



## GLAA Brief

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Right to Work checks from 1 July 2021

**This Brief explains what licence holders need to do to check a worker's right to work from 1 July 2021, and how the GLAA will check compliance with the new rules.**

### Introduction

The UK has left the European Union (EU) and the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 ended free movement in the UK on 31 December 2020. From that date eligible EEA citizens and their family members resident in the UK by 31 December 2020 had a 6 month grace period to apply to the EU Settlement Scheme ("EUSS"). This period ended on 30 June 2021.

All employers, irrespective of size or sector, have an important role to play in preventing illegal working by undertaking simple checks on their employees' right to work in the UK before they employ someone.

Employers should ask all prospective employees to demonstrate their right to work using either a manual document check as set out in the "Code of practice on preventing illegal working: Civil penalty scheme for employers" (see below for link), or by using the Home Office online right to work checking service. Employers cannot direct how an individual proves their right to work. Those who have made a successful application to the EUSS will have been provided with an eVisa and can only prove their right to work using Home Office online service 'prove your right to work to an employer' available on GOV.UK: <https://www.gov.uk/prove-right-to-work>.

Employers may face a civil penalty if they do not carry out a check on someone they have assumed has the right to work but is found to be an illegal worker.

### Checking an EEA citizen's right to work in the UK

From 1 July 2021, EEA citizens and their family members require immigration status in the UK. They can no longer rely on an EEA passport or national identity card to prove their right to work. They are required to provide evidence of lawful immigration status in the UK, in the same way as other foreign nationals.

There is no requirement for a retrospective check to be undertaken on EEA citizens who entered into employment up to and including 30 June 2021. Employers will maintain a

continuous statutory excuse against liability for a civil penalty if the initial checks were undertaken in line with the guidance that applied at the time they made the check.

Currently, the online checking service supports checks in respect of those who hold:

- a biometric residence permit;
- a biometric residence card;
- status issued under the EUSS (or if an application has been submitted);
- status issued under the points-based immigration system;
- British National Overseas (BNO) visa; or
- Frontier workers permit, including eVisas

## **Outstanding decisions on applications to the EUSS**

EEA citizens, and their family members, who have made an application to EUSS up to and including 30 June 2021, and who are waiting for a decision on that application, can continue to live in the UK and maintain a right to work until their application is finally determined. This includes pending the outcome of any appeal against a decision to refuse status.

From 1 July 2021, EEA citizens with an outstanding online application to the EUSS made up to and including 30 June 2021 will be issued a digital Certificate of Application. This enables the individual to use the online right to work service to evidence their right to work. In the first instance, employers should check with the individual to see if they can provide a share code. This will mean that employers can check the workers' right to work immediately rather than having to contact the Employer Checking Service. The online service will provide confirmation of the worker's right to work and advise when a follow-up check is required. EEA citizens are encouraged to make an application to the EUSS. If they are successful in their application, they will be given either 'settled' or 'pre-settled' status and are able to continue living and working in the UK.

If an EEA citizen applies for a job with you after 30 June 2021, but has not applied to the EUSS by the deadline and has no alternative immigration status in the UK, then they will not be able to pass a right to work check and should not be employed. If they believe they are eligible for the EUSS, you could signpost them to make an application.

Where an EEA citizen has reasonable grounds for missing the EUSS application deadline, they will be given a further opportunity to apply. The Home Office have published guidance on GOV.UK detailing what an employer must do in these circumstances: <https://www.gov.uk/government/publications/right-to-work-checks-employers-guide>.

## **EU Settlement Scheme 'Settled' status**

An individual may be considered to have been resident in the UK on 31 December 2020 and may be eligible for settled status if they:

- Lived in the UK for a continuous period of 5 years in the past, and
- Have not left the UK for more than 5 years in a row since then.

If an EEA citizen has been granted 'Settled Status' by the Home Office, they will have a continuous right to work, in the same way as someone with Indefinite Leave to Enter / Remain status.

## EU Settlement Scheme ‘Pre-settled’ status

If an individual does not have 5 years of continuous residence in the UK when they apply for the EUSS, they will usually be given pre-settled status. Once they have pre-settled status, they can live and work in the UK for a further 5 years from that date. They can then apply for settled status once they have achieved 5 years of continuous residence, but they must do this before the pre-settled status expires.

If the individual will reach 5 years of continuous residence between 31 December 2020 and 30 June 2021, they can choose to wait to apply until they have reached the 5 years of continuous residence period. If their application is successful, they will get settled status without being given pre-settled status first.

If an EEA citizen has been granted ‘Pre-Settled Status’ by the Home Office, they will have a time-limited right to work and you must carry out a follow-up check. The Home Office online service will advise when a follow-up check must be carried out.

## Points-based immigration system

EEA citizens who come to the UK to live, work or study will need to obtain immigration status under the points-based system in the same way as other foreign nationals.

The majority of EEA citizens will be provided with an eVisa, however this will be dependent upon the immigration route and how they made their application. Some EEA citizens will have a Biometric Residence Permit (“BRP”). Those with a valid BRP can use this to access the online right to work service.

To prove their right to work from 1 July 2021, individuals will provide their employer with a share code and their date of birth which will enable them to check their Home Office immigration status via the online service available on GOV.UK: <https://www.gov.uk/view-right-to-work>. Those with a BRP may choose to present their BRP for a manual check.

An employer will obtain a statutory excuse against liability for a civil penalty if they carry out the check using the online service, or a manual check as set out in this guidance.

## How the GLAA will test compliance with the Licensing Standards

To prove their status to an employer, a worker should first view their own Home Office right to work record online. They may then share this with you by providing you with a ‘share code’, which, when entered along with the individual’s date of birth, enables you to access the individual’s right to work information in real time. You must access the part of the service called ‘Check the applicant’s right to work online’ available here: [Checking a job applicant's right to work - GOV.UK \(www.gov.uk\)](https://www.gov.uk/check-right-to-work)

In order to evidence their compliance with licensing standard 7.2 ‘Right to work’, licence holders will need to show that their workers are entitled to undertake the work in question in the UK. Licence holders may be asked to show the checks they have undertaken to ascertain a worker’s immigration status. Licence holders can do this by evidencing the checks undertaken using the online service which allows you to print the profile page (the response provided by the online service) or save it as a PDF or HTML file. Employers should store this securely, (electronically or in hardcopy) for the duration of employment and for two years afterwards. The file must then be securely destroyed.

## Further information

Please refer to the Home Office [UK points-based Immigration System: Employer Partner Pack](#) for further information which you can find on the GLAA website.

Code of practice on preventing illegal working: Civil penalty scheme for employers [Code of practice on preventing illegal working: civil penalty scheme for employers \(publishing.service.gov.uk\)](#)

Further information regarding the EU Settlement Scheme can be found here: [Apply to the EU Settlement Scheme \(settled and pre-settled status\) - GOV.UK \(www.gov.uk\)](#)

There is also a useful employer toolkit about the EU Settlement Scheme that you may find useful: [EU Settlement Scheme: employer toolkit - GOV.UK \(www.gov.uk\)](#)

There is useful guidance for employers on right to work checks here: [An employer's guide to right to work checks \(publishing.service.gov.uk\)](#)

You may wish to share the following guidance with your workers: [View and prove your immigration status \(eVisa\) - GOV.UK \(www.gov.uk\)](#)

If you any further queries, please contact the GLAA helpline on 0345 602 5020 or email [licensing@gla.gov.uk](mailto:licensing@gla.gov.uk).

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