



GMS Flash Alert

Immigration Edition

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United Kingdom - Update on Post-Brexit "Right to Work" Checks

On 1 April 2019, the U.K. government published further information for employers on post-Brexit "right to work" checks. The guidance highlights the requirements that employers must continue to meet in relation to checks for their European Union (EU), European Economic Area (EEA), and Swiss national employees until 1 January 2021.¹ (For prior coverage of right to work news, see GMS [Flash Alert 2018-165](#), 19 December 2018.)

WHY THIS MATTERS

In light of the continued Brexit uncertainty, many employers have requested further information on their obligation to complete valid right to work checks in relation to their EU, EEA, and Swiss national employees. Questions have arisen as to whether employers would be required to distinguish between those who are eligible to apply under the EU Settlement Scheme, and those who are not. (For prior coverage of the EU Settlement Scheme, see GMS [Flash Alert 2018-088](#), 22 June 2018.) This is especially the case in a "no-deal" Brexit scenario, where EU, EEA, and Swiss nationals arriving in the U.K. after Brexit may not have an automatic right to work for more than three months.

The new guidance seeks to bring some clarity to employers. It confirms that current rules in relation to checking the right to work of EU, EEA, and Swiss nationals will continue until at least January 2021. Employers will not need to check if employees have been issued their status under the EU Settlement Scheme, or another immigration document, to prove their right to work.

EU, EEA, and Swiss citizens arriving in the U.K. after 1 January 2021 must apply for status under the new immigration system and new right to work check procedures.

Details of Published Guidance

The main details of the published guidance are as follows:

- Irrespective of whether the U.K. leaves the EU with a deal, there will be no change in the way EU, EEA, and Swiss citizens currently prove their right to work (valid passport or ID card) until 1 January 2021. Employers will not be required to differentiate between employees who arrived in the U.K. before or after Brexit.
- Employers will not need to check whether their new EU, EEA, and Swiss employees have status under the EU Settlement Scheme or European Temporary Leave to Remain. Similarly, employers will not need to retrospectively check the status of their EU, EEA, and Swiss employees who began employment before 1 January 2021.
- Employers employing non-EU family members of an EU, EEA, or Swiss citizen will need to continue to check Home Office-issued documentation to obtain a statutory excuse from a civil penalty.²
- Employers will need to continue to conduct right to work checks on all prospective employees to comply with the rules relating to the prevention of illegal working and the avoidance of unlawful discrimination.

Future Plans

- The U.K. government is proposing to introduce a new single immigration system for individuals of all nationalities from 1 January 2021.
- Further information on the new immigration system and the resulting right to work requirements is to be provided by the U.K. government in due course.

KPMG LLP (U.K.) NOTE

The guidance will provide reassurance to employers that they will not need to introduce new right to work processes in relation to their EU, EEA, or Swiss employees until at least 1 January 2021. EU, EEA, and Swiss employees can volunteer their new immigration status documents to their employer if they wish, and employers can ask for employees to provide them with a copy of their status. However, employers should accept employees not wishing to provide their immigration status documents while there is no legal requirement on an employer's part to check them.

It is also important to note that any guidance in this area is subject to change while Brexit negotiations continue. Therefore, employers should continue to review any new immigration policies or guidance published by the government.

FOOTNOTES:

1 For the full legislation and guidance, see "[Employing EU, EEA and Swiss citizens and their family members after Brexit.](#)"

2 See "[Right to work checks: an employer's guide.](#)"

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Contact us

For additional information or assistance, please contact your local GMS or People Services professional* or one of the following professionals with the KPMG International member firm in the United Kingdom.

The KPMG Legal Services – Immigration Team has a wealth of experience in transactional, advisory, and compliance assurance services. We will be able to advise your business in relation to practical considerations in light of the above changes, as well as what this means for your long-term recruitment and compliance strategies.



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The information contained in this newsletter was submitted by the KPMG International member firm in the United Kingdom.

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