



## Right to Work checks from 1 July

### Employer Information

#### Hiring EU\* citizens from 1 July 2021

From 1 July 2021, employers will no longer be able to accept EU passports or ID cards as valid proof of an individual's right to work. You'll need to [check their right to work online](#) using:

- a share code; and
- their date of birth

You can [check someone's original immigration documents](#) instead, for example if they do not have an immigration status (eVisa) that can be shared with you online. You can also check which types of document give someone the right to work in the UK on [GOV.UK](#).

A [guide](#) for EU, EEA and Swiss citizens on viewing and proving their immigration status (eVisa) is available on GOV.UK.

Irish citizens can continue to use their passport or passport card to prove their right to work.

**You could face a [civil penalty](#) if you employ someone and you have not carried out a correct right to work check.**

\*EU is used throughout this guidance and refers to EU, EEA and Swiss citizens. Irish citizens are not affected.

#### Avoiding discrimination

You must not discriminate when conducting right to work checks. The Home Office has published [statutory codes of practice](#) 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 must not discriminate on the basis of race or any of the other protected characteristics.

#### How to conduct a Right to Work check from 1 July 2021

There are two types of right-to-work check: a manual check and an online check. The type of check you conduct will depend on the status of the individual you intend to employ, and in some circumstances, the individual's preference.

A manual check can be completed for UK and Irish citizens who can use their passport as proof of right-to-work. You will also need to complete a manual check for



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individuals if they do not have an immigration status (eVisa) that can be shared with you online.

An online right-to-work check is required for individuals who only hold an eVisa. This applies to most EU citizens, including those with settled or pre-settled status, anyone with a Hong Kong BNO visa and some other nationalities who have moved to the UK more recently under the points-based immigration system.

To carry out an online right to work check, you'll need the applicant's date of birth and their share code which they will have obtained online. You can then complete the check online by visiting [View a job applicant's right to work details](#).

There is a [guide for EU citizens](#) which you can use to provide information to EU citizen job applicants about the Right to Work process and their responsibilities.

### **EU citizens already employed before 30 June 2021**

There is no mandatory requirement for employers to undertake retrospective checks on EU citizens who were employed on or before 30 June 2021. You will maintain a continuous statutory excuse against a civil penalty in the event of a worker not having the correct status if the initial right to work check was undertaken in line with right to work legislation and published guidance.

However, some employers may wish to conduct retrospective checks to ensure the stability of their workforce. If you choose to carry out retrospective checks, you must ensure that you do so in a non-discriminatory manner.

### **Late applications to the EU Settlement Scheme**

If an EU citizen applies for a job with you after 30 June but has not applied to the EU Settlement Scheme by the deadline and has no alternative immigration status in the UK (such as a visa under the points-based immigration system), then they will not be able to pass a right to work check and should not be employed.

There may be situations after 30 June 2021 in which you identify an EU citizen in your workforce who has not applied to the EU Settlement Scheme by the deadline and does not hold any other form of leave 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 EU citizen has reasonable grounds for missing the EUSS application deadline, they will be given a further opportunity to apply. Full guidance has been [published](#) (Annex C) on the steps you should take as an employer if this situation arises.



## Q & A

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

- 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 an eVisa?

- Those who have successfully applied to the EU Settlement Scheme or for a UK visa (including permission to stay) using the ID Check app or by visiting a Visa Application Centre, will have created a UK Visas and Immigration (UKVI) account. They will use their UKVI account credentials to log into the online View and Prove service on GOV.UK, which is where they can access their online immigration information – this is called an eVisa.

### 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 January 2019, employers have been able to use the service to check a prospective employee's immigration status.
- The online service can be used by those with status under the EU Settlement Scheme or under the points-based immigration system. Non-EU 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.



## **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 [www.equalityadvisoryservice.com](http://www.equalityadvisoryservice.com)

## **What if an individual has submitted an application to the EUSS up to and including 30 June 2021, but has not received a decision?**

- EEA citizens, and their family members, who have made an application to the EUSS on or before 30 June 2021, and have not yet been granted status, can continue to live in the UK and maintain a right to work until their application is finally determined. This includes pending the outcome of any appeal against a decision to refuse status.
- Those who make an application by the deadline, which remains outstanding after 30 June, will be able to rely on their Certificate of Application as proof of eligibility to access their right to work, when this is verified by the Home Office Employer Checking Service (ECS) at: <https://www.gov.uk/employee-immigration-employment-status>
- Increasingly, individuals will be issued their Certificate of Application digitally. This will enable them to use the Home Office online service to evidence their right to work.

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

- You will have a continuous statutory excuse against a civil penalty if you carried out an initial right to work check in the correct way at the time you completed the check, such as where an EU citizen provided their passport or national identity card to you to prove their right to work prior to 30 June 2021.
- Where an EU citizen has reasonable grounds for missing the EUSS application deadline, they will be given a further opportunity to apply. Full guidance has been [published](#) (Annex C) on the steps you should take as an employer if this situation arises.
- 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.



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**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.