

The EU settlement scheme and supporting EU workers

A guide for reps

December 2020

Section 1

Introduction

The TUC stands for the rights of all workers, regardless of nationality or immigration status. Since the EU referendum in 2016, the TUC has been calling for all EU citizens to have a guaranteed right to remain in the UK. EU workers are a key part of our union movement, leading many campaigns to improve conditions and pay. EU citizens play a key role in our economy, society and communities, helping to keep our public services running and working in key roles in industries.

This guide gives trade union reps essential information on the government's EU Settlement Scheme to support members and prevent discrimination.

There is a lot of uncertainty currently about the rights of EU workers and the immigration system after the UK leaves the EU, as the government's plans for immigration are still developing. It is important for reps to stay up to date with developments – keep an eye on the Home Office website:

<https://www.gov.uk/government/organisations/home-office>

Even though the UK has left the EU, EU citizens continue to have the right to live, work and study (EU 'free movement' rights) as these rights were transferred into UK law by the Withdrawal Act.

However, in order to claim these rights, EU citizens are required to apply for the EU Settlement Scheme.

Section 2

EU Settlement Scheme

What is the EU Settlement Scheme?

The EU Settlement Scheme allows EU citizens to apply for 'settled status' which grants the right to permanent residence in the UK.

Note: Settled status can be lost if holders of this status spend longer than 5 years outside the UK.

What is 'pre-settled' status?

Those not deemed eligible for settled status receive 'pre-settled status'. Pre-settled status grants the right to remain in the UK for 5 years. After those with pre-settled status have been in the UK for 5 years continuously (ie, with no gap of more than 6 months in a 12-month period), they can apply for settled status. However, there is no guarantee this application will be successful.

Note: Pre-settled status can be lost if holders of this status spend more than 2 years outside the UK.

When is the deadline?

EU citizens have until June 2021 to apply for settled status.

Who can apply for the EU settlement scheme?

- EU citizens who have been living in the UK before 31 December 2020.
- Family members of UK citizens
- Close family members of EU citizens who arrive in the UK before March 2022

Can dual nationals apply?

No. Dual citizens of the UK and another EU country cannot apply for the EU Settlement Scheme.

How can someone apply for the EU Settlement Scheme?

To make an application, you will need to submit evidence that you have been living continuously in the UK for at least 5 years. Apply online at: <https://www.gov.uk/settled-status-eu-citizens-families/applying-for-settled-status>

Local authorities can assist in scanning ID documents – although services can be limited. Find your local centre here: <https://www.gov.uk/id-scan-eu-settlement-scheme>

Contact the Home Office advice line for more information on 0300 123 7379

Lines are open Monday to Friday (excluding bank holidays), 8am to 8pm
Saturday and Sunday, 9:30am to 4:30pm
Call charges apply – see here for details:
<https://www.gov.uk/call-charges>

Trade union-friendly accredited immigration legal advisors include the Joint Council for the Welfare of Immigrants - see:
<https://www.jcwi.org.uk/legal-advice>

Do employers have to check whether I have settled status?

No. The government has said employers are not required to check whether existing employees have settled or pre-settled status.

For more information see here:

<https://www.gov.uk/government/publications/eu-settlement-scheme-introduction-for-employers/eu-settlement-scheme-introduction-for-employers#right-to-work-checks>

Employers are only required to check the immigration status of workers when they are employed, transferred under TUPE, or where a temporary leave to remain is due to expire.

Seek legal advice for further information.

Check if your union has existing provision to access immigration legal advice. You can also check on the Law Society's solicitor search for immigration legal advisors at:

<https://solicitors.lawsociety.org.uk/>

Section 3

What reps can do

Negotiate

Negotiation is the most valuable tool you have available for protecting people's rights. This section outlines a number of issues that might affect EU members rights and what actions you can take to minimise the problems they may face in the coming months. In workplaces with recognition, unions should negotiate an agreement with employers that:

- the employer will not check whether existing EU workers have settled status or carry out other immigration document checks above those required by the law
- the employer will take all necessary steps to avoid any form of unlawful discrimination in carrying out document checks on workers
- workers will be provided with contracts that they can use as evidence of their residency in the UK if they need them for their application for the EU settlement scheme
- the employer will raise awareness of the EU settlement scheme to workers up to the June 2021 deadline
- the employer will support legal costs arising from workers applying for the EU settlement status scheme
- workers will be granted time off to make their application for the EU settlement scheme and attend any appointments involved in this process

- documents will not be withheld by the employer for long enough to make copies, recommended by the Home Office to be no longer than 24 hours
- any correspondence between the employer and the Home Office will only be entered into with the consent of the worker concerned.

Build solidarity

When workers come together they have more power to resist employers that try to discriminate, victimise or divide workers. Preventing employers from discriminating against workers from other countries will also make it harder for them to discriminate or exploit UK workers.

Try to build a campaign that connects UK and non-UK workers in your workplace. You could organise a briefing for all workers explaining what the union will do to support workers with concerns about their immigration status and prevent them being discriminated against.

You can find more techniques to build solidarity between workers in the TUC's e-note 'Supporting vulnerable workers' here: <https://www.tuceducation.org.uk/course/view.php?id=1559>

Stay up to date

As policy and rules on immigration post-Brexit is still in development, it is important for reps to stay up to date with developments. Keep an eye on the Home Office website:

<https://www.gov.uk/government/organisations/home-office>

Advice to members

Reps should emphasise to members the importance of seeking legal advice at the earliest possible opportunity.

By law, only those who are registered as immigration advisors can give advice about immigration applications. It is very important, therefore, that you do not attempt to advise workers yourself on how to make an application for settled status or how to address problems they may encounter in the process.

Check if your union has existing provision to access immigration legal advice. You can refer members to trade union-friendly accredited immigration legal advisors such as the Joint Council for the Welfare of Immigrants or check on the Law Society's solicitor search for immigration legal advisors at:

<https://solicitors.lawsociety.org.uk/>

Other problems

If EU citizens in your workplace start to be treated differently by your employer for example having problems with their contract or being dismissed or discriminated against reps should refer members promptly to their full-time officer, region or headquarters for advice.

Support the TUC's campaign

The TUC is campaigning to highlight concerns with the EU settlement scheme and for all EU citizens to have permanent status in the UK and their rights at work respected (see Section 4). The TUC is also calling for all workers, regardless of immigration status, to be able to enforce their rights at work.

Speak to your union about how you can support this campaign.

Read more about the TUC's campaign to build solidarity at work, end the hostile environment and defend the rights of migrant workers see the TUC's report 'Building Solidarity, Stopping Undercutting' here: <https://www.tuc.org.uk/research-analysis/reports/building-solidarity-stopping-undercutting>

For more information contact Rosa Crawford, TUC Policy Officer at rcrawford@tuc.org.uk

Section 4

Trade union concerns about the EU settlement scheme

Since the outcome of the Brexit referendum, the TUC has been calling for all EU citizens to have the permanent right to remain. The TUC has been engaging with MPs, MEPs, civil society campaign groups and Home Office officials to raise a number of concerns with the EU Settlement Scheme. Key concerns are listed below.

Risks of losing legal status

As individuals have to apply to the scheme - rather than being automatically granted the right to permanent residency and evidence to prove this right - the government created the risk that EU citizens will be refused settled status. Those refused settled status are at risk of losing their legal status in the country. Those in precarious jobs are particularly at risk of refused settled status as they are less likely to have evidence of five years continuous residency that is required to obtain settled status. Such workers often do not have contracts of employment and may not have rental contracts or bank accounts to provide as evidence.

Increased risk of discrimination and dismissal

While the government has stated that EU citizens will not have to prove they have obtained settled status until after June 2021, it is likely that some employers will go beyond the legal requirements and ask for

workers to prove they have settled status. There is a risk that employers may dismiss workers or take advantage of who cannot prove their immigration status - for example threatening to report such workers to the Home Office if they raise concern about low pay or poor conditions. Unions have long experience of bad employers exploiting workers who do not have secure immigration status.

Inaccessibility

The application process is largely digital with a paper-based application only available on request. The application form is also only available in English with an advice line provided in different languages. The TUC is concerned that those who are not proficient in English and do not have access to computers or smartphones will be disadvantaged in the application process. This is particularly likely to disadvantage lower income workers who are already marginalised.

Find out more

For more information about the campaign go to:

<https://www.facebook.com/TUCmigrationcampaign/>

Or contact:

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