



Prevention of Illegal Working

From 1 January 2021 following BREXIT, a new, points-based immigration system will operate as the legal framework for how EU and other overseas nationals may come to live and work in the UK.

The Immigration, Asylum and Nationality Act 2006

The law on preventing illegal working is set out in sections 15 to 25 of the Immigration, Asylum and Nationality Act 2006 (known as the 2006 Act). These rules came into force on 29 February 2008.

Duty under the 2006 Act

MSK (The Company) is required to make document checks on all potential and current employees and workers in order to confirm that they have the right to work in the UK. If it is found that an employee has a time limit on their stay then we should carry out repeat checks at least once every 12 months. Additionally if there's a restriction on the type of work they can do and, or, the amount of hours they can work, then we must not employ them in breach of these restrictions.

Under section 21 of the 2006 Act, knowingly employing an illegal worker can lead to a prison sentence for up to 2 years & / or an unlimited fine if the case is dealt with by a Crown Court.

Statutory excuse against payment of a civil penalty

Provided that the Company follows the guidance of the UK Border Agency, adopts this policy and procedure and ensures that it carries out the required document checks then it will have a legal excuse (known as a statutory excuse) against payment of a civil penalty if it was found to be employing an illegal worker.

Who is entitled to work in the UK?

- **British and Irish citizens** have an immediate right to work.
- **From 1 January 2021**, Europeans who are new to the UK and are not eligible to apply under the EU Settlement Scheme will require permission to work in the UK under the new points-based system.
- Some Commonwealth citizens have a **Right of Abode** in the UK, giving them an immediate right to work here. However, they will first need a Certificate of Entitlement to demonstrate this right, which must be in a current, valid passport.
- Some non-European nationals will have **no time limit** on their stay in the UK. This is known as settlement or ILR and provides an immediate right to work in the UK. If this status is endorsed in their passport, that passport must be current and valid. If not, they will need to apply for a Biometric Residence Permit to confirm their on-going ILR status before an employer can complete the appropriate right-to-work-check
- Some non-Europeans hold visas, biometric residence permits or other official documents that provide a **right to work for a temporary period**. It may be possible to extend that period of stay or qualify to apply for settlement, depending on the particular immigration permission. In some cases, the right to work can be limited to a particular employer or to a maximum number of hours per week (this will be set out in their immigration document).

How to perform the check

The check will need to be conducted to meet the following requirements:



- **You must** see one or more of the original documents that are prescribed by the Home Office. Verification can also be performed on-line in limited circumstances. www.GOV.UK/view-right-to-work
- You must check that the documents are valid, with the applicant present.
- You must make and keep copies of the documents and record the date you made the check. You can be asked to provide these documents.

Right-to-work documents

- Right to work in the UK can be validated through sight of original documents or online. The online tool is currently only available to those who hold a biometric residence card or have secured status through the EUSS.
- From 1 January 2021, this will also include Europeans who have secured status under the new points-based system.
- Where an employer is relying on original documents, these must be from the lists of acceptable documents prescribed by the Home Office as mentioned above.
- Where an employer is conducting an online right-to-work check, the new employee will provide a share code inviting the employer to view their status online. An employer should download the information presented, noting by whom and when the check was completed. The employer will also need to confirm that the employee presenting themselves for work is indeed the individual presented through the portal.

Checking the documents are valid

A document validity check means ensuring that:

- The documents are genuine, original and unchanged, and belong to the person who has given them to you
- The dates for the applicant's right to work in the UK haven't expired
- Photos are the same across all documents and look like the applicant

Dates of birth are the same across all documents

- The applicant has permission to do the type of work you're offering (including any limit on the number of hours they can work)
- For students, that you see evidence of their study and vacation times, and if two documents give different names, the applicant has supporting documents showing why they're different, for example, a marriage certificate or divorce decree.

Historically, documents from Europeans have been particularly difficult to verify as they may not be accompanied by a UK visa or other immigration document. You can verify documents of the European Union, of its member states, and of the other countries participating at the EU's Public Register of Authentic Travel and Identity Documents Online website. From 1 July 2021, unless: -

- Exceptional circumstances apply, employers will be able to complete online right-to-work checks for all EEA nationals. In most cases, status will either be held under the EUSS or the points-based system.

Right-to-work adjustments during COVID-19

- The Home Office has temporarily adjusted the right-to-work process due to restrictions placed on employers in light of COVID-19.
- Right-to-work checks remain a mandatory process to complete prior to any employee commencing employment in the UK. Instead of an in-person check, employers are permitted to view original documentation online in the presence of its owner.
- To complete a compliant check within these temporary guidelines, employers must:
- request a scanned copy or photograph of the original right-to-work documents

- arrange a video call with the individual to validate the original document against digital copies provided
- record the date of check, detailing the following wording on the copy '*adjusted check undertaken on [insert date] due to COVID-19*'.

Recording right to work

Employers will need to hold copies of their right-to-work checks to evidence that they were properly completed. When copying the documents:

- Make a copy that cannot be changed, such as a photocopy or a screen shot (if verified online).
- Copies should ideally be in colour.
- For passports, copy any page with the expiry date and applicant's details (for example, nationality, date of birth and photograph) including endorsements, such as a work visa.
- For biometric residence permits and residence cards (biometric format), copy both sides.
- For all other documents, a complete copy must be made.
- Keep copies during the applicant's employment and for **two years** after they stop working for you (ensuring you also comply with the Data Protection Act and related legislation).
- Record the date the check was made.

People without the right to work

Employers can be penalised by the Home Office if they employ a person in the UK who does not have or cannot evidence that: -

- They have the right to work. **A civil penalty of up to £20,000** can be issued, an employer can lose their sponsor licence and/ or individuals could face criminal charges. In some instances, the Home Office will publicly name an employer.
- However, it is possible that an individual who does not currently have the right to work could secure that right if they qualify for a visa or sponsorship.

Employing Nationals from the European Economic Area

Right to reside

'Right to reside' means you have the right to live in the UK. You have a right to reside in the UK if any of the following is true:

- you're a [British citizen](#) (which includes nationals of the Channel Islands or Isle of Man)
- you're a citizen of Ireland
- you have [pre-settled or settled status through the EU Settlement Scheme](#)
- you have [indefinite leave to enter or remain in the UK \(ILR\)](#)
- you have a [residence document](#)
- you're [exempt from immigration control](#)

If you or your family are from the EU, Switzerland, Norway, Iceland or Liechtenstein; You started living in the UK before 1 January 2021; You currently have a right to reside if you're any of the following:

- employed
- self-employed
- registered as a [jobseeker](#)
- self-sufficient
- a student
- someone with [permanent residence status](#)
- You also have the right to reside if you're a close family member of an [EU, EEA](#) or Swiss citizen with the right to reside.

Close family members are:

- a husband, wife or civil partner
- children or grandchildren under 21
- dependent parents or grandparents
- Your rights and status will remain the same until 30 June 2021.
- To continue living in the UK after 30 June 2021, you and your close family members can apply for the free EU Settlement Scheme.
- If you're not a close family member and have a residence card you can also apply to the EU Settlement Scheme to continue living in the UK after 30 June 2021.

You started living in the UK on or after 1 January 2021

- You do not have the right to reside unless you joined a close family member with the right to reside in the UK. They must have started living in the UK before 1 January 2021.
- How long you can stay in the UK depends on whether you have a visa or a [family permit](#).

When you do not have the right to reside

You do not have the right to reside but can stay in the UK while you have one of the following:

- a visa
- a [family permit](#)
- If you're a Commonwealth citizen, you may be able to apply to prove you have **right of abode' in the UK**.

EU, EEA or Swiss citizens and their family members who lived in the UK by 31 December 2020 need to [apply to the EU Settlement Scheme](#) to continue living in the UK after 30 June 2021.

- Iceland
- Liechtenstein
- Norway
- Switzerland

If you do not apply to the scheme, you may not be able to continue living or working in the UK.

You do not need to apply if you have: indefinite leave to enter the UK, indefinite leave to remain in the UK, British or Irish citizenship (including 'dual citizenship').

In most cases you must have started living in the UK by 31 December 2020. To arrive on or after 1 January 2021, you may need to [apply for a visa](#) instead

EU citizens moving to the **UK to work** need to get a visa in advance. **EU citizens** applying for a skilled worker visa need to show they have a job offer from an approved employer sponsor to be able to apply. Employers need a sponsor licence to hire most workers from outside the **UK**.

Check if you need to get your EU professional qualifications recognised in the UK

You will not be able to work in a regulated profession if your qualification from the EU, Switzerland, Norway, Iceland or Liechtenstein is not recognised in the UK.

Their immediate family members are also able to work freely in the UK while their adult EEA family members are legally residing and working here. However all job applicants are required to produce



an official document showing their nationality, this will usually be either a national passport or national identity card.

Required documentation not produced prior to recruitment

The Company will refuse to employ any person who fails to produce evidence of their entitlement to work in the UK.

Carrying out repeat checks

To comply with the regulations and avoid penalty, follow-up checks must be made **at least once every 12 months** until the individual provides documents indicating that they can remain permanently in the UK.

If the required documentation is not produced, or it is found that the employee is no longer allowed to work or carry out the work in question in the UK then The Company must terminate the contract of employment on expiry of the document confirming the right to work. This action will only be taken in consultation with Human Resources.

Avoiding Discrimination

It is important that we adopt procedures which protect us from prosecution, but equally important to ensure that these procedures do not fall foul of the Race Discrimination Laws. The Human Resource Team will ensure that there are no discriminatory practices and all potential employees will be treated in the same way and be required to provide documentation as outlined in this procedure before they start work.

This will ensure that we have complied with the changes and have a valid defence against payment of a civil penalty if it is found that an employee is not legally allowed to work in the UK.

Asylum Seekers/ Refugee's

Asylum seekers are those who have made an application for international protection on the basis that it would have be contrary to our obligations under the Refugee Convention of the European Convention of Human Rights (ECHR) to remove them from the UK.

They must apply to the Home Office for permission to work unless they already have the right to work from any previous leave to remain in the UK that they had before claiming asylum. If this is the case it will be clearly shown in their passport or valid Biometric Residence Permit. If an asylum seeker is allowed to work they will hold a Home Office issued Application Registration Card (ARC).

Restrictions on Asylum Seekers Working

Some asylum seekers have restrictions on the kind of work that they can do. If an asylum seeker gives you an ARC stating that their working arrangements are restricted you should ensure any work offered is NOT in breach of these restrictions, as you may be liable to a penalty.

Refugees

Refugees are foreign nationals or stateless people who have leave to remain in the UK because they have demonstrated a well founded fear of persecution, for one of the reasons listed in the 1951 Geneva Convention, if they returned home.

Policy Reviewed by – Trevor Walker – MSK H & S Manager

Policy Approved by



Signed: *M. Doughty*

Date: 15:07:2022

Mark Doughty
Managing Director



Right to Work Checklist

Name of person:	
Date of check:	
Type of check:	Initial check before employment <input type="checkbox"/> Follow-up check on an employee <input type="checkbox"/>

You may conduct a physical document check or perform an online check to establish a right to work

Step 1 for physical check

- You must **obtain original** documents from either **List A** or **List B** of acceptable documents for a manual right to work check

List A

- 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.
- 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.
- A Registration Certificate or Document Certifying Permanent Residence issued by the Home Office, to a national of a European Economic Area country or Switzerland.
- A Permanent Residence Card issued by the Home Office, to the family member of a national of a European Economic Area country or Switzerland.
- 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.
- 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.
- 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.
- A birth (short or long) 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.
- 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.
- 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

- 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.
- 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.
- 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.
- 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

- A Certificate of Application issued by the Home Office under regulation 17(3) or 18A (2) of the Immigration (European Economic Area) Regulations 2006, 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 6 months** old **together with a Positive Verification Notice** from the Home Office Employer Checking Service.
- 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.
- 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.

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.

1. Are photographs consistent across documents and with the person's appearance?	Yes <input type="checkbox"/>	No <input type="checkbox"/>	N/A <input type="checkbox"/>
2. Are dates of birth consistent across documents and with the person's appearance?	Yes <input type="checkbox"/>	No <input type="checkbox"/>	N/A <input type="checkbox"/>
3. Are expiry dates for time-limited permission to be in the UK in the future i.e. they have not passed (if applicable)?	Yes <input type="checkbox"/>	No <input type="checkbox"/>	N/A <input type="checkbox"/>
4. Have you checked work restrictions to determine if the person is able to work for you and do the type of work you are offering? (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)	Yes <input type="checkbox"/>	No <input type="checkbox"/>	N/A <input type="checkbox"/>
5. Are you satisfied the document is genuine, has not been tampered with and belongs to the holder?	Yes <input type="checkbox"/>	No <input type="checkbox"/>	N/A <input type="checkbox"/>
6. Have you checked the reasons for any different names across documents (e.g. marriage certificate, divorce decree, deed poll)? (Supporting documents should also be photocopied and a copy retained.)	Yes <input type="checkbox"/>	No <input type="checkbox"/>	N/A <input type="checkbox"/>

Step 3 Copy

You must make a clear **copy** of each document in a format which cannot later be altered, and retain the copy securely: electronically or in hardcopy. You must copy and retain:

- Passports:** any page with the document expiry date, nationality, date of birth, signature, leave expiry date, biometric details and photograph, and any page containing information indicating the holder has an entitlement to enter or remain in the UK and undertake the work in question.
- All other documents:** the document in full, both sides of a Biometric Residence Permit.

You must also record and retain the date on which the check was made.

Know the type of excuse you have

If you have correctly carried out the above 3 steps you will have an excuse against liability for a civil penalty if the above named person is found working for you illegally. However, you need to be aware of the type of excuse you have as this determines how long it lasts for, and if, and when you are required to do a follow-up check.

The documents that you have checked and copied are from:

- List A** You have a **continuous statutory excuse** for the **full duration** of the person's employment with you. You are not required to carry out any repeat right to work checks on this person.
- List B: Group 1** You have a **time-limited statutory excuse** which expires when the person's permission to be in the UK expires. You should carry out a **follow-up check when the document evidencing their permission to work expires.**

3. List B: Group 2 You have a **time-limited statutory excuse** which expires 6 months from the date specified in your Positive Verification Notice. **This means that you should carry out a follow-up check when this notice expires**

You must obtain original documents from either List A or List B of acceptable documents for a manual right to work check

Home Office online right to work checking service

For an online right to work check (available in respect of those with a biometric residence permit, a biometric residence card or have status issued under the EU settlement scheme). There are three basic steps to conducting an online right to work check:

1. use the Home Office online right to work checking service (the 'View a job applicant's right to work details' page on gov.uk) in respect of an individual and only employ the person, or continue to employ an existing employee, if the online check confirms they are entitled to do the work in question;
2. satisfy yourself that any photograph on the online right to work check is of the individual presenting themselves for work; and
3. retain a clear copy of the response provided by the online right to work check (storing that response securely, electronically or in hardcopy) for the duration of employment and for two years afterwards.

Employers Right to Work Checklist

Documents Checked By:
NAME

SIGNATURE:

You will not have an excuse if at any point during the employment, you know that the above named person is not allowed to work for you, or to carry out the type of work in question and you may face criminal action