

RIGHT TO WORK CHECKS

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INTRODUCTION

Importance of right to work checks

A right to work check determines whether an applicant has the legal right and permission to work in the UK. The Immigration, Asylum and Nationality Act 2006 (amended by the Immigration Act 2016) provides employers with a statutory excuse against a civil penalty where they can clearly demonstrate that they have carried out all the necessary checks to mitigate any risks of employing illegal workers.

Employers are at risk of facing a [civil penalty](#) if they are found to be employing an illegal worker and they haven't carried out a correct right to work check. A civil penalty can be anything up to £20,000 per illegal worker. Criminal sanctions may also apply where the employer is found to have knowingly appointed or continues to employ an individual who does not have a right to work in the UK.

Online checks

Historically, employers have had to carry out a physical check of documentation, although from the end of January 2019, employers have been able to check documentation online in real time. This facility requires applicants to confirm their right to work with the home office online before providing their new employer with an access code. Read further details about how the online checks work on the [gov.uk website](#).

Manual checks and following up

When conducting manual checks, there are three steps that employers must take to confirm an individual has the right to work in the UK.

1. Obtain the person's original documents from List A or List B of the acceptable documentary evidence as outlined in on page five.
2. Check all documentary evidence with the holder to verify that the documents are genuine, that the individual is the rightful owner of those documents, and they are permitted to do the type of work being offered.
3. Make a clear copy of all documentary evidence seen and record the date of the check (documents may be photocopied or scanned and uploaded onto the electronic staff record (ESR) or other internal HR system)

Employers should retain all copies securely for the duration of the individual's employment, and for at least two years after the employment has come to an end. Copies of personal information must only be retained for the purpose of establishing a statutory excuse as defined by Section 15 of the Immigration, Asylum and Nationality Act 2006 (as amended in 2014) and retained in line with data protection laws (as amended in 2018). This includes ensuring you have a

documented lawful basis for processing any data as per the [Information Commissioner's Office \(ICO\) guidance](#).

Employers will need to refer to Home Office guidance which can be found on the gov.uk website.

- [Right to work checks: employer guidance](#)
- [An employer's guide to the administration of the civil penalty scheme](#)
- [The code of practice on preventing illegal working: civil penalty scheme for employers](#)

Who requires a right to work check and when?

To avoid discrimination, employers must complete right to work checks on all successful applicants before they can be allowed to take up employment.

No assumption should be made about an individual's right to work on the grounds of colour, race, nationality, ethnic or national origins, accent or the length of time they have been resident in the UK.

Checking right to work documents

The Home Office has provided guidance which outlines the type and range of [acceptable right to work documents](#) that must be obtained and verified to prove an individual's right to work in the UK. This was last updated in January 2019.

Employers must see:

- one document or a combination of documents as specified in List A; or
- one document or a combination of documents as specified in List B.

You must not accept any other documents or combination of documents other than those stipulated by the Home Office in Lists A and B in order to retain a statutory excuse.

All documents must be original and show that the holder is entitled to do the type of work being offered.

Those that contain an expiry date should be valid and current. Photocopies and documents downloaded from the internet must not be accepted.

There are a small number of exceptions to the valid and current rule, which include an out of date UK/EEA passport, and an EEA national identity card. Please consult the most up to date UK Visas and Immigration [employer's guide](#) for further information if you are unsure what can be accepted.



An indefinite leave to remain stamp in an expired passport must not be accepted. Where an individual presents an expired passport with indefinite leave to remain, employers should provide the individual with opportunity to obtain and provide current documents, such as a Biometric Residence Permit.

Further guidance on some forms of documentation, including additional evidence that can be accepted from students, can be found in [appendix one](#).

Follow-up checks

In certain circumstances, employers may be required to carry out follow-up checks to ensure they retain a statutory excuse. There are two categories of statutory excuse:

Continuous excuse

This is where an individual can provide one document or combination of documents from List A and there are no restrictions on their right to work in the UK. Once documents from List A have been checked, copied and retained, you do not need to conduct any repeat checks on the worker for the duration of their employment. This also applies where documentary evidence shows that the individual has indefinite leave to remain in the UK.

Time-limited excuse

This is where an individual can provide a document or combination of documents from List B which means they have time-limited and restricted right to work in the UK. The individual's permission to work in the UK ends when their visa or other right to work document expires. Some visas carry restrictions as to the number of hours the individual can work and/or the type of work they can do. This means that you will need to conduct a repeat check before the expiry date of the visa if you wish to continue to employ them. The frequency of any follow-up checks depends on whether the documents presented are from Group 1 or Group 2 in List B (see table below).

Document type	Excuse type	Frequency of checks
LIST A	Continuous	<u>Before</u> employment starts only. No further checks are required for the duration of their employment.
LIST B – GROUP 1	Time-limited	<u>Before</u> employment starts and again <u>when permission expires</u> (as indicated within the document presented).
LIST B – GROUP 2	Time-limited	<u>Before</u> employment starts and again <u>after six months</u> , as set out in the Positive Verification Notice (see section on in-time applications below).

It is crucial that employers record the date of any follow-up checks required on employees who have limited leave to remain in the UK, and that these checks are completed at the correct time to retain in order to retain a statutory excuse.

The statutory excuse will continue for a further period of up to 28 days from the expiry date given in the employee's document, where you can obtain the necessary assurances that they:

- have submitted an in-time application to UKVI, or
- have made an appeal against an immigration decision before the expiry date specified in their document.

In-time applications

The worker's application must be made before their permission to work in the UK expires for it to be regarded as being 'in-time'. Any right to work will continue until the outcome of the application is determined.

Employers must:

- seek acceptable proof of an in-time application being made, such as a Home Office acknowledgement letter or proof of postage which indicates that an application was sent to the Home Office
- go to the Home Office's online [Employer Checking Service portal](#) to confirm that an application has been received and the individual continues to have a right to work while their application/appeal is being determined. The Home Office advises to wait for 14 days after the individual has submitted their application or appeal to ensure this has been registered. It is employers' responsibility to inform prospective or current employees when they are carrying out a check with the service.

The Home Office will then issue you with a Positive Verification Notice which confirms that the named individual is permitted to carry out the type of work in question. Positive verification notices are valid for a period of six months from the issue date.


Employers are required to take copies of all documentary evidence, including the Positive Verification Notice, in order to retain a statutory excuse.

Failure to carry out checks

Failure to carry out the necessary checks can result in the Home Office issuing the employer with a civil penalty of £20,000 per illegal worker or imposing up to five years' imprisonment and/or an unlimited fine where they are found to have knowingly employed an illegal worker.

Migrants found to be working illegally may also face a maximum custodial sentence of six months and/or an unlimited fine (in England and Wales). Wages paid to an illegal migrant will be recoverable under the Proceeds of Crime Act 2002.

In certain circumstances, immigration officers can close an organisation for up to 48 hours or place it under special compliance requirements where it is suspected



of employing an illegal worker. Where employers can provide the sufficient evidence that all right to work checks have been conducted and that they have taken all reasonable steps to prevent illegal working, the 'closure notice' may be cancelled.

The [Immigration Act 2016 factsheet](#) is available to download from the NHS Employers website.

Validating documents

When validating documents presented by applicants, you must:

- check photographs, where available, to satisfy yourself that they are consistent with the appearance of the individual
- check the date of birth is consistent with the individual's identity documents and the appearance of the applicant
- check that expiry dates of any limited leave to enter or remain in the UK are still valid
- check any government stamps or endorsements to ensure the individual is entitled to do the work being offered
- if the applicant provides you with documents that have different names you must request further documentation to explain the reason for this (marriage/civil partnership certificate, divorce certificate, deed poll, adoption certificate or statutory declaration)
- dates must be cross-referenced with identity documents and work permits or confirmed by contacting appropriate embassies and consulates.

Further guidance on checking the authenticity of documentation can be found in Appendix 2 of the [Identity check standard](#) which can be found on the NHS Employers website.

Copying and storing documents

All documents must be copied and retained on file securely either electronically or in hard copy to provide proof against a penalty, in line with data protection laws (as amended by the General Data Protection Act in 2018). A record of the date on which a check was made must be retained, either by making a dated declaration on the copy or in a separate record, held securely, which can be shown to the Home Office upon request to establish your statutory excuse.

Employers need to make a copy of the relevant page or pages of the document in a format that cannot be subsequently altered, for example a photocopy or scan. In the case of a passport or other travel document, the following parts must be photocopied or scanned:

- Passports: any page with the documents expiry date, nationality, date of birth, signature, leave expiry date, biometric details and photograph, and any page containing information indicating the holder has an entitlement to enter or remain in the UK and undertake the work in question.
- All other documents: the document in full, both sides of a Biometric Residence Permit.

You should then keep a record of every document you have copied in line with data protection laws (as amended by the General Data Protection Act in 2018). Copies of the documents should be kept securely for the duration of the individual's employment and for a further two years after their employment has ceased. The person taking the copy must sign and date it to show it has been certified.

Recruiting within the EEA

Nationals from EEA countries and any immediate family members (where the EEA national continues to reside in the UK) can currently enter and work freely in the UK without any restrictions. They must however, be able to produce one of the documents in List A which confirms their nationality.

There will be no changes to the ways that EU, EEA and Swiss citizens can prove their right to work until 1 January 2021 regardless of whether the UK leaves the European Union with or without a deal. A new immigration system will apply from 1 January 2021 onwards. For full clarity, the government has issued guidance on employing EU, EEA and Swiss citizens and their family members after Brexit, which can be found on the [gov.uk website](#).

The Home Office EU Settlement Scheme meanwhile, has been devised to provide EU citizens and their families a further route to living and working in the UK after 31 December 2020. Information and resources are available on the [NHS Employers website](#) to support staff through this process.

Employers can also view settlement status through the [Home Office online service](#) once the applicant has given you their date of birth and unique share code. This information should be maintained in line with data protection requirements.



Recruiting from outside of the EEA

Sponsorship licences and certificates of sponsorship

Employers that recruit foreign nationals from outside the UK or EEA under Tier 2 of the points-based immigration system, or who wish to extend the employment of an individual when their Tier 2 visa expires, must apply for a sponsorship licence, and issue a Certificate of Sponsorship (CoS) to migrants they wish to employ.

The CoS is not an actual document but is a unique reference number. Once issued with this reference number migrants can use this to apply for entry or leave to remain in the UK.

Employers must meet certain duties around record keeping, reporting, compliance and co-operating with the Home Office in order to retain their sponsorship licence. The licence is valid for four years, unless it is withdrawn by the UKVI for failing to comply with sponsorship duties.

Further Home Office guidance detailing [employer requirements and duties as a sponsor](#), can be found on the gov.uk website.

Organisations must ensure they renew their licence prior to the expiry date in order to continue to act as a sponsor. We would strongly recommend that employers review their licence at least one month prior to the expiry date.

Individuals who are work permit holders and have existing leave to enter, or remain, granted under the old work permit arrangements, will be able to extend their leave under Tier 2 but are not required to change their status until their leave to remain expires. To continue in post, they will need a Certificate of Sponsorship from their employer, which must confirm that the job is at or above S/NVQ level 3 and is paid at or above the appropriate rate for the job.

If an existing work permit holder wants to change their employment, (for example, a new employer or a promotion with existing employer) they will need their employer to issue a Certificate of Sponsorship and meet the full eligibility criteria for Tier 2.

Further information on the [immigration rules: points-based system](#) can be found on the NHS Employers website.

The resident labour market test

To sponsor an individual outside of the UK under Tier 2 (General) of the points-based system, for a skilled job that is not on the Home Office list of shortage occupations, employers will need to first complete a resident labour market test.

A resident worker is a person who is an EEA national or has settled status in the UK within the meaning of the Immigration Act 1971, as amended by the Immigration and Asylum Act 1999, and the Nationality, Immigration and Asylum Act 2002.

Additional information on the [resident labour market test](#) and on the [sponsorship licence system](#) is also available on the NHS Employers website.

Asylum seekers

An asylum seeker is a person who has made an application for asylum, but whose application is yet to be decided upon. Asylum seekers generally do not have the right to work in the UK. For the very small number who do, it will state employment permitted or allowed to work on their Application Registration Card (ARC).

Employers must seek a Positive Verification Notice from the Home Office to confirm the individual's status and right to work in the UK before they can be allowed to start work. This can be done by going to the online [Employer Checking Service portal](#) as described earlier on page six. It is employers' responsibility to inform prospective or current employees when they are carrying out a check with the service.

Further information about employing asylum seekers can be found in the Home Office guidance for employers on [preventing illegal working in the UK](#).


Refugees

A refugee is a person who has had a positive decision on their claim for asylum under the 1951 United Nations Convention Relating to the Status of Refugees (the Refugee Convention). Individuals who do not meet the Refugee Convention's criteria for refugee status may qualify either for humanitarian protection (granted for five years), or discretionary leave to remain (granted for up to three years).

Refugees have rights under the Geneva Convention to be treated no less favourably than citizens of the host nation. This means that they can work and are able to move and reside freely in the UK. They are also eligible for mainstream benefits and services, including access to education and NHS treatment, in the same way as UK citizens.

Refugees with humanitarian protection or discretionary leave to remain are entitled to apply for further leave before their right to remain expires. A refugee's entitlement to employment and training continues during this period of waiting for a decision on their application.

Refugees are unlikely to have a passport or copies of other official documentation, such as a birth certificate or drivers licence. They are not a part of



the points-based immigration system. If granted leave to remain in the UK, a refugee will be issued with a Home Office Immigration Status document (ISD) which will indicate their refugee status. Employers may ask the individual to present this and accept this as evidence of their identity. For more detailed information on acceptable documentation for different groups, see the Home Office guidance for employers on [preventing illegal working in the UK](#).

International students

International students are often able to work part time (20 hours per week) when studying in the UK, and full time during their holidays and any period of time between completing their studies and their permission to be in the UK expiring. Some international students have no right to work at all.

Before employing a student who has a limited right to work during term time, you must obtain evidence of their academic term and vacation dates that cover the duration of their studies in the UK for which they will be employed by you. You should request this evidence from the student.

This evidence should originate from the education institution that is sponsoring the student. You may obtain the dates for the entire duration of the course or, if this is not possible, you may obtain and copy them annually providing the information you hold is current at the time of the student's employment.

Acceptable evidence includes one of the following.

- A printout from the student's education institution's website, or other material published by the institution setting out its timetable for the student's course of study. You should check the website to confirm the link is genuine.
- A copy of a letter or email addressed to the student from their education institution, confirming term-time dates for the student's course.
- A letter addressed to you as the employer from the education institution, confirming term-time dates for the student's course.

In exceptional circumstances, for example where the student is following a course timetable that differs from the one published, you may need to obtain bespoke evidence from the sponsor. It is important to remember that you require this evidence to establish and retain a statutory excuse against liability for a civil penalty.

Information about [permitted employment for students under Tier 4](#) including those applying for work placements can be found on the UKVI section of the gov.uk website.

Further information on the [Tier 4 student category](#) can be found on the NHS Employers website.

Staff acquired under Transfer of Undertakings Protection of Employment

Employers who acquire staff as a result of a Transfer of Undertaking Protection of Employment (TUPE) transfer **cannot** rely on another employers' right to work checks. The new employer has a grace period of 60 days to undertake the appropriate document checks following the date of transfer.

This grace period applies only at the point of transfer and does not apply to any subsequent follow-up checks that might be required.

What to do if an applicant does not have the right to work

If, after carrying out these checks, it is established that the applicant is not permitted to work in the UK, then you must not allow the individual to commence employment.

If a person is likely to obtain the relevant permission within an acceptable time period, then it is at the discretion of the employer as to whether they agree to wait until the permission is received or withdraw the offer of employment. If there is no evidence that the relevant permission is going to be forthcoming promptly, then the offer of employment must be withdrawn.



Appendix 1: Guidance on specific forms of documentation

National Insurance numbers

Employers should note that the provision of a National Insurance number in isolation is not sufficient evidence for the purposes of having a statutory excuse and this must only be accepted when presented in combination with one of the appropriate documents specified in Lists A or B.

Biometric residence permit

All foreign nationals from countries outside the EEA and Switzerland who are granted leave to remain in the UK for more than six months must apply for a [Biometric residence permit](#) (BRP). Employers may accept these permits, alongside the other recommended documents, as acceptable proof of the holder's identity, nationality and right to stay, work or study in the UK.

Individuals are issued with a BRP automatically when they apply for a visa or immigration. A sticker or vignette is issued in their passport, which is valid for 30 days, allowing them time to travel to the UK. Upon arrival, they then have 10 days to collect their BRP from a Post Office branch (as specified in their decision letter).

Further information checking a Biometric Residence Permit can be found on the UKVI section of the [gov.uk website](#) or by calling the helpline on 0300 123 4699.

Residence cards (biometric format)

For non-EEA family members, biometric residence cards have been issued since 6 April 2015. These replace the previously issued passport vignette or standalone document, though both will remain acceptable documents for the purposes of right to work checks.

Appendix 2: Additional guidance for specific countries

Employing EEA nationals

The majority of nationals from EEA countries and Switzerland can currently enter the UK without any restrictions. However, employers should not employ an individual on the basis of their claim to be a national from an EEA country, as not all EEA nationals can work in the UK without restrictions.

Employers should ask nationals from all EEA countries and Switzerland to prove their nationality by producing one of the documents, or combinations of documents, specified in [List A or List B as stipulated in Home Office guidance](#).

Immediate family members are also able to work freely in the UK while their adult EEA family member is legally residing and working here. Employers must check documentation to demonstrate this entitlement.

As mentioned earlier in this standard, there will be no difference in the way EU, EEA and Swiss citizens prove their right to work until 1 January 2021, regardless of whether the UK leaves the EU. The above guidance applies but you should also consider the following country specific points too.

The following countries are part of the EEA and have full employment rights: Austria*, Belgium*, Bulgaria*, Croatia**, Czech Republic*, Cyprus*, Denmark*, Estonia*, Finland*, France*, Germany*, Greece*, Hungary*, Iceland*, (Republic of) Ireland*, Italy*, Latvia*, Liechtenstein, Lithuania*, Luxembourg*, Malta*, (The) Netherlands*, Norway, Poland*, Portugal*, Romania*, Slovakia*, Slovenia*, Spain*, Sweden* and the UK*.

*Denotes the countries that are also a member of the EU.

**See further information in the section below regarding the old restrictions on Croatian nationals.

Nationals from Switzerland and their family members also have the same free movement and employment rights as EEA nationals.

Although the UK is currently a member of the EEA, the information in this section is not relevant to British citizens and their families.

Employing Irish nationals

Irish citizens will continue to have right to work in the UK under Common Travel Area arrangements. No matter what the terms of the UK's exit from the European Union, there is a commitment to maintain right to work rights between the UK and the Republic of Ireland. More information is available on the [gov.uk website](#).



Employing Croatian nationals

As of 30 June 2018, the current registration requirements for Croatian workers have expired, bringing their right to work in line with other EU citizens. Further information is available on the [gov.uk website](#).

Employing Turkish nationals

The European Community Association Agreement (ECAA) with Turkey provides Turkish nationals who are already legally employed in the UK with certain rights when they want to extend their stay.

They can:

- apply to extend their permission to stay in the UK after they have worked in the UK for one year so that they can continue to work for the same employer (if a job is available)
- change employers after they have worked in the UK for three years, provided they are continuing to work in the same occupation
- have full access to the UK labour market and are free to work in any type of job for any employer after they have worked in the UK for a period of four years.

If an applicant is successful, UKVI will give them permission to stay as a Turkish ECAA worker and the individual will be issued with a vignette in their passport and receive a letter confirming their status. Employers will be able to use this documentation to check a potential or existing employee's right to work in the UK. However, a Turkish ECAA worker visa does not give the individual an automatic right to apply for indefinite leave to remain and any application to UKVI for indefinite leave to remain will be rejected. The duration of leave granted to an individual will be between 12 and 36 months. At the end of this period, another application must be made if further leave to remain is required.

A Turkish worker will, however, be eligible to apply for indefinite leave to remain after they have legally resided in the UK for a period of ten years, or two to 14 years of continuous residence of any legality.

Information about [employing Turkish nationals](#) can be found on the NHS Employers website.




Further guidance can be found on the [UKVI section](#) of the gov.uk website.



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