



## Right to work checks: new guidance for employers after 1 July

What should employers do to be compliant with right to work changes on 1 July?

The deadline of 30 June for EU, EEA and Swiss citizens and their families in the UK to apply to the EU Settlement Scheme has meant the Home Office has published new guidelines for employers on how to avoid employing people illegally.

I have summarised the guidance for employers on right to work checks and the new draft Code of Practice on avoiding illegal working and costly penalties of up to £20,000.

Following right to work check procedures correctly affords employers a statutory excuse to protect them if it is discovered that employees have been working illegally.

Up to the end of June, employers can continue to rely on employees' EU, EEA and Swiss passports and national identity cards when conducting right to work checks, even if the employment itself commences on 1 July or later.

I would advise all firms to review their policies and train staff in readiness for 1 July.

Who do the new right to work check changes apply to?

As the new guidelines explain, from 1 July onwards, the Brexit changes to the rights of European citizens in the UK will have consequences for how employers should approach right to work checks.

Irish citizens will be able to still rely on their passport or passport card to prove their right to work. However all other EU, EEA and Swiss citizens can no longer use their passport or national identity card to prove their right to work. Instead, they will need to prove their right to work online from 1 July, like other visa holders with biometric residence permits.

Those who are eligible to have their status checked online can find a share code by [accessing their online account](#). They can then share this code with potential employers to confirm their immigration status.

Employers can then [check their right to work online](#) using a new employee's share code and their date of birth.

### Which new documents can be used for right to work checks?

Employers will still need to check the original documents of UK and Irish citizens as well as any others without a digital immigration status. ([Check which types of document give someone the right to work in the UK.](#))

Certain new documents have been added to the list by the [draft code](#). As before there are some that afford employers a continuous statutory excuse to protect them from penalties for illegal employment, and others that are temporary and would require a follow up check, such as a Frontier Worker Permit.

Other new categories of permissible documents include Irish passports (current or expired) or passport cards; UK, Guernsey or Jersey certificates confirming an application to the EU Settlement Scheme made before 30 June and documents issued by Crown Dependencies EU Settlement Schemes and verified by the Home Office Employer Checking Service.

### Another date to watch out for

During the Coronavirus pandemic, remote right to work checks meant employers did not need to lose out on statutory protection against illegal working penalties if new joiners sent scanned copies of their evidence, then held the originals up to camera on a video call, with dated records kept of these checks.

See my previous recent post on [remote right to work checks](#) for more information.

The Home Office concession allowing remote checks was due to end on 21 June but has now been extended until 1 September.

Employers must not get caught by the change, as the Home Office has resumed compliance visits as well as issuing fines for right to work check breaches.

### What should employers do if a staff member misses the EU Settlement Scheme deadline?

The draft Code of Practice however makes clear that employers are not required to do any retrospective checks on employees where the check is conducted before 1 July 2021 (under the current Code of Practice). If initial checks were carried out correctly, they will suffice to provide employers with a statutory excuse until the end of the staff member's employment (or the expiry of their permission if sooner) to protect them from a penalty.

The latest right to work [guidance](#) published on 18 June 2021 provides employers with last minute guidance on what to do if after 30 June 2021 they happen to identify (for example following an internal audit or a voluntary retrospective check) an EEA national employee who has not applied to the EU Settlement Scheme by the deadline and does not otherwise hold any form of leave in the UK.

[Caseworker guidance](#) provides numerous examples of circumstances where an EEA national may be considered to have reasonable grounds to make a late application and therefore have a further window to apply. As a transitional measure, the new guidance sets out a process that employers may follow until 31 December 2021, if they identify an EEA national employed before 1 July 2021 who has not yet made an application. Essentially this will involve advising the employee to make an application within 28 days, contacting the [Employer Checking Service](#) once the employee provides a Certificate of Application and then retaining a copy of any Positive

Verification Notice received from the Employer Checking Service (which provides a six-month statutory excuse), ensuring to conduct a follow up check before the six-month Positive Verification Notice expires.

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If you would like further advice on any of the issues raised or if you have any other queries related to UK immigration, please get in touch with immigration partner [Vanessa Ganguin](#).