

BREXIT BRIEFING

Movement of People – October 2020



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This document was adapted from guidance originally produced by the **Construction Leadership Council's** (CLC) Brexit Working Group and [released on 19 October 2020](#).

The information contained is correct as of 16 October 2020. This publication is for general information only and does not seek to give legal advice or to be an exhaustive statement of the law. Specific advice should always be sought for individual cases.

This is the first version released by ACE.

Find out more on our website: www.acenet.co.uk

Points based system

From 1 January 2021, free movement will end and the UK will introduce a points based immigration system. The new system will treat EU and non-EU citizens equally and transform the way in which all migrants come to the UK to work. Anyone coming to the UK to work, excluding Irish citizens, will need to apply for permission in advance.

The new points-based immigration system will introduce job, salary and language requirements that will change the way employers hire from the EU. To support employers, the Home Office has developed a suite of digital and print assets with information to help prepare for the new Points-Based System (PBS).

This essential guidance includes a new employer partnering pack which has been available since 30 September 2020, giving guidance and clarification on the PBS. In addition, the Home Office anticipates that there will be further clarity provided on PBS before the October dates that have been provided (most likely in response to the Migration Advisory Committee Shortage Occupation List Report, September 2020 – see below).

Actions:

- Review [government guidance regularly](#)
- If employers have any questions or feedback on the guidance, please contact: PBSEmployerComms@homeoffice.gov.uk

Ireland, Northern Ireland and Great Britain: The Common Travel Area

In the case of Ireland specifically, the Common Travel Area (CTA) will continue to permit the free-flowing movement of people from 2021. British and Irish citizens can move freely and reside in either jurisdiction, enjoying associated reciprocal rights and privileges, including the right to work and access to social welfare benefits and health services.

The CTA existed before either the UK or Ireland became members of the EU, which means that reciprocal rights for Irish and UK citizens operate separately from those rights afforded by EU membership. Both the UK and Irish governments are committed to taking all necessary measures to ensure that the long-standing CTA rights and privileges are protected and this included entering into a Memorandum of Understanding (MoU) on 8 May 2019, reaffirming this joint commitment.

Skilled worker route

The Points-Based System will include a new Skilled Worker route to enable migrant workers to come to work in the UK in certain construction occupations with identified skills shortages. A role will require a minimum skills level of [RQF3](#). Workers will not need to hold a formal qualification to apply under this route. It is the skill level of the job they will be doing which is important. The full list of construction occupations that qualify for the Skilled Worker Visa route is available from the Home Office document ['The UK's Points-Based Immigration System: Further Details' \(Annex E\)](#).

There is no overall cap on the number of people who can apply for the Skilled Worker route. However, anyone using the route will need to have a job offer from an approved employer sponsor to come to work in the industry. They will also need to be able to speak English and be paid the relevant salary threshold by an employer sponsor. This will either be the general salary threshold of £25,600 or the going rate for a job, whichever is higher.

Shortage of Occupation list

A few occupations across all industries will additionally be placed on the Shortage of Occupation List (SOL). This provides additional points to support a visa application for someone to come and work in the UK if:

- The occupation is skilled at the required level set by the Government
- The occupation is in shortage
- It is sensible to fill this shortage with migrant workers.

The Government has adopted the recommendations of the Migration Advisory Committee (MAC) in terms of what occupations should qualify for the Skilled Visa Route and Shortage of Occupation List. The MAC provides independent, evidence based advice on migration issues to the Government. Employers are encouraged to work through their relevant trade association or professional institution and the Construction Leadership Council to make representations concerning construction occupations they believe to be in shortage which are not currently available through the Skilled Worker route or on the SOL.

The latest review of the SOL was published by the MAC on 29 September 2020 and it can be accessed [here](#). A further interim review of the SOL will take place in autumn 2021 and a major review will take place every three years.

Actions:

- Check the current [SOL Review report](#)
- Raise any concerns regarding shortage occupations not currently included with SOL with ACE.

Becoming a licensed sponsor

Employers intending to hire anyone from outside of the UK will need to register as a licensed sponsor. There are four steps to this process:

- Check that your organisation is eligible and that the people you want to hire are eligible.
- Ensure that your organisation can manage its licence.
- Allow at least 8 weeks to apply – applications can only be made online and depending on various factors the fee for employers will either be £536 or £1,476. There is an additional cost for each staff member sponsored. The employer's licence lasts for four years.
- Once licenced as a sponsor, you can select candidates who then have to make a visa application, which you must endorse by issuing an electronic certificate of sponsorship and pay the Immigration Skills Charge, which starts at £1,000 for the first year of work.

If sponsoring a migrant worker from outside the EU in 2020 you must normally advertise to the UK labour market for 28 days. If recruiting from 2021, you may immediately advertise globally and non-UK nationals (including those from the EU) will need a visa and your sponsorship to work at your organisation.

These requirements are explained in more detail in the Employers Guide to becoming a licensed sponsor of skilled migrant workers [see link below].

Actions:

- Identify and appoint a nominated person (or persons) within your organisation to manage the sponsorship process.
- Register online as a Licensed Sponsor.
- Allow eight weeks for the application to be processed.
- Review the [Employers Guide to becoming a licensed sponsor of skilled migrant workers](#).

EU, EEA and Swiss migrants

EU citizens who live in the UK before 31 December 2020 can continue to work in the UK in the same way that they do now until 30 June 2021, the deadline for applying for settled status in the UK. However, EU, EEA and Swiss citizens arriving on or after 1 January 2021 for work will need to apply in advance for a visa and be sponsored by a licensed sponsor. Those arriving for work under the new immigration system (from 1 January 2021) will not be eligible for settled status.

Employers will need to check an applicant's right to work in the same way as they do now until 30 June 2021 which means that EU, EEA or Swiss citizens only need to show their passport or national identity card in order to secure employment. Employers have a duty not to discriminate against EU, EEA or Swiss citizens and these citizens cannot be required to show their status under the EU Settlement Scheme until after 30 June 2021. EU, EEA or Swiss citizens who qualify for pre-settled or settled status may make an application inside or outside of the UK until 30 June 2021.

EU, EEA and Swiss citizens who are resident in the UK but do not have pre-settled or settled status may leave and re-enter the country between 1 Jan 2021 and 30 June 2021 and will only need to show their passport to gain entry. It should be noted that EU Nationals who do not apply for settled status will be at risk of deportation after 30 June 2021.

Actions:

- Check a job applicant's [right to work](#)
- EU, EEA and Swiss employees who live in UK before 1 January 2021 can apply for pre-settled or settled status until 30 June 2021. An [employer toolkit for applying is available, here](#)
- EU, EEA and Swiss citizens arriving into the UK for work on or after 1 January 2021 will need to apply for a visa in advance, under the new immigration system
- Irish citizens are covered by the CTA, which is explained beforehand in this guidance.

UK workers in the EU

If you employ UK workers based in [EU and EEA countries](#) there may be some [additional checks](#) to ensure that they can continue to work in that country.

- They may be required to meet new local requirements in the country where they reside.
- Their UK qualifications may no longer be mutually recognised.
- If the end date on the UK-issued [A1/E101](#) goes beyond the day the UK leaves the EU, you will need to contact the relevant [EU / EEA or Swiss authority](#) to confirm whether or not your employee needs to start paying social security contributions in that country from that date. Employees may be required to make social security contributions in more than one country at a time.
- Individuals can find out what actions they need to take if they wish to continue [working in the EU](#) if they are a UK citizen.

Actions:

- Check whether there are any national requirements in EU countries where workers will be based after 1 January 2021.
- Check whether their UK qualifications will still be recognised.
- Check whether any social security contributions are required in the relevant country.

Mutual recognition of professional qualifications

The purpose of the EU Directive 2005/36/EC is to facilitate a fair, transparent and consistent regime for the mutual recognition of professional qualifications across EU member states. Some professions (defined as sectoral professions) such as architect or doctor would be entitled to automatic recognition or free movement, whereas other regulated professions such as chartered professions, may have specific education or training requirements in order to attain the regulated profession. [View the EU's qualifications recognition page.](#)

The objectives of this Directive are being transposed into a framework developed by BEIS (subject to agreement between UK and EU) to ensure the transition is as seamless as possible, and so that the Directive and the UK framework are harmonised. The present arrangements are subject to a consultation and review by BEIS and so may be subject to change. For the most part (and of which architecture is the most notable exception) professions in the UK built environment/construction sector are not regulated in law and therefore no specified minimum competences are legally established. Many professional organisations regulate the profession through the award of titles/designatory letters conferred by chartered bodies but this process is voluntary.

There is a significant difference between individuals who wish to practice and those who seek access to UK professional titles. In most construction fields, eligible professionals wishing to practice in the UK are not required to seek membership of the respective professional body in their field of expertise. As such there is no restriction to the profession and access to professional titles cannot be considered to be a barrier to practice.

Those wishing to work in the UK whether from within or outside the EU, should be encouraged to seek guidance from the appropriate UK professional body and consider the merits of following at a minimum, the continuing professional development guidelines set for their particular profession. Professional bodies will be very supportive in providing guidance on appropriate UK safety standards and will rightly encourage those coming to the UK to register and work towards an appropriate grade of professional membership.

Actions:

- Seek additional guidance from relevant professional bodies.

Construction Industry Scheme and Sub-contractors

People arriving into the UK after 1 January 2021 will still be able to work under the CIS scheme and there will be no additional forms to complete after the points based system is implemented. Having the right to work in the UK will be the foremost test. If an individual is able to work in the UK, there will be no further restrictions in relation to registering with CIS.

The following link takes you to the section on the HMRC website about registering for CIS and includes a section on workers from abroad. This has no specific reference to the new system but, as the current rules don't differentiate between EU and non-EU, this [guidance is expected to continue from January 2021](#).

Useful resources

Please note that ACE is not responsible for content held on external websites.

- [Employer Partnering Pack](#)
- [Guide to becoming a Licensed Sponsor](#)
- [UK Points-based system](#)
- [Shortage Occupation List](#)
- [Recognition of professional qualifications in EU Directive 2005/36/EC](#)
- [CIS and sub-contractors](#)
- ACE's [Brexit related content](#) and [member-only briefings](#)

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