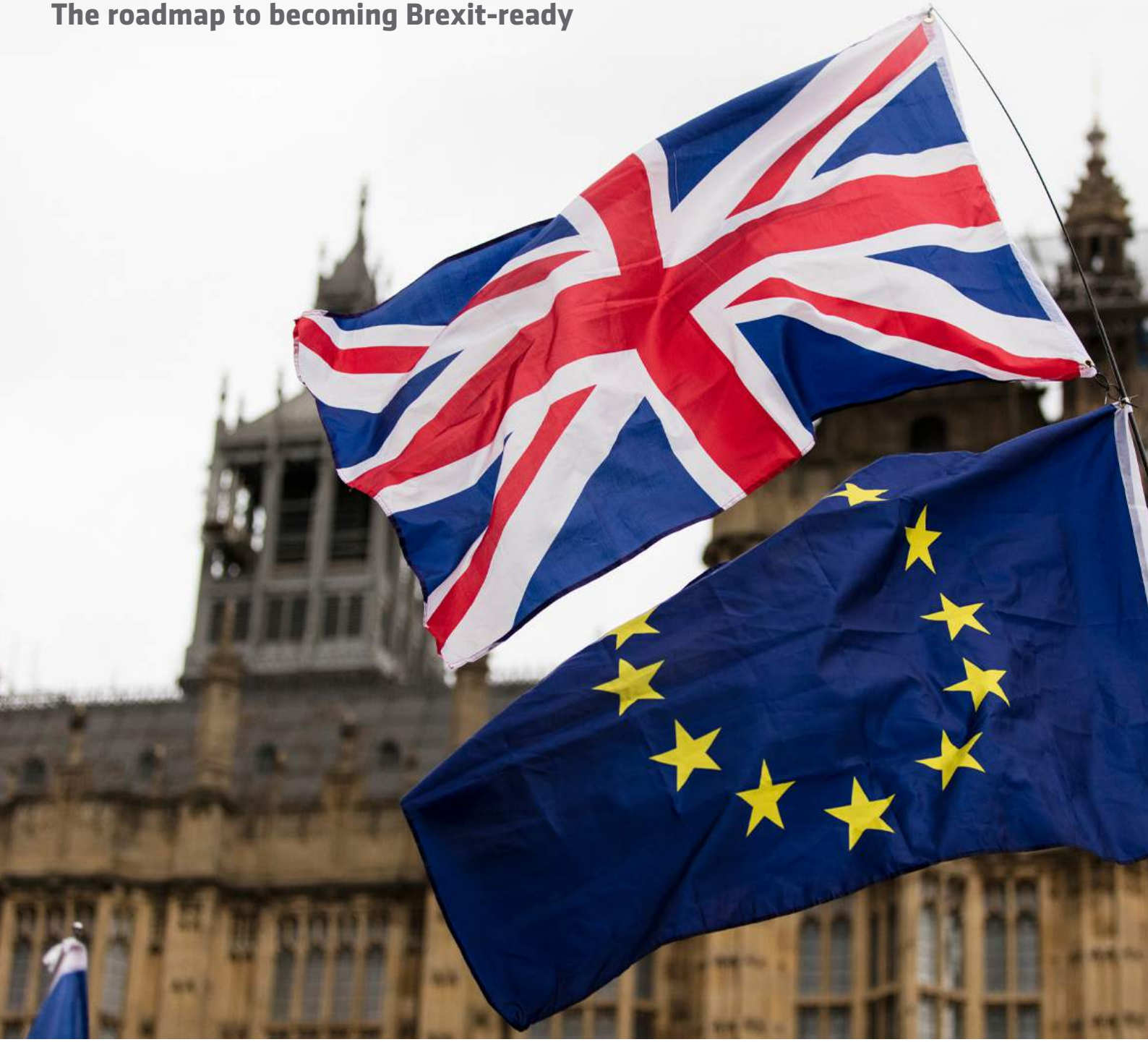
How to prepare your business for Brexit

The roadmap to becoming Brexit-ready



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It's time to get ready for **Brexit**

As talks between the UK and the EU continue, we are here to help your business prepare for potential outcomes. While much remains uncertain about the future trade relationship, now is the time to assess readiness and identify areas of opportunity.

This guide will talk you through Brexit and help you on your journey towards the new landscape.

When will Britain leave the EU?

Britain left the EU on 31 January 2020, however we are now in a transition phase.
This transition phase is a period agreed between the UK and EU in which the UK is no longer a member of the EU, but continues to be subject to its rules and remains part of the customs union and single market.

This will end on 31 December 2020, so businesses have until this date to ensure they're well prepared for any impact this might have on their business.

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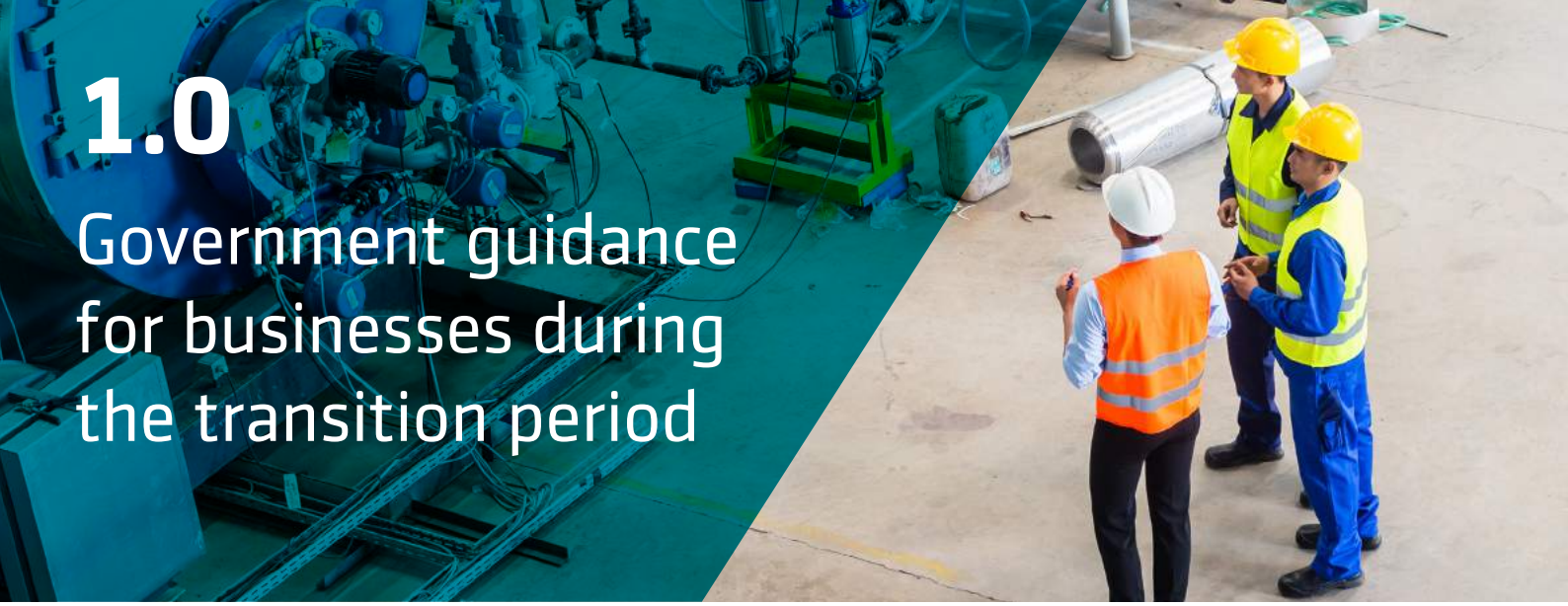


1.0 Government guidance for businesses during the transition period

The government has issued detailed and useful guidance to businesses on the transition under its Check, Change and Go campaign. This is the main resource for Brexit information as we await further developments in the negotiations between the UK and its EU counterparts on the future relationship.

There are three likely scenarios:

- that an agreement is reached and implemented to take affect from the end of the transition period 31 December 2020
- a no-deal scenario
- a partial deal is reached where some things are agreed but others are not

Meanwhile, during the transition period, EU law will continue to apply in the UK until 31st December 2020 and from 1 January 2021 much of the existing EU law will be retained in UK law.

Most small businesses will remain largely unaffected when the transition period ends, but there are certain groups of organisations that will have to act now to prepare for the transition, including those involved in the following activities:

- importing or exporting goods
- moving goods to and from Northern Ireland
- transport goods across EU borders
- if you employ anyone from Europe (including Switzerland, Norway, Iceland and Liechtenstein)
- if you rely on intellectual property rights
- transferring data to or from the European Economic Area (EEA)
- if you have a website with a .eu domain
- commercial contracts

What are the key messages for each of the groups mentioned?

Importing or exporting goods

From 1 January 2021 you will need an Economic Operators Registration and Identification number (EORI) starting with GB if want to continue to move goods between the UK and EEA countries. This unique ID code can be obtained rather quickly, usually within a week and failure to obtain an EORI might mean increased costs and delays. An EORI may not be necessary if you only provide services.

You also have to consider custom declarations and if you need a custom agent.

Moving goods to and from Northern Ireland (NI)

You may not need an EORI if you move goods between NI and Ireland but you will require an EORI number starting with XI from 1 January 2021 if you move goods between NI and non-EU countries, make a declaration in NI or get a customs decision in NI. Take note that you'll need to apply for an EORI starting with GB before you can apply for one starting with XI. If you already have a GB EORI, HMRC might send you a EORI starting with XI in mid-December.

Transport goods across EU borders

There are several changes affecting hauliers from 1 January 2021. This includes operating licences, permits, trailer and vehicle registration.

If you employ anyone from Europe

(including Switzerland, Norway, Iceland and Liechtenstein)

See chapter 4.

If you rely on intellectual property rights

There are a number of new rules that will dictate the position with EU and international intellectual property rights. For example, as things stand, comparable UK trade mark and design rights will be created for every registered EU trade mark or registered Community design at the end of the transition period under the terms of the Withdrawal Agreement. The aim is to create as little as possible administrative work for the right holders.

On 1 January 2021, protected international trade mark registrations designating the EU will no longer be valid in the UK. On this day these rights will be immediately and automatically replaced by UK rights. If you own an existing right, you do not need to do anything at this stage.

After 1 January 2021, you can apply for a European patent through the UK Intellectual Property Office or direct to the European Patent Office (EPO) to protect your patent in more than 30 countries in Europe, using the (non-EU) European Patent Convention (EPC).

As the EPO is not an EU agency, leaving the EU does not affect the current European patent system. Existing European patents covering the UK are also unaffected.

Data protection at the end of the transition period

The Government has already confirmed that the Data Protection Act 2018 which incorporates the General Data Protection Regulation (GDPR) will be retained in UK law after the transition period has ended. If your business has no contacts, transfers or customers in the EEA, you really only need to continue to comply with the UK data protection rules, which includes the GDPR.

If your business receives personal data from contacts in the EEA you may need to have safeguards in place, for example Standard Contractual Clauses (SCC's) between you and your EU counterparts. There will be no restrictions on transfers from the UK to the EEA.

UK businesses with a presence in the EEA, for example an office, branch or customers, will need to comply with both UK and EU data protection regulations at the end of the transition period. You may also need to designate a representative in the EEA.

The EU is yet to make a data adequacy assessment of the UK. If this result is positive, personal data can flow freely from the EU/EEA to the UK without any action by organisations.

If you have a website with a .eu domain

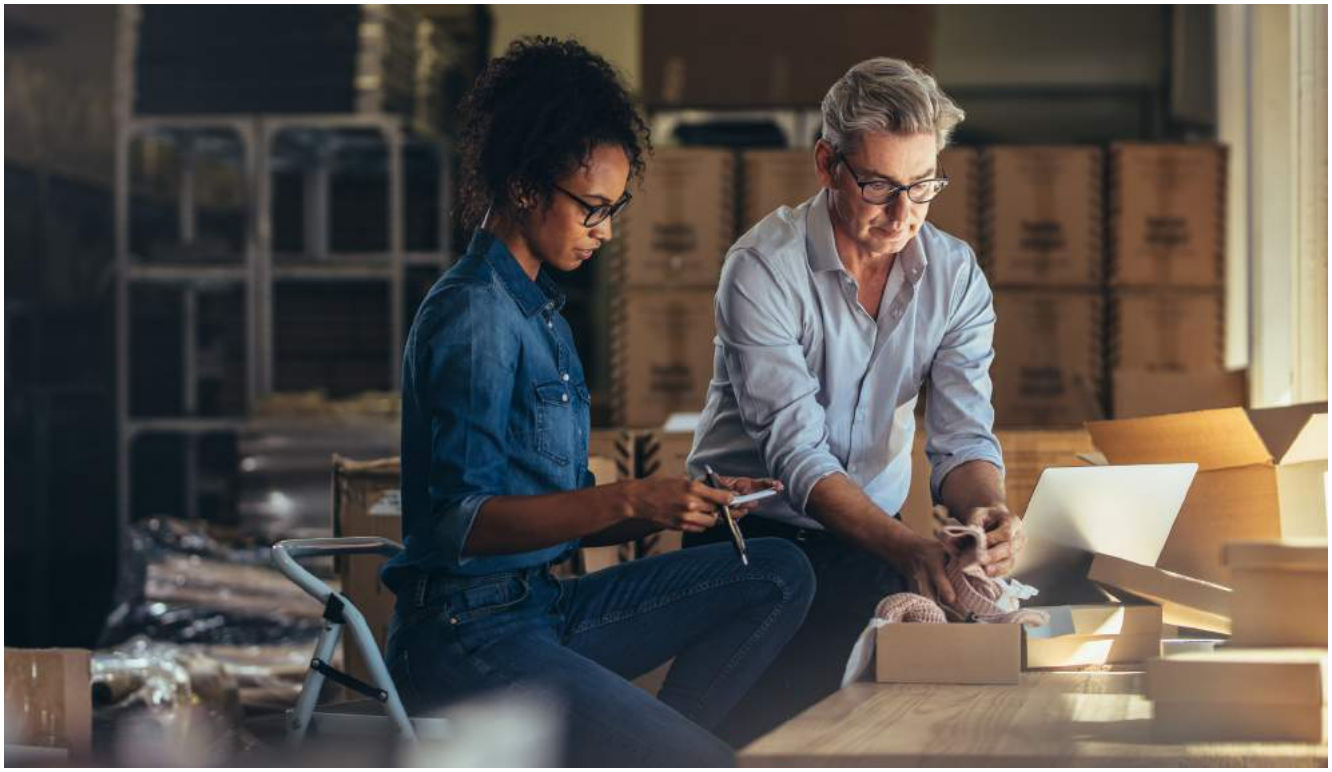
You'll need to check the criteria as you'll only be able to register or renew .eu domain names if you are:

- an EU/EEA citizen, independently of where you live
- not an EU/EEA citizen but resident in the EU/EEA
- an organisation, business or undertaking that is established in the EU/EEA

Commercial contracts

Generally speaking, commercial contracts will be largely unaffected by the question of EU membership. However, there will be situations where it'll be highly relevant, for example contracts with cross border elements.

In light of this, it's important to review existing contracts especially focusing on jurisdiction clauses in the event of disputes.



2.0

An employer's guide to preventing illegal working

On 31 December 2020, the UK will complete its transition period to leave the European Union (EU), with or without a trade deal agreement in place. A particular concern for many employers is how the end to EU free movement will affect carrying out Right to Work verification and the obligation to prevent illegal working.

What are the potential offences?

Illegal working is governed principally by two pieces of legislation: the Immigration, Asylum and Nationality Act 2006 ('the 2006 Act') and the Immigration Act 2016 ('the 2016 Act').

In particular, you will need to consider whether you require a sponsor licence to employ the foreign nationals in question.

Under section 15 of the 2006 Act it is a civil offence for an employer to employ in the UK a person aged 16 or over who is subject to immigration control if:

- That person has not been granted leave to enter or remain in the UK; or
- That person's leave to enter or remain in the UK is invalid, has ceased to have effect (whether by reason of curtailment, revocation, cancellation, passage of time or other reason) or is subject to a condition preventing him or her from accepting the employment.

Thus, the person must have a current and valid permission to be in the UK which does not prevent him or her from taking the job in question, or he or she must come into a category where such employment is otherwise allowed.

Section 21 of the 2006 Act created a criminal offence which was made more onerous by section 35 of the 2016 Act. It is a criminal offence for an employer to employ in the UK a person:

a. knowing that he or she is disqualified from employment by reason of the employee's immigration status; or
b. who is disqualified from employment by reason of immigration status and the employer has **reasonable cause to believe** that to be so.

The first offence above was already an offence under the 2006 Act; the 2016 Act added the second part.

To be disqualified in this context means:

- He or she has not been granted leave to enter or remain in the UK; or
- His or her leave to enter or remain in the UK is invalid, has ceased to have effect (whether by reason of curtailment, revocation, cancellation, passage of time or other reason) or is subject to a condition preventing him or her from accepting the employment.

The maximum sentence on conviction for this offence is five years, with an unlimited fine applying. The Home Office may also seek to deport anyone who is working illegally.

The 2016 Act also:

- created a new offence of illegal working, thereby enabling the earnings of illegal workers to be seized under the Proceeds of Crime Act 2002
- gave to a chief immigration officer the power to impose compliance sanctions and close businesses that continue to employ illegal workers
- increased the powers for immigration officers to enter business premises to search for documents.
- there is also now a requirement that public sector workers in customer-facing roles speak fluent English

These offences do not relate to engaging self-employed contractors. However, there is a risk that an immigration officer will not distinguish between the different statuses so it may be prudent to check the immigration status of everyone who works for your business.

These two offences replace the previous offence under section 8 of the Asylum and Immigration Act 1996 ('the 1996 Act').

Penalties for permitting illegal working

Prior to 29 February 2008, an employer was liable, on summary conviction, to pay a criminal fine in respect of each offence with which they were charged and convicted.

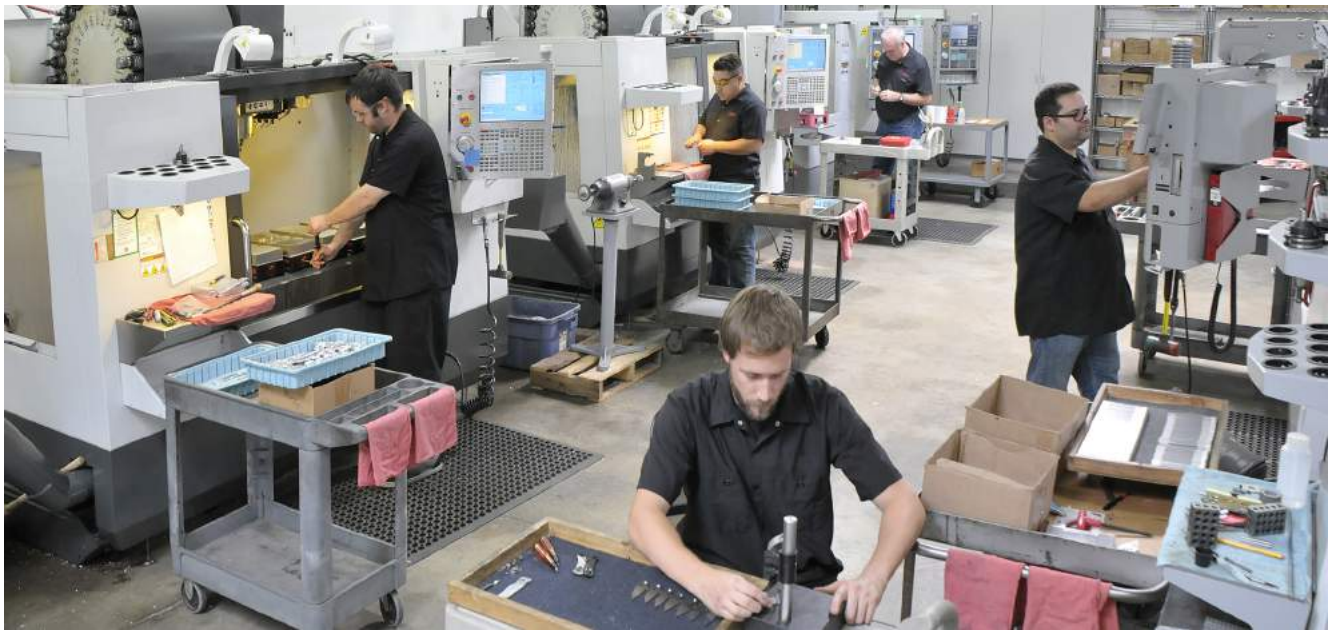
With effect from 29 February 2008, the following two-tier approach came into force via the 2006 Act and it applies to those employees who started employment on or after 29 February 2008:

- A civil penalty for employers that employ illegal workers as a result of negligent recruitment and employment practices. Negligent hiring occurs where the employer hires an illegal worker, but does not actually know the worker is illegal at the time.
- A criminal offence (as detailed above) for employers that are found to have knowingly employed illegal workers. On conviction on indictment, this offence carries a maximum five year prison sentence and/or an unlimited fine.

The maximum civil penalty is £20,000 per illegal worker, having increased from £10,000 with effect from 16 May 2014.

Civil penalties are intended to be proportionate to the level of non-compliant behaviour and therefore the amount of the civil penalty will be calculated on a sliding scale. Whether the maximum penalty will be applied will depend on whether the employer reported the suspected illegal worker to the Home Office's Employers' Helpline and his active co-operation with the Home Office's investigation. These two mitigating factors can each lead to a reduction of £5,000 in the penalty. Where the employer can show both of these mitigating factors and has not been found to be employing illegal workers within the previous three years, the penalty may be reduced to nil, and a warning notice issued instead, if he can also show he has effective document checking practices in place.

There is also a fast payment option i.e. a 30% reduction in the civil penalty for payment in full within 21 days of the penalty notice, but note that this option is not available to employers who have been found to be employing illegal workers within the previous three years



The employer's statutory excuse

Section 15(3) of the 2006 Act provides a statutory excuse for an employer against liability for payment of the civil penalty where he can show that, before the employment began, he carried out various prescribed document checks in order to verify the prospective employee's status. the Immigration Act 2016 ('the 2016 Act').

However, the excuse is not available if the employer knew that the person was not entitled to work in the UK when he or she was taken on. This is a criminal offence under section 21 of the 2006 Act and, as stated above, conviction under this offence will carry the potential of an unlimited fine and/or prison sentence of up to two years.

The prescribed document checks should be carried out in respect of all prospective employees and should take place **before** the person begins working.

These arrangements for establishing the statutory excuse only apply to those employees who started employment on or after 29 February 2008. An employer will still be liable for criminal prosecution under the 1996 Act where illegal workers were employed between 27 January 1997 and 28 February 2008 in circumstances where the employer did not establish the statutory defence at the point of recruitment. Equally, if the employer established the statutory defence under section 8 of the 1996 Act for employees taken on before 29 February 2008, this will be retained for the duration of that person's employment.

Documents are on one of two lists. Documents provided from **List A** establish that the person has an ongoing and permanent entitlement to work in the UK. If an individual is not subject to immigration control, or has no restrictions on their stay in the UK, they should be able to produce a document or specified combination of documents from List A. Original documents on this list will establish the excuse for the duration of the employee's employment.

Where an individual has restrictions on their entitlement to work in the UK i.e. they have limited leave to enter or remain in the UK, they will need to produce a document or specified combination of documents from List B. List B is divided into 'Part 1' and 'Part 2' documents. Part 1 documents mean that the employer's time-limited statutory excuse lasts until the expiry date of the employee's permission to be in the UK and do the work in question, as evidenced in the document produced for the right to work check. Part 2 documents, which all involve obtaining a Positive Verification Notice from the Home Office Employer Checking Service, mean that the employer's time-limited statutory excuse lasts for six months.

The employer must in all cases see the original of any document, take and retain a photocopy and be satisfied (having regard to any photographs or dates of birth on the document) that it relates to the individual in question.

References to documentation issued by the Home Office include documentation issued by UK Visas and Immigration (which is part of the Home Office) and also documentation that was issued by the former UK Border Agency.

List A – Acceptable documents which provide a continuous statutory excuse

Any one of the original documents included below in List A (or the relevant combination) will provide an employer with a continuous statutory excuse for the whole duration of the employee's employment if he checks and copies them and follows certain steps:

1	A passport showing that the holder, or a person named in the passport as the child of the holder, is a British citizen or a citizen of the UK and Colonies having the right of abode in the UK.
2	A passport or a national identity card showing that the holder, or a person named in the passport as the child of the holder, is a national of a European Economic Area country or Switzerland.
3	A registration certificate or document certifying permanent residence issued by the Home Office to a national of a European Economic Area country or Switzerland.
4	A permanent residence card issued by the Home Office to the family member of a national of a European Economic Area country or Switzerland (from 6 April 2015, permanent residence cards are now issued in biometric format).
5	A **current** biometric immigration document (Biometric Residence Permit) issued by the Home Office to the holder which indicates that the person named in it is allowed to stay indefinitely in the UK, or has no time limit on their stay in the UK.
6	A **current** passport endorsed to show that the holder is exempt from immigration control, is allowed to stay indefinitely in the UK, has the right of abode in the UK, or has no time limit on their stay in the UK.
7	A **current** immigration status document issued by the Home Office to the holder with an endorsement indicating that the person named in it is allowed to stay indefinitely in the UK or has no time limit on their stay in the UK, **when produced in combination with** an official document giving the person's permanent National Insurance Number and their name issued by a Government agency or a previous employer.
8	Either a short form or a full birth certificate issued in the UK which includes the name(s) of at least one of the holder's parents, **when produced in combination with** an official document giving the person's permanent National Insurance Number and their name issued by a Government agency or a previous employer.
9	Either a short form or a full adoption certificate issued in the UK which includes the name(s) of at least one of the holder's adoptive parents, **when produced in combination with** an official document giving the person's permanent National Insurance Number and their name issued by a Government Agency or a previous employer.
10	A birth certificate issued in the Channel Islands, the Isle of Man or Ireland, **when produced in combination with** an official document giving the person's permanent National Insurance Number and their name issued by a Government agency or a previous employer.
11	An adoption certificate issued in the Channel Islands, the Isle of Man or Ireland, **when produced in combination with** an official document giving the person's permanent National Insurance Number and their name issued by a Government agency or a previous employer.
12	A certificate of registration or naturalisation as a British Citizen, **when produced in combination with** an official document giving the person's permanent National Insurance Number and their name issued by a Government agency or a previous employer.

Once the employer has checked one of (or the relevant combination of) these documents from the prospective employee, there is no need to ask for any further documents contained in List B.

In addition, as the statutory excuse lasts for the whole duration of the employee's employment, there is no need to repeat the right to work check.

List B – Acceptable documents which provide a time-limited statutory excuse

List B is divided into Parts 1 and 2. Any one of the original documents included below in List B (or the relevant combination) will provide an employer with a time-limited statutory excuse if he checks and copies them and follows certain steps:

List B, Part 1	
1	A **current** passport endorsed to show that the holder is allowed to stay in the UK and is allowed to do the type of work in question.
2	A **current** biometric immigration document (Biometric Residence Permit) issued by the Home Office to the holder which indicates that the person named in it is allowed to stay in the UK and is allowed to do the work in question.
3	A **current** residence card (including an accession residence card or a derivative residence card) issued by the Home Office to a non-European Economic Area national who is a family member of a national of a European Economic Area country or Switzerland or who has a derivative right of residence (from 6 April 2015, residence cards and derivative residence cards are now issued in biometric format).
4	A **current** immigration status document containing a photograph issued by the Home Office to the holder with an endorsement indicating that the person named in it is allowed to stay in the UK, and is allowed to do the work in question, **when produced in combination with** an official document giving the person's permanent National Insurance Number and their name issued by a Government agency or a previous employer.

If the prospective employee is able to produce a current document in List B, Part 1, the employer should make a follow-up check using this document. The time-limited statutory excuse will continue for as long as the employee has permission to be in the UK and do the work in question, as evidenced by the document, or combination of documents, they produced for the right to work check.

If, however, at the point that permission expires, the employer is reasonably satisfied that the employee has an outstanding application or appeal or administrative review pending to vary or extend their leave in the UK, the time-limited statutory excuse will continue from the expiry date of the employee's permission for a further period of up to 28 days. This is to enable the employer to verify whether the employee has permission to continue working for him. During this 28 day period the employer must contact the Home Office Employer Checking Service and receive a Positive Verification Notice confirming that the employee continues to have the right to undertake the work in question.

In the event that the employer receives a Positive Verification Notice, the statutory excuse will last for a further six months from the date specified in the Notice. The employer will then need to make a further check upon its expiry. However, in the event that the employer receives a Negative Verification Notice, the statutory excuse will be terminated.

List B, Part 2	
1	A certificate of application issued by the Home Office, under regulation 17(3) or 18A(2) of the Immigration (European Economic Area) Regulations 2006, to a family member of a national of a European Economic Area country or Switzerland stating that the holder is permitted to take employment which is less than six months old.
2	An application registration card issued by the Home Office stating that the holder is permitted to take the employment in question.

If the prospective employee holds one of the documents in List B, Part 2, or is unable to present an acceptable document because they have an outstanding application with the Home Office or an appeal or administrative review pending in respect of their leave, the employer must contact the Home Office Employer Checking Service and receive a Positive Verification Notice which indicates that the person named in it is allowed to stay in the UK and is allowed to do the work in question. The time-limited statutory excuse will last for six months from the date specified in the Positive Verification Notice. The employer will then need to make a further follow-up check upon its expiry.

If follow-up checks are not carried out, the employer may be subject to a civil penalty if the employee is found to be working illegally. The follow-up checks only enable an employer to retain his original excuse. This is because the excuse cannot be established after employment has started.

Biometric Residence Permits

Biometric Residence Permits (BRPs) are immigration documents issued to migrants that have been granted permission to enter or remain in the UK for more than six months.

In the case of migrants overseas who are granted permission to enter the UK for more than six months, they are now issued with a vignette (sticker) in their passport which will be valid for 30 days to enable them to travel to the UK. Following their arrival in the UK, they have 10 days to collect their BRP from the Post Office branch detailed in their decision letter. For most migrants granted permission to be in the UK, the BRP is the document that proves they have permission to work in the UK.

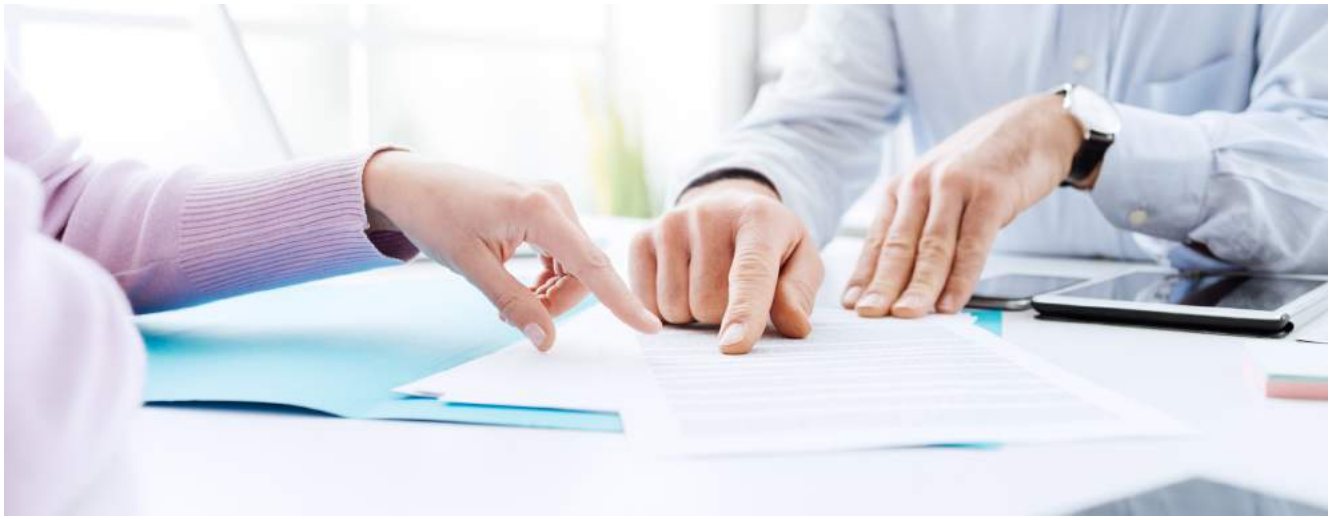
BRPs are credit-card sized immigration documents that contain a highly secure embedded chip. They contain the holder's unique biometric identifiers (fingerprints, digital photo) within the chip, display a photo and biographical information on the face of the document and details of entitlements, such as access to work. BRPs therefore provide employers with a secure and simple means to conduct a right to work check.

Migrants permitted to work in the UK are encouraged to collect their BRP before they start work. However, if they need to start work before collecting their BRP, they will be able to evidence their right to work by producing the short validity vignette in their passport which they used to travel to the UK. Employers will then need to conduct a full right to work check on the basis of this vignette, which must still be valid at the time of check. However, as this expires 30 days from issue, employers will have to repeat the check using the BRP (before the expiry of the vignette) for the statutory excuse to continue.

The current Home Office guidance note on checking BRPs suggests a number of further additional checks employers should carry out to determine whether or not an employee's BRP is genuine. The additional checks are intended to be easily added to those already required to be undertaken by employers and does not replace them. On presentation of a BRP, if the employer carries out the additional checks it is likely to demonstrate the employer's commitment to the prevention of illegal working and provide additional protection for their business.

The guidance note suggests that when an employee or potential employee presents a BRP, in addition to general checks the employer should also:

- Examine the permit – to check if it is clean and in good condition.
- Check the permit number – which is displayed on the front of the permit in the top right hand corner. The number should begin with two letters followed by seven numbers. The number should not be raised.
- Check the holder's image – this should always be in grey-scale. Employers should check the photograph to ensure that it is consistent the appearance of the individual.
- Check the tactile feature (on the back of the BRP) – the back of the BRP should have a raised design, which incorporates the four national flowers of the UK. This can be seen by shining a light across the permit and/or by running a finger over the design.
- Feel the permit – it should be thicker than a photo card driving licence, it will make a distinctive sound when flicked and should not be folded or bent.
- Check the biographical details – check that the name, date of birth and photographs are consistent with the individual present; and
- Check the immigration conditions – which are shown on the front and back of the permit. Common conditions confirm the number of hours an individual is permitted to work or that they must report to the police.



Taking the right steps

To be compliant with the rules, employers must ensure they take the following steps:

Step one

Ask all prospective employees to provide:

- One of the original documents, or the relevant combination, given in List A; OR
- One of the original documents, or the relevant combination, given in List B.

Step two

the prospective employee and retain a record of the date on which the right to work check was made. This date may be written on the document copy as follows: 'the date on which this right to work check was made: [insert date]'. In carrying out the check you should:

- Check any photographs, where available, to ensure that the employer is satisfied they are of the prospective employee.
- Check the dates of birth listed so that the employer is satisfied these are consistent with the appearance of the prospective employee.
- Check that the expiry dates of any limited leave to enter or remain in the UK have not been passed.
- Check any UK Government stamps or endorsements to see if the prospective employee is able to do the type of work that the employer is offering (for students who have limited permission to work during term times, the employer must also obtain and retain details of their academic term and vacation dates covering the duration of their period of study in the UK for which they will be employed).
- Be satisfied that the documents are genuine, have not been tampered with and belong to the holder.
- The employer must check the documents in the presence of the holder (either in person or via a live video link).

If the prospective employee gives the employer two documents that have different names, the employer should ask for a further document to explain the reason for this. The further document could be a marriage certificate, divorce decree, deed poll, adoption certificate or statutory declaration. Supporting documents should also be copied and the copy retained.

Step three

The employer should take and retain a clear photocopy (or scan in a format which cannot be altered, such as a jpeg or pdf document) of the relevant document(s).

In the case of a passport, employers should copy the following:

- Any pages that give the prospective employee's personal details, their nationality, photograph, date of birth, signature, the date of expiry, leave expiry date and biometric details.
- Any pages containing information indicating the holder has an entitlement to enter or remain in the UK and undertake the work in question.

All other documents should be copied in their entirety, including both sides of a Biometric Residence Permit.

Employers should ensure they keep a record of every document copied. Copies of documentation should be retained securely and in accordance with data protection legislation for the duration of the employee's employment and for two years after employment has ceased. That way, the Home Office will be able to examine the employer's right to the statutory excuse if they detect an employee is working illegally.

It is up to the prospective employee to demonstrate that he or she is permitted to do the work being offered. If the prospective employee is not permitted to work, the employer is entitled to refuse employment to that person.

Employers who acquire staff as a result of a TUPE transfer are provided with a grace period of 60 days to undertake the appropriate documents checks following the date of transfer.

Home Office Employer Checking Service

Employers may be presented with documents that require verification by the Home Office Employer Checking Service to establish the statutory excuse.

The service is delivered via a process where the employer is required to complete an online interactive form to enable the Home Office to verify any entitlement to work. For all checks through the Employer Checking Service, it is the employer's responsibility to inform the prospective employee that they may undertake a check on them with the Home Office. To establish or retain the statutory excuse, the records and documents relating to the check should be retained for examination and submitted to officials upon request.

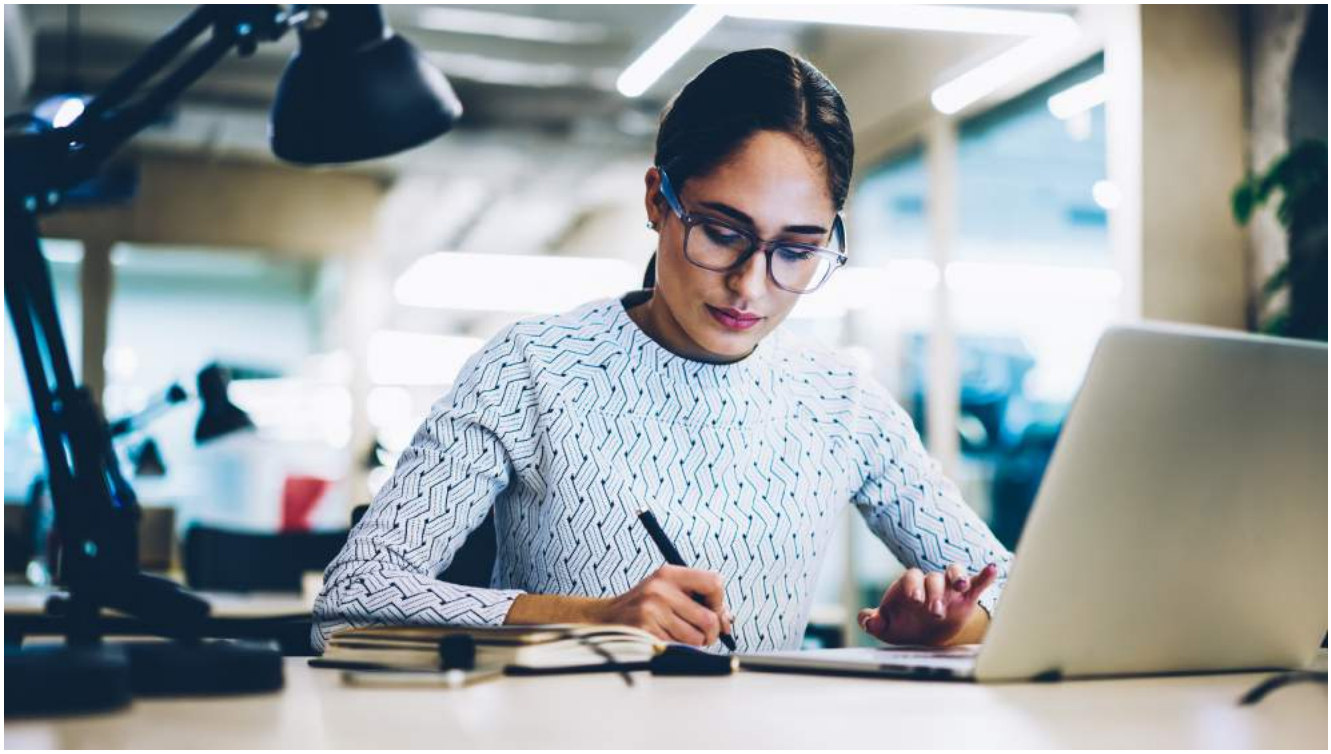
Employers are able to solely rely on the online Employer Checking Service to demonstrate compliance with illegal working legislation.

Avoiding allegations of race discrimination

In complying with their statutory obligations, employers may run the risk of unlawful race discrimination. Therefore, employers need to take steps to ensure they do not act in a discriminatory fashion when complying with their obligations to employ only workers who are entitled to work in the UK. It is important to remember that the majority of people from minority ethnic groups who live in the UK are British citizens.

The safest way for employers to ensure that they do not discriminate in their recruitment practices and procedures is to treat all job applicants in exactly the same way and make right to work document checks of all prospective employees, even if they claim to or appear to be British.

Employers who operate discriminatory recruitment processes risk a claim being made for unlawful race discrimination under the Equality Act 2010. In this case, the compensation that can be awarded is unlimited.



Right to Work Checks for nationals from the European Economic Area (EEA) and Switzerland

The UK left the EU on 31 January 2020. Most nationals from the EEA countries and Switzerland can still enter and work in the UK without any restrictions following the UK's departure from the EU until the end of the transition period on 31 December 2020.

The same is also the case for their immediate family members. EEA and Swiss nationals who arrived in the UK before the end of the transition period (31 December 2020) have until 30 June 2021 to apply for either settled or pre-settled status, which will give them the right to work in the UK.

EEA and Swiss nationals entering the UK from 1 January 2021 will not be able to apply for settled or pre-settled status. They will require a visa to be able to work in the UK under the new immigration system which applies from 1 January 2021. EEA nationals and Swiss nationals will usually be able to produce either a national passport or a national identity card and can continue to rely on these until 30 June 2021 to prove their right to work in the UK. EEA nationals, Swiss nationals and their family members will continue to be able to use the documents listed in this section as proof of their right to live and work in the UK until 30 June 2021 due to the 6-month grace period that remains in place from the end of the transition period following the UK's departure from the EU.

For EEA nationals and Swiss nationals that were recruited prior to 30 June 2021, there is no requirement to carry out any further right to work checks and employers may continue to rely on the existing right to work checks as evidence of their right to work in the UK for the duration of their employment.

Until 30 June 2021 these individuals can prove their right to work in the following ways:

- EU, EEA or Swiss citizens can use their passport or national identity card
- non-EU, EEA or Swiss citizen family members can use an immigration status document listed in List A, above
- EU, EEA and Swiss citizens and their family members can use the online right to work checking service

If the individual uses the online checking service this will generate a share code. The employer must then use the employers' online service to check their right to work using this share code:
https://www.gov.uk/view-right-to-work

Home Office guidance states that, as employers have a duty not to discriminate against EU, EEA or Swiss citizens, employers cannot require those individuals to provide details of their immigration status under the EU Settlement Scheme until after 30 June 2021.

From 1 July 2021, in respect of any new recruitment from that date (this does not apply to existing EEA and Swiss employees employed before that date) employers will be under an obligation to check that all EEA and Swiss new recruits, as with other recruits from overseas, have a valid UK immigration status under the new immigration regime: a valid passport or national identity card will no longer be sufficient evidence to provide a statutory excuse. The EEA includes EU countries and also Iceland, Liechtenstein and Norway. The following countries are part of the EEA and fall within these rules:

Austria	Belgium	Cyprus	Denmark	Finland	Lithuania
France	Germany	Greece	Iceland	Ireland	Estonia
Italy	Liechtenstein	Luxembourg	Malta	Netherlands	Hungary
Norway	Portugal	Spain	Sweden	Poland	Bulgaria
Czech Republic	Slovakia	Slovenia	Romania	Latvia	

In addition, nationals from Switzerland also have the same free movement and employment rights as EEA nationals and so fall within the above rules. This is because although Switzerland is not an EU or EEA member it is part of the single market.

Bulgaria and Romania

Bulgaria and Romania joined the EU on 1 January 2007 but nationals of these two countries still needed to obtain authorisation to work in the UK until 31 December 2013 in the form of an Accession worker card. These restrictions were lifted with effect from 1 January 2014 and Bulgarian and Romanian nationals were able from that date to legally work in the UK on the same basis as nationals from any other EEA country.

Croatia

Croatia joined the EU on 1 July 2013. The transitional provisions restricting the free movement rights of Croatian workers ended on 30 June 2018, meaning that Croatian nationals are no longer required to obtain an accession worker authorisation document from the Home Office and employers are no longer required to check for these documents.

Irish Nationals

Under the Common Travel Area arrangements Irish Nationals do not need permission to enter or remain in the UK, including a visa, any form of residence permit or employment permit.

This status will continue once free movement and the transition period following the UK's departure from the EU ends on 31 December 2020.

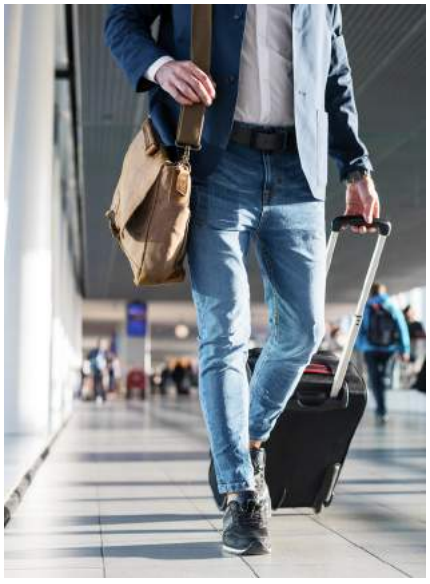
New immigration system from 1 January 2021

A new immigration system will apply to individuals arriving in the UK for the first time from 1 January 2021. EEA citizens moving to the UK for the first time from this date to work will need to obtain a visa in advance:

https://www.gov.uk/guidance/new-immigration-system-what-you-need-to-know

https://www.gov.uk/guidance/recruiting-people-from-outside-the-uk-from-1-january-2021

From 2021 there will not be a general route for employers to recruit from outside the UK for jobs offering a salary below £20,480 or jobs at a skill level below RQF3 (equivalent to an 'A' level). EEA citizens applying for a skilled worker visa will need to show they have a job offer from an approved employer sponsor to be able to apply for a skilled work visa. Employers who are planning to sponsor workers from outside the UK from 2021 will need to apply for a sponsorship licence in advance:
https://www.gov.uk/government/publications/uk-points-based-immigration-system-employer-information



3.0

Brexit and VAT: What's changing?

As the Brexit transition period comes to an end, many businesses still feel uncertain about how the myriad of changes to VAT and customs regulations will impact their UK VAT accounting and compliance. We've set out below some of the issues which businesses need to address.

Importers: EU to Great Britain and Rest of World (RoW) into the United Kingdom

A series of planning points and considerations arise concerning UK businesses importing from the EU into GB:

- Different rules for consignments under £135 (see next section).
- Obtain a GB economic operator registration and identification (EORI) number to clear goods through UK customs when importing goods into GB from the EU and RoW. This number identifies the business at UK customs and is being issued automatically to any businesses known to be trading with the EU before 2018. However, the onus is on the taxpayer to obtain an EORI number if needed.
- Use a freight forwarder/agent, or process imports yourself (a government fund is currently available to help train staff and update software).
- Consider use of simplified import procedures to ease the burden of new and additional import declarations. It may also be possible to defer the more detailed declarations for imports from the EU until July 2021.
- Determine the duty applicable on the goods imported and whether you can use other import reliefs.
- Use postponed import VAT accounting (compulsory if you use certain simplified import procedures) and report imports in box 7 of the VAT return and the relevant VAT in boxes 1 and 4 (only boxes 4 and 7 if the business chooses not to use postponed accounting).
- Apply for deferment account to ease release of goods from customs (useful for customs duty, even if also using postponed accounting for the VAT) unless you are using an agent's deferment account.
- Ensure contracts involving goods moving between the UK and other countries are clear as to who will be responsible for customs duty and import VAT.
- There are currently no changes to rules for postal imports greater than £135 consignments which are dealt with via the Royal Mail.

Low value imports – under £135 per consignment

Low value consignment VAT relief will not apply to goods from the EU but consignments under £135 can still be imported duty-free.

For consignments under £135, there are special rules depending on location of goods at time of sale and whether sold via an Online Market Place (OMP). These rules do not apply to excise goods, consignments from Guernsey and Jersey under IVAS, gifts and non-business sales.

The £135 is per consignment, not item, and is based on the intrinsic value of the goods (excl. packing, post and other taxes).

For goods outside the UK at point of sale	
Buyer gives its UK VAT# to OMP/Seller	**Buyer** accounts for and pays UK VAT under reverse charge (boxes tbc but probably 1, 4 and 7).
Direct from Seller to non-VAT registered buyer	**Seller** charges and accounts for UK VAT on its UK VAT return (boxes 1 and 6) although avoided if Seller able to prepay. If not already UK VAT registered this may make Seller required to be, especially a non-UK based Seller who gets no VAT registration threshold. Seller must issue paper or digital VAT invoice to customer which must accompany the goods.
Sold via OMP to non-VAT registered buyer	**OMP** charges and accounts for UK VAT on the sale (boxes 1 and 6). OMP must issue paper or digital VAT invoice to customer.

For goods already in the UK at point of sale	
UK based Seller to all customer types	Current rules. Sales contribute to UK business' UK VAT registration threshold and, once registered, **Seller** charges/accounts for VAT accordingly (boxes 1 and 6).
Non-UK Seller to VAT registered buyer (direct and via OMP)	Current rules – **Seller** registers and accounts for UK VAT on sale of goods already in the UK.
Direct from overseas Seller to non-VAT registered buyer	**Seller** charges and accounts for UK VAT on its UK VAT return (boxes 1 and 6). If not already UK VAT registered this may make Seller required to be, especially a non-UK based Seller who gets no VAT registration threshold. Seller must issue paper or digital VAT invoice to customer which must accompany the goods.
From overseas Seller via OMP to non-VAT registered buyer	**OMP** declares and accounts for the UK VAT to buyer **Seller** (who should have suffered import VAT) makes zero-rated sale to OMP

Exporters: GB to EU and UK to RoW

Likewise, we can outline some planning points for UK businesses exporting:

	Obtain a GB EORI number to clear goods through UK customs when exporting goods from GB to the EU (already required for UK businesses exporting to RoW).
	Check whether any labelling, licenses or excise requirements apply for the type of goods concerned
	For export declarations, the business should either: – use a third party (say a freight forwarder) to document the declarations; or – complete export declarations itself and register for the national export scheme
	Consider using CTC (EU common transit convention) if goods are being exported by transit through other EU countries.
	Ensure appropriate evidence obtained and held to meet export UK VAT zero-rating requirements.
	Establish with the customer who is responsible for the import into the destination country and the information they need (Incoterms are often used in contracts to make this clear).
	If selling to VAT-registered businesses in the EU, Incoterms making that customer responsible for the import would be simplest for the UK supplier.
	If the UK seller is responsible for the import into the destination country (especially likely for sales to consumers) it is likely the UK supplier will have VAT and customs duty obligations in the destination country and will need an EU EORI number (for the first EU country the supplier imports into post-Brexit). This will bring new compliance and (if over £150 consignments) duty costs for sellers to the EU consumer market. Some of this might be eased from 1 July 2021 when the EU expects to introduce a one-stop-shop for goods facility; this is similar to the MOSS for digital services and may reduce the number of EU VAT registrations required by UK businesses.

Goods into and out of Northern Ireland

Exactly how these will translate into customs and VAT rules between GB, NI, the EU and RoW is still being worked out (especially as there are still some differences between EU and UK interpretation) so guidance is being updated as things progress. Currently the UK is planning for the following:

Goods sold:	Reporting	Customs duty £	VAT £	Comments
NI to GB	VAT return only	None	Normal VAT	Anti-avoidance rules planned to ensure only 'normal' NI to GB trade avoids duty.
GB to NI	No GB export declarations. Digital import declaration in NI via the free Trader Support Service or HMRC systems.	Only for goods destined for, or 'at risk' of entering, the EU. If goods remain in UK, the duty will be refunded. Range of customs procedures available to.	Seller invoices and accounts for NI import VAT (and recoverable by buyer) in same way as normal UK to UK VAT.	Special rules for: – intra-VAT group movements/sales on GB – NI ferries/goods under a domestic reverse charge/ goods under special customs procedures/ goods sold by overseas sellers via OMPs.
NI to EU	Treated as EU to EU sales so follow the existing EU rules intra EC requirements for zero-rating, ECSL, Intrastat etc. using XI VAT number. No additional checks.			–
EU to NI				–
RoW to NI	EU tariffs apply to goods destined for, or 'at risk' of entering, the EU, otherwise same as rest of UK.		Normal rules for UK imports using XI EORI number.	–
NI to RoW	Normal rules for UK exports.		Normal rules for UK exports using XI EORI number.	–
GB to EU (transport via NI)	Unclear what declarations are required here, presumably digital import declaration into NI only (no GB export declaration and no IE import declaration).	Presumably EU customs duty will be payable under the GB Seller's import declaration as goods are destined for the EU.	Seller accounts for the NI import VAT in Box 1 of its VAT return, but zero-rate the export sale to the customer. Seller unable to recover this import VAT.	The VAT accounting seems out of kilter with how VAT is supposed to work as there appears to be sticking VAT. We await clarification from HMRC on this scenario.
EU to GB (transport via NI)	Unclear what declarations are required here, presumably GB import declaration by EU Seller.	Presumably UK customs duty will be payable under the EU Seller's GB import declaration.	EU Sellers must UK VAT register to invoice and account for UK VAT to GB customer (who will be able to recover in the normal way.	It is hoped there will be some kind of transit relief available for such movements to avoid additional customs duty and paperwork. To be confirmed.
NI to EU (transport via GB)	GB export declaration EU import declaration	Customs duty on import into EU for importer.	Import VAT in EU for importer.	
NI to GB (transport via IE)	Unclear. EU x-border deemed supply and/or IE export declaration GB import declaration	Customs duty on import into GB.	Potentially a deemed EU supply on NI to IE movement + IE VAT registration and import VAT in GB.	

Other matters

- For movement of own goods from GB to NI, there will be a deemed supply by the owner and (presumably) a digital declaration will be required using the owner's XI EORI number. The VAT on this deemed supply will be recoverable on the same VAT return if it is being used for fully taxable purposes. If there is a partial exemption restriction, HMRC are looking at a way to compensate for this by adjusting the original VAT recovery position for the item concerned.
- Goods entering NI from GB and RoW – additional checks may be required to ensure goods (e.g. chemicals, animals, medical, pesticides) conform to EU standards
- VAT Retail Export Scheme will still be available to retail outlets in NI
- Triangulation only applies for goods between EU and NI
- EU Margin Scheme still available for goods purchased in NI or the EU
- UK Margin Scheme only available for stock purchased and sold within GB
- Just one UK VAT return and VAT number but XI prefix used for NI to EU trade
- NI origin goods will benefit from UK trade deals, but possibly not EU trade deals (for goods sold to RoW)
- NI's requirement to meet EU standards for goods imported to NI – negative impact on UK <-> RoW trade agreements.
- Requirements for statistical reporting (EC Sales Lists and Intrastat) are expected to cease post-Brexit except for:
  - Supplies of goods between NI and the EU for which EU reporting requirements continue
  - Intrastat Arrivals until 31 December 2021
- UK businesses VAT registered in EU countries, or required to become so, but without an establishment in those countries, may need to appoint a fiscal representative in those countries post-Brexit if they haven't already done so. This can be expensive and it is advisable to make contact with EU VAT representatives as early as possible.
- For VAT number validation, the EU website for verifying the validity of EU VAT numbers (VIES) remains accessible; HMRC is working on a UK equivalent for UK VAT numbers.
- EU VAT Refund claims, for EU VAT incurred pre-Brexit by UK VAT registered businesses, can be made until 31 March 2021. For EU VAT incurred post-Brexit, EU VAT Refund claims can only be made by businesses with an establishment in Northern Ireland, businesses selling goods within or out of Northern Ireland, or businesses making acquisitions of goods into Northern Ireland or an EU country. Otherwise UK businesses may be able to claim under the 13th Directive; this is usually on paper forms via the specific tax authority concerned and will be subject to their rules on deadlines and what can/can't be recovered.

Grant funding

Three grants are available in respect of new customs declaration requirements for imports from/exports to the EU up to a maximum of €200k:

- training that helps your business to complete customs declarations and processes
- hiring new staff to help your business complete customs declarations
- IT improvements to help your business complete declarations more efficiently

Deferment account

This is needed if there will be customs and/or excise duty due on the items being imported and also for any import VAT (unless postponed accounting is to be used – see below). This can be done by the business itself or via a third-party freight forwarder or agent who uses its own deferment account to pays duty and/or VAT on behalf of the business at import, and then claws back these monies from the business after the event together with its fee. Without a deferment account, any duties and VAT will be payable immediately on import.

Whether there is duty to pay will depend on the nature of the goods, the tariff applicable to those goods and whether they benefit from any import duty reliefs.

If a business uses a freight forwarder, ensure they use the correct EORI and VAT number on all paperwork because this is a common cause of issues.

Postponed import VAT accounting

HMRC has also introduced postponed import VAT accounting from 1 January 2021. Under this, the importing business self-accounts for import VAT in box 1 of their VAT returns in a similar way to the current acquisition tax accounting. The business can then claim the recoverable amount of import VAT in box 4 of the same VAT return subject to the normal VAT recovery rules, meaning a cash-flow advantage compared to current import procedures.

You can use this postponed import VAT accounting if:

- the goods are for use in your business; and
- your VAT registration and/or EORI number is shown on the relevant customs declaration

If you are using certain simplified import declarations, you **must** use postponed accounting, but only for imports where the frontier declaration/entry into declarant records is 1 Jan 2021 onwards.

Services

Many rules will remain unchanged, but where the current rules make a distinction between EU and non-EU, there are likely to be changes as explored further below.

Financial and insurance services

Specified supplies are financial and insurance services which, although exempt, are treated as taxable for VAT recovery purposes when supplied to customers outside the EU. From 1 January 2021, specified supplies will include such sales to EU customers as well, thereby increasing VAT recovery for UK suppliers to the EU market.

Digital services and the Mini-One-Stop-Shop (MOSS)

The place of supply and taxation of these services will remain where the customer belongs and UK suppliers will no longer benefit from the £8,818 de minimis threshold. If the place of supply is within an EU country, the UK supplier will either be required to VAT register in that country, or will have to sign up to the non-union MOSS scheme as it will not be able to use the EU MOSS facility unless it has an establishment in the EU. To register for non-union MOSS, non-EU businesses must apply through one of the EU countries' tax authorities (which it cannot do until 1 January 2021); but must do by the 10th of the calendar month following that in which they start making such sales.

Tour operators margin scheme (TOMS)

Draft legislation, if enacted, will zero-rate sales of packages if the travel itself occurs outside the UK (whereas the current law only zero-rates travel outside the EU). This removes any risk of double taxation if the EU decides EU VAT is due on these packages.

It is unclear whether EU countries will consider UK-based tour operators to be making supplies within their countries and therefore require VAT registration there. In 2014, 19 of the 28 EU member states on the EU VAT expert committee considered that the TOMS only applies to EU established suppliers, meaning the normal place of supply rules apply to non-EU based suppliers. As yet, however, the EU has not pursued non-EU suppliers, but this could change after Brexit because UK tour operators are very active throughout the EU.

Special rules for services to non-EU consumers

Special rules apply for specific services (such as advisory, hire of non-transport goods, finance, data) supplied to non-EU consumers. Currently, such supplies to non-business EU and UK customers have a UK place of supply and are therefore subject to UK VAT, but for non-EU customers the place of supply is outside the EU and therefore no VAT chargeable. Post Brexit it is expected that the place of supply for such services to non-business customers will be VAT-free for all non-UK customers.

Use and enjoyment provision

For certain services, the normal rules for working out the place of supply are over-ridden where the normal rule gives the UK, but the services are used and enjoyed by the customer outside the EU (and vice versa). It is likely this will change to apply where the services are used and enjoyed by the customer outside the UK (and vice versa).

Freight transport supplied to business customers

Currently if a UK supplier supplies freight services to a UK business, there is no UK VAT if the transport occurs wholly outside the EU. It is unclear yet whether this will be extended to cases where the transport takes place wholly outside the UK as well.

Zero-rating of freight and intermediary services

Currently if certain freight or intermediary services, with a UK place of supply, are in connection with exports or underlying supplies that take place outside the EU, the freight and intermediary services are themselves zero-rated for UK VAT purposes. As the level of exports will increase post-Brexit more freight services will benefit from zero-rating. If the intermediary rule is extended to the EU, more of these services will also benefit from zero-rating.

Catering on-board transport and B2C freight transport

Supplies of catering on board ships, planes and trains, and supplies of freight transport B2C have special PoS rules currently if the journey is between two EU countries (e.g. UK and another EU country). When the UK is no longer part if the EU, these rules may need to change to reflect this.

Conclusion

It's clear that many businesses that trade with the EU or move goods via Northern Ireland need to think carefully about how Brexit impacts them. In particular, goods traders need to get freight forwarders and agents on board urgently if they do not wish to grapple with import compliance and use of HMRC systems themselves. The huge growth of online selling also brings many issues as sellers balance commercial considerations against the additional compliance implications of selling to the EU consumer market.

4.0

How will the EU Settlement Scheme affect employers?

Here, we summarise the EU settlement immigration scheme in place for European Economic Area (EEA) nationals, Swiss nationals and their family members who wish to continue living in the UK after 30 June 2021 and what it means for employers.

Who can apply and when?

The EU Settlement Scheme opened to all applicants on 30 March 2019 and is available to EU, EEA and Swiss citizens and their eligible family members who wish to stay in the UK after 30 June 2021. The EEA includes the EU countries and also Iceland, Liechtenstein and Norway.

EEA nationals and Swiss nationals who have lived in the UK for five years or who are applying for "pre-settled" status will need to:

- prove their identity
- show that they have a UK address
- declare they have no serious criminal convictions

This will enable them to gain the new immigration "settled status" or "pre-settled" status. Obtaining "settled status" is the immigration equivalent of having indefinite leave to remain in the UK.

Those who have not yet been resident in the UK for five years are eligible to apply for "pre-settled status", which they can then change to "settled status" free of charge once they've completed five years' continuous residence. The deadline for applying for settled or pre-settled is 30 June 2021.

Under the scheme, applicants will need to prove they have resided in the UK for a minimum period of five years, rather than needing to also evidence they have exercised "free movement" rights (such as demonstrating employment, self-employment or that they are actively seeking work). The test will be restricted to proving residence only. Those who already have permanent residence documentation or indefinite leave to remain do not need to apply, although they can do on a voluntary basis.

Once applicants have achieved "settled status", they can continue to live and work in the UK without any immigration restriction.

It is free to apply for the scheme.

Further details of the scheme is on the Government website.

The Government has also published an employer toolkit to help guide employers through the new EU settlement scheme. The toolkit includes a briefing pack for communicating key facts to employees, a leaflet with information for EU citizens in the UK, a leaflet with steps to apply for settled status and steps to apply.

Irish citizens

Irish citizens do not need to apply to the Scheme – Irish citizens will be able to continue coming to the UK to live and work as they can now.

What do employers need to do?

The current right to work checks (e.g. EU passport and/or EU national ID card) continue to apply until 30 June 2021. There is no legal requirement for employers to carry out further Right to Work checks for employees who are EEA or Swiss nationals prior to that date.

The current right to work checks (e.g. EU passport and/or EU national ID card) continue to apply until 30 June 2021. There is no legal requirement for employers to carry out further Right to Work checks for employees who are EEA or Swiss nationals prior to that date.

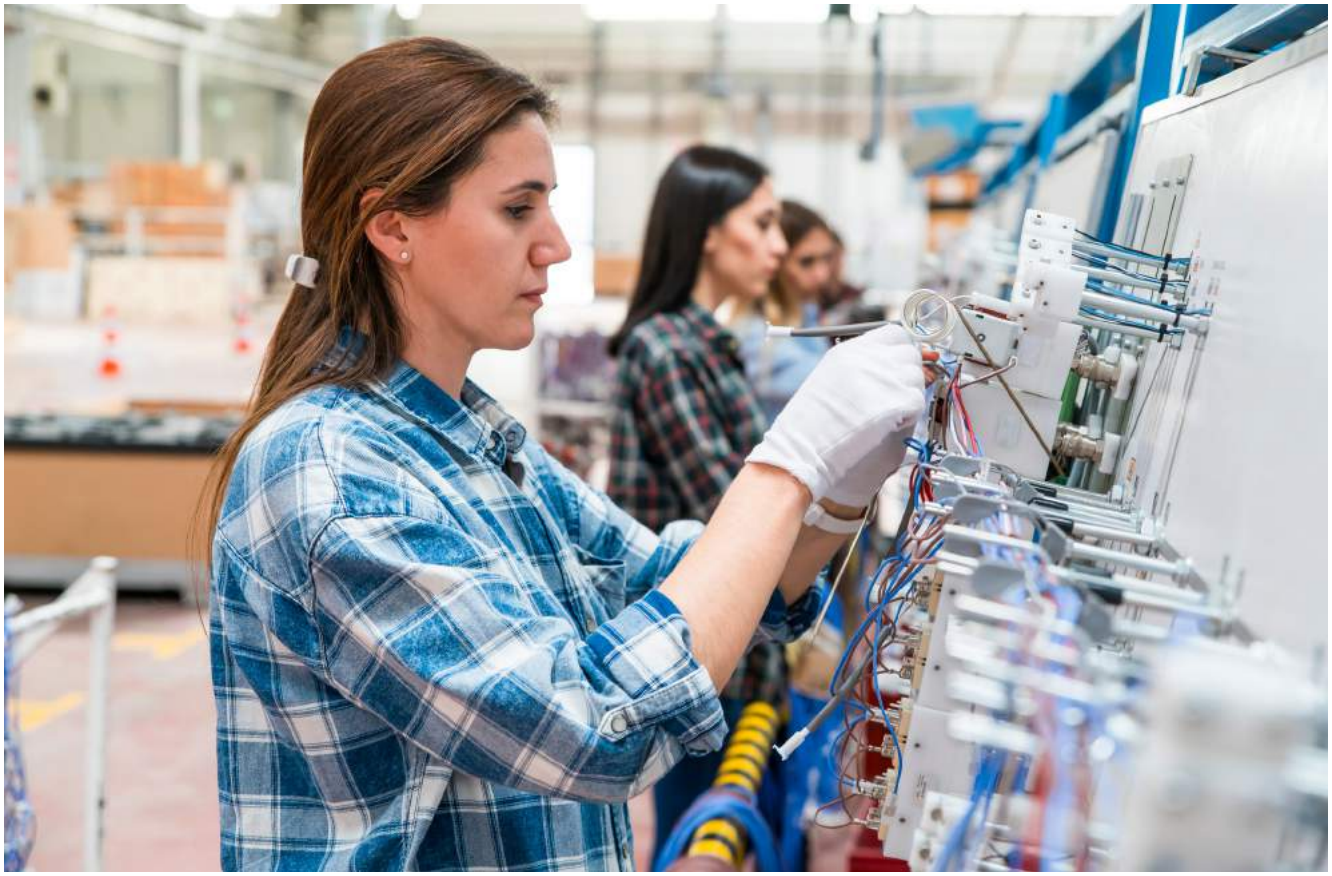
For EEA and Swiss nationals that were recruited prior to 30 June 2021, there is no requirement to carry out any further right to work checks and employers may continue to rely on the existing right to work checks (such as an EU passport or identify card) as evidence of their right to work in the UK for the duration of their employment, or, in the alternative, on confirmation of the employee's settled or pre-settled status under the EU settlement scheme.

For any recruitment from 1 July 2021, employers will be under an obligation to check that all EEA nationals and Swiss nationals, have a valid UK immigration status under the new immigration regime – a valid passport or national identity card will no longer be sufficient evidence to provide a statutory excuse.

Employers will not be required to distinguish between EU citizens who moved to the UK before or after the new, points-based immigration system that will be introduced in January 2021.

EEA citizens (which includes EU citizens), Swiss citizens and their family members will need to be living in the UK by 31 December 2020, in order to apply for settled or pre-settled status under the EU Settlement Scheme.

Whilst there is no legal requirement to do so, employers may wish to remind staff to apply for the scheme far in advance of the deadline for applications of 30 June 2021.



Conclusion

We hope you found this guide useful. Markel is committed to supporting brokers and their clients through Brexit and the uncertainty that it brings.

If you have any further questions relating to the information in this guide, Markel clients and policyholders have access to:

- a 24/7 legal advice line for Brexit-related employment issues
- Law Hub, an online legal portal, with a dedicated Brexit section
- an in-house VAT helpline for when you need assistance, or second opinion, with any Brexit-related VAT issue

To find out how to access these benefits, either contact your broker or visit **uk.markel.com/Brexit**.

All information accurate at the time of production December 2020.

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