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Guide

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Immigration and Brexit: *legal guide* to managing a migrant workforce

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Immigration and Brexit: legal guide to managing a migrant workforce

Guide

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Introduction

Until June 2016, employers only needed to answer two simple questions with respect to the UK immigration policy: do prospective or current employees have the right to work in the UK and, if not, can they secure that right? From there it became a process, or a chain of processes.

The UK's EU referendum and subsequent government policy positions changed all of this. A person's right to work is still absolutely crucial, but the prospect of free movement coming to an end has added new considerations.

Employers now have other pressing concerns:

- What does Brexit mean for employees who are EEA nationals?
- How can they be given useful and reassuring information on an inherently personal and uncertain topic?
- What needs to happen so that they and their families can continue to live in the UK?
- What about employing EEA nationals in the future?

This guide has been produced to help employers understand and manage these considerations.

In *Part 1*, we provide an overview of where we are with Brexit, beginning with the government's position on EEA nationals already in the UK and our immigration system after Brexit. At the time of writing, very little detail has been made available, so we have provided the most relevant high-level statements of policy and a timeline explaining how they track as a whole. We then set out how HR teams could be responding to this information and the actions they could take to prepare for Brexit.

In *Part 2*, we look at the routine but nevertheless vital issue of the day-to-day management of a migrant workforce. From ensuring prospective hires' right to work, to visa applications and compliance matters, we will cover the relevant considerations and work through sponsorship and the less well-known visa categories.

Finally in *Part 3*, we broach the crucial issue of actions for EEA nationals, most of whom will face a choice between applying for residency or citizenship before Brexit, or else making a settled or temporary status application from September 2018. The section sets out when and how they can make those applications, insofar as the policies are known.

This guide is only intended to provide high-level recommendations to employers; you should always speak to an expert adviser or refer to the law and supporting information before taking action. We nevertheless hope that this guide will help you understand the broad processes you should follow and the variety of ways you can access more information.

Terminology: EU and EEA nationals

We refer to European Union (EU) and European Economic Area (EEA) nationals interchangeably throughout this guide.

When we use the phrase EEA nationals we mean passport holders of Austria, Belgium, Bulgaria, Croatia, Republic of Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the United Kingdom.

The EEA comprises EU countries and also Iceland, Liechtenstein and Norway, which are part of the EU's single market. Switzerland is neither an EU nor EEA member but is part of the single market. This means Swiss nationals have the same rights to live and work in the UK as other EEA nationals, and as such are treated the same.

The UK Government has stated on several occasions that Brexit will mean an end to free movement when the UK leaves the EU. Ending free movement would not be confined to restricting the movements of EU nationals; it is expected to extend to the removal of free movement rights for all those treated as members of the EEA.

Part 1 – Overview

A Government position

The government is still to announce exactly how immigration will be managed after the UK leaves the EU. It is, however, possible to get some sense of its plans from a number of policy papers that have been published since the referendum vote.

(i) Overall strategy

Free movement will end. 'We will design our immigration system to ensure that we are able to control the numbers of people who come here from the EU. In future, therefore, the Free Movement Directive will no longer apply and the migration of EU nationals will be subject to UK law.'

The brightest and best. 'We will create an immigration system that allows us to control numbers and encourage the brightest and the best to come to this country, as part of a stable and prosperous future with the EU and our European partners.'

Controlling migrant numbers. 'In future we must ensure we can control the number of people coming to the UK from the EU.'

System could be more straightforward for Europeans. 'In future, we will be able to apply different immigration rules and requirements according to the UK's economic and social needs at the time reflecting our future deep and special partnership with the EU.'

(ii) EU nationals already in the UK

Certainty for EU nationals in the UK and vice versa. 'We want to secure the status of EU citizens who are already living in the UK, and that of UK nationals in other Member States, as early as we can.'

Settled status. 'Individuals who arrived in the UK prior to a "specified date" (still to be decided, but no earlier than 29 March 2017) and have accrued five years' residence would be granted "settled status" under UK law, subject to rules on criminality. The current scheme for European nationals would no longer apply.'

A staggered approach. Different rules would apply depending on whether the EU national entered the UK before or after the specified date.

EU nationals who entered before the specified date but do not qualify for settled status would be granted a temporary status to take them to five years, at which point they can apply for settled status.

Those who entered after the specified date can apply for a temporary status in order to accumulate five years in the UK, but should have 'no expectation of guaranteed settled status'.

Existing residence documents would no longer be valid. Existing residence documents obtained by EEA nationals and their family members in the UK under the current European regulations would be deemed invalid after the UK exits the EU.

A streamlined process. Existing government data, such as income records, would be used to reduce the documentary evidence required for applications under the new system.

Individuals who currently hold a permanent residence document would have to meet 'limited criteria', and the application process would be 'as streamlined as possible' for them.

Eligibility criteria would be 'tailored'. For example, the UK Government would no longer require economically inactive Europeans to show they held comprehensive sickness insurance to prove their residence.

(iii) UK immigration system after Brexit

Phase 1: Protecting EEA nationals already living in the UK. 'Our first priority is to safeguard the position of existing EU residents in the UK and UK nationals in the EU. So, the first phase of our immigration proposals was to publish our fair and serious offer on 26 June 2017.'

Phase 2: A temporary solution. 'As part of a smooth and orderly transition as we leave the EU, the second phase of our immigration proposals is based on a temporary implementation period to ensure there is no cliff-edge on the UK's departure for employers or individuals.'

People in the UK will be able to confirm their residence. 'This includes the "grace period" during which those EU citizens who arrived before [a cut-off date to be decided] will have time to obtain their documentation from the Home Office.'

There will be a new, temporary system. 'During this period there will also be a straightforward system for the registration and documentation of new arrivals (as well as for those who arrived after the specified date but before exit, if appropriate).'

Phase 3: UK's new and permanent immigration system. 'After this implementation period, we will move to the third phase which will be our long-term arrangements covering the migration of EU citizens, designed according to economic and social needs at the time, and reflecting our future deep and special partnership with the EU.'

The Migration Advisory Committee (MAC) will provide the evidence. 'The Government will want to ensure that decisions on the long-term arrangements are based on evidence. The commission that we are now asking the MAC to undertake is very much part of this.'

The government will provide the policy. 'Alongside that, the Government will be undertaking its own extensive programme of engagement and evidence gathering with all interested parties including business, industry, trades unions, educational institutions and many others, to ensure we strike a balance on future EU migration arrangements.'

Sources:

- *The Brexit White Paper, February 2017*
- *Safeguarding the position of EU citizens in the UK and UK nationals in the EU, June 2017*
- *Home Secretary letter to the Migration Advisory Committee, July 2017*

B Brexit timeline

Figure 1: Brexit timeline

UK holds **EU Referendum**

23 JUN **2016**

29 MAR **2017**

Art. 50 **Lisbon Treaty triggered**, starts 2-year countdown to EU exit

PHASE 1

UK publishes proposal to **safeguard position of EU citizens** in the UK and UK citizens in the EU

26 JUN **2017**

27 JUN **2017**

Migration Advisory Committee (MAC) asked to **investigate Brexit impact on UK labour market** and how immigration system should align with modern industrial strategy

MAC issues call for evidence

MAC may publish interim reports

4 AUG **2017**

27 OCT **2017**

Deadline for submissions to MAC call for evidence

A Home Office to start accepting **settled status applications**

B MAC expected to **publish final report**

SEP **2018**

PHASE 2

A **Temporary immigration system** for new EU entrants expected

B **2-year grace period for EU citizens** in the UK to apply for settled status or residence document

29 MAR **2019**

29 MAR **2019**

UK expected to **exit EU**

29 MAR **2021**

New permanent immigration system expected

PHASE 3

C What can HR teams do now?

Preparing for Brexit isn't easy for HR teams. There are far more questions than answers and it is still not known how EEA nationals living here will be able to register their status, let alone what the immigration system will look like after separation. In the absence of any concrete direction, many employers are doing one or more of three things:

(i) Keeping accurate records of EEA national employees

HR teams are using a variety of methods to collect accurate and useful data. That information can be used to communicate with EEA staff, to inform workforce planning, or to respond to government policy consultations.

For most smaller employers, collecting this data is as easy as walking around their offices. Larger employers are using a range of other techniques, including:

- Asking employees to update their HR records;
- Insisting on updates and tracking compliance;
- Running voluntary and mandatory surveys using software other than their HR systems;
- Auditing their HR records and checking passport copies, relying on right to work checks completed when a person began employment (see *Part 2* for more details); and
- Running 'bring your passport to work' days where managers check and take copies of employees' documents.

(ii) Workforce planning

Many businesses are thinking about how they can change the way they recruit; others are readying themselves to present a case to the Home Office when they consult on new immigration policy. An end to free movement will inevitably mean it becomes more difficult to employ EEA nationals.

(iii) Reassuring employees

Employers can help by providing useful and reassuring information to staff in a variety of ways. According to Fragomen's 2016 survey, around 80% of businesses had employees ask if they are going to have to leave the UK. Simple and useful information can reassure employees, even if it does not provide absolute certainty.

Examples of ways employers are providing their employees with information include:

- Online frequently-asked-questions documents;
- Town hall meetings that provide employees with an explanation of the law and an opportunity to ask any questions; and
- One-to-one consultations and help with filing applications to remove the risk of a mistake or delay, reduce stress for employees and add an extra offering to a business's benefits package.

In *Part 3* we set out the different ways employees may be able to regularise their stay or apply to become British citizens.

All this is not to imply that employers must take action now – many employers are sticking to a wait-and-see-approach. The UK's offer for EEA nationals is still a matter of negotiation, so there is every likelihood that the final arrangements will look quite different.

D Brexit and Ireland

The status of Irish nationals in the UK and, in turn, UK nationals in Ireland can be considered as a separate topic when considering Brexit implications, as different rights apply. HR professionals considering the impact of Brexit on Irish citizens need to consider the general rules (as it applies to each other's citizens), but also the special status of those individuals commuting across the border between Northern Ireland and Ireland.

(i) Irish and UK nationals: general considerations

The free movement of individuals between Ireland and the UK has been recognised from the founding of the Irish Free State in 1922. This was reinforced through various pieces of post-war legislation resulting in the creation of the Common Travel Area (CTA) as we know it today. The CTA allows citizens of the UK and Ireland to live and work in each other's country without immigration control. In effect, from the perspective of an HR professional, the countries can be considered one and the same.

Critically, when considering the impact of Brexit, it is important to keep in mind that the CTA exists under legislation pre-dating the UK and Ireland's admission to the EU in 1973. That being the case, it should, in theory, survive the UK's departure of the EU intact. However, as with everything Brexit-related, there are many unknowns and much will be decided during the ongoing negotiations, including the final status of the CTA.

That said, both the UK and Irish governments, as well as the EU, have all made it clear that they are committed to maintaining the CTA. This had been reiterated by EU negotiator Michel Barnier in his *statement to the Irish Parliament* in May 2017, and also by the UK Government in its *policy paper on EU citizens* published in June 2017. It is worth noting that the UK was especially keen to set out a clear position on Irish citizens in the latter, stating from the outset its desire to 'reflect the longstanding social and economic ties between the UK and Ireland and to protect the Common Travel Area arrangements'.

This stance was subsequently confirmed by the UK Government in its *Northern Ireland and Ireland Position Paper* published on 16 August 2017. Of note was a commitment by the government to the 'preservation of the rights of British and Irish citizens as enjoyed today'.

In response to that paper, the European Commission released its own *Dialogue on Ireland/Northern Ireland (TF50)* documents on 6 September and 20 September 2017. While these documents also reinforced the EU's continued commitment to the CTA, it is worth noting that this was not unconditional. The Commission stated that this would be recognised provided it was 'in conformity with European Union law'. This does leave open the possibility that the CTA would not survive Brexit if the EU concludes that its continuation is not compatible with EU law. However, the Commission will most likely reserve judgement on this issue while the question of the Customs Union and the movement of goods across the border with Northern Ireland remains to be resolved.

(ii) Irish citizens post-Brexit

While the final position of Irish and UK citizens in each other's country remains to be determined post-Brexit, what is known is that all parties have as their stated aim a desire to retain the CTA. Therefore, unless there is a catastrophic breakdown in relations between the UK, Ireland and the EU during the Article 50 negotiations, there is every reason to believe that the CTA will survive and remain in place following Brexit. If so, companies with Irish national employees should not anticipate having to make any drastic changes in policy as it relates to the employment of Irish citizens. For HR purposes, they can continue to be treated the same as UK nationals.

(iii) The border and citizens of Northern Ireland

Both the UK and Irish governments, as well as the EU, have made it clear they also remain committed to a soft border between Northern Ireland and Ireland. Should that commitment survive the negotiations (as is broadly anticipated), there should be little or no practical impact on those traversing the border post-Brexit. That said, how goods move across the border (and in turn any impact this has on the movement of people) has not been resolved and remains a controversial point of contention between the various players.

Options such as treating the island of Ireland – consisting of both the Republic and Northern Ireland – as a single entity for specific economic purposes have been raised, supported by the Irish Government's Civic Dialogue conclusion that a coordinated all-island approach to negotiations would help protect the all-island economy and the CTA.

The UK Government's proposal is to maintain a soft border and to control the flow of goods using technology. This is a novel and unproven approach and therefore it will be difficult to predict how it will impact employers. Further, it did not have the support of the Irish Government, as evidenced by Foreign Minister Stephen Coveney's comments, where he has variously described the use of technology to manage the border as 'unworkable' and 'nonsense'.

Even if we assume it is possible to manage the border with technology, there remain many unanswered questions, not least how it will work and if it will be used to monitor the movement of goods only or if it will also, by default, monitor the flow of people. Any attempt to monitor the flow of people would be extremely controversial and an unwelcome development for employers.

Finally, and most critically from an HR planning perspective, it is important to note that citizens in Northern Ireland are considered Irish citizens. This is enshrined as a principle of the Good Friday Agreement and reinforced by the UK Government in its June policy paper, where it states that it would 'continue to uphold … the rights of the people of Northern Ireland to be able to identify as British or Irish, or both, and to hold citizenship accordingly'.

As such, employees commuting to work from Northern Ireland into Ireland post-Brexit will always retain access to the Irish labour market by confirming their Irish citizenship (for example by securing an Irish passport). This should give comfort to any employer in Ireland that has employees crossing the border.

(iv) What to do now

The consensus of opinion tends to suggest that the CTA will survive the UK's departure from the EU and, as such, there is little concrete advice to offer HR professionals at this stage. However, time spent reassuring Irish employees that this is the most likely outcome could be useful. Further, including a reference to the special status of Irish citizens in your Brexit communications and discussions with employees will serve to reassure them that HR is alive to the differing needs of Irish nationals.

For Irish employers, it is important to ensure you understand the profile of employees from Northern Ireland and Britain, and have a good understanding of the current immigration rules.

Part 2 – Managing your migrant workforce

Brexit policies and negotiations may be taking all of the headlines, but it is just as, if not more, important for employers to be on top of their routine, day-to-day management of their migrant workforce. In this section we will run through the main immigration considerations for most employers, starting with checking right to work through to sponsoring visas.

Confirming the *right to work* does not merely start and end with checking a passport. Documents need to be copied, certified and properly stored.

If you are employing a British citizen then by doing this you have delivered against your duties and no further action is needed. The same is currently true for nationals from the EEA and Switzerland, but with different rules for Croatian citizens, though Brexit will likely change everything. A non-EEA national with valid permanent residence[1] in the UK has a similar right to take up work in the UK.

If you are employing someone with a time-limited visa, biometric residence permit or similar document, then you will need to make sure it is valid and that they have the right to work. Your duties will continue beyond first-day checking and, to begin with, you will need to track the expiry of their immigration permission. Ahead of expiry, you will need to be sure that it has either been extended, or that the Home Office has received an application to extend stay before the permission expired. If not, you may need to end employment.

This is very important. Employing an illegal worker can lead to a £20,000 fine, criminal charges, reputational damage and/or the loss of any sponsored workers.

There are two main considerations when a person does not have the right to work in the UK. Can they secure the right to work in their own right – that is, sponsor themselves or qualify for a visa on the basis of family ties – and if not, can you sponsor them?

A number of self- or family-sponsored visa categories allow people to work in the UK. *Spouses* of British nationals, EEA nationals[2] and people settled here can live and work in the UK with little restriction. A Commonwealth citizen with a grandparent born in the UK or on a UK ship or other vessel, or in Ireland before 1922 may qualify for a UK *Ancestry* visa and then take employment. *Students* studying a degree level course or higher, can generally work to a limited degree, although any work they do must be incidental to their study. There are other options too.

If a person cannot secure the right to work on their own, an employer may be able to sponsor them. *Sponsorship* is essentially a deal between the Home Office and an employer whereby the Home Office entrusts approved employers to bring in the skilled workers that they genuinely need, usually without interviewing or excessive documentary requirements when a visa application is submitted.

In return a sponsor has to do part of the Home Office's job for them. That means making reports if a person doesn't start working on their visa, ends their employment or absconds. It also means knowing where they live and work, in case the Home Office needs to speak to them. The duties can be quite onerous once a worker is in the UK, but many employers think it is a price worth paying for a simpler visa process.

Sponsorship is not available to every worker. An employer should consider three key criteria before looking seriously at sponsoring a worker:

1. A degree-level job is normally a requirement.
2. An employer has to be willing and able to meet strict minimum salary requirements, normally set at around £30,000 (but potentially considerably higher).
3. Sponsorship is often only possible if no suitable residents are available to take the vacancy, a need that can be evidenced in a variety of ways.

If these conditions can be met, you can think about securing a licence and sponsoring the worker. You then need to stay on top of your compliance duties on an ongoing basis, essentially policing the employee's immigration status for the Home Office. If not, the chances are you won't be able to sponsor the worker.

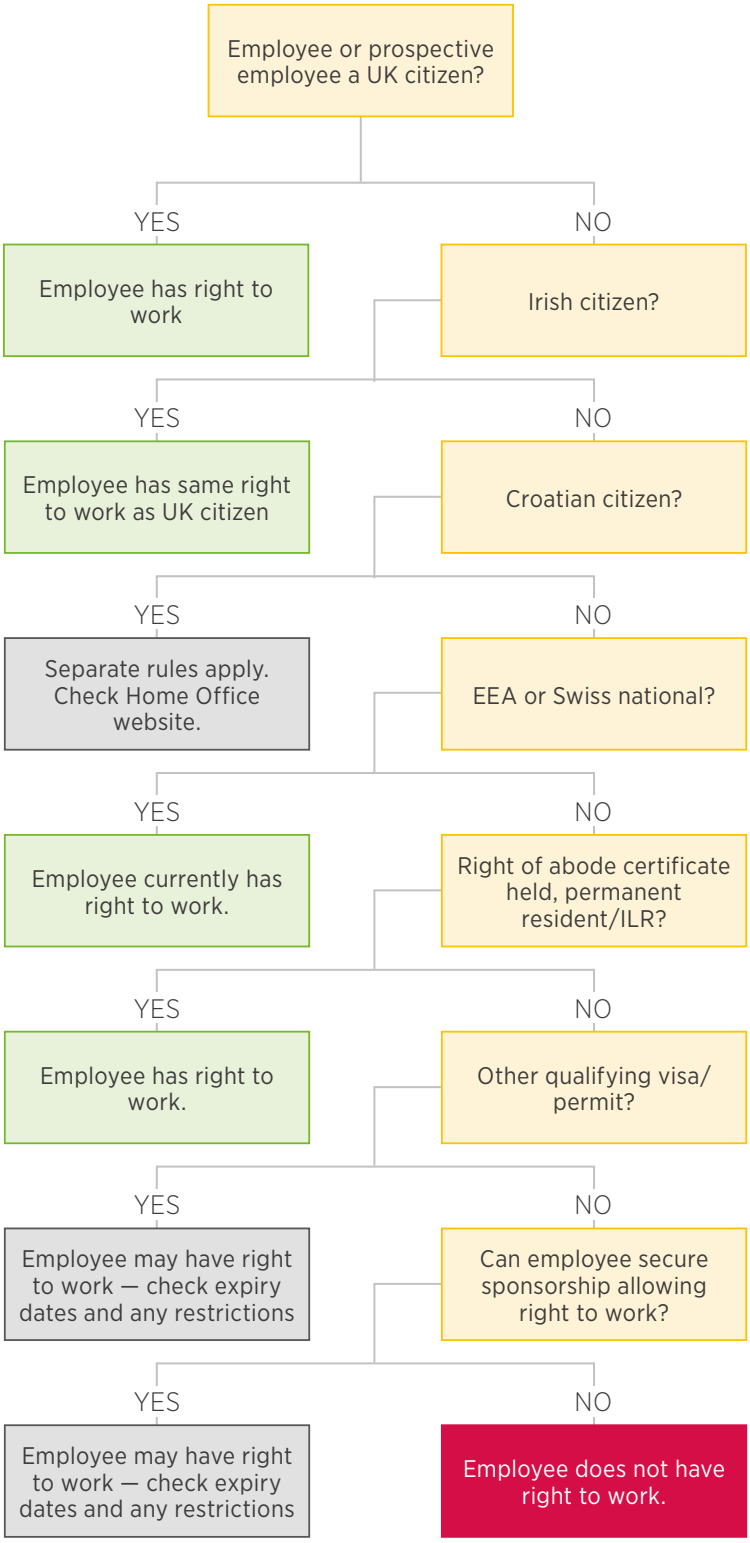
[1] Permanent residence is also known as Indefinite Leave to Remain in the UK. Both terms carry the same meaning: that the holder is free to reside permanently in the UK with no restriction on employment, save that if they are absent from the UK for two continuous years or more that status will usually be lost.

[2] This will be subject to Brexit terms.

A Assessing and recording right to work

A *right to work* check must be completed for every employee to ensure that they are able to undertake employment for their employer in the UK. Employers who do not conduct a compliant right to work check risk a civil penalty of up to £20,000, amongst other sanctions.

Figure 2: Assessing right to work



(i) Who has the right to work?

- **British citizens** have an immediate right to work.
- Citizens from the **EEA** and **Switzerland** also have an immediate right to work in the UK, though different rules apply for Croatian nationals.
- Some **Commonwealth citizens** have a *right of abode* in the UK, giving them an immediate right to work. However, they will first need a Certificate of Entitlement in a valid passport to demonstrate this right.
- Some **non-EEA nationals** will have no time limit on their stay in the UK. This is known as permanent residence, settlement or Indefinite Leave to Remain (ILR) and provides an immediate right to work in the UK.
- Some **non-EEA nationals** hold visas, biometric residence permits or other official documents that provide a right to work for a temporary period. It may be possible to extend that period of stay or apply for permanent residence, depending on the particular immigration permission. In some cases the right to work will be limited to a particular employer or to a maximum number of hours per week (this will be set out in the person's immigration document).
- Other **non-EEA nationals** will have no right to work in the UK. This group may be overseas, in the UK unlawfully or here lawfully but holding an immigration permission that does not permit employment.

You must conduct a *right to work check* for any prospective employee to be sure which group they fall under.

(ii) When to perform the check

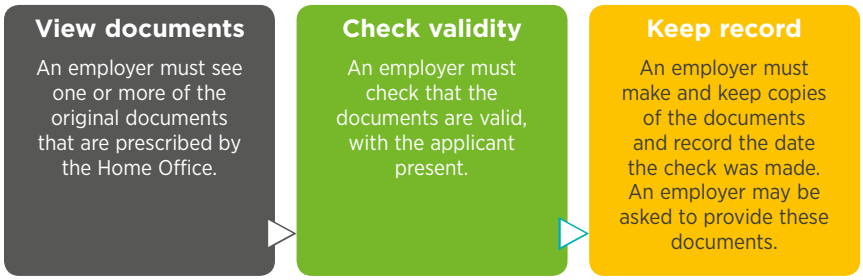
Employers must check that a prospective employee is allowed to work in the UK before employing them. Original documentation must be checked, signed and dated by the employer, either:

(a) shortly before the employee's first day of employment; or
(b) on the first day of employment before the employee commences their role.

(iii) How to perform the check

The check must be completed by the employer and not a third party.

Figure 3: Steps to check right to work



Right to work documents. An employer must check original documents from the lists of acceptable documents published by the Home Office. The Home Office's *right to work checklist* sets out which can be used when conducting a right-to-work check.

Checking the documents are valid. This means ensuring that:

- The documents are genuine, original and unchanged and belong to the person who has given them to you;
- The dates for the applicant's right to work in the UK haven't expired;
- Photos are the same across all documents and look like the applicant;

- Dates of birth are the same across all documents;
- The applicant has permission to do the type of work you're offering (including any limit on the number of hours they can work);
- For students you see evidence of their study and vacation times; and
- If two documents give different names, the applicant has supporting documents showing why they're different, for example a marriage certificate or divorce decree.

Documents from EEA nationals can be particularly difficult to verify as they may not be accompanied by a UK visa or other immigration document. However, you can verify documents of the EU, of its member states, and of the other countries participating at the *Public Register of Authentic Travel and Identity Documents Online*.

Employer Checking Service (ECS). The *Employer Checking Service* (ECS) should be used to verify that an individual has a continuing right to work, if the individual has:

(a) an outstanding appeal;
(b) an application with the Home Office, pending a decision; or
(c) presented an asylum registration card.

After contacting the Home Office, employers will receive a Positive Verification Notice or a Negative Verification Notice. This normally takes 5–10 days.

A Positive Verification Notice will confirm that an individual has a right to work in the UK and provides an employer with a six-month statutory excuse against liability for a civil penalty should it be established they no longer have the right to work during this period. A Negative Verification Notice means that an individual does not have a right to work in the UK and does not provide a statutory defence against liability for a civil penalty.

Recording the right to work. Employers will need to hold copies of their right to work checks to evidence that they were properly completed. When copying the documents:

- Make a copy that cannot be changed, for example a photocopy, or PDF if held electronically;
- For passports, copy any page with the expiry date and applicant's details (for example nationality, date of birth and photograph) including endorsements, such as a work visa;
- For biometric residence permits and residence cards (biometric format), copy both sides;
- For all other documents you must make a complete copy;
- Keep copies during the applicant's employment and for two years after they stop working for you (ensuring you also comply with the data protection legislation); and
- Record the date the check was made.

(iv) People without the right to work

Employers can be penalised by the Home Office if they employ a person in the UK who does not have or cannot evidence that they have the right to work. A civil penalty of up to £20,000 can be issued, the employer can lose their sponsor licence and/or individuals could face criminal charges. In some instances, the Home Office will publicly name an employer and earnings can be seized as proceeds of crime.

However, it is possible that an individual who does not currently have the right to work could secure that right if they qualify for a visa or sponsorship.

(v) Statutory defence against illegal working

The Home Office does not expect employers to be experts in spotting forged documents and there may be instances when a forgery is too sophisticated for an employer to spot it. Completing and recording the check compliantly will give employers a statutory defence against a civil penalty in these instances. However, if an employer does not properly conduct or record a right to work check they will have no statutory defence, irrespective of how sophisticated a forged document may be.

(vi) Staying compliant on right to work

Where a person holds a time-limited immigration permission, for instance a visa valid for 12 months, employers will need to track the expiry date of that document. Employers may track the expiry in a spreadsheet, in their diaries or HR systems – whatever works effectively for them.

If you plan to continue to employ the person beyond the visa expiry, you will then need to:

(a) contact the worker ahead of the visa expiring to ask if they plan to extend their stay; and
(b) repeat the right to work check on or shortly before the date of expiry.

Employers will need to repeat these checks, using the ECS where necessary, to ensure that an extension has been successful and that the person's right to work continues.

B Points-based system and other visa categories

Employers cannot be expected to know the immigration system inside out, but it helps to recognise the most common visa types, understand when a person can work and how long they can stay in the UK for.

Most non-EEA immigration to the UK is managed through the points-based system (PBS), which groups migrants into five tiers according to their characteristics or intentions in the UK.

Family members of those in the above categories are known as '**PBS dependants**'. In most cases, they will have a right to work, other than as a doctor or dentist in training.

There are also a relatively small number of immigration categories outside of the PBS. The most common categories are:

- **Spouse, civil partner or unmarried partner** of a UK national or person settled in the UK;
- **UK Ancestry**, for Commonwealth citizens with a British-born grandparent;
- **Sole representative** of an overseas business; and
- **Visitor**, for those entering for a short period, for instance as tourists or for business meetings.

In the sections below, we discuss the main requirements of Tier 2, the skilled worker category. Tier 2 is a useful immigration category if an employer already holds a sponsor licence, or plans to recruit a number of non-EEA nationals and may therefore be advised to apply for one.

However, it is not necessarily the best category for employers who rarely recruit non-EEA nationals.

Securing a sponsor licence takes time and sponsorship can be expensive. Neither is it available to everyone – sponsorship is generally restricted to migrants taking jobs at degree level or above.

It is quite often preferable, and in many cases necessary, to begin by looking beyond Tier 2. That means understanding the types of visas a person can qualify for, whether they can work and how long they can stay in the UK. **Annex A** contains this information, along with links to the Home Office website.

Figure 4: PBS tiers

Tier 1	Highly valuable migrants who will bring investment, entrepreneurialism or exceptional talent to the UK.
Tier 2	Skilled workers filling vacancies in the UK or working here on assignment.
Tier 3	Workers in low-skilled roles, although it has never been opened because successive governments took the view that the EEA offers sufficient access to labour.
Tier 4	Students and children studying at fee-paying schools.
Tier 5	A collection of temporary immigration categories.

C Sponsoring in Tier 2

Sponsorship in Tier 2 becomes an option if a non-EEA worker cannot qualify for a visa in their own right. Tier 2 is designed to give businesses access to skilled migrant workers while protecting the employment prospects of resident workers. Understanding sponsorship means understanding three key issues:

1 Who can qualify for sponsorship in one of the two main immigration categories and how long they can stay for:

   (a) Tier 2 (General) for new-hire skilled workers; or
   (b) Tier 2 (ICT) for existing company employees on assignment.

2 How to secure a sponsorship licence and remain compliant.

3 How long everything takes.

These considerations are summarised in sections **D–F** below. You can find more details on the *Home Office website*.

D Securing a sponsorship licence and remaining compliant

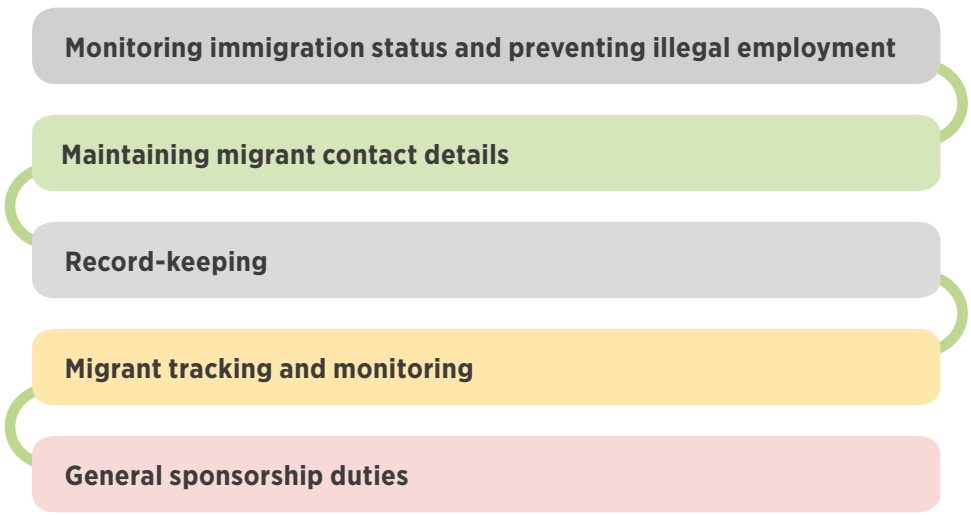
To sponsor an applicant under Tier 2, an employer must first hold a Tier 2 A-Rated Sponsor Licence. This licence allows the employer to sponsor existing or prospective employees for a Tier 2 visa, using a Certificate of Sponsorship. These Certificates of Sponsorship are not physical documents but electronic records, with a unique number, which a worker can use to apply for their Tier 2 visa.

The Home Office expects the employer to manage Tier 2 employees through the Home Office's Sponsor Management System (SMS). A sponsor must have the ability to track and monitor its non-EEA workforce through well-operated HR systems.

(i) Sponsor obligations

An employer can become a sponsor if they are able to meet certain statutory and regulatory obligations. These are captured under five key areas that may be reviewed by the Home Office prior to the issuance of a sponsor licence, or at any time after the licence has been granted (see Figure 5).

Figure 5: Sponsor obligations



(ii) Securing a Tier 2 licence

There are a number of steps involved in an application for a sponsor licence, and preparation is critical to a successful outcome. These include:

- Ensuring your HR systems are sponsor licence ready;
- Determining who will be responsible for ensuring that you meet your compliance obligations and who will manage your sponsor licence;
- Gathering the required corporate documentation (including documents to establish entities linked through common ownership and control where you want an ICT limb) to your licence. The *documentation* required depends on the nature of the organisation;
- Identifying at least one non-EEA national who requires sponsorship;
- Preparing and submitting the online application;
- Submitting the hard copy application; and
- Awaiting notification of a Home Office visit/outcome of application.

(iii) Timing

Applications normally take 6–12 weeks to process, although they have been known to take considerably longer. The Home Office may visit your office to assess your HR systems and speak with those who will take active roles under the licence.

(iv) Cost

At the time of writing, the *application fee*[3] for a sponsor licence is £1,476 (non-refundable). If you have charitable status or are deemed a 'small company', you will pay a reduced fee of £536. Fees are subject to revision.

As well as the fees for the initial application, there are fees if you apply to renew an existing sponsor licence, or in certain circumstances apply to extend the scope of an existing licence (for example where you applied for a Tier 5 licence, but now wish to sponsor a Tier 2 (General)).

(v) Compliance duties

Once granted, a Tier 2 sponsor licence is valid for four years. Employers holding a sponsor licence must ensure that they remain compliant with the Immigration Rules throughout that period.

In practice, this will mean holding accurate records and operating effective systems to ensure they are kept up to date. It will also mean tracking and monitoring your employees and reporting any significant changes in circumstances to the Home Office. The Home Office's *Tier 2 and 5 Sponsor Guidance* thoroughly details what is expected of a sponsor and must be well understood and taken seriously. Failure to comply can lead to civil penalties, criminal charges, damage to reputation and/or the loss of all sponsored workers. In the worst-case scenario, a sponsor licence can be revoked and an employer may be prevented from reapplying for a licence for a period of six months.

(vi) Home Office audits

The Home Office normally tests compliance at an immigration audit.

The Home Office can audit a Tier 2 sponsor at any time, with or without prior notice. It is not uncommon for a Home Office official to turn up at a sponsor licence holder's address without any notification. They will ask for the key personnel responsible for the licence to answer a number of questions and explain their immigration processes. Visits can be made at any physical addresses where sponsored employees carry out their employment duties – which could include the premises of a client who is receiving services from a worker sponsored by a service provider, if they are working on-site.

The visit will usually consist of:

- An interview with key personnel responsible for operating the Tier 2 sponsorship compliance obligations on a day-to-day basis;
- A review of any systems referred to in the interview (such as absence procedures);
- A review of HR files of present or historical non-EEA national employees (sponsored and non-sponsored); and
- An interview of sponsored workers to verify the information you have provided.

[3] These can change so please check fees using the link before applying.

E Sponsoring a new hire: Tier 2 (General)

Tier 2 (General) is for employers who need to fill a skilled vacancy where no suitable residents are available. The category will not help every worker and employers should ensure that a prospective employee will qualify before applying for a sponsor licence or issuing a Certificate of Sponsorship (CoS).

(i) Labour market controls

Strict skill, salary and labour market protections are in place to ensure that sponsored workers do not undermine the job prospects of resident workers.

Skill level. Tier 2 (General) is largely restricted to degree-level jobs. The Home Office uses Standard Occupational Classification codes (SOC codes) to identify these jobs. The list of SOC codes can be found in *Appendix J* of the Immigration Rules.

If your prospective employee will not fill a degree-level role, Tier 2 (General) is unlikely to be an option. Importantly, the level of the job is what matters; the worker does not need to hold a degree.

Salary. Tier 2 (General) migrants must be paid at least the minimum salary for the visa or the minimum salary for their particular job, whichever is higher. These minimum salaries are subject to change, often annually.

At time of writing, the minimum salary for the visa is either:

(a) £20,800 for a new entrant to a role, for instance those recruited via a milk-round, switching from Tier 4, or aged under 26; or
(b) £30,000 for everyone else.

The minimum salaries for a particular role are set out in *Appendix J* of the Rules. The minimum salaries detailed in the SOC are based on a 39-hour working week and salaries can be extrapolated upwards or downwards for people who are contracted to work longer or shorter weeks. The minimum salary set for the visa cannot be pro-rated and must be met.

Resident Labour Market Test. Tier 2 (General) is only available where an employer can show that there are no suitable resident workers available to fill a vacancy. This is known as the Resident Labour Market Test (RLMT) and there are five main exceptions:

1 **By advertising the role for 28 days.** The adverts need to be in two places, normally including Universal Job Match. The adverts must contain a job title, indication of salary and job description, amongst other heavily prescribed information. Copies must be taken and stored.

   Employers should interview any resident workers who appear to be suitable for the role and keep records of the interviews, including an explanation if they are not suitable. The employer can only sponsor a non-EEA worker if there are no suitable workers available.

   More guidance can be found in the Home Office's *Tier 2 Sponsor Guidance*.

2 **Shortage Occupation List (SOL).** The SOL is a list of jobs that are in endemic shortage in the UK labour market. It is largely made up of health and engineering occupations and can be found in *Appendix K* of the Immigration Rules.

   Employers do not normally need to advertise a role if a job is on the SOL and can sponsor a non-EEA worker even if a suitable resident is available.

3 **New graduates.** The RLMT does not apply to graduates who switch from a Tier 4 student visa to a Tier 2 (General) visa from within the UK. There is no need to advertise these roles or to prioritise resident workers.

   Employers can rely on milk-round advertising if a graduate studied overseas. Milk-round advertising can also be relied on if a non-EEA graduate studied in the UK but is applying from overseas.

4 **High earners.** The RLMT does not apply to people paid over £159,600. These workers are deemed to have passed the test by virtue of their high salaries.

5 **Inward investment projects.** The RLMT requirement is not engaged if the job offer relates to a posting from an overseas firm to the sponsor in connection with the relocation of a high-value business to the UK or a significant new inward investment project (£27 million + new capital expenditure or 21 new jobs). This does not include the supply of services to a third-party client.

(ii) Other considerations

Certificate of Sponsorship. Non-EEA workers need to be assigned with a Certificate of

Sponsorship (CoS) to make their visa application. As noted above, a CoS is a virtual and not a physical document, containing biographical information about a worker. It sets out what job they will be doing, where they will work and how much they will be paid. Employers need a sponsor licence before they can issue a CoS. On applying for a licence an employer will request a number of CoS, based on their business needs. These CoS are unrestricted.

They are not strictly capped by the government, but an employer must be able to demonstrate a genuine need for the CoS when making requests – if you ask for 50 you will need to demonstrate why you need that many, for instance.

Tier 2 limit. There is a limit of 20,700 Tier 2 (General) applications that can be made from outside the UK each year. That limit also includes the dependants of Tier 4 migrants where they are switching to a Tier 2 permission from within the UK (but excludes those paid over £159,600 and high-value inward investment roles).

For these applicants, a sponsor cannot simply issue an unrestricted CoS from their own allocation but must apply under the limited quota of Restricted Certificates of Sponsorship (RCoS). The limit is split into *12 monthly pots* of 1,725 RCoS. Sponsors apply for them on or before the 5th of the month and they are normally awarded on the 11th of the month. This can create a considerable delay if, for instance, an application is submitted the day after the application window closes.

If a particular month is undersubscribed, the spare RCoS roll over to the next month. If it is oversubscribed, the applications are prioritised with shortage occupations and PhD-level jobs given a degree of priority. All other roles are prioritised according to salary. Additional weighting is given to graduates from UK universities recruited through the milk-round graduate recruitment platform.

Cooling-off period. Non-EEA workers cannot normally qualify for a Tier 2 visa if they were in the UK and held a Tier 2 visa in the 12 months preceding their application. Some exceptions apply and can be found in the Home Office's *Tier 2 policy guidance*.

Length of stay. Tier 2 (General) workers can apply for Indefinite Leave to Remain (ILR) after five years, so long as certain conditions are met. However, their stay is normally capped at six years if they do not secure ILR.

English language. Tier 2 (General) workers must speak English. They can demonstrate their proficiency by being a national of an English-speaking country, holding a degree taught in English or passing a recognised English language test. *Appendix B* of the Immigration Rules contains guidance on how this requirement is met, which includes some surprises – for instance, South Africa not being considered as an English-speaking country.

Immigration Skills Charge. Sponsors must pay the *Immigration Skills Charge* of £1,000 per year, per sponsored employee (a lesser charge of £364 applies to small or charitable sponsors). Some exemptions exist, for instance for those sponsored before 6 April 2017, those in PhD roles and people switching from Tier 4 student status to Tier 2.

Visa application. If the prospective employee qualifies for and is assigned a CoS or RCoS, they can apply for their Tier 2 visa. The application normally takes 15 days from overseas or 8–12 weeks in the UK, but faster priority services are available.

Immigration Health Surcharge. Tier 2 migrants who will be entering the UK for six months or more, or extending their leave in country, must pay the *Health Surcharge*. The charge is £200 per year, per person, and entitles the employee to the same NHS services as a British citizen. The fee is also payable for dependant applicants.

F Sponsoring an assignee: Tier 2 (Intra Company Transfer)

Tier 2 (ICT) allows employers to sponsor existing employees of an overseas entity and send them to the UK on assignment. Like Tier 2 (General), a number of controls exist to protect the job prospects of resident workers and control the number of people entering the UK.

Categories. Tier 2 (ICT) contains two subcategories. As with Tier 2 (General), minimum salaries are subject to change:

1 **(ICT) Long Term** is for sponsored workers who will be paid the higher of £41,500 or the minimum salary for the job, as set out in *Appendix J* of the Immigration Rules. They are normally limited to five years' stay in the UK but can remain for nine years if they are paid over £120,000. They must have worked for the employer's company overseas for at least 12 months, unless they are paid £73,900 or more per annum.

2 **(ICT) Graduate Trainee** is for sponsored workers entering as part of an accelerated graduate trainee programme for a specialist role. They must be paid the higher of £23,000 or the minimum salary for the job, again set out in *Appendix J*. They need to be a recent graduate with at least three months' experience with their employer overseas.

Certificate of Sponsorship. Non-EEA workers need a CoS to make their visa application. As is under Tier 2 (General), employers need a sponsor licence before they can issue a CoS.

Skill level. Tier 2 (ICT) is restricted to degree-level jobs. As with Tier 2 (General), the Home Office identifies these jobs using the SOC codes in *Appendix J* of the Immigration Rules. The level of the job is what matters — the worker does not need to hold a degree.

Company experience. To sponsor migrants under Tier 2 (ICT), employers must show a direct link by common ownership or control with the overseas entities from which they seek to bring the migrants. The Home Office defines a linked entity in its *sponsor guidance*.

Cooling-off period. Non-EEA workers cannot normally qualify for a Tier 2 visa if they were in the UK and held a Tier 2 visa in the 12 months preceding their application. Some exceptions apply and can be found in the Home Office's *Tier 2 guidance*.

Immigration Skills Charge. As with Tier 2 (General), sponsors must pay the *Immigration Skills Charge* of £1,000 per year, per sponsored employee (a lesser charge of £364 applies to small or charitable sponsors). Applications for those sponsored before 6 April 2017 and those in PhD roles are exempt from the charge, as are applications for Graduate Trainee Intra-Company Transferees.

Visa application. If the assignee qualifies for and is assigned a CoS, they can apply for their Tier 2 visa. The application normally takes 15 days from overseas or 8–12 weeks in the UK, but faster priority services are available.

Immigration Health Surcharge. Tier 2 migrants who will be entering the UK for six months or more, or extending their leave in country, must pay the *Health Surcharge*. The charge is £200 per year, per person, and entitles the employee to the same NHS services as a British citizen. The fee is also payable for dependant applicants.

Part 3 – Brexit and applications for EEA nationals

A Whether and when to apply for citizenship, permanent residence and settled status

(i) Law and policy as it stands

Ultimately most of your EEA employees living in the UK will want to know whether and how they can secure their status here. The answer is unfortunately not so straightforward.

It is open to EEA nationals to apply for a permanent residence document if they have been living in the UK for five years. Permanent residence documents confirm a person's right to remain in the UK indefinitely and enable an application for British citizenship. Those who have been resident for less than five years can apply for a Registration Certificate. However, the government has taken the view that those documents should become invalid after Brexit, a point that is still to be negotiated with the EU.

Instead, the UK Government wants to award settled status — again, the right to live in the UK indefinitely — to EEA nationals who have lived in the UK for five years and entered before a specified date. That specified date is also under negotiation, but would fall on or between 29 March 2017 and 28 March 2019.

Those who have not lived in the UK for five years by the specified date would be able to apply for temporary status. They would then be able to apply for settled status after five years' residence.

The precise requirements of temporary status and settled status applications are not yet known. It is likely that criminality checks will be undertaken and some evidence of residence will be required.

At this stage, and based on a limited amount of published information, EEA nationals are likely to fall under one of three categories:

1 Those who have been in the UK for five years and want to naturalise as British citizens as soon as possible.

2 Those who have been in the UK for five years but have no immediate desire to naturalise.

3 Those who will not have lived in the UK for five years by the specified date.

(ii) Registration Certificate

It is also open to EEA nationals to apply for a *Registration Certificate* that evidences their existing right to live in the UK. The application can be submitted immediately upon entering the UK, provided the EEA national is exercising their Treaty Rights.

These applications are not mandatory and the document may ultimately be superfluous. The UK does not intend to recognise documents or status granted under EU law after Brexit. If this position is agreed by the EU, any Registration Certificates will be invalidated after Brexit. On that basis there will not normally be a strong case for applying for a Registration Certificate, although any prospective applicant should consider their own specific circumstances.

B Applying for British citizenship

EEA nationals can normally apply for *British citizenship* after residing in the UK for six years, so long as they hold a *permanent residence* document (although Irish nationals can apply without a permanent residence document). In addition, the applicant must:

- Have held permanent residence status for 12 months, although those married to British citizens may apply immediately upon obtaining permanent residence status;
- Be of good character;
- Not have been absent from the UK for more than 450 days in the five years preceding the application and no more than 90 days in the 12 months preceding the application, although some exceptions do apply;
- Have passed a 'Life in the UK' test and have sufficient level of English;
- Currently reside in the UK; and
- Intend to keep the UK as their main place of residence in the future (unless they are married to a British citizen).

Case study 1: Eligibility for British citizenship

ARRIVAL

Sabine, a French national, arrives in the UK with her French husband and 4-year-old child. She starts work immediately as a structural engineer.

SEP **2012**

PR APPLICATION

Sabine has now worked in the UK for 5 years. She and her family have resided in the UK during this time with very few absences. They are all of good character. Accordingly, they are eligible for permanent residence under the UK's current system. They submit their PR applications.

SEP **2017**

PR GRANTED

Sabine and her family receive their permanent residence documents.

MAR **2018**

CITIZENSHIP

Sabine and her family have held PR for 12 months and can apply for British citizenship. If they do not, their PR will be invalidated and they will need to apply for settled status.

MAR **2019**

C Making an application for permanent residence

It may not be sensible for every qualifying EEA national to apply for a permanent residence document unless they hope to naturalise as a British citizen before Brexit.

EEA nationals can apply for a permanent residence document after exercising one or more Treaty Rights in the UK for a continuous period of five years. They will also need to evidence that they have not left the UK for more than 180 days in each year during the five-year period.

It may not be the right application for everybody who qualifies. The UK Government hopes to invalidate any *permanent residence* documents after Brexit, although the EU has not agreed with that position. Holders of permanent residence documents would then need to apply for settled status. The government has indicated that the application process for settled status, due in September 2018, will be simpler than the equivalent process for permanent residence, suggesting that it may be better to wait.

Nevertheless, nationals of almost every EEA country must hold a permanent residence document before they can apply for British citizenship under the current rules; only Irish nationals are exempt.

(i) Exercising Treaty Rights

All EEA nationals have an initial right to enter and reside in the UK for up to three months. After this period, in order to extend their right to reside in the UK, they must show that they are exercising Treaty Rights as a 'qualified person'. In practice, this means providing evidence that they are:

- a jobseeker;
- a worker;
- a self-employed person;
- a self-sufficient person; or
- a student.

For the purposes of this guide we have focused on EEA nationals who are in the UK as workers.

(ii) Making the application

Most people will be able to make their application online, on the Home Office website at *https://visas-immigration.service.gov.uk/product/eea-pr*.

Applicants for a permanent residence document often need to supply an extensive *list of documents*.

Applicants should pay careful attention to Home Office guidance. Failing to provide the correct documents in the correct format can lead to an application being delayed or refused. These are the issues that applicants most commonly need to be prepared for.

Original documents. The Home Office typically insist on receiving original documents. If, for whatever reason, the original document is not available, the applicant must explain why. It may mean, however, that a decision is delayed until the Home Office has sight of the originals.

Translations. Any documents that are not in English or Welsh should normally be translated by a qualified professional translator. The translator must confirm in writing on the translation:

- The full name and contact details of the translator or a representative of the translator's company;
- That the translation is a 'true and accurate translation of the original document'; and
- The date the translation was carried out.

Bank statements and payslips. These must be in original format. People who receive electronic bank statements/payslips can either:

(a) have each page stamped and signed by the bank/employer; or
(b) have the bank/employer prepare a letter attesting that the bank statements/payslips submitted are authentic and genuine.

Employer support letter. This must be on official company letter-headed paper, signed and dated by an appropriate person, that is, an HR contact.

The letter should typically include:

- Full name;
- Nationality;
- Date of birth;
- Date they joined the company;
- Job title;
- Salary details per annum;
- Weekly hours of work; and
- Confirmation that they are still required for the role in question.

Note: If an applicant has been employed by different companies in the relevant five-year period, they should obtain letters for each period of employment and include the reason for employment ending.

Marriage and birth certificates (if dependants are applying). These must be the original long form version which clearly shows applicants and their spouse as the parents of the applying child.

Case study 2: Permanent residence or settled status

ARRIVAL

Alessandro, an Italian national, arrives in the UK to study physics and subsequently takes a job at a university in Scotland.

JAN **2013**

PR ELIGIBILITY

JAN **2018**

Alessandro has accrued 5 years' residence, spent very little time overseas and is of good character.

PR OR SETTLED STATUS?

Alessandro has a choice to apply for permanent residence now or wait for the new settled status provisions, expected by late 2018.

Settled status may be the best option as he should still have time to qualify for British citizenship in Jan 2019 before the UK exits the EU. He will need to study the new rules carefully and think about how they correspond with nationality law.

LATE **2018**

Case study 3: Applicants who do not qualify for settled status

ARRIVAL

Liisa arrives from Latvia in Feb 2017, taking a job as a nurse in Wales.

FEB **2017**

BREXIT

MAR **2019**

The UK leaves the EU but Liisa has not accrued the 5 years' residency needed for PR. She applies for **temporary status** under the 2-year grace period of blanket permission.

SETTLED STATUS

Liisa has been in the UK for 5 years, spent very little time abroad and is of good character. She can apply for settled status.

FEB **2022**

CITIZENSHIP

FEB **2023**

Having held settled status for a year, Liisa may qualify for British citizenship. This will become clearer when the new policy is published.

D Applications available to family members of EEA nationals

An EEA national working in the UK benefits from more extensive rights of family reunion than other foreign nationals, applying to any or all of their non-EEA national:

- Spouse;
- Civil partner;
- Children under 21;
- Grandchildren under 21;
- Dependent parents; and
- Dependent grandparents.

Family members enjoy the right to come to the UK and live and work here indefinitely, provided the EEA national (known as their 'sponsor') is exercising Treaty Rights within three months of arriving in the UK and they continue to be part of a subsisting relationship. While direct family members are not required to obtain documentation to evidence that they are related to an EEA national, they should do so to facilitate travel and also to prove to potential employers that they have the legal right to work in the UK. Family members of EEA nationals may be eligible for permanent residence after five years in the UK.

Initially, EEA family members will normally apply for one of two documents:

1 **Family permits.** Non-EEA nationals can initially apply for a family permit without charge, which will give them a document to evidence their right to enter and travel to the UK for a period of six months.

2 **Residence cards.** Once in the UK, family members can apply for a residence card, which is granted for a period of five years. Applicants must complete an application form and provide evidence that their sponsor is exercising Treaty Rights.

From there, family members of EEA nationals exercising Treaty Rights in the UK can normally apply for permanent residence at the five-year point. Of course, the status of those now in the UK under these provisions will depend on their date of entry to the UK.

Annex A

Table 1: Summary of qualifying criteria and rights under PBS

Category	Sub-category	Purpose/Key criteria	Max length of stay	Work rights	Red flags	Capped	Indefinite Leave to Remain (ILR)	Citizenship
Tier 1	Investor	For those investing GBP 2m+ in the UK in approved investments	Extendable/ Indefinite	Y	Investment must be maintained to extend visa and settle in UK	N	After 3–5 years	After 5–6 years
	Entrepreneur	For those investing in an existing or proposed business entrepreneurship (GBP 200,000+ or GBP 50,000 in certain funded cases)	Extendable/ Indefinite	Restricted to business in which they are investing	Job creation is required to extend visa and settle in UK	N	After 3–5 years	After 5–6 years
	Graduate entrepreneur	For graduates who have been officially endorsed as having a genuine and credible business idea	2 years	Restricted to business in which they are investing	No extension after 2 years but can switch to Entrepreneur category if business succeeds	N	N	N
	Exceptional talent	To provide a route for endorsed leaders (exceptional talent) or emerging leaders (exceptional promise) in: science; engineering; humanities; medicine; digital technology; or the arts	Extendable/ Indefinite	Y	Must be endorsed as a leader or an emerging leader in field by an authorised body before a visa application can be made	Y – There are limited places available under this visa category, with 500 places released on both 6 April and 1 October each year	After 5 years	After 6 years +
Tier 2	General	For skilled workers filling a role for which a resident worker cannot be found/'high earners' (currently GBP 159,600 pa)/those in shortage occupations	6 years (must by then apply for and be granted Indefinite Leave to Remain)	Minimum salary is usually GBP 30,000+ pa. Work restricted to terms of the Certificate of Sponsorship. Supplementary work allowed under strict conditions	Changes must be authorised. Actual salary required may be higher depending on SOC minimum	Y – Out of country applications (other than for high earners) subject to an annual cap of 20,700 per year	After 5–6 years	After 6 years +
	Intra-company transfer (long term)	For overseas employees offered a role in a UK branch of the organisation	5 years, or 9 years for 'high earners' (currently GBP 120,000 pa)	Minimum salary is GBP 41,500+ pa. Work restricted to terms of the Certificate of Sponsorship. Supplementary work allowed under strict conditions	Must have worked for overseas employer for 12 months+ or earn GBP 73,900+ pa. Changes must be authorised. Actual salary required may be higher depending on SOC minimum	N	N	N
	Intra-company transfer (graduate trainee)	For recent gradutes on a structured graduate training programme with clearly defined progression towards a managerial or specialist role	12 months	Minimum salary is GBP 23,000+. Restricted to terms of the Certificate of Sponsorship. Supplementary work allowed under strict conditions	Must have worked for overseas employer for 3 months+. Changes must be authorised	N	N	N
Tier 3	Low-skilled sector workers	Category was never introduced	N/A	N/A	N/A	N/A	N/A	N/A
Tier 4	General (student)	For students over 16 who wish to study in the UK and have been offered a place on a course by a licensed Tier 4 Sponsor	Extendable	Restrictions apply during term time	Certain applicants can switch to Tier 2 (General) but time spent under Tier 4 does not count towards settlement	N	N	N
Tier 5	Youth Mobility Scheme	For 18–30-year-olds who can show GBP 1,890 savings and want to work in the UK from: Australia; Canada; Japan; Monaco; New Zealand; Hong Kong; Republic of Korea; Taiwan or British overseas citizens; British overseas territories citizens; British nationals (overseas)	2 years	Y – Other than as a professional sportsperson (for example as a coach), doctor or dentist in training – unless they can show they qualified in the UK	Applicants from Hong Kong and Republic of Korea must be sponsored. No switching into other PBS categories – applicant must apply overseas. Not eligible if applicant has children living with them/for whom they are financially responsible	Y – Currently: Australia – 35,500 places; New Zealand – 13,000 places; Canada – 5,500 places; Japan – 1,000 places; Monaco – 1,000 places; Taiwan – 1,000 places; Republic of Korea – 1,000 places; Hong Kong – 1,000 places	N	N
	Government Authorised Exchange	For those coming to the UK for a short time for work experience or to do training, an Overseas Government Language Programme, research or a fellowship through an approved government authorised exchange scheme	2 years	Work restricted to terms of the Certificate of Sponsorship. Supplementary work allowed under strict conditions	Changes must be authorised. Applicants cannot take a permanent job	N	N	N
PBS Dependants	Adult family members across all categories except Tier 5 YMS	Spouse/civil partner/cohabiting (2 years+) partner	In line with main applicant	Permitted to work other than as a doctor or dentist in training	Changes to main applicant status/ employment will impact family member	N	In line with main applicant	In line with main applicant

Table 2: Summary of qualifying criteria and rights of PBS dependants

Category	Sub-category	Purpose/Key criteria	Max length of stay	Work rights	Red flags	Capped	Indefinite Leave to Remain (ILR)	Citizenship
Family of settled persons/British citizens	Spouse/ partner	To allow family members of British nationals or those present and settled in the UK to return to the UK with or join their family member in UK and settle in UK	Extendable/ Indefinite	Y	Minimum income threshold and language requirements apply	N	After 5 years	After 5–6 years
Ancestry	N/A	For Commonwealth applicants with a grandparent born: in the UK, including the Channel Islands and the Isle of Man; or before 31 March 1922 in what is now the Republic of Ireland; or on a British-registered ship or aircraft	Extendable/ Indefinite	Y	Cannot claim through step-parents	N	After 5 years	After 6 years +
Sole representative	N/A	For sole representative of an overseas company planning to set up a UK branch or a wholly owned subsidiary for an overseas parent company	Extendable/ Indefinite	Y – for employer	Applicant cannot work for themselves or any other business, and cannot stay in the UK if the sole representative arrangement is ended by their employer	N	After 5 years	After 6 years +
Visitors	Business purposes	For visitors who wish to undertake permitted business activities in the UK	6 months	N	Applicant cannot: do paid or unpaid work; live in the UK for long periods of time through frequent visits; marry or register a civil partnership, or give notice of marriage or civil partnership	N	N	N
Offshore workers	N/A	For employment on oil, gas and any other installations fixed to the seabed that are wholly at sea on the UK Continental Shelf (UKCS)	Usually short periods, up to 12 months	Y – Within UKCS only	Permission under PBS required if any part of the work will be on-shore within the UK or within UK territorial waters (12-mile zone)	N	N	N

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