

Cavendish Coalition webinar: Ensuring the settled status and right to work of social care and NHS staff, Frequently Asked Questions

Thank you to everyone who attended the *Ensuring the settled status and right to work of social care and NHS staff webinar* on 26 May 2021.

Attendees asked many questions during the event, some of which have been answered in previous webinars, events, or publications.

Please see the following links for additional information on some of the most frequently asked questions regarding the EU Settlement Scheme and right to work checks.

- [Preparing for the EU Settlement Scheme application deadline guidance](#)
- [Preparing for the new points-based immigration system and securing EU citizen rights webinar FAQs](#)

Existing EU staff

Do we need to ask current employees for their settlement proof after 1 July? What do we need to do with employees that have not confirmed their status by 30 June? Would employers be challenged under discrimination law if we asked those individuals who have not volunteered their settled or pre-settled status during the grace period to provide this information to demonstrate their RTW?

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.

There is no mandatory requirement for employers to undertake retrospective checks on EEA citizens who were employed on or before 30 June 2021. However, we recognise that some employers may wish to conduct retrospective checks to ensure the stability of their workforce.

If an employer chooses to carry out retrospective checks, they must ensure that they do so in a non-discriminatory manner. The '[Code of practice for employers: Avoiding unlawful discrimination while preventing illegal working](#)' provides practical guidance on how to avoid unlawful discrimination when employing individuals and conducting right to work checks, as does NHS Employers' [Preparing for the EU Settlement Scheme application deadline guidance](#).

Retrospective checks are also not required if an employer has pre-settled status.

If we don't have to ask for staffs' updated status and it does turn out later down the line that they don't have the correct RTW is the Trust responsible for this?

Employers will maintain a continuous statutory excuse against a civil penalty in the event of illegal working if the initial right to work check was undertaken in line with right to work legislation and published guidance. More information is available in NHS Employers' [Preparing for the EU Settlement Scheme application deadline](#) guidance.

At what point are we expected to record the status of our employees, if at all, if in the grace period submission of these details is voluntary?

ESR has the option to record settled and pre-settled status and EU nationals can volunteer their status if they wish to do. Employers are encouraged to record any information made available to help understand potential gaps and remind other EU nationals to consider their status.

How we get help to support employees to apply EU Settlement Scheme?

NHS Employers and the Cavendish Coalition have created several resources to help support employees apply to the EU Settlement Scheme, including:

- [Guidance](#) on supporting individuals to sign up to the EU Settlement Scheme before the window for applications closes on 30 June 2021.
- [A webinar recording and FAQs](#) that discusses the new points-based immigration system, what this means for overseas recruitment, and the latest resources available and information on the EU settlement scheme.
- [A resource](#) that includes good practice examples of support NHS organisations have offered their EU staff.
- [A flowchart](#) to help your staff understand whether they are eligible for the scheme or not.

If retrospective checks on our current workforce are not applicable, how would we ever find out if it comes to light that one of our employees failed to apply?

There are multiple ways for an individual to discover they no longer have the required status. This could occur, for example, when they try to register with a doctor or dentist, try to access services of the NHS, or through a right to rent check.

If you do an ID check on your existing employee and find that they have not applied for settlement and are illegal, what should you do?

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.

More information is available in NHS Employers' [Preparing for the EU Settlement Scheme application deadline](#) guidance.

Do the Home Office propose to take any actions against individuals who have not registered with the scheme from the 1st July 2021?

EEA citizens who have not made an application under the EU Settlement Scheme (EUSS) by 30 June 2021 and do not have any other form of immigration leave will no longer have lawful status in the UK. If an individual is unable to demonstrate they have a right to work, the employer is required to take the appropriate action. This may be terminating employment or contacting the Home Office for further information.

The Home Office has outlined potential scenarios where an application has not been made to the scheme by 31 June and the implication this has on employers. Please see [Preparing for the EU Settlement Scheme application deadline](#) resource for more detail.

How long is the 'grace period' and how long will "late" applications be accepted for? Do people now arrive in the UK have the same rights as if they arrived before 31 December 2020?

The grace period will end on 30 June 2021. EEA nationals and their family members who were resident in the UK before 1 January 2021 can still make applications in some circumstances after this date. Where an EEA citizen has reasonable grounds for missing the EUSS application deadline, they will be given a further opportunity to apply.

EEA citizens who have not made an application under the EU Settlement Scheme by 30 June 2021 and do not have any other form of immigration leave will no longer have lawful status in the UK. If an individual is unable to demonstrate they have a right to work, the employer is required to take the appropriate action. This may be terminating employment or contacting the Home Office for further information.

If an individual has an outstanding EUSS application made by the 30 June 2021 deadline, employers can contact the Home Office Employer Checking Service to confirm their status.

What do we do if we started a casual workers contract in Feb 2021 with EU national, but they leave to visit their home country for a break in June 2021, returned in July 2021 - but not applied for settled status? Will they be eligible for no retrospective checks as the contract was set up before June 2021 - or will they need a new contract and settled status?

The law on RTW checks is focused on situations where there is a contract of employment. If the contract remains, then the initial RTW check is valid. It is for employers to seek their own advice upon and they may want to consider their processes to ensure that if there is any break in contract or change in role / position, they consider whether it's appropriate to re-visit the right to work check.

What happens when staff who have dual nationality and have provided their British passport, but do not want their nationality changed on their official record?

British citizens cannot apply to the EUSS because, as a British citizen, they have the right of abode in the UK and are ineligible to hold leave.

What action if any will the Home Office take to stop employees or contractors from working if they have not applied to the Scheme by 31 June?

EEA citizens who do not apply by the relevant deadline will not have a lawful status in the UK. However, where a person eligible for leave under the EU Settlement Scheme has reasonable grounds for missing the application deadline, they will be given a further opportunity to apply. The Home Office will take a pragmatic and flexible approach in considering the circumstances of each case, so that those who miss the deadline through no fault of their own can still obtain lawful status in the UK.

New EU staff – right to work checks and points-based immigration system.

When can employers expect guidance to be published on requirements for right to work checks post 30 June for those with EUSS and their family members?

Guidance on the right to work checks post-June 2021 have now been [published](#) by the Home Office.

Can an employer carry out ‘grace period’ right to checks on or before 30 June if the individual’s employment begins on or after 01 July and will they have a statutory excuse? Should a Certificate of Sponsorship be issued to EU nationals coming to the UK prior to June 30th if they can still use their passport for RTW currently?

The statutory excuse exists from the point at which the right to work check is carried out. The Home Office would expect employers to carry out checks within a reasonable timeframe of employment commencing, as people's status can change. Employers would need to either carry out the check for the statutory excuse or carry out a check in accordance with the [guidance](#) post 1 July 2021.

Besides the online checking services, is there any other way of proving whether employees have either pre or settled status?

Where granted status, it will be a digital status solely and no other document will be issued at the time of grant which confirms the status. However, non-EEA citizens who have been granted status under the EUSS may be issued an EUSS BRC.

If, after 30 June, a new employee of the Trust doesn’t submit their settled status evidence as part of their Pre-employment right to work checks, can we ask them to make a late application, and once granted can we employ them?

EEA citizens and their family members who arrived in the UK from 1 January 2021 require an immigration status to work in the UK, in the same way as other foreign nationals. They can no longer rely on an EEA passport or national identity card to prove their right to work. If an employer identifies an EEA citizen who is unable to demonstrate they have a right to work, the employer is required to take the appropriate action. This may involve not hiring the individual, contacting the Home Office to see whether they can obtain a statutory excuse and continue with the employment, or it may involve terminating the employment. The Home Office have now [published further guidance](#) for employers.

For those that don't have the pre-settled or settled status do we just start their skilled worker application?

If an individual isn't eligible for the EU Settlement Scheme, they must be sponsored through the points-based immigration system.

If you apply for a skilled worker visa – will the individual receive a Biometric Card showing their right to work?

Yes, it varies. EEA nationals who apply using the chip checker app will receive a digital status; others will receive a BRP card.

Are you able to confirm which visa is needed for domiciliary carers or live-in care staff?

There is currently no immigration route for roles under skill level RQF3. Domiciliary care workers (SOC code 6145) are not eligible under the skilled worker or health and care visa routes. Non-UK nationals can only be employed in these roles if they have existing right to work rights, such as through the EU Settlement Scheme, Youth Mobility Visa, family visa etc.

EUSS - Other

Do staff with indefinite leave to remain do they need to apply to the Scheme?

No, staff with indefinite leave to remain do not need to apply to the EU Settlement Scheme. More information on this can be found on [GOV.UK](https://www.gov.uk).

What is the definition of a 'durable partner'?

A [durable partner](#) refers to an unmarried spouse or civil partnership.

How will children evidence residency?

More detail on how children under the age of 21 can apply to the scheme is available on [GOV.UK](https://www.gov.uk).

Will the app work on iPhone?

Yes, the EU Settlement Scheme Document Checker app is compatible with Apple devices.

Would Home Office be conducting any audits?

The Home Office may audit an employer's right to work checks as part of our compliance activity for licensed sponsors.

Our understanding is that all applicants regardless of their right to work status should be treated equally. By suggesting that only jobs that HCC deem as hard to fill would potentially be discriminatory to those that are eligible for a visa but are not allowed to be recruited due to the list of hard to fill posts? This is why the resident labour market test was scrapped last year. Please clarify

The Resident Labour Market Test (RLMT) required that workers could only be sponsored if there were no suitable resident workers available. The RLMT did not apply to jobs on the shortage occupation list, meaning workers needing sponsorship could be considered equally alongside resident workers.

Under the new Skilled Worker route, the RLMT has now been removed. This means workers needing sponsorship can be considered equally alongside other candidates, regardless of whether or not the job is in a shortage occupation.

Speaker questions:

Lumi and Chris, University Hospitals Dorset NHS Foundation Trust: How can we offer support to staff if we can't identify them as we aren't allowed to ask?

Developing a dedicated group of people such as a network, which are allowed to have a voice in the trust but at the same time are independent, that staff can relate to and act as cultural translators is key.

This group must honestly and transparently work with all the departments in the trust involved in supporting the group including HR, organisational development as well as committees and boards.

The network and trust have so far used electronic media to remind all staff that this deadline is approaching. Some of the methods used to promote the network and provide support included promotion in:

- Payslips
- screen savers
- videos/ photos/ stories of support from senior management
- weekly Trust bulletin

The network also developed WRES data for 'white other' staff based on a staff survey and raise awareness of difficulties as well as success achieved as a network.

It is difficult to engage with 100% of the that are eligible for the Scheme, but the trust and network have done whatever possible to reach out to as many people as possible.