

A person is seen from behind, standing in an airport terminal and looking out a large window. Outside, a commercial airplane is visible in the sky, and a tall airport control tower stands on the ground. The scene is in black and white, with a teal graphic element on the right side of the image.

What You Need to Know About Post-Brexit Changes From 1 July 2021

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Immigration Update & Right to Work Checks

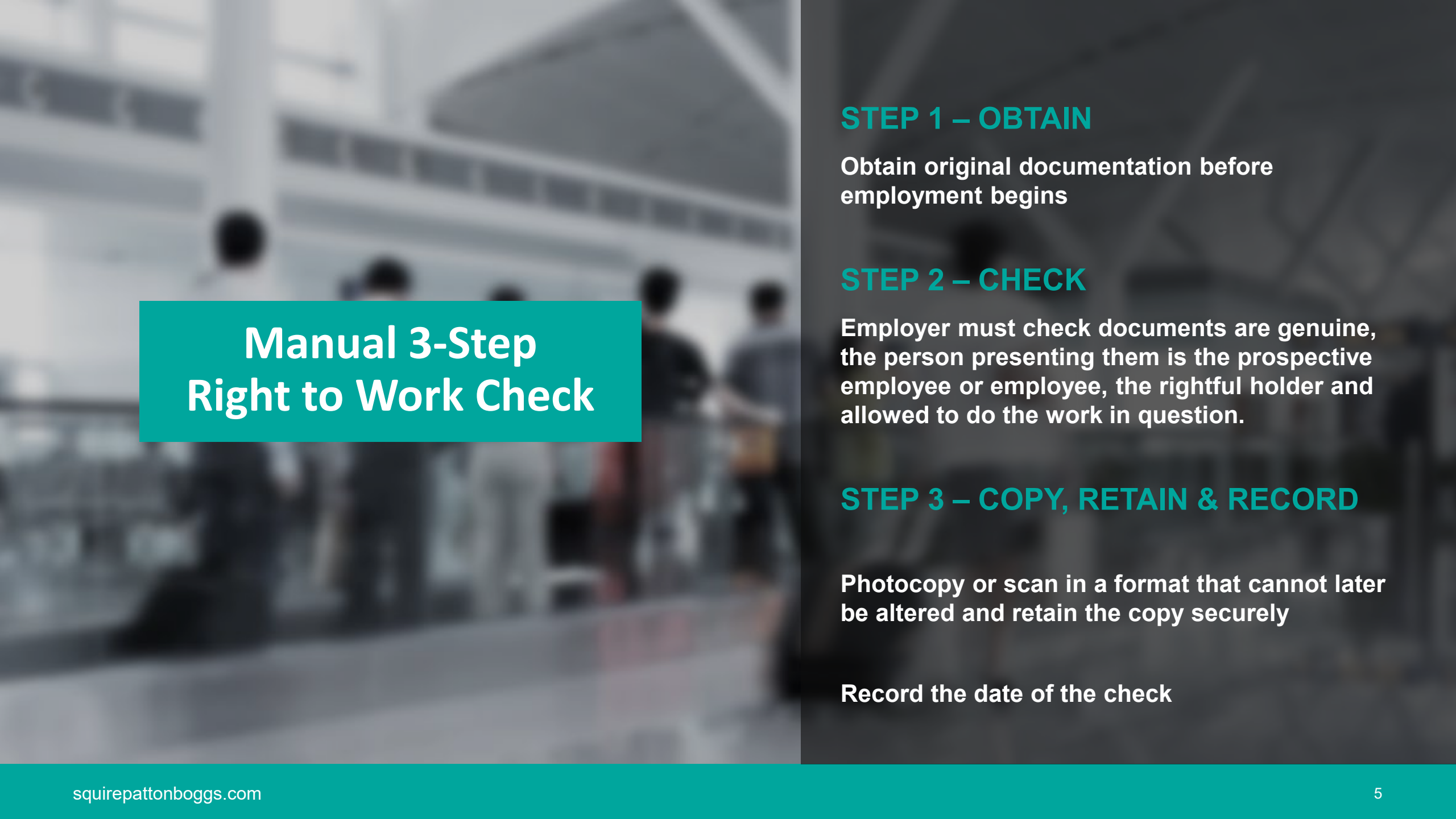
- Quick refresher on right to work checks
- Adjusted right to work checks in light of COVID restrictions
- Effect of Brexit on right to work checks before and after 1 July
- How should you adapt your right-to-work processes
- What do you need to know about the UK's points-based immigration system?
- Can you refuse to sponsor?
- New graduate visa route for international students

Why are they so important?

- A civil penalty of up to £20,000 per illegal employee can be issued to an employer who employs someone without the right to work (whether knowingly or not).
- It's a criminal offence to employ someone without the right to work if you know or have reasonable cause to believe that is the case. **Unlimited fine / custodial sentence of up to 5 years.**
- The Home Office now has the power to close business premises for 48 hours for repeated illegal working offences.
- Being issued with a civil penalty could lead to your sponsor licence being revoked (which will usually lead to having to dismiss all sponsored employees).

Basic legal position

- Employers can establish a 'statutory excuse' against illegal employment if they check specified documentation or complete an online check which shows the employee is allowed to work in the UK.
- A valid statutory excuse will protect the employer from a civil penalty if it later transpires that the employee does not have the right to work...
- ...BUT a statutory excuse cannot be relied upon if the employer is knowingly employing someone illegally or has reasonable cause to believe that is the case.
- The statutory excuse must be 'maintained' by carrying out follow-up checks when required to do so.



Manual 3-Step Right to Work Check

STEP 1 – OBTAIN

Obtain original documentation before employment begins

STEP 2 – CHECK

Employer must check documents are genuine, the person presenting them is the prospective employee or employee, the rightful holder and allowed to do the work in question.

STEP 3 – COPY, RETAIN & RECORD

Photocopy or scan in a format that cannot later be altered and retain the copy securely

Record the date of the check

Adjusted checks extended until 31 August 2021

- Ask the employee to submit a scanned copy or a photo of their original documents via email or using a mobile app
- Ask them to hold up the original documents to the camera and check them against the digital copy of the documents
- Record the date you made the check and mark it as *“adjusted check undertaken on [insert date] due to COVID-19”*
- No need to do follow-up check once Covid restrictions lifted (as originally anticipated)



Effect of Brexit: RTW checks *before* 1 July 2021

- EU Settlement Scheme (EUSS) deadline is 30 June 2021.
- Right to work checks for EEA/Swiss new starters on or before that date continue as usual (i.e. EEA passport or ID card) but they may demonstrate that they have pre-settled or settled status via the online service if they want to.
- For EEA nationals starting employment up to and including 30 June 2021, employers are not expected to differentiate between those who arrived in the UK before or after 1 January 2021 or otherwise assess an EEA national's eligibility under the EUSS.
- BUT the guidance also states that an employer cannot rely on a statutory excuse obtained through a right to work check if it knows the employee does not have the right to work in the UK or has reasonable cause to believe that is the case.

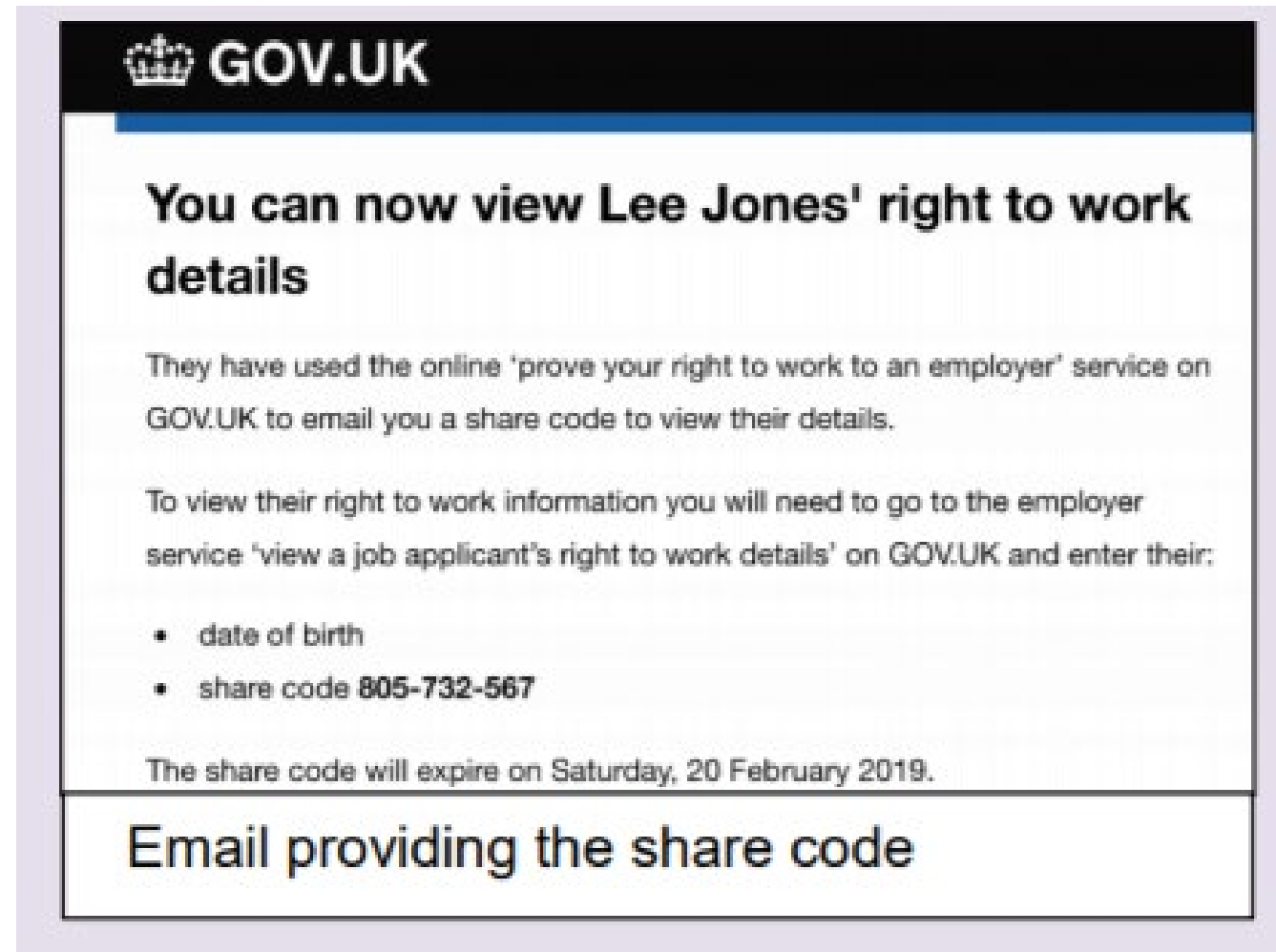
Effect of Brexit: Changes *from* 1 July 2021

- From 1 July 2021, non-British new starters (including EEA nationals but excluding Irish) will need:
 - pre-settled status or settled status
 - some other form of visa or indefinite leave to remain
 - sponsorship under the Points Based System
- There is no requirement to do retrospective checks on EEA nationals starting employment up to and including 30 June 2021. You will maintain a continuous statutory excuse against liability for a civil penalty if the initial checks were undertaken in line with the Home Office's guidance in place at the time.
- Employers who choose to carry out retrospective checks must do so in a non-discriminatory manner.
- An employer cannot rely on a statutory excuse obtained through a right to work check if it knows the employee does not have the right to work in the UK or has reasonable cause to believe that is the case.

Online right to work checks

- EEA nationals with pre-settled or settled status can only do so through the online service
- Candidate logs into <https://www.gov.uk/prove-right-to-work> to generate a share code (valid for 30 days).
- Using the share code and the candidate's name and date of birth, employer logs into <https://www.gov.uk/view-right-to-work>
- The employer will check the candidate has the right to work and that the photo in the online check is of the candidate, by seeing them in person or by video call
- The employer will print and retain a copy of the online check and keep a record of the permission expiry date so that a follow-up check can be done.

Online right to work checks (1)



The screenshot shows an email from GOV.UK. At the top is the GOV.UK logo. The main heading is 'You can now view Lee Jones' right to work details'. Below this, the text states: 'They have used the online 'prove your right to work to an employer' service on GOV.UK to email you a share code to view their details.' It then instructs the user: 'To view their right to work information you will need to go to the employer service 'view a job applicant's right to work details' on GOV.UK and enter their:' followed by a bulleted list: '• date of birth' and '• share code 805-732-567'. At the bottom, it says 'The share code will expire on Saturday, 20 February 2019.' A separate box at the very bottom is titled 'Email providing the share code'.

GOV.UK

You can now view Lee Jones' right to work details

They have used the online 'prove your right to work to an employer' service on GOV.UK to email you a share code to view their details.

To view their right to work information you will need to go to the employer service 'view a job applicant's right to work details' on GOV.UK and enter their:

- date of birth
- share code **805-732-567**

The share code will expire on Saturday, 20 February 2019.

Email providing the share code

Online right to work checks (2)

View a job applicant's right to work details

Check details of a job applicant's right to work in the UK, including:

- the types of work they're allowed to do
- how long they can work in the UK for, if there's a time limit

You'll need the job applicant's:

- date of birth
- right to work share code

You can also [check someone's original documents](#) instead - for example if you do not have a share code.

Start now >

on the right to work service

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

Details

They can work in any job.



Rotate ↻

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-JRKMKUG-12 |

A silhouette of a person's hand holding a tablet, with a finger pointing at the screen. The background is a blurred cityscape at night.

The online right to work service can also be used by those who hold:

- a biometric residence permit
- a biometric residence card
- status issued under the points-based immigration system
- British National Overseas (BNO) visa
- frontier workers permit

Employees not granted EUSS status by 1 July 2021

- EEA nationals who apply to the EUSS up to and including 30 June 2021 but have not yet been granted status, can continue to live and work in the UK as now until their application is finally determined.
 - Anyone with outstanding application to the EUSS made up to and including 30 June 2021 will be issued with either:
 - an EUSS Certificate of Application (CoA), or;
 - an EUSS email confirming receipt of their application
- in which case, if they need to prove their right to work, the employer should use the Employer Checking Service (ECS) to confirm their status.
- Increasingly, the CoA will be issued digitally, enabling the individual to use the online right to work service and provide a share code to evidence their right to work. Until then, the employer should use the ECS.

Employees who have not applied on or before 30 June 2021 (1)

- If an EEA national applies for a job **after** 30 June 2021, but has not applied to the EUSS by the deadline and has no alternative immigration status in the UK, then they will not be able to pass a right to work check and should not be employed.
- For EEA employees who started work for you **before** 1 July 2021, no retrospective checks are required and you will have a statutory excuse against a civil penalty, providing the initial right to work check was carried out in line with the Home Office's guidance at the time of first employing them.
- However, there may be situations after 30 June 2021, in which you identify an EEA employee who has not applied to the EUSS by the deadline and does not hold any other form of leave in the UK.

Employees who have not applied on or before 30 June 2021 (2)

- Where an EEA national has reasonable grounds for missing the EUSS application deadline, they will be given a further opportunity to apply.

- As a transitional measure until 31 December 2021, in circumstances where you identify that an eligible EEA employee has not applied to the EUSS by 30 June 2021, you do not need to terminate their employment at that point providing they have been employed by you, in the UK, prior to the end of the grace period (30 June 2021).

- In such circumstances, you should:
 - Advise the individual they must make an application to the EUSS within 28 days and provide you with a Certificate of Application (CoA).
 - If they do not make an application to the EUSS within 28 days, you should take steps to terminate their employment (subject to a reasonable process in the circumstances).

Employees who have not applied on or before 30 June 2021 (3)

- Once you have been provided with a CoA, you must then contact ECS to confirm the individual has applied and obtain a PVN which will provide you with a statutory excuse against a civil penalty for six months.
- Home Office guidance says: *“It should be noted that the criminal offence of employing an illegal worker is generally reserved for the most serious cases of non-compliance not intended for employers who have employed EEA citizens in good faith having completed a right to work check in the prescribed manner and are acting in accordance with this guidance to support their employees to make an application to the EUSS.”*
- This doesn’t mean you are necessarily off the hook for a civil penalty – where you know or have reasonable cause to believe that an employee does not have the right to work, you should take advice on the appropriate steps.

Adapting your right-to-work processes

- Use the online right to work service as much as possible
- Look at your current systems for manual right to work checks
- Think about when checks are done, who is doing them, how your records are stored.
- Update your contracts
- Do you have a robust system for recording and flagging visa expiry dates and doing follow-up checks?
- Create user friendly one-pager guides for those doing checks
- Provide training on a regular basis
- Encourage those doing checks to seek support if unsure



The UK's Points-Based Immigration System

- Skilled Worker: for roles skilled to RQF Level 3 (A Level) or above
- Broadly speaking, the minimum qualifying salary is at least £25,600
- No resident labour market test
- Applicants are required to pass a prescribed English language test
- For a 3 year visa, Home Office application fees alone are in excess of £5,600 per person
- Employer must hold a Skilled Worker Sponsor Licence.



Home Office fees: Skilled Worker visa application

- Home Office fees, all payable at the time of the application:
 - Certificate of Sponsorship: £199
 - Immigration Skills Surcharge (ISC): Small or charitable sponsors (£364 per year of sponsorship) or medium or large sponsors (£1,000 per year of sponsorship)
 - ISC refunded pro-rata, in most cases, if employee leaves early.
 - ISC cannot be paid by or clawed back from the sponsored employee
 - Immigration Health Surcharge: £624 per year of sponsorship
 - Application fee: £610 to £1408 (c.£250 for priority services)

Can you refuse to sponsor?

- *Osborne Clarke Services v Purhoit* [2008]: risk of claims of indirect discrimination claims if you have a blanket policy of refusing to employ candidates or employees who require sponsorship without objective justification.
- Obvious justifications include the role not being sufficiently skilled or paid to qualify for sponsorship. There is no longer a Resident Labour Market Test so that cannot be used as a justification.
- If you genuinely need a candidate to start in a role at short notice and have a suitable candidate who does not require sponsorship who can do so, you may be able to justify a refusal to sponsor a non-British candidate on the grounds that the sponsorship process would take too long.
- Not clear whether the cost and administrative burden of applying for Skilled Worker visa under the new points-based system would now be adequate justification, particularly for large organisations.

Graduate visa (new!)

- Available to international students who have completed a degree at undergraduate level or above at a Higher Education Provider with a track record of compliance and who have valid Tier 4 or Student permission at the time of application.
- The graduate route will require a new visa application, which will only be possible from inside the UK. It will include the payment of a visa fee of £700 and the Immigration Health Surcharge at the full rate of £624 per year.
- Successful applicants on this route at bachelor's and master's level will be able to stay in the UK and work, or look for work, at any skill level for two years. Doctoral students will be able to stay for three years.
- Will not count towards settlement (other than as part of the 10 year-route)

- Detailed Home Office guidance: <https://www.gov.uk/government/publications/right-to-work-checks-employers-guide>
- Right to work checklist (not yet updated):
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/774286/Right_to_Work_Checklist.pdf
- Candidate/employee page online right to work service: <https://www.gov.uk/prove-right-to-work>
- Employer page online right to work service: <https://www.gov.uk/view-right-to-work>
- Employer checking service (for pending applications): <https://www.gov.uk/employee-immigration-employment-status>

Questions?