

Coronavirus: right to work checks

In light of the ongoing coronavirus pandemic the Home Office has published guidance for employers carrying out right to work checks during the coronavirus (COVID-19) pandemic. This guidance was published at the end of the day on 30 March 2020. Although many SGBs may not be actively recruiting at this time the guidance is still of paramount importance as it also applies to existing employees who require follow up checks during the pandemic. Right to work checks have been temporarily adjusted due to coronavirus (COVID-19). This is to make it easier for SGBs to carry them out in light of current restrictions on movement and social distancing.

The changes

As of 30 March 2020 the following temporary changes have been made:

- checks can now be carried out over video calls
- job applicants and existing workers can send scanned documents or a photo of documents for checks using email or a mobile app, rather than sending originals
- SGBs should use the Employer Checking Service if a prospective or existing employee cannot provide any of the accepted documents

Checks continue to be necessary and SGBs must continue to check the prescribed documents listed in right to work checks: an employer's guide. Despite the practical issues caused by coronavirus it remains an offence to knowingly employ anyone who does not have the right to work in the UK so SGBs will need to ensure they are taking necessary adjusted steps to complete right to work checks.

Because of COVID-19, some individuals may be unable to evidence their right to work. During this period, you must take extra care to ensure no-one is discriminated against because they are unable to show you their documents. In circumstances where this occurs SGBs are recommended to take advice to avoid unlawful discrimination while preventing

illegal working.

Conducting a right to work check during the temporary COVID-19 measures

The Government guidance has recommended the following process is followed when conducting right to work checks during the pandemic.

- Ask the worker to submit a scanned copy or a photo of their original documents via email or using a mobile app
- Arrange a video call with the worker – ask them to hold up the original documents to the camera and check them against the digital copy of the documents
- Record the date you made the check and mark it as "adjusted check undertaken on [insert date] due to COVID-19"
- If the worker has a current Biometric Residence

Permit or Biometric Residence Card or status under the EU Settlement Scheme you can use the online right to work checking service while doing a video call - the applicant must give you permission to view their details

If the job applicant or existing worker cannot show their documents for whatever reason then SGBs must contact the Home Office Employer Checking Service. If the person has a right to work, the Employer Checking Service will send you a 'Positive Verification Notice'. This provides an employer with a statutory excuse for 6 months from the date in the notice.

After the COVID-19 measures end

The Home Office will let SGBs know in advance when these measures will end. After that date, SGBs should revert to following the usual checking process set out in right to work checks: an employer's guide.

However SGBs will also be asked to carry out retrospective checks on existing employees who:

- started working for you during these measures

- required a follow-up right to work check during these measures. You should mark this check: "the individual's contract commenced on [insert date]. The prescribed right to work check was undertaken on [insert date] due to COVID-19."

The retrospective check must be carried out within 8 weeks of the COVID-19 measures ending. Both checks should be kept for SGBs records of right to work checks.

The Home Office will not take any enforcement action against SGBs if SGBs carried out the adjusted check set out in this guidance, or a check via the Home Office, and follow this up with the retrospective check.

If, at the point of carrying out the retrospective check, you find your employee does not have permission to be in the UK you must end their employment.

If the check you have undertaken during the adjusted period was done in the prescribed manner, you do not need to undertake a retrospective check.

As discussed above, the arrangements set out above are temporary and will need to be regularly monitored. The Home Office will inform when these measures will end so SGBs should regularly monitor for updates.

Get in touch

Sports clubs can access the **sportscotland** legal expert resource helpline by email at sportscotlandinfo@harpermacleod.co.uk or by calling 0141 227 9333.