

The new immigration system – Q&As

Our webinar on 4 November 2020 generated a wide-ranging set of questions from attendees, which we have collated and answered below.

In these Q&As, unless otherwise indicated, the term ‘EEA national’ means nationals of countries included in the European Economic Area, as well as Swiss nationals. It excludes Irish nationals, who are already considered ‘settled’ in the UK. Irish nationals can, but are not required, to apply under the EU Settlement Scheme (EUSS).

If you need more detailed advice or training, please take a look at our [Immigration Solutions for HR](#), consider attending our next [Immigration Law Academy](#) on 25 and 26 January 2021 or get in touch with [Naomi Hanrahan-Soar](#), [Stephen O’Flaherty](#) or your usual immigration contact.

Question	Answer
<p>1. We have an EEA national who started work in October 2020 but is working remotely in their home country due to COVID. They will be coming to the UK in January. Will we need to sponsor them under skilled worker visa and will there be issues with this given he has already started work?</p>	<p>If the person physically arrives in the UK by 31 December 2020, even if this is for a preliminary visit, then they would be eligible to apply under the EU Settlement Scheme.</p> <p>If they arrive in January 2021 or later, then they would need immigration permission under the UK immigration system in order to live and work physically in the UK. This may mean they need to be sponsored under the Skilled Worker route if there is no alternative route applicable to them based on their individual circumstances.</p> <p>There are no immigration issues with the person working physically in their home country before they arrive in the UK, however there may be other implications, eg from a tax or social security perspective. Our article on remote working abroad outlines some of the issues.</p>
<p>2. How do you evidence the ‘speaking English’ requirement for the Skilled Worker category?</p>	<p>The options for proving English language ability are expanded in comparison to the current arrangements for Tier 2 (General). The new provisions are set out in bold below.</p> <p>The English language requirement for Skilled Worker can be met in one of the following ways:</p> <ul style="list-style-type: none"> • In a previous UK immigration application, the person has met the English language requirement at the level required for their Skilled Worker application (ie Level B1 on the Common European Framework of Reference for Languages) – this will be the case if the person has previously been granted permission under Tier 2 (General) for example. • The person is a national of a majority English-speaking country, ie Antigua and Barbuda; Australia; The Bahamas; Barbados; Belize; Canada; Dominica; Grenada; Guyana; Jamaica; Malta; New Zealand; St Kitts and Nevis; St Lucia; St Vincent and the Grenadines; Trinidad and Tobago; USA (the person’s passport will be required as evidence) • The person has a bachelor, masters or doctorate level degree awarded in the UK (the award certificate, official transcript or official letter from the awarding institution will be required as evidence)

	<ul style="list-style-type: none"> • The person has a bachelor, masters or doctorate degree level qualification taught in a university or college in certain majority English language speaking countries: Antigua and Barbuda; Australia; The Bahamas; Barbados; Belize; Dominica; Grenada; Guyana; Ireland; Jamaica; Malta; New Zealand; St Kitts and Nevis; St Lucia; St Vincent and the Grenadines; Trinidad and Tobago; USA (the award certificate, official transcript or official letter from the awarding institution will be required as evidence, along with a UK NARIC confirmation) • The person has a bachelor, masters or doctorate degree level qualification that was taught or researched in English (the award certificate, official transcript or official letter from the awarding institution will be required as evidence, along with a UK NARIC confirmation) • The person has one of the following qualifications that was awarded by an Ofqual regulated awarding body following education in the UK which I undertook while under the age of 18: GCSE; A-level; Scottish National Qualification at Level 4 or 5; Scottish Higher or Advanced Higher in English (language or literature) (the award certificate or official transcript will be required as evidence)
<p>3. I know that resident labour market testing will not be required under the Skilled Worker route, but will there be any job posting requirements, or is this all going away, with the new process being just to find the right candidate, assess whether a visa is needed and apply for one ie through the Skilled Worker route?</p>	<p>There will not be any job posting requirements at all for the Skilled Worker route. The process you describe is correct, however please see further information on CoS allocation processes at question 22.</p>
<p>4. You mentioned we don't need to see qualifications. How are we going to, for audit purposes, verify that the applicant is not lying for the PhD for instance?</p>	<p>The person will need to submit any qualification they are relying on for their application to the Home Office, along with a UK NARIC confirmation if the qualification was awarded outside the UK. UK NARIC launched new services on 1 November 2020 to specifically verify that a PhD awarded abroad is equivalent to a UK PhD, and (if relevant) that it meets the English language requirement. If the job requires a PhD, then you as the employer should follow your usual processes for qualification verification.</p> <p>If the person is relying on a PhD to score points under the Skilled Worker route, then you as their sponsor must also provide a 'credible explanation' of how the qualification is relevant to the job. If relying on a PhD in a Science, Technology, Engineering or Mathematics (STEM) subject, then you must also provide a credible explanation that the qualification is considered by the sponsor to be in a STEM subject.</p>

<p>5. Is the removal of the cooling off period for Tier 2 applicable for Tier 2 (ICT)?</p>	<p>There will still be a cooling off period for the Intra Company routes.</p> <p>If the applicant is a 'high earner', ie their salary is £73,900 or more (based on working a maximum of 48 hours a week), then they cannot have cumulative periods of UK immigration permission on the Intra Company routes amounting to more than nine years in any ten-year period.</p> <p>If the applicant is not a 'high earner', then they cannot have cumulative permission amounting to more than five years in any six-year period.</p>
<p>6. I have looked at the ONS tool for SOC codes. Looks like it is based on the old list of eligible SOC codes. Is there another tool that is based on the new list?</p>	<p>The ONS SOC occupation coding tool should cover all occupation codes irrespective of whether they are eligible for the Skilled Worker route.</p> <p>Currently the new eligible SOC codes are contained in Statement of Changes in Immigration Rules HC 813, Appendix Skilled Occupations, and will be published into the Immigration Rules on GOV.UK on 1 December 2020.</p>
<p>7. What happens if we've run out of Certificates of Sponsorship (CoS) and have currently requested additional allocation for visa extensions in the new year?</p>	<p>The Home Office will continue to consider requests for additional CoS allocations and once approved these will be available to the sponsor for assigning under the Skilled Worker route.</p> <p>However, CoS for entry clearance applications will need to be allocated by the Home Office on a case-by-case basis, after the sponsor has submitted details of the specific job and salary details.</p>
<p>8. Is having a preference for UK based/local labour markets over non-UK candidates needing sponsorship permissible or would this potential be discriminatory? The RLMT allowed UK (then EU/EEA) workers to come to the fore, without it how can we show preference to UK/local markets?</p>	<p>It is no longer a requirement for immigration purposes to demonstrate an inability to recruit a suitable resident worker. The Home Office has now moved to a system where the resident labour market is considered to be adequately protected through the salary thresholds Skilled Workers are required to meet, along with the application fees, compliance obligations and payment of the Immigration Skills Charge.</p> <p>From a race discrimination perspective, an employer should only ask a candidate to demonstrate their right to work in the UK at a later stage of the recruitment process, eg at final interview or job offer stage. All candidates should have their right to work checked at the same stage. It is not permissible to only consider applications made by UK-based candidates for example.</p> <p>You can make your employment offers conditional on the person having the right to work in the UK. If the person does not have the right to work, you can consider whether or not the person is eligible for sponsorship, and if so whether you wish to sponsor them.</p>

<p>9. if an employer does not have a COS, can they ask that only applicants with settled or pre settled status apply?</p>	<p>No, this would not be permissible. To avoid the risk of race discrimination, an employer should only ask a candidate to demonstrate their right to work in the UK at a later stage of the recruitment process as outlined in the answer to question 8 above.</p>
<p>10. What process should recruiters follow from 1 January 2021 for EEA applicants for roles in the UK. What questions, checks and processes should we put in place as I get a lot of applicants applying from Europe and it is not always clear they have status under the EU Settlement Scheme.</p>	<p>You should follow the same process for all candidates, irrespective of nationality, and only ask a candidate to demonstrate their right to work in the UK at the point where a job offer is made. The Home Office has confirmed that for EEA nationals starting work between 1 January 2021 and 30 June 2021, you can still accept their EEA passport as evidence of their right to work in the UK and will not be required to undertake retrospective checks.</p> <p>The Home Office is expected to release an update to An employer's guide to right to work checks during the first half of next year, which will provide details of what right to work checks will be required for EEA nationals from 1 July 2021.</p>
<p>11. If people can continue to apply for settled or pre-settled status until June 2021 (as opposed to 31 Dec 2020), when should employers start performing new RTW checks on EU nationals and what are these?</p>	<p>See answer to question 10 above.</p>
<p>12. Is there anything we need to take into consideration for travel on inter-company business from 1 January 2021, ie if a meeting was being hosted in the UK and we wanted people from across Europe to attend?</p>	<p>You will need to assess whether the proposed activities fall within those allowed for visitors, or if a visa allowing work is required. It is the nature of the activities rather than the length of presence in the UK that is relevant when making this assessment.</p>
<p>13. What will be the costs of the new Skilled Worker route?</p>	<p>The Home Office confirmed in the webinar that fees will not differ from those under the current system immediately, however immigration fees are subject to periodic change. The below outline is based on the current Tier 2 (General) fees.</p> <p>Skilled Worker Sponsor licence process:</p> <ul style="list-style-type: none"> • Application fee – £1,476/£536 (depending on the size of sponsor) • Priority fee (available from 12 November 2020, not mandatory) – £500 <p>Immigration application for a five-year Skilled Worker visa:</p>

	<ul style="list-style-type: none"> • Application fee – £1,220 from abroad or £1,408 from within the UK • Biometric enrolment fee – £19.20 • Certificate of Sponsorship fee – £199 • Immigration Health Surcharge – £3,120 • Immigration Skills Charge – £5,000/£1,820 (depending on the size of sponsor) • Priority fees (not mandatory) – £300/£500
<p>14. If an EEA national moves to the UK in March 2021, they can still start a new job then and apply to the EU Settlement Scheme? No need for a sponsored visa?</p>	<p>If the person is taking up residence in the UK for the first time on or after 11 pm on 31 December 2020, then they would not be eligible under the EU Settlement Scheme and would be required to apply for permission under the main UK immigration system. Whether they will require sponsorship will depend on their personal circumstances, ie whether they qualify for a non-sponsored visa.</p>
<p>15. Will someone be able to switch from Tier 2 ICT to the Skilled Worker category without needing to complete the cooling off period?</p>	<p>Yes, this will be allowed. In-country switching to the Skilled Worker route will however not be allowed for people holding the following UK immigration permission:</p> <ul style="list-style-type: none"> • Visitor • Short-term student • Parent of a Child Student • Seasonal Worker • Domestic Worker in a Private Household • Permission granted outside the Immigration Rules
<p>16. It would be really useful to have an example recruitment timeline based on the changes that have been made to the CoS system; also, what are cost of CoS going to be; can you reconfirm there is no cap i.e. we will be able to issue as many as we want? Finally, how will new recruits be able to evidence the English language requirements (wondering if this elongates recruitment timelines)</p>	<p>In comparison to the current Tier 2 (General) recruitment timeline, the timeline will be reduced by around six weeks where resident labour market testing would have been applicable for Tier 2 (General). Sponsors will need to request a 'defined' CoS (dCoS) to be allocated for entry clearance applicants, however the Home Office indicated the processing time for this in most cases should be around one working day. CoS will still be £199 initially.</p> <p>Sponsors will need to request CoS allocations from the Home Office for in-country applications and will need to justify the need for this, as is currently the case. dCoS will need to be requested on a case-by-case basis.</p> <p>For information on the English language requirements, see the answer to question 2.</p>
<p>17. Do people who are already sponsored on a Tier 2 visa need to switch or can</p>	<p>People who currently hold permission under Tier 2 will continue to have valid permission in this category. They will be able to extend their permission under the Skilled Worker category before expiry.</p>

<p>they remain on their current visa and switch when expiring?</p>	<p>Please note that the going rates for further permission and settlement under the Skilled Worker route are not the same as they currently are for Tier 2 (General). For some occupations the rates have increased. It will therefore be important to assess the eligibility of Tier 2 (General) migrants for extension and settlement in good time to verify that they will qualify.</p>
<p>18. Does an employee working in the EU who is visiting the UK subsidiary i.e. for 2 weeks and will contribute to the economic value of the UK subsidiary require a visa or any type of work permit? They will be doing more than just attending meetings.</p>	<p>If the person is an EEA national who will be entering the UK before 11 pm on 31 December 2020, then free movement arrangements will still apply. If the person enters after this time and they are not eligible to apply under the EU Settlement Scheme before 30 June 2021, then if their activities will go beyond what is allowed for business visitors, then they would need to obtain a UK visa with work permission that authorises them to do the proposed work activities.</p>
<p>19. We have an employee currently on a Tier 5 visa who will become an EU citizen in the next month. Will she need to re-enter the UK as an EU citizen by 31 December 2020?</p>	<p>The Rules for the EU Settlement Scheme do not require an EEA national to have entered the UK in that capacity, all that is required is that the person is an EEA national by 11 pm on 31 December 2020 and to be residing in the UK by this time. So, assuming your employee is granted her citizenship by 11 pm on 31 December 2020, she should aim to obtain proof of her citizenship as soon as possible and ensure she applies for pre-status under the EU Settlement Scheme by 30 June 2021.</p>
<p>20. Am I right in understanding that we do not need to check that an employee from the EU who is already employed by us has applied for and been granted settled status? Is this ever, or just before June 2021?</p>	<p>The Home Office has confirmed in the webinar that the present right to work arrangements will remain in place until 30 June 2021. Employers will not be required to do retrospective right to work checks on employees hired on or before 30 June 2021.</p> <p>Aside from the civil penalty regime for illegal working, there is however a separate criminal offence for knowing, or having reasonable cause to believe that you are employing a person who does not have the right to work in the UK. The Home Office is expected to provide clarification in the first half of next year on what the consequences for an employer will be if it comes to light that an EEA national they employ does not in fact have the right to work in the UK, either because they entered after 31 January 2021 without work permission, or failed to apply on time for the EU Settlement Scheme.</p>
<p>21. In terms of recruitment, are there any discrimination considerations to 'preferring' UK nationals or those with the RTW in the UK, over workers that may need sponsorship?</p>	<p>See the answers to questions 8 and 9.</p>

22. What are the transitional arrangements where the process has started under the old system but the worker will be starting work in the new system?

Individuals who make a Tier 2 (General) application before 9 am on 1 December 2020 will have their application processed under the current arrangements and will be issued with a visa as a Tier 2 (General) migrant. For the purposes of extension and settlement applications, Tier 2 (General) migrants will be considered under the new Rules to fall within the definition of 'Skilled Worker'.

Applications submitted after this will be processed under the new Skilled Worker Rules.

In the webinar the Home Office confirmed the following details:

- Tier 2 (General) sponsors will automatically become Skilled Worker sponsors from 1 December 2020 and their unrestricted CoS allocation will also be transferred and available for sponsoring in-country Skilled Worker migrants
- Sponsors will be able to assign CoS from their allocation for in-country Skilled Worker applications from 1 December 2020
- Sponsors will be asked to provide additional PAYE information in relation to Tier 2 (General) unrestricted CoS that have been assigned but not yet used in support of a visa application
- For entry clearance applications made under the Skilled Worker route, a sponsor will have to submit a request to the Home Office on a case-by-case basis for a 'defined CoS' (dCoS) to be allocated, which will include the specific job and salary details of the role the migrant will fill
- The dCoS process is anticipated to take around a working day in most cases, and is intended to allow the Home Office to do a sense check on what roles sponsors are intending to fill with new migrants coming to the UK from abroad
- Sponsors who have a live restricted CoS for Tier 2 (General) will have this converted to a dCoS automatically
- Any outstanding requests for rCoS on 30 November 2020 will be converted to dCoS

This publication states the position as at 4 November 2020. It provides general guidance only: expert advice should be sought in relation to particular circumstances. Please let us know by email (info@lewissilkin.com) if you would prefer not to receive this type of information or wish to alter the contact details we hold for you. © November 2020 Lewis Silkin LLP