

Mobility: Immigration alert

January 2022



United Kingdom

New, digital Right to Work check rules to come into effect 6 April 2022

Executive summary

Effective 6 April 2022, UK employers will be able to use certified Identity Service Providers to digitally verify the identification documents of British and Irish citizens when conducting Right to Work checks. Additionally, employers will no longer be able to use physical documents to confirm certain non-British/Irish citizens' right to work in the UK; they will instead be required to use the Home Office's Online Checking Service.

Background

UK employers are required by law to check that job applicants are allowed to work lawfully in the UK before employing them. This employer obligation is called a Right to Work check and it has historically required employers to review applicants' original documents to confirm their eligibility to work in the UK. Following the outbreak of COVID-19, the UK Government introduced temporary measures permitting UK employers to conduct Right to Work checks via video calls and use photos or scans of applicants' documents in lieu of originals. The Government's decision to move toward a permanent, digital process for Right to Work checks follows widespread positive feedback and an independent review by the Home Office of the temporary measures put into place during the pandemic.

British and Irish citizens

Effective 6 April 2022, UK employers will be allowed to use [certified Identity Service Providers](#) (IDSP) to verify the identity of British and Irish citizens when conducting Right to Work checks. UK employers must ensure that they use a certified IDSP that uses Identification Document Validation Technology that is compliant with the [UK Digital Identify and Attributes Trust Framework \(UKDIATF\)](#). They must also provide guidance for their employees regarding the type of information they obtain from IDSP, and the manner in which it is used.

UK employers will be able to digitally verify the identity and work eligibility of UK and Irish citizens by checking their valid British passports and Irish passports or Irish passport cards, respectively. Other documents will not be accepted when conducting digital Right to Work checks for British/Irish citizens.

BRP, BRC and FWP holders

UK employers are currently able to use the Home Office's [Online Checking Service](#) to conduct digital Right to Work checks for job applicants who are not British or Irish citizens, including holders of UK Biometric Residence Cards (BRC), Biometric Residence Permits (BRP) and Frontier Worker Permits (FWP). Effective 6 April 2022, UK employers will only be able to use the Online Checking Service to complete Right to Work checks for these individuals. They will no longer be able to accept physical cards for these checks, irrespective of the validity of the BRC, BRP or FWP.

Advantages for UK employers

The move toward a permanent, digital process for conducting Right to Work checks is expected to make it quicker, safer and more convenient for UK employers (and landlords) to carry out Right to Work (and Right to Rent) checks by:

- ▶ Using the same processes as the ones used for DBS pre-employment identity checks
- ▶ Leveraging technology to increase security and privacy
- ▶ Reducing the time needed to complete Right to Work checks, particularly in connection with large recruitment campaigns
- ▶ Moving the UK immigration system closer to a fully digital system

Penalties for noncompliance

While UK employers may use IDSP to support digital Right to Work checks, the responsibility for the checks remains with the UK employer (and not the IDSP). To obtain a statutory excuse against liability or a civil penalty, UK employers must:

- ▶ Use the services of a certified IDSP. Employers that verify the identity of job applicants using their own processes must undergo certification as an IDSP
- ▶ Ensure that applicants' documents and information (e.g., full name, photo, image of the biometric page of their ID documents) are provided in a clear, legible format and can be stored securely as electronic or hard copies for audit and investigation purposes
- ▶ Confirm that the image provided to the IDSP is a true likeness of the prospective employee. This can be done face to face or via video call
- ▶ Retain applicants' documents and information securely for two years following the end of the employment

Key steps

Employers should consider how to avail the new rules to deliver a streamlined, secure onboarding process for new hires. The IDSP process for certification is not yet open. This process will be administered by UK Accreditation Service.

EY will continue to monitor these developments, particularly around the more technical aspects of the UK's Right to Work legislation. Should you have any questions, we encourage you to contact one of our immigration professionals.

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EYG no. 000423-22Gbl

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