

# UK Business Immigration

## What employers need to know about the extension of right to work checks from 1 October 2026

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UK organisations will recall that the Home Office consulted in December 2025 on the extension of the right to work (RTW) scheme, which we wrote about [here](#). The Home Office has finally responded to that consultation but, more importantly has also published a [draft Code of Practice on Preventing Illegal Working: Right to Work Scheme for Employers \(Code\)](#), introducing significant changes to the UK's rules on carrying out RTW checks, which will come into force on 1 October 2026.

### Why is this important?

The RTW scheme currently only applies to employers engaging individuals under a contract of employment. However, the new draft Code reflects legislative changes introduced by section 48 of the Border Security, Asylum and Immigration Act 2025 (the Act), which substantially broadens the framework.

Most notably, the changes expand both (i) the range of working arrangements in which RTW checks must be conducted to obtain a statutory excuse against a civil penalty; and (ii) the parties who may be liable for non-compliance. As a result, organisations that have not historically regarded themselves as the "employer" for RTW purposes in certain working arrangements may now fall within scope. This brings with it both new compliance obligations and an increased exposure to civil penalties.

These developments are particularly significant for UK organisations operating with non-traditional workforce models, including those relying on contingent labour, subcontracting arrangements or platform-based services.

### Who will be in scope?

A key feature of the new scheme is the expanded definition of employer. From 1 October 2026, "employer" will include not just organisations employing an individual under a contract of employment, but also those engaging an individual under a worker's contract or as an individual subcontractor, as well as online matching services providing the details of an individual who is a service provider to potential clients or customers.

**Key insight** – Importantly, the draft Code confirms that RTW checks will not be required for individuals who are genuinely self-employed, operating in business on their own account, trading in their own name or as part of their own business, who contract directly with clients or customers for the provision of work or services. This includes arrangements where services are provided directly to members of the public, or under traditional business-to-business contracts for the supply of services, where the arrangement is for the purchase of a service rather than the employment of an individual to carry out work or services. However, individuals who obtain work through an intermediary, platform or similar arrangement, and who are not operating an independent business in their own right will be within scope for the purpose of RTW checks.

## Extension of liability

The draft Code also clarifies that liability for an illegal working civil penalty will also apply to “non-direct” contractual arrangements including:

- Where an organisation is under a contract to provide work or services to a third-party, and enters into a contract with another employer who employs the workers to carry out all or part of the work or services required to fulfil that contract
- Where an online matching service matches a service provider with a client or customer to provide work or services, and the service provider enters into a contract with the client or customer
- Where an employer 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 in their place.

In these circumstances, an organisation contracted to provide work or services to a third-party, the online matching service or the employer in the case of a substitution clause, may be treated as employing any individual who personally provides the work or services, even if it is not in a contractual relationship with that individual and/or does not even know that that individual is providing the work or services.

**Key insight** – In practice, this means that RTW obligations are no longer necessarily confined to organisations that hold a direct contractual relationship with their workers. The draft Code states that the Home Office will, in the first instance, seek to identify the employer who holds the direct contractual relationship with the worker. However, the extended liability provisions will operate as a mechanism to ensure responsibility in cases of illegal working where that employer cannot be identified, or where certain detailed prescribed requirements set out in the draft Code have not been met. Where the Home Office cannot identify the employer who holds the direct contractual relationship with the worker, or where the prescribed requirements have not been met, liability for payment of a civil penalty may be imposed on another person upstream in the chain of contracts in relation to the work or services.

This means an organisation seeking to rely upon a statutory excuse against extended liability for payment of a civil penalty in these circumstances must be able to demonstrate compliance with those prescribed requirements. This will require the organisation to retain sufficient evidence of the steps taken, and to provide evidence of that compliance on request.

The prescribed requirements include (in summary):

- **Contractual terms and conditions** – Where an organisation is under a contract to provide work or services to a third-party, and enters into a contract with another employer to provide or arrange for the delivery of the work or services, such as by providing workers to carry out the work, or where an online matching service matches a service provider to clients or customers and the service provider enters into a contract with that client or customer, then the organisation, employer or the online matching service must have in place a written statement (including specific terms listed in the draft Code) before the work or service commences.
- **Substitution controls** – Where a contractual arrangement between an employer and a worker permits substitution, the employer will only obtain a statutory excuse against liability for payment of a civil penalty where they have implemented specific processes listed in the draft Code, before the work or service commences.
- **Identity verification systems and processes** – To establish a statutory excuse against liability for payment of a civil penalty, an organisation in a chain of contracts, an online matching service or an employer in the case of a substitution clause must maintain proportionate systems and processes to ensure that the individual carrying out the work or services is the same individual on whom a RTW check has been conducted.

**Key insight** – Helpfully (as this is not entirely clear from the wording of the Act), the draft Code confirms that the RTW scheme will not apply to organisations that act solely as end-users, clients or customers of a service, or who commission or purchase work or services, where they are not under a contract to provide those work or services onwards to a third-party as part of a chain of contracts. In other words, where a party is not part of a chain supplying labour onwards to a third-party, but is instead the final recipient of the services, for example an organisation using agency workers or contractors purely for their own purposes, they will not be treated as responsible for carrying out RTW checks.

## What should employers do now?

From a practical perspective, these changes significantly increase the compliance burden on organisations using a wide range of working arrangements.

Between now and 1 October, organisations should:

- Review their existing RTW check processes, strengthen onboarding controls and ensure systems are in place so that RTW checks can be carried out on all new in-scope individuals from 1 October.
- Carry out internal audits to check if workers and self-employed individuals are correctly classified and identify any new in-scope individuals. However, the draft Code has entirely overlooked the issue that the line between worker and genuinely self-employed is extremely thin, and can depend on relatively minute facts, the existence or relevance of which could easily escape the average employer. Dozens of decided cases, including at the highest levels within the UK legal system, have failed to come up with a definitive test for what separates a worker from the genuinely self-employed. Expect more to do the same.
- Review contractual arrangements with labour providers and contractors to ensure that they properly allocate responsibility for RTW checks, include appropriate warranties and indemnities and that the prescribed requirements as set out in the draft Code are met, where required.
- Assess the robustness of their RTW record-keeping and audit processes.
- Provide training to relevant teams to ensure the expanded scope of the scheme is fully understood.
- Consider technological solutions (including a RTW digital verification service provider) to manage an increased volume of RTW checks.

While the draft Code has provided some much-needed clarity, it lacks detailed worked examples illustrating how these provisions will apply to the different types of in-scope contractual arrangement. This has been promised by the Home Office in the form of an updated version of the current [Employer's Guide to Right to Work Checks](#), but this may not be available until uncomfortably close to the 1 October implementation date. In its response to the [consultation on extending the right to scheme](#) published on 30 June 2026, the Home Office has said that "The government will work to ensure processes are clear, streamlined and robust with guidance for employers alongside additional support for employers implementing RTW checks as a result of the changes". Let's hope so.

If you would like to discuss how these changes may affect your business or have any questions relating to UK business immigration matters, please contact your usual team member at the firm, or Annabel Mace, partner and Head of UK Business Immigration.

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