

Minimum requirements

2.1 Who requires a right to work check and when?

2.1.1 Employers must carry out a right to work check on all successful applicants before they can be allowed to take up employment.

2.1.2 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.

2.1.3 In the event that an employer is found to be employing an illegal worker, they would not be liable for a civil penalty if they can prove they conducted the appropriate checks set out in Home Office guidance. This is called a statutory excuse.

2.1.4 There are three types of right to work check:

- a manual right to work check
- an online Home Office right to work check (non-British or non-Irish citizens)
- a right to work check using Identity Document Validation Technology (IDVT) via the services of a provider (British and Irish citizens only).

2.1.5 The type of check an employer should conduct will depend on the status of the individual you intend to employ and, in some circumstances, the individual's preference. See sections 2.2 online checks, 2.3 using an IDSP and 2.4 manual checks for more information.

2.2 Online Home Office checks

2.2.1 Non-British and non-Irish nationals wishing to work in the UK can confirm their right to work through the Home Office online checking portal, the digital 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
- a frontier workers permit.

2.2.2 Individuals will provide a prospective employer with their share code so that employers can check their right to work status digitally instead of requiring them to present documentary evidence. The share code is generated when the individual accesses their details online.

2.2.3 Since 06 April 2022, it has been mandatory for holders of the Biometric Residence Card (BRC), a Biometric Residence Permit (BRP) and Frontier Work Permit (FWP) to evidence right to work using the Home Office checking portal. Employers are no longer be able to accept physical biometric cards for BRC, BRP and FWP holders to evidence right to work.

2.2.4 Where employers can evidence that they have undertaken a right to work check using the Home Office online portal and have confirmed that the photograph on the check is of the individual presenting themselves for work, 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 they have limited leave to remain.

2.2.5 Further details about how the Home Office online portal works can be found on the gov.uk website.

2.3 Using an Identity Service Provider (IDSP)

2.3.1 British and Irish nationals are now able to confirm their right to work through a new digital system, the legislation took effect from 06 April 2022. The digital checks of right to work allow employers to verify British

and Irish nationals' eligibility to work, via a certified third party IDSP, without having to check physical documents.

2.3.2 Employers will still be required to confirm that the photograph provided to the third-party provider they use is a true likeness of the prospective employee. This can be in person or via a video call, as outlined in Home Office guidance. You must also retain a clear copy of the identity check output for the duration of employment and for two years after the employment has come to an end.

2.3.3 There will be occasions where a digital right to work check for British and Irish citizens will not be possible and you will be required to carry out a manual check of the document described in section 2.4 to obtain a statutory excuse e.g. if an individual is reliant upon an expired British or Irish passport. See Home Office guidance for more information about the documents required for the purposes of verifying right to work digitally via a certified third party provider.

2.3.4 A list of certified providers is available on the gov.uk website and employers interested in procuring a certified provider can engage directly with those providers.

2.3.5 Should an employer choose to use an IDSP they will need to become familiar with the regulations, and to ensure that staff involved in arranging identity and right to work checks have the necessary training on for example, what information they must obtain from the third party to confirm a candidate's identity; what the information can be used for; and what other requirements they still need to fulfil to establish eligibility to work.

2.3.6 Find out more about verifying right to work digitally via a certified third party provider in the Home Office employer's guide to right to work checks.

2.4 Manual checks

2.4.1 It will not be possible to conduct an online or digital right to work check in all circumstances, as not all individuals will have an immigration

status that can be checked online or digitally, or in some circumstances an individual may choose not to demonstrate their right to work using the online or digital services. In such cases employers should conduct a manual check.

2.4.2 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 section 2.5.
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).

2.4.3 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 and retained in line with data protection laws. This includes ensuring you have a documented lawful basis for processing any data as per the Information Commissioner's Office (ICO) guidance.

2.4.4 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.

2.5 Acceptable right to work documents

2.5.1 The Home Office provides 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.

2.5.2 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.

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

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

2.5.5 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.

2.5.6 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.

2.5.7 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.

2.6 Frequency of checks

2.6.1 Employers are required to carry out an initial right to work check to prevent illegal working on all individuals they intend to employ. Once you have completed this check, you will be required to carry out follow-up right to work checks if the individual's permission to be in the UK and to do the work in question is time-limited to ensure you 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	Before employment starts only. No further checks are required for the duration of their employment.
List B – Group 1	Time-limited	Before employment starts and again when permission expires (as indicated within the document presented).
List B –		

Group		
2	Time-limited	Before employment starts and again after six months, as set out in the Positive Verification Notice (see section on in-time applications below).

2.6.2 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.

2.6.3 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 the Home Office

Or

- have made an appeal against an immigration decision before the expiry date specified in their document.

2.6.4 Where relevant, it should be made a contractual condition for the individual to maintain their right to work status for the full term of employment. They must immediately notify the employer if their immigration status changes, or they cease to have the right to work in the UK.

2.7 In-time applications

2.7.1 An employee's application for further immigration permission to stay in the UK must be made before their existing permission expires for it to be deemed in-time. Any right to work will continue until the outcome of the application is determined.

2.7.2 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.

2.7.3 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.

2.7.4 Employers are required to take copies of all documentary evidence, including the positive verification notice, to retain a statutory excuse.

2.8 Validating, copying, and storing documents

2.8.1 When validating documents presented by individuals, you must check that:

- photographs and dates of birth are consistent across documents and with the appearance of the individual
- expiry dates for permission to be in the UK have not passed
- there are no work restrictions to prevent the individual doing the type of work being offered
- the documents are genuine, have not been tampered with and belong to the holder; and
- documents with different names can be explained by providing further evidence (for example, marriage/civil partnership certificate, divorce certificate, deed poll, adoption certificate or statutory declaration).

2.8.2 Employers must keep a record of every document checked. This can be hardcopy or a scanned copy in a format which cannot be manually altered. A record of the date on which a check was made must be retained, either by making a dated declaration on the copy (using the wording ‘the date on which this right to work check was made: [insert date]’ or in a separate record, held securely, which can be shown to the Home Office upon request to establish your statutory excuse. For Home Office purposes, simply writing a date on the copy document does not, in itself, confirm that this is the actual date when the check was undertaken.

2.8.3 In the case of a passport or other travel document, the following parts must be photocopied or scanned:

- **Passports:** any page with the document’s 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, including both sides of an Immigration Status Document and an Application Registration Card.

2.8.4 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.