



Home Office

# Employer right to work checks supporting guidance

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## About this guidance

This guidance advises an employer how to conduct a right to work check and sets out the specific actions you can take to prevent liability for a civil penalty. This is called 'establishing a statutory excuse against liability for a penalty'.

This guidance applies to right to work checks conducted on or after 31 August 2021 to establish or retain a statutory excuse from having to pay a civil penalty for employing a person who is not permitted to do the work in question.

## Previous versions of guidance

The civil penalty scheme to prevent illegal working commenced on 29 February 2008 (further to the Immigration Asylum and Nationality Act 2006). It was not introduced retrospectively. Employers are, therefore, not required to have a statutory excuse in respect of those whose employment commenced before 29 February 2008 and who have been employed continuously for them prior to that date. Between January 1997 and February 2008, section 8 of the Asylum and Immigration Act 1996 applied to right to work checks conducted during this period.

Where the employment commenced on or after 29 February 2008, and a statutory excuse was established for the duration of that person's employment before 16 May 2014, the document checks set out in the ['Full guide for employers on preventing illegal working in the UK'](#) published in October 2013 continue to apply.

Where the employment commenced on or after 16 May 2014, and a statutory excuse was established for the duration of that person's employment before 28 January 2019, the document checks set out in the ['Employer's guide to right to work checks'](#), last published on 29 June 2018, continue to apply.

For example, since 16 May 2014, for those people in the UK who require permission to work and reside, an immigration endorsement must be in a current passport to demonstrate a right to work. However, if you conducted a check between 29 February 2008 and 15 May 2014 and accepted an immigration endorsement in a passport that had expired or has since expired, your statutory excuse continues because this was an acceptable document at the time you conducted the check. You are only required to conduct follow up checks on an employee if their right to work is time-limited.

Since 28 January 2019, employers have been able to rely on the Home Office online service, [view a job applicant's right to work](#) to establish a statutory excuse.

Where the employment commenced on or after 28 January 2019, and a statutory excuse was established for the duration of that person's employment before 1 January 2021, the document checks set out in the ['Employer's guide to right to work checks'](#), last published on 28 January 2019, continue to apply.

Where the employment of an EEA citizen commenced on or after 1 January 2021, and a statutory excuse was established for the duration of that person's employment before 1

July 2021, the document checks set out in the 'Employer's guide to right to work checks', last published on 17 March 2021, continue to apply.

Where the employment of an EEA citizen commenced on or after 1 July 2021, and a statutory excuse was established for the duration of that person's employment before 31 August 2021, the document checks set out in the 'Employer's right to work checks supporting guidance', last published on 2 July 2021 continue to apply. These changes included.

- Changes to the way EEA citizens prove their right to work in the UK from 1 July 2021
- Changes to the acceptable document list to remove EEA passports, national identity cards and specified EEA Regulations documents, which only confirmed the individual's nationality or that they were exercising EEA Treaty Rights
- Changes to the acceptable document list to include:
  - Irish passport and passport card
  - A document issued by the Crown Dependencies Jersey, Guernsey, or the Isle of Man, which has been verified as valid by the Home Office Employer Checking Service
  - A frontier worker permit issued under regulation 8 of the Citizens' Rights (Frontier Workers) (EU Exit) Regulations 2020

## Summary of changes in this issue of the guidance

This guidance was last updated on 31 August 2021.

The UK has left the European Union (EU) and the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 ended free movement on 31 December 2020. On 1 January 2021, a grace period of six months began, during which time relevant aspects of free movement were saved to allow eligible EU, EEA and Swiss (EEA) citizens and their family members resident in the UK by 31 December 2020 to apply to the EU Settlement Scheme (EUSS). This period ended on 30 June 2021.

Since 1 July 2021, EEA citizens and their family members are required to hold a valid 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.

This guidance updates that issued in 2 July 2021.

On 6 August 2021, the government announced temporary protection for more applicants to the EUSS. This means that those who apply from 1 July, and joining family members, will have their rights protected while their application is determined. This guidance reflects this change.

EUSS applicants and joining family members will now be able to take up new employment while they await the outcome of their application. Home Office guidance remains that where a prospective employee has a Certificate of Application (CoA) confirming a valid application to the EUSS made on or after 1 July, employers should verify this with the Home Office Employer Checking Service (ECS).

The most significant updates contained in this guidance relate to:

- I. Changes to the way those with outstanding applications to the EUSS evidence their right to work, Annex B refers
- II. Changes to the lists of acceptable documents:
  - a. Removal of duplication from List B, Group 1, no.5
  - b. Amendment to List B, Group 2, no.2
  - c. Addition at List B, Group 2, no.5
- III. Extension to the COVID-19 temporary adjusted right to work checking process

# 1. Introduction

All employers in the UK have a responsibility to prevent illegal working. You do this by conducting simple right to work checks before you employ someone, to make sure the individual is not disqualified from carrying out the work in question by reason of their immigration status.

This guidance provides information on how and when to conduct a right to work check. You should also refer to the following documents:

- [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 you conduct the checks as set out in this guide and the code of practice, you will have a **statutory excuse** against liability for a civil penalty in the event you are found to have employed someone, who is prevented from carrying out the work in question, by reason of their immigration status. This means that if we find that you have employed someone who does not have the right to do the work in question, but you have correctly conducted right to work checks as required, you will not receive a civil penalty for that illegal worker.

In addition to the codes of practice and this guidance, there are a range of [tools available](#) on GOV.UK to support you in conducting right to work checks.

## Why do we need to prevent illegal working?

The ability to work illegally is a key driver of illegal migration. It leaves people vulnerable to exploitation and results in unscrupulous employers undercutting compliant businesses. It can also negatively impact on the wages of lawful workers and is linked to other labour market abuse such as tax evasion, breach of the national minimum wage and exploitative working conditions, including modern slavery in the most serious cases.

## Legislation

The law on preventing illegal working is set out in sections 15 to 25 of the [Immigration, Asylum and Nationality Act 2006](#) (the 2006 Act), section 24B of the Immigration Act 1971, and Schedule 6 of the Immigration Act 2016.

The 2006 Act replaced section 8 of the Asylum and Immigration Act 1996 (the 1996 Act) in respect of employment commencing on or after 29 February 2008. The civil penalty provisions in the 2006 Act do not apply to continuous employment with the same employer that commenced before 29 February 2008, for which a statutory excuse is, therefore, not required. Under section 15 of the 2006 Act, an employer may be liable for a civil penalty if they employ someone who does not have the right to undertake the work in question if that person commenced employment on or after 29 February 2008.

## Who is this guidance relevant for?

Employers, including their Human Resource staff and those staff within the same business with delegated responsibility for the recruitment and employment of individuals, should read this guidance to understand their responsibility to correctly carry out right to work checks, and, therefore, ensure compliance with the law.

This guidance applies to employers who employ staff under a contract of employment, service or apprenticeship, whether expressed or implied and whether oral or in writing.

As the employer, you are liable for the civil penalty even if the actual check is performed by a member of your staff. You will not establish a statutory excuse if the check is performed by a third party, such as a recruitment agency or your professional adviser, if you are the employer. In simple terms, the check must be carried out by the employer who the contract of employment is with.

Even if you are not the direct employer of the workers involved in your business, there are compelling reasons why you should seek to know that your workers have a right to work. If illegal workers are removed from your business, it may disrupt your operations and result in reputational damage. There could be adverse impacts on your health and safety and safeguarding obligations, as well as the potential invalidation of your insurance if the identity, qualifications, and skill levels of your workers are not as claimed. Accordingly, you may wish to check that your contractors conduct the correct right to work checks on people they employ.



## References in this guidance

'Breach' or 'breaches' mean that section 15 of the Immigration, Asylum and Nationality Act 2006 has been contravened by employing someone who is:

- subject to immigration control; and
- aged over 16; and
- not allowed to carry out the work in question because either they have not been granted leave to enter or remain in the UK or because their leave to enter or remain in the UK:
  - is invalid;
  - has ceased to have effect (meaning it no longer applies) whether by reason of curtailment, revocation, cancellation, passage of time or otherwise; or
  - is subject to a condition preventing the person from doing work of that kind.

A breach also refers to the contravention of the [Accession of Croatia \(Immigration and Worker Authorisation\) Regulations 2013](#).

'Certificate of Application' (CoA) is a digital, or 'non-digital', document which individuals can rely on to demonstrate their eligibility to work, rent, and access to benefits and services. This document is issued when a valid application made to the EU Settlement Scheme.

'Civil Penalty Notice' means a notice given under section 15(2) of the Immigration, Asylum and Nationality Act 2006 that requires an employer to pay a penalty of a specified amount.

'Current document' means a document that has not expired.

'Days' has two separate meanings:

- When referring to an employer – means calendar days, including Saturdays, Sundays and bank holidays.
- When referring to the Employer Checking Service – it does not include Saturdays or Sundays, Christmas Day or Good Friday, or any day which is classified as a bank holiday in England.

'Disqualified person' means a person with no legal immigration status and, therefore, does not qualify for right to work.

'Document' means an original document unless specified that a copy, electronic or screenshot is acceptable.

'EEA or Swiss citizen' means citizens of EEA countries or Switzerland.

The EEA countries are:

Austria, Belgium, Bulgaria, Croatia, Republic of Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain and Sweden.

'Employer Checking Service' refers to the Home Office service that employers are required to contact in certain circumstances (such as those described in this guidance) to check whether a person is allowed to work in the UK and, if so, the nature of any restrictions on that person's right to do so. Employers must receive positive confirmation of a person's right to work from the Employer Checking Service in order to have a statutory excuse against liability for a civil penalty. This is referred to as a Positive Verification Notice.

'Employment of illegal workers within the previous three years means you have been issued with a civil penalty or warning notice in respect of a breach of the 2006 Act or the Accession of Croatia Regulations 2013 (which applied until July 2018) for one or more workers which occurred within three years of the current breach, and where your liability was maintained following the exercise of any objection and/or appeal, or you have committed an offence under section 21 of the 2006 Act, as amended by the Immigration Act 2016, during the same period.

'eVisa' refers to a digital visa provided by the Home Office as evidence of a person's immigration status (permission to enter or stay in the UK).

'Home Office online right to work checking service' means the online system allowing employers to check whether a person is allowed to work in the United Kingdom and, if so, the nature of any restrictions on that person's right to do so. For the avoidance of doubt, this system is accessible for employers on the 'View a job applicant's right to work details' page on GOV.UK. No other online portal relating to immigration status may be used instead for right to work checking purposes.

'Leave to enter or remain in the UK' means that a person has permission from the Home Office to be in the UK. Permission may be time-limited or indefinite.

'Non-EEA citizens' means the citizens of countries outside the EEA.

An 'online right to work check' means the response generated by the Home Office online right to work checking service in relation to a person.

'Pre-settled status' means a person has applied for settled status to the UK. Individuals with pre-settled status can stay in the UK for five years from the date they received pre-settled status.

References to 'right to work checks' refer to prescribed manual document checks and prescribed online right to work checks.

'Statutory excuse' means the steps an employer can take to avoid liability for a civil penalty.

'Settled status' means the person has lived in the UK for a continuous five-year period under pre-settled status conditions and has not left the UK for more than five years in a row since then. A person with settled status can stay in the UK as long as they like.

'Valid application' means individuals who comply with the validation requirement of an application process, including the enrolment of biometrics, if required, and the provision of evidence of nationality and identity.

'View a job applicant's right to work details' means the Home Office online checking service on GOV.UK which enables employers to check whether a person has a right to work and, if so, the nature of any restrictions on that person's right to do so.

'We' or 'us' in this guidance mean the Home Office.

'You' and 'your' in the guidance mean the employer.

## 2. How to conduct a right to work check?

You should conduct a right to work check **before** you employ a person to ensure they are legally allowed to do the work in question for you. If an individual's right to work is time-limited, you should conduct a follow-up check shortly before it is due to come to an end.

There are two types of right to work checks: a manual document-based check and an online check. Conducting either the manual document-based check or the online check as set out in this guidance and in the [code of practice](#) will provide you with a statutory excuse.

You can also use the [Employer Checking Service](#) where an individual has an outstanding application, administrative review or appeal, or if their immigration status requires verification by the Home Office, for example in the case of Crown Dependencies.

### Conducting a manual document-based right to work check

There are three steps to conducting a manual document-based right to work check. You need to complete all three steps before employment commences to ensure you have conducted a check in the prescribed manner, in order to establish a statutory excuse.

#### Step 1: Obtain

You must obtain **original** documents from either [List A](#) or [List B](#) of acceptable documents at [Annex A](#).

#### Step 2: Check

You must **check** that the documents are genuine and that the person presenting them is the prospective employee or employee, the rightful holder and allowed to do the type of work you are offering. You must check that:

1. photographs and dates of birth are consistent across documents and with the person's appearance in order to detect impersonation;
2. expiry dates for permission to be in the UK have not passed;
3. any work restrictions to determine if they are allowed to do the type of work on offer (for **students** who have limited permission to work during term-times, you **must** also obtain, copy and retain details of their academic term and vacation times covering the duration of their period of study in the UK for which they will be employed);
4. the documents are genuine, have not been tampered with and belong to the holder; and
5. the reasons for any difference in names across documents can be explained by providing evidence (e.g. original marriage certificate, divorce decree absolute, deed poll). These supporting documents must also be photocopied and a copy retained.

## Step 3: Copy

You must make a **clear copy** of each document in a format which cannot manually be altered and retain the copy securely: electronically or in hardcopy. You must also retain a secure record of the date on which you made the check. Simply writing a date on the copy document does not, in itself, confirm that this is the actual date when the check was undertaken. If you write a date on the copy document, you must also record that this is the date on which you conducted the check.

You must copy and retain copies of:

1. **Passports:** any page with the document expiry date, the holder's nationality, date of birth, signature, leave expiry date, biometric details, photograph and any page containing information indicating the holder has an entitlement to enter or remain in the UK (visa or entry stamp) and undertake the work in question (the front cover no longer has to be copied).
2. **All other documents:** the document in full, including both sides of a Biometric Residence Permit, Application Registration Card and a Residence Card (biometric format).

All copies of documents taken should be kept securely for the duration of the worker's employment and for two years afterwards. The copy must then be securely destroyed.

We recommend you use our:

- employers' ['Right to Work Checklist'](#) to ensure you have correctly carried out all the steps you need to; or
- online interactive tool ['Check if someone can work in the UK'](#), which will take you through the process by asking you a series of questions.

Both will help you to confirm that you have undertaken each step correctly to establish your statutory excuse.

## Step 1: Acceptable documents

The documents you may accept from a person to demonstrate their right to work are set out in two lists – [List A](#) and [List B](#). These are set out in [Annex A](#) to this guidance.

[List A](#) contains the range of documents you may accept for a person who has a permanent right to work in the UK. If you conduct the right to work checks correctly before employment begins, you will establish a continuous statutory excuse for the duration of that person's employment with you. You do not have to conduct any further checks on this individual.

[List B](#) contains a range of documents you may accept for a person who has a temporary right to work in the UK. If you conduct the right to work checks correctly, you will establish a time-limited statutory excuse. You will be required to conduct a follow-up check in order to retain your statutory excuse. This should be undertaken in the same way as the original check.

## Step 2: Checking the validity of documents

When you are checking the validity of the documents, you should ensure that you do this in the presence of the holder. This can be a physical presence in person or via a live video link. In both cases you must be in physical possession of the original documents. For example, an individual may choose to send their documents to you by post to enable you to conduct the check with them via live video link. You may not rely on the inspection of the document via a live video link or by checking a faxed or scanned copy of the document.

The responsibility for checking the document is **yours**. Whilst it may be delegated to your members of staff, you will remain liable for the penalty in the event the individual is found to be working illegally and the prescribed check has not been correctly carried out. You may not delegate this responsibility to a third party. Whilst you may use a third party to provide support in terms of technical knowledge or specialised equipment to prevent the employment of illegal workers, the responsibility for performing the check (in order to obtain a statutory excuse from a civil penalty) will remain with you as the employer.

If you are given a false document, you will only be liable for a civil penalty if it is **reasonably apparent** that it is false. This means that a person who is untrained in the identification of false documents, examining it carefully, but briefly, and without the use of technological aids could reasonably be expected to realise that the document in question is not genuine.

You will not obtain a statutory excuse if:

- the check is performed by an individual who is not employed by you;
- it is reasonably apparent that the person presenting the document is not the person referred to in that document, even if the document itself is genuine. You may be liable to prosecution if you know or have reasonable cause to believe that the individual does not have immigration permission to work;
- you know that the individual is not permitted to undertake the work in question; or
- you know that the documents are false or do not rightfully belong to the holder.

You may wish to read the online guidance about recognising fraudulent identity documents. [Guidance on examining identity documents](#) can be found on GOV.UK. You can also compare identity and travel documents against the images published on:

- [PRADO - Public Register of Authentic travel and identity Documents Online](#); or
- [EdisonTD](#)

These are archives of identity and travel documents.

You may also wish to consider using commercially available document validation technology to help check the authenticity of biometric documents presented to you, notably passports and biometric residence permits (BRPs). There is no requirement that you do this in order to have a statutory excuse against a civil penalty, but using this technology is likely to increase the security of your checking procedures. Guidance about [identity document validation technology](#) is available on GOV.UK.

If someone gives you a false document or a genuine document that does not belong to them, you should use this link to [report the individual to us](#), or call our Employer Enquiry helpline on **0300 790 6268** (Monday to Thursday, 9am to 4:45pm; Friday 9am to 4:30pm).

### Step 3: Retaining evidence

You must keep a record of every document you have checked. This can be a hardcopy or a scanned copy in a format which cannot be manually altered, such as a jpeg or pdf document. You should keep the copies securely for the duration of the person's employment and for a further two years after they stop working for you. You should also be able to produce these document copies quickly in the event that you are requested to show them to demonstrate that you have performed a right to work check and retain a statutory excuse.

You must also make a note of the date on which you conducted the check. This can be by either making a dated declaration on the copy or by holding a separate record, securely, which can be shown to us upon request. This date may be written on the document copy as follows: '**the date on which this right to work check was made: [insert date]**' or a manual or digital record may be made at the time you conduct and copy the documents which includes this information. You must be able to show this evidence if requested to do so in order to demonstrate that you have established a statutory excuse. You must repeat this process in respect of any follow up check.

You may face a civil penalty if you do not record the date on which the check was performed.

Simply writing a date on the copy document does not, in itself, confirm that this is the actual date when the check was undertaken. If you write a date on the copy document, you must also record that this is the date on which you conducted the check.

### Conducting an online right to work check

An online right to work check will provide you with a statutory excuse against a civil penalty in the event of illegal working involving the subject of the check. You can do an online check by using the online service, entitled '[View a job applicant's right to work details](#)' on GOV.UK.

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. The online right to work checking service sets out what information you will need. In circumstances in which an online check is not possible, you should conduct the manual check.

Currently, the online service supports checks in respect of those who hold:

- a biometric residence permit;
- a biometric residence card;
- status issued under the [EU Settlement Scheme](#);

- a digital Certificate of Application to the EU Settlement Scheme issued on or before 30 June 2021;
- status issued under the points-based immigration system;
- British National Overseas (BNO) visa; or
- Frontier workers permit

You should give employees every opportunity to demonstrate their right to work. You cannot insist that they use the online service or discriminate against those who choose to prove their right to work by presenting you with documents which also feature on the list of acceptable document lists.

While you may choose to encourage use of the online check and may support individuals in doing so (e.g. by providing access to hardware and the internet), you are not permitted to mandate online checks, except for those individuals who have been provided with digital evidence of their immigration status only (known as an eVisa). If an individual does not wish to demonstrate their right to work using the online service, even if their immigration status or documentation is compatible with the online service, you should conduct a [manual document-based right to work check](#).

## How does the service work?

The service works on the basis of the individual first viewing their own Home Office right to work record. They may then share this information with you if they wish, by providing you with a 'share code', which, when entered along with the individual's date of birth, enables you to access the information. The share code will be valid for 30 days from the point it has been issued and can be used as many times as needed within that time.

Share codes are service specific. An individual cannot use a code generated by another Home Office service (e.g. right to rent) for the purpose of a right to work online check.

If a share code has expired, or the individual has used a code generated by another service, you must ask them to resend you a new right to work share code.

The employer part of the service is called '[View a job applicant's right to work details](#)' and is available on GOV.UK. You must access the service using the **employer** part of the service in order to obtain a statutory excuse. It is not sufficient to view the information provided to the employee, or prospective employee, when they view their profile using the migrant part of the Home Office online right to work checking service. The Home Office has an audit record of online checks conducted by employers using the service. **You will not establish a statutory excuse by viewing the migrant part of the service.**

There are three steps to conducting an online right to work check. The steps below explains in more detail what you need to do in each of the three steps to correctly conduct an online right to work check.



## Step 1: Use the Home Office online service

The Home Office online service works on the basis of the person first viewing their own Home Office right to work record. They may then share this information with you by providing you with a 'share code'. When this code is entered along with the person's date of birth, it enables you to access their right to work profile page. The share code will be valid for 30 days and can be used as many times as needed within the 30 days, after which a new code will be required in order to conduct an online check.

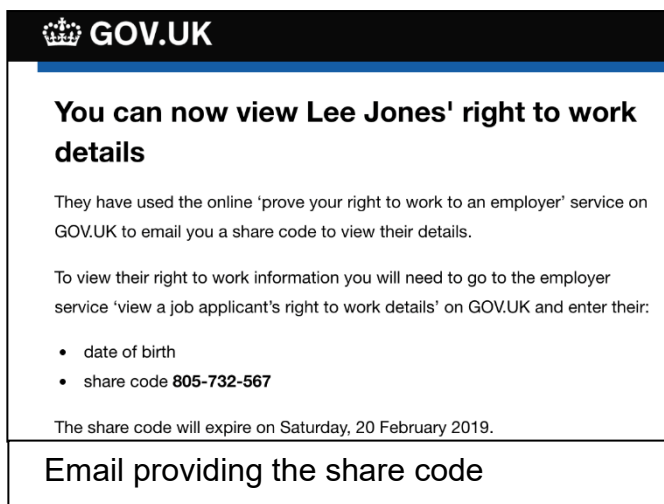
Each share code is unique and cannot be used for another purpose. If required for another purpose, a new share code must be generated, choosing the correct option.

The individual may provide the share code to you directly, or they may choose to send this to you via the service. If they choose to send it to you via the service, you will receive an email from [right.to.work.service@notifications.service.gov.uk](mailto:right.to.work.service@notifications.service.gov.uk).

To check the person's right to work details, you will need to:

- access the service '[View a job applicant's right to work details](#)' via GOV.UK
- enter the 'share code' provided to you by the individual, and
- enter their date of birth

It is not sufficient to simply view the details provided to the individual on the migrant part of the service, and doing so will not provide you with a statutory excuse.



The above image is an example of the message an employer receives when an individual has sent their share code to the employer via the online service.

## Step 2: Check

In the presence of the individual (in person or via live video link), you must check that the photograph on the online right to work check is of the individual presenting themselves for work (i.e. the information provided by the check relates to the individual and they are not an imposter).

You must only employ the person, or continue to employ an existing employee, if you are conducting a follow-up check, if the online check confirms they have the right to work and are not subject to a condition preventing them from doing the work in question.

If the online right to work check does not confirm that the individual has the right to work in the UK and do the work in question, you will not have established a statutory excuse from this check if you proceed to employ them. If you know or have reasonable cause to believe that they do not have the right to work, and employ them anyway, you risk being found guilty of a criminal offence.

If you employ someone on the basis of the online check, but it is reasonably apparent from the photograph that the individual working is not the individual to whom the information provided in the check relates, you may face a civil penalty in the event of illegal working.

**GOV.UK** View a job applicant's right to work

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


**Right to work**

**Erika Mustermann**

They can work in the UK.

**Details**

They can work in any job. There is no limit on how long they can stay in the UK.



Rotate ↻

**If you employ this person**

To avoid a [penalty](#), you must:

- check this looks like the person you meet face to face
- keep a secure copy of this online check (either electronically or in hard copy), for the duration of the employment and for 2 years after

You don't need to do the check again.

Read the [employers' code of practice](#) to find out more about right to work checks.

Details of check		
Company name	Date of check	Reference number
Acme Ltd	8 January 2018	WE-NDHSIDD-63

[Print page](#) [Download PDF](#)

[Finish and leave service](#)

Need help using this service? [Get help](#)

The above image is from the online service and shows the individual has a continuous right to work.

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


Right to work

**Erika Mustermann**

They have permission to work in the UK from 28 March 2021. They can work in the UK until 28 April 2023.

**Details**

They can work in any job.



Rotate ↕

**If you employ this person**

To avoid a [penalty](#), you must:

- check this looks like the person you meet face to face
- keep a secure copy of this online check (either electronically or in hard copy), for the duration of the employment and for 2 years after
- do this check again when their permission to be in the UK expires on 28 April 2023

Read the [employers' code of practice](#) to find out more about right to work checks.

Details of check		
Company name	Date of check	Reference number
Acme Ltd	8 January 2018	WE-JRKMJG-12

[Print page](#) [Download PDF](#)

[Finish and leave service](#)

Need help using this service? [Get help](#)

The above image is from the online service and shows the individual has a time-limited right to work and confirms the date that their leave expires.

### Step 3: Retain evidence of the online check

You must retain evidence of the online right to work check. For online checks, this should be the 'profile' page confirming the individual's right to work. This is the page that includes the individual's photo and date on which the check was conducted. You will have the option of printing the profile or saving it as a PDF or HTML file.

You should store this securely, (electronically or in hardcopy) for the duration of employment and for two years afterwards. The file must then be securely destroyed.

Should illegal working be identified, you will need to be able to evidence that you have conducted a right to work check in order to have a statutory excuse and avoid a civil penalty. By retaining evidence of the check as above, you will be able to present this to an Immigration Officer in the event of illegal working.

## When to contact the Home Office to verify right to work

In certain circumstances, you will need to contact the Home Office's [Employer Checking Service](#) (ECS) to establish a statutory excuse. These are when:

1. You are presented with a document (non-digital CoA or an acknowledgement letter or email) confirming receipt of an application to EUSS on or before 30 June 2021; or
2. You are presented with non-digital CoA confirming receipt of an application to the EUSS on or after 1 July 2021; or
3. You have checked a digital CoA, using the online service, confirming receipt of an application to the EUSS on or after 1 July 2021, and been directed to the ECS; or
4. You are presented with an Application Registration Card stating that the holder is permitted to undertake the work in question. If the card contains an expiry date, this date must not have expired. Any work will be restricted to employment in a shortage occupation; or
5. You are satisfied that you have not been provided with any acceptable documents because the person has an outstanding application with us which was made before their previous permission expired or has an appeal or administrative review pending against our decision and therefore cannot provide evidence of their right to work; or
6. You consider that you have not been provided with any acceptable documents, but the person presents other information indicating they are a long-term resident of the UK who arrived in the UK before 1988.

In the above circumstances, you will establish a statutory excuse only if you are issued with a **Positive Verification Notice (PVN)** from us confirming that the named person is allowed to carry out the type of work in question.

You should not contact the ECS where employment commenced before 29 February 2008 and has been continuous ever since. You will receive a Negative Verification Notice because this employment is out of scope of the civil penalty scheme.

To find out if you need to request a verification check from the ECS and to conduct that check, you should use the online tool '[Employer Checking Service](#)'.

### Certificate of Application

You must make a copy of this document and retain this copy, in the usual way. If you are required to verify the CoA with the ECS, you must also obtain and keep a copy of the Positive Verification Notice (PVN). In so doing, you will have a statutory excuse for six months from the date stated in the PVN. A PVN will not provide a statutory excuse if you know that the employment is not permitted. In such circumstances, you will also be committing a criminal offence.

## Application Registration Card and asylum seekers

Since July 2017, new upgraded Application Registration Cards (ARC) have been issued to new asylum claimants through a gradual rollout. The ARC is the card used by asylum claimants to demonstrate they have made an asylum claim. The new ARC closely resembles the Biometric Residence Permit. It includes extra security features, a biometric facial image and an expiry date. Whilst the earlier version of the ARC is no longer being issued, the cards already in circulation will continue to be acceptable until they expire.

Asylum claimants are not normally allowed to work whilst their claim is being considered. They are instead provided with accommodation and support to meet their essential living needs if they would otherwise be destitute. We may grant permission to work to asylum seekers whose claim has been outstanding for more than 12 months through no fault of their own. Anyone allowed to work under this policy is restricted to working in jobs on the [shortage occupation list](#) published by the Home Office. Their ARC will state “**work permitted shortage OCC**”. Any permission to work granted will come to an end if their claim is refused and any appeal rights are exhausted because at that point, they are expected to leave the UK.

You may accept a new biometric style or an old-style ARC as evidence of a right to work, provided you verify the right to work and any work restrictions by obtaining a Positive Verification Notice issued by our Employer Checking Service (ECS). This excuse will expire six months from the date of the Positive Verification Notice, when a further check must be undertaken if the statutory excuse is to be retained.

If you receive a Negative Verification Notice from the ECS, which informs you that the individual does not have the right to work, and you employ this person, you will not have a statutory excuse and may be liable for a civil penalty or be committing a criminal offence. Further information about employing asylum seekers may be found in [Permission to work and volunteering for asylum seekers guidance](#).

Anyone who is granted permission to remain in the UK as a refugee, or who is granted humanitarian protection has unrestricted access to the labour market. A refugee may demonstrate their work entitlement through their Biometric Residence Permit or Immigration Status Document (an older form of document issued to refugees and certain other categories of migrant prior to the introduction of the Biometric Residence Permit).

## Outstanding applications, appeals and administrative reviews

If you request verification from the Employer Checking Service (ECS), because the employee or potential employee has an outstanding application with us or appeal or administrative review against a Home Office decision, you should wait at least **14 days** after the application, appeal or administrative review has been delivered or posted to us or the court, before requesting a verification check. This is because it takes this amount of time for most applications, appeals or administrative reviews to be registered with the Home Office.

In order to make the verification request with the ECS, you must obtain confirmation from your employee or potential employee of when the application, appeal or administrative

review was made to the Home Office. This information must be included in the request form.

The ECS aims to provide a response within **five working days** of receiving a valid request. It is your responsibility to inform the person you intend to employ, or continue employing, that you are carrying out this check on them, to complete the verification request correctly and to make the request at least 14 days after the date of the application, appeal or administrative review was delivered or posted.

## Windrush generation individuals

The Government has put in place additional safeguards to ensure that those who have lived lawfully in the UK since before 1988 are not denied access to work.

In some circumstances, individuals of the Windrush generation (those who arrived in the UK before 1973) and those non-UK citizens who arrived in the UK between 1973 and 1988, may not be able to provide documentation from the acceptable document lists to demonstrate their entitlement to work in the UK. The Home Office has established the [Windrush Help Team](#) which is handling applications under the Windrush Scheme for confirmation of indefinite leave to remain, including a biometric residence permit or applications for British citizenship.

In these circumstances, you should contact the [Employer Checking Service](#) (ECS).

The ECS will notify the Windrush Help Team, who will contact the individual to confirm their circumstances and arrange for their status to be resolved. Working with the Windrush Help Team, the ECS will be able to confirm an individual's right to work in these circumstances and will do so by issuing you with a Positive Verification Notice (PVN).

A PVN issued by the ECS will provide you with a statutory excuse for six months from the date stated in the PVN. The information provided by the ECS will clearly set out whether a repeat check will be required, and if so, when.

[The Windrush Help Team](#) can offer support and guidance about the Windrush Scheme and advise individuals on how to apply. It can also help vulnerable people or those who need additional support. If a prospective employee or employee has been affected, they can contact the Windrush Help Team via the above link or by calling 0800 678 1925.

## Biometric Residence Permits

The Home Office began rolling out [Biometric Residence Permits](#) (BRPs) in November 2008. Since July 2015, BRPs are the main form of physical evidence of lawful residence currently issued by the Home Office to most non-EEA citizens, and their dependants, who are granted permission to remain in the UK for more than six months.

BRPs are credit-card sized immigration documents that contain an embedded chip and incorporate security safeguards to combat fraud and tampering. BRPs, therefore, provide employers with a secure and simple means to conduct a right to work check. Employers should nevertheless remain vigilant and ensure they check that a BRP is genuine when conducting checks.

BRPs provide evidence of the holder's immigration status in the UK. They contain the holder's unique biometric identifiers (fingerprints, digital photo) within the chip. They also display a photo and biographical information on the face of the document and details of entitlements, such as access to work and/or public funds.

For migrants overseas, who are granted permission to enter the UK for more than six months, they are issued with a vignette (sticker) in their passport which will be valid for 30 days to enable them to travel to the UK. Following their arrival, they will have 10 days or before their vignette expires (whichever is later) to collect their BRP from the Post Office branch detailed in their decision letter. For most individuals granted permission to be in the UK and work, the BRP will be the document that demonstrates they have permission to work in the UK.

Those permitted to work in the UK are strongly encouraged to collect their BRP before they start work. If they need to start work for you prior to collecting their BRP, they will be able to evidence their right to work by producing the short validity vignette in their passport which they used to travel to the UK. You will need to conduct a manual right to work check on the basis of this vignette, which must be valid at the time of the check. However, as this will expire 30 days from issue, you will have to repeat the check using the BRP, either by conducting a manual or an online check, for the statutory excuse to continue.

Without conducting a subsequent check on the basis of the individual's BRP, you will not know when the individual's right to work will come to an end, if their permission is time-limited. In addition, without the BRP, the individual will have no evidence of their right to be in the UK and their right to work here. They will also not be able to travel back into the country.

If you employ someone on the basis of the short validity vignette and they are unable to present you with a BRP when the vignette time expires, you are not required to immediately terminate the employment if you believe the employee continues to have the right to work. However, once the 30 days has expired, you will not be able to establish a statutory excuse if it transpires that the employee is working illegally.

The Home Office online right to work checking service supports right to work checks in respect of BRP holders. Employees or prospective employees who hold this document may choose to demonstrate their right to work using the online service.



## Biometric Residence Permits (BRPs) and National Insurance numbers

We are introducing an aligned BRP and National Insurance Number (NINo) process, on a phased basis, for those aged 16 or over. This currently applies to most migrants and dependants who have been granted leave to enter in any skilled worker category (General, Intra-Company Transfer, Minister of Religion and Sports person) or as a refugee and dependants, including those granted settled status through the protection route. In such cases, the NINo will appear in the remarks on the reverse of the BRP and there is no need for the migrant or the employer to make a separate application to the Department for Work and Pensions to obtain one.

By themselves, NINos do not provide evidence that someone has the right to work in the UK. However, adding the NINo to the BRP assists the employer in two ways. First, the BRP provides an employer with a secure and simple means of checking a migrant's right to work in the UK. Second, the provision of the NINo on the same document makes it easier for employers to meet their requirements to administer PAYE and national insurance.



## 3. Who do you conduct checks on?

You should ask all prospective employees to demonstrate their right to work using either a manual document check as set out in the code of practice, or by using the Home Office online right to work checking service. You cannot mandate how an individual proves their right to work. To ensure that you do not discriminate against anyone, you should provide every opportunity to enable an individual to prove their right to work.

You may face a civil penalty if you do not carry out a check on someone you have assumed has the right to work for you but is found to be an illegal worker.

### Discrimination

You should not discriminate when conducting right to work checks. You should conduct right to work checks on **all** potential employees, including British citizens.

**Do not simply check the status of those who appear to be migrants, otherwise you could be breaking the law.**

You should not make assumptions about a person's right to work in the UK or their immigration status on the basis of their colour, nationality, ethnic or national origins, accent or the length of time they have been resident in the UK.

The '[Code of practice for employers: Avoiding unlawful discrimination while preventing illegal working](#)' provides practical guidance on how to avoid unlawful discrimination when employing individuals and conducting right to work checks. We strongly recommend that you refer to this code and the [Code of practice on preventing illegal working: Civil penalty scheme for employers](#) when conducting right to work checks. If you breach this code of practice, it may be used as evidence in legal proceedings.

Anyone who believes that they have been discriminated against, either directly or indirectly, by an employer, a prospective employer or an employment agency, because of their race or a protected characteristic may bring a complaint before an Employment Tribunal, or an Industrial Tribunal in Northern Ireland. If the claim is upheld, the Tribunal will normally order the employer to pay compensation, for which there is no upper limit.

If you need expert advice and support on discrimination, you can call the Equality Advisory Support Service (EASS) on 0808 800 0082.

## 4. When do you conduct follow up checks?

You need to recheck the right to work of those individuals who have time-limited permission to work in the UK. This should occur when their previous permission comes to an end. The follow-up check is designed to prevent people from overstaying their immigration leave where this is time-limited. The Employer Checking Service can confirm the right to work of an individual who has an outstanding application or appeal to the immigration system (see above).

You are required to carry out an **initial right to work check** to prevent illegal working on all people you intend to employ **before** you employ them. 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.

When conducting follow-up checks, you may use either the manual right to work check or the online right to work check where applicable, irrespective of the type of check you conducted originally, before employment commenced.

### Manual document-based right to work checks

If you conduct a manual document-based right to work check and a person provides you with acceptable documents from [List A](#) at [Annex A](#) there is no restriction on their right to work in the UK, so you establish a **continuous statutory excuse** for the duration of that person's employment with you. There is no requirement for a follow-up check.

If you conduct a manual document-based right to work check and a person provides you with acceptable documents from [List B](#) there are restrictions on their right to work in the UK, so you will establish a **time-limited statutory excuse**. You **are required** to carry out follow-up checks on such a person. The frequency of these follow-up checks depends on whether the documents you are provided with are from **Group 1** or **Group 2**.

**Group 1** documents provide a time-limited statutory excuse which expires when the person's permission to work expires. This means that you should carry out a **follow-up check shortly before permission which demonstrates their permission to work expires**.

**Group 2** documents provide a time-limited statutory excuse which expires six months from the date specified in your Positive Verification Notice. **This means that you should carry out a follow-up check shortly before this notice expires**.

When follow-up checks are required in relation to documentation provided as part of a manual right to work check.

## Table 1: Follow-up Checks

If a document from [List A](#) is presented to you, then a continuous statutory excuse will be established. The right to work check will be required before employment starts only.

If a document from [List B Group 1](#) is presented to you, then a time-limited statutory excuse will be established. A right to work check will be required before employment starts and again shortly before permission (as set out in the document checked) expires.

If a document from [List B Group 2](#) is presented to you, then a time-limited statutory excuse will be established. A right to work check will be required before employment starts and again after six months (as set out in the Positive Verification Notice).

### Online right to work checks

If you conduct an online right to work check and the information provided by the Home Office online right to work checking service indicates that the individual's right to work is time-limited, you should conduct a follow-up right to work check shortly before that permission (as set out in the online check) expires. If the individual's right to work is not time-limited, there is no requirement for you to repeat the check.

### Contacting the Home Office

If, on the date on which permission expires (as set out in the document previously checked or the information provided by the Home Office online right to work checking service), you are reasonably satisfied that your employee:

- has submitted an in-time application to us to extend or vary their permission to be in the UK; or
- has made an appeal or an administrative review against a decision on that application which is outstanding; or
- is unable to provide acceptable documentation but presents other information indicating they are a non-EEA long-term lawful resident of the UK who arrived here before 1988

Your statutory excuse will continue from the expiry date of your employee's permission for a further period of up to 28 days to enable you to obtain a positive verification from the Employer Checking Service (ECS). This 'grace period' does not apply to checks carried out before employment commences. In such circumstances, you should delay employing the individual until you have received a Positive Verification Notice (PVN) from our ECS.

If during this period your employee provides evidence that their application, appeal or administrative review has been determined with permission to remain granted together with the relevant acceptable document from [List A](#) or [List B](#) Group 1, or they provide a share code allowing you to conduct an online check, you may maintain your excuse by checking these documents, or conducting the online check, in the normal way and a positive verification by the ECS will not be required. If, however, the individual presents documents

from [List B](#) Group 2, you will need to obtain a new PVN from the ECS to maintain a statutory excuse.

A letter from a solicitor indicating a successful appeal or administrative review or a copy of a successful court judgment will not provide you with a statutory excuse.

You can reasonably satisfy yourself of a pending application through, for example, a Home Office acknowledgment letter or a Home Office or appeal tribunal reference number, and proof of date of postage. If your employee cannot provide this evidence, this does not necessarily mean that they have not made an application, appeal or applied for an administrative review.

## In-time applications

A person'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'. If they do this, any existing right to work will continue until that in-time application has been determined. In such circumstances, a Positive Verification Notice (PVN) from our [Employer Checking Service \(ECS\)](#) would demonstrate your statutory excuse for six months from the date of the Notice. If you receive a Negative Verification Notice in response to your verification request, you will no longer have a statutory excuse and you will be liable for a civil penalty if the person is not permitted to work in the UK. You may also be convicted of the offence of employing an illegal worker.

It is important that a person makes an application to the Home Office **before their permission to be here expires**, because this has an impact on their right to work.

## Appeals and Administrative Reviews

A Positive Verification Notice (PVN) from our [Employer Checking Service \(ECS\)](#) will also be required to demonstrate a right to work where the person has an outstanding appeal or administrative review. It will provide a statutory excuse for six months from the date of the Notice.

Administrative reviews have replaced some rights of appeal where the applicant believes our decision to refuse their application is incorrect. For decisions made in the UK, the review application must be made within 14 calendar days from notification of the decision. Any previous permission to work continues during the period that an administrative review can be made and, if made, will continue until the administrative review has been determined (decided or withdrawn). This will normally be within 28 days. You will need to obtain a PVN from our ECS, to confirm that work is permitted. This Notice will provide you with a statutory excuse for six months from the date of the Notice.

Where an application for an administrative review is brought after the period for making an application has expired, we may decide to accept the administrative review as valid. If so, any permission to work will continue **from the date** that the administrative review is accepted. This will be confirmed by a PVN from the ECS. The individual will not be

permitted to work between the date that their previous permission to work expired and the date we decide that the administrative review is valid.

Further detail on [administrative reviews](#) can be found on GOV.UK.

## Transfer of undertakings

Transfer of Undertakings (Protection of Employment) (TUPE) Regulations 2006 provide that right to work checks carried out by the transferor (the seller) are deemed to have been carried out by the transferee (the buyer). As such, the buyer will obtain the benefit of any statutory excuse established by the seller.

However, if the seller did not conduct the original checks correctly, the buyer would be liable for a penalty if an employee, who commenced work on or after 29 February 2008, is later found to be working illegally. Also, a check by the buyer may be the only way to determine when any follow-up check should be carried out in respect of employees with time-limited permission to work in the UK.

For these reasons, employers who acquire staff in cases of TUPE transfers are advised to undertake a fresh right to work check on those staff they have acquired. Employers are not required to have a statutory excuse in respect of employment which commenced before 29 February 2008, where the individual has been in continuous employment prior to that date. This includes where employment has continued as part of a TUPE transfer.

We recognise that there may be practical problems in undertaking these checks before employment commences for workers acquired as part of a TUPE transfer, and for this reason a grace period has been provided during which you should undertake the check. This period runs for 60 days from the date of the transfer of the business to correctly carry out fresh right to work checks in respect of those TUPE employees acquired. There is no grace period for any subsequent follow-up checks.

This 60-day grace period applies in all situations where there is a “relevant transfer”<sup>1</sup>, even if the transferring business is subject to “terminal” insolvency proceedings falling within regulation 8(7) of the 2006 TUPE Regulations, such as cases involving compulsory liquidation<sup>2</sup>.

## Changes in the Employer’s legal constitution

Where the employer is a corporate body and there has only been a change in the employer’s legal constitution e.g. a change from a private limited company to a public limited company or change from a partnership to a limited company or a limited liability partnership or a TUPE transfer within the same group of companies, the right to work check does not need to be repeated because of this change. This is only the case when the

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<sup>1</sup> as defined by Regulation 3 of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (the “**TUPE Regulations**”)

<sup>2</sup> The employment protections set out in Regulations 4 (continuation of employment) and 7 (protection from dismissal) of the TUPE Regulations are dis-applied in Regulation 8(7) cases.

employer is effectively the same entity and is only changing its legal status. Where there is any doubt, we recommend that the employer checks the person's right to work, rather than risking liability for a civil penalty should an employee be found to be working illegally.

## 5. What are the sanctions against illegal working?

Illegal working is tackled through a 'whole government approach'. Co-ordination across agencies in government, including HMRC, to ensure that illegal working is detected more effectively, is conducted through the sharing of intelligence and joint enforcement operations. When illegal working is identified, a range of sanctions are applied.

If you are found to be employing someone illegally and you have not carried out the prescribed checks, you may face sanctions including:

- a civil penalty of up to £20,000 per illegal worker;
- in serious cases, a criminal conviction carrying a prison sentence of up to five years and an unlimited fine;
- closure of the business and a compliance order issued by the court;
- disqualification as a director;
- not being able to sponsor migrants;
- seizure of earnings made as a result of illegal working; and review and possible revocation of a licence in the alcohol and late-night refreshment sector and the private hire vehicle and taxi sector.

### Civil penalties

The amount of any civil penalty issued is determined on a case-by-case basis. [The 'Code of practice on preventing illegal working'](#) explains how a penalty is calculated, including mitigating factors which may reduce the penalty amount.

If you are found liable, you will be issued with a **Civil Penalty Notice** setting out the total penalty amount you are required to pay, and the date by which you must pay it. It will also inform you how you can exercise your right to object, following which you will be able to appeal. The employer must always object against the penalty notice before appealing to the court, except if served with a penalty notice for a higher amount following an objection.

Further information is contained in the ['Employer's guide to the administration of the civil penalty scheme'](#) which sets out in more detail the stages of the civil penalty process, how the penalty is calculated, the range of notices you may receive and the deadlines by which you need to take action at each stage.

Receipt of a civil penalty could also affect your ability to sponsor migrants who come to the UK in the future (including those under the points-based immigration system) or your eligibility to hold a Gangmaster's licence. Being issued with a civil penalty may also affect your ability to hold a licence in the private hire and taxi sector and the alcohol and late-night refreshment sector.

If an employee is undertaking a role which is different from that for which the certificate of sponsorship was issued and permission to enter or remain was granted, you are employing

the worker illegally. Further information on sponsoring migrants may be found on [Sponsorship: guidance for employers and educators](#).

If you are an employer who is subject to immigration control, you should also be aware that if you are liable for a civil penalty, this will be recorded on Home Office systems and may be taken into account when we consider any future immigration application that you make.

## The offence of employing an illegal worker

You will commit a **criminal offence** under section 21 of the Immigration, Asylum and Nationality Act 2006, as amended by section 35 of the Immigration Act 2016, if you **know or have reasonable cause to believe that you are** employing an illegal worker. You may face up to five years' imprisonment and/or an unlimited fine.

It is illegal to employ someone aged 16 or over who is subject to immigration control and who is not allowed to undertake the work in question (by reason of their immigration status). The civil penalty scheme is the sanction applied in most routine cases involving the employment of illegal workers. If you know that you are employing someone who is not allowed to carry out the work in question, you will not have a statutory excuse, regardless of whether you have conducted right to work checks. However, in more serious cases, prosecution may be considered where it is deemed the appropriate response to the non-compliance encountered.

## The offence of illegal working

Working illegally is a criminal offence. Illegal workers face having their wages seized. They may also be prosecuted and can be imprisoned for up to six months.

The Immigration Act 2016 made it an offence to work illegally in the UK. A person commits this offence if they are subject to immigration control, and they work when they are disqualified from working by reason of their immigration status. The offence applies when they know, or have reasonable cause to believe, that they are disqualified from working. 'Disqualified from working by reason of their immigration status' means that they:

- have not been granted leave to enter or remain in the UK; or
- their leave to enter or remain in the UK
  - is invalid,
  - has ceased to have effect (whether by reason of curtailment, revocation, cancellation, passage of time, or otherwise), or
  - is subject to a condition preventing the person from doing work of that kind.

As well as including those working illegally under a contract of employment, the offence also applies to work undertaken by those who are self-employed. The offence covers both informal and formal working arrangements.

The offence carries a maximum penalty of six months' imprisonment and/or an unlimited fine in England and Wales and six months' imprisonment and/or a fine of the statutory



maximum in Scotland and Northern Ireland. Wages gained from illegal working may be seized as the proceeds of crime and assets may be confiscated.

## Closure notices and compliance orders

The 2016 Act (Section 38 and Schedule 6) introduced illegal working [closure notice and compliance order](#) provisions to provide a power to deal with those employers who have continued to flout the UK's laws by using illegal labour where previous civil and/or criminal sanctions have not curbed their non-compliant behaviour.

Serious or persistently non-compliant employers may face temporary closure of their business by Immigration Officers. The employer is then placed under special conditions to support compliance, as directed by the Court, and may be inspected by immigration officers.

The provisions commenced on 1 December 2016 in England and Wales. The notice prohibits access to the premises and paid or voluntary work on the premises, unless it is authorised in writing by an Immigration Officer. The closure notice does not prevent access to the premises by any person who habitually lives there. In addition to the issue of the notice, consideration will also be given to the service of penalties or prosecution for illegal working and other immigration offences.

Whenever an illegal working closure notice has been issued, and which has not been cancelled, an Immigration Officer must make an application by complaint to a Magistrates' Court for a compliance order. The application is sent to the Court and served on the respondent before the hearing and forms the basis of the application to the court for the compliance order. The aim of a compliance order is to prevent an employer operating at the premises from employing illegal workers. The employer is placed under special conditions to support compliance, as directed by the Court, and may be inspected by immigration officers.

## Preventing illegal working in licensed sectors

The Immigration Act 2016 amended existing licensing regimes in high-risk sectors of the economy (private hire vehicles and taxi sector and the alcohol and late-night refreshment sector). Licences will not be issued to those who break the UK's immigration laws and may be revoked where an existing licence holder commits immigration crime or receives a civil penalty for employing illegal workers.

As a result of changes made by the Immigration Act 2016, licensing authorities now carry out right to work checks when considering applications for licences in the taxi and private hire vehicle sector and the alcohol and late-night refreshment sector. Applicants need to provide evidence of their right to work in the UK and licences will not be issued to those who do not have the right to do the work in question.

Where the holder of a licence breaches immigration laws or receives a civil penalty, this will be grounds for licensing authorities to review, suspend or revoke a licence. In the case of licences for sale and supply of alcohol and late-night refreshment, the Home Office as a responsible authority under the Licensing Act 2003 receives a copy of these applications

and may make representations to the relevant licensing authority when we believe that to grant a licence will be prejudicial to preventing immigration crime and illegal working in licensed premises.

Immigration Enforcement have the same power of entry as licensing enforcement officers to facilitate joint operations and inspections for immigration offences in relation to the licensable activity.

Provisions for England and Wales commenced in April 2017 in England and Wales. Equivalent provisions in regulations will be made for Scotland and Northern Ireland.

## 6. Do you have any questions?

In the first instance, please refer to the [Home Office guidance](#):

- The online interactive tool 'Check if someone can work in the UK';
- The online interactive tool 'Employer Checking Service Enquiries';
- An employer's 'Right to Work Checklist';
- Code of practice on preventing illegal working: Civil penalty scheme for employers;
- Code of practice for employers: Avoiding unlawful discrimination while preventing illegal working; and
- An employer's guide to the administration of the civil penalty scheme.

If you cannot find the answer to your question, please contact our Employer Enquiry helpline on 0300 790 6268.

# 7. Annex A: Lists of acceptable documents for manual right to work checks

Where a right to work check has been conducted using the online right to work checking service, the information is provided in real-time directly from Home Office systems and there is no requirement to check any of the documents listed below.

## Changes have been made to List B.

**List B, Group 1, no.5 is a duplicate entry of the document referred to in List B, Group 2, no 2. List B, Group 2, no.2 is the correct acceptable document.**

**List B, Group 2, no.2 has been amended to include the Isle of Man and with reference to 'on or before 30 June 2021' removed.**

**List B, Group 2, no.5 is an additional entry.**

**These changes take effect with this guidance and will be amended in upcoming legislation.**

**You will maintain a defence against a civil penalty if the check you undertake is as set out in this guidance using the amended, or the additional, document.**

## List A – acceptable documents to establish a continuous statutory excuse

1. A passport (current or expired) showing the holder, or a person named in the passport as the child of the holder, is a British citizen or a citizen of the UK and Colonies having the right of abode in the UK.
2. A passport or passport card (current or expired) showing that the holder is a national of the Republic of Ireland.
3. A current document issued by the Home Office to a family member of an EEA or Swiss citizen, and which indicates that the holder is permitted to stay in the United Kingdom indefinitely.
4. A document issued by the Bailiwick of Jersey, the Bailiwick of Guernsey or the Isle of Man, which has been verified as valid by the Home Office Employer Checking Service, showing that the holder has been granted unlimited leave to enter or remain under Appendix EU to the Jersey Immigration Rules, Appendix EU to the Immigration (Bailiwick of Guernsey) Rules 2008 or Appendix EU to the Isle of Man Immigration Rules.
5. A current Biometric Immigration Document (Biometric Residence Permit) issued by the Home Office to the holder indicating that the person named is allowed to stay indefinitely in the UK or has no time limit on their stay in the UK.

6. A current passport endorsed to show that the holder is exempt from immigration control, is allowed to stay indefinitely in the UK, has the right of abode in the UK, or has no time limit on their stay in the UK.
7. A current Immigration Status Document issued by the Home Office to the holder with an endorsement indicating that the named person is allowed to stay indefinitely in the UK, or has no time limit on their stay in the UK, **together with** an official document giving the person's permanent National Insurance number and their name issued by a government agency or a previous employer.
8. A birth or adoption certificate issued in the UK, **together with** an official document giving the person's permanent National Insurance number and their name issued by a government agency or a previous employer.
9. A birth or adoption certificate issued in the Channel Islands, the Isle of Man or Ireland, **together with** an official document giving the person's permanent National Insurance number and their name issued by a government agency or a previous employer.
10. A certificate of registration or naturalisation as a British citizen, **together with** an official document giving the person's permanent National Insurance number and their name issued by a government agency or a previous employer.

#### **List B Group 1 – documents where a time-limited statutory excuse lasts until the expiry date of leave**

1. A current passport endorsed to show that the holder is allowed to stay in the UK and is currently allowed to do the type of work in question.
2. A current Biometric Immigration Document (Biometric Residence Permit) issued by the Home Office to the holder which indicates that the named person can currently stay in the UK and is allowed to do the work in question.
3. A current document issued by the Home Office to a family member of an EEA or Swiss citizen, and which indicates that the holder is permitted to stay in the United Kingdom for a time limited period and to do the type of work in question.
4. A document issued by the Bailiwick of Jersey, the Bailiwick of Guernsey or the Isle of Man, which has been verified as valid by the Home Office Employer Checking Service, showing that the holder has been granted limited leave to enter or remain under Appendix EU to the Jersey Immigration Rules, Appendix EU to the Immigration (Bailiwick of Guernsey) Rules 2008 or Appendix EU to the Isle of Man Immigration Rules.
5. A document issued by the Bailiwick of Jersey or the Bailiwick of Guernsey, which has been verified as valid by the Home Office Employer Checking Service, showing that the holder has made an application for leave to enter or remain under Appendix EU to the Jersey Immigration Rules or Appendix EU to the Immigration (Bailiwick of Guernsey) Rules 2008, on or before 30 June 2021. **Entry to be removed - refer to List B, Group 2, no. 2**
6. A frontier worker permit issued under regulation 8 of the Citizens' Rights (Frontier Workers) (EU Exit) Regulations 2020.

7. A current Immigration Status Document containing a photograph issued by the Home Office to the holder with a valid endorsement indicating that the named person may stay in the UK, and is allowed to do the type of work in question, together with an official document giving the person's permanent National Insurance number and their name issued by a government agency or a previous employer.

#### List B Group 2 – documents where a time-limited statutory excuse lasts for six months

1. A document issued by the Home Office showing that the holder has made an application for leave to enter or remain under Appendix EU to the immigration rules (known as the EU Settlement Scheme) on or before 30 June 2021 **together with a Positive Verification Notice** from the Home Office Employer Checking Service.
2. A document issued by the Bailiwick of Jersey, the Bailiwick of Guernsey or the Isle of Man showing that the holder has made an application for leave to enter or remain under Appendix EU to the Jersey Immigration Rules or Appendix EU to the Immigration (Bailiwick of Guernsey) Rules 2008 **together with a Positive Verification Notice** from the Home Office Employer Checking Service. **Entry amended.**
3. An Application Registration Card issued by the Home Office stating that the holder is permitted to take the employment in question, **together with a Positive Verification Notice** from the Home Office Employer Checking Service.
4. A Positive Verification Notice issued by the Home Office Employer Checking Service to the employer or prospective employer, which indicates that the named person may stay in the UK and is permitted to do the work in question.
5. A Certificate of Application (digital or non-digital) issued by the Home Office showing that the holder has made an application for leave to enter or remain under Appendix EU to the immigration rules (known as the EU Settlement Scheme), on or after 1 July 2021, **together with a Positive Verification Notice** from the Home Office Employer Checking Service. **Additional document entered on list.**

## 8. Annex B: EEA citizens

The reference to 'EEA citizens' in this Annex means EU, EEA and Swiss citizens, unless otherwise stated.

The UK has left the European Union (EU) and the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 ended free movement law in the UK on 31 December 2020. There followed a grace period of six-months 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 EUSS. This period ended on 30 June 2021.

On 6 August 2021, the government announced temporary protection for more applicants to the EUSS. This means that those who apply from 1 July 2021, and joining family members, will have their rights protected while their application is determined. This guidance reflects this change.

EUSS applicants and joining family members will now be able to take up new employment while they await the outcome of their application. Home Office guidance remains that where a prospective employee has a Certificate of Application (CoA) confirming a valid application to the EUSS made on or after 1 July 2021, employers should verify this with the Home Office Employer Checking Service (ECS).

### Right to work checks for EEA citizens from 1 July 2021

Since 1 July 2021, EEA citizens and their family members are required to have immigration status in the UK. They can no longer rely on an EEA passport or national identity card, which only confirms their nationality, to prove their right to work. They are required to provide evidence of lawful immigration status in the UK, in the same way as other foreign nationals.

There is no requirement for a retrospective check to be undertaken on EEA citizens who entered into employment up to and including 30 June 2021. You will maintain a continuous statutory excuse against liability for a civil penalty if the initial checks were undertaken in line with the guidance that applied at the time you made the check.

If you choose to carry out retrospective checks, you must ensure that you do so in a non-discriminatory manner. The [Code of practice for employers: avoiding unlawful discrimination while preventing illegal working](#) provides practical guidance on how to avoid unlawful discrimination when conducting right to work checks.

### Irish citizens

Irish citizens continue to have unrestricted access to work in the UK. From 1 July 2021, they can prove their right to work using their Irish passport or Irish passport card, or their Irish birth or adoption certificate together with an official document giving the person's permanent National Insurance number and their name issued by a government agency or a previous employer.

Irish citizens can also apply for a frontier worker permit, this permit can be issued digitally or as a physical permit, so they may choose to prove their right to work using the [Home Office online right to work service](#) or present their physical permit if they have one.

## How EEA citizens are required to prove their right to work since 1 July 2021

### EEA citizens granted status under the EU Settlement Scheme (EUSS)

Since 1 July 2021, the majority of EEA citizens prove their right to work using the Home Office online services. To prove their right to work, individuals will provide you with a share code and their date of birth which will enable you to check their Home Office immigration status via the online service available on GOV.UK:

<https://www.gov.uk/view-right-to-work>.

You will obtain a statutory excuse against liability for a civil penalty if you carry out the check using the online service as set out in this guidance.

If an EEA citizen has been granted 'Settled Status' by the Home Office, they will have a continuous right to work, in the same way as someone with Indefinite Leave to Enter / Remain status.

If an EEA citizen has been granted 'Pre-Settled Status' by the Home Office, they will have a time-limited right to work and you must carry out a follow-up check. The Home Office online service will advise when a follow-up check must be carried out.

### Exceptions to the Home Office online service when proving right to work

Since 1 July 2021, EEA citizens who do not have leave granted under the EUSS are required to evidence their UK immigration status for the purposes of right to work, using documents as set out in legislation. These are detailed below:

- Frontier Worker Permits
- Service Provider from Switzerland visas
- Outstanding applications to UK EUSS
- Outstanding applications to Crown Dependency EUSS
- Indefinite Leave to Enter/Remain
- Points-Based System visas



## Frontier workers

A 'Frontier Worker' is an EEA citizen who is resident outside the UK but is economically active (employed or self-employed) in the UK. They have rights under the Withdrawal Agreement, the EEA European Free Trade Association (EFTA) Separation Agreement and the Swiss Citizens' Rights Agreement ('the agreements') to enter the UK and work for as long as they remain a frontier worker.

Since 1 July 2021, it is mandatory for frontier workers to obtain a [frontier worker permit](#) as evidence of their right to enter the UK.

Whilst the frontier worker permit requires an individual to reside outside the UK, their work in the UK can be spread over the entire year(s). Therefore, they may make multiple trips to the UK and they are lawfully present in the UK.

Frontier workers are issued with a frontier worker permit either digitally or physically. Conducting either the manual check or using the online service, as set out in this guidance, will provide you with a statutory excuse against liability for a civil penalty.

### Additional information

Whilst it is mandatory for protected frontier workers to hold a frontier worker permit to enter the UK on this basis from 1 July 2021, there is no mandatory requirement for protected frontier workers who have rights under the Agreements to use a frontier worker permit to evidence their rights in the UK.

Consequently, it is open to any EEA or Swiss citizen who has an enforceable Citizens' Rights Agreement right as a frontier worker to work in the UK, to demonstrate the existence of that right in a different way to those documents in Lists A and B.

To obtain a statutory excuse against liability for a civil penalty in such cases, you must request a right to work check from the Employer Checking Service (ECS), using the online form 'request a Home Office right to work check' on GOV.UK at: <https://www.gov.uk/employee-immigration-employment-status>

You must have obtained copies of the employee's documents which evidence that they were exercising rights as a Frontier Worker on or before 31 December 2020, as these will form part of your statutory excuse.

Before providing you with a response, the ECS may contact you and ask you to send them a copy of the documents you have checked. The ECS will confirm if the individual has the right to work, and when you need to carry out a follow up check. Where the ECS can issue a Positive Verification Notice in the absence of a Frontier Worker Permit, you will be required to carry out a further ECS check in six months to maintain your statutory excuse.

If you choose to employ the individual as a Frontier Worker, without checking their Frontier Worker Permit or securing a PVN from the ECS, **you will not establish a statutory excuse** against a liability for a civil penalty should the individual be found to be working illegally.

The ECS will confirm if the individual has a right to work, and when you need to carry out a follow-up check.

If you do choose to accept the alternative evidence, but do not request a Home Office right to work check, **you will not establish a statutory excuse** against liability for a civil penalty should the individual be found to be working illegally.

Alternative Evidence:

- evidence of the applicant's own identity and that they are an EEA citizen – such as a passport or national identity card.
- evidence they are primarily resident outside of the UK, such as utility bills or bank statements which include proof of address outside the UK
- evidence they worked in the UK as an employed or self-employed person during 2020, or had retained worker or self-employed status during 2020 (see below)
- evidence they have continued to be employed or self-employed in the UK or have retained worker or self-employed person status.

Acceptable evidence of work in the UK includes:

- a signed and dated contract specifying the employee must work in the UK
- letters from employers confirming the need for the employee to travel to the UK for the purpose of work and outlining the frequency of this travel
- tax returns from HMRC showing the person is established as self-employed in the UK
- bank statements or invoices which show payments for work carried out in the UK.

### **Retained frontier worker status:**

A protected frontier worker who has (or had) temporarily stopped working can still be treated as a worker under regulation 4 of The Citizens' Rights (Frontier Workers) (EU Exit) Regulations 2000 if they can provide proof that they:

- are (or were) temporarily unable to work because of illness or an accident
- are (or were) in duly recorded involuntary unemployment
- are (or were) involuntarily unemployed and have embarked on vocational training
- voluntarily stopped working to start vocational training related to their previous work
- are (or were) temporarily unable to work following pregnancy or childbirth

Guidance on what is considered sufficient evidence for retaining frontier worker status can be found in the frontier worker permit case working guidance here: [Frontier Worker Permit Scheme Guidance](#).

### **Service Provider from Switzerland**

A 'Service Provider from Switzerland' (SPS) is an individual **of any nationality** who is required by their employer (who must be based in Switzerland) to execute a pre-existing contract to temporarily provide services for a party in the UK. Eligible companies have rights under the Swiss Citizens' Rights Agreement to enable employees, or individuals (if self-employed) to travel to the UK to provide services for up to 90 days per year. An SPS must obtain their visa in advance of travel.

The UK company and the Swiss company providing the services must have had a pre-existing contract to deliver services before 31 December 2021. A Service Provider from Switzerland visa is a hard copy document without an online checking function. The visa will be in the form of a vignette and will identify the individual as a 'Service Provider from Switzerland', and can be issued in two ways:

- (All nationalities) within a passport
- (Swiss citizens only) on an official form ("Form for Affixing a Visa") - If the individual is a Swiss citizen, they can choose to apply to the immigration route using their Swiss identity card. In this circumstance, the vignette will be attached to an official Home Office form.

As an employer you are not required to carry out a right to work check on an individual with a Service Provider from Switzerland visa, as they are not in your employment. You may, however, be asked to provide sight or a copy of the contract held with the Swiss company the visa holder is carrying out work or services for.

The Service Provider from Switzerland visa specifies that an individual is only permitted to work in the UK for 90 days per calendar year, the 90 days' work can be spread over the entire year. The visa allows the individual to make multiple trips to the UK until the visa expires.

## Outstanding UK EU Settlement Scheme applications

EEA citizens, and their family members, who have made a valid application to the EU Settlement Scheme (EUSS) can continue to live their life in the UK and maintain a right to work until their application is finally determined. This includes pending the outcome of any appeal against a decision to refuse status.

Employers must provide prospective employees with every opportunity to prove their right to work and should not discriminate against those with an outstanding, valid application.

## Receipt of application submitted to the EU Settlement Scheme

There are a small number of individuals who made their EUSS application using a paper application. Due to the postage and processing time related to paper application, you may be required to undertake a check before the individual receives their Certificate of Application. Where an individual has made an application **on or before 30 June 2021**, they will be provided with a letter or email notification acknowledging receipt of the EUSS application. You must request a right to work check from the Employer Checking Service to verify this document.

## Certificate of Application

Where an individual has been issued with a Certificate of Application (CoA), you must first check whether this is a '[digital](#)' or '[non-digital](#)' CoA. A CoA is evidence that an individual

has made a valid application to the EUSS and should be used to evidence their right to work until such time their application is finally determined.

### Digital Certificate of Application

Most individuals with an outstanding valid application made to the EUSS **on or before 30 June 2021** have been issued with a digital CoA. In this instance, you should check with the individual and ask them to provide you with a share code. This means you can check their right to work immediately via the online service and do not need to contact the ECS. The online service will provide confirmation of their right to work and advise when a follow-up check is required.

Where the individual has a digital CoA to evidence an application made **on or after 1 July 2021**, the online service will direct you to verify this via the ECS. You must do this in order to obtain a positive verification notice in these circumstances.

### Non-digital Certificate of Application

A 'non-digital' CoA is an email or letter, sent to the individual, advising them how prospective employers can request information about their right to work from the Employer Checking Service (ECS). Where a prospective employee provides you with a 'non-digital' CoA as evidence of an application made to the EUSS **on or after 1 July 2021**, you must make a copy of this document and retain this copy, together with a Positive Verification Notice (PVN) from the ECS. In doing so you will have a statutory excuse for six months from the date stated on the PVN.

Should you be provided with a non-digital CoA dated **on or before 30 June 2021** you should ask the prospective employee to check if they have also been issued with a digital CoA. If they have, they should provide you with a share code to verify their right to work via the online service instead.

You can request a right to work check from the ECS using the online form 'request a Home Office right to work check' on GOV.UK at:

<https://www.gov.uk/employee-immigration-employment-status>

### EU Settlement Scheme status granted by a Crown Dependency

The Crown Dependencies (the Bailiwick of Jersey, the Bailiwick of Guernsey, and the Isle of Man) each operate their own EU Settlement Scheme (EUSS) for those eligible to apply. The UK and the Crown Dependencies recognise status granted under each other's Scheme, so an individual granted settled or pre-settled status by a Crown Dependency will be considered to have settled or pre-settled status in the UK.

The Isle of Man and Guernsey issue a letter to those granted EUSS status. Jersey issues a letter and operates an immigration status checker service for individuals to obtain confirmation of their status at any point.

Since 1 July 2021, when presented with a letter or email confirmation of EUSS leave from a Crown Dependency, you must request a right to work check from the Employer

Checking Service using the online form 'request a Home Office right to work check' on GOV.UK at:

<https://www.gov.uk/employee-immigration-employment-status>

You must keep a copy of the Crown Dependency letter or email and retain this with the response from the Employer Checking Service to have a statutory excuse against liability for a civil penalty.

## **Outstanding EU Settlement Scheme applications in a Crown Dependency**

Where an individual has an outstanding application to the EU Settlement Scheme (EUSS) of the Crown Dependencies of the Bailiwick of Jersey, the Bailiwick of Guernsey or the Isle of Man, they will have a letter or email notification confirming their outstanding application. You must request a right to work check from the Employer Checking Service (ECS) using the online form 'request a Home Office right to work check on GOV.UK' at:

<https://www.gov.uk/employee-immigration-employment-status>.

You must make retain a copy of the letter or email notification with the response from the ECS to have a statutory excuse against liability for a civil penalty.

## **EEA citizens with valid Indefinite Leave to Enter or Remain**

EEA citizens with Indefinite Leave to Enter or Remain (ILE/R) are not required to make an application to the EU Settlement Scheme but can do so if they wish.

Since 1 July 2021, EEA citizens with ILE/R are required to prove their right to work in the same way as other foreign nationals who do not have a digital status.

You can carry out a manual check of their Home Office documentation such as an endorsement / vignette in a current passport stating, 'indefinite leave to enter or remain' or 'no time limit'. Some may have a current Biometric Residence Permit (BRP) and this can be checked manually. Alternatively, they may choose to use their BRP to access the online right to work service.

Carrying out either a manual check of the documents or the online check, as set out in this guidance will provide you with a statutory excuse against liability for a civil penalty.

### **Further information:**

If you encounter, EEA citizens who believe that they have ILE/R but do not have a document to confirm this please encourage them to:

- [apply to the EU Settlement Scheme](#) to obtain settled or pre-settled status (individuals may still be eligible to make an application to the EUSS after 30 June 2021); or
- [apply to the Windrush Scheme](#) to get proof of their ILE/R status

If they are from Malta or Cyprus, they may also be able to apply for British citizenship through the [Windrush Scheme](#).

**Applications for either scheme are free of charge.**

## **Points-Based Immigration System**

EEA citizens who come to the UK to live, work or study will need to obtain immigration status under the points-based system in the same way as other foreign nationals.

The majority of EEA citizens will be provided with an eVisa, however this will be dependent upon the immigration route and how they made their application. Some EEA citizens will have a Biometric Residence Permit (BRP). Those with a valid BRP can use this to access the online right to work service.

To prove their right to work from 1 July 2021, individuals will provide you with a share code and their date of birth which will enable you to check their Home Office immigration status via the online service available on GOV.UK:

<https://www.gov.uk/view-right-to-work>

Those with a BRP may choose to present their BRP for a manual check.

You will obtain a statutory excuse against liability for a civil penalty if you carry out the check using the online service, or a manual check as set out in this guidance.

## **EEA Citizens without lawful immigration status after 30 June 2021**

We recognise that employers wish to have a lawful and stable workforce after 30 June 2021 and maintain compliance with the Right to Work Scheme. You will have a continuous statutory excuse against a civil penalty if you carried out an initial right to work check in the prescribed manner as set out in legislation and guidance that applied at the time you completed the check, such as where an EEA citizen provided their passport or national identity card to you to prove their right to work prior to 30 June 2021.

If an EEA citizen applies for a job with you after 30 June, but has not applied to the EUSS and has no alternative immigration status in the UK, then they will not be able to pass a right to work check and should not be employed. If they believe they are eligible for the EUSS, you could signpost them to make an application.

However, there may be situations after 30 June 2021 in which you identify an EEA citizen in your workforce who has not applied to the EUSS and does not hold any other form of leave in the UK. You may have chosen to carry out a retrospective check, completed an internal audit or have been made aware that your employee does not have a lawful status in the UK. They may tell you that they have missed the deadline through no fault of their own and you may believe it to be disproportionate were you take immediate steps to cease their employment.

Where an EEA citizen has reasonable grounds for missing the EUSS application deadline, they will be given a further opportunity to apply. Non-exhaustive caseworker guidance has been published setting out a wide range of circumstances which will normally constitute reasonable grounds for a person's failure to meet the deadline, including where applicants lacked the mental capacity to apply, or where individuals have been unaware of the



deadline for a variety of reasons. The Home Office has grant-funded 72 organisations with a total of £22 million to do outreach and make sure people who are vulnerable or require assistance, are helped to make an application.

It should be noted that the criminal offence of employing an illegal worker is generally reserved for the most serious cases of non-compliance with the Right to Work Scheme. It is not intended for employers who have employed EEA citizens in good faith having completed a right to work check in the prescribed manner and are acting in accordance with this guidance to support their employees to make an application to the EUSS.

### **EEA citizens employed prior to 30 June 2021:**

You do not need to cease employment at the time you identify an EEA employee without status. In such circumstances, you should:

1. Advise the individual they must make an application to the EUSS within 28 days.

They must then provide you with confirmation that they have been issued with a 'digital' or 'non-digital' Certificate of Application (CoA). Where they have been issued with a CoA, you must request a right to work check from the Home Office Employer Checking Service (ECS) on GOV.UK at: <https://www.gov.uk/employee-immigration-employment-status>.

2. If they do not make an application within 28 days, you must take steps to cease their employment in line with right to work legislation.
3. Where a valid application has been confirmed, the ECS will give you a Positive Verification Notice (PVN). You must retain the PVN and a copy of the individual's CoA. This will then provide you with a statutory excuse against a civil penalty for six months. This allows sufficient time for the application to be concluded and enables the individual to maintain their employment with you during that time.
4. If the individual has been granted status before the PVN expiry date, they can prove their right to work to you using the Home Office right to work online service. If they have not been granted status at the time the PVN expired, you must do a further check with the ECS in order to maintain your statutory excuse against a civil penalty.
5. If the follow-up check confirms that the application is outstanding, you will be given a further PVN for six months and would then repeat step 4 until such time as the application has been finally determined. If the follow-up check confirms the application has been finally determined and refused, then you will not be issued with a PVN and you must take steps to cease the individual's employment.

### **Immigration Enforcement 28-day notice**

From 1 July 2021, where Immigration Enforcement encounter EEA citizens, or their family members, who are working without status, they will be given a written 28-day notice before action is taken. This provides individuals who may have been eligible under the EUSS had they applied by 30 June 2021, with the opportunity to make a late application to EUSS demonstrating any reasonable grounds for missing the deadline.

Failure to make an application may impact upon their eligibility to access services in the UK and they may be required to leave the UK.

## Family Members

Some individuals may be eligible for a permit to come to the UK if they are the family member of an EU, EEA or Swiss citizen, or a 'person of Northern Ireland'.

There were two different types of family permit: the EU Settlement Scheme family permit and the EEA family permit. The latter, **EEA family permits, ceased to be valid after 30 June 2021, even if there was time left on the permit.** For more information on the EEA family permit, please visit:

Those with a EUSS family permit will be issued with a vignette placed in their passport or on a separate card/paper if the individual has not used a passport to apply. Where an individual presents a vignette of this type, the employer must take a copy of the passport as well as the vignette and ensure the photographs represent the same person.

Due to the COVID-19 pandemic, some countries have advised that expired passports should be considered as valid for an extended period of time. Where an individual presents an EUSS family permit in an expired passport, or where their EUSS family permit is on a separate card/paper along with an identity card (current or expired), you must contact the contact the Employer Checking Service (ECS) via GOV.UK to verify their status and obtain a defence against a civil penalty:

<https://www.gov.uk/employee-immigration-employment-status>.

You must make a copy of their expired passport or identity card, EUSS family permit (vignette in passport or on a separate card/paper) and retain this with the response from the ECS to have a statutory excuse against liability for a civil penalty.

Non-EEA family members of EEA citizens are required to make an application to the EUSS to continue living in the UK after 30 June 2021. Whilst they will be granted an eVisa, they may also have a valid Biometric Residence Card (BRC).

From 1 July 2021, non-EEA family members of EEA citizens can provide you with a share code and their date of birth which will enable you to check their Home Office immigration status via the online service available on GOV.UK:

<https://www.gov.uk/view-right-to-work>.

Alternatively, they may choose to present their valid BRC, for a manual check, which they can continue to use to prove their right to work until early 2022 when BRC holders will transition to utilising the online service for right to work checks.

Finally, where applicable, joining family members (JFM) may apply to the EUSS. Where a JFM makes a valid application to the EUSS, they will receive a [Certificate of Application](#) (CoA), issued by the Home Office. They will be able to use their CoA for the purpose of a right to work check.



## Support for employees and employers carrying out a right to work check

### Employer Enquiry helpline / UKVI Resolution Centre

If you need help carrying out a right to work check you should call the Employer Enquiry helpline:

Telephone: 0300 790 6268, select option 2, then option 4  
Monday to Thursday, 9am to 4:45pm  
Friday, 9am to 4:30pm

If you need access to a device or the internet, many local libraries have computers where you can access the internet. Please visit [your local library](#) to access these facilities.

### Further support available for EU, EEA and Swiss citizens

If any of your existing or prospective employees require further advice or support with regard to their immigration status, they can access information on GOV.UK:

<https://www.gov.uk/government/publications/view-and-prove-your-immigration-status-evisa>

This also provides further information on how to prove immigration status, how to update personal details, and support available.

If your employee needs help accessing or using their Home Office online immigration status services, they can contact the UKVI Resolution Centre:

Telephone: 0300 790 6268, select option 3  
Monday to Friday (excluding bank holidays), 8am to 8pm  
Saturday and Sunday, 9:30am to 4:30pm.

# 9. Annex C: Employment of specific categories of workers

## Skilled worker route

Since 1 January 2021, if you want to recruit workers from outside the UK's resident labour market, you will need to be a Home Office licensed sponsor. This will enable you to recruit workers from anywhere in the world.

Under the new skilled worker route, anyone coming to the UK to work will need to demonstrate that:

- they have a job offer from a Home Office licensed sponsor
- the job offer is at the required skill level – RQF 3 or above (A Level and equivalent)
- they speak English to the required standard

In addition to this, the job offer must meet the applicable minimum salary threshold. This is the higher of either:

- the general salary threshold set by Her Majesty's Government on advice of the independent Migration Advisory Committee at £25,600, or
- the specific salary requirement for their occupation, known as the “going rate”

Applicants will be able to ‘trade’ characteristics, such as their qualifications, against a lower salary to get the required number of points. If the job offer is less than the minimum salary requirement, but no less than £20,480, an applicant may still be eligible if they have:

- a job offer in a specific shortage occupation
- a PhD relevant to the job
- a PhD in a science, technology, engineering or mathematics (STEM) subject relevant to the job

There are different salary rules for workers in certain health or education jobs, and for “new entrants” at the start of their careers.

Further information on the “going rate” for specific occupations and further exemptions can be found in Annex E of the [UK points-based immigration system: further details statement](#).

To identify whether a job meets the required skill level for the skilled worker route, can be found in the UK points-based immigration system: further details statement.

## Students

Not all international students are entitled to work while they are in the UK, but some are allowed to take limited employment if the conditions of their permission to study permit this.

A student who has been granted permission to be in the UK and is permitted to work will have a clear endorsement in their passport or Biometric Residence Permit, which states that they are permitted to work and the number of hours of work permitted during term time e.g. 10 hours or 20 hours a week. A student may also have a digital record of their immigration status that you can check through the GOV.UK Employer Checking Service. A week is considered in this context to run from Monday to Sunday. If permission to work is not stated in one of these documents, the student is not permitted to work. Students who have the right to work are permitted to work full-time before their course starts, during vacations or after they have completed their course. Students are not permitted to fill a permanent full-time vacancy unless they are applying to switch into the skilled worker route following the completion of degree-level study in the UK, or they have permission under the Doctorate Extension Scheme. Students are not permitted to work as an entertainer or professional sportsperson.

Short-term students on an English language course are not permitted to work or undertake a work placement.

Visitors studying a course of up to six months in the UK are not permitted to work or to do a work placement.

For students who have limited permission to work during term-times, you must also obtain, copy and retain details of their academic term and vacation times covering the duration of their period of study in the UK for which they will be employed.

More information about student work entitlements is available in the [Student route caseworker Guidance](#).

## Work placements

Work placements are intended to enable the student to gain specific experience of working in the field for which they are studying. Work placements are distinct from any employment that a student may (if permitted) take while they are following a course of study.

Students, including child students aged 16 or over, are allowed to undertake work placements where they are integral and related to the course and are assessed as part of the course. Where their student sponsor is a Probationary Sponsor, such courses must be at least RQF level 6 or SCQF level 9. Activity as part of a course-related work placement is restricted to no more than one third of the total length of the course undertaken in the UK unless:

- the student is following a course at degree level or above and is sponsored by a Higher Education Provider (HEP) with a track record of compliance or by an overseas HEI to undertake a short-term Study Abroad Programme in the UK, in which case the

work placement is restricted to no more than 50 per cent of the total length of the course; or

- the student is a child student aged 16 or over, in which case the work placement can form no more than 50 per cent of the total length of the course; or
- there is a statutory requirement for the course to include a specific period of work placement which exceeds this limit.

Student sponsors should provide a **letter** addressed to you as the work placement provider confirming that the work placement forms an integral and assessed part of the course and does not, by itself or in combination with other periods of work placement, breach the above restrictions. The letter must also include the terms and conditions of the work placement, including the work that the student will be expected to do, and how and when they will be assessed. You are strongly advised to obtain and retain such a letter as evidence of the work placement and that the work placement restrictions have not been breached as you may be liable for a civil penalty if your student employee does not comply with their immigration conditions.

While your student employee is undertaking a work placement as required by their course, this period of placement does not count towards the period of term time employment permitted by their immigration conditions.

Further information on [Student visa](#), including work placements, is available on GOV.UK.

The Student route replaced Tier 4 on 5 October 2020. Where a student holds Tier 4 leave, they will be considered to hold the same work rights as someone who holds Student leave.

## Impact of a change in circumstances on a student's right to work

1. The student has made an application to the Home Office to vary their leave – If the student is in the UK and has made a valid in-time immigration application (one made before their existing leave expired), their existing conditions of leave and work entitlements continue until their application is decided. If the application is approved, their leave will be varied, and they will get new conditions of leave. If the application is refused, their existing conditions of leave continue to apply until their leave expires.
2. The student has stopped studying or their sponsor has lost its licence – If there has been a significant change in the student's circumstances which means they no longer qualify for their grant of Student leave, the Home Office will curtail the leave. Any permission to work will expire on the new date that the student's leave will expire following curtailment. Curtailment can be with immediate effect or take effect 60 days from the date the student was notified that their leave was curtailed.
3. Employer Checking Service - If there has been a change in the student's circumstances, or you are unsure whether they have a right to work, you should contact the [Employer Checking Service](#)

## Tier 1 (Entrepreneur)

A person granted immigration permission under Tier 1 as an entrepreneur **is not permitted to be employed**. They are only allowed to work for their own business. The endorsement in the passport or Biometric Residence Card will clearly state what they are permitted to do. The Biometric Residence Permit currently states: -

Front:

T1 HS ENTREPRENEUR  
LEAVE TO REMAIN  
RESTRICTED WORK  
BUS INVEST  
NO SPORTSPERSON

Reverse:

NO PUBLIC FUNDS

## Voluntary Work

Individuals, including students, who have been granted immigration permission to be in the UK are permitted to **volunteer**. Visitors can volunteer for a registered charity for a maximum of 30 days during their visit, but volunteering cannot be the main purpose of their visit. Individuals who have limited permission to work in the UK may not carry out any **voluntary work**.

The legal distinction between volunteering and voluntary work can be quite complex. However, there are some key questions to consider when assessing whether an activity is voluntary work:

It is likely to be voluntary work if:

- there is an obligation on the individual to perform the work and in return an obligation on the organisation to provide it. The obligation does not have to be in writing.
- the individual is rewarded for that work, either through money or benefits in kind.

An obligation to work or receipt of remuneration is likely to mean that the individual is working under a mutuality of obligation. Where there is mutuality of obligation, it is voluntary work.

However, as the legal distinction is not always clear, we recommend that those involved seek independent legal advice for their specific activity.

An individual who is not permitted to work might commit a criminal offence by engaging in voluntary work when they are subject to contractual obligations. In such circumstances, their employer might also be liable for a civil penalty for employing an illegal worker.

Students, including child students aged 16 and over, can do voluntary work if they are permitted to work, but this work and any other (for example paid) work must not exceed the total number of hours they are permitted to work during term time. For example, if a student is permitted to work 20 hours a week during term-time and has paid work of 15 hours a week during term time, they cannot do more than 5 hours voluntary work. If they are not permitted to work they cannot do voluntary work.

## 10. Annex D: Extension to COVID-19 temporary adjusted right to work checks

Following the positive feedback received on the ability to conduct right to work checks remotely, the Home Office initiated a review of the availability of specialist technology to support a system of digital right to work checks in the future. The intention is to introduce a long-term digital solution for many who are unable to use the Home Office online right to work checking service, including UK and Irish citizens. This will enable checks to continue to be conducted remotely but with enhanced security.

As a result, and in recognition of moves to hybrid and alternative working models, temporary COVID-19 adjusted changes to the Right to Work Scheme, introduced on 30 March 2020, will remain in place until 5 April 2022 (inclusive).

Due to the COVID-19 pandemic, some countries have advised that their expired passports should be considered as valid for an extended period of time. Where an individual is required to present you with a current passport or travel document endorsed to show that the holder is allowed to stay in the UK for a 'time-limited period' and the leave is in a recently expired passport then you should contact the Employer Checking Service, to verify their status and obtain a defence against a civil penalty:

<https://www.gov.uk/employee-immigration-employment-status>.

You must make a copy of their expired passport and endorsement and retain this with the response from the ECS to have a statutory excuse against liability for a civil penalty.

Information on how to carry out these temporary adjusted checks is available at [Coronavirus \(COVID-19\): right to work checks](#) on GOV.UK. This page will be updated with any changes to the temporary measures.

The COVID-19 adjusted checks end on 5 April 2022 (inclusive). New guidance will be issued prior to 6 April 2022.

It remains an offence to knowingly employ a person who is not lawfully in the UK.

You do not need to carry out retrospective checks on employees who had a COVID-19 adjusted check between 30 March 2020 and 5 April 2022 (inclusive). You will maintain a defence against a civil penalty if the check you have undertaken during this period was done in the prescribed manner or as set out in the COVID-19 adjusted checks guidance. However, any individual identified with no lawful immigration status in the UK may be liable to enforcement action.