

Mobility: Immigration alert

March 2023



United Kingdom

UK updates right to work guidance for employers

Executive summary

On 28 February 2023, the UK Home Office released updated guidance regarding [right to work](#) (RTW) checks to be conducted by employers. This guidance introduces updates and clarifications to the RTW procedures resulting from the ongoing digitalization of the UK's border and immigration system.

Background

The prevention of illegal work is a statutory requirement for all UK employers. Effective 29 February 2008, an employer may be liable for a civil penalty if they employ individuals who do not have the right to undertake employment in the UK. By conducting RTW checks in line with the relevant guidance and code of practice, employers can establish a statutory excuse against a civil penalty in the event they are found to have employed someone who is not eligible to carry out the work in question due to their immigration status.

Key developments

Some of the most significant updates to the RTW guidance include the following:

- ▶ Where employers use Identity Document Validation Technology (IDVT) and Identity Service Providers (IDSP) for holders of British or Irish passports (or Irish passport cards), if these documents are not valid (i.e., expired) or the individual does not wish to prove their identity using an IDSP, employers must complete a document-based manual RTW check in the prescribed way in order to establish a statutory excuse. It is not possible to establish a statutory excuse against liability for a civil penalty if the manual document-based check is performed by an IDSP.
- ▶ In order to establish a statutory excuse, employers must complete a likelihood check following an initial document check by an IDSP. Employers may do so in person or via video call.
- ▶ The discontinued COVID-19 concession for temporary adjusted checks (effective 30 March 2020 to 30 September 2022) has been incorporated into the guidance. The guidance now reflects that employers are not required to conduct retrospective checks on employees who had a COVID-19 adjusted check and that a statutory excuse against liability for a civil penalty will be maintained if the check was completed in the prescribed manner as set out in the guidance at the time of the check. However, any individual with no lawful immigration status in the UK may be liable to immigration enforcement action.
- ▶ Effective 26 January 2023, individuals who are in the UK and submit digital visa applications prior to the expiry of their immigration permission (i.e., an in-time application) will retain their permission to remain in the UK pending the outcome of their in-time application, which will be reflected in their digital profiles as eVisa holders. This does not apply to those whose applications were outstanding prior to 26 January 2023, who had submitted applications via non-digital routes or who have been granted leave to enter or remain in the UK through the EU Settlement Scheme or as a frontier worker. Prior to 26 January 2023, employers were required to contact the Employer Checking Service (ECS) to obtain a Positive Verification Notice (PVN), which provided the employer with a time-limited statutory excuse valid for six months. The latest RTW guidance simplifies the process for this requirement.

- ▶ The guidance clarifies that Biometric Residence Permits (BRPs) that have been issued with an expiry date of 31 December 2024, where the BRP holder has immigration permission beyond this date, is not an error. The BRP holder's immigration rights and entitlements are unaffected, and their online profile will display the expiry date of their immigration permission, instead of the card expiry date of 31 December 2024. This issue is reflective of the Home Office's development of a border and immigration system, which aims to be digital by default and phase out physical documents before the end of 2024.
- ▶ The Home Office has consolidated information pertaining to the employment of Ukrainian nationals within Annex D. Individuals who receive stamps with the endorsement "Leave Outside the Rules" have a time-limited RTW, and a time-limited statutory excuse would be established if the employer completed a manual RTW check in line with the guidance at the time of the check. The guidance emphasizes that employers would need to complete a follow-up check on individuals with a time-limited permission to work in the UK. Under the Ukrainian schemes, all Ukrainian nationals need to obtain a BRP, and BRP holders will need to use the online checking service to prove their RTW in the UK. However, prospective employees who are Ukrainian nationals and have not applied for permission to stay in the UK will not have the RTW. Therefore, employers will not be permitted to employ them until measures have been taken to regularize their immigration status in the UK.

Impact on employers

Employers may incorporate required changes (where applicable) to their RTW processes to ensure they are up to date and compliant with current guidance in order to establish a statutory excuse against civil penalties. The ongoing digitalization of the UK immigration system is expected to further streamline RTW and human resource processes.

Key steps

EY will continue to monitor these developments. Should you have any questions, we encourage you to contact one of our immigration professionals.

Seema Farazi

Partner - People Advisory Services, Global Immigration

Tel: + 44 207 951 7122

Email: seema.farazi@uk.ey.com

Lisa Amos

Partner - People Advisory Services, Global Immigration

Tel: + 44 778 715 1456

Email: lisa.amos@uk.ey.com

Kellie Sullivan

Director - People Advisory Services, Global Immigration

Tel: + 44 207 806 9707

Email: kellie.sullivan1@uk.ey.com

Charlotte Nicolas

Senior Manager - People Advisory Services, Global Immigration

Tel: + 44 207 197 5228

Email: charlotte.nicolas@uk.ey.com

Martin Maddocks

Senior Manager - People Advisory Services, Global Immigration

Tel: + 44 207 806 9078

Email: martin.maddocks@uk.ey.com

EY | Building a better working world

EY exists to build a better working world, helping create long-term value for clients, people and society and build trust in the capital markets.

Enabled by data and technology, diverse EY teams in over 150 countries provide trust through assurance and help clients grow, transform and operate.

Working across assurance, consulting, law, strategy, tax and transactions, EY teams ask better questions to find new answers for the complex issues facing our world today.

EY refers to the global organization, and may refer to one or more, of the member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients. Information about how EY collects and uses personal data and a description of the rights individuals have under data protection legislation are available via ey.com/privacy. EY member firms do not practice law where prohibited by local laws. For more information about our organization, please visit ey.com.

Ernst & Young LLP is a client-serving member firm of Ernst & Young Global Limited operating in the US.

© 2023 Ernst & Young LLP.
All Rights Reserved.

EYG no. 002340-23Gbl

2101-3682263
ED None

ey.com