

What action do Employers Need to

The UK officially left the European Union (“EU”) on the 31st January 2020 and is currently in the ‘transition period’ which is due to end on the 31st December 2020.

This means that there will no longer be the free movement of people from the EU to the UK and going forward, employers will need to establish whether an EU national has the right to legally work in the UK.

To protect the rights of EU nationals living and working in the UK already, the Government has introduced the EU Settlement Scheme. This scheme allows EU nationals to apply for “settled” and “pre-settled” status to be able to continue to work and live in the UK.

What is “settled” or “pre-settled” status?

EU nationals who are resident in the UK on or before the 31st December 2020, can apply for either “settled” or “pre-settled” status under the EU Settlement Scheme. Having “settled” or “pre-settled” status confirms an employee’s entitlement to work in the UK. The deadline to apply for “settled” or “pre-settled” status is the **30th June 2021**.

“Settled” status will be given if an individual has started living in the UK by the 31st December 2020 and has lived in the UK for a continuous period of 5 years (“**continuous residence**”).

“Pre-settled” status will be given if an individual does not have 5 years’ continuous residence but started living in the UK by the 31st December 2020. The individual can stay in the UK for a further 5 years from the date they get “pre-settled” status. Once they have got 5 years’ continuous residence, they can then apply to change their status to “settled”.

The Current Position on Right to Work Checks

The right to work checks for EU nationals remain unaffected until 31st December 2020, and employers should continue to undertake their right to work checks in the usual way.

There is no requirement for employers to undertake a repeat right to work check for those EU nationals currently employed if they already have evidence of a compliant right to work check on file. However, employers have a duty not to discriminate against EU, EEA or Swiss citizens and cannot require EU nationals to show their status under the EU Settlement Scheme until after 30th June 2021.

Right to Work Checks for EU nationals employed between 1st January 2021 and 30th June 2021

The Government has confirmed that it is introducing a new immigration system which will apply to people arriving in the UK from the 1st January 2021. However, the Government is yet to issue guidance on the new immigration system.

EU citizens moving to the UK to work from the 1st January 2021 to the 30th June 2021 will need to get a visa in advance as proof that they can work and live in the UK. However, whilst we are waiting for further guidance on the new immigration system, the Government has advised that right to work checks should be completed in the same way as they are now, irrespective of when the EU candidate first arrived in the UK.

What should employers do now?

Employers should speak with any EU national employees to ensure that they are aware of the EU Settlement Scheme to ensure that they apply under the scheme for “settled” or “pre-settled” status before the deadline, namely 30th June 2021.

Employers should also continue carrying out their right to work checks in the usual way until the 31st December 2020. Employers must also bear in mind that they must not ask an employee for their status under the EU Settlement Scheme until after the 30th June 2021.

In the absence of further guidance from the Government about the new immigration system, employers are advised to continue conducting right to work checks in the usual way after the 31st December 2020 too. However, employers should be aware that this could lead to potential consequences. Completing right to work checks in the usual way, by obtaining a copy of the new EU hire's passport or national ID card alone, does not distinguish between those protected under the EU Settlement Scheme and those EU nationals who are new to the UK from 1st January 2021 (who need to secure a working visa before commencing employment). As above, employers cannot require their employees to show their status under the EU Settlement Scheme until after 30th June 2021.

The consequence of this is that an employer cannot seek to rely on a statutory excuse if they know or should have known that the individual entered into the UK after 31st December 2021, and could be liable for a civil penalty if it later transpires they have an employee who has been working illegally.

It is hoped that the Government will clarify this point before 31st December 2020.

Please note, that there will be **no** changes to the rights of Irish citizens to work in the UK and employers can continue to accept their passports as evidence of this.

If you have any questions about the EU Settlement Scheme or Right to Work Checks, please do not hesitate to contact a member of the Napthens' Employment team.