

# IMMIGRATION

A comprehensive working guide  
to all employers and how the changes  
will affect your business



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# Are you ready for the changes to the Rights to Work Laws

From 1st July 2021, new immigration rules come into play and as an employer you have an obligation to be aware and apply these new rules. With the uncertainty around COVID and all the changes it brought to businesses, BREXIT and its implications has taken a back seat and there hasn't been as much publicity around this, which could risk organisations missing this change and breaking the law.

In this guide we will be looking at what has changed and the steps you need to make, as an employer when appointing new employees and ensuring that they have the Right to Work in the UK.

## Current Immigration rules

Under the old immigration rules as part of Right to Work law, up to and including the 30th June 2021 European Economic Area (EEA) nationals can present their EEA passport or national ID card as evidence of their right to work in the UK. Under these rules this is the only evidence required by an employer to prove an applicant's right to work in the UK if they are from an EEA country.

The countries in this area are:

- Austria
- Belgium
- Bulgaria
- Croatia
- Republic of Cyprus
- Czech Republic
- Denmark
- Estonia
- Finland
- France
- Germany
- Greece
- Hungary
- Iceland
- Ireland
- Italy
- Latvia
- Liechtenstein
- Lithuania
- Luxemburg
- Malta
- Netherlands
- Norway
- Poland
- Portugal
- Romania
- Slovakia
- Slovenia
- Spain
- Sweden

From 1st July 2021, EEA citizens and their family members require immigration status in the UK and will no longer be able to rely on their EEA passport or national ID card. The new rules are designed to treat all applicants in a fair and equal manner.

# New Immigration rules - 1st July 2021

The old rules ceased to apply on 1st of July 2021. As an employer you have an obligation to check all job applicants' right to work status and ensure that they are allowed to work in the UK before offering them employment, so it is important to be aware of the new rules.

This can be done by:

- Checking the applicants original documentation
- Checking the applicants right to work via an online tool

You will need to have a sponsor licence to employ someone from outside of the UK, and freedom of movement will no longer exist between EU/EEA countries and the UK which means that all applicants will be treated fairly and equally.

Anyone that you now decide to employ from outside the UK (excluding Irish citizens) must now meet certain requirements and have applied for permission first by acquiring a visa.

Each visa type will have a different set of requirements. A sponsor licence will be required for most employees coming from outside of the UK, and there are various routes that an applicant can take to gain the right to work in the UK.

## What are the routes to work?

### Skilled Worker Route

Anyone recruited from outside of the UK under this route will need to show:

- they have a job offer from a Home Office licensed sponsor
- they speak English at the required level
- the job offer is at the required skill level of RQF3 or above (equivalent to A level)
- they'll be paid at least £25,600 or the 'going rate' for the job offer, whichever is higher

If the job will pay less than this, but no less than £20,480, the applicant may still be able to apply by 'trading' points on specific characteristics against their salary. For example, if they have a job offer in a shortage occupation or have a PhD relevant to the job.

The gov.uk website has a full list of [skilled worker via shortage occupations](#).

There are different salary rules for workers in some health or education jobs, and for “new entrants” at the start of their careers.

### **Intra-company transfer route**

You can apply for this route if you want to transfer a worker from another part of your business to come and work in the UK. They must be an existing employee who will carry out a role that meet salary and skills thresholds as specified below.

Workers transferring to the UK via this route need to:

- be sponsored as an Intra-Company Transfer by a Home Office licensed sponsor
- Have 12 months’ experience working for a business overseas linked by ownership to the UK business they will work for
- be undertaking a role at the required skill level of RQF6 or above (graduate level equivalent)
- be paid at least £41,500 or the ‘going rate’ for the job, whichever is higher

This route is temporary, although your worker can be assigned to the UK several times they cannot stay in the UK for more than 5 years in any 6 year period.

If you have a worker who is paid in excess of £73,900 they do not need to have worked overseas for 12 months and can stay for up to nine years in any ten-year period.

Workers who are transferred to the UK as part of a structured graduate training programme for up to one year can apply for the Intra-Company Graduate Trainee route. The requirements are the same except there are different rules on length of overseas experience and salary.

The gov.uk website has full details on [how to apply to become a licensed sponsor](#) under the above routes.



## Other routes

**Global Talent** Open to EU citizens in the same way as it is already open to non EU citizens. Highly skilled people who achieve a level of required points can enter the UK without the offer of employment as long as they are endorsed by a recognised UK body which is approved by the Home Office.

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**Graduate** Graduate Visas will be available to international students who complete their degree in the UK from summer 2021. This means that they can apply and stay in the UK for up to 2 years after the completion of their studies and it will be an unsponsored route.

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**Start up and Innovator** Designed to attract talent of entrepreneurial nature as well as innovative scalable business ideas to the UK. The start-up is for people setting up a first time innovative business. Innovator is for those with the industry experience along with £50,000+ funding in place. Teams of people or individuals can apply for this route.

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**Health and Care Visa** Part of the skilled worker route. This allows people working in eligible health occupations to come and work in the UK. Anyone applying under this route must have a job offer from the NHS, social care sector or an organisation which supplies services to the NHS.

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**Creative** Applicants under this route must have a confirmed job offer in the creative industry for short term contract/engagement for up to 12 months. This employment must be with a UK employer that has sponsorship licenced by the Home Office.

**Sporting Roles** Requires the person to have an endorsement by their relevant governing sporting body. Must have a confirmed job offer and their employment must be with a UK employer that has sponsorship licenced by the Home Office.

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**Seasonal workers pilot** This pilot runs until the end of 2021, enabling a limited number of workers on a temporary basis to work in specific roles in the horticultural sector.

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**Youth Mobility scheme** The UK has arrangements with eight countries/territories to enable around 20,000 18-30 year olds to come to the UK to work and travel. Applicants must be from the 18- 30 age group and are allowed a maximum stay of 2 years.

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**Frontier workers** Anyone from the EU that are either employed or self-employed in the UK but live somewhere else. If the person was working in the UK prior to 31st December 2020 they can keep their status but are required to apply for a permit. Irish citizens do not require a permit, but can apply if they wish to do so. After December 2020 visas are required for new frontier workers.



# Becoming a Licenced Sponsor

If you want to recruit workers from outside of the UK you will need to apply to be a sponsor through the Skilled Worker route. Before applying check that the people you want to recruit meet the requirements for coming to the UK for work.

The average processing time for a sponsorship application is around eight weeks and starts as soon as your application is received. As a licensed sponsor, you will be able to hire eligible employees from anywhere in the world.

Some immigration routes, such as Global Talent, are 'unsponsored'. You don't need a licence to hire employees with an unsponsored visa.

You do not need to be a sponsor to recruit Irish citizens or anyone from the resident labour market with an existing right to work in the UK. This includes EU citizens with settled or pre-settled status, and non-EU citizens with indefinite leave to remain in the UK.

You will need to:

## 1) Check your business is eligible

In order to get a licence, you cannot have unspent criminal convictions for immigration offences or certain other crimes, such as fraud or money laundering.

## 2) Choose the type of skilled worker licence you want to apply for

This will depend on whether you are sponsoring a job applicant for general purposes, or for the purpose of an ICT. You can apply for a licence covering either or both.

## 3) Decide who will manage sponsorship within your business

You need to appoint people within your business to manage the sponsorship process when you apply for a licence. The main system that they'll use will be the sponsorship management system (SMS). The roles are:

- Authorising Officer – a senior and competent person responsible for the actions of staff and representatives who use the SMS
- Key Contact - your main point of contact with UK Visas and Immigration (UKVI)
- Level 1 User - responsible for all day-to-day management of your licence using the SMS

These roles can be filled by the same person or different people.



#### 4) Apply online and pay a fee

Type of licence	Fee for small or charitable	Fee for medium or large sponsors sponsors
Tier 2	£536	£1,476
Tier 5	£536	£536
Tier 2 and Tier 5	£536	£1,476
Add a Tier 2 to an existing Tier 5	No fee	£940
Add a Tier 5 to an existing Tier 2	No fee	No fee

The fees stated are current as of November 2020. Fees are kept under review and may be subject to change. Please check GOV.UK for up to date fees.

You're usually classed as a small business if:

- your annual turnover is £10.2 million or less
- you have 50 employees or fewer

Contact the Business Helpdesk if you're unsure which category your business fits into:

[businesshelpdesk@homeoffice.gov.uk](mailto:businesshelpdesk@homeoffice.gov.uk)



## Immigration Skills Charge

The Immigration Skills Charge is a fee paid by a UK employer for each skilled migrant worker they employ through the Skilled Worker and Intra-company Transfer routes. You will need to pay the charge when sponsoring both EU and non-EU migrant workers. Employers must pay £1,000 per skilled worker for the first 12 months, with an additional £500 charge for each subsequent six-month period. Discounted rates will apply as they do now to charities and small business.

[For full guidance on becoming a sponsor or to begin your application, visit GOV.UK.](#)

## Penalty for not carrying out a right to work check

The new system does not apply to EEA or Swiss citizens that are already in your employment.

If it's found that an employer has not carried out a legitimate right to work check the civil penalty for employing an illegal worker is a jail term of up to 5 years and an unlimited fine.

You can also be penalised if you employ someone and you did not carry out the correct checks or are found to have not checked properly. This can lead to fines of up to £20,000 for each illegal worker that you employ.



## Summary

- From 1st July 2021 freedom of movement between EU/EEA countries and the UK no longer applies
- New rules will apply to all applicants, except those from Ireland or anyone from the resident labour market with an existing right to work in the UK (including EU citizens with settled or pre-settled status and non-EU citizens with indefinite leave to remain in the UK)
- There are various routes for applicants who do not fall into the above categories to take, including the skilled worker route, intra-company transfer route, global talent, graduate, start-up and innovator, health and care visa, creative, sporting roles, seasonal workers pilot, youth mobility scheme, and frontier workers
- For most of the above routes you will need to become a licensed sponsor to employ workers from outside the UK
- To become a licensed sponsor you will need to apply online and pay a fee
- For skilled worker and intra-company transfer routes you will be required to pay an immigration skills charge
- As an employer it is your responsibility to verify applicants' right to work in the UK before extending an offer of employment
- There are penalties to failure to carry out verification or for not checking properly including hefty fines and potential prison time

## About the Author

Nikki Whitaker is Dataplan's Commercial HR Business Partner joining the team in 2019. She has 25 years of experience in Human Resources Management, spanning both the public and corporate sectors.



Nikki and her team provide our clients with trusted HR services and consultancy. She strives to present what can be complicated HR issues in a way that is understandable and easy to digest, no matter your background or experience of HR.

We know that HR can be complicated and costly to get wrong, which is why we offer a range of options to deliver the bespoke solution that is needed for your individual business.

**For tailored advice to your specific needs please get in touch:**

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