



Rights of EU Citizens in Wales

EU Citizens and Their Right to Work

This factsheet provides a brief summary of an EU citizen's rights to work in Wales. In this factsheet, 'EU citizens' includes citizens of the EU member states, as well as citizens of the EEA states (Norway, Iceland and Liechtenstein), and citizens of Switzerland. This factsheet also covers the rights of family members who are not themselves EU citizens, and whose right to live in the UK is derived from their relationship with an EU citizen.

Following the UK's exit from the European Union (**Brexit**), the rights of EU citizens across the UK have changed in a number of ways. EU citizens and their **family members** who were living in the UK on 31 December 2020 and who wished to stay in Wales, must have applied to the **EU Settlement Scheme (EUSS)** for either **Settled Status** (indefinite leave to remain) or **Pre-Settled Status** (limited leave to remain for 5 years) before the deadline of 30 June 2021. Those who have indefinite leave to remain or enter, or are an Irish citizen, do not need to apply but can if they want to.

EU citizens and their family members who did not apply to the EUSS before the 30 June 2021 deadline, no longer have the right to remain in the UK after 1 July 2021, and should seek legal advice if they now wish to stay in Wales (details of the support available is provided at the end of this factsheet). However, the UK Government has made provision for late applications to be made by EU, EEA and Swiss citizens and their family who can evidence they have reasonable grounds for having missed the EUSS deadline.

EU citizens who arrived in the UK for the first time on or after 1 January 2021 cannot apply for **Settled Status** or **Pre-Settled Status**. Those who wish to remain for more than a short visit, of up to 6 months, must apply for a **Long Term Visa** (for example, to study, or work, or join a family member).

Non-EU family members of EU citizens can only enter the UK after 1 January 2021 if they already have an EUSS family permit, a UK-issued EEA family permit or a UK-issued biometric residence card.

EU Citizens who have Settled Status or Pre-Settled Status (or who have applied to the EUSS before 30 June 2021)

All EU citizens and their family members with Settled Status or Pre-Settled Status have the right to work in Wales. Those who applied to the EUSS before the 30 June 2021 deadline and are awaiting a decision also retain the right to work until they are granted Settled Status or Pre-Settled Status (or until they are no longer able to appeal a refusal of their application). Their right to work is not linked to a particular employer or a particular job or role.

EU Citizens with a status or pending outcome have the right to equal treatment with British workers in access to employment, working conditions and all other social and tax advantages related to work (for example, access to work-related benefits and pensions). EU Citizens who have Settled Status have the right to work in Wales (and across the UK) indefinitely. EU Citizens who have Pre-Settled Status have the right to work in Wales (and across

the UK) until the expiration of their grant of Pre-Settled Status, should they not go on to apply for settled status after a five year residency.

Those who are awaiting an outcome should also be treated equally and fairly until they receive an outcome and then they should be treated in accordance to the outcome they receive. Those that have applied will be granted with a certificate of application and employers can verify status with the home office.

EU Citizens who were living in the UK on 31 December 2020 and did not apply to the EUSS before 30 June 2021

From 1 July 2021, those EU citizens no longer have leave to remain in the UK and are therefore, without an immigration status, restricted from working in Wales. Those that now wish to apply to remain in the UK, you should seek urgent legal advice (details of the support available is provided at the end of this factsheet).

Employers are not responsible for making sure your employees have applied to the scheme and do not need to undertake retrospective right to work checks on individuals who were employed on or before 30 June 2021.

There may be situations after 30 June 2021 in which you identify someone in your workforce who has not applied by the deadline and does not hold any other form of leave in the UK.

The employer right to work checks supporting guidance (links at the end of this document) explains what to do if this happens. The employer should advise the employee that they must make an application within 28 days of notice.

EU Citizens who arrived on or after 1 January 2021 for the first time

Short Term Visitors (visits lasting less than 6 months)

EU citizens arriving as Short Term Visitors, may be treated as Business Visitors and are permitted to attend business meetings, events and conferences but cannot:

- do paid or unpaid work for a UK company
- work as a self-employed person
- do a work placement or internship
- sell goods and services directly to the public.

Long Term Visa Holders

EU citizens and their family members wishing to work in the UK must apply for a Long Term Visa. In most cases, if granted, they will have the right to live in the UK and work, normally for a specific employer, in a particular job or role. If they wish to switch employers, or jobs or roles, they may need to seek a change to the terms of their Visa or reapply for another Long Term Visa.

Proof of right to work

EU citizens can prove their right to work by showing proof that they hold Settled Status or Pre-Settled Status or another form of leave to remain (such as a Long Term Visa). If they have made a valid application under the EUSS before 30 June 2021 but their application has not yet been decided, they can also provide evidence of their application (certificate of application) as proof of their right to remain and continue working in Wales. A certificate of application typically lasts 6 months but to note in some instances outcomes are taken longer to be granted.

Self-Employment

To register as self-employed an EU citizen must have a National Insurance Number. EU Citizens can apply for a National Insurance number if they live in the UK and have the right to work in the UK ie have pre-settled or settled status.

Additional Information and Support

Free legal advice is available from Welsh Government funded, Immigration Specialist Lawyers, Newfields Law. Their contact details are below:

+44 (0) 292 169 0049 info@newfieldslaw.com

Newfields
35 Park Place
Cardiff, CF10 3RL

Useful Links

I need help with Settled Status – Settled

<https://settled.org.uk/en/help/>

Citizens' rights have changed | the3million

<https://www.the3million.org.uk/rights-have-changed>

Homepage – Independent Monitoring Authority for the Citizens' Rights Agreements

ima-citizensrights.org.uk

EU Settlement Scheme: information for late applicants – GOV.UK

<https://www.gov.uk/government/publications/eu-settlement-scheme-information-for-late-applicants/eu-settlement-scheme-information-for-late-applicants>

EU Settlement Scheme caseworker guidance – GOV.UK

<https://www.gov.uk/government/publications/eu-settlement-scheme-caseworker-guidance>

EU citizens – we want you to stay in Wales | GOV.WALES

<https://gov.wales/preparing-wales/eu-citizens>

EU Settlement Scheme: employer toolkit – GOV.UK

<https://www.gov.uk/government/collections/eu-settlement-scheme-employer-toolkit>

The UK's points-based immigration system: information for EU citizens – GOV.UK

<https://www.gov.uk/guidance/the-uks-points-based-immigration-system-information-for-eu-citizens>

Immigration – Citizens Advice

<https://www.citizensadvice.org.uk/wales/immigration/>

EU Citizens Immigration (eusswales.com)

<https://www.eusswales.com/en/index.html>

Right to work checks: an employer's guide – GOV.UK

<https://www.gov.uk/government/publications/right-to-work-checks-employers-guide>

Frequently Asked Questions Regarding the Employment of EU Citizens

Can UK companies and organisations still hire EU Citizens?

Yes, and they will need to make their own checks of right to work by asking the person for a share code and checking this using the view and prove service.

Prove your right to work to an employer – GOV.UK (<https://www.gov.uk/prove-right-to-work>)

View a job applicant's right to work details – GOV.UK (<https://www.gov.uk/view-right-to-work>)

You should not discriminate when conducting right to work checks. The Home Office has published statutory codes of practice (<https://www.gov.uk/government/publications/right-to-work-checks-code-of-practice-on-avoiding-discrimination>) for employers on how to avoid unlawful discrimination when undertaking checks. It clearly stipulates that employers should provide individuals with every opportunity to demonstrate their right to work and should not discriminate on the basis of race or any of the other protected characteristics.

Can I employ someone without Settled Status?

If someone has made an application to the EUSS but have not yet received a decision they can show you a certificate of application which proves they have applied but does not give you an indication of the outcome of their application.

Can I ask existing employees for proof of right to work in the UK?

You do not need to undertake retrospective right to work checks on EU citizens who were employed on or before 30 June 2021. However, some employers may wish to conduct retrospective checks to ensure the stability of their workforce. If you choose to carry out retrospective checks, you must ensure that you do so in a non-discriminatory manner.

Why doesn't the employee passport not show evidence of Settled Status?

Settled Status is a digital only scheme and proof of the persons status can no longer be shown on a passport as it would previously with other immigration status.

Does Pre Settled Status mean my employee could lose their right to work and or live in the UK?

Pre Settled Status means the person has not been in resident in the UK for over 5 years – The person will be able to apply for Settled Status as soon as they have been resident in the UK for over five years.

Will employees with Settled Status have the same workplace rights as other employees?

Yes and treating them differently may be classed as discrimination and you could be subject to the employee bringing action against you.