

Right to work checks

Advice & Guidance for Businesses



Basic principles

- You must check that a job applicant is allowed to work for you in the UK before you employ them.
- You can either check the applicant's original documents or check their right to work online.
- **You could face a [civil penalty](#), such as a fine or imprisonment, if you employ an illegal worker and have not carried out a correct right to work check.**
- You must not make assumptions about a job applicant's right to work in the UK based on their name; their appearance or their country of origin. Therefore you need to check documents for ALL job applicants.
- After 30 June 2021, the new immigration rules for recruiting people from outside the UK will apply to EU, EEA and Swiss citizens.
- You will not need to make retrospective checks for existing employees.

Checks from 1 July 2021

New rules are in place for ALL prospective employees starting employment with a business from and including 1 July 2021.

The rules which then apply to EU workers are the **same** as they have done for non-EU workers since 1 January 2021

Please note – The temporary COVID-19 adjusted right to work checks will now end on 31st August 2021, and from 1st September 2021 employers will revert to face to face and physical document checks as set out in legislation and guidance.

What to check- Government Guidance

- The Home Office has published the following guidance:
 - [Right to Work Checklist.pdf \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)
 - [Right to work checks: an employer's guide - GOV.UK \(www.gov.uk\)](https://www.gov.uk)
 - [employers guide to acceptable right to work documents v5.pdf \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)
- Remember to treat all job applicants in the same way at each stage of the recruitment process in order to avoid claims of race discrimination.



What to check

You must ensure:

- 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 have not 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 are offering (including any limit on the number of hours they can work)
- For students you see evidence of their study and vacation times
- If 2 documents give different names, the applicant has supporting documents showing why they are different, such as a marriage certificate or divorce decree
- If your employee's right to work is time-limited, you will need to check their documents again when it's due to expire.

Copying documents

- Make a copy that cannot be changed, for example a photocopy
- Make sure the copy is clear enough to read
- For passports, copy any page with the expiry date and applicant's details (for example nationality, date of birth and photograph) including endorsements, for example a work visa
- For biometric residence permits and residence cards (biometric format), copy both sides
- For all other documents you must make a complete copy
- Keep copies during the applicant's employment and for 2 years after they stop working for you
- Record the date the check was made
- Make sure you follow [data protection law](#).

If documents are not available



- You must ask the Home Office to check your employee or potential employee's Immigration Employment Status – [Use the Employer Checking Service - GOV.UK \(www.gov.uk\)](https://www.gov.uk/employer-checking-service)
- Please note:
 - Application registration cards and certificates of application must state that the work the employer is offering is permitted. Many of these documents do not allow the person to work.
 - The Home Office will send you a 'Positive Verification Notice' to confirm that the applicant has the right to work. You must keep this document.

New obligations as an employer

- From 31st August 2021 temporary adjustments are ending and as from 1st September 2021 employers must conduct right to work checks as per [the published guidance](#)
- You can no longer accept scanned copies or photos of original documents
- Employers must be in possession of original documents when carrying out checks
- Alternatively, you can use the [online right to work checking service](#), in which case you will not need to see or check the individual's physical documents
- Permission in the form of a share code is required from the employee to view their details.

New online right to work checks

- These will replace many of the current manual checks
- The applicant will need to input their details through the Government website: [Prove your right to work to an employer - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/proof-your-right-to-work)
- Once completed the applicant will receive a “share code” which should be passed onto the prospective employer.
- The prospective employer will need to access the right to work process: [View a job applicant's right to work details - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/view-a-job-applicant-s-right-to-work-details)
- Ensure that you follow the process and keep the required records, failure to do so could mean that the Statutory Excuse has not been established.

EEA Citizens without lawful status after 30th June 2021

- There is no requirement for a retrospective check to be undertaken on EEA citizens who entered into employment up to and including 30th June 2021
- Employers will have a statutory excuse if they carried out a prescribed right to work check on an EEA citizen to prove their right to work prior to 30th June 2021
- If an EEA citizen applies for a job after 30th June and has not applied to the EUSS (Settlement Scheme) they will fail the right to work check and should not be employed
- Where an EEA citizen has reasonable grounds for missing the EUSS application deadline they will be given a further opportunity to apply
- See here for more details
<https://www.gov.uk/government/publications/right-to-work-checks-employers-guide>



What does it mean for your business?

- You will need to ensure that your processes are reviewed and that they will meet the requirements
- You will need to ensure that **all** job applicants have the right to work in the UK
- If it is not possible to confirm that a person has the right to work the business can refuse to employ that person
- The Government website gives advice on how and why checks should be completed: [Right to work checks: employer guidance - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/right-to-work-checks-employer-guidance)

What happens if you get it wrong?

Government guidance online states the following:

- You can be sent to jail for 5 years and pay an unlimited fine if you are found guilty of employing someone who you knew or had 'reasonable cause to believe' did not have the right to work in the UK.
- You can also be penalised if you employ someone who does not have the right to work and you did not do the correct checks, or you did not do them properly.
- If this happens, you might get a 'referral notice' to let you know your case is being considered and that you might have to pay a civil penalty (fine) of up to £20,000 for each illegal worker.
- Help and advice - Telephone: 0300 790 6268 or businesshelpdesk@homeoffice.gov.uk

Further Details

If you require more information, use these links:

[Checking a job applicant's right to work - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/publications/right-to-work-checks-employers-guide)

<https://www.gov.uk/government/publications/right-to-work-checks-employers-guide>

If you require more specific and individual assistance email:

[Professor Dave Walsh: dave.walsh@dmu.ac.uk](mailto:dave.walsh@dmu.ac.uk)

With thanks to the following for their vital contribution to this presentation:





Feedback

- Thank you for listening to this module. We hope you have found it helpful.
- Would you kindly answer the following questions...