

# Preparing for BREXIT Immigration Briefing

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# Areas we will focus on

- ▶ Protecting your EEA workforce (EU Settled Status Scheme)
- ▶ Right to work checks for EEA nationals from January 2021
- ▶ Tier 2 (General) now and future changes, Skilled Worker route
- ▶ Skilled Worker Licence (formally sponsor licence)
- ▶ Graduate Immigration Visa
- ▶ Tier 5 Temporary (Worker Government - Govt Authorised Scheme)

The key date to note and plan before is:

31 December 2020

- ▶ Free movement of workers from Europe ends; and
- ▶ New Immigration Rules come into force the next day 'fully'

# EEA nationals residing in the UK on 31 December 2020

- ▶ Should be encouraged to apply under the **Settled Status Scheme**.
- ▶ Deadline to apply - **30 June 2021**
- ▶ Two types of status can be granted. If one has been in the UK less than 5 years will be granted **pre-settled status** and **settled-status** if been here 5 years or more.
- ▶ Benefits of applying:
  - No application fee
  - Can look for and take up employment without requiring sponsorship
  - Entitled to free NHS treatment and welfare benefits
  - Family members, including non-EU family members can be included in the application
  - Absences of 2 years (pre-settled) or 5 years (settled) from the UK will be allowed
  - After 1 year of settled status will be able to apply for British Citizenship.

# The EU Settlement Scheme (“EUSS”) - which citizens can apply

- ▶ EEA citizens can apply, includes - EU citizens and citizens of Iceland, Liechtenstein and Norway. Also includes Swiss citizens (not part of EU or EEA)
- ▶ EU Residence Permit holders must also apply
- ▶ EEA and Swiss nationals with ILR or who are British citizens are exempt, as are...
- ▶ Irish nationals - Common Travel Area (CTA).

# Application Process for EUSS

You can access the application online using a computer, tablet or mobile phone. Your application saves automatically, so if you want to, you can start and then complete it at another time. It is free to apply to the EU Settlement Scheme.



## Basic information

The application asks for basic information like your name, address, contact details and nationality.



## Proof of identity

Verify your identity and nationality using your passport, national identity card, or biometric residence card (if you are a non-EU citizen).



## Proof of residence

Prove your residence in the UK by providing your National Insurance number, if you have one. Other documentation may be used, or required, to show proof of residence.



## Criminality check

Complete the criminality check by declaring any criminal convictions. Only serious or persistent criminality will affect your application. This will not affect the vast majority of EU citizens and their family members.

# Approval under EUSS

Successful applicants will get **digital proof** of their status through an online service. Your family members who are from outside the EU will receive a biometric residence card if they do not already have one.



Your status will be stored electronically by the Home Office. Once you receive your status, details will be provided on how to access it on **GOV.UK**.



You will be able to prove your rights to others online, including employers.

Help will be available if you have difficulties using online services.



There will be no changes to Right to Work checks on EU citizens until 30 June 2021.

If you are an EU citizen, you can continue to use your passport or national identity card as proof of your rights until 30 June 2021.

# Checking an EEA Citizen Job Applicant's Right to Work

- ▶ You will need to check a job applicant's right to work in the **same way as now** until 30 June 2021.
- ▶ Up until this date an EEA national can prove their right to work in the following ways:
  - Passport or national identity card; or
  - Online right to work checking service.
- ▶ *“You have a duty not to discriminate against EEA or Swiss citizens. You cannot **require** them to show you their status under the EU Settlement Scheme until after 30 June 2021” UKVI Guidance*



# EU Settlement Scheme, points to note as an employer

- ▶ Registration on the scheme is voluntary.
- ▶ EU nationals who are in the UK by 31 December 2020 11pm may continue to work lawfully in the UK without registration.
- ▶ On 30 June 2021 it will become mandatory to have registered on the scheme to have the right to live and work in the UK.
- ▶ Therefore **whilst it is not an employer's duty** to ensure that a colleague has registered, employment will become unlawful once the scheme is mandatory and employer could face a civil penalty of £20,000.
- ▶ Arrivals from EEA from 01.01.21 who wish to work in the UK will require sponsorship by a UK based employer.

# EUSS and what steps employers can take now

- ▶ First step is to review and to keep under review HR records to monitor how many colleagues need to register.
- ▶ Send communication and updates on the scheme to all colleagues.
- ▶ Provide access to the government website and links to the information.
- ▶ Provide HR colleagues with training on the EUSS.
- ▶ Provide training and support to EEA colleagues on the application process including access to a PC and android phone.
- ▶ Consider position of British colleagues in Europe now and future secondments

# Paragon Law Support To EEA Citizens:

► Free telephone advice for employees:

- Tuesday's 9 - 11am
- Thursday's 3 - 5pm
- Dedicated number to call is 0115 9644112 (national coverage and standard phone charges apply)

# Tier 2 Changes to "Skilled Worker Route" From January 2021

- ▶ Made up of the main Skilled Worker Visa category and a sub-category Health and Care Visa.
- ▶ To sponsor workers under the Skilled Worker categories a business will need a Skilled Worker licence and a Intra-Company Transfer licence.
- ▶ Minimum salary threshold to be reduced from £30,000 to £25,600 (but in certain circumstances can be lower). Migrant will still need to be paid the 'going rate' salary for their occupation (as per SOC).
- ▶ New entrants' salary will be set 30% lower than the rate for experienced workers in any occupation.
- ▶ Skills threshold reduced from RQF6 to RQF3
- ▶ Will suspend (not abolish) immigration cap and abolish resident labour test (currently only international student switches to Tier 2 are exempt)
- ▶ New highly skilled visa also recommended by MAC which will not require sponsorship

# Tier 2 Changes From January 2021

- ▶ **Single-based Immigration System, meaning - EU and non-EU citizens will need to demonstrate that:**
  - they have a job offer from a business which is registered as a skilled worker sponsor licence holder
  - job offer is at the required skill level
  - they speak English
  - earns the minimum salary under the SOC Code
  
- ▶ However, if they earn less than the required minimum salary threshold, they will need to demonstrate that they:
  - have a job offer in a specific **shortage occupation**; or
  - that they have a **PhD relevant to the job**; or
  - they have a **PhD in a STEM subject relevant to the job**; or
  - applicant is a **new entrant to the labour market**

# Skilled Worker From January 2021

A total of 70 points is required

Some characteristics are tradable

Non-tradeable points (mandatory) – 50 required				
Offer of a job by an approved sponsor				20
Job at an appropriate skill level				20
English language skills at level B1 (intermediate)				10
Tradeable points (may only score from one entry from each of the two sections below) – 20 required				
Salary <sup>4</sup>			Other	
General salary threshold	Going rate			
Salary of at least £20,480	At least 80% of the going rate for the profession (70% if a new entrant).	0	Education qualification: PhD in a subject relevant to the job	10
Salary of at least £23,040	At least 90% of the going rate for the profession.	10	Education qualification: PhD in a STEM subject relevant to the job	20
Salary of at least £25,600	At least the going rate for the profession.	20	Job in a shortage occupation (as designated by the MAC)	20
Salary of at least £20,480	Listed health/education job <u>and</u> meets the relevant national pay scale	20	Applicant is a new entrant to the labour market (as designated by the MAC)	20

## 5431 Butchers

Example job tasks:

- slaughters animal and removes skin, hide, hairs, internal organs, etc.;
- cuts or saws carcasses into manageable portions;
- removes bones, gristle, surplus fat, rind and other waste material;
- cuts carcass parts into chops, joints, steaks, etc. for sale;
- prepares meat for curing or other processing; cleans tools and work surfaces.

Related job titles:

- Butcher
- Butcher's assistant
- Butchery manager
- Master butcher
- Slaughterman

Salary rate: £18,400

[Source: Annual Survey of Hours and Earnings (ASHE) 2018]

## 5111 Farmers

### Example job tasks:

- feeds and waters animals, takes responsibility for livestock health and welfare, treats minor ailments and calls vet if necessary;
- plants, propagates, sprays, fertilises and harvests field crops;
- undertakes farm maintenance tasks such as fencing, hedging, cleaning and building maintenance;
- operates and maintains farm machinery such as combine harvesters, straw balers, milking machines and tractors;
- arranges for the sale of crops, livestock and other farm produce;
- maintains records of production, finance and breeding;
- ensures good environmental practice is observed in all tasks.

### Related job titles:

- Agricultural contractor
- Agricultural technician
- Crofter (farming)
- Farmer
- Herd manager

### Jobs within SOC which are skilled to RQF 3 (other jobs are lower-skilled):

- Herd managers
- Livestock breeders
- Pig breeders
- Agricultural contractor jobs that require an RQF level 3 in Agricultural Crop Production, Mixed Farming or Livestock Production, or an NPTC Advanced National Certificate in Agriculture

Salary rate: £17,700



# Skilled Worker Visa PROS AND CONS

## Pros

- Can lead to ILR after 5 years provided meet requirements at that time including minimum salary for ILR (£36,200)
- Maximum time on Skilled Worker visa will be 6 years
- Can bring dependant spouse/partner and children.

## Cons

- Tied to the job and employer. If want to move to a new job, need new employer to sponsor
- Reliant on sponsor keeping their licence

# Sponsor Licence Cost

- ▶ £1,476 for a medium or large business
- ▶ £536 for a small business or charity
- ▶ You qualify as a small business if you meet at least two of the following:
  - *The company's annual turnover doesn't exceed £6.5 million*
  - *The balance sheet total (meaning, the total of the fixed and current assets) doesn't exceed £3.26 million*
  - *The company employs no more than 50 personnel*

# Summary of Sponsor Licence Application Process

- ▶ First stage is to complete a web based application form
- ▶ Must demonstrate why a sponsor licence is required.
- ▶ Must then file specified documents to the UKVI about the business.
- ▶ Business may be subject to a pre-registration audit (and ongoing visits).
- ▶ As a sponsor you have ongoing duties and reporting requirements.
- ▶ Renewal after every 4 years
- ▶ 6-month cooling off period **if application refused** before you are able to apply again
- ▶ Also note that you cannot apply for a licence until 12 months have passed if you have been issued with a civil penalty notice for employing a migrant that does not have the right to work.
- ▶ Home Office Caseworker errors are frequent!

# Sponsor Licence, decision making process:

- ▶ Be vigilant to further queries and requests for information
- ▶ In 85% of cases decision will be made on the papers and info on online form
- ▶ Eligibility criteria
- ▶ Suitability criteria
- ▶ Verification of documents
- ▶ Decision in 3 - 5 weeks
- ▶ Or the business is selected for a pre-registration audit

# Sponsor Licence - pre-registration audit

Purpose is to assess your suitability as a sponsor:

- Your awareness of record keeping
- Your awareness of reporting changes to the business or the migrant sponsored
- How you monitor migrant activity and prevent illegal working
- Check accuracy of information given up until now during the application process

They will do this by:

- Reviewing personnel files for right to work checks
- Interviewing key personnel
- Inspection of policies and systems

# Sponsor Licence - Pre-Registration Audit

## 1. Record Keeping:

- Right to work checks on files
- Signed contracts
- Payslips and P60's
- Qualifications and Accreditations
- Job descriptions
- A History of the migrant's contact details

# Sponsor Licence - Pre-Registration Audit

## 2. Reporting Duties (10 working days to report):

- Unauthorised absences
- Late start to work
- Change of address
- Premature end of employment
- You stop sponsoring the migrant
- Significant changes to the migrant's salary, job title, duties or location of work
- If size of the business changes
- Change of ownership of the business or business is involved in a merger or takeover

# Sponsor Licence - Pre-Registration Audit

## 3. How you monitor migrant activity and prevent illegal working:

- Policy on maintaining up to date contact details
- Recruitment practices and policies
- How you monitor expiry dates of visas (list B employees)
- How you monitor remote workers
- How absences are reported and monitored
- How is information cascaded from line-managers, branches and other sites to users on the SMS to make reports



# Sponsor Licence - Pre-Registration Audit

## 4. Preparing for the visit

- Write a Migrant Policy Document that addresses the above
- Check that right to work documents are on file, dated & certified
- Review your HR system's appropriateness to capture the data
- Knowledge of the Employer Checking Service
- Training of site managers and make part of KPI's
- Which key personnel should engage with the officers on the day (must understand the requirements and be able to speak about them)
- Undertake a mock audit & interviews, either internally or externally
- Nominate your in-house immigration expert(s)
- Seek professional help early in the process

# Sponsor Licence - Pre-Registration Audit

## 5. The day of the audit:

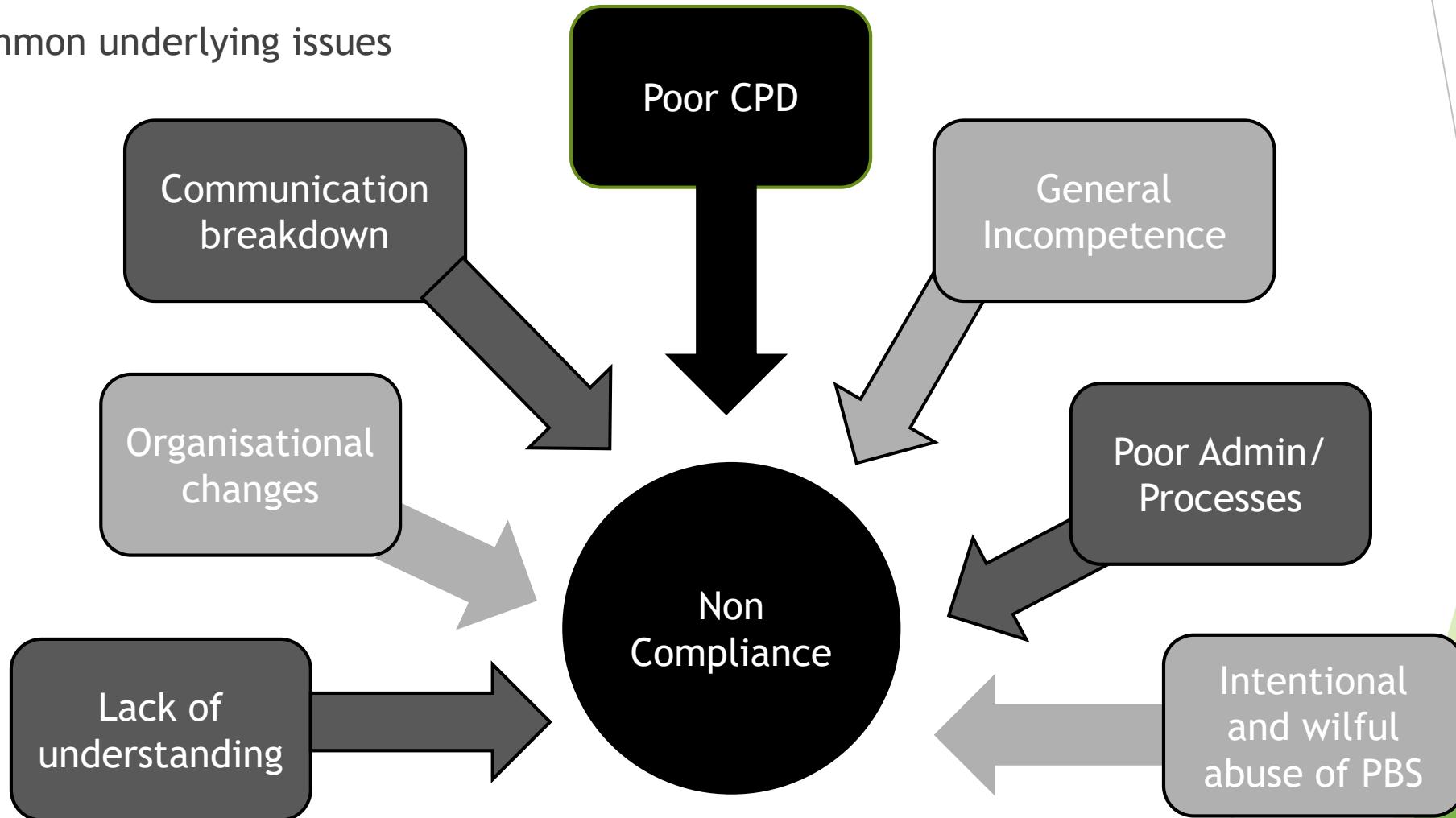
- Meet and greet
- Be factual and evidential - key question is “show me”
- Engage and don't be confrontational
- Challenge facts and not policy
- Have evidence, policies and systems ready to be shown before you are audited

You will have 3 days to provide evidence that was not available on the day of the audit.

Visiting auditor will write a report and decision given approximately 3-4 weeks after the visit.

# Sponsor Licence - subject to ongoing visits and audits

Common underlying issues



# Sponsor Compliance, Home Office Action

## ▶ Suspension of Licence:

- Issues identified
- Further documents requested
- Continued investigation undertaken

## ▶ Downgrading:

- B-Rated and action plan to regain A-Rating in 3 months
- Action plan costs £1,476
- Subject to further visits and scrutiny

## ▶ Revocation:

- All sponsored workers have 60 days to find alternative sponsorship
- 12 month cooling- off period applies to key personnel, owners and directors.
- Tribunal claims, reputational damage and will not be able to apply for a licence for 12 months

# A Note on Avoiding Discrimination Claims

- ▶ A business can not refuse to sponsor a migrant because they require sponsorship.
- ▶ A refusal must be based on merits. RTW should happen later in the recruitment process.
- ▶ Exceptions to this are:
  - National Security Reasons
  - A time critical delivery of a contract
  - The skill level for the job on offer is below that which for which a Tier 2 visa will be issued
  - There is not enough time to acquire a visa before the a Licence before the migrant's leave expires.

# GRADUATE IMMIGRATION ROUTE

- ▶ Will be **introduced summer 2021** and therefore students who graduate in the summer of 2021 or after will qualify.
- ▶ Successful applicants will be able to stay and work, or look for work, at any skill level for a maximum of **2 years (3 years if graduate with a PhD)**. Will need to switch into a skilled work visa category prior to visa expiring.
- ▶ Application will include a visa fee and payment of IHS. This route will not require a sponsor.
- ▶ The route is non-extendable and does not count towards settlement. Can switch to Skilled Worker (New Entrant salary and no ISC)
- ▶ Dependents who are already in the UK at the time of switching can continue to be remain as dependents.
- ▶ Will need approval of sponsoring body to switch in to this route.

# Tier 5 (Temporary Worker - Government Authorised Scheme)

- ▶ Allows for post graduation training, internship or work experience.
- ▶ Still require sponsorship but in this instance the sponsor is an ‘overarching body’ or an HEI.
- ▶ Schemes relating to research, fellowship and training in the fields of science and medicine will attract leave of 24 months.
- ▶ All Other schemes given 12 months leave.

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