



## Right to Work: Employer Factsheet

The Home Office has published updates to the [Employer's Guide to Right to Work Checks](#) on GOV.UK to support employers to undertake right to work checks for EEA and Swiss citizens (referred to here as 'EEA citizens') from 1 January 2021 to 30 June 2021.

### Key points

- Right to work checks for EEA citizens will not change until after 30 June 2021. Until then, EEA citizens can use their passport or national identity card to evidence their right to work.
- During this time, employers will not be expected to differentiate between EEA citizens who arrived before the end of the transition period (31 December 2020) and those arriving afterwards, in the grace period from 1 January to 30 June 2021.
- EEA citizens with status under the EU Settlement Scheme (EUSS) or the points-based immigration system may choose to use the Home Office online service to evidence their right to work.
- During the grace period employers cannot refuse to accept a passport or ID card from an EEA citizen or insist they use the Home Office's online checking service to prove their right to work during this period.
- The leaflet [Understanding your right to work: EU, EEA and Swiss citizens](#) can assist you to provide information to EEA citizen job applicants about the Right to Work process and their responsibilities.
- There is no mandatory requirement for employers to undertake retrospective checks on EEA citizens who were employed on or before 30 June 2021. Employers will maintain a continuous statutory excuse against a civil penalty in the event of illegal working if the initial right to work check was undertaken in line with right to work legislation and published guidance.
- However, we recognise that some employers may wish to conduct retrospective checks to ensure the stability of their workforce. If an employer chooses to carry out retrospective checks, they must ensure that they do so in a non-discriminatory manner. The '[Code of practice for employers: Avoiding unlawful discrimination while preventing illegal working](#)' provides practical



guidance on how to avoid unlawful discrimination when employing individuals and conducting right to work checks.

- 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.
- New guidance on how to conduct right to work checks on EEA citizens after 30 June 2021 will be provided in advance of this date.
- Queries about the Right to Work Scheme can be sent to:
  - [RighttoRentandRighttoWork@homeoffice.gov.uk](mailto:RighttoRentandRighttoWork@homeoffice.gov.uk), or please contact;
  - [The Employer Enquiry helpline on 0300 790 6268](tel:03007906268)

## Further information:

- The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 ended free movement between the EU and the UK at 11 pm on 31 December 2020. For those EEA citizens who were lawfully resident in the UK by virtue of free movement law prior to the end of the transition period (31 December 2020), and for their relevant family members, their existing residence rights in the UK are saved. Provisions were also made for those EEA citizens and their family members who were not physically in the UK at that point in time but are to be treated as resident in the UK under the Agreements.
- The [EU Settlement Scheme](#) provides a free and easy means for eligible EEA citizens and their family members to obtain the immigration status they require to remain in the UK. Over 4.6 million grants of status have been made under the scheme to the end of January 2021, and those eligible to apply have until 30 June 2021 to do so. Latest figures can be found at <https://www.gov.uk/government/collections/eu-settlement-scheme-statistics>.
- This means EEA citizens and their family members who apply by the deadline of the 30 June 2021 and have not yet been granted status under the EUSS can continue to live their life in the UK as now and maintain a right to work, until their application is determined. This includes pending the outcome of any appeal against a decision to refuse status.

## Q & A

### Why do employers conduct right to work checks?

- The ability to work is a driver of illegal migration; it encourages people to break our immigration laws and provides the practical means for migrants to remain in the UK illegally.



- Since 1997, all employers in the UK have had a responsibility to prevent illegal working. They do this by conducting simple right to work checks before employing someone to make sure the individual is not disqualified from carrying out the work in question by reason of their immigration status.
- Illegal working results in businesses that are not playing by the rules undercutting legitimate businesses who are. It also negatively impacts on the wages of lawful workers and is linked to other labour market abuse such as tax evasion, breach of the national minimum wage and exploitative working conditions; including modern slavery in the most serious cases.

## **What is the Home Office right to work online service?**

- The right to work online service is a simple way to check someone's right to work digitally, without needing to check physical documents.
- Since 28 January 2019, employers have been able to rely on the Home Office online checking service ([view a job applicant's right to work](#)) to check a prospective employee's immigration status. Details of how to carry out an online check can be found on GOV.UK in [An Employer's Guide to Right to Work Checks](#).
- The online service can be used by those with status under the EUSS or under the points-based immigration system. Non-EEA citizens holding a current biometric residence permit or card, can also use the online service as an alternative means of demonstrating their right to work in place of physical documents.
- The online service makes it simpler to carry out checks, particularly during this global pandemic. It enables checks to be carried out by video call. The service provides information on the individual's current right to work details, including any work-related immigration conditions, and a high-quality facial image of the individual. Employers do not need to see physical documents as the right to work information is provided in real time directly from Home Office systems. The service is secure and free to use.

## **Will expired EU, EEA and Swiss citizens' passports or national identity cards be acceptable as proof of right to work after 1 January?**

- As set out in List A of the [Code of Practice on Preventing Illegal Working](#), current or expired passports or national identity cards can be presented by EEA citizens as evidence of their right to work. However, you must check that



the documents provided are genuine, that they belong to the individual presenting them to you, and that person is the prospective employee.

## **What do I do if an EEA citizen is unable to provide their passport or national identity card as they state that they have an outstanding application with the Home Office?**

- Where an EEA citizen is unable to provide you with their passport or national identity card because they have an outstanding application for status under the EUSS then you will need to contact the [Employer Checking Service](#) (ECS) to establish a statutory excuse.
- The ECS can confirm from Home Office records that the applicant has lawful status as a result of the outstanding application and, if appropriate, will issue a Positive Verification Notice (PVN). The PVN provides the employer with a statutory excuse against a civil penalty enabling them to hire or extend the person's contract for six months while their immigration status is confirmed.

## **Can employers carry out retrospective checks on EEA citizens employed before 30 June 2021?**

- Yes. Whilst there is no requirement for retrospective checks to be undertaken on EEA citizens employed on or before 30 June 2021, we recognise that some employers may wish to conduct retrospective checks to ensure the stability of their workforce. If an employer chooses to carry out retrospective checks, they must ensure that they do so in a non-discriminatory manner.

## **What guidance is being given to employers to support them to avoid discrimination when undertaking right to work checks?**

- The Home Office has published statutory codes of practice on GOV.UK for employers on how to avoid unlawful discrimination when undertaking checks. This guidance clearly stipulates that employers should provide individuals with every opportunity to demonstrate their right to work and should not discriminate on the basis of race or any of the other protected characteristics.
- Avoiding discrimination while preventing illegal working: code of practice, can be found at <https://www.gov.uk/government/publications/right-to-work-checks-code-of-practice-on-avoiding-discrimination>.

## **What support, other than guidance, does the Home Office provide to employers to respond to queries about the rights of EU citizens during the grace period?**



- The Home Office has an established employer helpline. This service is equipped to provide advice on compliance with right to work checks and how to avoid discriminatory action against EEA citizens during the grace period. The Employer Enquiry helpline can be contacted on 0300 790 6268. (Monday to Thursday, 9am to 4:45pm; Friday 9am to 4:30pm). Calls made to this number will be charged at local rate. More information can be found at <https://www.gov.uk/call-charges>.

## **What should an individual do if they feel that they have been discriminated against whilst undergoing right to work checks?**

- We are clear that those who discriminate are breaking the law. Anyone who believes they have been discriminated against, either directly or indirectly, may bring a complaint before the courts or before an employment tribunal. The Equality Advisory Support Service is there to support people who may have experienced discrimination in England, Scotland or Wales, and an equivalent is provided by the Equality Commission for Northern Ireland. If the complaint is upheld, the Tribunal will normally order the payment of compensation, for which there is no upper limit.
- Where individuals need expert advice and support on discrimination, they can contact the Equality Advisory Support Service (EASS) on 0808 800 0082. Further information can be found on <https://www.equalityadvisoryservice.com/>

## **What happens if an employer has correctly carried out the right to work check on the EEA citizen at the time of employment but later becomes aware that the EEA citizen has no lawful status?**

- Employers will maintain a continuous statutory excuse against a civil penalty if they carried out a right to work check on an EEA citizen as set out in guidance at the time of employing the individual.
- 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 during the grace period and have completed a right to work check in the prescribed manner. Referral to the CPS for prosecution may be considered in the most serious cases where it is deemed the appropriate response to the non-compliance encountered.

## **If an employer only checks the EEA citizen's passport or national identity card will they face the possibility of receiving a civil penalty?**



- No – as long as the right to work check has been carried out as set out in guidance, employers will have established a continuous statutory excuse against liability for a civil penalty in the event that the employee does not have the right to work.

## **If an EEA citizen or non-EEA family member employee is encountered after June 2021 without permission to work will they face enforcement action?**

- If an individual has not applied to the EUSS by 30 June 2021 or does not hold any other form of leave, they will be in the UK without lawful status. Therefore, they will not be able to pass a right to work check from that date and may be liable to enforcement action.
- However, where someone is eligible for status under the EUSS and has reasonable grounds for missing the application deadline, they will be given a further opportunity to apply before enforcement action is taken. As in other areas of the EUSS, we will take a flexible and pragmatic approach, but they will not be able to work until they have resolved their status.
- New guidance on how to conduct right to work checks on EEA citizens after 30 June 2021 will be published in advance of this date and will include support for employers in these circumstances.

## **If an employer uses subcontractors from a different company, whose responsibility is it to ensure the right to work checks have been done, the parent company or the subcontracting company?**

- Right to work checks must be carried out by the business that will be employing the individual. In simple terms, the check must be carried out by the employer who the contract of employment is with.
- The law on conducting right to work checks focuses on situations where there is a contract of employment, whether express or implied. The law does not cover the situation where people are providing services as self-employed.
- Nevertheless, it is a criminal offence for migrants to work illegally in the UK (where they are breaching their conditions or are unlawfully in the UK), including self-employment activity.
- Employers should take their own legal advice on the extent to which it would be lawful to ask self-employed people “working” for them to evidence their right to work in the UK.



## **How do recruitment agencies undertake right to work checks for agency or temporary workers? They may perform several different jobs for a number of different employers in a short period of time.**

- Right to work checks must be carried out by the business that will be employing the individual. In simple terms, the check must be carried out by the employer who the contract of employment is with.
- Where temporary or agency workers are supplied by an employment business or recruitment agency, the right to work check will be completed when the employee registers with the business / agency. We recommend that organisations consider their specific activities and determine whether follow-up checks are appropriate to ensure individuals continue to have a right to work, in circumstances where the individual enters a new job, changes role or undertakes a new assignment after 30 June 2021.
- This will ensure that recruitment agencies fulfil their legal responsibility to complete the correct checks to confirm an individual's right to work and that they are legally entitled to work in the UK, prior to being placed with a business.

## **What plans do you have to continue the adjusted right to work checking process given the ongoing COVID-19 pandemic?**

- Since 30 March 2020, right to work checks have been temporarily adjusted in response to the COVID-19 pandemic. Information on how to carry out these temporary adjusted checks is available at [Coronavirus \(COVID-19\): right to work checks](#). This page will continue to be updated with any changes to the temporary measures.
- Due to the ongoing nature of the pandemic we do not have a confirmed date for when the temporary adjustments will come to an end.
- We do, however, recognise the length of time that has passed since the temporary checks were introduced. Therefore, we are currently undertaking a review of the process, which will also consider the impact and potential for allowing a longer period for undertaking retrospective checks as well as the implications if employers were not required or able to complete retrospective full right to work checks. The outcome of the review is expected early this year.