

Annex A

Late applications to the EU Settlement Scheme

We recognise employers wish to have a lawful and stable workforce after 30 June 2021 and maintain compliance with the Right to Work Scheme. You will have a continuous statutory excuse against a civil penalty if you carried out an initial right to work check in the prescribed manner as set out in legislation and guidance that applied at the time you completed the check, such as where an EEA citizen provided their passport or national identity card to you to prove their right to work prior to 30 June 2021.

If an EEA citizen applies for a job with you after 30 June but has not applied to the EUSS by the deadline and has no alternative immigration status in the UK, then they will not be able to pass a right to work check and should not be employed. You should encourage them to apply as soon as possible.

However, there may be situations after 30 June 2021 in which you identify an EEA citizen in your workforce who has not applied to the EUSS by the deadline and does not hold any other form of leave in the UK. You may have chosen to carry out a retrospective check (although you are not required to do so), completed an internal audit or have been made aware your employee does not have a lawful status in the UK. They may tell you they have missed the deadline through no fault of their own and you may believe it to be disproportionate were you to take immediate steps to cease their employment.

Where an EEA citizen has reasonable grounds for missing the EUSS application deadline, they will be given a further opportunity to apply. Non-exhaustive caseworker guidance has been published setting out a wide range of circumstances which will normally constitute reasonable grounds for a person's failure to meet the deadline, including where applicants lacked the mental capacity to apply, or where individuals have been unaware of the deadline for a variety of reasons. The Home Office has grant-funded 72 organisations with a total of £22 million to do outreach and make sure people who are vulnerable or require assistance, are helped to make an application.

It should be noted the criminal offence of employing an illegal worker is generally reserved for the most serious cases of non-compliance with the Right to Work Scheme. It is not intended for employers who have employed EEA citizens in good faith having completed a right to work check in the prescribed manner and are acting in accordance with this guidance to support their employees to make an application to the EUSS.

EEA citizens employed prior to 30 June 2021

As a transitional measure to provide additional flexibility, this guidance sets out the process you may follow until 31 December 2021, in circumstances where you identify an EEA citizen in your workforce has not applied to the EUSS by 30 June 2021. You do not need to cease employment at the time you identify an employee without status if this transitional measure applies.

In order to benefit from this transitional measure, the EEA citizen must have been employed by you, in the UK, prior to the end of the grace period (30 June 2021). In such circumstances, you should:

1. Advise the individual they must make an application to the EUSS within 28 days and provide you with a Certificate of Application (CoA). If they do not make an application to the EUSS within 28 days, you must take steps to cease their employment in line with right to work legislation.

<https://www.gov.uk/settled-status-eu-citizens-families/applying-for-settled-status>

2. Once you have been provided with a CoA, you must then contact the Home Office Employer Checking Service (ECS) to confirm the individual has applied. When contacting the ECS, you may be asked to provide evidence of the start date of the individual's employment (such as a copy of the initial right to work check).

3. Where an application has been made, the ECS will give you a Positive Verification Notice (PVN). Retaining the PVN and a copy of the individual's CoA will then provide you with a statutory excuse against a civil penalty for six months. This allows sufficient time for the application to be concluded and enables the individual to maintain their employment with you during that time.

4. Before the PVN expires, you must do a follow-up check with the ECS in order to maintain your statutory excuse against a civil penalty. If the individual has been granted status before the PVN expiry date, they can prove their right to work to you using the Home Office right to work online service.

5. If the follow-up check confirms that the application is pending, you will be given a further PVN for six months and would then repeat step 4 until such time as the application has been finally determined. If the follow-up check confirms the application has been finally determined and refused, then you will not be issued with a PVN and you must take steps to cease the individual's employment.

6. Employers are advised to record and maintain accurate records of checks and actions taken in regard to this guidance in the same way in which evidence is retained to demonstrate a statutory excuse.

7. For those who were employed on or after 1 July 2021, you must perform the appropriate right to work checks prior to employment.

Immigration Enforcement 28-day notice

From 1 July 2021, where Immigration Enforcement encounter EEA citizens, or their family members, who are working without status, they will be given a written 28-day notice before any action is taken. This provides individuals who may have been eligible under the EUSS had they applied by 30 June 2021, with the opportunity to make a late application to EUSS demonstrating any reasonable grounds for missing the deadline.

Failure to make an application may impact upon their eligibility to access services in the UK and they may be required to leave the UK.