



Legal Entitlement to Work Policy

Official information from the Home Office in relation to
'An Employer's Guide to Right Work Checks'

MaxRecycle
Hawthorne House
Blackthorn Way
Sedgeleth Industrial Estate
Fencehouses
Tyne & Wear
DH4 6JN

T: 0845 026 0026

F: 0845 026 0025

E: recyclenow@maxrecycle.com



Home Office

AN EMPLOYER'S GUIDE TO RIGHT TO WORK CHECKS

29 June 2018
Produced by the Home Office

© Crown copyright 2018

Contents

1. Introduction	4
Summary of changes in this issue of the guide	4
Who is this guide relevant for?	5
How should this guide be used?	6
References in this guide	6
2. What is a right to work check?	8
3. Why do you need to do checks?	9
Wider sanctions against illegal working.....	10
The offence of illegal working	10
The offence of employing an illegal worker	11
Closure notices and compliance orders	11
Preventing illegal working in licensed sectors.....	12
4. Who do you conduct checks on?	13
5. How do you conduct checks?	14
Illustration 1: Summary of a right to work check	14
Illustration 2: The 3-Step Check.....	15
Step 1: Acceptable documents	17
Step 2: Checking the validity of documents	17
Step 3: Retaining evidence.....	18
Additional evidence from students.....	19
When to contact the Home Office to verify right to work	20
Biometric Residence Permits	22
6. When do you conduct checks?	24
Table 1: Follow-up Checks.....	24
In-time applications	25
Appeals and Administrative Reviews	26
Transfer of undertakings.....	26
Changes in the Employer’s legal constitution	27
7. Do you have any questions?.....	28
8. Annex A.....	29
Lists of acceptable documents for right to work checks	29
Annex B	31
Employment of specific categories of workers.....	31
Students.....	31

Work placements.....	31
Impact of a change in circumstances on a Tier 4 points based system student's right to work.....	32
Nationals from the European Economic Area (EEA) and their Family Members.....	34
EEA nationals	34
EEA nationals who may work without restriction:.....	35
Croatian nationals.....	35
Non-EEA Family Members of EEA nationals	35
Non-EEA Nationals with a Derivative Right of Residence	36
Residence Cards (biometric format).....	36
Certificate of Application	37
Additional information	38
Entrepreneur	39
Voluntary Work.....	39
Employment of other categories	40

1. Introduction

The ability to work illegally is a key driver of illegal migration; it encourages people to break the UK's immigration laws and provides the practical means for migrants to remain unlawfully in the country. It encourages people to take risks by putting their lives in the hands of unscrupulous people smugglers and leaves them vulnerable to exploitative employers. Illegal working results in businesses that are not playing by the rules and undercutting legitimate businesses that are. It also negatively impacts 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.

All employers, irrespective of size or sector, are required to prevent the employment of illegal workers. They should fulfill this duty by carrying out a [simple 3-step check](#) to confirm that a potential employee is entitled to work in the UK.

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) and sections 24 and 24B of the Immigration Act 1971.

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 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. Employers may be excused from paying a penalty if they carry out prescribed document checks on people before employing them to ensure they are lawfully allowed to work. These checks should be repeated in respect of all those who have time-limited permission to work in the UK when this permission expires.

This guidance was last amended in June 2018.

Summary of changes in this issue of the guide

The most significant updates contained in this guidance relate to:

- i. steps employers should take if, in carrying out a right to work check, they consider a prospective employee presents information indicating they are a non-EEA national who has been a long-term lawful resident of the UK since before 1988, and does not possess acceptable right to work documentation;
- ii. further clarification on appropriate steps for employers in relation to existing employees;
- iii. clarification of the grace period in cases of Transfer of Undertakings (Protection of Employment) transfers;
- iv. ending restrictions on the employment of Croatian nationals with effect from 1 July 2018.

Who is this guide relevant for?

This guide applies to checks required on or after 16 May 2014 to establish or retain an excuse from having to pay a civil penalty for employing a person who is not permitted to work for you.

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. For example, since 16 May 2014 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. With the exception of checks made in respect of individuals with time-limited permission to work, you are not expected to conduct retrospective checks on employees if you have previously satisfied yourself that the employee is entitled to work.

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. However, 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 and skill levels of your workers are not as claimed. Accordingly, you should check that your contractors conduct the correct right to work checks on people they employ. You may also wish to use this guidance when you use workers who are genuinely self-employed.

The current civil penalty scheme to prevent illegal working commenced on 29 February 2008 (further to the Immigration, Asylum and Nationality Act 2006). It was not introduced retrospectively. Employers are therefore not required to have a statutory excuse in respect of employees whose employment commenced before 29 February 2008 and who have been in their continuous employment since before 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.

The law does not require employers to carry out retrospective checks on persons who lawfully commenced employment before 29 February 2008. Follow up checks on existing employees are only required where the person has a time-limited immigration status.

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.

How should this guide be used?

This guide sets out what an employer needs to know about conducting right to work checks. It provides guidance on what right to work checks are and why it is important that employers do them. It also explains on whom an employer needs to make checks, how frequently they should perform the checks, and how to do the checks correctly.

This guide has been issued alongside other guidance, Codes of Practice and tools. This collection comprises:

- 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.

They can be found on the [illegal working penalties](#) page of GOV.UK.

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 them from accepting the employment.

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 Act or the Accession of Croatia Regulations 2013 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 2016 Act, during the same period.

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

2. What is a right to work check?

As an employer, you have an important role to play in preventing illegal working by undertaking simple checks on your employees' right to work in the UK.

A right to work check consists of checking a document which is acceptable for demonstrating someone's permission to work. You must do this **before** you employ a person to ensure they are legally allowed to do the work in question for you. It is not enough to simply undertake the check on the first day of employment if the employment has already started. You are also required to conduct a follow-up check on people who have time-limited permission to work in the UK when this permission expires.

Checking a person's documents to determine if they have the right to carry out the type of work you are offering comprises **three key steps**:

1. **Obtain** the person's original documents as specified in this guidance;
2. **Check** the validity of the documents in the presence of the holder; and
3. Make and retain a clear **copy**, and make a record of the date of the check.

You are responsible for conducting the visual inspection of the documents presented to you. You are only required to verify someone's right to work with our [Employer Checking Service](#) (ECS) in specified circumstances. These are set out [here](#). You should also contact the ECS if the person does not have acceptable documents and provides you with information indicating that they are a non-EEA national who has been a long-term lawful resident of the UK since before 1988.

You can find detailed information on how to [correctly conduct right to work checks and a list of acceptable documents later in this guidance](#). A separate document: 'An employer's guide to acceptable right to work documents' contains example images of the documents contained in the lists.

3. Why do you need to do checks?

As an employer, you have a duty to prevent illegal working. You should conduct document checks to make it harder for people with no right to work in the UK to unlawfully obtain or stay in employment, and to make it easier for you to ensure that you only employ people who have permission to do the work in question.

It is illegal to employ someone aged 16 or over subject to immigration control and who is not allowed to undertake the work in question.

If you carry out document checks as set out in this guide, you will have a **statutory excuse** against liability for a civil penalty. This means that if we find that you have employed someone who does not have the right to work on or after 29 February 2008, but you have correctly conducted document checks as required, you will not receive a civil penalty for that illegal worker.

As the employer, you are liable for the civil penalty even if the actual check is performed by a member of your staff. You are unable to establish a statutory excuse when the check is performed by a third party, such as a recruitment agency, if you are the employer.

If you are found to be employing someone illegally and you have not carried out the prescribed checks, we will take action against you. In this respect, we have strengthened our legislation and operational enforcement response to illegal working and it is now highly likely that employers and workers involved in illegal working will be detected and tough sanctions will be applied. Illegal working is increasingly being tackled through a 'whole government approach', with greater co-ordination across agencies in government, including HMRC, to ensure that illegal working is detected more effectively, through the sharing of intelligence and joint enforcement operations. More and more frequently, government departments are sharing data to prevent or stop access to benefits, services and work by people who are disqualified by reason of their immigration status. When illegal working is identified, the fullest range of sanctions is applied. In addition, the Government has put in place additional safeguards, as part of data sharing arrangements, and for employers, to ensure that non-EEA nationals who have [lived lawfully in the UK since before 1988](#) are not denied access to work.

If you know or have reasonable cause to believe 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 document checks.

You will commit a **criminal offence** under section 21 of the 2006 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.

We will determine the level of your breach and the amount of any civil penalty for which you may be liable will be determined on a case-by-case basis. In doing so, we will refer to the **Consideration Framework** and **Civil Penalty Calculator** set out in our '[Code of practice on preventing illegal working: Civil penalty scheme for employers](#)' published in

May 2014. 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.

Wider sanctions against illegal working

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.

If you are liable for a civil penalty, it could also affect your ability to sponsor migrants who come to the UK in the future, including those you wish to work for you under Tiers 2 or 5 of the Points Based System, or to hold a Gangmaster's licence. 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](#). Having a civil penalty may also affect your ability to obtain or retain a licence in the private hire and taxi sector and the alcohol and late night refreshment sector.

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 6 months.

As a result of an amendment to the Immigration Act 1971 (Section 24B), it is now a criminal offence to work illegally in the UK. A person commits this offence if they require immigration permission to live and work in the UK and they work when they know, or have reasonable cause to believe, that they have no permission to do so. This 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.

The offence has a wide reach. As well as work under a contract of employment, the offence of illegal working also applies to self employment, and covers both informal as well as formal working arrangements.

The new offence strengthens our ability to seize wages from illegal working as the proceeds of crime and to pursue the confiscation of assets. In England and Wales, the offence carries a maximum penalty of six months' imprisonment and/or an unlimited fine. In Scotland and Northern Ireland, the offence carries a maximum penalty of six months' imprisonment and/or a fine of the statutory maximum.

The offence of employing an illegal worker

You will commit a **criminal offence** under section 21 of the 2006 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.

The offence of knowingly employing an illegal worker, set out in section 21 of the 2006 Act, was amended by section 35 of the 2016 Act. An employer can now be prosecuted for employing an illegal worker if they know, *or have reasonable cause to believe*, that the person has no right to do the work in question. This means that it is no longer necessary for Immigration Enforcement to prove that the employer *knew* that the employee had no permission to work. The amended offence enables employers to be prosecuted where *they had reason to believe* the employment was illegal, but, for example, deliberately ignored information or circumstances that would have given the employer reasonable cause to believe that the employee lacked permission to work. The maximum prison sentence for this offence has been increased from two to five years.

We will continue to apply the civil penalty as a sanction in most routine cases involving the employment of illegal workers. However, in more serious cases, prosecution may be considered where it is deemed the appropriate response to the non-compliance encountered.

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.

The provisions commenced on 1 December 2016. The closure notice is a fast power which may be used to close premises for a limited time where an employer (or a person connected with the employer) operating at the premises is found to be employing illegal workers and has been previously non-compliant with illegal working legislation.

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 2016 Act 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.

Since 1 December 2016, immigration checks have been a mandatory part of the [licensing regime for taxis and private hire vehicles](#). 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 work. Where immigration permission is time-limited, a licence will not be issued for a period that exceeds this period. 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. If immigration permission is curtailed (cut short), the holder of the licence will be committing an offence if they do not return the licence to the licensing authority, for which they may be fined.

The 2016 Act amended the Licensing Act 2003 (the 2003 Act) to make immigration checks a mandatory part of the licensing regime for premises licensed to sell alcohol and late night refreshment (food and hot drinks served between 2300 and 0500). Immigration offences and penalties are grounds on which a licence may be refused or revoked, and we are now a designated responsible authority. As a result, we are notified of premises and some personal licence applications in the same way as the police. This allows us to make representations when we believe that to grant a licence will be prejudicial to preventing immigration crime and illegal working in licensed premises. We now 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 are set out in the amended 2003 Act and commenced in April 2017 in England and Wales. Equivalent provisions in regulations will be made for Scotland and Northern Ireland.

If you are found to be employing someone illegally and you have not carried out the prescribed checks, you will face robust sanctions which could include:

- a civil penalty of up to £20,000 per illegal worker;
- a criminal conviction carrying a prison sentence of up to 5 years and an unlimited fine;
- closure of the business and an application for a court compliance order;
- disqualification as a director;
- not being able to sponsor migrants; and
- seizure of earnings made as a result of illegal working.

4. Who do you conduct checks on?

You should conduct right to work checks on all potential employees. Do not simply check the status of those who appear to be migrants. Treat all potential employees in the same way.

You should conduct right to work checks on **all** potential employees. This means you should ask all people you are considering employing to provide you with their documents. To ensure that you do not discriminate against anyone, you should treat all job applicants in the same way at each stage of your recruitment processes.

You are only required to conduct repeat checks on an existing employee if they have time-limited permission to be in the UK. You are not required to take action now to conduct a check in respect of a period of continuous employment that commenced before 29 February 2008.

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 length of time they have been resident in the UK.

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](#)' aims to strengthen safeguards against unlawful discrimination when recruiting people and complying with your duty to conduct 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. Courts and Employment Tribunals may take account of any part of the Code relevant to matters of discrimination.

5. How do you conduct checks?

Remember to obtain, check and copy the appropriate documents. By doing so, and recording the outcome, you will prevent liability for a civil penalty.

There are three basic steps to conducting a right to work check. Remember three keywords:

1. **Obtain**
2. **Check**
3. **Copy**

Further information is contained in [Frequently Asked Questions](#).

Illustration 1: Summary of a 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 explains in more detail what you need to do in each of the 3 steps to correctly conduct a check, and establish a statutory excuse.

Illustration 2: The 3-Step 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 (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.

You must copy and retain:

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).

You must retain copies securely for not less than two years after the employment has come to an end. 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
- use our 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 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. You must obtain an original document or document combination specified in one of these lists in order to comply with **step 1** of the 3-step check.

[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](#)'.

Ensure you obtain an original document that is contained in list A or list B, including a passport or biometric residence permit.

Step 2: Checking the validity of documents

When you are checking the validity of the documents, you must 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. 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. 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 of performing the check to prevent a civil penalty liability 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 knew that the documents were false or did not rightfully belong to the holder.

In order to establish a statutory excuse, you are required only to conduct an examination of the document and to check this against the holder of that document. You may, however, 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). Guidance about using such technology is available [here](#).

You may also 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](#).

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 123 5434** (Monday to Thursday, 9am to 4:45pm; Friday 9am to 4:30pm).

If you do not employ the person, or you have employed them having made the correct checks, you will be excused from paying a civil penalty.

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. By doing this, we will be able to check whether you have complied with the law if we find that someone is, or has been working for you illegally.

You must also make a contemporaneous record of the date on which you conducted your 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 to establish your statutory excuse. 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 the fact that this is the date on which you conducted the check.

Additional evidence from students

International students are often able to work part-time during their studies in the UK and full-time during their vacations and any period of time between completing their studies and the expiry of their permission to be in the UK. Some international students have no right to work at all. [Annex B](#) contains further information about permitted employment for students.

Where a student has permission to study under Tier 4 of the Points Based System, their conditions allow them to work when they are “following a course of study”:

- at the appropriate academic level; and
- with a sponsor of the specified academic status that permits them to work the number of hours that they are working.

Their entitlement to work full time during vacations and during the period of permission that is granted before a course begins and after the course ends only applies if they are following, or have completed, the required course of study.

When you conduct checks and are presented with documents indicating that the holder is a student with a limited right to work in the UK during term time, you are required to obtain and retain evidence of their academic term and vacation dates. This will make it easier for you to know when an international student employee may work part-time for you, and when they are permitted to work full-time.

You should request this evidence from the student. This evidence should originate from the education institution which is sponsoring the student. You may obtain the dates for the entire duration of the course or, if this is not possible, you may obtain and copy them annually providing the information you hold is current at the time of the student's employment.

We consider acceptable evidence to be one of the following:

- i. A printout from the student's education institution's website or other material published by the institution setting out its timetable for the student's course of study (you should check the website to confirm the link is genuine); or
- ii. A copy of a letter or email addressed to the student from their education institution confirming term time dates for the student's course; or
- iii. A letter addressed to you as the employer from the education institution confirming the term time dates for the student's course.

We would expect the evidence in paragraph (i) above to be readily available for most students and therefore will be provided to you in most cases. In exceptional circumstances, for example where the student is following a course timetable which differs from that published, you may need to obtain bespoke evidence from the sponsor. It is important to remember that you require this evidence in order to establish and retain a statutory excuse against a civil penalty and we may check this evidence.

You may face a civil penalty if your Tier 4 student employee exceeds the maximum period they are permitted to work during term time in any given period of a week running from Monday to Sunday.

Where you are employing a student on a **work placement** which forms an integral part of their course (see [Annex B](#) of this guidance for further details), you may have a written agreement with the student's education institution about the work placement. You are strongly advised to retain this agreement as evidence that the student's work placement with you does not exceed the time permitted for this activity.

Further information on Tier 4 students, including work placements, may be found [here](#).

When to contact the Home Office to verify right to work

When conducting checks on someone's has the right to work in the UK, you are required to contact us to establish or retain your statutory excuse in the following circumstances:

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. This 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.

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 applicants through a gradual rollout. The ARC is the identification card used by asylum applicants to demonstrate they have made an asylum claim. The new ARC closely resembles the BRP. It includes new 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 valid until 2019.

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 who is permitted to work on the basis of this policy is restricted to working in a job 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. Anyone who is granted permission to remain in the UK as a refugee has unrestricted access to the labour market.

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, if 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](#).

Note: Do not make a request of the Employer Checking Service in the case employment that 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 make that check you should use the online tool '[Employer Checking Service](#)'.

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 the Home Office 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

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 a taskforce which is handling applications for British citizenship or indefinite leave to remain from these individuals, including those who have yet to obtain official documentation allowing them to evidence their status.

In these circumstances, you should contact the Employer Checking Service in the usual way.

In these cases, the Employer Checking Service will notify the taskforce, which will contact the individual to confirm their circumstances and arrange for their status to be resolved.

Working with the taskforce, the Employer Checking Service 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 Positive Verification Notice issued by the Employer Checking Service will provide you with a statutory excuse for six months from the date stated in the Positive Verification Notice.

After six months, you should carry out the check again, by which point the individual may be able to provide a document/s from the acceptable document list. If not, you should again contact the Employer Checking Service. In advance of you conducting a follow-up check, the Home Office will contact you when an individual has received documentation from the Windrush taskforce.

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. 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 thirty 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 migrants granted

permission to be in the UK, the BRP will be the document that demonstrates they have permission to work in the UK.

BRPs are credit-card sized immigration documents that contain a highly secure embedded chip and incorporate sophisticated security safeguards to combat fraud and tampering. BRPs therefore provide employers with a secure and simple means to conduct a right to work check.

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, are highly resistant to forgery and counterfeiting, 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.

Migrants 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 full 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 for the statutory excuse to continue.

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. You will also not know when the employee's permission to work expires. 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. It is therefore important that you conduct the follow up check using the BRP before the vignette expires.

BRPs and National Insurance numbers

There is a gradual rollout of the combined BRP and National Insurance number (NINo) for migrants who have the right to work in the UK. This commenced with Tier 2 (skilled workers) main applicants who make an application in the UK, and is being extended to other categories.

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.

6. When do you conduct checks?

You are required to carry out an **initial right to work check** 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** on someone who has a time-limited permission to be in the UK and to do the work in question. You are not required to carry out follow-up checks on those individuals whose entitlement to work is not time-limited. You are also not required to carry out any checks on individuals who commenced employment with you and have been employed continuously by you since before the introduction of the current scheme on 29 February 2008.

You need to recheck the status of those individuals who have limited permission to work in the UK. This should occur when their previous permission comes to an end.

If 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. You are **not required to** carry out any follow-up checks on such a person.

If 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 when 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 when this notice expires**.

Table 1 summarises when follow-up checks are required.

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 when 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).

If, on the date on which permission (as set out in the document checked) expires, 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; 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 Employers' Checking Service. This 'grace period' of 28 days does not apply where the right to work check is taking place before employment commences. In such circumstances, you should delay employing the migrant until you have received a Positive Verification Notice from our Employers' Checking Service.

If during this period of 28 days, 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, you may establish your excuse by checking these documents in the normal way and a positive verification by the Employers' Checking Service will not be required. If, however, the documents provided are from [List B](#) Group 2, positive verification by our Employers' Checking Service will still be required for you to obtain a continuing excuse.

In respect of an appeal or administrative review, you should seek positive verification through our Employers' Checking Service. 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 so, any existing right to work will continue until that in-time application has been determined. In such circumstances, a Positive Verification Notice from our Employers' 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 Employers' 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 many rights of appeal where the applicant believes our decision to refuse their application 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 Employers 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 administrative review 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 valid. This will be confirmed by a Positive Verification Notice from the Employers' Checking Service. The migrant will not be permitted to work between the date that their previous permission to work time 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 acquired 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 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 since before 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 these those TUPE employees acquired. There is no such 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 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 reg. 8(7) cases.

7. 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 123 5434.

8. Annex A

Lists of acceptable documents for 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 full birth or adoption certificate issued in the UK which includes the name(s) of at least one of the holder's parents or adoptive parents, 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** 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 6 months

1. 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.
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.

9. Annex B

Employment of specific categories of workers Students

Not all international students (those from outside the European Economic Area (EEA) or Switzerland) are entitled to work while they are in the UK, but some are allowed to take limited employment providing the conditions of their permission to study permit this.

A student granted permission to be in the UK as a Tier 4 student who is permitted to work will have a clear endorsement in their passport or Biometric Residence Permit, which states they are permitted to work and the number of hours of work allowed during term time e.g. 10 hours or 20 hours in a week, considered to be Monday to Sunday. If this information is not set out in these documents, the student does not have the right to work. Students who have the right to work are permitted to work full-time during vacations.

Short-term students are not permitted to work, either in the term time or the vacation, or do a work placement.

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.

Tier 4 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 Tier 4 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 Institution (HEI) 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.

Tier 4 education sponsors should provide a **letter** addressed to you as the work placement provider confirming that the work placement forms an integral part of the course and does not, by itself or in combination with other periods of work placement, breach the above restrictions. The letter should 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 evidence 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 is not included within the period of term time employment permitted by their immigration conditions.

Further information on Tier 4 students, including work placements, may be found [here](#).

Impact of a change in circumstances on a Tier 4 points based system student's right to work

1. **The student has changed their sponsor** – If we grant the student permission to study with a different education sponsor, it will be clear whether work is permitted and for how long. If we do not grant permission see the advice below: 'student is in the process of changing their sponsor'.

2. **The student is in the process of changing their sponsor** – Under Tier 4 guidance a student may start a new course when:

- they have applied to us for permission to study with a Tier 4 sponsor which has Tier 4 Sponsor status; and
- their permission to study in the UK with the former sponsor is still valid; and
- their prospective Tier 4 sponsor has assigned a confirmation of acceptance for studies to them for the new course.

If all these criteria are met, the student is permitted to start the course with the new sponsor and can undertake employment in line with the current conditions which are attached to their permission to study once they have started the new course. If any of the criteria are not met, the student does not have permission to work and will be in breach of their immigration conditions if they do so.

3. **The student changes to a new course with the same sponsor** – If the new course is below the level of academic study which permits restricted work, the student will be working in breach of their immigration conditions if they do work. You should not employ them. If their new course results in a reduction of the number of hours the student is permitted to work, and they continue to work more than this number, they will be in breach of their immigration conditions.

4. **The migrant has stopped studying** – If the migrant has stopped studying before they complete their course (whether they have withdrawn themselves or been withdrawn by their education sponsor) they are no longer following the course of study and will therefore be in breach of their immigration conditions if they work, even if they still have permission to be in the UK. You should not employ them. The only exception to this will be if the criteria in the 'student is in the process of changing their sponsor' scenario (above) are met.

5. **The student has completed their course early** – Where a student is given permission to come to the UK to study, they are given a short period of time to stay in the UK after their course ends. The student may work full time during this additional period. If the student completes their course early, we will normally vary the student's permission so that this short period of time to stay in the UK runs from the new course end date. If their permission to be in the UK has not been varied in this way but the person is found working beyond the additional period of time to stay that would apply to their new course end date, they will be in breach of their immigration conditions. In such circumstances, you should not employ them.

6. **The student's education sponsor has had their licence revoked or ceased trading** – The right to work is dependent on the student (i) following a course of study at the appropriate academic level and (ii) with a sponsor of the specified academic status. If the sponsor no longer has a sponsor licence because it has been revoked, the migrant can no longer meet this second requirement. If the sponsor has ceased trading, the migrant is unable to meet either requirement. In both cases, the migrant would be in breach of their conditions if they work and you should not employ them.

7. **The student continues to study but not with the named sponsor** - As indicated above, the right to work is dependent on the student being sponsored. Accordingly, the migrant would be in breach of their conditions if they work whilst they are not being educated by their sponsor (unless other conditions apply) and you should not employ them.

Nationals from the European Economic Area (EEA) and their Family Members

The rights of EEA nationals and their family members to live and work in other EEA states are set out in European Union legislation, primarily Directive 2004/38/EC – known as ‘the Free Movement Directive’, by which all Member States are bound.

The EEA consists of the countries within the [European Union](#) together with Iceland, Liechtenstein and Norway. Switzerland is not part of the EEA. However, the same rights to live and work in other Member States have been extended to Swiss nationals and their family members, and you should carry out the same checks for them as set out in this guidance for EEA nationals and their family members. Throughout this section, any reference to an EEA national should be interpreted as also including Swiss nationals.

The relevant UK legislation is the [Immigration \(European Economic Area\) Regulations 2016](#) (‘the EEA Regulations’) which sets out the rights of EEA and Swiss nationals and their family members.

EEA nationals

EEA nationals have the right to work in the UK. However, you should not employ any individual simply on the basis that they claim to be an EEA national.

You should require any person who claims to be an EEA national to produce an official document showing their nationality. This will usually be either a national passport or national identity card which indicates that the holder is a national of an EEA state.

Registration Certificates: some EEA 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 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 national can acquire permanent residence after five years’ lawful and continuous residence in the UK.

All of these documents (passport establishing EEA nationality, national identity card establishing EEA 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 nationals who may work without restriction:

- 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

* With effect from 1 July 2018

Nationals of Switzerland are also permitted to work without restriction.

Croatian nationals

From 1 July 2018 Croatian nationals will no longer be subject to restrictions on their access to the UK labour market. Like other European Union (EU) citizens, Croatians will be able to take up any employment in the UK without the need first to obtain worker authorisation from the Home Office. A Croatian national may demonstrate their right to work by producing an official document showing their nationality. This will usually be either a national passport or national identity card.

Until July 2018, separate restrictions on Croatian nationals' access to the labour market were in place, and were set out in the Accession of Croatia ([Immigration and Worker Authorisation\) Regulations 2013](#). Under these Regulations, a Croatian national who wished to work in the UK and who was subject to the worker authorisation requirement was required to obtain an accession worker authorisation document (permission to work) before starting any employment.

Non-EEA Family Members of EEA nationals

Non-EEA nationals who are the family members of an EEA (or Swiss) national who is exercising Treaty rights or has permanent residence, are also entitled to live and work in the UK.

You should not employ any individual simply on the basis that they claim to be the family member of an EEA national. You should also be aware that not all family members of EEA nationals are permitted to work in the UK without restrictions.

Residence Cards: Residence cards are issued by us to the non-EEA family members of EEA nationals who are exercising Treaty rights or have permanent residence in the UK. A valid residence card can be used to demonstrate that the holder has a right to work in the UK. Residence cards are included in [List B](#) of acceptable documents, and will provide you with a time-limited statutory excuse if they are current, and have been checked and copied correctly.

Permanent Residence Cards: Some non-EEA family members of EEA nationals may also be able to produce a permanent residence card, issued by us which indicates that they have lived in the UK for five years in compliance with the EEA Regulations. A permanent residence card, issued to a family member of an EEA national, is included in [List A](#) of acceptable documents, and will provide you with a continuous statutory excuse if checked and copied correctly.

When the current residence card, permanent residence card, or derivative residence card is inserted into the holder's national passport, there is no requirement for that passport to be current. However, you should ensure that the passport belongs to that person and take particular care checking the passport photograph if the passport is a number of years old. Since 6 April 2015, residence cards and permanent residence cards have been issued in biometric format. For more information please see [Residence Cards](#) (biometric format).

Non-EEA Nationals with a Derivative Right of Residence

Some non-EEA nationals have what is called a 'derivative right of residence' in the UK based on their relationship with an EEA (or Swiss) national or a British citizen. This means that these rights have been established by the Court of Justice of the European Union in cases where the non-EEA national's presence is necessary in order to enable the EEA national or British citizen to live here. For example, the non-EEA parent of an EEA child may meet the requirements. These rights only arise in a limited range of circumstances and only where the specific conditions are met. Non-EEA nationals with a derivative right of residence are entitled to reside and work in the UK. Derivative residence cards are in [List B](#) of acceptable documents, and will provide you with a time-limited statutory excuse if checked and copied correctly.

Residence Cards (biometric format)

Since 6 April 2015, we have issued Residence Cards (including Permanent Residence Cards and Derivative Residence Cards) for non-EEA family members in a biometric format. From this date we stopped issuing the vignette in the passport or standalone document, though these will continue to be acceptable documents for the purpose of right to work checks.

The new Residence Cards (biometric format) closely resemble [Biometric Residence Permits](#). They are of a standard credit card size and contain the holder's digital 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 number. They will also contain a biometric chip. The cards are more secure against forgery and abuse and therefore provide a helpful means to employers to conduct a right to work check.

A sample Residence Card (biometric format) may be found in '[Acceptable right to work documents: an employer's guide](#)'. Current Residence Cards which are endorsed in passports or are standalone documents will continue to be valid until they expire. Accession Residence Cards will not be issued in a biometric format.

Certificate of Application

Since 6 April 2015, an application by a non-EEA Family Member of an EEA National for a Residence Card or Derivative Residence Card has only been considered valid at the point at which the applicant successfully enrolls their biometric information. Applicants will continue to receive an initial acknowledgement letter which will not demonstrate a right to work. Instead, they will have 15 working days in which to enrol their biometrics. If they fail to do so, they will be sent a reminder giving them a further 10 working days in which to enroll. If they fail to enroll their biometrics after the 10 days have passed, their application will be rejected as invalid.

Where the application is made by a [direct family member](#) who has successfully enrolled their biometric information and has submitted

- their valid passport; and
- the valid EEA passport or national identity card for the EEA national; and
- evidence of relationship to their EEA national; and
- evidence that the EEA national is exercising Treaty rights or has acquired permanent residence

the applicant will be issued with a Certificate of Application which states that the individual has a right to work in the UK whilst their application for a Residence Card or Derivative Residence Card is being considered. This Certificate of Application will only give you a statutory excuse if it is less than six months old and is accompanied by a Positive Verification Notice issued by our Employer Checking Service stating that the holder has permission to do the work in question. The excuse will last for six months from the date of the Positive Verification Notice.

Applicants who are not direct family members, or do not provide the required documents, will not receive a Certificate of Application that states that work is permitted.

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

If the employee or potential employee's 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 work has been permitted, this work entitlement will be verified by the Employer Checking Service through a Positive Verification Notice.

Additional information

Non-EEA nationals may claim to have a right to work in the UK as a family member of an EEA national, or by virtue of a derivative right, but do not hold documentation 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, 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 by virtue of a derivative right of residence - to demonstrate the existence of that right through means other than those documents in Lists A and B which are explained in the preceding sections.

In such cases, you may choose to accept such 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 EEA national 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 financially independent, you must also see evidence that the EEA national and any family members hold comprehensive sickness insurance in the UK. 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.

In such cases, you may choose to accept such alternative evidence. However, in the event that a non-EEA national is found not to qualify to work in the UK, you would be liable to payment of a civil penalty as you will not have established a statutory excuse unless you have also seen, copied and retaining a copy of the appropriate documents set out in Annex A of this guidance. 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 by the Home Office.

Entrepreneur

A person granted immigration permission under Tier 1 of the Points Based Scheme 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 who have been granted immigration permission to be in the UK are permitted to volunteer. This includes visitors who 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, and students. However, subject to the exception set out below, 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.

Tier 4 (General) students and Tier 4 (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](#).