



PR16 - Right to Work Checks Policy and Procedure

Human Resources - Recruitment, Induction and Training

Commenciz Ltd

Fairgate House, 205 Kings Road, Tyseley, Birmingham, England, B11 2AA



Review Sheet



Last Reviewed
01 Apr '23



Last Amended
01 Apr '23



Next Planned Review in 12 months, or
sooner as required.

Business impact



These changes require action as soon as possible.

Reason for this review

Change in legislation

Were changes made?

Yes

Summary:

This policy outlines the processes and document checks required to ensure the business meets its responsibilities and does not commit offences of illegal working. It has been reviewed and updated to confirm that from 6 April 2022, a right to work check must be conducted online using the UK Online Right to Work Checking Service for any individual who holds a biometric resident permit, biometric resident card or frontier worker permit. The references have also been checked and updated.

Relevant legislation:

- Immigration, Asylum and Nationality Act 2006
- Immigration Act 2016
- Asylum and Immigration Act 1996
- Immigration Act 2014
- Data Protection Act 2018
- UK GDPR

Underpinning knowledge - What have we used to ensure that the policy is current:

- Author: Government, (2022), *Coronavirus (COVID-19): right to work checks*. [Online] Available from: <https://www.gov.uk/guidance/coronavirus-covid-19-right-to-work-checks> [Accessed: 8/4/2022]
- Author: Government, (2021), *Apply to the EU Settlement Scheme (settled and pre-settled status)*. [Online] Available from: <https://www.gov.uk/settled-status-eu-citizens-families> [Accessed: 8/4/2022]
- Author: Government, (2022), *Right to work checks: an employer's guide*. [Online] Available from: <https://www.gov.uk/government/publications/right-to-work-checks-employers-guide> [Accessed: 8/4/2022]
- Author: Government, (2021), *Prove your right to work to an employer*. [Online] Available from: <https://www.gov.uk/prove-right-to-work> [Accessed: 8/4/2022]

Equality Impact Assessment:

Commenciz Ltd have undertaken an equality analysis during the review of this policy. This statement is a written record that demonstrates that we have shown due regard to the need to eliminate unlawful discrimination, advance equality of opportunity and foster good relations with respect to the characteristics protected by equality law.



1. Purpose

- 1.1 To ensure that Commenciz Ltd does not commit offences of illegal working.
- 1.2 To support Commenciz Ltd in meeting the following Key Lines of Enquiry:

Key Question

Key Lines of Enquiry

WELL-LED

W2: Does the governance framework ensure that responsibilities are clear and that quality performance, risks and regulatory requirements are understood and managed?

- 1.3 To meet the legal requirements of the regulated activities that {Commenciz Ltd} is registered to provide:
 - Immigration, Asylum and Nationality Act 2006
 - Immigration Act 2016
 - Asylum and Immigration Act 1996
 - Immigration Act 2014
 - Data Protection Act 2018
 - UK GDPR



2. Scope

- 2.1 The following roles may be affected by this policy:
 - All staff
- 2.2 The following Service Users may be affected by this policy:
 - Service Users
- 2.3 The following stakeholders may be affected by this policy:
 - Commissioners



3. Objectives

- 3.1 To ensure that Commenciz Ltd carries out all required right to work checks on all potential new staff before employing them.



4. Policy

4.1 Commenciz Ltd will carry out document checks to ensure it meets the responsibilities under the Immigration, Asylum and Nationality Act 2006, and thereby ensures that it only employs those individuals who have the lawful right to work in the UK. Checks should be made on everyone before they commence employment with Commenciz Ltd.

4.2 Should Commenciz Ltd become aware that an individual does not have the right to work in the UK, Commenciz Ltd will ensure that it does not continue to employ such an individual if they do not have the relevant permissions.

4.3 Rights to Work

- UK nationals have unrestricted rights to work and be employed in the UK
- Free movement between the EU and the UK ended on 31 December 2020 (11pm). This means that EEA and Swiss nationals (and their families) arriving in the UK from 1 January 2021 onwards will do so under UK immigration laws and not under EU free movement
- Migrant workers entering the UK from outside the EEA or Switzerland are likely to require immigration permission to work in the UK, unless they are either: not subject to UK immigration control (e.g. those who hold the right to abode in the UK or indefinite leave to remain) OR are exempt from UK immigration control (such as members of a diplomatic mission)
- Specific rules apply to students studying in the UK

4.4 Brexit

The UK left the EU on 31 January 2020. There was a "transition period" until 31 December 2020. During the transition period, free movement continued, meaning that EEA and Swiss citizens (and their families) who were legally residing in the UK were able to continue doing so.

EEA and Swiss citizens residing in the UK by the end of the transition period on 31 December 2020 could apply for immigration status under the EU Settlement Scheme (EUSS).

Those who had lived in the UK for 5 years or more could have applied for "settled status" prior to 30 June 2021. Those who would have lived in the UK for less than 5 years could have applied for "pre-settled status".

Since 1 July 2021, EEA citizens who do not have leave granted under the EU Settlement Scheme are required to evidence their UK immigration status for the purposes of right to work, using documents as set out in legislation. These are detailed below:

- Frontier Worker Permits
- Service Provider from Switzerland visas
- Outstanding applications to UK EUSS
- Outstanding applications to Crown Dependency EUSS
- Indefinite Leave to Enter/Remain
- Points-Based System visas

The position for document checking of EU citizens in the UK has been extended. Please see below for further details.



5. Procedure

5.1 There are three steps to be taken for all applicants for employment to avoid contravening the Act and being subject to substantial fines which are:

Step 1

Commenciz Ltd, using the [HM Government document](#) as a guide, must ask for and be given either:

- One of the single documents, or two of the documents in the specified combinations given, from List A; or
- One of the single documents, or two of the documents in the specified combinations given, from List B

Commenciz Ltd must only accept original documents.

Step 2

Commenciz Ltd must take all reasonable steps to check that the document is genuine and to satisfy itself that the holder is the person named in the document. Commenciz Ltd should also check that the document allows them to do the work in question.

For each document given to you, you must:

- Check any photographs are consistent with the appearance of the person; and
- Check any dates of birth listed are consistent across documents and that you are satisfied that these match with the appearance of the person; and
- Check that the expiry dates of any limited leave to enter or remain in the UK have not passed; and
- Check any UK Government endorsements (biometric residence permits, stamps, stickers, visas) to see if the person is able to do, or can continue to do, the type of work you are offering; and
- Satisfy yourself that the documents are genuine, have not been tampered with and belong to the holder; and
- If you are given two documents which have different names, ask them for a further document to explain the reason for this. The further document could, for example, be a marriage certificate or a divorce decree absolute, a deed poll or statutory declaration

Step 3

Take a clear copy of the relevant page or pages of the document, in a format which cannot later be altered, for example, a photocopy or scan (where an electronic copy is made of a document, it must be made using a non-rewritable format, such as CD-R).

The individual conducting the right to work check must also retain a secure record of the date on which they conducted the check. It should be noted that simply writing a date on the copy document does not, in itself, confirm that this is the actual date when the check was undertaken. If a date is written on the copy document, the individual conducting the right to work check must also record that this is the date on which the check was conducted. For example, the following may be written on the copy document: "Date on which this right to work check was conducted - [date]".

In relation to the passports and other documents, the following pages should be copied and retained:

- 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 that the holder has entitlement to enter or remain in the UK (visa or entry stamp) and undertake the work in question. The front cover of the passport is no longer required to be copied
- All other documents: The document in full, including both sides of a Biometric Residence Permit, Application Registration Card and a Residence Card (biometric format)

The individual conducting the right to work check must then keep a record of every document they have copied. It is recommended that they keep copies of the documents securely for the duration of the person's employment plus for a further two years after they stop working for Commenciz Ltd. By doing this, the UKVI (UK Visas and Immigration) will be able to check whether Commenciz Ltd has complied with the law, or if Commenciz Ltd is required to pay a civil penalty if found to have anyone working illegally for the company. Thereafter, the copies should be securely destroyed.

The UK Border Agency recommends that employers use the UKBA 'Employers' Right to Work Checklist' and 'Full Guide For Employers On Preventing Illegal Working In The UK' to help employers ensure that they have correctly carried out all the steps required of them in their duty to prevent illegal working and to get, and then keep, a statutory excuse.



The UK Government has also produced an online interactive tool which allows employers to check if someone can work within the UK. The online tool can be found [here](#).

Commenciz Ltd is only required to carry out these document checks for people who started working for the company on or after 29 February 2008. The rules of the Asylum and Immigration Act 1996 still apply to staff who started working for the company between 27 January 1997 and 28 February 2008.

5.2 Online Right to Work Checking Service

As an alternative to the above paper process, Commenciz Ltd may opt to use the UK Online Right to Work Checking Service instead to carry out right to work checks for staff. However, it should be noted that it may not be possible to conduct an online right to work check in all circumstances, as not all individuals will have an immigration status that can be checked online.

Should Commenciz Ltd wish to use the UK Government's Online Right to Work Checking Service, it will need to seek authorisation from the prospective member of staff who will then be expected to share details of their right to work in the UK through the online service. So long as Commenciz Ltd ensures that the Online Right to Work Checking Service process is followed correctly and in full, it will have a defence to any civil penalty should it subsequently be the case that the individual does not, in fact, have the right to work. Currently, the online service supports checks in respect of those who hold:

- A biometric residence permit (BRP)
- A biometric residence card (BRC)
- Status issued under the EU Settlement Scheme
- A digital Certificate of Application to the EU Settlement Scheme issued on or before 30 June 2021
- Status issued under the points-based immigration system
- British National Overseas (BNO) visa; or
- Frontier worker permit (FWP)

Please note, from 6 April 2022, right to work checks must be conducted online using the UK Online Right to Work Checking Service for any BRP, BRC and FWP holders and employers will no longer be able to accept physical cards for the purposes of a right to work check even if it shows a later expiry date. Please see section 5.3 headed 'Compulsory Online Right to Work Checks' below.

5.3 Compulsory Online Right to Work Checks

From 6 April 2022, individuals holding any of the below can **only** evidence their right to work using the UK Online Right to Work Checking Service:

- A biometric resident permit
- A biometric residence card
- Frontier worker permit

Commenciz Ltd will no longer be able to accept physical cards for the purposes of right to work checks even if the card shows a later expiry date.

There is no cost for the UK Online Right to Work Checking Service which is available [here](#).

Commenciz Ltd will need the individual's date of birth and a share code which is generated by the individual accessing the UK Online Right to Work Checking Service.

The person conducting the right to work check should ensure that the share code begins with the letter 'W'.

The person conducting the right to work check must then access the section entitled "[View a job applicant's right to work details](#)" using the individual's share code and date of birth. The online check must be carried out in the presence of the individual, either in person or during a video call.

Retrospective right to work checks will not be required on biometric card holders who, before 6 April 2022, used their physical card to demonstrate their right to work. Employers will maintain a statutory excuse against a civil penalty if the initial checks were undertaken in line with the guidance that applied at the time the check was made.

5.4 False Documents Provided

If Commenciz Ltd is given a false document, it will only be required to pay a civil penalty if it is reasonably apparent that it is false. The UKBA considers the falseness to be reasonably apparent if an individual, who is untrained in the identification of false documents, examining it carefully, but briefly, and without the use of technological aids, could reasonably be expected to realise that the document in question is not genuine.

Equally, where a person presents a document and it is reasonably apparent that the person presenting the document is not the person referred to in that document, even if the document itself is genuine, then



Commenciz Ltd may be liable to prosecution for knowingly employing an illegal worker.

Commenciz Ltd will not have an excuse against payment if the individual conducting the check knew that the document(s), were false or did not rightfully belong to the holder and/or if the individual conducting the check knew that the individual is not permitted to undertake the work in question.

5.5 When an Existing Employee no Longer has the Right to Work

If Commenciz Ltd has carried out repeat checks and found that an existing employee is no longer allowed to work in the UK or to carry out the work in question, then Commenciz Ltd will no longer have an excuse against payment of a civil penalty. If Commenciz Ltd continues to employ a person who no longer has the right to work for Commenciz Ltd, then Commenciz Ltd will be committing the criminal offence of knowingly employing an illegal worker.

If Commenciz Ltd is considering the potential dismissal of an employee, it should seek independent legal advice.

5.6 Follow-Up Checks for Those Needing Immigration Permission

If an employee at Commenciz Ltd has time-limited permission to work in the UK, Commenciz Ltd must carry out a follow-up check. This should occur when the individual's previous permission is coming to an end.

If Commenciz Ltd fails to conduct the follow-up checks at the appropriate time, Commenciz Ltd will not be able to establish the statutory excuse and may incur a civil penalty.

5.7 Temporary Changes Due to COVID-19

Due to the COVID-19 outbreak, the Home Office introduced adjusted right to work checks to cover the period from 30 March 2020, which originally ran until 31 August 2021, but has now been extended to 30 September 2022. Until 30 September 2022, if Commenciz Ltd is carrying out a temporary adjusted check, it must:

- Ask an individual to submit a scanned copy or a photo of their original documents by email or using a mobile app
- Arrange a video call with the individual and ask them to hold up their original documents to the camera so that they can be checked against the digital copy they have seen; and
- Record the date they conducted the check and note "adjusted check undertaken on [Date] due to COVID-19" on a copy of the documents

If an individual has a biometric residence card or permit; or status under the EU Settlement Scheme, Commenciz Ltd can use the Government's 'Online Right to Work Checking Service' during a video call with the individual, but the individual must give permission to Commenciz Ltd to view their details. From 6 April 2022, all biometric card holders will evidence their right to work using the Home Office online service only and physical cards will no longer be accepted for the purposes of a right to work check, even if it shows a later expiry date.

If an individual is unable to provide copies of the required documents, Commenciz Ltd should contact the Home Office's Employer Checking Service. If the individual has the right to work in the UK, Commenciz Ltd will receive a "positive verification notice". This provides a statutory excuse for six months from the date of the notice.

As above, the temporary changes introduced due to COVID-19 will come to an end on 30 September 2022. The Government has advised that it will issue further guidance ahead of this date, but it is anticipated that this guidance will follow the guidance provided prior to the original end date of 31 August 2021, which stated that employers must either:

- Check the individual's original documents; or
- Check the individual's right to work online, but the individual must give Commenciz Ltd their share code

Employers do not need to carry out any retrospective checks on the individuals who had the checks under the temporary changes between 30 March 2020 and 30 September 2022. Employers will have a defence against a civil penalty if the checks carried out during this time were done as set out in the COVID-19 adjusted checks guidance.

5.8 Please ensure that this policy is read in accordance with the Government's guidance on right to work checks (which can be found [here](#)), as this guidance is being regularly updated and sets out the specific steps to be taken in certain circumstances.



6. Definitions

6.1 Settled Status Under the EU Settlement Scheme

- Settled status is given to individuals who have resided in the UK for a continuous period of 5 years and applied before 30 June 2021 (subject to some limited exceptions set out in the government guidance)
- Settled status means that the individual has the right to live, work and remain in the UK under the EU Settlement Scheme

6.2 Pre-Settled Status Under the EU Settlement Scheme

- To be granted Pre-Settled Status, an individual must:
 - Have resided in the UK before 11.00pm on 31 December 2020 (the end of the transition period); and
 - Prove that they have resided in the UK in the last 6 months (although there are some COVID-related exemptions)
 - Applied for Pre-Settled status by 30 June 2021 (subject to some limited exceptions as set out in the government guidance)
- Pre-Settled status is given to individuals who have not yet lived in the UK for a continuous period of 5 years. Individuals can apply for Settled Status after they have resided for a continuous period of 5 years

6.3 British National

- The term "United Kingdom national" is not defined in the nationality law of the United Kingdom. It has been defined in various ways and at various times for the purposes of other United Kingdom legislation, international agreements and treaties. The significance of the term "national" in international law is that it signifies a person connected with a State by a special legal tie entitling that State to protect the person in its relations with other States. Generally speaking, the term "United Kingdom national" or, more colloquially, "British national" covers:
 - British citizens
 - British Dependent Territories citizens
 - British Overseas citizens
 - British subjects (under Part IV of the BNA 1981)
 - British protected persons
 - British Nationals (Overseas)

6.4 Migrant Worker

- A "migrant worker" is a person who either migrates within their home country or outside it to pursue work such as seasonal work. Migrant workers usually do not have an intention to stay permanently in the country or region in which they work. A migrant worker is considered to be someone who is, or has been, working in Great Britain (GB) in the last 12 months and has come to GB from abroad to work within the last 5 years

6.5 Asylum Seeker

- An asylum seeker is a person who has made an application to be recognised as a refugee under the 1951 United Nations Convention Relating to the Status of Refugees and the 1967 Protocol on the basis that it would be contrary to the UK's obligations to remove them from the UK



Key Facts - Professionals

Professionals providing this service should be aware of the following:

- From 6 April 2022, right to work checks must be conducted online for any individuals who hold a biometric resident permit, biometric resident card or frontier worker permit
- Temporary right to work checks due to COVID-19 can be conducted until 30 September 2022
- Commenciz Ltd must ensure that it carries out proper document checks which confirm an individual's right to work in the UK before employment starts
- Right to work checks must be carried out on all prospective employees and not just those who are suspected of being from outside the UK, otherwise there is a significant risk of discrimination



Key Facts - People affected by the service

People affected by this service should be aware of the following:

- It is essential that you are confident that the individual members of staff providing services to you are legally able to do so from a trust and confidence perspective and from a health and safety perspective



Further Reading

As well as the information in the 'underpinning knowledge' section of the review sheet we recommend that you add to your understanding in this policy area by considering the following materials:

Employer Enquiry Helpline

Telephone: 0300 123 5434

Monday to Thursday, 9 am to 4:45 pm

Friday, 9 am to 4:30 pm

Business helpdesk - BusinessHelpdesk@homeoffice.gsi.gov.uk

GOV.UK - Use the Employer Checking Service:

<https://www.gov.uk/employee-immigration-employment-status>

Rising Proportion of EU Citizens in UK Given Temporary 'Pre-settled Status':

<https://www.theguardian.com/politics/2019/nov/14/rising-proportion-of-eu-citizens-being-granted-presettled-status>

Citizens Advice - Applying for Pre-settled and Settled Status:

<https://www.citizensadvice.org.uk/immigration/applying-for-settled-status/>

GOV.UK - View a Job Applicant's Right to Work Details:

<https://www.gov.uk/view-right-to-work>



Outstanding Practice

To be 'outstanding' in this policy area you could provide evidence that:

- Commenciz Ltd has clear and concise procedures in place to address any circumstances where an individual member of staff may have a limited right to remain in the UK and takes appropriate action in good time ahead of any deadline
- Commenciz Ltd has robust recruitment procedures in place and workers' personal data is stored safely and in line with data protection laws
- Commenciz Ltd carries out all right to work checks fully and comprehensively and prior to any member of staff starting employment



PR16 - Right to Work Checks Policy and Procedure

Human Resources - Recruitment, Induction and Training

Commenciz Ltd

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Forms

The following forms are included as part of this policy:

Title of form	When would the form be used?	Created by
Right to Work Expiry Letter - PR16	When someone's right to work is about to expire	Commenciz Ltd
Right to Work Expiry Follow Up Letter - PR16	When someone's right to work is due to expire - follow up	Commenciz Ltd

Commenciz Ltd
Fairgate House, 205 Kings Road, Tyseley, Birmingham, England, B11 2AA

[on headed notepaper of the employer]

[Employee's name]

[Employee's address]

[Date]

Dear **[Employee's name]**,

Re: Expiry of right to work status

I am writing to you in relation to your right to work status, which according to our records, is due to expire on **[insert date]**.

As your employer we need to ensure your right to work status remains valid and require evidence to this effect. Please can you bring in a copy of your up to date right to work status by **[insert date]**.

Where you have any questions, or would like to discuss this further, please do not hesitate to contact me.

Yours sincerely,

[Name]

On behalf of Commenciz Ltd

Commenciz Ltd
Fairgate House, 205 Kings Road, Tyseley, Birmingham, England, B11 2AA

[on headed notepaper of the employer]

[Employee's name]

[Employee's address]

[Date]

Dear **[Employee's name]**,

Re: Expiry of right to work status

Further to my letter dated **[insert date]**, I am writing to you in relation to your right to work status, which according to our records, is due to expire on **[insert date]**.

As your employer we need to ensure your right to work status remains valid and require evidence to this effect. Please can you bring in a copy of your up to date right to work status by **[insert date]**.

Where you have any questions, or would like to discuss this further, please do not hesitate to contact me.

Yours sincerely,

[Name]

On behalf of Commenciz Ltd