

## Right to work for European citizens post Brexit

From 1 July 2021, European citizens and their family members require immigration status to live in the UK.<sup>1</sup>

European citizens starting a new job must now provide evidence of their right to work to their prospective employer.

Employers are required by law to conduct right to work checks on European employees / workers who are *joining* their workforce.

Working without permission is a criminal offence and can result in imprisonment.

This briefing explains how European citizens can provide evidence of their right to work in Northern Ireland. The briefing is primarily aimed at European citizens who are seeking employment. It provides answers to problems that may arise in the process and outlines potential sources of help.

---

<sup>1</sup> We use the term European citizens to include: Austria, Belgium, Bulgaria, Croatia, Republic of Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and Switzerland.

## 1. Evidencing a right to work

As a result of Brexit, European citizens must now provide evidence their right to work. This marks a significant change: prior to 1 July 2021, an EU, EEA or Swiss passport was sufficient evidence of the right to work. Most European citizens will prove their right to work by demonstrating that they have been granted status under the EU Settlement Scheme (EUSS). Note that this requirement does not apply to Irish citizens (see below).

## 2. Who needs to evidence their right to work?

Only European citizens who are starting a *new* job from July 2021 are required to provide evidence of their right to work. Home Office guidance confirms that employers do not need to *retrospectively* check the status of European citizens who were employed before 1 July 2021.<sup>2</sup>

## 3. What is the EU Settlement Scheme?

The EU Settlement Scheme (EUSS) was set up to grant the new immigration status for European citizens post Brexit. EUSS is administered by the Home Office, the application is free and the process can be completed entirely online.<sup>3</sup>

Eligibility to EUSS is primarily based on continuous residence in the UK prior to 30 December 2021.<sup>4</sup> As of 30 September 2021, 102,260 EUSS applications have been made by persons resident in NI, which have been determined as follows:<sup>5</sup>

---

<sup>2</sup> See [Home Office guidance](#) page 39.

<sup>3</sup> A small number of people need to make paper applications. This includes persons who do not have a passport or national identity card, prisoners, etc.

<sup>4</sup> The Home Office will also check that applicants have not committed serious or repeated crimes and do not pose a security threat.

<sup>5</sup> These are approximate figures and are extrapolated from [Home Office statistics](#) as of 30 September 2021.

Outcome	Approx. persons in NI	Information
Settled Status	53,175	Granted to persons who have lived continuously in the UK for 5 or more years and to their family members.
Pre Settled Status	42,949	Granted to persons who have lived continuously in the UK for less than 5 years. Must be 'upgraded' to Settled Status after the full five years.
Other outcome	7,158	Application refused, withdrawn or invalid.

Family members may also apply to the EUSS regardless of their nationality. For example, a Brazilian spouse/partner of a Portuguese citizen can apply to EUSS.

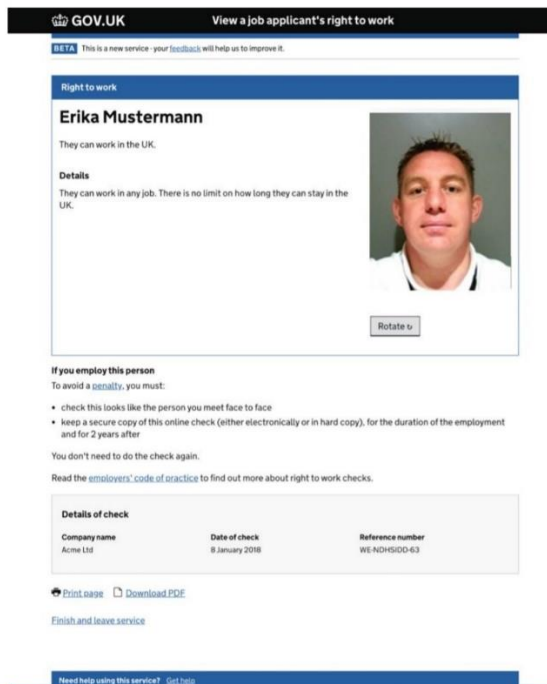
## 4. Irish citizens

Remember that Irish citizens (whether resident in N Ireland or Republic of Ireland) have an unrestricted right to work in the UK. This can be evidenced by way of an Irish passport, birth certificate, etc. However, any European / non European family members of Irish citizens need to show they are permitted to work e.g. through EUSS.

## 5. How can I prove my EUSS to my employer?

Status issued by EUSS is **digital**. Unlike traditional visas, the EUSS does not generally issue any physical proof of status e.g. in the form of a Biometric Residence Permit or a stamp / vignette in a passport. If you have obtained EUSS, you can share your digital status with your prospective employer through the following process:

1. Log on to the [View and prove your immigration status](#) Home Office website and confirm your identity details (such as date of birth and passport number).
2. This generates a 'one time' six-digit access code that is sent to your phone.
3. Use the code to log on to your online profile and request a 'share code' to be shared with your prospective employer by email.
4. The employer logs on, enters the share code and your date of birth. The employer can then view your photograph and whether you are permitted to work. This is what your employer will be able to see:



The share code is valid for 30 days and is service specific. This means that the you must repeat this process every time you wish to demonstrate your eligibility for work, healthcare, study, etc.

Note that non European family members are granted EUSS on their Biometric Residence Permit and therefore have a physical proof of status.

## 6. How can I prove my status if I am still waiting for EUSS?

It usually takes around 5 working days for EUSS applications to be processed however some applicants wait considerably longer.<sup>6</sup> This presents a practical difficulty in terms of providing evidence of a right to work.

Once EUSS has accepted your identity, it will issue an electronic Certificate of Application, which confirms your application is being processed. A Certificate of Application issued within the last six months is **sufficient evidence of the right to work**. If you are still waiting for your EUSS decision but have a Certificate of Application, your employer can request a verification check from the Home Office's online '[Employer Checking Service](#)'. The Home Office will issue a Positive Verification Notice to your employer, which confirms that you have a right to work. This is valid for 6 months. You should notify your employer as soon as you receive status.

The Law Centre estimates that there are at least 9,000 EEA citizens living in NI whose EUSS applications are pending (as of September 2021).<sup>7</sup> It is important that they are not excluded from the labour market due to delays in EUSS processing.

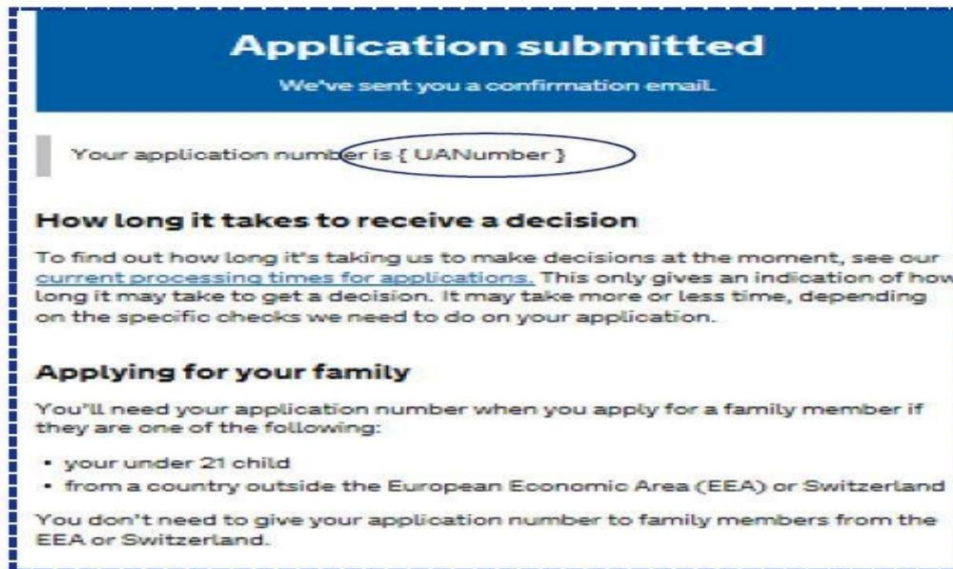
## 7. I haven't received my Certificate of Application: how can I prove my status?

Unfortunately, some EUSS applicants also experience delays in receiving the Certificate of Application. If you are in this position, you are still eligible to work but must instead rely on your EUSS application reference number. This can be found in your EUSS confirmation email. Your prospective employer can use this number to request a verification check by the same process outlined above. Again, you should notify your employer as soon as you receive your status.

---

<sup>6</sup> EUSS applications take longer if: further information is requested, the applicant is a minor and not linked to an adult, the application is submitted on paper, the applicant has a relevant criminal record, the applicant is a non European citizen, etc. A delay in processing an EUSS application is not an indicator of the merits of the claim.

<sup>7</sup> This is calculated as 2% of the UK figure of pending applications.



## 8. I haven't applied to EUSS: can I make a late application?

The deadline for EUSS applications was 30 June 2021. However, late applications are accepted if you have 'reasonable grounds' for missing the deadline. Examples of 'reasonable grounds' includes if you did not apply due to ill health, lack of language skills, lack of awareness of the scheme, etc. If you haven't applied, you should make an EUSS application without further delay. Free advice and assistance is available.

## 9. I haven't applied for EUSS: can I be sacked from my job?

Home Office guidance states that employers should not terminate the employment of workers who were employed before 1 July 2021 and haven't yet applied for EUSS. Rather, if your employer is aware that you haven't applied, s/he will notify you that you have 28 days to make your EUSS application.<sup>8</sup> This is a transitional measure designed to protect workers and employers and is only in place until 31 December 2021.

If you are in this position, you should apply for EUSS immediately otherwise you will face dismissal. If you are dismissed before being given an option to apply for EUSS, seek advice.

---

<sup>8</sup> See [Home Office guidance](#) which outlines a number of steps for employers who encounter workers who have not applied to EUSS. See page 44 and 45.

## 10. Protection from discrimination

Although employers must now check European citizens' eligibility to work, they must do so in a non-discriminatory way. Employers cannot discriminate against a potential or existing worker because of race or on racial grounds.<sup>9</sup> Race and racial grounds include colour, nationality and ethnic or national origins.

Practices whereby employers decide only to check new workers who have "foreign-sounding names", or minority ethnic workers are likely to be discriminatory. Likewise a situation where an employer decides to 'let go' all their European workers as a means to keep on the right side of the new immigration rules. If you experience any such treatment, you may have a discrimination claim or other employment claim (such as unfair dismissal) against your employer. Seek advice.

## 11. Other types of permission to work

Some European citizens have a right to work in the UK that is not derived from the EUSS. If you are in one of these categories you might have an *option* of applying to EUSS however you are under *no obligation* to do so.

An employer cannot insist that all employees have EUSS.

Category	Who does this apply to?	What permission does a person have?	Eligible to apply to EUSS?
Points-based system	EEA citizens who come to the UK to live, work or study after 1 January 2021.	Most points-based applicants are provided with a digital eVisa although some EEA citizens will have a Biometric Residence Permit (this depends on method and location of application).	No
Indefinite Leave to Remain	EEA citizens who entered and settled in the UK before April 2006.	This status is likely to be stamped as an endorsement / vignette in the person's current passport, which will state 'indefinite leave to remain or remain' or 'no time limit'. May or may not have a current Biometric Residence Permit.	Yes

<sup>9</sup> Race Relations (Northern Ireland) Order 1997, Article 6.

EEA citizens with Windrush entitlement	EEA citizens who entered and settled in the UK before December 1998 and acquired an automatic Indefinite Leave to Remain.	Status was automatic and so not physical evidence is available. It is necessary to obtain evidence.	Yes  May also apply to the <a href="#">Windrush Scheme</a>
Frontier Worker	A ' <a href="#">Frontier Worker</a> ' is an EEA citizen who is resident outside the UK but is economically active in the UK e.g. Lithuanian electrician who lives in Letterkenny who works in Strabane.	A Frontier Worker Permit is issued digitally (to those who applied via the app) or physically (for those who applied at a Visa Application Centre).	No <sup>10</sup>
Dual UK/EEA citizens	EEA citizen who has naturalised as a British citizen.	Certificate of naturalisation or British passport.	Yes
Other	This includes persons working for a Swiss based company and persons issued EUSS by the Crown Dependencies. <sup>11</sup>	Check <a href="#">Home Office</a> guidance	Check <a href="#">Home Office</a> guidance

---

<sup>10</sup> Frontier Workers are not resident in UK and therefore cannot apply to EUSS, which is based on residence.

<sup>11</sup> The Crown Dependencies (the Bailiwick of Jersey, the Bailiwick of Guernsey, and the Isle of Man) each operate their own EU Settlement Scheme (EUSS) for those eligible to apply.



## 12. Getting help

Different sources of help are available depending on the issue you are experiencing. The following services provide free and confidential advice.

Issue	Contact details
Advice and/or assistance about making a late EUSS application	<p><b>Law Centre Immigration team:</b> ☎ 028 9024 4401</p> <p><b>Advice NI</b> ☎ 0800 915 4604 / Text EUSS to 81025 ✉ <a href="mailto:advice@adviceni.net">advice@adviceni.net</a></p> <p><b>Stronger Together EUSS Support Project</b> ☎ 028 8775 0211 ✉ <a href="mailto:info@strongertogetherni.org">info@strongertogetherni.org</a></p>
Refused work or dismissed from employment due to right to work issues	<p><b>Law Centre Employment team:</b> ☎ 028 9024 4401 ✉ <a href="mailto:employmentadvice@lawcentreni.org">employmentadvice@lawcentreni.org</a></p>
Discrimination at work	<p><b>Equality Commission NI</b> ☎ 028 90 500 600</p>
Information about employment matters	<p><b>Labour Relations Agency</b> ☎ 03300 555 300</p>
Logging in to Home Office portal, accessing your share code, etc.	<p>Ask your local advice organisation. This is not immigration advice and the welfare adviser does not need to have OISC accreditation to help you access your own information.</p>

### Disclaimer

Although every effort is made to ensure the information in Law Centre publications is accurate, we cannot be held liable for any inaccuracies or their consequences.

The information contained within this document should not be treated as a complete and authoritative statement of the law.

Law Centre NI only operates within Northern Ireland and the information in this document describes the state of the law in Northern Ireland only.

When reading Law Centre documents, please pay attention to their date of publication, as legislation may have changed since they were published

© Law Centre NI 2021