

Changes to Immigration Rules – Briefing Note

Background

As a result of the UK leaving the EU new immigration rules came into effect from 1 January 2021. These new immigration rules remove the automatic right to work in the UK from EU, EEA and Swiss nationals. Where these individuals were resident in the UK prior to 1 January 2021 they are eligible to apply for settled or pre-settled status under the EU Settlement Scheme (EUSS).

Applications for settled or pre-settled status must be made by 30 June 2021. In order to apply for settled status the individual must have been resident in the UK for a minimum of 5 years. Where an individual has been resident for less than 5 years they can apply for pre-settled status and then for settled status once they have met the 5-year residency condition. In terms of the right to work, both settled and pre-settled status provide individuals with an unrestricted right to work in the UK.

To allow for these changes to take place as smoothly as possible a “grace period” is currently in place for the period from 1 January 2021 until 30 June 2021. During this grace period no changes are required to our practices in relation to checking an applicant’s eligibility to work in the UK. Changes will however be required with effect from 1 July 2021 and this briefing note sets out what these changes are.

1. Existing Employees in employment on or before 30 June 2021

During the grace period clear guidance has been provided by the Home Office that employers must not ask EU, EEA or Swiss nationals to provide any additional evidence of their right to work in the UK as to do so could be discriminatory.

Therefore no additional checks should be undertaken for employees who have a start date of 30 June 2021 or earlier.

2. New Employees interviewed on or before 30 June 2021 but with a start date of 1 July 2021 or later

It is recognised that we will currently be recruiting to posts where the applicants will not start employment until 1 July or later. Where interviews take place on or before 30th June 2021 managers should follow the current procedure for right to work checks and must not ask EU, EEA or Swiss citizens for any additional evidence of their right to work in the UK.

However where a candidate who is an EU, EEA or Swiss national is not due to start work until 1 July or later an extra step will be required. In such cases the recruiting manager must ask the candidate to provide evidence of their right to work in the UK prior to their start date. This right to work will almost certainly take the form of settled or pre-settled status and this should be done in the following way

- Recruiting manager should ask the candidate to go to the government website at <https://www.gov.uk/view-prove-immigration-status> and request a “share code”
- The candidate should provide this share code, along with their date of birth to the recruiting manager who should go to the government website at <https://www.gov.uk/view-right-to-work> and enter the share code.
- The recruiting manager should send a screen shot of the confirmation received to recruitment@westlothian.gov.uk

An additional clause has been added to all conditional offers and contracts of employment to highlight to employees that it is their responsibility to ensure they have the correct permissions to work in the UK and to ensure these are kept up to date where they are not indefinite.

Where this check results in confirmation that the individual has settled status no further action is required. Where it indicates the individual has pre-settled status a recheck date will be provided as part of the online check and a further online check will be required in advance of this date to ensure the individual has been granted settled status.

There may be cases where an individual has applied to the EUSS in advance of the 30th June deadline but hasn't yet received a decision on their application. In these cases, the individual will maintain the right to live and work in the UK until such time as a decision is made in relation to their application for settled or pre-settled status. This will be reflected in the information returned in the online check.

3. New employees interviewed after 30 June 2021

Where interviews are taking place after 30 June 2021 it will no longer be acceptable for EU, EEA or Swiss Citizens to present a passport or biometric residence permit as the sole proof of their right to work in the UK.

Instead recruiting managers will be required to follow the steps above in relation to checking the individuals settled or pre-settled status on the government website or ask them to provide appropriate documentation in line with the right to work checklist available on MyToolkit.

**HR Services
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