



**DOYLE CLAYTON**

Workplace Lawyers

# **Right to Work Changes Webinar**

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# Meet the Presenters



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# Agenda

1. Overview of the Right to Work regime & illegal working penalties
2. How to complete Right to Work checks – What has changed since 6 April 2022?
3. Record-keeping & reporting
4. Practical tips
5. Q&A



# Right to Work overview

- Employers in the UK have a responsibility to prevent illegal working and are liable for civil and criminal penalties if illegal working is identified.
- To avoid penalties and obtain a statutory defence to illegal working, conduct a check to confirm any new hires have the right to work in the UK (or continued right for current employees), and can carry out the relevant role.
- Complete the checks before they start working for you, for example before or on the morning of their first day of employment, to benefit from the statutory defence (prove this with date and time note on RTW check).



# Illegal working penalties

- **Civil penalties** – fine of up to £20,000 per illegal worker and named on gov.uk website
- **Issues with sponsor licence** – including possible revocation of licence and/or could trigger compliance audit
- **Criminal penalties if “know or reasonable cause to believe” employing illegal worker** – prison sentence of up to 5 years and/or unlimited fine
- **For individual** – wages seized and/or prison sentence of up to 6 months and/or unlimited fine
- **Employment law issues**
- Note: illegal working includes if a person is working in a different Occupation Code to the one they’re sponsored in



# Who should you do RTW checks on?

- Individuals **employed** by company under an employment contract working in the UK:
  - Includes contract of services/apprenticeship
  - Does not include individuals who are self-employed or agency staff
- BUT:
  - Consider carrying out RTW checks on self-employed consultants – risk of disruption to business and reputational damage if Home Office visits
  - In contract with agency, include requirement for them to (1) confirm staff will remain their employees, (2) carry out RTW checks on all staff sent to you and (3) agree an indemnity clause in contract for all costs related to illegal working
- Carry out RTW checks on **all employees, including British nationals** to avoid discrimination claims.



# How to complete RTW checks: What has changed?

Pre 6 April 2022 regime	Main changes from 6 April 2022
Biometric Residence Card (BRC), Biometric Residence Permit (BRP) & Frontier Worker Permit (FWP) holders could prove their RTW via the online <u>or</u> manual route.	BRC, BRP & FWP holders can <u>only</u> prove their right to work using the <b>online service</b> .
Adjusted Covid-19 concession was in place until 31 August 2022 (allows a scan or photo of the manual document to be used and verified via a video call).	Adjusted Covid-19 concession has now been extended until <u>30 September 2022</u> but <b>only for</b> individuals who can use manual checks
British and Irish nationals could only prove their Right to Work via a manual document (or by relying on the Covid-19 concession until 31 August 2022)	New “Identity Document Validation Technology” (IDVT) checks can be completed for British and Irish nationals via an “Identity Service Provider” (IDSP). Manual checks can also be used (adjusted Covid-19 concession can be used until 30 September 2022).

***PLUS some other changes we will not have time to cover – please ask if you have questions:***

- *Further information on sponsored work and student categories.*
- *Removal of ‘current document issued by Home Office to a family member of an EEA or Swiss citizen which indicates that the holder has a permission to stay in the UK’ .*
- *Addition of COA confirming a valid EUSS application was made on or after 1 July 2021 with PVN.*
- *Addition of document showing an application under Appendix EU to Isle of Man Immigration Rules; removal of reference to applications submitted before 30 June 2021.*
- *Further information on RTW checks for Ukrainian nationals.*



# How to carry out a RTW check

- Options from 6 April 2022:
  1. **Online** check
  2. **Manual** check
  3. **IDVT** check – for British & Irish nationals

Employer Checking Service e.g. for individuals with pending immigration applications – <https://www.gov.uk/employee-immigration-employment-status>





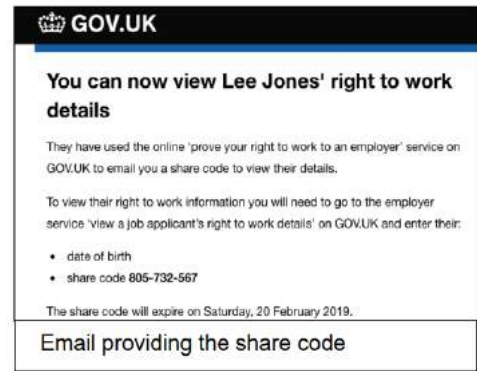
# Online check (1)

## STAGE 1 – STEPS TO BE TAKEN BY EMPLOYEE

1. Go to the <https://www.gov.uk/prove-right-to-work>. Then, provide details of identity document or BRP and date of birth.
2. Confirm purpose of check – prove right to work in the UK.
3. Share code (beginning with “W”) will be generated. Either (1) send share code directly to RTW checker or (2) provide RTW checker’s email address and the Home Office will send them the share code



# Online check (2)



## STAGE 2 – STEPS TO BE TAKEN BY EMPLOYER

1. RTW checker should go to <https://www.gov.uk/view-right-to-work> and enter (1) the share code and (2) date of birth
2. Have videocall or in-person meeting and check that:
  - Photo matches the person's appearance and other details are consistent; and
  - Check confirms the person is allowed to work in the role they will be doing for you in the UK

Keep a clear copy of the photo profile page on file (in hard copy or unalterable electronic format) for duration of employment and 2 years after it ends (may need to keep longer if required by another organisation, e.g. HMRC, DWP, or a regulator)



# Online check (3)


GOV.UK View a job applicant's right to work


BETA This is a new service - your [feedback](#) will help us to improve it.

Right to work

## Erika Mustermann

They can work in the UK.



Rotate 

**Details**

They can work in any job. There is no limit on how long they can stay in the UK.

**If you employ this person**

To avoid a [penalty](#), you must:

- check this looks like the person you meet face to face
- keep a secure copy of this online check (either electronically or in hard copy), for the duration of the employment and for 2 years after

You don't need to do the check again.

Read the [employers' code of practice](#) to find out more about right to work checks.

Details of check		
Company name	Date of check	Reference number
Acme Ltd	8 January 2018	WE-NDH5IDD-63

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GOV.UK View a job applicant's right to work


BETA This is a new service - your [feedback](#) will help us to improve it.

Right to work

## Erika Mustermann

They have permission to work in the UK from 28 March 2021. They can work in the UK until 28 April 2023.



Rotate 

**Details**

They can work in any job.

**If you employ this person**

To avoid a [penalty](#), you must:

- check this looks like the person you meet face to face
- keep a secure copy of this online check (either electronically or in hard copy), for the duration of the employment and for 2 years after
- do this check again when their permission to be in the UK expires on 28 April 2023

Read the [employers' code of practice](#) to find out more about right to work checks.

Details of check		
Company name	Date of check	Reference number
Acme Ltd	8 January 2018	WE-JRK1KJIG-12

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# Manual check

1. **OBTAIN** original RTW document (see List A and List B for acceptable documents)
2. **CHECK** original RTW document to make sure (1) it is genuine, (2) the photo matches the person's appearance and other details are consistent and (3) it allows them to do the role they will be doing for you in the UK
3. **COPY** original RTW document and print, sign and date and write:  
*"I confirm that this is a true and accurate copy of the original, which I have seen, on [insert the date] at [insert the time]."*

**PLUS** obtain evidence of discrepancy in name between documents e.g. marriage certificate

Keep a copy on file (in hard copy or unalterable electronic format) for duration of employment and 2 years after it ends (may need to keep longer if required by another organisation, e.g. HMRC, DWP, or a regulator)

**Note: Covid-19 concession in place until 30 September 2022**



# British & Irish nationals

- Since 6 April 2022, British and Irish nationals with valid passports or Irish passport cards (i.e. not expired) can follow new online RTW process OR a manual RTW check
- Some employees may not want to send their document to a third party – you cannot treat someone less favourably if they want to use a manual check
- Terminology:
  - IDSP (Identity Service Provider): *Organisation that provide identity verification services using IDVT*
  - IDVT (Identity Validation Technology): *Technologies that can verify identity of a person by checking their digital ID*
  - IDVT check: *The response that the IDSP generates using IDVT*



# IDVT checks - process

1. Choose IDSP
2. IDSP uses IDVT to check the valid British/ Irish document. They'll check (1) validity of document and (2) the individual is the rightful holder
3. IDSP sends you copy of (1) the IDVT check and (2) the document they checked
4. You carry out due diligence checks. Do you have a reasonable belief that the check was carried out correctly?
5. Check photo of the person on the check and their biographic details. Do they match with the person presenting themselves for work?
6. If the name differs between documents, get evidence to explain (e.g. marriage certificate, divorce decree absolute)
7. Retain copy of these documents in hard copy or electronic unalterable format for duration of employment and 2 years after it ends



# Choosing IDSP

- Some will be certified i.e. assessed by an independent party to make sure they are capable of providing ID verification services in line with Home Office guidance
- Recommended, but not mandatory, for employers to use a certified IDSP as you must be satisfied the IDSP is able to provide the required checks in line with Home Office guidance



# Choosing a 'level of confidence'

- Level of confidence ranges from low confidence (worst) to medium to high confidence (best)
- Home Office recommends using checks at medium confidence or better only
- Can use lower confidence checks but we recommend using medium level and above checks only, from a risk management perspective





# Costs of IDSP checks

- Range from £1.45 – £70 per check
- Uncertified providers or lower confidence checks may be cheaper but should be balanced against the risks



# Record-keeping & reporting

- Keep copies of employee's RTW documents on file for **duration of employment and 2 years after employment has ended (or may need to keep longer if required by another organisation, e.g. HMRC, DWP, or a regulator)**
- Comply with data protection obligations – do not retain data for longer than required and then securely destroy
- Keep RTW documents securely so that only staff who need to access them can e.g. in a locked filing cabinet or password protected
- Make sure Authorising Officer, HR team etc. know where to locate RTW documents in case of Home Office visit



# Practicalities and tips

- **Timing:** Complete the RTW check before employment commences. Consider discussing RTW checks during the recruitment stage and ensuring a RTW clause is in the employment contract
- **Follow up checks:** For time-limited RTW checks, diarise to follow up around 4 months before the expiry of the individual's permission and ensure at least one other person has access to the reminder
- **Cost:** Covid-19 concessions on manual checks remain in place until 30 September 2022, so you do not need to pay for IDSP providers if you want to carry out checks on British/ Irish nationals remotely until then. After that, you may want to think about asking employees to come into the office before their first day for a meet and greet if you prefer to do the checks manually yourself, and avoid IDSP costs and risks



# Questions?



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***Disclaimer This presentation was prepared on 11 April 2022 and provides general guidance only. Legal advice should always be taken as the law is subject to change.***

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