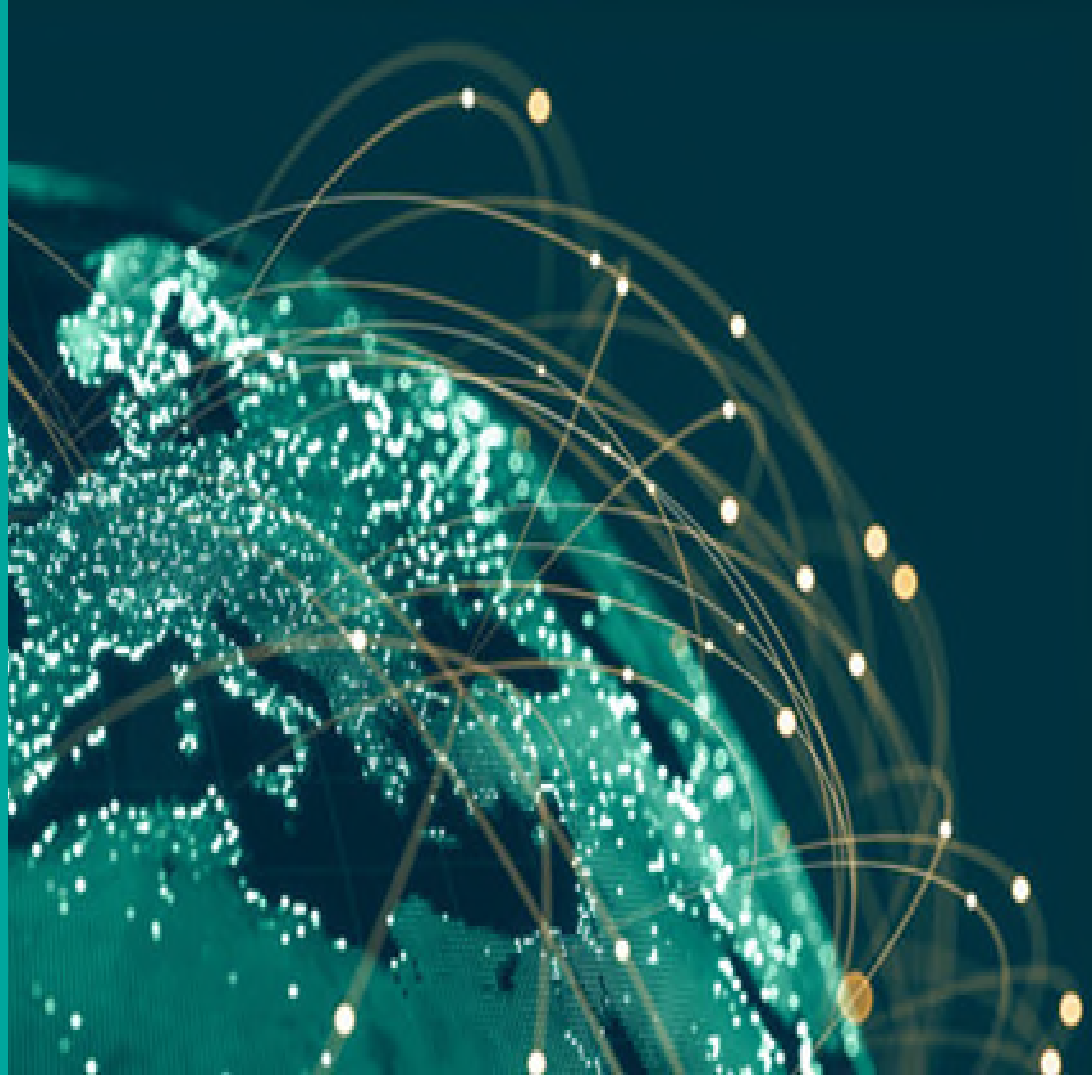


Extension of Right to Work Checks: How Employers Should Prepare Before 1 October 2026

28 July 2026



- What is illegal working?
- Right to work checks and statutory excuse
- What is changing and who will be in scope?
- Extended liability for non-direct contractual arrangements
- Practical impact for employers
- How to prepare
- Q&A

What is illegal working?

- Worker never had the right to work because they entered the UK without permission
- Worker had permission to work but this has expired and they are still working
- Worker has permission to work but is working in breach of conditions relating to restricted hours (students) or the role they work in/who they work for (sponsored workers)
- Worker had permission to work but this has been cancelled and they are still working (including dependants reliant on main applicant's permission)
- Worker has permission to stay as a visitor but is working in breach of visitor conditions

- Civil penalty of up to £60k per person working illegally (£45k for first offence)
- Compliance action against employer's sponsor licence including revocation
- Criminal conviction for *knowingly* employing an individual who does not have the right to work or having *reasonable cause to believe* that is the case
- Closure of business and court-issued compliance order
- Disqualification of company directors
- Seizure of profits from illegal working
- Revocation of licence to operate
- Damage to reputation
- Employment claims if dismissal not handled correctly (particularly if employer at fault)

- To obtain a statutory excuse, employer must carry out **prescribed right to work checks**:
 - before employment starts and, for those with time-limited permission, follow-up checks; and
 - retain relevant and appropriate records
- Three ways to carry out **prescribed right to work checks** (depending on the worker's status)
 - manual check on specific physical documents listed on List A or List B
 - online check using a share code for evisas
 - using a **registered RtW Digital Verification Service Provider** (DVSP) to complete the digital identity verification element of right to work checks for valid British/Irish passport (or Irish passport card) holders
- If a statutory excuse is established, this can protect the employer from a civil penalty even if, in certain circumstances, the worker works illegally **BUT** the employer cannot rely on a statutory excuse if it **knows** the worker does not have the right to work

- December 2025 – section 48 of the Border Security Asylum and Immigration Act 2025 amends sections 15 to 25 the Immigration Asylum and Nationality Act 2006
- May 2026 – draft Code of Practice for Employers: Avoiding unlawful discrimination while preventing illegal working
- June 2026 – results of the public consultation and draft Code of Practice on Preventing Illegal Working: Right to Work Scheme for Employers
- July 2026 – draft Employer's Guide to Right to Work Checks
- 1 October 2026 – implementation day!

- **Online checks** – new requirements
 - Employer must only accept share-codes beginning with 'W' (not "R" or "S")
 - Employer or business name must be recorded in full
- DVSP can carry out digital right to work checks on holders of valid British or Irish passports (or Irish passport cards) **and up to 6 months past the expiry date**
- If using facial recognition technology to **verify identity** as part of a check this must be done by a **registered DVSP** and employer must keep a copy of the comparison from the DVSP and a copy of document checked
- List of documents for manual checks updated so that an official document confirming an individual's **NI number** includes digital version issued by/on behalf of government agency

Major changes from 1 October 2026 – who will be in scope?

- Definition of employer will be expanded to include other working arrangements
- Employer is a person who employs or engages an individual:
 - under a contract of employment (contract of service or apprenticeship)
 - under a worker's contract
 - as an individual subcontractor
 - through an online matching service that introduces service providers to potential clients or customers

“Worker’s contract”: what does this mean in practice?

- The organisation **directly employing/engaging** the worker will be responsible for the right to work check
- **Out of scope for right to work checks:** individuals who are **genuinely self-employed** i.e. operating an independent business on their own account, trading in their own name or as part of their own business, contracting directly with clients or customers for the provision of work or services etc
- Important understand the distinction between **workers** and **self-employed** individuals
- **No liability for illegal working:** for end-users of labour provided by an employment business (or similar) where there is no worker’s contract between the end-user and worker

Individual sub-contractor: what does this mean in practice?

'Individual sub-contractor' means an individual who has entered into a contract with a person to provide work or services, in circumstances where that other person has entered into a contract with a third party to provide, or arrange for the provision of, the work or services but the individual has not

For example:

- An individual signs up to work with and is engaged by a delivery platform
- The individual logs into an app when they want to work, accepts delivery requests from the platform's customers and gets paid through the platform for each delivery they complete
- **The delivery platform** is the individual's employer for the purpose of right to work checks and may be liable for a civil penalty if the individual is found to be working illegally

Online matching service: what does this mean in practice?

‘Online matching service’ means a person who, in the course of a business:

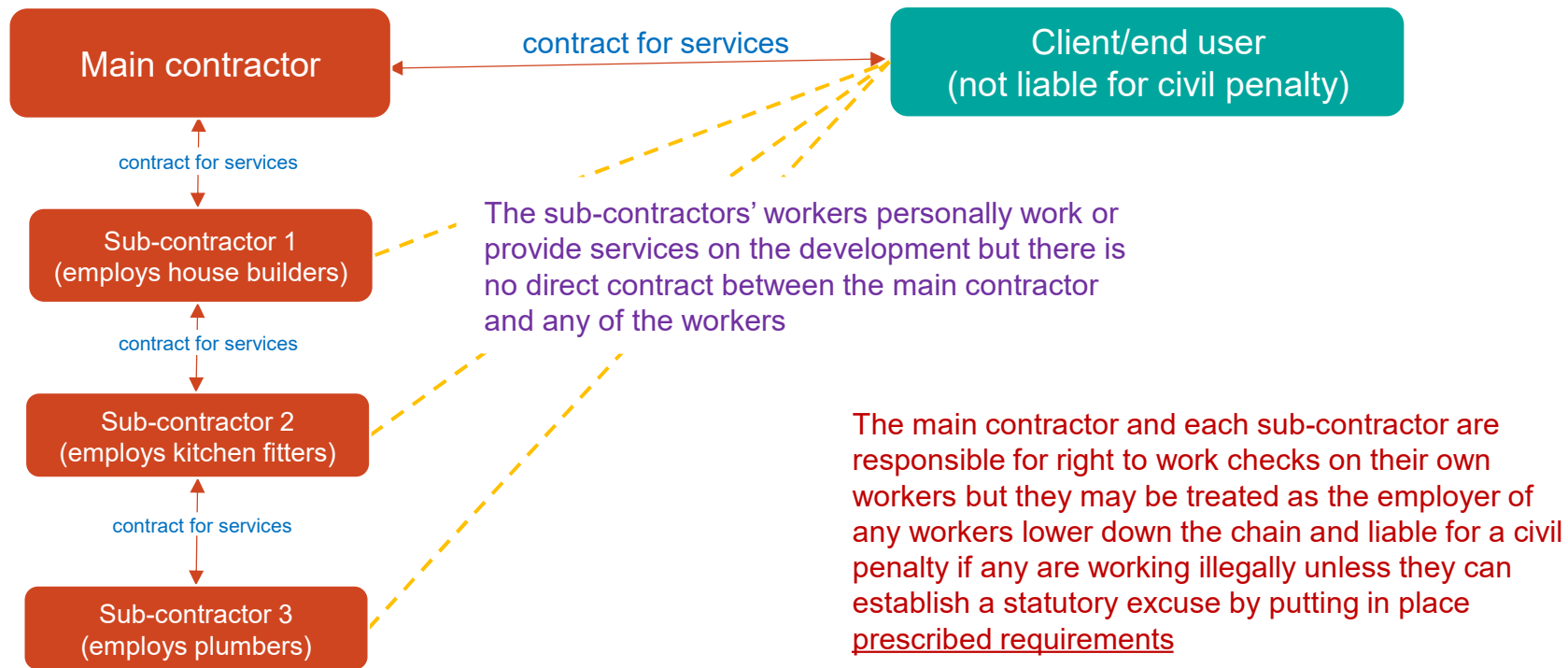
- (a) keeps a register of service providers for the purpose of matching them with potential clients or customers*
- (b) provides an online service by which potential clients or customers can submit enquiries for the purpose of being matched with suitable service providers; and*
- (c) charges a fee or commission in return for making such matches*

For example:

- A homeowner uses an online matching service to find a cleaner to clean their home
- The online matching service matches a cleaner to the homeowner and the cleaner personally carries out the cleaning services for the homeowner
- The online matching service is the cleaner’s employer for the purpose of right to work checks and may be liable for a civil penalty if the individual is found to be working illegally

- Liability for a civil penalty may also be extended to include “non-direct” contractual arrangements where:
 - an organisation is contracted to provide work or services to a third party and contracts with another employer/sub-contractor who employs workers to carry out the work or services to fulfil that contract
 - an online matching service matches a service provider with a customer to provide work or services, and the service provider enters into a contract with the customer
 - an organisation employs an individual to provide work or services, and the contract permits that individual to use a substitute to carry out the work or services

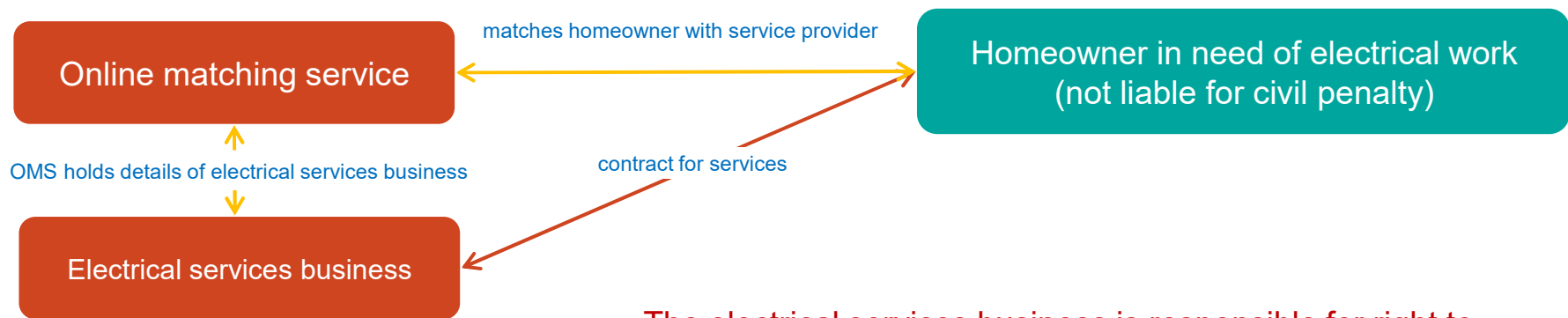
Extended liability: in-scope sub-contracting arrangement



Extended liability – what does this mean in practice (1)?

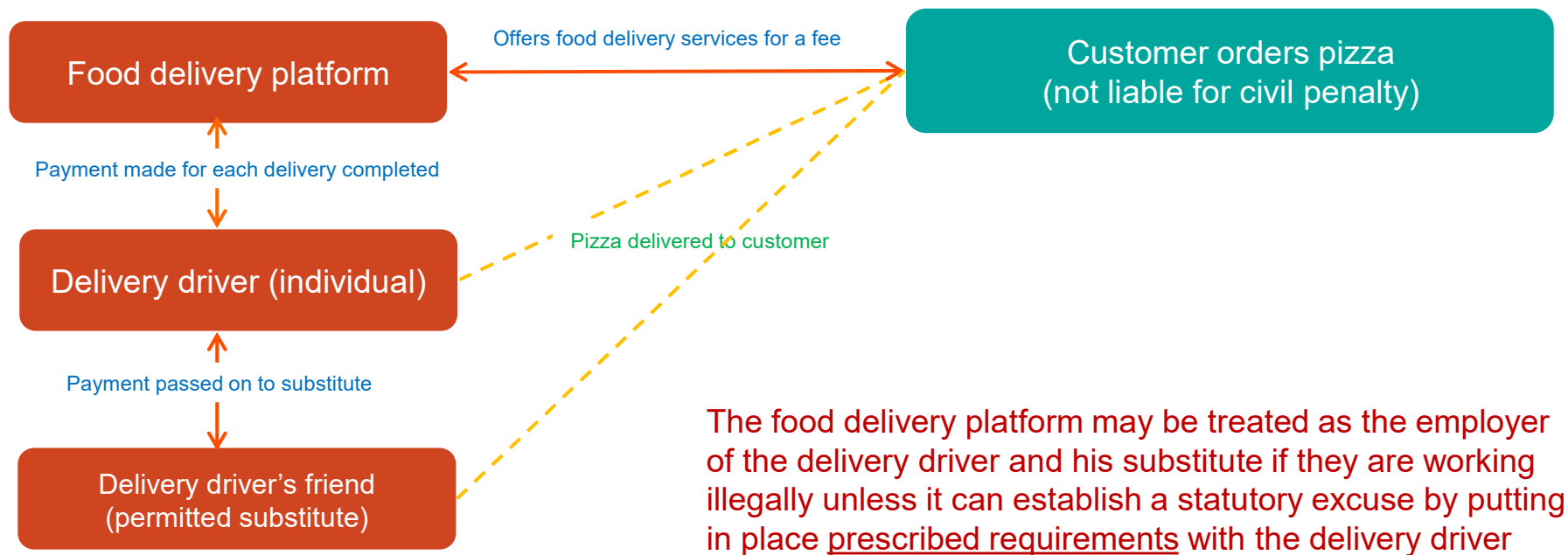
- The Home Office will seek to identify the **employer** holding the **direct contractual relationship** with the worker who will remain responsible for the right to work check
- Where the employer with the direct contractual relationship cannot be identified, parties higher up in the contractual chain may be treated as employing any individual who personally provides the work or services **even if they have no direct contractual relationship with the individual**
- These in-scope parties can establish a statutory excuse by meeting **prescribed requirements** relating to the contractual arrangements

Extended liability: in-scope online matching service



The electrical services business is responsible for right to work checks on its own workers but the online matching service may be treated as the employer of any worker carrying out the services and liable for a civil penalty if any are working illegally unless it can establish a statutory excuse by putting in place prescribed requirements with the electrical services business

Extended liability: in-scope substitution



Extended liability – what does this mean in practice (2)?

- Out of scope for extended liability and prescribed requirements:
 - an individual or organisation who acts solely as an end-user, client or customer of a service, or who commissions or purchases work or services, where they are not under a contract to provide work or services onwards to a third party but are instead the final recipient of the services for their own purposes
 - an individual or organisation who engages an employment business to provide workers for its own business operations

Organisations in-scope for the purpose of non-direct contractual arrangements will be liable for workers carrying out the work or services further down the contractual chain unless they can establish a statutory excuse by meeting certain **prescribed requirements** including:

- **Written contractual terms and conditions** before the work/service commences which must:
 - require the employer or service provider to carry out **right to work checks** on any individual employed
 - **prohibit further sub-contracting** without prior written consent and replicate equivalent right to work obligations in any permitted sub-contracting arrangements
 - **permit audits** of the employer or the service provider's compliance with right to work checks
 - **permit suspension or termination** of the contract where illegal working identified
 - require the employer or the service provider to **co-operate with any Home Office investigation** relating to illegal working

- **Substitution controls:** where a contractual arrangement between an employer and a worker permits substitution, an employer will only establish a statutory excuse where it has implemented, before the work or service commences, **processes** ensuring that:
 - a prescribed **right to work check** is carried out on any substitute
 - **responsibility for the check is not delegated** to individuals carrying out the work or services
 - **no individual may carry out work** or services as a substitute **before their right to work has been verified**
 - contractual provisions are in place between the employer and the worker (which may include but are not limited to **suspension or termination** of the contract) where the employer or the worker know, or have reasonable cause to believe, that a substitute is working illegally.
 - for the duration of employment, the employer ensures that the worker and their registered substitute are the same individuals whose right to work has been checked through **prescribed identity verification systems**

- **Identity verification systems and processes:** organisations which are in-scope for the purpose of non-direct contractual arrangements must have proportionate systems and processes in place to ensure that the individual carrying out the work or services is the same individual on whom a right to work check has been conducted including:
 - issuing identity cards or workplace passes
 - facial recognition technology, including use of registered RtW DVSPs
 - biometric or attendance management systems checks against training records, qualifications or licences relating to the role
 - re-verification of identity at set intervals (the Home Office recommends that this occurs at least once in any 24-hour period or shift of work)

- **Not retrospective** – penalties under new regime will only be issued in relation to employment that commenced on or after 1 October 2026
- **Uncertainty** relating to individuals and organisations in scope and prescribed requirements
- **Increased due diligence requests** from clients depending on the nature of your business
- **Extra resource** to review contracts where **prescribed requirements** apply
- **Added costs** including in relation to use of registered RtW DVSP where appropriate
- **Heightened Home Office enforcement action** including visits and requests for information and increase to reputational risk

How can employers prepare? (1)

- Carry out internal right to work audits, review existing processes, update policies, strengthen on-boarding controls and ensure systems are in place so right to work checks can be carried out on all new in-scope individuals from 1 October
- Map all categories of labour within your organisation and consider if individuals considered “self-employed” are correctly classified or should be treated as workers
- Review contracts with other employers, service suppliers and sub-contractors for the purpose of in-scope non-direct contractual arrangements to ensure that the **prescribed requirements** are met, where applicable
- Review contracts with labour and service providers (even if your organisation, as end-user, is not in scope) to include appropriate warranties, indemnities and other protections

How can employers prepare? (2)

- Provide training to relevant teams (including procurement, contract and operational managers, not just HR and TA) to ensure the expanded scope of the new rules is fully understood
- Consider technological solutions (including a RtW DVSP) to manage an increased volume of right to work checks
- Consider options for identity verification systems and processes to ensure providers are checking the identity of workers actually carrying out the work
- Look out for further updates as the employer's guide is currently only a draft!

- [Employer's guide to right to work checks](#)
- Online interactive tool: [Check if someone can work in the UK](#)
- [Employer's Right to Work Checklist](#)
- [Code of practice on preventing illegal working: Right to Work Scheme for employers](#)
- [Code of practice for employers: Avoiding unlawful discrimination while preventing illegal working](#)
- Online interactive tool: [Employer Checking Service \(ECS\)](#)



Annabel Mace

Partner

annabel.mace@squirepb.com



May Cheung

Director

may.cheung@squirepb.com



Carine Elliott

Senior Associate

carine.elliott@squirepb.com