



FRAGOMEN

THE EU SETTLEMENT SCHEME

A PACK FOR EMPLOYERS

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THE EU SETTLEMENT SCHEME

A PACK FOR EMPLOYERS

We have created this pack to help employers and their employees understand the Home Office's EU Settlement Scheme. It is vitally important that qualifying European nationals and their family members apply on time and we hope that these resources will help with the process.

This pack contains useful materials to help you, including:

- Section 1:** A template letter/email that you can send to your employees.
- Section 2:** A link to a short video that explains how the EU Settlement Scheme works.
- Section 3:** EU Settlement Scheme FAQs for employees.
- Section 4:** A guide for your employees, to help them through the application process.
- Section 5:** A list of useful links to help your employees find full Home Office guidance and to help you understand your right to work responsibilities.
- Section 6:** Content for a template letter/email that could be passed to your new hires, explaining the need for right to work in the UK. This will reduce the risk of inadvertent illegal working without you insisting that they show you any paperwork. It will not entirely remove the risk, but should help.
- Section 7:** Covers similarly important but technical issues that you should consider.

We've also used the pack to help with several different but connected problems.

Of these, the biggest relates to the right to work policy. For the first six months of 2021, employers can rely on a European passport or ID card for right to work purposes when onboarding a new hire. However, the employee should also have an immigration permission that allows them to work - for instance under the EU Settlement Scheme or a Skilled Worker visa. This creates a risk that if you only ask to see a European passport or ID card, your new employee assumes that is enough and as a result, they may inadvertently live and work in the UK. You might want to insist on seeing a person's right to work but this carries risk and we recommend you speak to an employment law expert first.

A LITTLE CONTEXT

The EU Settlement Scheme is a light touch residency process for Europeans who were in the UK before the end of the Brexit transition, at 11pm on 31 December 2020 (the cut off). Under the Scheme:



Europeans in the UK before the cut off can apply for:

- ▶ **Settled Status** if they have been continuously resident in the UK for five years. This is essentially permanent residence and can only be lost if they leave the UK for five years (four years for Swiss nationals) or are convicted of a serious criminal offence.
- ▶ **Pre-Settled Status** if they have under five years' continuous residence. Pre-Settled Status can be lost if they spend more than two years in a row outside of the UK. They can switch to Settled Status in the UK after five continuous years.



Non-European family members can also apply, so long as they were related before the cut off date or are children of Europeans who were born afterwards.

Crucially, applications must be submitted on or before the 30 June 2021 deadline. Those who do not apply on time will not have status in the UK and could find themselves subjected to hostile environment controls on working, renting accommodation, accessing healthcare and other fundamentals of everyday life. The Home Office has said that some late applications will be accepted, but only in specific and narrowly drawn circumstances.

In some respects this is not a matter for employers. You will not be expected to check that employees have applied as the guidance currently stands, and you will not need to repeat right to work checks after the application deadline. Irrespective, employees who do not apply on time could have their lives turned upside down and you may need to end their employment, if it transpires an employee does not have status in the UK.





OUR RECOMMENDATIONS

- 1** Communicate with employees and explain the situation. Our template letter/email at Section 1 will help.

- 2** Make useful information available on your intranet or in communal areas. Our video, FAQs, guide and list of useful links should give you what you need.

- 3** Make sure new hires understand what they need to do. We've explained the issue at Section 5 and provided a template briefing.

- 4** Plan ahead – we have set out other things to think about at Section 6.

We have arranged the guide to make it as easy as we could for you to use. The templates in sections 1 and 7 should be easy to cut and paste into an email. The FAQs and guide are provided as PDFs that can be attached to an email and sent to your employees. The video is available via a link to Vimeo, and again easy to cut and paste.

SECTION 1

A TEMPLATE LETTER/EMAIL THAT YOU CAN SEND TO YOUR EMPLOYEES

If you do nothing else, we really recommend writing to your employees to explain how the EU Settlement Scheme works, why they need to apply and highlighting the deadline. This template contains the key information you can include in a letter or email to employees, explaining the scheme.

Employers often ask who they should send the letter/email to. Employers with accurate records of who their European employees are will often direct correspondence straight to them. If you are not sure, and even if you are, it could make sense to send the note to all employees. Even those who are not qualifying Europeans may have friends and family who need to apply.

Dear Colleagues,

I am writing about the current position of Europeans in the United Kingdom and recognise that this continues to feel like an uncertain time for employees [and our residents]. As such, we wanted to send a reminder of the arrangements which are currently in place.

As I am sure you are aware, the United Kingdom left the European Union on 01 January 2021. If you are a European national (an EU, EEA or Swiss national) and moved to the United Kingdom before 11pm on 31 December 2020, you must register your residence before 30 June 2021 by applying for Pre-Settled Status or Settled Status under the EU Settlement Scheme. If you are accompanied in the United Kingdom by non-European family members, they can also apply under the scheme.

We strongly recommend making an application as soon as possible. If you have an EU registration certificate or an EU permanent residence card, you will still need to apply under the EU Settlement Scheme.

Pre-Settled Status and Settled Status

Depending on how long you have resided in the UK, you will be granted either Pre-Settled Status or Settled Status:

- ▶ Those resident in the United Kingdom for less than five years should be granted Pre-Settled Status (also known as limited leave to remain) and can switch to Settled Status after five years residence should you meet the eligibility requirements. Pre-Settled Status is granted in a five year block. You should keep a record of the expiry date and make sure you apply for Settled Status before it runs out.
- ▶ Those resident in the United Kingdom for five years or more should be granted Settled Status (also referred to as indefinite leave to remain). This is your right to live permanently in the UK and will only be lost if you spend five years overseas or are convicted for a serious crime.

Once registered, you will receive electronic confirmation of your status by email, which will be linked to your passport. With this status, you are able to freely live, work and travel in/out of the United Kingdom. You do not need to take any immediate further action thereafter.

Please note that Pre-Settled Status can be lost if you spend more than two years in a row outside of the UK, and Settled Status can be lost if you spend more than five years in a row outside of the UK (four years for Swiss nationals).

Application Process

The application process is relatively straightforward. You begin by scanning your passport, taking a selfie and answering several questions on an app. You then move to your internet browser to answer more questions and in some cases photographs of documents are uploaded. The process will take around 20 minutes. To help you with the application process Fragomen, an international immigration law firm, has provided a short guide which can be found at: <https://knowledge.fragomen.net/web/kKojSmngFpR6KXUwjVdAzE/eu-settlement-scheme-guide-march-2021.pdf>

You can also find more information on Fragomen's short video on the EU Settlement Scheme which can be found at: https://kvgo.com/fragomen-global/settlement_scheme_process you will need to use the password **FragomenMobility** to access this video.

Deadline for Applications

Qualifying Europeans who do not make an application before 30 June 2021 will become unlawfully resident in the United Kingdom after this date. This means they will not have access to jobs, rent, some healthcare and other fundamentals of day-to-day life. They may be subject to removal from the United Kingdom.

Useful Links and Helplines

You should consult Home Office guidance before submitting your application: <https://www.gov.uk/settled-status-eu-citizens-families>. If you have already applied under the EU Settlement Scheme, you can view and prove your status here: <https://www.gov.uk/view-prove-immigration-status>

If you would like to ask a question to the relevant authorities about the EU Settlement Scheme, they can be contacted by following this link: <https://www.gov.uk/contact-ukvi-inside-outside-uk>

If you face any technical issues when you are submitting your application, you can contact the EU Settlement Resolution Centre. They are open from Monday to Friday between 8:00am and 8:00pm, excluding public holidays and on Saturday and Sunday between 9:30am and 4:30pm. The telephone numbers are as follows:

Inside the UK: 0300 123 7379

Outside the UK: 0203 080 0010

We hope the above information is helpful – should you have any questions or concerns about your status in the United Kingdom, please reach out to [as appropriate for your organisation], who will be happy to assist further.

SECTION 2

A LINK TO A SHORT VIDEO THAT EXPLAINS HOW THE EU SETTLEMENT SCHEME WORKS

Our letter/email template contains a link to a short video, telling employees about the Scheme. Many of our clients have placed this link on their intranet as a simple way to educate employees about the scheme. The video cannot tell the whole story on the law, process and entitlements – only the law itself can do that – but is nevertheless instructive.

You can access the video using password FragomenMobility at:
https://kvgo.com/fragomen-global/settlement_scheme_process

Password is: **FragomenMobility**



SECTION 3

FAQs FOR YOUR EMPLOYEES, TO HELP THEM THROUGH THE APPLICATION PROCESS

What will happen to EU nationals in the UK post-Brexit?

What will happen to EU nationals in the UK post-Brexit?

THE BIG QUESTIONS FROM A UK PERSPECTIVE

1

WHAT HAS HAPPENED SO FAR?

The United Kingdom left the European Union on 31 January 2020 and the UK's involvement in European free movement ended on 31 December 2020.

2

WHAT DOES THE WITHDRAWAL AGREEMENT SAY?

The Withdrawal Agreement says that EU nationals living in the UK will be able to continue to live here on broadly the same terms as now, so long as they entered the UK before 31 December 2020 and do not have a disqualifying criminal conviction. The same has been agreed for UK citizens living in the EU.

3

DOES THIS MEAN ALL EU NATIONALS CAN STAY IN THE UK?

Broadly speaking, yes. EU nationals will be able to stay in the UK so long as they are not serious criminals and were resident here before 1 January 2021.

However, those EU nationals who entered the UK before 31 December 2020 must apply for appropriate residence documents (i.e. settled or pre-settled status) by 30 June 2021.

In practice this will mean:

- People who have been continuously and lawfully resident in the UK for five years are permitted to apply for settled status.
- People who arrived on or before 31 December 2020, but have been in the UK for less than 5 years will be able to apply for pre-settled status before switching to settled status at the five year mark.
- Close family members (spouses, civil and unmarried partners, dependent children and grandchildren, and dependent parents and grandparents) will be able to join EU nationals in the UK after Brexit, where the relationship existed on 31 December 2020 and continues to exist. Children born to or adopted by EU nationals after the end of the transition period will be able to join their parent in the UK.

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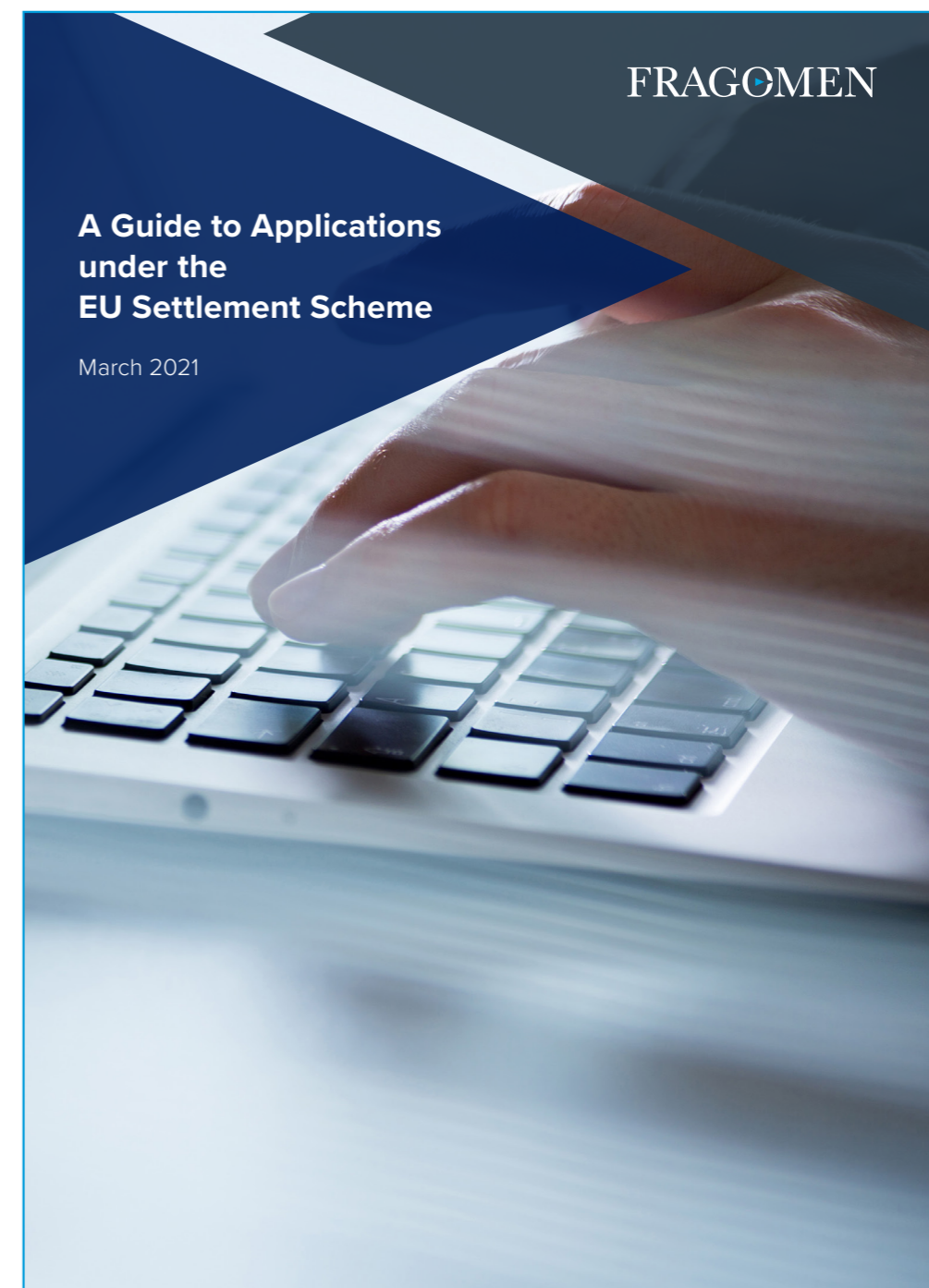
SECTION 4

A GUIDE FOR YOUR EMPLOYEES, TO HELP THEM THROUGH THE APPLICATION PROCESS

We have helped thousands of people to apply under the Scheme, in a variety of ways. We have used that knowledge of law and process to prepare a practical guide for applicants, drawing our learning together.

[You can find the guide here](#)

Of course, no guide will repeat the law in its entirety. Your employees should also be encouraged to refer to the Home Office website for more [detailed information](#).



SECTION 5

A LIST OF USEFUL LINKS FOR YOUR EMPLOYEES AND FOR YOU

You may wish to place all of this information on your intranet. Many of our clients have found it useful to include links to official sources, along with our resources. These links can help employees find more information.

EU Settlement Scheme

[General information and apply online](#)

[Applicant information \(including document guidance, how to use the app and scanning locations\)](#)

[Government helpline and email](#)

[Government Important Information leaflet](#)

[View and prove your immigration status](#)

These links could also help you. The EU Settlement Scheme is completely bound up in the rules for right to work. These links will help you find more information, more easily.

Right to work (RTW)

[View a job applicant's RTW details](#)

[Employer guide on RTW checks](#)

[RTW checklist](#)

[RTW – temporary COVID-19 guidelines](#)



SECTION 6

NEW HIRES BETWEEN 1 JANUARY 2021 AND 30 JUNE 2021

Your right to work obligations have not changed and will not change for the first six months of 2021. That means that until 1 July 2021, where you employ a European national (excluding Irish nationals), you only need to see and keep a compliant record of a European passport or ID card and there is no requirement for you to take retrospective checks. However, the employee should also hold the right to work – for instance under the EU Settlement Scheme or a Skilled Worker visa.

There is a risk that by simply asking to see a European passport or ID card, your new candidate will assume that is enough to confirm their right to work. If they do not hold any other permission, they could subsequently live and work illegally in the UK for a period of time – maybe a few months, maybe years – without realising. At some point, they will find that they cannot take a new job, rent a new property, access healthcare and other fundamentals of everyday life. These controls are known as the hostile environment for immigration.

While you are permitted to invite a new European employee to evidence their right to work, the law does not allow you to insist on seeing whether they have the right to work, during these six months. You may nevertheless choose to, but there are employment law risks and you should seek independent advice before doing anything.

Instead, some of our clients are writing to prospective employees to explain the situation and the risk. The Home Office has published a detailed guide for employees [here](#).

It would make sense for official guidance to be provided as default but you could also give them a shorter note. Here is a template for you to consider:

UNDERSTANDING YOUR RIGHT TO WORK IN THE UK

The UK's involvement in European free movement ended on 31 December 2020, at the end of the Brexit transition period. Arrangements are in place for Europeans who were resident in the UK before 2021 to confirm their status under the EU Settlement Scheme and a new immigration system has been introduced for people who subsequently move to the UK. Irish citizens continue to have the right to work in the UK, without the need for immigration permission.

If you are European and starting a job in the first half of 2021, your employer will ask to see and take a copy of your current passport. This is known as a right to work check. However, while an employer only needs to see a passport, it is important for you to nevertheless hold a permission that confirms your right to work in the UK. This quick guide will help you understand if you have the right to work and the options available, if you do not.

If you arrived in the UK before 11pm on 31 December 2020

- ▶ You should be eligible to work in the UK under provisions in the Brexit withdrawal agreement, so long as you make an application under the EU Settlement Scheme.
- ▶ The EU Settlement Scheme is not like other immigration applications.
- ▶ It will take you approximately 20 minutes to apply, normally using a user friendly EU Exit: ID Document Check app and your internet browser, although there are other ways to apply.
- ▶ You will be entitled to Settled Status where you have five years continuous residence in the UK or Pre-Settled Status until you meet the five year requirement, although some conditions do apply.
- ▶ You can find more information on the EU Settlement Scheme pages of the .gov website or find more guidance [here](#), FAQs [here](#) or use password FragomenMobility to access a short video [here](#).
- ▶ It is ok for qualifying people to start work before they have made an application but you must apply before 1 July 2021.
- ▶ People who do not apply on time could be prevented from taking a new job, renting a flat or accessing services in the UK.

If you arrived in the UK after the end of the transition period

You will need permission to work under the new immigration system.

- ▶ In many cases this will mean a Skilled Worker visa, available to people taking skilled jobs, who speak English, have an employer who is able to sponsor them and who can meet certain salary requirements.
- ▶ In other cases you may hold, for instance, an Intra-Company Transfer visa as an international assignee or a family member visa, because for instance you are married to a UK or Irish citizen.
- ▶ If you do not hold a visa or you entered the UK as a tourist, you will not have the right to work.
- ▶ It is important to ensure you have the right permission to live and work in the UK. Working illegally is a criminal offence and controls exist to rule out and/or limit access to work, accommodation and public services.
- ▶ You should consult the Home Office website for more information, speak to your employer or to an expert.

You can learn more about right to work checks in Home Office guidance and we hope that [the guide we produced with CIPD will help you](#).

SECTION 7

PLANNING AHEAD THINGS TO HAVE ON YOUR RADAR

Free movement has been replaced by a new immigration system for all migration. Under the new immigration system:



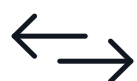
European and non-European nationals are treated equally. Irish nationals do not need to apply but non-Irish members of their family may need to.



The system is a faster version of the previous 'Tier 2' work visa structure.

New hires enter through a reformed work permit category named the Skilled Worker visa where:

- ▶ Employers hold a sponsor licence and are able to sponsor workers in jobs skilled at RQF3 level, e.g., A-Level.
- ▶ Most workers are paid at least £25,600 per annum.
- ▶ There is no labour market test or monthly limit on numbers.
- ▶ The typical lead-in time is usually around four to six weeks (as opposed to three to four months under the last immigration system) but English language testing, TB testing and (conceivably) Covid-19 testing may cause some delay.
- ▶ Substantial government fees apply, e.g., for larger employers around £5,700 where an unaccompanied employee enters for three years, £26,800 where an employee with a partner and three children enters for five years. The fees are lower for smaller employers, but still a considerable cost.



There is a temporary Intra-Company Transfer (ICT) category for assignees from overseas entities, modelled on previous policy, although it will be possible for ICT visa holders to move to a Skilled Worker visa from within the UK and potentially stay permanently.



There is no visa category for employees below RQF3 level.



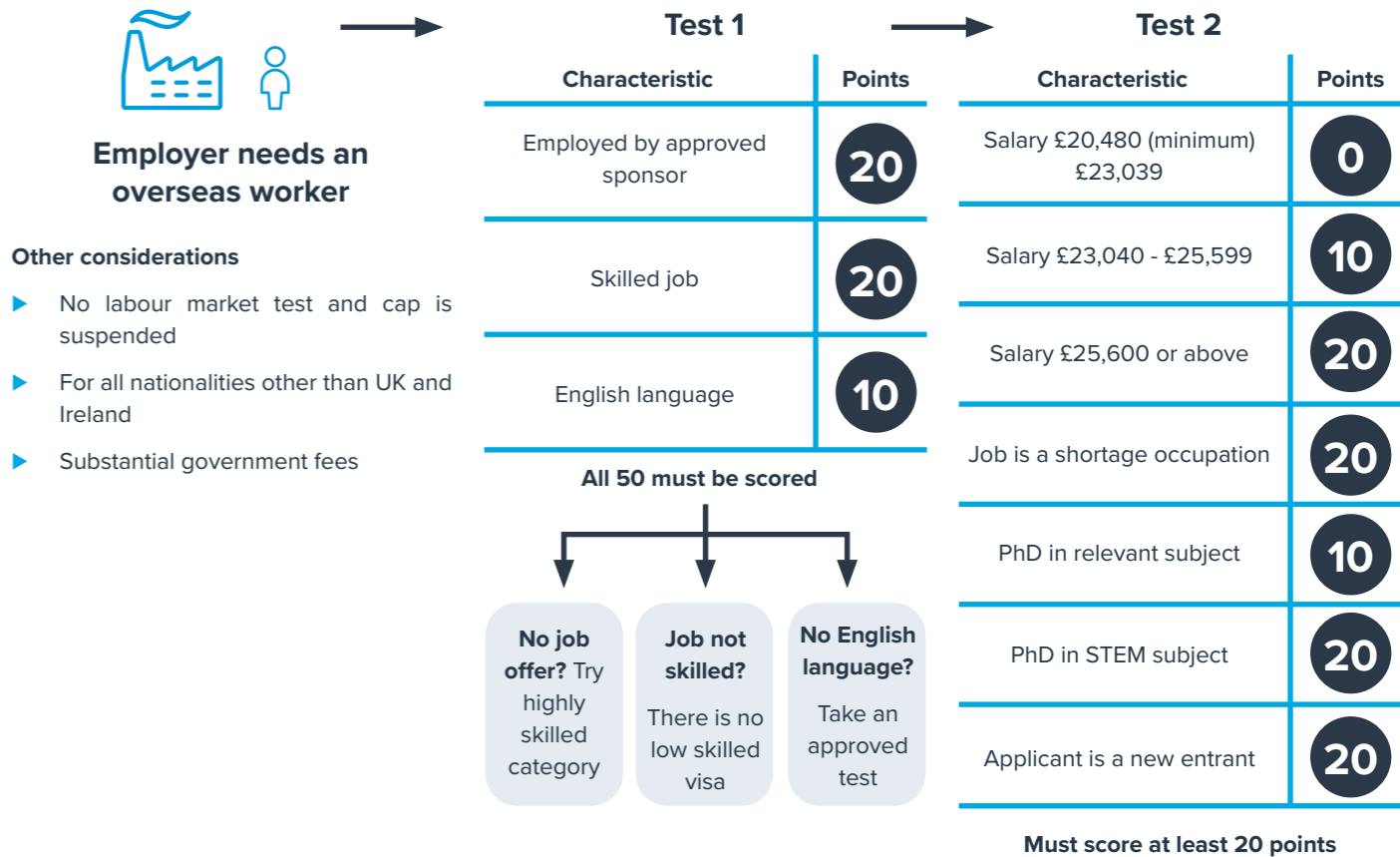
Overall, the new arrangements are an improvement on the old system for non-European workers but introduce substantially more friction for European recruitment.





THE SKILLED WORKER CATEGORY

Most overseas workers will enter under the Skilled Worker category. They will need to score points for all of the characteristics under Test 1 and earn enough money to qualify under Test 2, with higher minimum salaries for some jobs and lower requirements for younger workers.



Thinking about whether you can sponsor workers in future? The most important test is on skill level:



- ▶ If you run a care home, it will be possible to sponsor Senior Care Workers, but you will not be able to sponsor less senior care workers.
- ▶ If you work in construction, it will be possible to sponsor Builders, Floor and Wall Tilers and Construction Foreman, however you will not be able to sponsor Asbestos Removers, General Handymen, Cable Layers or Maintenance workers.
- ▶ If you work in agriculture, it will be possible to sponsor Farmers and Herd Managers, but you will not be able to sponsor Farm Labourers, Herders or Shepherds.
- ▶ If you work in hospitality, you will be able to sponsor Hotel Managers, Landladies/Landlords and Restaurant Managers, but you will not be able to sponsor Hotel Assistants, Waiting or Bar Staff.



If you do expect to sponsor workers in the future, you will need a UK sponsor licence:

- ▶ This is a contract between an employer and the Home Office, a promise to abide by the Immigration Rules and other legislation.
- ▶ You should assume a one to three month wait for the licence, including time spent collecting documentation, but processing times may fluctuate.



If you do not expect to sponsor workers, you should nevertheless have policies in place for Europeans holding status under the EU Settlement Scheme:

- ▶ We hope this pack helps you to brief your employees and direct applications.
- ▶ We also hope it helps your help new employees understand the need to make applications, where they qualify.
- ▶ You should ensure they track the expiry of their Pre-Settled Status and apply for Settled Status in good time, when they have five years residence.

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We hope this pack has been helpful and gives you everything you need to help your employees through the EU Settlement Scheme, in addition to government guidance. Do get in touch if you need more at londoninfo@fragomen.com.