

THE EMPLOYER CHECKING SERVICE NEEDS FIXING

The Home Office expects employers to check the right to work of all EU, EEA, and Swiss nationals. But when half a million applications are pending, its own system is not fit for purpose. This briefing explains the faults, and what it takes to fix them.

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WoRC
Work Rights Centre

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Executive Summary

The **Employer Checking Service** is an online service designed to help employers check the right to work for an applicant who is unable to provide them with a share code. This may be because the applicant is not digitally competent, or because theirs is one of the half a million EUSS applications still awaiting a decision from the Home Office.¹

This briefing reviews some of the problems with the service. In summary, it finds that contradictory wording, out-of-date information claiming that EEA nationals do not require right to work checks, and a lack of clarity regarding applicants' reference numbers make this a confusing service to use by employers. This, in turn, risks excluding thousands of EU+ nationals from employment, or pushing them into precarious informal positions.

Advisers at the Work Rights Centre have already heard from people who have lost their jobs, or who were unable to start work due to their employers' inability to use the Employer Checking Service. We covered their stories in depth in a separate report.²

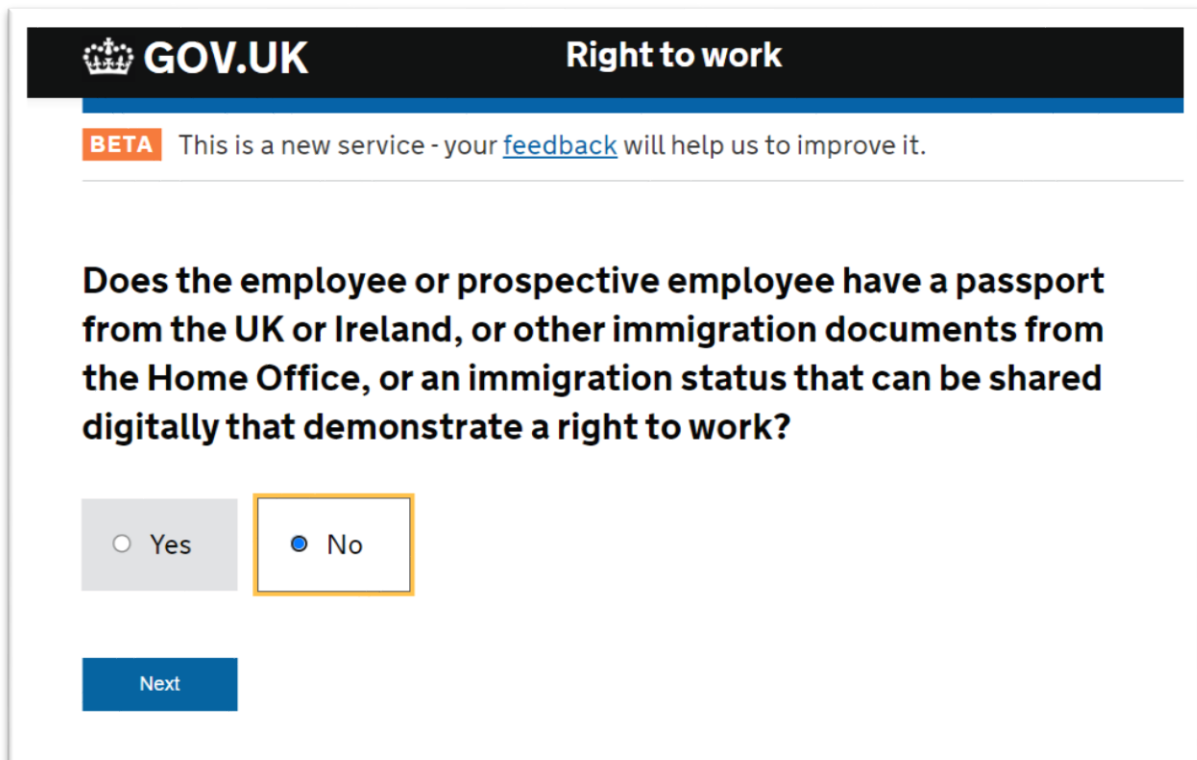
This briefing urges the Home Office to fix the Employer Checking Service, use its channels to communicate the process to employers, and increase its capacity to process the backlog of EUSS applications.

¹ Home Office (2021) EU Settlement Scheme Statistics. Published 12 August 2021. <https://www.gov.uk/government/collections/eu-settlement-scheme-statistics>

² Vicol, D.O. and McClelland, E. (2021) Lives on Hold. Published 25 August 2021. <https://www.workrightscentre.org/news/lives-on-hold>

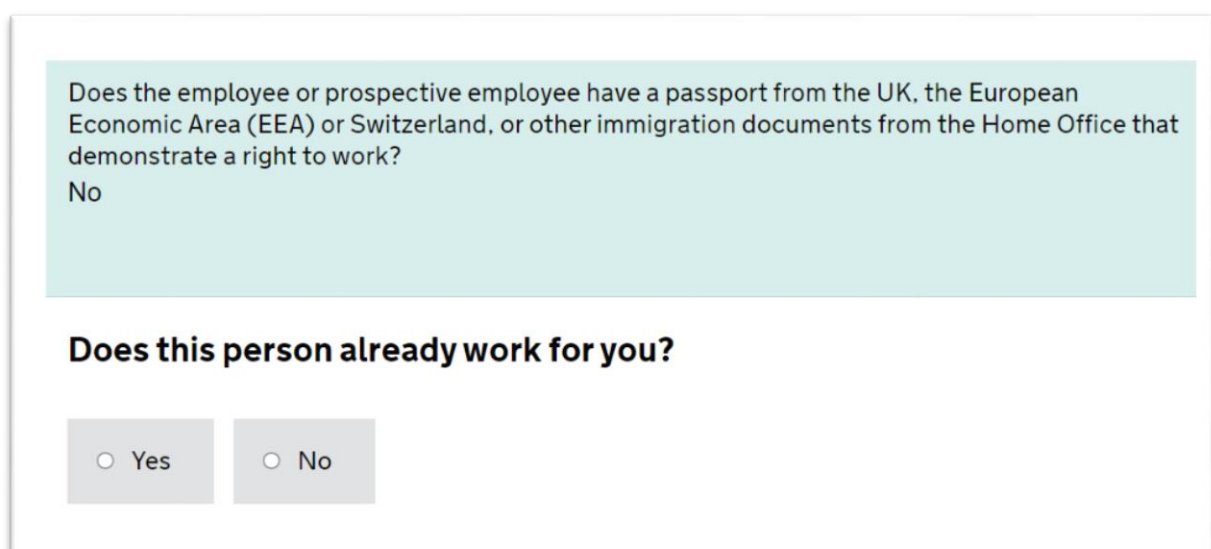
Problems with the Employer Checking Service

Problem 1. Questions don't mean what they say. When accessing the service, the first question employers have to answer appears to ask whether the prospective employee is a UK or Irish national. Naturally, an employer looking to hire an applicant from the EU, EEA, or Switzerland (henceforth EU+) would answer with: No.



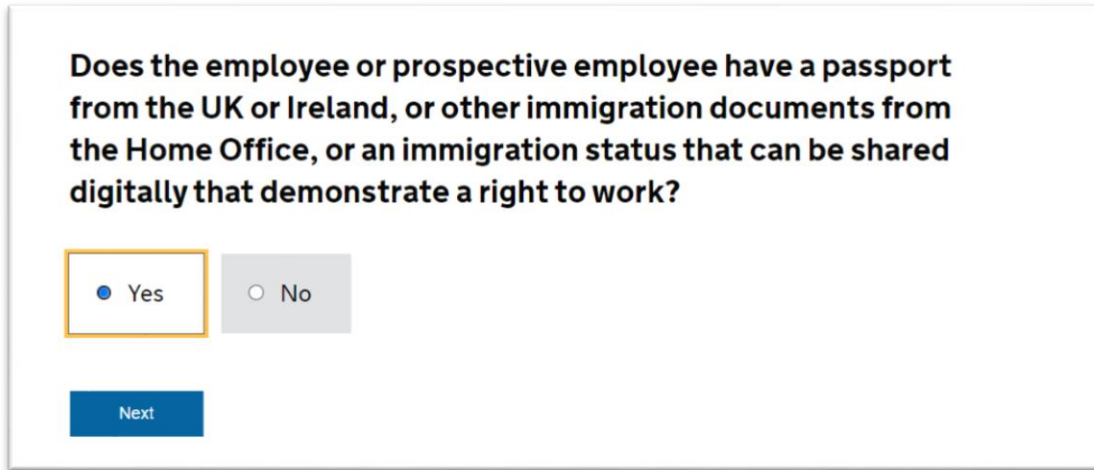
The screenshot shows the 'Right to work' section of the GOV.UK website. At the top, there is a black header with the GOV.UK logo and the text 'Right to work'. Below the header, a blue bar contains the text 'BETA This is a new service - your [feedback](#) will help us to improve it.' The main question is: 'Does the employee or prospective employee have a passport from the UK or Ireland, or other immigration documents from the Home Office, or an immigration status that can be shared digitally that demonstrate a right to work?'. There are two radio button options: 'Yes' and 'No'. The 'No' option is selected and highlighted with a yellow border. Below the options is a blue 'Next' button.

On the next page however, the same question is given a different meaning, to include people from the EEA and Switzerland.



The screenshot shows a different question on the GOV.UK website. The question is: 'Does the employee or prospective employee have a passport from the UK, the European Economic Area (EEA) or Switzerland, or other immigration documents from the Home Office that demonstrate a right to work?'. The answer 'No' is entered in the text field. Below the question is another question: 'Does this person already work for you?'. There are two radio button options: 'Yes' and 'No'.

The employer then has two implicit choices. They might assume that the first wording of the question was wrong, and the question refers in fact to EU+ nationals. So they go back and change the answer to Yes, because they're looking to hire someone from the EEA. This is where they get to Problem 2.



Does the employee or prospective employee have a passport from the UK or Ireland, or other immigration documents from the Home Office, or an immigration status that can be shared digitally that demonstrate a right to work?

Yes No

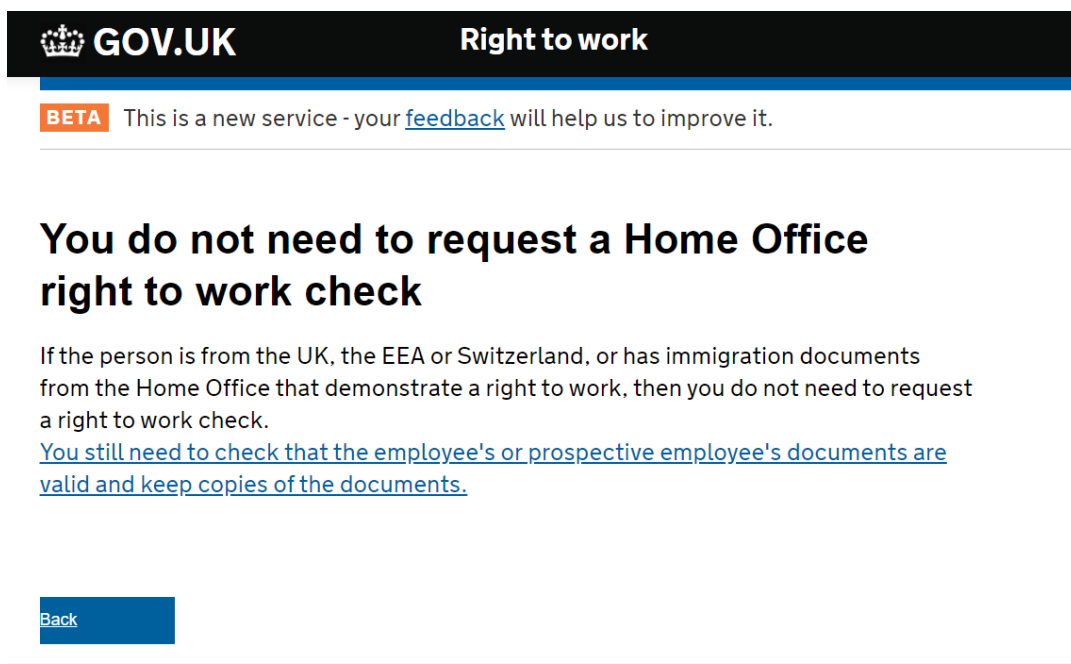
Next

Problem 2. Out-of-date information. Once an employer amends their answer, they are presented with outdated information about the status of EU+ workers.

On the 2nd of September 2021, the Employer Checking Service website read "if the person is from [...] the EEA or Switzerland [...] you do not need to request a right to work check".

This is incorrect. Employers have had to conduct right to work checks for EU+ job applicants ever since the EU Settlement Scheme was closed, on 01 July 2021.

At this point, a busy employer might simply give up. Indeed, at the Work Rights Centre we have had 9 cases where EU+ nationals were penalised or excluded from employment due to right to work issues.



GOV.UK Right to work

BETA This is a new service - your [feedback](#) will help us to improve it.

You do not need to request a Home Office right to work check

If the person is from the UK, the EEA or Switzerland, or has immigration documents from the Home Office that demonstrate a right to work, then you do not need to request a right to work check.

[You still need to check that the employee's or prospective employee's documents are valid and keep copies of the documents.](#)

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But let's say that a patient employer persists. They start from scratch, they answer No to the first question about the employee's British or Irish passport, they ignore the inconsistency in wording from later, and they carry on filling the form.

Problem 3. Retrospective checks. A question on when the employee started working misses the opportunity to remind employers that retrospective right to work checks are not necessary for members of staff hired before 30th June 2021.³

This reminder could save time and prevent unnecessary friction. A Spanish care home worker who contacted our charity was dismissed by her long-term employer, precisely due to this type of unnecessary retrospective check.

Does the employee or prospective employee have a passport from the UK, the European Economic Area (EEA) or Switzerland, or other immigration documents from the Home Office that demonstrate a right to work?
No [Change this](#)

Does this person already work for you?
Yes [Change this](#)

When did this person start working for you?
Day Month Year

[Next](#)

Problem 4. Not clear where employers can find applicants' Reference Numbers. The final question in the form asks employers to provide the worker's Home Office reference number. But it fails to recognise the fact that reference numbers vary, and may not even exist, depending on how the EUSS application was made.

Does this person have any one of the following?
an ongoing application or appeal for leave to remain in the UK

Please provide a reference number relating to their home office records
For example, not an exhaustive list, any of the following:

- a Home Office application reference number
- BRP document
- passport number (current or expired)
- Any Tracking reference number

³ Home Office (2021)Employer Right to work checks supporting guidance. Published 31 August 2021, p39 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1014298/2021.08.31_Employers_Guide.pdf

People who submitted an EUSS application online receive an automated email with a 16-digit Unique Application Number (UAN). By contrast, those who submitted their EUSS application on paper don't receive immediate confirmation. Some of them receive a letter which contains a 9-digit Application Reference. This can take weeks to arrive. Others will not have received anything from the Home Office at all - because paper applications are more complex and take longer to process. The only reference they may have is a tracking number from the Post Office, which they would only get if they mailed their original documents to the Home Office. But tracking reference numbers are easily misplaced, leaving applicants stuck in the backlog, with no evidence to show their EUSS status, and thus unable to exercise their rights under the Withdrawal Agreement.

Why this matters

More than half a million EUSS applications are yet to receive an outcome from the Home Office. EU+ workers and employers desperately need a functioning process to enable them to prove, and check, their right to work, even when status is pending.

Currently, the Employer Checking Service is faulty and unclear. This poses the serious risk that thousands of people whose applications are stuck in the backlog find themselves dismissed and unable to take up new employment.

Recommendations

To address the limitations, there are three main things the Home Office can do.

Adjust the Employer Checking Service website. In summary, this would require the following.

- A. Fix the wording to Question 1.
- B. Update the information regarding right to work checks for EU+ nationals.
- C. Discourage retrospective checks.
- D. Widen the types of Application Reference Numbers, and make it clear to employers where they might find them.
 - a. A 16-digit Unique Application Reference Number (available in the Certificate Of Application)
 - b. A 9-digit Application Reference (for paper applications which receive confirmation by mail).
 - c. A mail tracking number (for paper applications which are yet to receive confirmation of receipt).

Familiarise employers with the process. Many employers penalise EU+ workers due to a poor understanding of the right to work check process, and an inherent suspicion towards those who are still awaiting a decision on their EUSS application. The Home Office should utilise its social media channels, and organise targeted interventions in traditional media, to raise awareness of the new right to work check process.

Clear the backlog. Even with a clearer process for checking right to work when EUSS status is pending, there is still a risk that employers regard these workers with suspicion. To avoid people losing their jobs and being confined to unemployment, it is essential that the Home Office buttresses its capacity to process EUSS applications.

About Work Rights Centre

Work Rights Centre is a registered charity with a mission to end in-work poverty. We do this by helping people exit precarious work conditions, and by supporting them to improve their professional mobility with employability advice and civic training. The charity was founded in 2016. Ever since, we have advised over 2,800 people, helped recover over £112,000 in unpaid wages and fees, and supported hundreds more to make job applications and secure their status after Brexit by applying to the EUSS.

Our frontline service consists of two multilingual teams of advisers who operate in London (5 days a week) and Manchester (on Saturdays). Together, the 3.6FTE members of the advice team assist an average of 20 to 30 beneficiaries a week, with issues which range from non-payment, insecure immigration status, and career advice. You can support their work here <https://www.workrightscentre.org/support-us>

About the data

This briefing is based on a critical assessment of the Employer Checking Service. Screenshots were taken on 02 September 2021.

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Author: Dora-Olivia Vicol

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