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*Championing better
work and working lives*



EMPLOYERS' LEGAL GUIDE TO POST-BREXIT IMMIGRATION



Guide

December 2020

The CIPD is the professional body for HR and people development. The registered charity champions better work and working lives and has been setting the benchmark for excellence in people and organisation development for more than 100 years. It has more than 150,000 members across the world, provides thought leadership through independent research on the world of work, and offers professional training and accreditation for those working in HR and learning and development.

FRAGOMEN is the world's leading single-focus provider of immigration guidance and support. With more than 40 offices and over 4,000 employees worldwide, the firm provides clients with comprehensive immigration services in over 170 countries. Fragomen supports all aspects of global immigration services, including strategic planning, compliance, government relations, reporting, and case management and processing.

In the UK, the firm provides tailored immigration support, assisting clients with visa applications for their employees and their families, providing specialist compliance advice, regular client briefings, alerts and events. Fragomen is the only law firm in the UK accredited to sponsor interns on behalf of businesses under the points-based system.

Guide

Employers' legal guide to post-Brexit immigration

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1 Introduction

The UK's participation in EU free movement ends from 1 January 2021. In its place, the Home Office has implemented a new points-based immigration system for all migration to the UK, **other than for Irish nationals, who will not require immigration permission to work in the UK.**¹ The points-based system is calibrated to facilitate the entry of skilled workers while making it harder – often impossible – for employers to recruit from abroad for low-skilled or low-paid vacancies.

This guide will help HR professionals and employers navigate the new system. While it is not a substitute for the hundreds of pages of law and legal guidance, the guide explains the system at a practical level and considers the appropriate actions. This will include thinking about foreign workers in one of three categories:

- Europeans² who were in the UK before 1 January 2021 will often have an almost unrestricted right to work under the EU Settlement Scheme (EUSS). They should hold either pre-settled or settled status and the immigration steps of your onboarding process will be reasonably straightforward.
- Other foreign workers looking to enter the UK for low-skilled employment will need entry permission that allows the right to work, such as Indefinite Leave to Remain, a dependant visa or perhaps UK Ancestry amongst others. However, many will not have these and it will be difficult to strategically or sustainably recruit workers from overseas for these positions.
- Other foreign workers looking to enter the UK for skilled work will also be able to take employment if they have an entry

permission that gives a right to work. They will also qualify for sponsorship, a process that is entirely manageable but needs careful consideration and carries a number of compliance and other obligations for employers.

This guide deals with each of these groups in turn, as well as the implications for right-to-work checks. In the final section, we cover the specific situation in Northern Ireland. Technically, the impact of the rules in Northern Ireland is not remarkable or different from those elsewhere in the UK – however, the higher likelihood of European and other workers living in Ireland and working in Northern Ireland, or indeed in both countries, does create extra considerations for employers and employees.

UK immigration is complex and needs to be taken seriously. Failing to comply with the immigration rules can lead to civil penalties or criminal sanctions. This guide will point you in the right direction, but employers should also ensure decisions are taken against official policy. In addition to legal compliance, decisions on employing migrant workers and on how to address skills and labour needs, for example, are best taken following a workforce planning exercise. The CIPD's guide on workforce planning beyond Brexit can help your organisation plan for the longer term when considering your workforce and how best to recruit and deploy talent. Some organisations may find alternatives to recruiting migrant workers more attractive given the cost, administrative burden and additional HR resource that will now be required for recruiting overseas workers.

¹ The Common Travel Area arrangement between the UK and the Republic of Ireland allows their citizens to live and work in each other's country without immigration control. In effect, from the perspective of immigration, Irish nationals continue to benefit from free movement in the UK.

² For the purposes of this guide, when referring to Europeans, we are concerned with EU nationals (citizens of Austria, Belgium, Bulgaria, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain and Sweden), EEA nationals (EU nationals plus citizens of Iceland, Liechtenstein and Norway) and Swiss nationals. While Ireland is part of the EU and EEA, Irish nationals are not subject to immigration controls in the UK and so are excluded from this definition.

2 Supporting your current European workers and their families

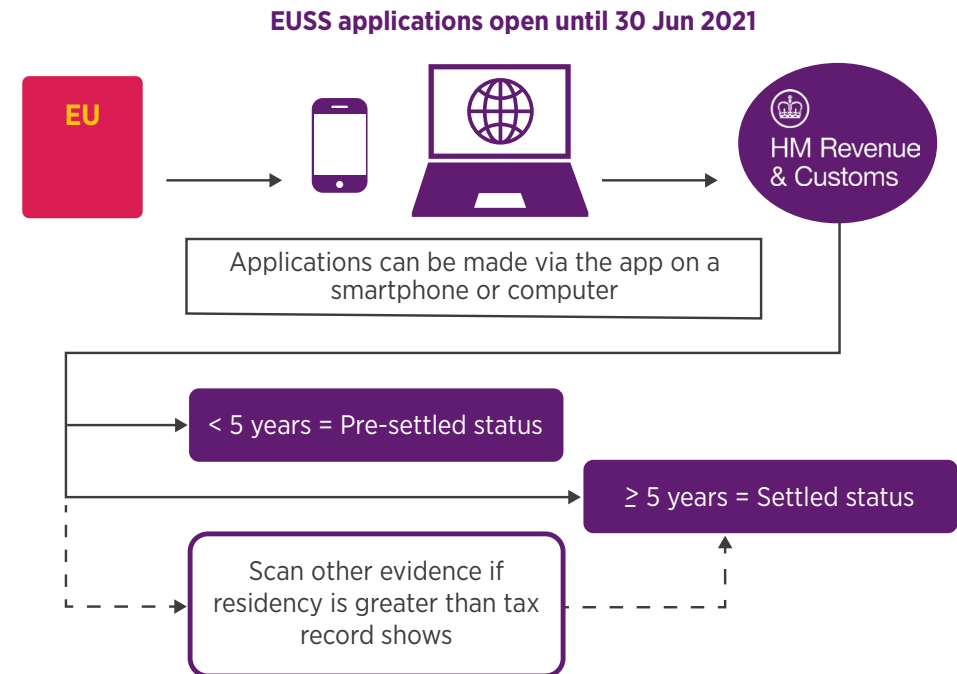
The Brexit [Withdrawal Agreement](#) contains provisions to protect the residence and work rights of Europeans residing in the UK before the end of the Brexit transition period at 11pm on 31 December 2021. The UK implemented those commitments through the EU Settlement Scheme, whereby:

- Europeans who are in the UK before the end of transition can apply for settlement status under the scheme.
- Those with five years' residence can qualify for settled status (the right to stay in the UK permanently).
- Those with less than five years' residence can qualify for pre-settled status, enabling continued residence in the UK and a move to settled status after five years' residence is accrued.
- Only serious criminals and those with excessive absences should be refused status or subsequently lose their status.
- Non-European family members of qualifying applicants can also apply under the scheme.
- The deadline for applications is 30 June 2021 and those who do not apply on time may be prevented from applying late and treated as being without lawful status or undocumented migrants in the UK.
- Europeans holding settled status can subsequently apply for British citizenship.

The application is straightforward for most people and normally completed on a smartphone. Applicants download the [EU Exit: ID document check app](#) to their smartphone or tablet and use it to upload biometric and biographical information from their passport. After taking a selfie and scanning their face, the

applicant answers several questions on the app and a webpage. The system checks possible residence against government records and documents can be uploaded to fill gaps. The application is then filed for a decision, normally in a few weeks. A detailed walkthrough of the status application process is contained in [B. EU Settlement Scheme](#) below.

Figure 1: Overview of the EU Settlement Scheme



A. Supporting your European workers

Legally speaking, the EUSS is a reasonably light-touch consideration for employers. From 1 July 2021, employers will be expected to check whether Europeans hold a right to work in the UK, including through the EUSS. That aside, there is no legal expectation that employers should push employees to apply under the scheme or check that they have applied.

However, the consequences of not applying before the 30 June 2021 deadline could be so severe that many employers are actively helping employees to apply. As it stands, those who do not apply on time may be considered illegal in the UK. Their right to work, rent accommodation, access health care, open a bank account and apply for a driving licence could be limited or curtailed. Late applications will be acceptable in some instances, but the precise circumstances are not entirely clear.

Employers can support their employees by communicating with them:

- Begin by reassuring employees that they do not need to leave the UK. Go on to educate them on the process for applying (this guide will help) and direct applications before the deadline.
- Many employers may have already communicated with employees several times, but consider doing so again ahead of the end of the transition period and also before the application deadline.
- Immigration service providers can provide written briefs including guides and FAQs, videos, webinars or surgeries. The Home Office has produced a helpful [toolkit](#).

B. EU Settlement Scheme

Eligibility

Europeans who are living in the UK by 31 December 2020 will need to make an application to the Home Office to continue their residence in the UK. The deadline to apply via the scheme is 30 June 2021 for those present in the UK before 11pm on 31 December 2020. **Irish nationals are not required to apply** as their rights will be protected in accordance with the [Common Travel Area Agreement](#), but they can apply if they want to.

Non-European family members already living in the UK by 31 December 2020 must also apply under the scheme (even if they hold an old-style EU Residence Card or Permanent Residence). Some family members may be able to come to the UK after 1 January 2021 and still apply under the scheme. This will ultimately depend on the relationship and whether they are related before 31 December 2020. If they are related before this date (and continue to be on the date of application), then close family members should be able to join the European national in the UK in the future. Close family members typically include spouses, civil and unmarried partners, children, grandchildren and dependent parents and grandparents. The Withdrawal Agreement does not protect extended family members, for example, siblings, uncles, aunts, nieces and nephews.

If they are not related before 31 December 2020 (say, if they get married at a later date), family members will not be under the EUSS but will be subject to UK law. This will incur significant application costs. In practice, the biggest difference may be that under UK law, the applicant will need to meet certain earnings

requirements to sponsor a spouse. At present, the annual gross earnings threshold is at £18,600 for spouses of UK nationals or settled migrants. Any children born or legally adopted after 31 December 2020 will be protected by the exit agreement.

Evidence of relationship

As part of the application, European dependants and non-Europeans will need to upload evidence of their relationship to the European national (for example, marriage, birth or civil partnership certificate). They will also need to provide a digital photo of themselves prior to submitting the application.

Residence

The Home Office will check length of residence against tax and benefit records. If a tax or benefit record does not cover a person's entire period of residence, the applicant may be asked to provide further evidence. The kind of evidence that the Home Office would accept would be annual bank statements, council tax bills or letters from their employer. A list of recommended documentation can be found on the Government's webpage on [evidence of UK residence](#).

Criminality checks

The Home Office will also undertake criminality checks as part of the application process. They will decide on the seriousness of a criminal record on a case-by-case basis, but broadly speaking, an application will be refused where there has been extended or repeat prison sentences.

Country of submission

Applications under the EUSS can be filed from the UK or Europe using the app to check the applicant's identity and to verify that the applicant is entitled to apply from outside of the UK. If the applicant is an EU, EEA or Swiss citizen, they must use their current valid biometric passport or national identity card with a biometric

chip. If they are not an EU, EEA or Swiss citizen, they must use their UK residence card with a biometric chip or, if they do not have this, they must send their identity document by post (provided that the local laws allow them to do so).

Depending on the length of residence in the UK, the applicant will either be granted settled status or pre-settled status. In either case, this will provide the applicant with the rights to:

- live in the UK
- work in the UK
- use the NHS
- enrol in education or continue studying
- access public funds such as benefits and pensions (if eligible for them)
- travel in and out of the UK.

Settled status

Eligibility

Europeans will be expected to make an application for settled status if they have lived in the UK for five years with continuous residence (see below) and do not have a serious criminal conviction. Europeans who already hold Permanent Residence will need to convert their status to settled status.

Continuous residence

Continuous residence would be deemed broken if the applicant has spent more than six months in any 12-month period out of the UK. There are some exceptions to the absences requirement where a single period of absence of more than six months but less than 12 months is permitted if this is for an important reason such as pregnancy, childbirth, serious illness, study, vocational training or an overseas posting.

Retaining settled status

After a person obtains settled status, it can still be lost if they leave the UK for a continuous period of five years or more. Swiss nationals will lose settled status if they leave the UK for a continuous period of four years or more.

Pre-settled status

Eligibility

Those with under five years' residence will be able to apply for pre-settled status before switching to settled status upon completion of five years of continuous residence in the UK. There is no defined

time that an applicant must be in the UK for, but they only need to evidence their residence by physical presence. This evidence must be dated within the last six months and can be, for example, a used flight ticket, hotel bookings and bank statements showing spending in the UK, placing the individual in the country by 11pm on 31 December 2020.

Retaining pre-settled status

After a person obtains pre-settled status, it can still be lost if they leave the UK for a continuous period of two years or more.

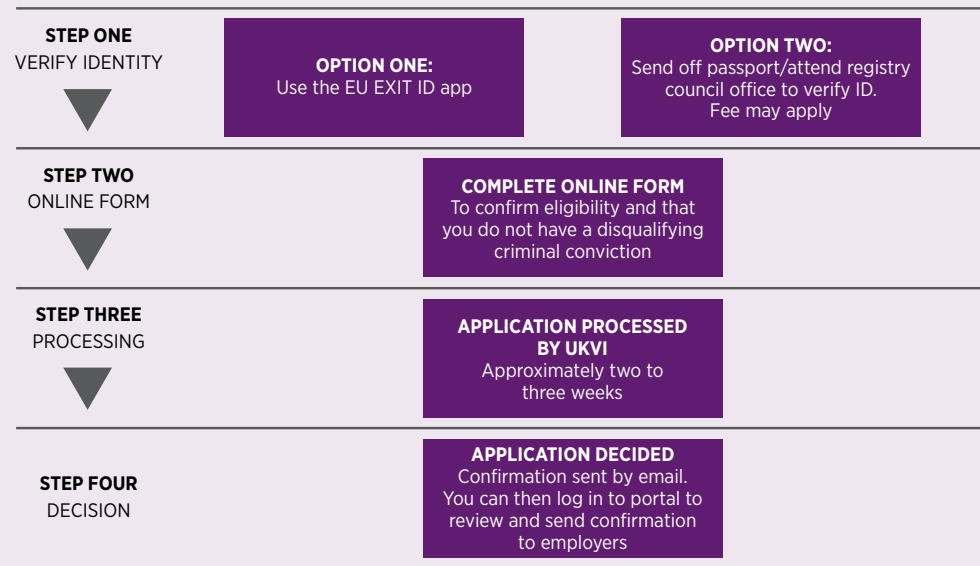
Making the application

Europeans with a biometric chip in their passport and non-Europeans who have a UK biometric residence card or permit will be able to use the app.

The application has two stages (Steps One and Two in Figure 2). First, the applicant will need to verify their identity. Second, they will then be required to complete a short online form.

The process should take around 20 minutes for a straightforward application.

Figure 2: EUSS application process



How does the EU Exit: ID Document Check app work?

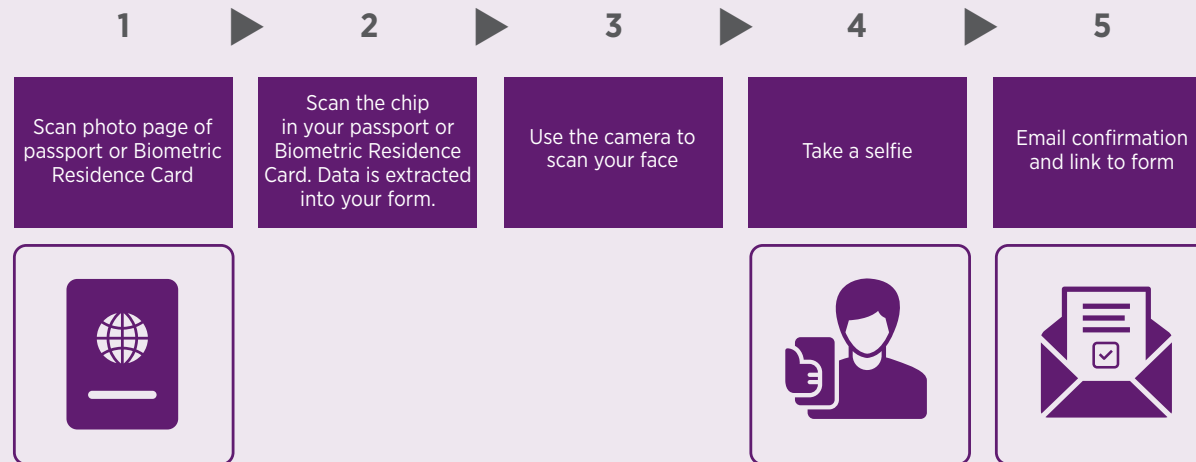
The app is used to verify the applicant's identity, so they do not need to send their passport to the Home Office or attend a local authority office.

The EU Exit: ID Document Check app can be downloaded on an Android 6.0 or later device or an iPhone 7 or above. The device must be connected to 3G/4G or WiFi and applicants may need to complete a software update to install the app.

Their identity will be immediately verified, and the applicant will get a link to the online application form. They will then be sent a one-time access code via text or email so that they can access their profile. They then need to complete the form by answering questions about themselves and upload documents if required.

If the app cannot verify the identity document, the applicant can make an appointment at an ID document scanning location. There are locations all around the UK and a full list can be found on the Government's [guidance page](#).

Figure 3: Using the EU Exit: ID Document Check app



What about non-European family members who do not have a UK residence card?

If the applicant is a non-European national (for instance, the family member of a European national) and does not have a UK residence card, they will need to complete an online application first and then attend a biometric appointment in the UK. The [application form](#) can be found on the government website. They will need to select the option of 'Enter my document details online and send my identity document by post.'

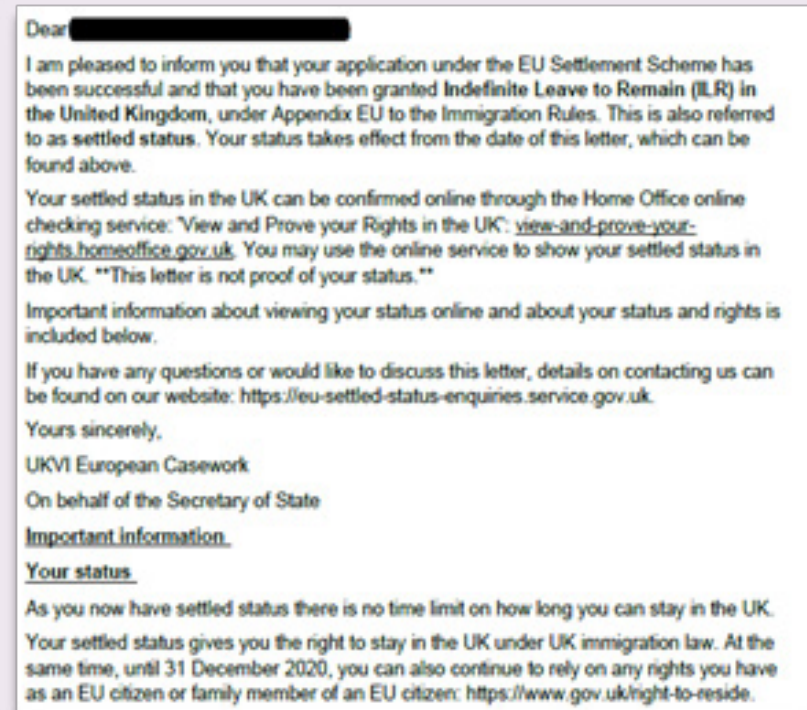
Once the online application has been submitted, the applicant will be automatically directed to the Home Office's third-party provider, Sopra Steria, to schedule a biometric appointment. Its website shows a [full list of the appointment centres](#) in the UK.

Approval and status

Once the application has been submitted, applicants will receive a digital certificate of application. This does not confirm their immigration status but does prove that the applicant has submitted an application.

Applicants will receive another email when a decision has been made, with an approval letter attached – see Figure 4 as an example. Europeans will not receive a physical status, but will be recorded electronically on the Home Office system.

Figure 4: Example approval letter under the EUSS



It will be possible for Europeans to understand their rights and update their details (such as passport number and contact telephone number), view their status and send proof of it to their employers through their online profile. An example screenshot of their status is shown in Figure 5.

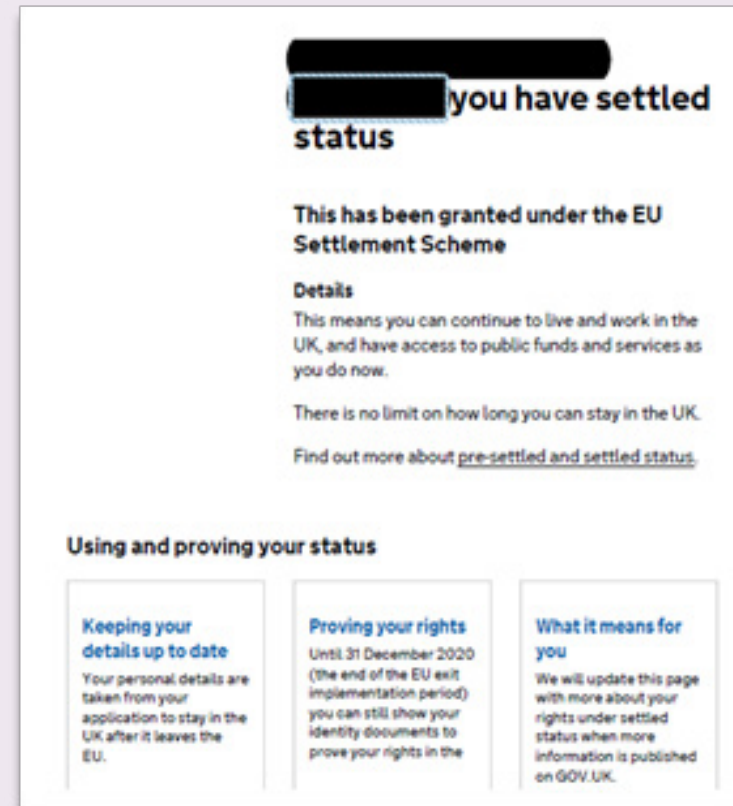
Non-Europeans will receive a biometric residence permit if their current visa has expired, their status in the UK has changed or they have not previously been issued with a residence card in the UK.

Where to find more information

Refer to the government website for further details about:

- [how to apply](#) under the EUSS
- the post-Brexit [immigration rules](#)
- [pending status applications](#)
- [Brexit generally](#), including the Article 50 process, negotiations and announcements about policy changes.

Figure 5: Settled status screenshot



C. Applying for British citizenship

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

- have held permanent residence/settled status for 12 months, unless they are married to British citizens, in which case they can 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 (some exceptions apply)
- have passed a 'Life in the UK' test and have a 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 – British citizenship

Background

Amélie, a French national, arrives in the UK in September 2015 with her French husband and 4 year-old child. She starts work immediately as a structural engineer.

Amélie works in the UK for five years. During this time, she and her family reside in the UK with very few absences. They have no criminal convictions. Accordingly, they are eligible for settled status under the EUSS. They submit their settled status applications, and subsequently receive their settled status in December 2020.

Eligibility

- After Amélie and her family have held their settled status for 12 months, they can apply for British citizenship.
- Alternatively, they can retain their settled status, as long as they do not spend five years continuously outside of the UK.

Making the application

It may not suit every qualifying European national to apply for British citizenship – there will be several factors to consider:

- **Dual nationality:** Some countries will not let individuals have two nationalities, so applicants should always check the position with the authorities in their home country. For example, German nationals would not be able to obtain British citizenship and simultaneously retain German nationality after 1 January 2021.
- **Tax position:** There may be tax implications with acquiring British citizenship and applicants should seek tax advice prior to proceeding. However, Europeans should also consider the further rights that they would obtain if they acquired British citizenship.
- **Voting:** While Europeans can already vote in local elections currently, the UK Government has not yet confirmed if this will be possible after May 2021. Obtaining British citizenship would guarantee this right, in addition to enabling successful applicants to vote in all national elections and referendums.
- **Certainty:** Europeans can lose settled status if they spend more than five years outside of the UK (or four years for Swiss nationals). However, if they obtain British citizenship, they would be able to leave the UK for as long as they wish, without losing their right to return.

Most people will be able to make their application online on the Home Office website.

Applicants must supply an extensive list of documents. This includes satisfying the English language requirement, either by taking a UK Visas and Immigration (UKVI) approved test or having

completed a degree taught in English. Applicants must also pass the 'Life in the UK' test prior to submitting the application. 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.

Exercising Treaty rights

When applying for citizenship, all Europeans must show that they were exercising Treaty rights as a 'qualified person' before gaining settled status. 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 Europeans who are in the UK as workers. However, if an applicant has spent any time in the UK as a self-sufficient person or a student, they must provide evidence that they had comprehensive sickness insurance during this time.

If the applicant has been a worker in the UK for the period before they obtained settled status, they must provide evidence of their employment. Applicants can provide P60s and an employer support letter. This must be on official company letter-headed paper, signed and dated by an appropriate person, for example an HR officer.

The letter³ 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.

Date of submission

Applicants must have been in the UK at the start of the five-year qualifying period being relied upon for the purposes of their continuous residence. For example, if the application is submitted on 1 November 2020, the applicant must have physically been present in the UK on 2 November 2015. This is the period of residence that demonstrates that they were in the UK for the five years before applying, rather than the five years spent securing Indefinite Leave to Remain.

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:

- (a) the full name and contact details of the translator or a representative of the translator's company
- (b) that the translation is a 'true and accurate translation of the original document', and
- (c) the date the translation was carried out.

Marriage and birth certificates (if dependants are applying)

These must be the long-form versions, with birth certificates clearly showing applicants and their spouse as the parents of the applying child.

Next steps

Once the application has been approved, applicants will receive an invitation to attend their citizenship ceremony. This is where their British citizenship will be conferred and they will receive their citizenship certificate.

After their citizenship certificate has been obtained, applicants can apply for their first British passport. They will be required to surrender their current passport and they will not be permitted to travel outside of the UK until they receive a decision on their British passport application.

D. Frontier workers

The [Withdrawal Agreement](#) between the UK and the EU also contains provisions for people who are established as 'frontier workers' by 11pm on 31 December 2020, allowing them to continue working in the UK for as long as they remain a frontier worker.

Frontier workers have a right of admission to the UK between the period 1 January 2021 and 30 June 2021, to carry on their activities without a permit or visa. From 1 July 2021 onwards, they will be required to present a [Frontier Worker](#) permit or other visa permission under UK law, to evidence their right to work in the UK.

³ 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.

What is a frontier worker?

A person is a 'frontier worker', and therefore eligible to apply for a Frontier Worker permit, if they were, immediately before the end of the transition period (11pm GMT on 31 December 2020), and have been continuously thereafter:

- (a) an EU, EEA or Swiss national
- (b) not primarily resident in the UK
- (c) one of the following:
 - a worker in the UK
 - a self-employed person in the UK
 - a person who has retained the status of being a worker/self-employed (that is, individuals who have had to stop working due to different circumstances such as illness, accident, unemployment, vocational training, pregnancy or childbirth).

Family members of frontier workers are not eligible to apply for a Frontier Worker permit. They may apply for a family permit to join the worker in the UK or even apply for status under the EU Settlement Scheme.

European national not primarily resident in the UK

An applicant must be an EU, EEA or Swiss national not primarily resident in the UK immediately before 11pm GMT on 31 December 2020, and continue to be not primarily resident in the UK thereafter.

This requirement will be met if at a particular point in time ('the relevant date'), they can show either that:

- (a) they have been in the UK for less than 180 days in the 12-month period immediately before the relevant date, or
- (b) unless there are exceptional reasons for not having done so (for example, illness, COVID-19 travel restrictions, pregnancy),

they have returned to their country of residence at least:

- once in the 6-month period immediately before the relevant date, or
- twice in the 12-month period immediately before the relevant date.

Worker, self-employed or retained status as a worker/self-employed person

The individual must meet this requirement before 1 January 2021.

They must not have ceased to be a worker or self-employed person in the UK, or ceased to have retained worker status, by this date.

To maintain their Frontier Worker status under the regulations, an applicant must continue to come to the UK for the purpose of work or self-employment at least in every rolling 12-month period from their first instance of work or self-employment in the UK in 2020. If this is not the case, then the individual should consider whether they had retained worker or self-employed person status during this period.

Worker

To be considered a worker, the individual must be in genuine employment. Genuine employment should have:

- an employer
- an agreement between employer and employee that the worker will perform certain tasks
- confirmation the employer will pay or offer services (such as free accommodation) or goods for the tasks performed.

Reasonable evidence may include:

- a letter from the employer confirming the need for the employee to travel to the UK for the purpose of work, outlining the frequency and usual duration of this travel

- a contract specifying the dates of employment and that the work must be wholly or partly undertaken from within the UK
- proof of payment for the work done in the UK for the relevant periods – this may include wage slips or bank statements covering the relevant periods of work.

The work activity must be genuine and effective, and not marginal and ancillary to their lifestyle as a whole while in the UK. Examples of activities in the UK which may be considered marginal and ancillary include:

- attending an interview or short, individual meetings
- negotiating and signing a deal or contract (where the work for the contract is not carried out in the UK)
- taking part in a one-off competition or audition (for artists, entertainers or musicians)
- being briefed on the requirements of a UK-based customer, if any work for the customer is done outside of the UK.

Self-employed person

Individuals in this category must be working for themselves and generating an income in an established self-employed capacity in the UK.

Applicants must provide evidence in support of their application to show they meet the factors listed below:

- economic activity in the UK, meaning they have performed certain tasks in the UK, such as selling goods, in return for payment or services
- genuine and effective self-employment in the UK
- stability and continuity in the UK
- membership of a professional body (where relevant).

Retained worker or self-employed person status

Someone who has temporarily stopped working in the UK can still be considered for a Frontier Worker permit if they can provide proof they had previously carried out genuine and effective work in the UK as a worker/self-employed person, and they:

- are temporarily unable to work in the UK because of illness or an accident
- are in duly recorded involuntary unemployment
- are involuntarily unemployed and have embarked on vocational training
- voluntarily stopped working to start vocational training related to their previous work
- are temporarily unable to work in the UK following pregnancy or childbirth.

For someone to retain worker status, their period of unemployment must immediately follow a period of employment or self-employment in the UK. This means that they must have become unemployed for one of the reasons listed above within 12 months of their last period of work in the UK.

Application process and grant of status

The application will be [online](#) and free of charge.

Applicants will need to provide evidence of their identity and frontier worker status.

Applicants must apply by using the relevant online application form and must follow the process set out in that online application form for:

- providing a valid identity document (namely a valid passport or national identity card)

- providing the required biometrics (either through the [EU Exit: ID Document Check](#) app or by attending a visa application centre (VAC))⁴
- providing evidence the applicant is a frontier worker.

A frontier worker will be issued with a digital permit. However, those who do not apply using the [EU Exit: ID Document Check](#) app will be required to attend a VAC and will initially be issued with a physical Frontier Worker permit. For applications made outside the UK, the permit must be collected in the UK and a Frontier Worker permit collection letter must be presented at the border on first entry to the UK.

Frontier Worker permits are valid for:

- five years if the applicant meets the eligibility criteria as a current frontier worker, or
- two years if the applicant meets the eligibility criteria as someone with retained worker/self-employed status.

Frontier workers can apply to renew their permit for as long as they continue to be frontier workers in the UK.

COVID-19 provisions

An individual may still be eligible to apply for a Frontier Worker permit even if they have not met the eligibility requirements as a result of being affected by COVID-19 restrictions.

Valid identity document

The Home Office may accept alternative evidence of identity and nationality in support of the application. For example, if an applicant claims an embassy is closed due to COVID-19 restrictions, they must provide evidence of this closure such as a letter from the relevant national authority, or a link to an official webpage.

Residency requirement

Where an applicant claims they have been prevented from travelling due to COVID-19, they must provide a supporting letter with their application outlining the details and the dates they were ill or were in quarantine, and where they were during this time.

Where an applicant claims to have been unable to travel as a result of international travel restrictions, these dates will need to be provided.

Employment requirements

In cases where an individual was unable to work as a worker or self-employed person in the UK during the 12-month period as a result of COVID-19, they must provide:

- proof they had previously carried out genuine and effective work in the UK as a worker or a self-employed person, and
- they had intended to come to the UK to work or engage in self-employed activities during the relevant 12-month period but had been unable to do so as a result of COVID-19.

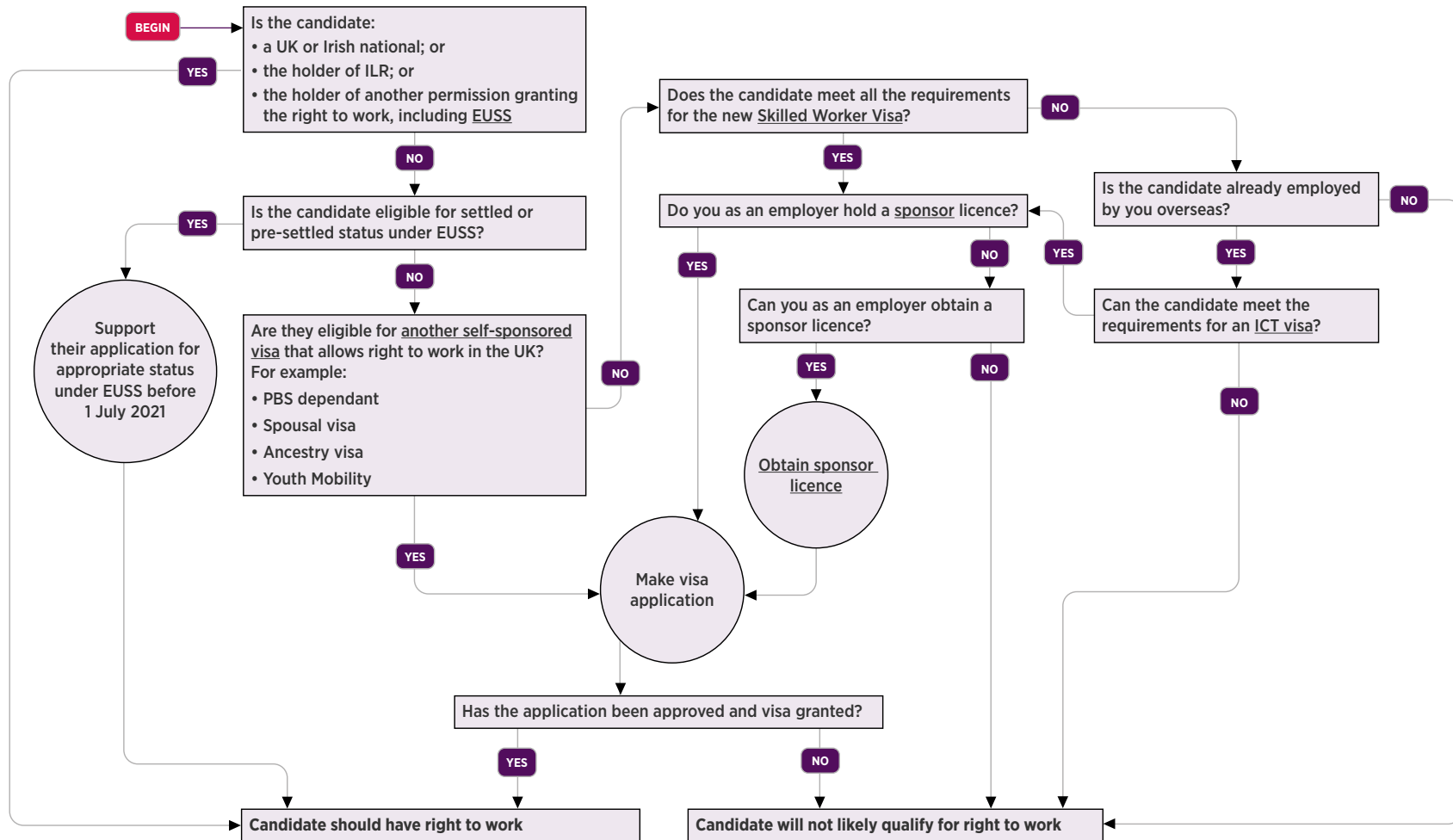
⁴ Applicants in the UK unable to use the app must wait until 21 January 2021 to apply online and to attend an application centre to enrol biometrics.

3 Employing non-UK citizen workers from 1 January 2021

What actions an employer needs to take regarding UK immigration policy can be focused around two simple questions. Do prospective or current employees have the right to work in the UK, and if not,

can they secure that right? From there it becomes a process, or series of processes.

Figure 6: Does your employee or prospective employee have the right to work in the UK after Brexit?



Confirming the right to work does not start and end with checking a passport. Documents need to be copied, certified and properly stored. If you are employing a British citizen, then you have delivered against your duties and no further action is needed. The same is currently true for people from Europe, although the rules are different for Croatians, and Brexit will change how right-to-work checks are conducted for such nationalities. A non-European national with valid Indefinite Leave to Remain⁵ in the UK has a similar right to take 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 all 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 – essentially sponsor themselves or obtain a visa on the basis of family ties – and if not, can you sponsor them?

A number of self-sponsored visa categories allow people to work in the UK. Spouses of British nationals, people already settled here, and up until 11pm on 31 December 2020, Europeans already

living in the UK, can live and work in the UK with little restriction. A Commonwealth citizen with a grandparent born in the UK or on a UK vessel may qualify for a UK Ancestry visa and then take employment. Students can often work to a limited degree, although any work they do must be incidental to their study. There are other options too, which are set out in the **Appendix**.

If a person cannot secure the right to work on their own, you as an employer may be able to sponsor them. Sponsorship is in essence 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. It normally makes sense to consider three key criteria before looking seriously at sponsoring a worker:

- (a) sponsorship is normally restricted to jobs at A-level or above
- (b) an employer has to be willing and able to meet strict minimum salary requirements, normally set at around £25,600, and
- (c) you can only sponsor a worker if there is a genuine vacancy and you may need to provide evidence of that.

⁵ Settlement is also known as Indefinite Leave to Remain (ILR) 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 years or more continuously then that status will usually be lost.

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

A. Assessing and recording right to work

In the UK, 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 may be exposed to a civil penalty of up to £20,000, amongst other sanctions.

Who has the right to work?

- **British and Irish citizens** have an immediate right to work.
- For the remainder of 2020, citizens from the **European Economic Area and Switzerland ('Europeans')** also have an immediate right to work in the UK, although different rules exist for Croatian nationals. The EEA comprises 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 UK. From 1 January 2021, Europeans who are new to the UK and are not eligible to apply under the EU Settlement Scheme will require permission to work in the UK under the new points-based system.
- Some Commonwealth citizens have a **Right of Abode** in the UK, giving them an immediate right to work here. However, they will first need a Certificate of Entitlement to demonstrate this right, which must be in a current, valid passport.
- Some non-European nationals will have **no time limit** on their stay in the UK. This is known as settlement or ILR and provides an immediate right to work in the UK. If this status is endorsed in

their passport, that passport must be current and valid. If not, they will need to apply for a Biometric Residence Permit to confirm their ongoing ILR status before an employer can complete the appropriate right-to-work check.

- Some non-Europeans 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 qualify to apply for settlement, depending on the particular immigration permission. In some cases, the right to work can be limited to a particular employer or to a maximum number of hours per week (this will be set out in their immigration document).
- Other non-Europeans 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.

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

When to perform the check

To perform a valid right-to-work check, original documentation must be checked, signed and dated by the employer before the employee commences employment, either:

- shortly before the employee's first day of employment, or
- on the first day of employment before the employee commences their role.

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

How to perform the check

The check will need to be conducted to meet the following requirements:

- (a) You must see one or more of the original documents that are prescribed by the Home Office. Verification can also be performed online in limited circumstances.

- (b) You must check that the documents are valid, with the applicant present.
- (c) You must make and keep copies of the documents and record the date you made the check. You can be asked to provide these documents.

Right-to-work documents

Right to work in the UK can be validated through sight of original documents or online. The online tool is currently only available to those who hold a biometric residence card or have secured status through the EUSS. From 1 January 2021, this will also include Europeans who have secured status under the new points-based system.

Where an employer is relying on original documents, these must be from the lists of acceptable documents prescribed by the Home Office as mentioned above.

Where an employer is conducting an online right-to-work check, the new employee will provide a [share code](#) inviting the employer to view their status online. An employer should download the information presented, noting by whom and when the check was completed. The employer will also need to confirm that the employee presenting themselves for work is indeed the individual presented through the portal.

Checking the documents are valid

A document validity check 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, that 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.

Historically, documents from Europeans have been particularly difficult to verify as they may not be accompanied by a UK visa or other immigration document. You can verify documents of the European Union, of its member states, and of the other countries participating at the EU's [Public Register of Authentic Travel and Identity Documents Online](#) website. From 1 July 2021, unless exceptional circumstances apply, employers will be able to complete online right-to-work checks for all EEA nationals. In most cases, status will either be held under the EUSS or the points-based system.

Right-to-work adjustments during COVID-19

The Home Office has temporarily adjusted the right-to-work process due to restrictions placed on employers in light of COVID-19. Right-to-work checks remain a mandatory process to complete prior to any employee commencing employment in the UK. Instead of an in-person check, employers are permitted to view original documentation online in the presence of its owner.

To complete a compliant check within these temporary guidelines, employers must:

- (a) request a scanned copy or photograph of the original right-to-work documents
- (b) arrange a video call with the individual to validate the original document against digital copies provided

- (c) record the date of check, detailing the following wording on the copy 'adjusted check undertaken on [insert date] due to COVID-19'.

It is important to note employers will be required to conduct a retrospective check (within eight weeks after COVID-19 measures end) for those individuals who:

- commenced employment during the COVID-19 pandemic, or
- required a follow-up right-to-work check during the pandemic.

Any follow-up right-to-work check must be marked 'the individual's contract commenced on [insert date]. The prescribed right-to-work check was undertaken on [insert date] due to COVID-19.'

Right to work for Europeans

Until at least 30 June 2021, employers will be able to obtain a statutory defence against illegal working, simply by seeing a European passport or ID card. However, Europeans who arrive in the UK on or after 1 January 2021 will require permission under the new immigration regime. This puts employers in a difficult position of having conducted a satisfactory right-to-work check without establishing that the individual has a right to work. Employers who make it mandatory for Europeans to evidence status under the EUSS or the new immigration regime may be deemed discriminatory. As such, they should act in conjunction with advice from their employment counsel and data privacy officer before requesting any additional evidence of right to work.

Employer Checking Service (ECS)

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

- (a) the individual has an outstanding appeal, or
- (b) the individual has an application pending with the Home Office (including a renewal).

After contacting the Home Office, you will receive a Positive Verification Notice or a Negative Verification Notice. This normally takes five to ten 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 defence 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 confirms 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 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, such as a photocopy or a screen shot (if verified online).
- Copies should ideally be in colour.
- 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, a complete copy must be made.
- 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 Act and related legislation).
- Record the date the check was made.

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, an employer can lose their sponsor licence and/or individuals could face criminal charges. In some instances, the Home Office will publicly name an employer.

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.

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 you a statutory defence against a civil penalty in these instances. However, if you do not properly conduct or record a right-to-work check, you will have no statutory defence, irrespective of how sophisticated a forged document may be.

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. This can be done on a spreadsheet, in your diary or on your HR system, whichever works for you.

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

- contact the worker ahead of the visa expiring to ask if they plan to extend their stay, and
- on or shortly before the date of expiry you should repeat the right-to-work check.

You 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. Self-sponsorship

The UK's immigration system is designed to facilitate the entry of skilled workers, excluding people who will enter to take low-skilled work. The system can work well for regular sponsors but the administration, time involved and cost could put off one-off or occasional users.

Where sponsorship isn't possible or would take too long, employers ought to look at whether an employee can qualify to work in their own right, also known as self-sponsorship. The permissions you are most likely to see are:

- Spouses and partners of UK nationals and people settled in the UK can take any employment. After five or ten years in the UK the holder can apply for Indefinite Leave to Remain, maintaining their right to work.
- UK Ancestry visas are available to Commonwealth citizens with a British-born grandparent. The UK Ancestry permission allows employment, and holders can apply for ILR after five years.
- People aged 18 to 30 from Canada, Australia, Japan and several other countries can qualify for a Youth Mobility Visa. This allows work at any level for two years, after which time they need to qualify for a new permission (for example, Skilled Worker) or leave the UK.
- A person with permission as a student may be allowed to work for 10 or 20 hours per week during term time, depending on the type of course they are studying

See the **Appendix** for a summary of the main types of visa that enable work.

C. Sponsoring Skilled Workers and Intra-Company Transfers

People who do not qualify for work permission in their own right will need to be sponsored under the Skilled Worker category, or as an Intra-Company Transferee where they are employed by you overseas. These categories are modelled on the Tier 2 General and Tier 2 Intra-Company Transfer (ICT) categories that operated between 2008 and 2020.

In both instances, workers must be in skilled roles (RQF 3 for Skilled Worker, RQF 6 for ICT), meet salary requirements and be sponsored by a UK employer, amongst other requirements. Of those requirements, skill level is arguably the most important. If a job is not skilled, the worker cannot hope to be granted permission to work. That said, sponsorship is a mandatory and onerous requirement. Applying for a licence takes time and careful consideration, and successful applicants must comply with a strict immigration regime on an ongoing basis.

In this section we set out the process for attaining a sponsor licence and the ongoing duties before setting out the key requirements, terms and conditions of sponsoring a Skilled Worker or ICT.

D. Securing a sponsorship licence and remaining compliant

To sponsor an applicant under the Skilled Worker or ICT category, an employer must first hold an A-Rated Sponsor Licence. This licence allows the employer to issue Certificates of Sponsorship (CoS) to existing or prospective employees ahead of their Skilled Worker or ICT visa application, or apply for a Defined Certificate of Sponsorship (DCoS) on their behalf.

The securing of a sponsor licence is a long-term commitment by an employer. Once in possession of a sponsor licence, their compliance obligations start immediately, whether they have sponsored any employees or not.

The Home Office expects employers to manage their sponsored employees through the Home Office's Sponsor Management System (SMS). A sponsor must have the ability to track and monitor its sponsored population through well-operated HR systems and key personnel authorised to have access to the licence.

Before applying for a sponsor licence, there are several points to consider, including the changing immigration landscape and how this will impact your business. A potential sponsor should ask themselves whether the business operates solely from within the UK or will the UK company making the application have links (by way of common ownership/control) to overseas entities. If an applicant sponsor is able to demonstrate such links to overseas entities, they may have the option to apply for both the **Skilled Worker** and **Intra-Company Transfer** limbs of a licence. By securing a sponsor licence that has both limbs, the UK entity will have the flexibility to offer sponsorship in the UK to those who have been employed by a linked overseas entity or new hires/permanent moves to the UK.

Eligibility criteria – documentation and key personnel

The initial application for a UK sponsor licence is a lengthy and involved process. How readily a company is able to secure supporting documentation and establish key compliance processes will dictate how quickly an application can be filed. This is often the longest part of the application process.

What supporting documentation is needed? A company must submit four pieces of documentation chosen from a [set list](#).

It is important for applicant sponsors to submit the right documentation as detailed, otherwise an application can be rejected. It is important to review the [Home Office guidance](#) to ensure any specific documentation for your industry is included.

Are there 'key personnel' based in the UK? There are three critical roles that must be allocated during the sponsorship licence application process. These individuals are key to maintaining responsibility for the sponsor licence, all of whom must be based in the UK:

- **Authorising Officer.** This is often the role given to an HR manager, director or business owner. This individual will have ultimate responsibility for the sponsor licence. They must be a paid employee or office holder of the UK company and based in the UK. They do not have automatic access to the SMS.
- **Key Contact.** The main liaison point between the UKVI and the sponsoring organisation. They do not have automatic access to the SMS. This can be the authorising officer or a third-party representative.
- **Level 1 user.** For the purpose of the sponsor licence application, this is often the authorising officer. This individual has full access to the SMS and allows for CoS/DCoS to be issued and reporting duties to be fulfilled. It is not uncommon for more than one Level 1 user to be listed on the licence, often a representative.

Suitability criteria – compliance practices and processes

There are certain statutory and regulatory obligations of being a sponsor that the UK entity will be required to acknowledge, accept and implement as part of the sponsorship licence application. The main aim of these obligations is to prevent immigration abuse by ensuring patterns of non-compliance are detected and tackled early.

The main duties for an employer who wishes to secure and retain its sponsor licence relate to record-keeping and reporting, as well as compliance with the law in relation to the prevention of illegal working. In assessing these duties, the UKVI may undertake an onsite audit with minimal or no notice. The audits undertaken assess these duties specifically by reviewing and scoring the following four areas:

(a) Human resources systems:

- monitoring immigration status
- maintaining migrant contact details
- record-keeping and recruitment practices
- migrant tracking and monitoring.

(b) Convictions and civil penalties:

- whether any key personnel listed on the licence has been issued with a [relevant offence](#).

(c) Migrant compliance:

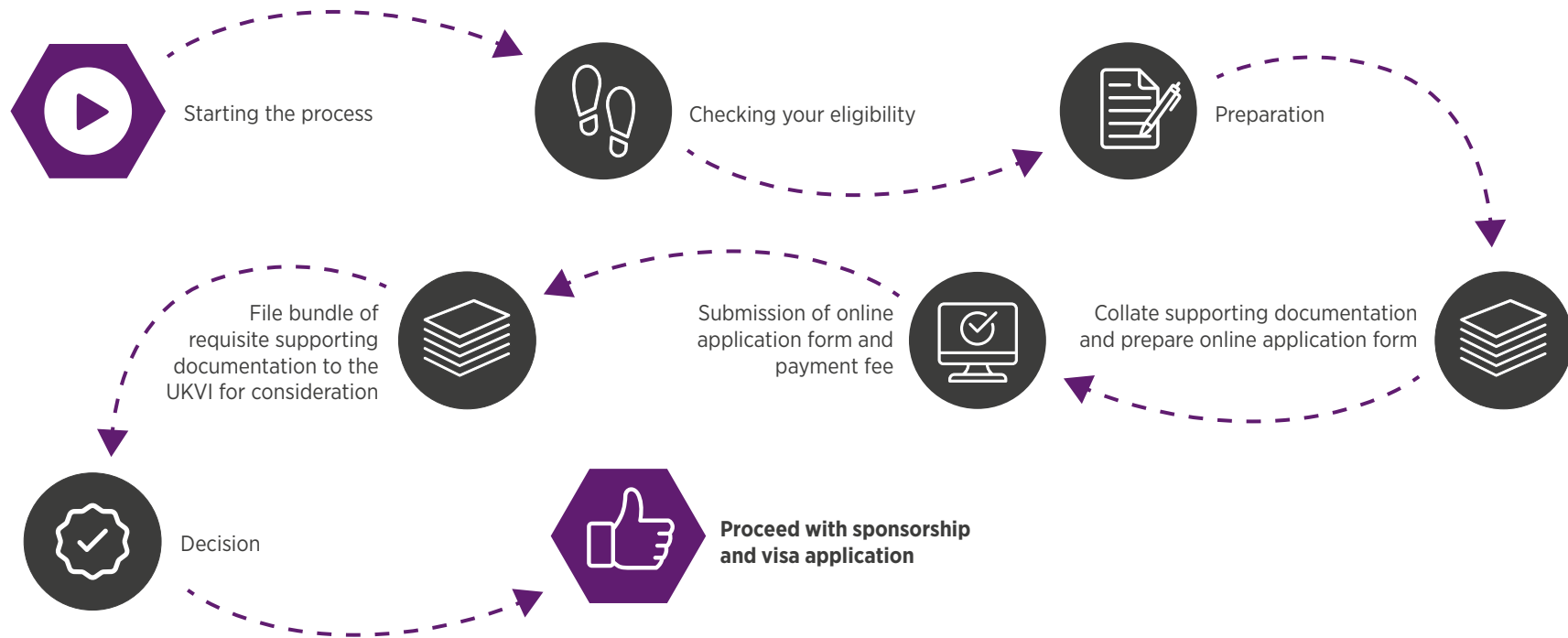
- prevention of illegal working
- maintaining registration with overarching bodies.

(d) Employment:

- Can you offer employment that meets skill level and salary criteria?
- Can you offer employment that meets genuine vacancy requirements?

A business must be confident that by the time of application it has sufficient/robust systems in place to ensure ultimate compliance. If the UKVI deems an applicant sponsor unable to fully meet the sponsor obligations, the sponsor licence application could be refused.

Figure 7: Securing a sponsor 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:

1. Ensuring your HR systems are sponsor-licence-ready.
2. Determining who will be responsible for ensuring that you meet your compliance obligations and who will manage your sponsor licence.
3. 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.

4. Preparing and submitting the online application.
5. Submitting the hard-copy application.
6. Awaiting notification of a Home Office visit/outcome of application.

Timing

Applications can take between four and eight weeks to process. There is also a newly introduced priority processing service that allows for an application to be processed in approximately ten working days.

The Home Office may wish to arrange a pre-licence compliance audit to assess your HR systems and speak with those who will take active roles under the licence. This would add approximately two weeks to the process.

Cost

The [application fee](#) 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 expedite the initial application, renew an existing sponsor licence, or apply to extend the scope of an existing licence (for example, where you applied for a Temporary Worker (formally Tier 5) licence and wish to add a Skilled Worker limb to the licence). There are no fees at this time should you wish to add an ICT limb to an existing Tier 2 General/Skilled Worker licence.

Compliance duties

If a sponsor licence is successfully obtained, this will allow the sponsor to provide work authorisation to skilled workers who have a job offer in the UK. Throughout the four-year licence validity, a sponsor licence holder must adhere to mandatory compliance obligations in line with Home Office guidance.

In practice that will mean issuing CoS/DCoS that meet minimum sponsorship criteria, 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 [Workers and Temporary Workers: Guidance for Sponsors](#) 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, loss of reputation and/or the loss of all sponsored workers.

Home Office audits

The Home Office normally tests compliance at an immigration audit.

The Home Office can audit a sponsor at any time, with or without prior notice. It is not uncommon for a Home Office official to turn up at a sponsor's licensed 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 – this could include the premises of a client who is receiving services from a worker sponsored by a service provider, if they are working onsite.

The visit will usually consist of:

- an interview with key personnel responsible for operating the 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 employees (sponsored and non-sponsored), and
- an interview of sponsored workers to verify the information you have provided.

Table 1: What are the outcomes of a Home Office audit?

Outcome	Action	Fees
Maintain A-rated status	N/A	Zero
Downgraded to B-rated status	Temporary status Action plan awarded Second audit undertaken in most cases Reinstated to A or revocation once action plan assessment complete	£1,476
Suspension	Temporary status 20 working days to respond to suspension letter No Action Plan unless upgraded to B rating Reinstated to A or revocation once second assessment complete	Zero (or £1,476 if upgraded to B status)
Revocation – removed from register of sponsors	Sponsored employees' status curtailed No reapplication for 12 months Key personnel restricted for 12 months from being listed on another sponsor licence	Zero

E. Skilled Worker

The Skilled Worker route is for employers who need to fill a skilled vacancy in the UK. While much broader than the previous Tier 2 General category, the route will not help every worker and employers should ensure that a prospective employee will qualify before applying for a sponsor licence or issuing a CoS.

Various skill and salary requirements are in place, along with an ability to 'trade' points for various attributes of either the role or applicant. A total of 70 points must be met to qualify for the Skilled Worker route:

- **Sponsorship** (20 points – mandatory). An application under Skilled Worker must be for a role sponsored by a UK entity holding an [approved sponsor licence](#) from the Home Office. Those entities who may have previously employed UK/European nationals will only now need to consider obtaining a licence to sponsor Europeans and non-Europeans coming to the UK from 1 January 2021.
- **Skilled role** (20 points – mandatory). Skilled Worker skill threshold is set at RQF 3, equivalent to A-level standard. The Home Office uses [Standard Occupational Classification codes](#) (SOC codes) to identify these eligible jobs.

If your prospective employee will not fill a role considered to be at RQF 3–5 level or above, Skilled Worker is unlikely to be an option. Importantly, the level of the job is what matters; the worker does not need to hold qualifications at a certain standard.

- **English language** (10 points – mandatory). Skilled Worker applicants must speak English. They can demonstrate their proficiency by being a national of an English-speaking country, holding a recognised qualification taught in English, passing a

GCSE, A level, Scottish National Qualification at level 4 or 5, or Scottish Higher or Advanced Higher, in English (language or literature taught in a UK school), or passing a recognised English language test. The Home Office's Immigration Rules contain guidance on [how this requirement is met](#), which includes some surprises – for instance, South Africa not being considered as an English-speaking country and Malta being recognised as such.

- **Salary** (20 points – tradable). Skilled Worker migrants must be paid at least the minimum salary for the visa category or the minimum salary for their particular job under the 'going rate', whichever is **higher**. These minimum salaries could be subject to change, often annually. The minimum salary level can only be met by the migrant's base salary. Even guaranteed allowances cannot be included.

The 20 points required for salary can be scored in one of the ways listed in Table 2.

Table 2: Tradeable requirements for meeting the salary threshold

Tradeable requirements	Points
The applicant's salary equals or exceeds both: <ul style="list-style-type: none"> • £25,600 per year, and • the going rates for the occupation code. 	20
Educational qualification: PhD in a subject relevant to the job and the applicant's salary equals or exceeds both: <ul style="list-style-type: none"> • £23,040 per year, and • 90% of the going rate for the occupation code. 	20 (10 for education qualifications and 10 for salary)
Educational qualification: PhD in a STEM subject relevant to the job and the applicant's salary equals or exceeds both: <ul style="list-style-type: none"> • £20,480 per year, and • 80% of the going rate for the occupation code. 	20
Job in a shortage occupation and the applicant's salary equals or exceeds both: <ul style="list-style-type: none"> • £20,480 per year, and • 80% of the going rate for the occupation code. 	20
Applicant is a new entrant to the labour market and their salary equals or exceeds both: <ul style="list-style-type: none"> • £20,480 per year, and • 70% of the going rate for the occupation code. 	20
Job in a listed health or education occupation and the applicant's salary equals or exceeds both: <ul style="list-style-type: none"> • £20,480 per year, and • the going rate for the occupation code. <p>All applicants with a role in health or education occupation can only be awarded tradeable points from this option.</p>	20

The 'going rate' for a particular role is set out in the Home Office Immigration 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 category itself cannot be pro-rated and must be met.

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. The salary rate for roles appearing on the SOL will be 20% lower than the full going rate.

New Entrants

The definition of a new entrant has been broadened to capture more applicants and will include those listed in Table 3. The salary rate for New Entrants will be 30% lower than the full going rate in any occupation; however, the minimum of £20,480 must always be met. If benefitting from the new entrant going rate discounts, a visa up to a maximum of four years can be applied for.

Table 3: Who is a New Entrant?

The candidate will be deemed a 'New Entrant' if any of the following apply:

- they are under the age of 26 at the time of the Skilled Worker application
- they are switching from a Student visa (Bachelor degree or above) or Graduate route (including Tier 1 Graduate Entrepreneur)
- the role is in a UK regulated profession and the candidate is working towards professional qualifications or full registration or chartered status with the regulating professional body
- the role is a postdoctoral position in selected PhD level SOC codes.

Trading points under a PhD

Applicants may trade points if they are being sponsored for a job in an appropriate occupation code listed as being 'eligible for PhD points' and they have a relevant UK PhD or other academic doctoral qualification. The going rate threshold will be 10% lower than the full going rate or 20% lower if the PhD is in a science, technology, engineering or mathematics (STEM) subject.

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.

Immigration Health Surcharge

Applicants who will be entering the UK for six months or more, or extending their leave in-country, must pay the Immigration Health Surcharge. The charge is generally £624 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 at the same rate or £470 for dependants aged under 18 at the date of application.

Switching

Applicants may now switch from most other immigration categories into the Skilled Worker route from within the UK, including from an ICT or Youth Mobility route. An applicant must still meet all eligibility requirements. Switching into Skilled Worker is not permitted from a visitor status.

Application process

Applicants require sponsorship from an employer. Companies who are sponsors can issue a CoS to an individual, which the individual uses to make their visa application. 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 'undefined' and used when an applicant is inside the UK already holding status and moving into or extending in the Skilled Worker route.

For applicants filing outside the UK, employers must make a request via the SMS for a Defined CoS (DCoS). These will be reviewed by a panel and should be issued for use within 24 hours of a request. Additional information may be requested and the issuance time increased if a particular application is deemed high risk or there are questions on the genuineness of the information provided in the request. The process is much quicker than under the previous UK system, where such requests were only dealt with in one monthly panel meeting.

Length of stay

Skilled workers can apply for an initial visa for up to five years. Holders can apply for ILR after five years, so long as certain conditions are met, including absence thresholds. There is no limit on their stay in the category if they are unable to meet the requirements for ILR.

Former requirements no longer applicable

There are aspects from the previous system that no longer apply to applications made under Skilled Worker. A Resident Labour Market Test is no longer required but employers must retain evidence of a genuine recruitment on file under compliance obligations. There is no longer a monthly panel for certain CoS requests – this is replaced by the 'defined CoS' process above. Accordingly, the cap on numbers is suspended. A 12-month cooling-off period and restriction on time spent in the category no longer applies.

Health and Care subcategory

The Health and Care visa is for eligible health workers who have been trained to a recognised standard and have good English-language skills. The Health and Care visa forms part of the Skilled

Worker route. Benefits of the route include fast-track visa processing for entry to the UK, reduced application fees and an exemption from the Immigration Health Charge. The Government's website contains [further details](#) on roles in a limited number of health and care job titles that are eligible for the visa category.

Supplementary and skilled working

Holders of Skilled Worker and Tier 2 General permission are allowed to take supplementary or secondary employment in certain circumstances. For supplementary employment, in addition to the job specified on the CoS, a Skilled Worker's conditions allow them to do extra work if it is:

- in either a job in the [Shortage Occupation List](#) or a job in the same occupation code as the job for which the CoS was assigned
- no more than 20 hours a week
- outside the working hours covered by the CoS.

If the extra work meets the above requirements, the applicant does not need to inform the Home Office before taking extra work.

For secondary employment, a skilled worker can apply to do a second (additional) job that does not qualify as supplementary employment. For example, it requires more than 20 hours' work a week. They will need a new CoS for this second job and must apply for a variation of permission, in addition to the certificate and permission for their existing job. This is because working in the second job is not covered by their existing conditions. Other conditions and considerations are set out in the [Skilled Worker guidance](#).

F. Intra-Company Transfer (ICT)

The ICT route allows employers to sponsor existing employees of an overseas entity and send them to the UK on assignment. As a category requiring sponsorship, a number of controls exist to protect the job prospects of resident workers and control the number of people entering the UK.

Categories

The ICT visa contains two subcategories. The minimum salaries are subject to change:

- (a) The Intra-Company Transfer route is for sponsored workers who will be paid the higher of £41,500 or the minimum salary for the job. They are normally limited to holding no more than five years' stay in any six-year period (or nine years in any ten-year period for those earning above £73,900). 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.
- (b) The Intra-Company Graduate Trainee visa 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. They need to be a recent graduate with at least three months' experience with their employer overseas.

Certificate of Sponsorship

All applicants require a CoS to make their visa application and therefore employers need a sponsor licence before they can issue a CoS.

Skill level

An ICT is restricted to roles considered at RQF 6 level (degree-level jobs). As with Skilled Worker, the Home Office identifies these jobs using the SOC codes. The level of the job is what matters – the worker does not need to hold a degree.

Company experience

To sponsor migrants under an 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

Applicants are normally limited to holding no more than five years' stay in any six-year period (or nine years in any ten-year period for those earning above £73,900).

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, including applications for Intra-Company Graduate Trainees.

Visa application

If the assignee qualifies for and is assigned a CoS, they can apply for their ICT visa. The application normally takes 15 days from overseas or eight weeks in the UK, but faster priority services are generally available.

Immigration Health Surcharge

Applicants who will be entering the UK for six months or more, or extending their leave in-country, must pay the Immigration Health Surcharge. The charge is generally £624 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 at the same rate or £470 for dependants aged under 18 at the date of application.

Switching

ICT applicants are now able to switch to the Skilled Worker route from within the UK if all relevant eligibility criteria are met.

Length of stay

ICT is not considered a qualifying category when reviewing eligibility for ILR. ICT holders are not permitted to apply for ILR in the UK and must take note of the cooling-off provisions.

G. Case study examples

Case study – Low-skilled

Background

Judith has received an application for the vacancy of accounts assistant from Michael, a United States national based in Germany. The proposed start date is 1 February 2021.

Eligibility

The role of accounts assistant is not eligible for sponsorship under either the Skilled Worker or ICT categories as the role is not at the required skill level. Therefore Michael must have applied, or be able to apply, for permission to live and work in the UK through another visa route.

Possible routes Michael could be eligible to work under are:

- If he is the spouse of a British national/settled worker, he could be eligible to apply as the partner of a settled person.
- If he is the spouse of an EEA national, who has obtained status under the EUSS, he may be eligible to apply as their family member.
- If his spouse has secured work sponsorship under the Skilled Worker or ICT routes, he can apply as their dependant.

This is a non-exhaustive list.

There is, however, no sponsored route available to him to fill this role.

Case study – Permanent employee (Skilled Worker route)

Background

Gary would like to hire Charlotte to the permanent role of finance manager in the UK, with a base salary of £65,000 per annum. Charlotte is a French national based in Italy and due to her current commitments, the earliest that she would be able to relocate to the UK would be from March 2021. Charlotte has only been to the UK to visit previously.

Eligibility

- As Charlotte has not resided in the UK before 1 January 2021, she will not have status under the EUSS.
- Charlotte would not be able to apply under the ICT route, as she is not employed by the overseas entity and does not satisfy the 12-month employment overseas requirement as the salary on offer is below £73,900 per annum. Additionally, the ICT route does not lead to settlement in the UK and therefore may not be suitable for a permanent UK-based role.
- Charlotte could be sponsored under the Skilled Worker route. The role and salary on offer are at the required level for sponsorship. Charlotte would need to satisfy an English-language requirement.
- Once Charlotte has spent five years in the UK under the Skilled Worker route, she may be eligible to apply for settlement.

Case study – ICT route

Background

Mahendra is an Indian national working as a management consultant, who joined the Indian office in August 2017 and has worked continuously for the company since this date. He has spent two previous periods in the UK under the Tier 2 ICT – Long Term Staff route, from 1 August 2018 until 30 September 2018, and then again from 1 December 2019 until 30 September 2020.

He applies for an internal vacancy to work on a project in the UK office for 12 months, which is offering a base salary of £50,000 per annum, with a start date of 1 February 2021. The India office is recognised on the UK office sponsor licence as a linked entity.

Eligibility

Mahendra has two sponsored visa options available to him:

- Intra-Company Transfer
- Skilled Worker.

The salary on offer is above the minimum requirement for both visa routes and also the going rate for the occupation role of a management consultant. Therefore the salary requirement is met for both routes.

Intra-Company Transfer route

As a temporary assignment of 12 months and due to the fact no English-language requirement is needed, the ICT route is likely to be the most suitable option.

As the salary on offer is less than £73,900 per annum, Mahendra needs to satisfy a 12-month overseas employment requirement, which is met on the basis he joined the company in August 2017.

Mahendra is not subject to the cooling-off period under the ICT route as he has spent only 12 months in the previous six years in the UK. He is therefore able to apply for a further 12 months as this does not exceed the permitted five years in a six-year period.

Skilled Worker route

The Skilled Worker route may also be applicable, although as an Indian national, Mahendra would be required to meet an English-language requirement.

As Mahendra is based in India, a tuberculosis test would be required as part of either application.

Case study – Remote worker

Background

Jessica and Juan are Spanish nationals employed by a UK technology company but work remotely in Spain. Jessica spent ten years in the UK and applied for settled status in 2019. She returned to Spain in 2020, during the COVID-19 pandemic. Juan has never lived in or visited the UK.

This case study focuses on the immigration aspects of the scenario. Other matters, including those in relation to taxation, will need to be considered regarding overseas remote workers.

Jessica's eligibility

- Jessica can retain her settled status, despite her return to Spain.
- Her settled status will mean that she can return to work in the UK for short or extended periods, including indefinitely.
- Jessica will not lose her settled status unless she spends five years outside of the UK or contravenes rules around criminality.

Juan's eligibility

- Juan will not qualify for status under the EUSS.
- Juan will be able to visit the UK for business, for instance to attend meetings, without needing a visa.
- If Juan wishes to move to the UK he will need to apply for a work permission, most likely in the Skilled Worker category.

4 Ireland and Northern Ireland

As mentioned elsewhere in this guide, because of the [Common Travel Area](#) arrangement between the UK and the Republic of Ireland, citizens of either country can live and work in each other's country without immigration control.

However, once free movement has ended, other Europeans living in Northern Ireland (NI) will need permission to live and work there, just as non-Europeans already do. They will be subject to the same Immigration Rules as for the rest of the UK, but movements between the Republic of Ireland (ROI) and Northern Ireland can make this seem more complicated. The main considerations are as follows.

Republic of Ireland residents working in Northern Ireland

- If they are Irish citizens, there is no impact and they can freely work in NI and anywhere else in the UK.
- If they are of any other nationality, the UK Immigration Rules explained in this guide will apply for work in Northern Ireland.
- Where a European national was living in the ROI and working in NI before 1 January 2021, in some instances, a [Frontier Worker](#) permit will be a reasonably straightforward solution. However, if they will spend or have spent over 180 days in a year over five years in the UK, as well as meeting other conditions, pre-settled or settled status under the EUSS may be a better choice.

Northern Ireland residents working in the Republic of Ireland

- If they are UK citizens, there is no impact and they can freely work in the ROI (unlike in the rest of Europe).

- If they are European, they can freely work in the ROI but would need a right to reside in Northern Ireland under UK Immigration Rules.
- If they are not European, the Irish Immigration Rules apply. They will need work authorisation (see common types below) to work in Ireland. They will also need a right to reside in Northern Ireland under UK Immigration Rules.

Common Irish work permits

The most common work authorisation types are:

- the [Atypical Working Scheme](#) (AWS) for short-term work assignments up to 90 days where there is a business need
- the [Critical Skills Employment Permit](#) (CSEP) for highly skilled workers hired on a local contract
- the [Intra-Company Transfer](#) (ICT) Employment Permit for international transfers of senior managers, key personnel or trainees for up to five years (or one year for trainees)
- the [General Employment Permit](#) (GEP) for attracting third-country nationals for occupations which are experiencing a labour or skills shortage.

A right to work is also conferred by other immigration permissions, including but not limited to family member, graduate and student immigration categories (although students can only work part-time during term time).

5 Appendix – Table of visa categories

Category	Purpose/key criteria	Max. length of stay	Work rights	Red flags	Capped	Settlement	Citizenship*
Investor	For those investing £2m+ in the UK in approved investments	Extendable/indefinite	Y	Investment must be maintained to extend visa and settle in UK	N	After 2-5 years	Usually after 6 years
Innovator	For those wanting to set up or run a business in the UK, and the business or business idea has been endorsed by an approved body: minimum of £50,000 in investment funds required	Extendable/indefinite	Work is restricted to business in which investing	Must be still running a business in the UK or intending to set up a new business to extend and settle in the UK	N	After 3 years	Usually after 5 years
Start-up	For those wanting to set up or run a business in the UK, and the business is a new idea (not already trading), innovative and viable with potential growth. Must be endorsed by an approved body	2 years	Y	No extension after 2 years but can switch into Innovator category	N	N	N
Global Talent	For endorsed individuals who are either leaders in their field or potential to be leaders in the fields of: science, engineering, medicine, humanities, digital technology, and arts and culture	Extendable/indefinite	Y	Must be endorsed by an approved body before an application can be made; for extensions and settlement must have made money in their field of expertise	N	After 3-5 years	Usually after 6 years
Tier 1 Entrepreneur (closed to new applicants)	For those investing in an existing or proposed business through £200,000+ entrepreneurship (or £50,000 in certain funded cases)	Extendable (closed for applications made on or after 5 April 2023)/ Indefinite (closed for applications made on or after 5 April 2025)	Work is restricted to business in which investing	Job creation is required to extend visa and settle in UK	N	After 3-5 years	Usually after 6 years

Category	Purpose/key criteria	Max. length of stay	Work rights	Red flags	Capped	Settlement	Citizenship*
Tier 1 Graduate Entrepreneur (closed to new applicants)	For graduates who have been officially endorsed as having a genuine and credible business idea	2 years	Y	No extension after 2 years but can switch to Entrepreneur category if business succeeds until 5 July 2021. Can submit extension application under the Tier 1 Entrepreneur visa category until 5 July 2025, and apply for settlement up until 5 July 2027	Y	N	N
Tier 1 Exceptional Talent (closed to new applicants)	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 under Global Talent category/ indefinite	Y	Extensions are made under the Global Talent category	N/A as closed to new applicants	After 3-5 years	Usually after 6 years
Skilled Worker	For skilled workers to work in the UK in a specific job	Extendable/indefinite	Minimum salary is usually £25,600+ per annum, although tradeable points available for lower salaries. Work restricted to terms of the Certificate of Sponsorship. Changes to be authorised. Supplementary work allowed under strict conditions	Changes must be authorised. Actual salary required may be higher depending on occupation code minimum	N	After 5 years	Usually after 6 years

Category	Purpose/key criteria	Max. length of stay	Work rights	Red flags	Capped	Settlement	Citizenship*
Intra-Company Transfer	For overseas employees offered a role in a UK branch of the organisation	5 years in any 6-year period, or 9 years in any 10-year period for high-earners (currently £73,900 per annum)	Minimum salary is £41,500 per annum. 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 £73,900+ per annum. Changes must be authorised. Actual salary required may be higher depending on occupation code minimum	N	N	N
Intra-Company Graduate Trainee	For workers who are being transferred to the UK as part of a structured graduate training programme	12 months	Minimum salary is £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
Student	For students over 16 who wish to study in the UK and have been offered a place on a course of further or higher education, a pre-sessional English course, a recognised foundation programme, on the Doctorate Extension Scheme or to take an elected post as a Student Union Sabbatical Officer	Extendable	Restrictions apply during term time	Time spent under the Student route does not count towards settlement	N	N	N

Category	Purpose/key criteria	Max. length of stay	Work rights	Red flags	Capped	Settlement	Citizenship*
Youth Mobility Scheme	For 18-30-year-olds who can show £2,530 savings and want to work in the UK from: Australia; Canada; Japan; Monaco; New Zealand; Hong Kong; Republic of Korea; Taiwan; San Marino; 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), or self-employment (unless the premises is not owned by them from which they carry out their business (unless their home), the total value of any equipment used in the business does not exceed £5,000 and they have no employees)	Applicants from San Marino must be sponsored. The application must be made overseas. Not eligible if applicant has children living with them/for whom they are financially responsible	Y – currently: Australia – 30,000 places; New Zealand – 13,000 places; Canada – 5,000 places; Japan – 1,000 places; Monaco – 1,000 places; Taiwan – 1,000 places; Republic of Korea – 1,000 places; Hong Kong – 1,000 places; San Marino – 1,000 places	N	N
Government Authorised Exchange	For those coming to the UK for a short time on an approved scheme for work experience, research & training programmes, an Overseas Government Language Programme or a fellowship	12 or 24 months	Work restricted to terms of the Certificate of Sponsorship. Changes to be authorised. Supplementary work allowed under strict conditions	Applicants cannot take a permanent job or fill a vacancy in the workforce	N	N	N
Adult family members across all categories except Youth Mobility Scheme	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

Category	Purpose/key criteria	Max. length of stay	Work rights	Red flags	Capped	Settlement	Citizenship*
Partner of a Settled Person	For those who are the spouse/civil partner/cohabiting (2 years+) partner of either a British citizen, a person who is settled in the UK (ie holds Indefinite Leave to Remain/ Permanent Residence status) or a person holds status as a refugee/person granted humanitarian protection	Extendable/indefinite	Y	Must meet a financial requirement and English-language requirement. Must intend to live together permanently in the UK and permission to be in the UK dependent on subsisting relationship with partner	N	After 5 years	Usually after 6 years
Ancestry	For those who are a Commonwealth citizen, aged 17 or over, able to prove that one of their grandparents was born in the UK and are able to and intending to work in the UK	Extendable/indefinite	Y	Cannot apply from within the UK for initial visa. Cannot apply through step-parents	N	After 5 years	Usually after 6 years
Turkish Worker	For Turkish workers who have legally worked in the UK for at least 1 year	Extendable/indefinite	Y – for first 1 to 3 years, must continue to work for same employer, for 3 to 4 years are able to change employer but work in the same occupation, and after 4 years are able to work in any occupation for any employer	Must have been working legally in the UK for at least 1 year. Restrictions on the work authorisation for first 4 years	N	After 5 years	Usually after 6 years
British National (Overseas)	For British National (Overseas) nationals and their family members who are ordinarily resident in either Hong Kong or the UK	Extendable/indefinite	Y – except as a professional sportsperson (including a sports coach)	Family members must apply at the same time as the British National (Overseas) status holder	N	After 5 years	Usually after 6 years

Category	Purpose/key criteria	Max. length of stay	Work rights	Red flags	Capped	Settlement	Citizenship*
Indefinite Leave to Remain/Settlement	For those who are free from immigration restrictions	Indefinite	Y	Status must be in a current document for a right-to-work check perspective	N	Already obtained	Usually after 1 year
Refugee Status	For those who are granted status under the Refugee Convention	5 years/indefinite	Y	A change in personal circumstances or country situation which is significant and non-temporary may result in a person's status being revoked or not renewed	N	After 5 years for those who continue to need protection	Usually after 6 years
Humanitarian Protection	For those who are granted humanitarian protection	5 years/indefinite	Y	A change in personal circumstances or country situation which is significant and non-temporary may result in a person's status being revoked or not renewed	N	After 5 years for those who continue to need protection	Usually after 6 years

*For citizenship applications, usually the applicant is required to have lived in the UK for a minimum of five years and have held Indefinite Leave to Remain/Settlement status for a period of 12 months. If married to a British citizen, different rules apply.



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