



# Employee Right To Work Check


Are you doing it right?



**Every employer in the UK has a responsibility to prevent illegal working.**

**It is unlawful to employ an individual who does not have the right to work in the UK or who is working in breach of their conditions of stay (visa) in the UK.**

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An employer needs to carry out certain checks before an individual commences employment, and also keep a record of the checks that have been carried out.

The checks must be carried out **before** an individual starts working for you.

To avoid any potential discrimination claims, you must undertake document checks for **all workers**, irrespective of whether you know them to be British.

For best practice, even if you are not the direct employer of your workers, you should still know they have the correct permission to work for you.

### **Sanctions against illegal working**

Under the relevant legislation, an employer who employs illegal workers, may be liable to a civil penalty or commit a criminal offence.

A civil penalty of up to **£20,000 per illegal worker** may be imposed if an employer negligently employs someone without the right to undertake the work for which they are employed.

A criminal offence will be committed if an employer knowingly employs an individual who does not have the right to undertake the work for which they are employed. On summary conviction, an employer may receive an unlimited fine or imprisonment of up to 5 years or both.

### **Brexit Implications**

- All foreign nationals (except Irish nationals) require a visa to lawfully live and work in the UK, unless they are an EEA or Swiss national with pre-settled or settled status under the EU Settlement Scheme.
- Employers of EEA and Swiss nationals are no longer able to rely on the EEA passport or ID card to confirm the person's right to work in UK. Proof of immigration status under either the EU Settlement Scheme or the immigration system in place at the time will be required.
- If you intend to employ EEA and/or Swiss workers that do not have either pre-settled or settled status under the EU Settlement Scheme, you will need a sponsor licence to do so.

## Right to Work Checks

An employer is excused from paying a civil penalty (known as the “statutory excuse”) if it can show that it has conducted right to work checks.

There are three types of right to work check:

- a Home Office online check;
- a manual document-based check;
- a right to work check using IDVT via the services of an Identity Service Provider IDSP.

These checks will provide employers with a statutory excuse against a civil penalty in the event of illegal working, provided they are carried out correctly.

## Online Right to Work Check

Employers should be aware that 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. In circumstances where an online check is not possible, you should conduct the manual check or IDVT check.

From 6 April 2022, workers with a Biometric Residence Card (BRC), Biometric Residence Permit (BRP) or Frontier Worker Permit (FWP) are required to evidence their right to work using the Home Office online service only. Employers will not be able to accept physical cards for the purposes of a right to work check.

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

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

The first step is for the potential employee to view their Home Office right to work record, this is done using this [LINK](#). The worker should then provide you with a ‘share code’ which they may share with you directly, or they may choose to send this to you via the service.

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

- access the service [View a job applicant’s right to work details](#)
- enter the ‘share code’ provided to you by the individual; and
- enter their date of birth

You must, **in the presence of the worker or via video call:**

- check that the photograph on the online right to work check is them;
- ensure the online check confirms that they have the right to work;
- retain evidence of the online right to work check – this should be the profile page confirming their right to work (including the photo and date on which the check was conducted). You should have the option to print the profile or save it as a PDF file.
- store this securely either electronically or in hardcopy for the duration of their employment and for two years afterwards. Then it can be securely destroyed.

## Manual Right to Work Check

Right to work checks can be achieved by undertaking a series of specified steps:

- Obtain the employee’s original identity documents. (see [HERE](#) for Home Office guidance);
- Check the documents are valid with the employee present;
- Copy and keep the documents securely, recording the date of the check (and follow-up check if the document expires).

If the individual is subject to restrictions and/or the document they present has an expiry date, you must make a note of this date and undertake a new document check on or before the relevant date in the future. You must retain documents during the course of each individuals’ employment and for two

years after they have stopped working for you.

There is an online interactive tool which can be used to check which types of document give someone the right to work in the UK and what a right to work check involves for each of them (you can find this [HERE](#)). The employer must check the validity of the original documents and satisfy itself that the individual is the person named in them.

If you employ students, you need to check the working time restrictions on their visa and you will need to obtain a print-out of the semester timetable from the institution as some students are able to work full-time during their holiday periods.

### Using an Identity Service Provider (IDSP)

From 6 April 2022, employers can use Identity Document Validation Technology (IDVT) via the services of an IDSP to carry out right to work checks for British and Irish citizens who hold a valid passport (including Irish passport cards).

Employers will only have a statutory excuse if they reasonably believe that the IDSP has carried out their checks in accordance with the [Home Office guidance](#).

Employers will need to follow these steps when carrying out a right to work check using an IDSP:

- IDSPs can carry out digital identity verification to a range of standards or levels of confidence. The Home Office recommends that employers only accept checks via an IDSP that satisfy a minimum of a Medium Level of Confidence.
- Check the photograph and biographic details (for example, date of birth) on the output from the IDVT check are consistent with the individual presenting themselves for work (i.e. the information provided by the check relates to the individual and they are not an imposter).
- Retain a clear copy of the IDVT identity check output for the duration of employment and for two years after the employment has come to an end.

### COVID-19 changes

Due to COVID-19 there are temporary changes to the way you can check documents. You can find guidance about the adjusted process [HERE](#), in short:

- Checks can now be carried out over video calls;
- Job applicants and existing workers can send scanned documents or a photo of documents for checks using email or a mobile app, rather than sending originals;
- Employers should use the Employer Checking Service if a prospective or existing employee cannot provide any of the accepted documents.

Please note, these temporary measures will end on 30 September 2022.

If a prospective or existing worker cannot show an employer their documents, the employer must contact the Home Office Employer Checking Service. If the person has a right to work, the Employer Checking Service will send the employer a 'Positive Verification Notice'. This provides you with a statutory excuse for 6 months from the date in the notice.

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