



NHS Employers

Part of the NHS Confederation

JULY 2021

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

Since January 2019, non-UK nationals wishing to work in the UK have been able to confirm their right to work through the Home Office [online checking portal](#), the online service supports checks in respect of those who hold:

- a biometric residence permit
- a biometric residence card
- status under the EU Settlement Scheme
- status under the points-based immigration system
- a British National Overseas (BNO) visa, or
- a frontier workers permit.

They can then choose to provide any prospective employer with their share code so that employers can check an applicant's right to work status online instead of requiring them to present documentary evidence. The share code is generated when the applicant accesses their details online.

While not mandatory for non-UK nationals to confirm their right to work status in this way, employers may find it beneficial to encourage them to do so by highlighting the added benefits in speeding up the recruitment process and the applicant's ability to start work while enhancing assurances about their right to work status.

Where employers can evidence that they have undertaken a check using the online portal, this will provide them with a statutory excuse. The same follow up checks must be undertaken where the individual's right to work status indicates that the applicant has limited leave to remain (see further details on page five). Where individuals choose not to have their right to work status verified online, employers must obtain manual checks as described on page four.

Further details about how the online portal is intended to work can be found on the [gov.uk website](#).

MANUAL CHECKS AND FOLLOWING UP

It will 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, or an individual may choose not to demonstrate their right to work using the online service. In such cases employers should conduct a manual check.

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 below.
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](#) (List A and List B) that must be obtained and verified to prove an individual's right to work in the UK. This was last updated in June 2021.

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 passport.

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.

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.

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.

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 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 employees 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.

DOCUMENTS

Validating documents

When validating documents presented by applicants, you must:

- check photographs, where available, and dates of birth are consistent with the appearance of the individual
- 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. 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. 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

Recruiting outside of the UK

On 1 January 2021 a new points-based UK immigration system came into effect. The new arrangements apply to everyone from outside of the UK (excluding the Republic of Ireland) wishing to live and work in the UK.

Employers that recruit nationals from outside the UK under the points-based immigration system, 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. Certificates must be used within three months of assignment.

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.

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

EEA nationals right to work evidence

The UK has left the European Union (EU) and the EU Withdrawal Act 2020 ended free movement law in the UK on 31 December 2020. There followed a grace period of six-months (until 30 June 2021) during which relevant aspects of free movement law were saved to allow eligible EEA citizens and their family members resident in the UK by 31 December 2020 to apply to the [EU Settlement Scheme](#).

From 1 July 2021, EEA nationals and their family members require immigration status in the UK, in the same way as other foreign nationals. They can no longer rely on an EEA passport or national identity card to prove their right to work. EEA nationals will need to demonstrate their right to work either with the pre-settled or settled status under the EU Settlement Scheme, or with a visa under the points-based immigration system.

Most EEA nationals resident in the UK will have made an application to the EU Settlement Scheme and will have been provided with digital evidence of their UK immigration status. They will evidence their right to work by sharing their immigration status digitally, using the [Home Office online right to work checking service](#). This service allows employers to check an applicant's right to work status online instead of requiring them to present documentary evidence.

There will, however, be other EEA nationals who have another form of leave in the UK, which is held in a physical document, for example an endorsement in a passport, visa or vignette, those are included in the [Home Office acceptable right to work document lists](#).

Irish nationals continue to have the right to work in the UK under Common Travel Area arrangements and as such they can continue to use a passport or passport card to prove their rights in the UK. They did not have to apply for status under the EU Settlement Scheme, but may have chosen to do so, meaning they can also use their settled or pre-settled status to prove their right to work.

Employers should refer to Home Office guidance on [employing EEA citizens in the UK](#) for more information.

EEA nationals can be directed to [Home Office guidance on viewing and proving their immigration status](#) for support with the process.

Non-EEA nationals right to work evidence

Non-EEA nationals can use an immigration status document listed in the Home Office [acceptable right to work documents](#) to prove their right to work.

Those who hold a biometric residence permit, biometric residence card or status under the points-based immigration system can also prove their right to work using the Home Office [online checking service](#). If an applicant uses the online service this will generate a share code so that employers can check an applicant's right to work status online instead of requiring them to present documentary evidence.

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. 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 with 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.

Further information on the student visa 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 employer's 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.