



AN EMPLOYER'S GUIDE TO RIGHT TO WORK CHECKS

Information from the UK Home Office

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Summary of changes in this issue of the guide

This guidance was last updated on 17 March 2021.

The most significant updates contained in this guidance relate to:

- I. Further guidance for employers on right to work checks for EEA and Swiss nationals during the grace period (1 January – 30 June 2021)

This guide applies to right to work checks conducted on or after 17 December 2020 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

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 persons 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.

The civil penalty scheme to prevent illegal working commenced on 29 February 2008 (further to the 2006 Act). It was not introduced retrospectively. Employers are, therefore, not required to have a statutory excuse in respect of employees 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.

Since 28 January 2019, employers have been able to rely on the Home Office online checking service, [view a job applicant's right to work](#) to discharge their responsibilities under the Immigration Asylum and Nationality Act 2006.

Further guidance for employers on how to avoid unlawful discrimination when conducting right to work checks was issued on 17 December 2020;

- I. An update on right to work checks for EEA and Swiss nationals during the grace period (1 January – 30 June 2021)

- II. An overview of the new routes under the points-based system.
- III. The temporary adjusted right to work checking process during COVID-19.

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 [Code of Practice](#).

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 guide 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 guide to understand their responsibility to correctly carry out right to work checks, and, therefore, ensure compliance with the law.

This guide 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 guide

'We' or 'us' in this guide mean the Home Office. References to 'you' and 'your' mean the employer.

'Days' means calendar days, i.e. including Saturdays, Sundays and bank holidays.

'Employee' means someone who is employed under a contract of employment, service or apprenticeship. This can be expressed or implied, oral or in writing.

'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](#).

'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.

'A current document' means a document that has not expired.

2. 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 5 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 [here](#).

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, 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 5 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.

3. How do you 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 check and an online check. Conducting either the manual check or the online check as set out in this guidance and in the [Code of Practice](#) will provide you with a statutory excuse.

Further information about conducting right to work checks is contained in [Frequently Asked Questions](#).

Conducting a manual right to work check

There are 3 basic steps to conducting a manual right to work check. Illustration 2 explains in more detail what you need to do in each of the 3 steps to correctly conduct a manual right to work check and establish a statutory excuse. You need to complete all 3 steps before employment commences to ensure you have conducted the prescribed check fully.

Illustration 1: Summary of a manual right to work check



Obtain

Obtain original versions of one or more acceptable documents.



Check

Check the document's validity in the presence of the holder.



Copy

Make and retain a clear **copy**, and record the date the check was made.

Illustration 2: The 3-Step Manual Check

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.

More detailed information about all of these acceptable documents, together with examples of what they look like can be found in '[An employer's guide to acceptable right to work documents](#)'.

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. Further advice about document fraud and illustrations of documents which are suitable for right to work checks are available in the '[Employer's guide to acceptable right to work documents](#)'. Guidance on examining identity documents may be found [here](#). 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 using such technology is available [here](#).

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 checking service supports checks in respect of those who hold:

- a biometric residence permit;
- a biometric residence card; or
- status issued under the EU [Settlement Scheme](#) (alternatively, these individuals continue to be able to demonstrate their right to work by presenting their EU passport or ID card until the end of the EU-Exit grace period on 30 June 2021); or
- status issued under the points-based immigration system; or
- British National Overseas (BNO) visa; or
- Frontier workers permit

You should give employees every opportunity to demonstrate their right to work. You should not discriminate on the basis of whether or not an individual is able and/or willing to demonstrate their right to work using the online checking service. To do so may result in you breaching the law. 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. 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 service, you should conduct the manual 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, after which a new code will be required in order to conduct an online check.

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 ('View a job applicant's right to work details') 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 3 basic steps to conducting an online right to work check. Illustration 4 explains in more detail what you need to do in each of the 3 steps to correctly conduct an online right to work check.

Illustration 3: Summary of the online right to work check

1. Use

Use the Home Office online right to work checking service on GOV.UK.

2. Check

Check that any photograph on the online right to work check is of the individual presenting themselves for work.

3. Retain

Retain a clear copy of the response provided by the online right to work check.

Step 1 Use the Home Office online right to work checking service

When an individual wishes to share their right to work with you using the Home Office online right to work checking service, they should provide you with the 'share code' generated by the service. They may provide this to you directly, or they may choose to send this to you via the service, in which case you will receive an email from right.to.work.service@notifications.service.gov.uk.

To view the individual's right to work details, you will need to type in the share code and the individual's date of birth.

You must use the Home Office online right to work checking service to conduct an online check. You must do this by accessing the '[View a job applicant's right to work details](#)' page on GOV.UK. 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.

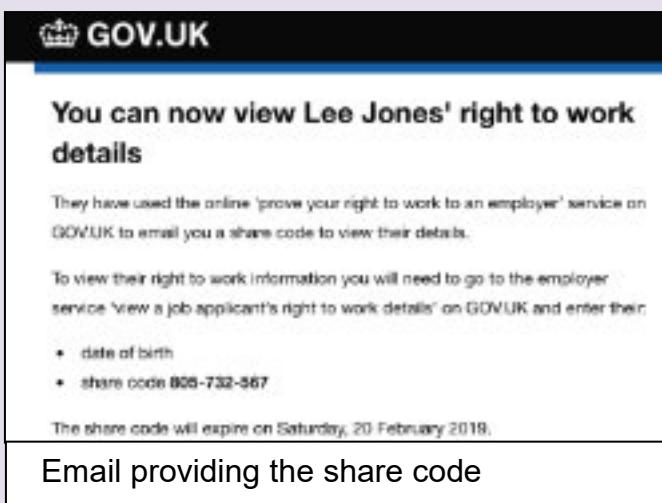


Illustration 4:

Step 2 Check

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.



View a job applicant's right to work



Lee Jones can work in the UK until 30 April 2020

Details

On their current visa, you can employ them to do any job except those listed in the conditions below.

Conditions

They cannot:

- work as a doctor or dentist in training
- play or coach international sports

These conditions are the standard requirements for their visa.

If you employ this person:

To avoid a penalty, you must:

- check that this visa has the penalty you need to use
- keep a written copy of this online check (either electronically or in hard copy), for the duration of the employment and for two years after
- do this check again when their visa expires on 30 April 2020

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

Details of check

Company name

Date of check

Reference number

01/01/2017

00000000-XX



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An example of an online check response

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 (the response provided by the Home Office online right to work checking service) 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 most cases you will be able to conduct either a manual or online check, as set out above. 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 [Certificate of Application](#) which is less than six months old and which indicates that work is permitted; or
2. 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
3. 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
4. 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](#) from us confirming that the named person is allowed to carry out the type of work in question.

You should not contact the Employer Checking Service 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 Employer Checking Service and to conduct that check, you should use the online tool '[Employer Checking Service](#)'.

Certificate of Application

You must check the original Certificate of Application which is not more than six months old in the usual way. You must make a copy of this document and retain this copy, together with the Positive Verification Notice. In so doing, you will have a statutory excuse for six months from the date stated in the Positive Verification Notice. A Positive Verification Notice 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 an 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 Employers Checking Service. 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 Employer Checking Service, 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 [here](#).

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 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 Employer Checking Service, 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 Employer Checking Service aims to provide a response within **5 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 non-EEA nationals 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-EEA nationals 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 to individuals on the Windrush Scheme and advise them 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 only evidence of lawful residence currently issued by the Home Office to most non-EEA nationals, and their dependants, 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, 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 in or out of 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.

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 migrants and dependants who have been granted leave to enter in any Tier 2 work category (General, Intra-Company Transfer, Minister of Religion and Sportsperson) 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.

4. Who do you conduct checks on?

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.

You should ask all prospective employees to demonstrate their right to work using either a physical 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.

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 when conducting document 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.

5. 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 right to work checks

If you conduct a manual 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 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**.

Table 1 summarises 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

Document Type	Excuse Type	Frequency of Checks
List A	Continuous	Before employment starts only.
List B - Group 1	Time-limited	Before employment starts and again shortly before permission (as set out in the document checked) expires.
List B – Group 2	Time-limited	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. 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 from our Employer Checking Service.

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 Employer Checking Service will not be required. If, however, the individual presents documents from [List B](#) Group 2, you will need to obtain a new Positive Verification Notice from the Employer Checking Service 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 from our Employer Checking Service 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 from our Employer Checking Service 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 Positive Verification Notice from our Employer Checking Service, 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 Positive Verification Notice from the Employer Checking Service. 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 may be found [here](#).

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”¹, 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 liquidation².

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 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.

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

² 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.

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’;
- [Carry out a right to work check: a 3 step guide](#);
- An employer’s ‘Right to Work Checklist’;
- [Acceptable right to work documents: an employer’s guide](#);
- Frequently asked questions;
- 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

List A	
Acceptable documents to establish a continuous statutory excuse	
1.	A passport 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 national identity card showing the holder, or a person named in the passport as the child of the holder, is a national of a European Economic Area country or Switzerland.
3.	A Registration Certificate or Document Certifying Permanent Residence issued by the Home Office to a national of a European Economic Area country or Switzerland.
4.	A Permanent Residence Card issued by the Home Office to the family member of a national of a European Economic Area country or Switzerland.
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 (short or long) 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 Residence Card (including an Accession Residence Card or a Derivative Residence Card) issued by the Home Office to a non-European Economic Area national who is a family member of a national of a European Economic Area country or Switzerland or who has a derivative right of residence.
4.	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.
Group 2 – Documents where a time-limited statutory excuse lasts for six months	
1.	A Certificate of Application issued by the Home Office under regulation 18(3) or 20(2) of the Immigration (European Economic Area) Regulations 2016, to a family member of a national of a European Economic Area country or Switzerland stating that the holder is permitted to take employment which is less than six months old together with a Positive Verification Notice from the Home Office Employer Checking Service.
2.	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.
3.	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.

8. Annex B

Right to work checks for EEA and Swiss nationals between 1 January – 30 June 2021

The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 ended free movement between the EU and the UK on 31 December 2020 (11pm). This means that EEA and Swiss nationals (and their families) arriving in the UK from 1 January 2021 onwards will do so under UK immigration laws and not under EU free movement.

There is a grace period of 6 months which began immediately after the end of the transition on 31 December 2020 and will end with the [EU Settlement Scheme](#) (EUSS) application deadline of 30 June 2021.

The Citizen's Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020, commonly referred to as the grace period statutory instrument (SI), is secondary legislation introduced to implement the UK's obligations in respect of citizens' rights under the Withdrawal Agreement, and corresponding agreements, with EEA EFTA states and Switzerland ("the Agreements").

The grace period SI protects the rights of those EEA nationals and their family members who are lawfully resident in the UK at the end of the transition period, but who haven't yet been granted status under the EUSS. They will need to apply by the deadline of 30 June 2021. This means EEA nationals and their family members who apply by the deadline and have not yet been granted status under the EUSS can continue to live their life in the UK as now and maintain a right to work until their application is determined. This includes pending the outcome of any appeal against a decision to refuse status. Alternatively, EEA nationals and their family members will need to obtain another form of UK immigration status to live and work in the UK after the grace period.

Right to work checks for EEA nationals will not change until after 30 June 2021. Until then, EEA nationals can use their passport or national identity card to evidence their right to work.

You are not expected to differentiate between EEA nationals who arrived before the end of the transition period (31 December 2020) and those arriving after in the grace period from 1 January to 30 June 2021.

We recognise that employers wish to ensure the stability of their workforce during the grace period and are able to provide help and support to prospective and existing employees to obtain the immigration status they need beyond 30 June 2021. You may therefore invite those who already have status under the [EU Settlement Scheme](#), or status under the points-based immigration system, to evidence their right to work using the Home Office online service. You cannot insist that EEA nationals use the online service or discriminate against those who wish to use their passport or national identity card during the grace period.

There is no mandatory requirement for retrospective checks to be undertaken on EEA nationals who were employed on or before 30 June 2021. You will maintain a continuous statutory excuse against a civil penalty in the event of illegal working if the initial right to work check was undertaken in line with right to work legislation and in line with this guidance.

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 employing individuals and conducting right to work checks.

Should an EEA national be unable to provide you with acceptable documents because they have an outstanding application for status under the EU Settlement Scheme, or the points-based immigration system, you will need to contact the [Employer Checking Service](#) to establish a statutory excuse.

The leaflet '[Understanding your right to work: EU, EEA and Swiss citizens](#)' published on GOV.UK can assist employers to provide information to EEA citizen job applicants about the Right to Work process and their responsibilities.

Further information is also available in a [factsheet](#) for employers about right to work checks on EEA citizens during the grace period.

From 1 July checks will change, and all EEA nationals will be required to demonstrate they have a right to work through evidence of their immigration status, rather than their nationality, using the online service. There will be a small number of exceptions and these will be detailed in further guidance. New guidance on how to conduct right to work checks on EEA nationals from 1 July will be provided in advance of this date.

Irish nationals will continue to have the right to work throughout and prove their right to work as they do now, for example by using their passport.

EEA and Swiss nationals – acceptable documents (until 30 June 2021)

As part of the right to work check, EEA and Swiss nationals can demonstrate this using their passport or national identity card, as well as the documents set out below.

Registration Certificates: some EEA and Swiss nationals may also have been issued with a registration certificate. This is a document issued by us to confirm that they are living here in compliance with the EEA Regulations, either by fulfilling the requirements for residence (also known as ‘exercising Treaty rights’) or by residing here as the family member of another EEA national who is exercising Treaty rights, or who has permanent residence.

Document Certifying Permanent Residence: some EEA and Swiss nationals may be able to produce a document certifying that they have a right of permanent residence in the UK. Under EU law, an EEA or Swiss national can acquire permanent residence after five years’ lawful and continuous residence in the UK.

All of these documents (passport establishing EEA or Swiss nationality, national identity card establishing EEA or Swiss nationality, registration certificate and document certifying permanent residence) are included in **List A** of acceptable documents, and production of any one of them will provide you with a continuous statutory excuse if checked and copied correctly **before** the person starts working for you.

EEA countries are:

- Austria
- Belgium
- Bulgaria
- Croatia
- 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
- Sweden

Switzerland is considered an “EEA state” for the purposes of the UK’s EEA Regulations.

Croatian nationals

Since 1 July 2018, Croatian nationals have no longer been subject to worker restrictions and no longer require worker authorisation from the Home Office. Croatian nationals may now demonstrate their right to work in the same way as any other EEA national.

Non-EEA family members of EEA nationals – acceptable documents

A non-EEA national family member of an EEA national who is living in the UK in compliance with the EEA Regulations, or who has acquired the rights of 'permanent residence' in the UK under EU law, also has a right to live and work in the UK. As part of a right to work check, they can demonstrate their right to work using documents set out below.

You should also be aware that not all family members of EEA nationals are permitted to work in the UK without restrictions.

Residence Cards: Some non-EEA family members of EEA nationals have been issued with a Residence Card by the Home Office. A valid Residence Card is included in [List B](#) of acceptable documents. Checking and retaining a copy of a current Residence Card before the person starts working for you will provide you with a time-limited statutory excuse.

Permanent Residence Cards: Some non-EEA family members of EEA nationals have been issued with Permanent Residence Cards by the Home Office. This confirms that they have acquired the right of 'permanent residence' in the UK under EU law, generally after five years' lawful and continuous residence in the UK.

A Permanent Residence Card, issued to a family member of an EEA national, is included in [List A](#) of acceptable documents. Checking and retaining a copy of a Permanent Residence Card before the person starts working for you will provide you with a continuous statutory excuse.

When a current Residence Card, Permanent Residence Card, or derivative residence card has been issued as a vignette in the holder's passport, there is no requirement for that passport to be current. However, you should check that the photograph is the person presenting the document, taking particular care checking the passport photograph if the passport is a number of years old. See [Residence Cards](#) (biometric format) for further information.

Non-EEA nationals with a Derivative Right of Residence – acceptable documents

Derivative Residence Cards: Some non-EEA nationals have been issued with a Derivative Residence Card by the Home Office. This confirms that they have a right to live and work based on their relationship with an EEA national or a British citizen. These rights only arise in a limited range of circumstances when specific conditions are met. They are based on judgments of the Court of Justice of the European Union and related to cases where the non-EEA national's presence in the UK is necessary in order to enable the relevant EEA national or British citizen to continue to live here. (For example, a non-EEA primary carer of British citizen child may meet the requirements).

A valid Derivative Residence Card is included in [List B](#) of acceptable documents. Checking and retaining a copy of a Derivative Residence Card before the person starts working for you will provide you with a time-limited statutory excuse.

Residence Cards (biometric format)

On 6 April 2015, the Home Office stopped issuing Residence Cards, Permanent Residence Cards, and Derivative Residence Cards in the form of a vignette in a passport or standalone document, though these will continue to be acceptable documents for the purpose of right to work checks until they expire. Since then, they have been issued in a biometric format.

Residence Cards (biometric format) closely resemble [Biometric Residence Permits](#). They are a standard credit card size and contain the holder's facial image, name and signature, date and place of birth, nationality, gender, expiry date of card, place of issue, type of residence card (category of residence) and a unique identification number. They also include a biometric chip.

A sample Residence Card (biometric format) may be found in '[Acceptable right to work documents: an employer's guide](#)'.

Holders of a BRC may demonstrate their right to work using the Home Office online right to work checking service.

Certificate of Application

Where a valid application for a Residence Card, Permanent Residence Card or Derivative Residence Card is submitted to us, the applicant is issued with a 'long' Certificate of Application which states that the individual has a right to work in the UK whilst their application for the card is being considered. A Certificate of Application **which includes a right to work** will give you a statutory excuse if it is **less than six months old** and is accompanied by a Positive Verification Notice that you have obtained by contacting the Home Office Employer Checking Service, stating that the holder has permission to work in the UK. The excuse will last for six months from the date of the Positive Verification Notice.

If you are presented with a 'short' Certificate of Application that does not state that work is permitted, this will not demonstrate a right to work and the Home Office Employer Checking Service will provide a Negative Verification Notice.

If the Certificate of Application is more than six months old, but the individual's application for a Residence Card or Derivative Residence Card has not been finally determined, they can apply to the Home Office for a replacement Certificate of Application which will again be valid for six months. If their work entitlement is extended, you will need to contact the Employer Checking Service again to receive a new Positive Verification Notice verifying this.

Additional information

Non-EEA nationals may claim that they have a right to work in the UK as a family member of an EEA national, or because of a derivative right, but do not hold a Residence Card, Permanent Residence Card or 'long' Certificate of Application with a right to work issued by us.

There is no mandatory requirement for non-EEA nationals who are resident in the UK as a family member of an EEA national I, or who have a derivative right of residence in the UK, to register with us or to obtain documentation from us.

Consequently, it is open to any non-EEA national who has an enforceable European Union law right to work in the UK - as a direct family member³ of an EEA national or because of a derivative right of residence - to demonstrate the existence of that right in a different way to those documents in Lists A and B as explained in the preceding sections.

In such cases, you may choose to accept alternative evidence. You should ask to see the following, **however, in so doing you will not establish a statutory excuse against a penalty** should the individual be found to be working illegally:

- evidence of the applicant's own identity – such as a passport; and
- evidence of their relationship with the EEA family member – e.g. a marriage certificate, civil partnership certificate or birth certificate, and
- evidence that the relevant EEA national family member has a right of **permanent residence in the UK** or is one of the following if they have been in the UK for more than 3 months:
 - (i) working e.g. employment contract, wage slips, letter from the employer; or
 - (ii) self-employed e.g. contracts, invoices, or audited accounts; or
 - (iii) studying e.g. letter from the school, college or university and evidence of sufficient funds; or
 - (iv) self-sufficient e.g. bank statements.

For family members of EEA nationals who are studying or self-sufficient (financially independent), you must also see evidence that the EEA national has comprehensive sickness insurance in the UK for themselves and all their relevant family members. This can include a private medical insurance policy, an EHIC card or a S1, S2 or S3 form.

You must only accept original documents as evidence.

Further guidance on EEA and non-EEA family members of EEA nationals can be found in the [European casework instruction](#) page on GOV.UK.

³ In this context 'family member' means a spouse, civil partner, child under 21 and dependent relative in the ascending line such as a parent or grandparent. Other relatives such as unmarried partners can only fall into the 'family member' category if they have been issued a Residence Card or Permanent Residence Card by the Home Office.

9. Annex C

Employment of specific categories of workers

Skilled worker route

From 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 Tier 2 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.

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 Students, including work placements, is available [here](#).

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.

Employment of other categories

For information about other immigration categories including the employment of refugees and asylum seekers, please refer to the [Frequently Asked Questions document](#).

10. Annex D

Temporary adjusted right to work checks during the Coronavirus (COVID-19) pandemic

Since 30 March 2020, right to work checks have been temporarily adjusted in response to the coronavirus pandemic. Information on how to carry out these temporary adjusted checks is available at [Coronavirus \(COVID-19\): right to work checks](#) on GOV.UK. This information will be updated with any changes to the temporary measures.

Since January 2019, employers have been able to rely on the Home Office online service '[view a job applicants right to work](#)' available on GOV.UK, for those eligible to use the service. This check can be carried out via live video link and as the information is provided in real-time, directly from Home Office systems there is no requirement to see documents.

If you conduct a check using the online service or a standard document-based check as set out in the code of practice, it will not be necessary to conduct a retrospective check.

Due to the ongoing nature of the pandemic we do not have a confirmed date for when the temporary adjustments will come to an end.

It remains an offence to knowingly employ a person who is subject to immigration control and who is not allowed to undertake the work in question (by reason of their immigration status), or where there is reasonable cause to believe this is the case and the person is employed anyway.