conduct right to work checks on EEA nationals after 30 June 2021 is expected to be published by the Home Office in spring 2021. We will keep you updated as and when further guidance becomes available through our [NHS Workforce Bulletin](#).

Checklist

- After 30 June 2021, passports and national identity cards will no longer be sufficient proof of right to work for EEA nationals.
- Keep up to date with the latest on right to work checks for EEA nationals using latest [Home Office guidance](#).
- Sign up to receive the [NHS Workforce Bulletin](#) for more information on future requirements for right to work checks as it becomes available.

Existing EEA staff

Current Home Office guidance states that there will be no requirement for retrospective checks to be undertaken on EEA nationals who were employed on or before 30 June 2021. You will maintain a continuous statutory excuse against a civil penalty for the duration of the individual's employment, providing the initial right to work checks were undertaken prior to employment and in line with [Home Office guidance](#) at the time. Operating a policy of conducting retrospective right to work checks on all existing EEA staff could be discriminatory on grounds of race.

However, if you have any concerns that the checks carried out prior to employment were not compliant; if right to work status has not been ascertained and recorded for any staff; or if you have reason to believe that the individual's immigration status has changed, it would be sensible to redo these to maintain a statutory excuse. If an EEA national is unable to provide you with any acceptable documents because they have an outstanding application under the EU Settlement Scheme or the new points-based immigration system, you should contact the [Home Office Employer Checking Service](#).

Checklist

- Retrospective checks will not be a requirement for EEA nationals who were employed on or before 30 June 2021.
- You will maintain a continuous statutory excuse against a civil penalty, providing the initial right to work checks were carried out prior to employment and in line with [Home Office guidance](#) at the time.
- Consider redoing right to work checks after 30 June 2021 if you have any concerns that initial checks carried out prior to employment were not compliant; if nationality or right to work status was not ascertained and recorded; or if you have reason to believe that the individual's immigration status has changed.



Questions and answers

To help you prepare further, we have answered some key questions on the EU Settlement Scheme and right to work checks.

What do I need to do if I am employing an EEA national between 1 January 2021 and 30 June 2021?

Help the individual to understand their rights to live and work in the UK during the recruitment process. To support you to do this, the Home Office has prepared an [information leaflet](#) you can issue to individuals to help explain when, how and what they need to consider before accepting employment.

In the right to work transitional period between 1 January 2021 and 30 June 2021, EEA nationals can continue to prove their right to work by showing a passport or national identity card. During this period, you are not permitted to insist on any further information to confirm right to work. By seeing, authenticating, and recording either a passport or national identity card at pre-employment stage, you will have a statutory excuse if you were later found to be employing an individual without permission to work, according to Home Office rules.

Where an individual volunteers information about their immigration status and you can confirm this through the pre-employment checking process, you can record this in ESR or other monitoring system.

What is settled status?

Individuals will usually receive settled status if they started living in the UK by 31 December 2020 and can prove they have lived in the UK for a continuous five-year period (known as continuous residence). Individuals can stay in the UK as long as they want to if they have settled status.

What does it mean if an employee only has pre-settled status?

Pre-settled status is granted for five years from the date the application is approved.

Individuals who have been granted pre-settled status will be able to apply for settled status once they can evidence that they have been in the UK for a period of five continuous years. It will be the individual's responsibility to ensure that they apply for an updated status once they are eligible. Where you are aware that an individual has pre-settled status, and of the date it expires, it would be good practice to remind the individual that they need to make an application for settled status and to redo the right to work check at that point to maintain a statutory excuse.

If an individual does not meet the requirements for settled status, they will need to apply for an alternative visa before their pre-settled status expires, otherwise they will lose the right to live and work in the UK.

Can employers insist that their employees apply for settled or pre-settled status?

You can help and offer encouragement to staff to apply for settled or pre-settled status under the EU Settlement Scheme as part of regular communications but cannot insist that they do so and cannot insist on receiving proof of status.

As part of your communications to existing staff you can ask them to voluntarily share their pre-settled or settled status with you to help track take-up of the EU Settlement Scheme. Where this information is made available, the functionality within ESR will help you to raise awareness with relevant staff and record right to work information. We recommend regularly auditing records of existing staff to track local take-up of the scheme and this will also highlight gaps in registration numbers across your EEA workforce and help you plan for associated risks.

When using the Home Office Employer Checking Service, will the share code show whether the EEA national has pre-settled or settled status?

Until the end of the grace period (30 June 2021), the Home Office's Employer Checking Service will confirm right to work but will not differentiate between those granted pre-settled or settled status. Provided that you have carried out a valid right to work check prior to employment in line with Home Office guidance, you will have a continuous statutory excuse against liability for a civil penalty in the event that the employee is later found not to have the right to work.

After 30 June 2021, how can I check if an EEA national has the right to work in the UK?

After 30 June 2021, EEA passports and national identity cards will no longer be sufficient proof of right to work. Instead, EEA nationals will need to show evidence of their status under either the new points-based immigration system or the EU Settlement Scheme.

Settled and pre-settled status are a digital-only status, meaning that no residence card or passport stamp is issued and a status outcome letter is not proof of status. The Home Office is pioneering the digital-only system with the EU Settlement Scheme. Employers can check an individual's status by using the online checking service. In addition, individuals can generate a digital code and email it to their employer or prospective employer.

However, an individual's non-EEA family members will continue to be issued biometric residence permits. Some family members have a residence permit under the old EEA regulations and they will be reissued a new residence permit under the EU Settlement Scheme once they have been granted settled or pre-settled status.

Irish nationals will continue to have the right to work and prove their right to work as they do now. For example, using their passport (although their family members will not).

New guidance on how to conduct right to work checks for EEA nationals after 30 June 2021 is expected to be published by the Home Office in Spring 2021. We will keep you updated as and when further guidance becomes available through our [NHS Workforce Bulletin](#).

Should employers be asking all existing EEA employees to re-prove their right to work after 30 June 2021?

Current Home Office guidance states that there will be no requirement for retrospective checks to be undertaken on EEA nationals who were employed on or before 30 June 2021. You will maintain a continuous statutory excuse against a civil penalty for the duration of the individual's employment, providing the initial right to work checks were undertaken prior to employment and in line with [Home Office guidance](#) at the time. Operating a policy of conducting retrospective right to work checks on all existing EEA staff could be discriminatory on grounds of race.

If you have any concerns that the checks carried out prior to employment were not compliant, if right to work status has not been ascertained and recorded for any staff, or if you have reason to believe that the individual's immigration status has changed, it would be sensible to redo these to maintain a statutory excuse. If an EEA national is unable to provide you with any acceptable documents because they have an outstanding application under the EU Settlement Scheme, or the new points-based immigration system you should contact the [Home Office Employer Checking Service](#).

If an employer chooses to ask existing EEA employees to re-prove their right to work after 30 June 2021, how can this be done in a manner that reduces the risk of a discrimination claim?

Asking EEA staff to re-prove their right to work after 30 June 2021, where you already have a valid right to work check on file, could lead to a claim of discrimination on grounds of race. Provided that you have carried out a valid right to work check prior to employment, this will give you protection in the event that an employee is subsequently found not to have obtained (pre) settled status and is therefore working illegally. If you do choose to carry out retrospective checks, we would recommend either checks are carried out on the whole workforce, or that checks are done on all those employees who have not had right to work checks carried out for a fixed period e.g. two or five years. This would minimise the risk of a race discrimination claim. Similarly, the risk of a claim is reduced if you continue to follow any established policy for checking information provided as part of an earlier right to work check.

The Home Office ['Code of practice for employers: Avoiding unlawful discrimination while preventing illegal working'](#) provides further guidance on how to avoid unlawful discrimination when conducting right to work checks.

How should we handle a situation whereby an EEA employee has not applied to the Settlement Scheme by the deadline?

The priority now is on the preventative actions that you can take to limit the chances of this situation arising in your organisation. Many employers have already been communicating to staff about the requirement to apply for the EU Settlement Scheme by 30 June 2021. Now is the time to keep momentum going, review your existing materials and ensure all staff and their families know about the scheme and the deadline for applying.

As part of your communications to staff, you can ask them to voluntarily share their pre-settled or settled status with you to help track take-up of the EU

Settlement Scheme. Where this information is made available, the functionality within ESR will help you to record right to work information. We recommend regularly auditing records of existing staff to track local take-up of the EU Settlement Scheme and this will highlight gaps in registration numbers across your EEA workforce and help you plan for associated workforce risks.

If you are made aware that an EEA employee has not applied to the Settlement Scheme by the deadline, this situation must be handled sensitively. You should seek to establish their reasons for not making the application and support them to contact the Home Office, ensuring that this is recorded on your system and followed up. Also ensure the individual is aware of all the support that is available to them. For example, through local trade union representatives who can provide access to immigration advice and other professional support services.

We understand from the Home Office that there is a commitment to handling such cases with a flexible approach, although it remains to be seen how such cases will be treated in practice. Where there are reasonable grounds for an application not to have been submitted, there will be further opportunity, indefinitely, to apply to the scheme but we are not yet certain if there will be the option to continue to allow the individual to work while their case is being considered.

The Home Office have published guidance to their staff on reasonable grounds for a late application, examples of reasonable grounds include, but are not limited to:

- Where a person had a serious medical condition, which meant they were unable to apply by the relevant deadline
- Someone who is isolated, vulnerable or did not have the digital skills to access the application process
- Where a person was unable to apply by the relevant deadline for compelling practical or compassionate reasons, including in light of the COVID-19 pandemic.

See the full guidance 'Making an application: deadline' in 'EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members' guidance on [GOV.UK](https://www.gov.uk).

If the individual's late application is not granted, or they do not make an application, then it is likely that you will be committing an offence by continuing to employ them.

Further guidance on how to conduct right to work checks for EEA nationals after 30 June 2021, and on handling situations whereby an individual has not applied by the deadline, is expected to be published by the Home Office in spring 2021. We will keep you updated as and when further guidance becomes available through our [NHS Workforce Bulletin](#).



Right to work check scenarios

Existing EEA staff with settled status

An EEA member of staff who has been in your employment prior to 31 December 2020 has successfully applied to the EU Settlement Scheme. They have voluntarily given you their share code which you have used to confirm their status on the Home Office online right to work checking service and recorded on ESR. The individual has the right to work and remain in the UK for as long as they like with settled status. No further right to work checks are required.

Existing EEA staff with pre-settled status

An EEA member of staff who has been in your employment prior to 31 December 2020 has been granted pre-settled status through the EU Settlement Scheme. They have voluntarily given you their share code, which you have used to confirm their status on the Home Office online right to work checking service and recorded on ESR. The individual has the right to work and remain in the UK for a further five years from the date they were given pre-settled status. The individual will be able to apply for settled status once they can evidence that they have been in the UK for a period of five continuous years. It will be the individual's responsibility to ensure that they apply for an updated status once they are eligible.

Where you are aware that an individual has pre-settled status, and of the date it expires, it would be good practice to remind the individual that they need to make an application for settled status and to redo the right to work check at that point to maintain a statutory excuse.

Existing EEA staff with unknown settled status

An EEA member of staff who has been in your employment prior to 31 December 2020, has not informed you either way if they have secured pre or settled status. When the individual was recruited you performed and recorded all the necessary right to work checks (that is, a passport or national identity card). You cannot require the member of staff to confirm their status, but you can signpost them to Home Office resources, encourage them to apply if they are eligible, and prompt them to voluntarily share their status with you. No retrospective right to work checks are required after 30 June 2021.

However, if you did have any concerns that the checks carried out prior to employment were not compliant, if right to work status has not been ascertained and recorded, or if you have reason to believe that the individual's immigration status has changed, it would be sensible to redo these to maintain a statutory excuse.

Existing EEA staff with no pre or settled status

An EEA member of staff who has been in your employment prior to 31 December 2020 has not informed you either way if they have secured pre or settled status. When the individual was originally recruited you performed and recorded the necessary right to work checks (that is, a passport or national identity card), and therefore you have a statutory excuse from a civil penalty. No retrospective checks are required after 30 June 2021.

However, at some point it comes to light that the individual was unaware of the scheme and did not apply by the deadline of 30 June 2021. Situations where you are made aware that an EEA employee has not applied to the Settlement Scheme by the deadline must be handled sensitively. You should seek to establish their reasons for not making the application and support them to contact the Home Office, ensuring that this is recorded on your system and followed up.

We understand from the Home Office that there is a commitment to handling such cases with a flexible approach, although it remains to be seen how such cases will be treated in practice. Where there are reasonable grounds for an application not to have been submitted, there will be further opportunity, indefinitely, to apply to the scheme but we are not yet certain if there will be the option to continue to allow the individual to work while their case is being considered. If the individual's late application is not granted, or they do not make an application, then it is likely that you will be committing an offence by continuing to employ them.

The Home Office have published guidance to their staff on reasonable grounds for a late application. See 'Making an application: deadline' in 'EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members' guidance on [GOV.UK](https://www.gov.uk/guidance/eu-settlement-scheme-eu-other-eea-and-swiss-citizens-and-their-family-members).

EEA staff employed during the right to work transitional period

You employed an EEA national between 1 January 2021 and 30 June 2021. You performed and recorded the necessary right to work checks (that is, a passport or national identity card) and therefore you have a statutory excuse from a civil penalty. No retrospective right to work checks are required after 30 June 2021.



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Contact us

✉ enquiries@nhsemployers.org
🌐 www.nhsemployers.org
🐦 [@nhsemployers](https://twitter.com/nhsemployers)

NHS Employers
2 Brewery Wharf
Kendell Street
Leeds
LS10 1JR

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