

**Right to Work Checks
Preventing Illegal Working
Managers' Guide**



1. IMPLICATIONS OF THE ACT

- 1.1 Under the Immigration, Asylum and Nationality Act 2006 it is a criminal offence to employ someone who does not have the right to work in the UK. Employers have a statutory defence against conviction for the employment of illegal workers if they check and record certain specific documents belonging prospective employees.
- 1.2 Failure to carry out the required checks and/or maintain evidence of these checks can result in civil penalties of up to £20,000 or in serious cases imprisonment of up to 5 years

2. CHECKING PROCEDURE FOR ILLEGAL WORKING

- 2.1 Checks must be made before an individual commences employment to find out if a person has both the right to work in the UK and the right to carry out the type of work they have applied for. Checks must be applied in the same way to every potential employee, not just to those who may appear to be from overseas.

2.2 Acceptable Documentation

The Home Office has produced two lists of acceptable documents that a job applicant may use to provide evidence of their eligibility to work in the UK. Only documents listed in this checklist can be used to assess an individual's eligibility to work in the UK. The checklist is attached as Appendix 1.

List A documents show that the holder is not subject to immigration control, or has no restrictions on their stay, so they have an ongoing right to work in the UK. List B documents show that the holder has been granted leave to enter or remain in the UK for a limited period of time and, or, has restrictions on their right to work. Holders of List B documents will be subject to repeat checks.

Documents supplied **must be originals**. Photocopies or scanned copies of originals are not acceptable.

If, having consulted the list of acceptable documents, you have any questions about the validity of a particular document you should contact Recruitment to discuss.

It is worth highlighting that the following passports contain the word 'British' but will not give an automatic right to work in the UK (unless it contains a certificate of entitlement or a relevant endorsement):

- a British Visitor's Passport; or
- a passport that describes the holder as:
 - a British National (Overseas);
 - a British Dependent Territories citizen;
 - a British Overseas Territories citizen;
 - a British Overseas citizen;
 - a British subject; or
 - a British protected person.

2.3 Checking Process

The Chair of the interview panel will carry out the checks and must be familiar with the requirements of the Home Office Guidelines for compliance with the Immigration, Asylum and Nationality Act 2006 as laid out in this document.

The Chair of the interview panel must check that

- photographs and dates of birth are consistent across documents and with the person's appearance in order to detect impersonation;
- expiry dates for permission to be in the UK have not passed;
- 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);
- the documents are genuine, have not been tampered with and belong to the holder;
- 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.

The Chair must arrange for the original document(s) to be photocopied. In the case of a passport or other travel document, the copy should include:

- any page with the document expiry date
- the holder's nationality, date of birth, signature,
- the holder's photograph
- leave expiry date, biometric details, 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.

Other documents must be copied in full, for example both sides of a Biometric Residence Permit.

The Chairperson must sign the copied documents as follows: '**Copies of original documents seen by**' [print NAME], on [insert date] and then sign.

Copies of the original documents must be returned to Recruitment with the application pack. Failure to return the copied documents will delay the appointment process.

2.4 Repeat Checking

If a person has a time limit on their right to work, repeat document checks must be carried out to ensure compliance with the legislation.

Repeat checks must be carried out to ensure that the person continues to have the right to work for the council when the employee's permission to be in the UK and do the work in question expires. This should be evidenced by the document or combination of documents produced for the right to work check as follows

2.4.1 Group 1 Documents

The council's ability to employ the individual will continue for as long as the employee has permission to be in the UK and do the work in question as evidenced by the document or combination produced by the employee for the right to work check.

If however, at the point that permission expires, the council is reasonably satisfied that the employee has an outstanding application or appeal to vary or extend their leave in the UK, the time limited statutory excuse will continue from the expiry date of the employee's permission for a further period of up to 28 days. **An application or appeal must be made on or before a person's permission to be in the UK and do the work in question expires in order to be deemed "in-time" and valid**

During this 28-day period the council must contact the Employer Checking Service and receive a Positive Verification Notice confirming the employee continues to have the right to undertake the work in question.

In the event that a Positive Verification Notice is received, the ability to continue to employ the individual will last for a further six months from the date specified in the Notice. A further check will then need to be carried out on its expiry.

In the event that a Negative Verification Notice is received, the ability to continue to employ the individual will cease. In these circumstances the named individual's employment with the council should be ended with immediate effect following discussion with HR.

2.4.2 Group 2 Documents

If the employee holds one of the documents in Group 2, or is unable to present an acceptable document because they have an outstanding application with the Home Office or an appeal in respect of their leave, the council must contact the Employer Checking Service and receive a Positive Verification Notice. The ability to continue to employ the individual will last for six months from the date specified in the Positive Verification Notice. A further check will then need to be carried out on its expiry.

- 2.5 Services are responsible for ensuring appropriate checks are carried out and ensuring employees have valid permission to work. Based on the information provided by services at the point of recruitment, Human Resources will remind Services when an employee's permission to work is nearing expiration in order for appropriate action to be taken.

3. DOCUMENT RETENTION

Copies of documents taken must be retained by Human Resources in a non-rewritable format in the employee's personal file for at least 2 years after they have left the council's service.

4. FAILURE TO PROVIDE APPROPRIATE DOCUMENTATION

- 4.1 The Chair of the interview panel should liaise with HR where an applicant:

- fails to produce required documents;
- presents genuine but inappropriate documents;
- presents someone else's documents;
- presents forged document

- 4.2 If, after carrying out the checks, you believe the preferred candidate is either not permitted to undertake the work on offer or is not the rightful owner of the documents, you should contact Human Resources who will report the matter to the appropriate authorities.
- 4.3 The council will not offer employment to anyone who does not provide appropriate evidence of his or her eligibility to work in the UK.

5. COUNTRIES IN THE EUROPEAN ECONOMIC AREA

- 5.1 Nationals and their immediate family members from EU, EEA countries and Switzerland have historically been able to enter and work in the UK without restriction. The countries included in the EU and EEA are as follows

Austria	Hungary	Norway
Belgium	Iceland	Poland
Cyprus	Ireland	Portugal
Czech Republic	Italy	Slovakia
Denmark	Latvia	Slovenia
Estonia	Liechtenstein	Spain
Finland	Lithuania	Sweden
France	Luxembourg	United Kingdom
Germany	Malta	
Greece	Netherlands	

- 5.2 Changes to the UK Immigration laws introduced on 1 January 2021 however removed this right.
- 5.3 While these new immigration rules came into force on 1 January 2021 there is a grace period for citizens of the EU, EEA and Switzerland which runs from 1 January 2021 to 30 June 2021. During this period employers can continue to accept an EU, EEA or Swiss passport or national identity card as evidence of eligibility to work in the UK. The employers guidance published by the government also goes one stage further and specifically states that employers cannot require these individuals to show any additional proof of their right to work in the UK until after the end of the grace period on 30 June 2021.
- 5.4 From 1 July 2021 however employers will be required to carry out additional right to work checks on EU, EEA or Swiss nationals. The type of check that is required will depend on the individuals status under the EU Settlement Scheme (EUSS)

5.4.1 EU, EEA and Swiss Citizens with Settled or Pre-settled Status

Citizens of the EU, EEA and Switzerland who were resident in the UK by 31 December 2020 have been given the opportunity to apply for settled or pre-settled status under the EU Settlement Scheme. In order to qualify for settled status the individual must be able to evidence that they have been resident in the UK for a minimum of 5 years. If this residency requirement cannot be met the individual can apply for pre-settled status

Where an individual is granted settled status they will retain their right to work in the UK indefinitely (subject to certain conditions around residence being adhered to). Where they are granted pre-settled status they will retain their right to work in the UK but will need to make a further application for settled status at the point they meet the

5 year residency requirement.

Employers can check whether an individual has settled or pre-settled status using the government's online checking service. In order to do this the individual will need to provide the chair of the interview panel with a "share code" which can then be entered on the government website at <https://www.gov.uk/view-prove-immigration-status> which will provide confirmation of the individual's settled or pre-settled status. This confirmation must be scanned to Recruitment along with the appointment pro-forma.

Where this check indicates that someone has pre-settled status a further check will need to be carried out prior to the expiry of the pre-settled status to ensure the individual has been granted settled status. The requirement for a follow up check will be recorded by HR and notifications will be issued at the point a follow up check is required.

5.4.2 EU, EEA and Swiss Citizens without Settled or Pre-settled Status

EU, EEA and Swiss nationals who have not applied for or been granted settled or pre-settled status will have no automatic right to work in the UK.

This means that they will need to have some other route to eligibility to work in the UK which can be verified using the relevant documentation contained in the checklist available at Appendix 1.

6. EMPLOYING STUDENTS

- 6.1 Students are allowed to take limited employment in the UK, providing their conditions on entry to the UK allow this. Those studying here who have entered the UK as 'student visitors' are not allowed to work. There are strict conditions on the type of work students can carry out and the hours they can work while they are studying in the UK. Any questions around eligibility should be discussed with recruitment prior to a conditional offer being made. The council must obtain and retain a copy of evidence from a student's education sponsor setting out their term and holiday dates covering the duration of their period of study in the UK for which they will be employed.

7. EMPLOYING MEMBERS OF THE ARMED FORCES

- 7.1 Where a member of the Armed Forces applies for settlement before their discharge, they will receive an Indicative Letter from the Border Agency outlining that a decision to grant them settlement in principle has been made based on the information currently held.
- 7.2 This indicative letter does not give the holder permission to work. Instead it demonstrates that the individual named is complying with the UK Border Agency rules and should not be excluded from consideration for future employment on the grounds of their immigration status. There is no guarantee that settlement will ultimately be granted but the grant of settlement is highly likely barring any late change in the circumstances of the applicant. In the vast majority of cases, this will enable early confirmation and commencement of employment once the applicant has been discharged from HM Forces. If you are given an Indicative Letter you should delay actual employment until acceptable documents showing the right to work have been provided.

8. EMPLOYING ASYLUM SEEKERS, REFUGEES AND THOSE GRANTED HUMANITARIAN PROTECTION

8.1 Asylum Seekers

Asylum seekers do not normally have the right to work in the UK and may only be lawfully employed if restrictions on them taking employment have been lifted.

If an asylum seeker is allowed to work they will hold a Home Office issued Application Registration Card (ARC) stating one of the following:

- Allowed to Work
- Employment Permitted
- Work Restricted – Shortage Occupation List
- Work Restricted – Student
- Work Restricted – Other

Even when presented with an Application Registration Card you must verify the individual's right to work and to do the job being offered with the Employer Checking Service.

Asylum seekers are allowed to volunteer, as long as they are carrying out the work on behalf of a registered charity, voluntary organisation or body that raises funds for either.

8.2 Refugee Status and Humanitarian Protection

Refugees and those with humanitarian protection have no restrictions on the type of work they can do, as long as they continue to hold qualifying status.

These individuals do not have to meet the tests of the points-based system, and you do not need to be a sponsor under this scheme to employ someone with this status.

**HR Services
June 2021**

Lists of acceptable documents for manual right to work checks (from 1 July 2021)

List A – acceptable documents to establish a continuous statutory excuse

1. A passport (current or expired) showing the holder, or a person named in the passport as the child of the holder, is a British citizen or a citizen of the UK and Colonies having the right of abode in the UK.
2. A passport or passport card (current or expired) showing that the holder is a national of the Republic of Ireland.
3. A current document issued by the Home Office to a family member of an EEA or Swiss citizen, and which indicates that the holder is permitted to stay in the United Kingdom indefinitely.
4. A document issued by the Bailiwick of Jersey, the Bailiwick of Guernsey or the Isle of Man, which has been verified as valid by the Home Office Employer Checking Service, showing that the holder has been granted unlimited leave to enter or remain under Appendix EU to the Jersey Immigration Rules, Appendix EU to the Immigration (Bailiwick of Guernsey) Rules 2008 or Appendix EU to the Isle of Man Immigration Rules.
5. A current Biometric Immigration Document (Biometric Residence Permit) issued by the Home Office to the holder indicating that the person named is allowed to stay indefinitely in the UK or has no time limit on their stay in the UK.
6. A current passport endorsed to show that the holder is exempt from immigration control, is allowed to stay indefinitely in the UK, has the right of abode in the UK, or has no time limit on their stay in the UK.
7. A current Immigration Status Document issued by the Home Office to the holder with an endorsement indicating that the named person is allowed to stay indefinitely in the UK, or has no time limit on their stay in the UK, together with an official document giving the person's permanent National Insurance number and their name issued by a government agency or a previous employer.
8. A birth or adoption certificate issued in the UK, together with an official document giving the person's permanent National Insurance number and their name issued by a government agency or a previous employer.
9. A birth or adoption certificate issued in the Channel Islands, the Isle of Man or Ireland, together with an official document giving the person's permanent National Insurance number and their name issued by a government agency or a previous employer.
10. A certificate of registration or naturalisation as a British citizen, together with an official document giving the person's permanent National Insurance number and their name issued by a government agency or a previous employer.

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

1. A current passport endorsed to show that the holder is allowed to stay in the UK and is currently allowed to do the type of work in question.

2. A current Biometric Immigration Document (Biometric Residence Permit) issued by the Home Office to the holder which indicates that the named person can currently stay in the UK and is allowed to do the work in question.
3. A current document issued by the Home Office to a family member of an EEA or Swiss citizen, and which indicates that the holder is permitted to stay in the United Kingdom for a time limited period and to do the type of work in question.
4. A document issued by the Bailiwick of Jersey, the Bailiwick of Guernsey or the Isle of Man, which has been verified as valid by the Home Office Employer Checking Service, showing that the holder has been granted limited leave to enter or remain under Appendix EU to the Jersey Immigration Rules, Appendix EU to the Immigration (Bailiwick of Guernsey) Rules 2008 or Appendix EU to the Isle of Man Immigration Rules.
5. A document issued by the Bailiwick of Jersey or the Bailiwick of Guernsey, which has been verified as valid by the Home Office Employer Checking Service, showing that the holder has made an application for leave to enter or remain under Appendix EU to the Jersey Immigration Rules or Appendix EU to the Immigration (Bailiwick of Guernsey) Rules 2008, on or before 30 June 2021.
6. A frontier worker permit issued under regulation 8 of the Citizens' Rights (Frontier Workers) (EU Exit) Regulations 2020.
7. A current Immigration Status Document containing a photograph issued by the Home Office to the holder with a valid endorsement indicating that the named person may stay in the UK, and is allowed to do the type of work in question, together with an official document giving the person's permanent National Insurance number and their name issued by a government agency or a previous employer.

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

1. A document issued by the Home Office showing that the holder has made an application for leave to enter or remain under Appendix EU to the immigration rules on or before 30 June 2021 together with a Positive Verification Notice from the Home Office Employer Checking Service.
2. A document issued by the Bailiwick of Jersey or the Bailiwick of Guernsey showing that the holder has made an application for leave to enter or remain under Appendix EU to the Jersey Immigration Rules or Appendix EU to the Immigration (Bailiwick of Guernsey) Rules 2008 on or before 30 June 2021 together with a Positive Verification Notice from the Home Office Employer Checking Service. 38
3. An Application Registration Card issued by the Home Office stating that the holder is permitted to take the employment in question, together with a Positive Verification Notice from the Home Office Employer Checking Service.
4. A Positive Verification Notice issued by the Home Office Employer Checking Service to the employer or prospective employer, which indicates that the named person may stay in the UK and is permitted to do the work in question.