




# Right to Work Checks from 01 July 2021

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	<i>Issued for use</i>	
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## 1. RIGHT TO WORK CHECKS

1.1 All employers in the UK have a responsibility to prevent illegal working. Aarsleff Ground Engineering Ltd (AGE) do this by conducting right to work checks before the Company employs someone, to make sure the individual is not disqualified from carrying out the work in question by reason of their immigration status.

1.2 By conducting the required checks in the correct way, AGE limits liability for a civil penalty in the event you are found to have employed someone who does not actually have the right to work in the UK.

## 2. WHAT CHANGED FROM 1 JULY 2021?

2.1 A new immigration system came into force on 1 July 2021. This is due to Brexit and the fact that freedom of movement to the UK for EEA nationals has stopped. This means that right to work checks for EEA nationals must be done in a different way from 1 July 2021. From this date, AGE no longer accept EEA passports or national identity cards as evidence of an individual's right to work in the UK.

## 3. WHEN DO AGE CONDUCT A RIGHT TO WORK CHECK?

3.1 The HR team conduct a right to work check before employing a person to ensure they are legally allowed to do the work in question. If an individual's right to work is time-limited, the HR team conducts a follow-up check shortly before it is due to come to an end. For more on follow up checks, see below.

## 4. WHO'S RIGHT TO WORK DO WE NEED TO CHECK?

4.1 AGE must carry out a right to work check on every single employee who is employed. We do not assume, on any basis, that someone has the right to work in the UK and checks are required of everyone in the same way.

## 5. HOW DO AGE CHECK RIGHT TO WORK FROM 1 JULY 2021?

5.1 There are two types of right to work checks:

- a manual document-based check and
- an online check

5.2 Either method can be used. AGE does not discriminate on the basis of whether or not an individual is able and/or willing to demonstrate their right to work using the online service. While AGE encourage use of the online check and support individuals in doing so (e.g. by providing access to hardware and the internet), AGE do not mandate online checks (except where it is the only evidence the individual has because they are on a digital status only route). If an individual does not wish to demonstrate their right to work using the online service, even if their immigration status or documentation is compatible with the service, the HR team will conduct the manual check.

## 6. Manual checks

6.1 The HR team complete all stages of the check to establish the statutory excuse.

### 6.1.1 Step 1: Obtain

Obtain original documents from either List A or List B (see below).

### 6.1.2 Step 2: Check

The HR team checks that the documents are genuine and that the person presenting them is the prospective employee or employee, the rightful holder and allowed to do the type of work you are offering. The HR team check that:

- a) photographs and dates of birth are consistent across documents and with the person's appearance in order to detect impersonation.
- b) expiry dates for permission to be in the UK have not passed.
- c) any work restrictions to determine if they are allowed to do the type of work on offer (for students who have limited permission to work during term-times, you must also obtain, copy and retain details of their academic term and vacation times covering the duration of their period of study in the UK for which they will be employed).
- d) the documents are genuine, have not been tampered with and belong to the holder; and
- e) the reasons for any difference in names across documents can be explained by providing evidence (e.g. original marriage certificate, divorce decree absolute, deed poll). These supporting documents must also be photocopied, and a copy retained.

### 6.1.3 Step 3: Copy

The HR team make clear copies of each document in a format which cannot manually be altered and retain the copy securely electronically. The HR team retain a secure record of the date on which the check was made.

The HR team copy and retain copies of:

1. Passports: any page with the document expiry date, the holder's nationality, date of birth, signature, leave expiry date, biometric details, photograph and any page containing information indicating the holder has an entitlement to enter or remain in the UK (visa or entry stamp) and undertake the work in question.
2. All other documents: the document in full, including both sides of a Biometric Residence Permit, Application Registration Card and a Residence Card (biometric format).

All copies of documents taken are kept securely for the duration of employment and for two years afterwards. The copy will then be securely destroyed.

## 7.0 Online checks

7.1 Currently, the online service supports checks in respect of those who hold:

- a biometric residence permit.
- a biometric residence card.
- status issued under the EU Settlement Scheme.
- status issued under the points-based immigration system.
- British National Overseas (BNO) visa; or
- Frontier workers permit.

Where an online check is not possible due to the individual not having an immigration status that can be checked online, a manual check will be conducted.

### Share code

To carry out the online check, the HR team need a share code which the individual provides. The code enables the HR team to see their Home Office right to work record when entered along with their date of birth.

Share codes expire 30 days after they have been issued. In the event of an expired code, the HR team will ask the individual to provide a new code if the one they originally provided has expired.

The HR team will access 'View a job applicant's right to work details' on GOV.UK and access the service using the employer part of the service in order to obtain a statutory excuse.

#### Steps

The HR team will complete all stages of the check to establish the statutory excuse.

#### **Step 1: Use the Home Office online service**

The individual may provide the share code to the business directly, or they may choose to send this via the service. If they choose to send it via the service, the HR team will receive an email from [right.to.work.service@notifications.service.gov.uk](mailto:right.to.work.service@notifications.service.gov.uk). To check the person's right to work details, the HR team will:

- access the service 'View a job applicant's right to work details' via GOV.UK to view the employer's part of the service.
- enter the 'share code' provided to you by the individual and
- enter their date of birth.

#### **Step 2: Check**

The HR team then checks that the photograph on the online right to work check is of the individual in question. This is done in the presence of the holder either in their physical presence or via live video link.

AGE only employs the person or continues to employ an existing employee (if conducting a follow-up check) if the online check confirms they have the right to work and are not subject to a condition preventing them from doing the work in question.

**Step 3: Retain evidence of the online check** The HR team retain evidence of the online right to work check. For online checks, this is the 'profile' page confirming the individual's right to work. This is the page that includes the individual's photo and date on which the check was conducted. The HR team will save it as a PDF and add it to the person's electronic personnel file. This is stored securely, for the duration of employment and for two years afterwards. The file will then be securely destroyed.

### **8.0 WHICH DOCUMENTS CAN DEMONSTRATE THE RIGHT TO WORK IN A MANUAL CHECK?**

8.1 The documents which can be accepted from a person to demonstrate their right to work are set out in two lists – List A and List B (see below).

#### 8.1.1 Checking validity

The HR team checks the validity of the documents in the presence of the holder with physical possession of the original documents. We do not rely on a document that has been seen only over live video link, nor a faxed or scanned document.

8.1.2 The responsibility for checking documents is held by the HR team.

#### 8.2 Keeping records

8.2.1 The HR team keep a record of every document checked. The copies are stored securely for the duration of the person's employment and for a further two years after they stop working for AGE on their electronic personnel file.

8.1.2 The HR team make a note of the date on which the check was conducted. This is done by making a dated declaration on the copy.

## 9.0 WHEN DO AGE CONDUCT FOLLOW UP CHECKS?

9.1 The HR team will recheck the right to work of those individuals who have time-limited permission to work in the UK. The HR team conduct a follow up check when the documents provided by the employee for the initial pre-employment check were from List B. List A documents do not need a follow up check.

9.2 The HR team complete the follow up check when their previous permission comes to an end. When conducting follow-up checks, the HR team use either the manual right to work check or the online right to work check where applicable, irrespective of the type of check conducted originally before employment commenced.

9.2.1 The frequency of these follow-up checks depends on whether the documents provided are from Group 1 or Group 2 of List B.

9.2.2 Group 1 documents provide a time-limited statutory excuse which expires when the person's permission to work expires. The HR team carry out a follow-up check shortly before permission which demonstrates their permission to work expires.

9.2.3 Group 2 documents provide a time-limited statutory excuse which expires six months from the date specified in your Positive Verification Notice. The HR team carry out a follow-up check shortly before this notice expires.

## 10.0 WHEN WOULD AGE NEED TO CONTACT THE HOME OFFICE TO VERIFY RIGHT TO WORK?

10.1 In certain circumstances, AGE will need to contact the Home Office's Employer Checking Service (ECS) to establish a statutory excuse. It is expected that, in most cases, AGE will be able to conduct a manual or online check. However, you should contact the ECS when:

1. We are presented with a Certificate of Application which is less than six months old, and which indicates that work is permitted; or
2. We are presented with an Application Registration Card stating that the holder is permitted to undertake the work in question. If the card contains an expiry date, this date must not have expired. Any work will be restricted to employment in a shortage occupation; or
3. We are satisfied that we have not been provided with any acceptable documents because the person has an outstanding application with us which was made before their previous permission expired or has an appeal or administrative review pending against the decision and therefore cannot provide evidence of their right to work; or

We consider that we have not been provided with any acceptable documents, but the person presents other information indicating they are a long-term resident of the UK who arrived in the UK before 1988.

10.2 In the above circumstances, AGE will establish a statutory excuse only if we are issued with a Positive Verification Notice (PVN) from us confirming that the named person is allowed to carry out the type of work in question.

10.3 It is advised that AGE should not contact the ECS where employment commenced before 29 February 2008 and has been continuous ever since. We would receive a Negative Verification Notice because this employment is out of scope of the civil penalty scheme.

## **11.0 TUPE TRANSFER RIGHT TO WORK CHECKS**

11.1 Employers who acquire staff in cases of TUPE transfers are advised to undertake a fresh right to work check on the staff they have acquired. Employers are not required to have a statutory excuse in respect of employment which commenced before 29 February 2008, where the individual has been in continuous employment prior to that date. This includes where employment has continued as part of a TUPE transfer.

However, if the transferor (outgoing employer) did not conduct the original checks correctly, the transferee (incoming employer) would be liable for a penalty if an employee, who commenced work on or after 29 February 2008, is later found to be working illegally.

Transferees have 60 days from the date of the transfer of the business to correctly carry out fresh right to work checks in respect of those TUPE employees acquired. There is no grace period for any subsequent follow-up checks.

## **12.0 WHAT IS THE EU SETTLEMENT SCHEME?**

12.1 EEA nationals who were resident in the UK before 31 December 2020 have to apply to the EU Settlement Scheme (EUSS) to obtain authorisation to stay in the UK to work. The deadline for applications was 30 June 2021.

12.2 EEA citizens with Indefinite Leave to Enter or Remain (ILE/R) are not required to make an application to the EU Settlement Scheme but can do so if they wish.

12.3 From 1 July 2021, EEA nationals can prove their right to work in the same way as other foreign nationals who do not have an immigration status that can be shared digitally.

12.4 The HR team will carry out a manual check of their Home Office documentation such as an endorsement / vignette in a current passport stating, 'indefinite leave to enter or remain' or 'no time limit'. Some may have a current Biometric Residence Permit (BRP) and this will be checked manually.

## **13.0 EXISTING EEA EMPLOYEES**

13.1 AGE are not required to carry out retrospective right to work checks on EEA nationals who started work for the business on or before 30 June 2021.

13.2 Government guidance says that you will have a continuous statutory excuse against a civil penalty if an initial right to work check was carried out before 30 June 2021 according to the rules that were in place, then e.g. a EEA passport or national identity card check, and you do not know that the employee does not have the right to work in the UK.

## **14.0 RECRUITING EEA NATIONALS FROM 1 JULY 2021**

14.1 From 1 July 2021, the majority of EEA citizens will prove their right to work using the Home Office online right to work service. Those who have made a successful application to the EUSS will have been granted their immigration status digitally and can only prove their right to work using Home Office online service 'prove your right to work to an employer' available on GOV.UK: <https://www.gov.uk/prove-right-to-work>.

14.2 If an EEA citizen 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 employed.

14.3 To prove their right to work from 1 July 2021, individuals will provide the HR team with a share code and their date of birth which will enable the HR team to check their Home Office immigration status via

the online service available on GOV.UK: <https://www.gov.uk/view-right-to-work>.

14.4 If an EEA citizen has been granted 'Settled Status' by the Home Office, they will have a continuous right to work, in the same way as someone with Indefinite Leave to Enter / Remain status.

14.5 If an EEA citizen has been granted 'Pre-Settled Status' by the Home Office, they will have a time-limited right to work and the HR team will carry out a follow-up check. The Home Office online service will advise when a follow-up check must be carried out.

14.6 As of 1 July 2021, there will be some groups of EEA citizens who will not have status under the EUSS. They will evidence their right to work using specified documents if they cannot use the Home Office online system. These are:

- Frontier Worker Permits
- Service Provider of Switzerland visas
- Outstanding applications to UK EUSS
- Outstanding applications to Crown Dependency EUSS
- EEA citizens with Indefinite Leave to Enter/Remain
- Points-Based System visas.

## **15.0 FRONTIER WORKERS**

15.1 A 'Frontier Worker' is an EEA citizen who is resident outside the UK but is economically active (employed or self-employed) in the UK.

15.2 From 1 July 2021, it is mandatory for frontier workers to obtain a frontier worker permit as evidence of their right to enter the UK.

15.3 Whilst the frontier worker permit requires an individual to reside outside the UK, their work in the UK can be spread over the entire year(s). Therefore, they may make multiple trips to the UK, and they are lawfully present in the UK. Frontier workers are issued with a frontier worker permit either digitally or physically.

15.4 Conducting either the manual check or using the online service will provide AGE with a statutory excuse against liability for a civil penalty.

**List A – acceptable documents to establish a continuous statutory excuse**

1.	A passport (current or expired) showing 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 passport card (current or expired) showing that the holder is a national of the Republic of Ireland.
3	A current document issued by the Home Office to a family member of an EEA or Swiss citizen, and which indicates that the holder is permitted to stay in the United Kingdom indefinitely.
4	A document issued by the Bailiwick of Jersey, the Bailiwick of Guernsey or the Isle of Man, which has been verified as valid by the Home Office Employer Checking Service, showing that the holder has been granted unlimited leave to enter or remain under Appendix EU to the Jersey Immigration Rules, Appendix EU to the Immigration (Bailiwick of Guernsey) Rules 2008 or Appendix EU to the Isle of Man Immigration Rules.
5	A current Biometric Immigration Document (Biometric Residence Permit) issued by the Home Office to the holder indicating that the person named 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 named person is allowed to stay indefinitely in the UK, or has no time limit on their stay in the UK, together 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	A birth or adoption certificate issued in the UK, together 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	A birth or adoption certificate issued in the Channel Islands, the Isle of Man or Ireland, together 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 certificate of registration or naturalisation as a British citizen, together with an official document giving the person's permanent National Insurance number and their name issued by a government agency or a previous employer.



**List B Group 1 – documents where a time-limited statutory excuse lasts until the expiry date of leave**

1.	A current passport endorsed to show that the holder is allowed to stay in the UK and is currently 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 named person can currently stay in the UK and is allowed to do the work in question.
3	A current document issued by the Home Office to a family member of an EEA or Swiss citizen, and which indicates that the holder is permitted to stay in the United Kingdom for a time limited period and to do the type of work in question.
4	A document issued by the Bailiwick of Jersey, the Bailiwick of Guernsey or the Isle of Man, which has been verified as valid by the Home Office Employer Checking Service, showing that the holder has been granted limited leave to enter or remain under Appendix EU to the Jersey Immigration Rules, Appendix EU to the Immigration (Bailiwick of Guernsey) Rules 2008 or Appendix EU to the Isle of Man Immigration Rules.
5	A document issued by the Bailiwick of Jersey or the Bailiwick of Guernsey, which has been verified as valid by the Home Office Employer Checking Service, showing that the holder has made an application for leave to enter or remain under Appendix EU to the Jersey Immigration Rules or Appendix EU to the Immigration (Bailiwick of Guernsey) Rules 2008, on or before 30 June 2021.
6	A frontier worker permit issued under regulation 8 of the Citizens' Rights (Frontier Workers) (EU Exit) Regulations 2020.
7	A current Immigration Status Document containing a photograph issued by the Home Office to the holder with a valid endorsement indicating that the named person may stay in the UK, and is allowed to do the type of work in question, together with an official document giving the person's permanent National Insurance number and their name issued by a government agency or a previous employer.

**List B Group 2 – documents where a time-limited statutory excuse lasts for six months**

1	A document issued by the Home Office showing that the holder has made an application for leave to enter or remain under Appendix EU to the immigration rules on or before 30 June 2021 together with a Positive Verification Notice from the Home Office Employer Checking Service.
2	A document issued by the Bailiwick of Jersey or the Bailiwick of Guernsey showing that the holder has made an application for leave to enter or remain under Appendix EU to the Jersey Immigration Rules or Appendix EU to the Immigration (Bailiwick of Guernsey) Rules 2008 on or before 30 June 2021 together with a Positive Verification Notice from the Home Office Employer Checking Service.
3	An Application Registration Card issued by the Home Office stating that the holder is permitted to take the employment in question, together with a Positive Verification Notice from the Home Office Employer Checking Service.
4	A Positive Verification Notice issued by the Home Office Employer Checking Service to the employer or prospective employer, which indicates that the named person may stay in the UK and is permitted to do the work in question.

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