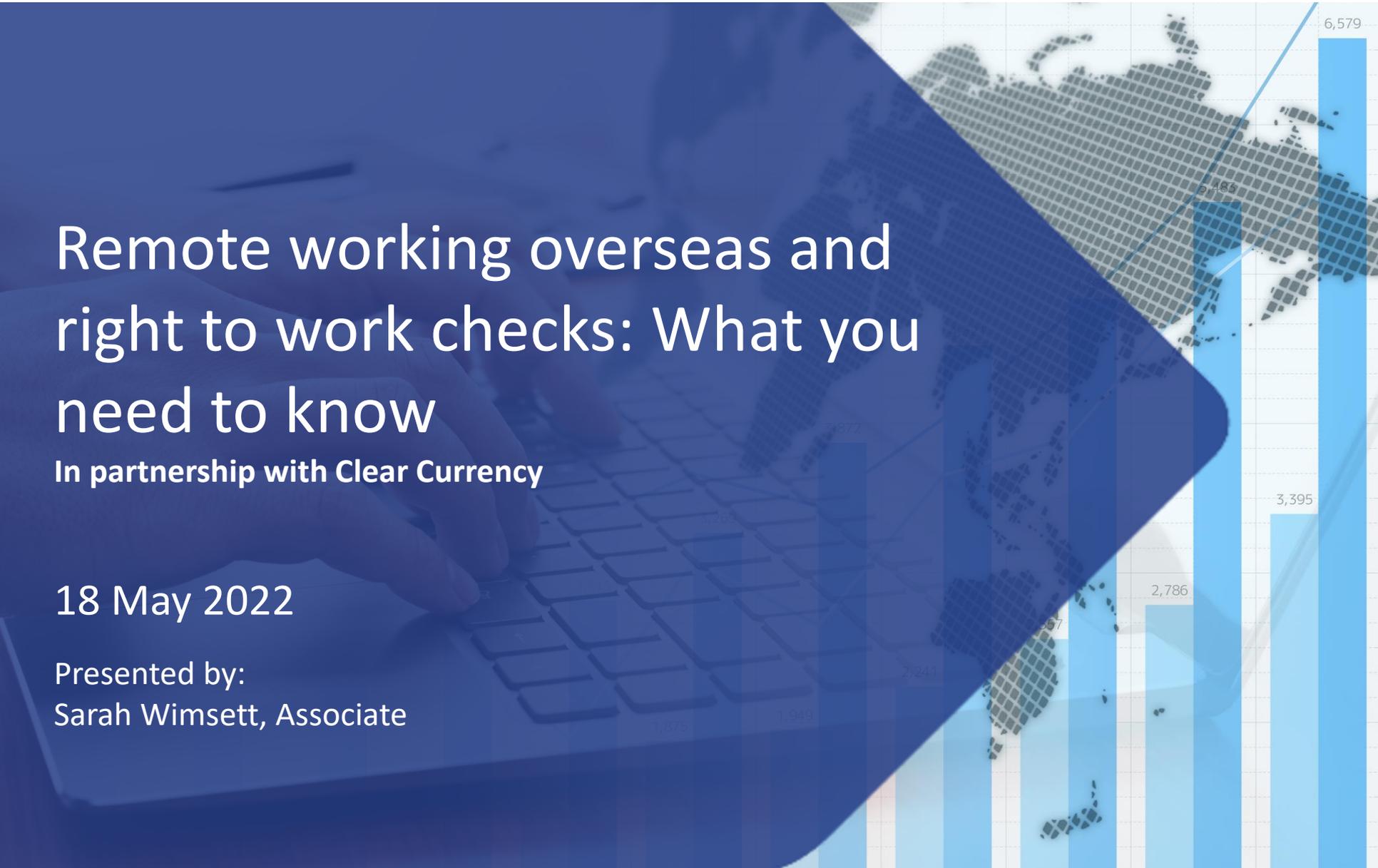


Remote working overseas and right to work checks: What you need to know

In partnership with Clear Currency

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Sarah provides employment law advice to a wide variety of clients including specialist sectors such as manufacturing, education, agriculture, financial services and healthcare.

Sarah joined Brachers as a trainee in 2014 and qualified into the Employment team in 2016.

She has a particular interest in employment tribunal work and it forms a regular part of her workload.

Sarah is named in the Chambers UK 2022 legal directory as an 'associate to watch' in the area of employment law.

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Right to work - Overseas

Right to work

- A work visa may be needed
- This will depend on the nature of the employee's activities and the rules in the relevant country
- Right to work vs right to reside
- Likely to need advice from a local immigration specialist
- If a visa is required, this may require a host country employer/sponsor
- May need to check how any current visas would be affected
- Planning and time will be required and costs should be considered

- Important for both the business and the individual to seek tax advice.
- What obligations may the business have overseas? (e.g. social security obligations).
- Will they be considered to have a corporate presence overseas?
- What would the implications be if an employee moved back to the UK?
- What are the implications depending on where an employee is paid?
- How is this different if the individual is a consultant?



Employment rights

Employment rights

- Employment rights vary from country to country.
- When working abroad the employee is in a different legal jurisdiction which may be subject to different employment rights from those in the UK.
- This may be the case even if the contractual terms state their contracts are covered by laws of England and Wales.
- Failing to abide by the local laws may result in potential claims.
- In particular, special care should be taken to get UK and local legal advice when considering a termination of a worker based abroad.



Health and safety

Health and safety

- In the UK an employer has a duty to take reasonable care of their employees.
- This extended to remote working.
- Consider the practicalities of how you will comply with this duty.
- Risk assessments should be carried out but like employment rights when working abroad different health and safety laws apply and you may need to seek external advice.

Name (Print)

Signature

Contracts and policies

Contracts

- **Intellectual property** – are you covered where the employee is based overseas?
- **Place of work** – where will their normal place of work be and are limitations on changes to this required?
- **Travel** – what requirements will the individual have to travel?
- **Restrictive covenants** – what geographical restrictions will apply?
- **Working hours** – how are different time zones going to work?
- **Pay** – what currency?

Policies

- Do your policies cover those working abroad? Do they work in practice for those working abroad?
- **Expenses** – how will expenses work for someone working abroad?
- **Requests for working abroad** – separate policy or included in flexible working?

Data protection

Data protection

- Consider whether additional safeguards need to be put in place when data is being transferred outside of the UK.
- Undertake a data privacy impact assessment.
- If dealing with a consultant overseas, ensure your data processing agreements are adequate and up to date.
- You may need advice on data protection in the relevant company.
- How will it be ensured that there are adequate security practices in place?
- Consider providing training to the employee.



Practical implications

Practical implications

- Those working in a regulated industry should consider any requirements of their regulator – for example the FCA.
- Is the employee covered under your insurances?
- How will their work be ‘supervised’ or how will they supervise others?
- Will they retain a UK bank account? If not, consider conversion rates etc.
- Will the employee be able to access benefits such as private medical insurance, company cars, income protection, and life assurance?
- Remember the wider picture – families moving.



Right to work

Key documentation

- The law on preventing illegal working: sections 15 to 25 of the Immigration, Asylum and Nationality Act 2006, section 24B of the Immigration Act 1971 and Schedule 6 of the Immigration Act 2016.
- An employer's guide to right to work checks: 6 April 2022.
- Code of practice on preventing illegal working: Civil penalty scheme for employers.
- Code of practice for employers: avoiding unlawful discrimination while preventing illegal working.
- If an employer conducts the checks set out in the guidance and the code of practice, they will have a statutory excuse against liability for a civil penalty in the event that they are found to have employed someone, who is prevented from carrying out the work in question, by reason of their immigration status.

Biometric card holders

From 6 April 2022:

- Biometric card holders will evidence their right to work using the Home Office online service only.
- Employers will not be able to accept physical cards and conduct manual right to work check.
- Retrospective checks will not be required where a manual check was conducted before 6 April 2022. You will still retain a statutory excuse if you conducted a right to work check in accordance with the applicable guidance at the time.
- To complete right to work checks employers will require the individual's date of birth and a share code to access the online portal provided by the individual.

Digital identity verification

- From 6 April 2022, Identity Service Providers (IDSPs) can be used to support employers with right to work checks.
- A digital copy of a physical document relating to that person is produced for verification of the document's validity, and whether that person is the rightful holder of the document.
- This new system is not mandatory. Training is recommended for staff who do use it.
- Private sectors IDSPs can become independently certified to ensure technology meets the standards.
- Note that employers retain obligations where using at IDSP.

Who does it apply to?

- British and Irish citizens who hold a valid passport (including Irish passport cards). This must be in date.
- Additional checks would be required for other documentation.
- An employer will remain at risk of a civil penalty if the digital right to work check is not carried out correctly even if using a private sector service provider.

COVID-19 rules

- The Home Office has extended its adjusted COVID-19 right to work checks, allowing employers to carry out a manual right to work check using video conferencing and copies of supporting documents until 30 September 2022.
- These rules will work alongside the new rules on digital identification verification and biometric residence cards until 30 September 2022.
- Checks can be carried out over video calls where the original documents are held up to the camera.
- Job applicants and existing workers can send scanned documents or a photo of documents for checks using email or a mobile phone app, rather than sending originals.

COVID-19 rules

- Employers should use the Home Office Employer Checking Service if a prospective or existing employee cannot provide any of the accepted documents.
- If the worker has a Biometric Residence Permit or Biometric Residence Card or has been granted status under the EU Settlement Scheme or the points-based immigration system an employer can use the online right to work checking service while doing a video call – the applicant must give permission to view their details.
- If the job applicant or existing worker cannot show their documents, employers should contact the Home Office Employer Checking Service.



Any questions?

About Brachers' Employment team

Our [Employment and HR team](#) take pride in delivering employment law and HR services that are tailored to your needs. We are dedicated to listening and learning about your business to understanding the challenges you face, your ambitions, and how to retain, your key asset, your people.

We are one of the largest employment and HR teams in the South East, working alongside businesses with 60,000 employees in the region.

Free online consultation

If you have any questions arising from the session, please take advantage of our [free 30-minute consultation](#) with Sarah Wimsett, or another of the Brachers' Employment team for an initial discussion on your needs and to find out how we can help.

Other webinars you may be interested in

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- [Brachers Bitesize: Holiday pay](#)
- [Answering the recruitment challenge: Staffing through an agency](#)