



Home Office

# An employer's guide to right to work checks

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# 1. Introduction

Illegal working often results in abusive and exploitative behaviour, the mistreatment of illegal migrant workers, tax evasion and poor housing conditions. It can also undercut legitimate businesses and have an adverse impact on the employment of people who are lawfully 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 which commenced on or after 29 February 2008. 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. Employers have a duty to prevent illegal working in the UK by carrying 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 those who have time-limited permission to work in the UK.

On 16 May 2014, changes came into force to strengthen and simplify the civil penalty scheme for employers, and this includes some changes to the document checks employers are required to undertake. This guidance was amended in July and December 2014 and May 2015 to provide further clarification to the scheme.

On 12 July 2016, sections 34 and 35 of the Immigration Act 2016 (the 2016 Act) were commenced. Section 34 amends the Immigration Act 1971 by inserting a new offence of illegal working (section 24B). Section 35 amends section 21 of the 2006 Act which sets out the criminal offence of employing an illegal worker.

## Summary of changes in this issue of the guide

This guidance concerns the conduct of right to work checks in order to prevent illegal working. Compliance with the prescribed right to work checks will also result in an employer being excused from paying a civil penalty where they are found to have employed an illegal worker. This is referred to as a statutory excuse.

This guidance also provides some information to employers about the related illegal working offences that were introduced by the Immigration Act 2016 and implemented on 12 July 2016.

## The offence of illegal working

With effect from 12 July 2016, under section 24B of the 1971 Act (as inserted by section 34 of the 2016 Act), a person commits the offence of illegal working if he is:

- Subject to immigration control and works when disqualified from doing so by reason of his immigration status; and
- At the time, he knows or has reasonable cause to believe that he is disqualified from working by reason of his immigration status.

A person has been disqualified by reason of his immigration status if:

- He has not been granted leave to enter or remain in the UK; or
- His 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 of illegal working is not limited to working under a contract of employment and is intended to cover all types of work, including apprenticeships and self employment. The new offence enables wages from illegal working to be seized as the proceeds of crime. 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

With effect from 12 July 2016, under section 21 of the 2006 Act (as amended by section 35 of the 2016 Act), an employer commits an offence if he employs an illegal worker and knows or has reasonable cause to believe that the person has no right to do the work in question. This means that an employer can no longer evade prosecution where the investigating agency cannot prove that the employer knew that the employee had no permission to work. The amended offence enables employers to be prosecuted where they have reasonable cause to believe that the employee could not undertake the employment, even where they have perhaps deliberately ignored information or circumstances that would have caused the employer to know that the employee lacked permission to work. The maximum sentence on indictment for this offence has been increased from 2 to 5 years.

## For whom is this guide relevant?

**This guide applies to checks required on or after 16 May 2014** to establish or retain an excuse against a liability for 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. When the employer established a limited statutory excuse before 16 May 2014, that excuse will last for twelve months from the date of the check. However, in respect of any check which was undertaken before 16 May 2014 and which provided an excuse which would expire on or after 16 May 2014, the excuse will time expire on the **later** of either:

- the 12 month anniversary of the check; or
- when the immigration endorsement that provided the excuse time expires.

If it is unclear when the immigration endorsement will time expire, it may be prudent for you to repeat the check on the 12 month anniversary in any event.

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. It does not apply to those who do work for you with a genuine self employed status. However, genuine self employed migrants may still commit the illegal working offence if such work is not permitted. Further information is contained in the [Frequently Asked Questions](#).

## 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 need to do so, and how to do the checks correctly.

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

- [An employer's guide to the administration of the civil penalty scheme](#);
- [An employer's guide to acceptable right to work documents](#);
- [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](#);
- An employer's [Right to Work Checklist](#);
- The online interactive tool [Check if someone can work in the UK](#); and
- The online interactive tool [Employer Checking Service Enquiries](#).

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

## Who should read this guide?

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 from 16 May 2014, and therefore ensure compliance with the law.

## 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:
  - i. is invalid;
  - ii. has ceased to have effect (meaning it no longer applies) whether by
  - iii. reason of curtailment, revocation, cancellation, passage of time or otherwise; or
  - iv. 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 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?

A right to work check means that you check a document which is acceptable for showing 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. You are also required to conduct a follow-up check on people who have time-limited permission to work in the UK.

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;
2. **Check** them 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](#) in three specified circumstances. These are set out in the section on Home Office verification checks.

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 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, 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 an independent payroll company.

If you fail to carry out these checks correctly, or at all, and you are found employing someone illegally, we will take tough action against you.

You could face a large financial penalty known as a **civil penalty** of up to **£20,000** for each illegal worker.

If you know 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.

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 by Home Office officials. These officials 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.

Note: For civil penalty notices served on or after 28 July 2014, 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, the range of notices you may receive and the deadlines by which you need to take action at each stage.

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 considering 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](#).

## 4. Who do you conduct checks on?

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 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.

In May 2014 we issued an updated '[Code of practice for employers: Avoiding unlawful discrimination while preventing illegal working](#)'. The aim of the Code is 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.

You will also place yourself at risk of liability for 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.

## 5. How do you conduct checks?

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 the [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 they 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:

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). Supporting documents should also be photocopied and a copy retained.

### Step 3 Copy

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

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 which 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.

[List B](#) contains a range of documents which may be accepted 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](#)'.

## 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.

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.

Where a person presents a document and 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 for knowingly employing an illegal worker.

You will not be able to rely on a statutory excuse if 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 a commercially available document scanner 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 at [this link](#).

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 Sponsorship, Employer and Education Helpline on 0300 123 4699, (Monday to Thursday, 9am to 5pm, Friday, 9am to 4:30pm).

If you do not employ the person, you have no liability for 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 and unalterable copy, 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 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 establish a statutory excuse.

You may be liable for a civil penalty if you do not record the date when the check was performed. Simply inserting a date on to the copy document does not, in itself, confirm that this is the actual date when the check was undertaken. If you insert a date onto the copy document itself, you must also record the fact that this is the date upon 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](#) and [Table 2](#) contain 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 where 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 conducting checks, if you 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 liability for a civil penalty.

You may be liable for 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 seven days.

Where you are employing a student on a **work placement** which forms an integral part of the 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](#).

## Home Office verification checks

When conducting checks, you are required to contact the Home Office in the following circumstances to verify that someone has the right to work in the UK to establish and retain your statutory excuse:

1. You are presented with a [Certificate of Application](#) which indicates that work is permitted and which is less than six months old; 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 the Home Office which was made before their [previous permission time expired](#) or has an appeal or [administrative review](#) pending against a Home Office decision and therefore cannot provide evidence of their right to work.

In the circumstances, you need to obtain a **Positive Verification Notice** in order to obtain a statutory excuse. A Positive Verification Notice confirms that the named person is allowed to carry out the type of work in question. You must check the original Certificate of Application which is not more than six months old, or Application Registration Card in the usual way. You must make copies of these documents and retain these copies, 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.

However, if you receive a **Negative Verification Notice** then you will not have an excuse and may be liable for a civil penalty if the employee is not permitted to undertake the work.

You may obtain a Positive Verification Notice when employment commenced after 29 February 2008 in the above circumstances.

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 Enquiries](#)'.

If you are making a check because the employee or potential employee has an outstanding application with the Home Office or appeal or administrative review against a Home Office decision, we suggest that you wait until **14 days** after the application, appeal or administrative review was made before requesting a verification check in order for that application, appeal or administrative review to be registered with the Home Office.

The Employer Checking Service aims to send you a response within **5 working days** of requesting the check. It is your responsibility to inform the person you intend to employ, or continue employing, that you are carrying out this check on them.

## 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 proves 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. They 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. BRPs therefore provide employers with a secure and simple means to conduct a right to work check.

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.

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. BRPs no longer indicate whether the holder is required to register with the police.

Adding the NINo to the BRP will assist 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 this person if they have time-limited permission to be in the UK and to do the work in question.

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 the person's employment with you. You are **not required** to carry out any further checks on this 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 this 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 either:

- submitted an in time application to us to extend or vary their permission to be in the UK; or
- made an appeal or an administrative review against a decision on that application;

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 Employer 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 the Employer 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 Employer Checking Service will not be required. If, however, the documents provided are from [List B](#) Group 2, verification by the Employer Checking Service that the employee can continue to do the work in question 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 the Employer 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 must be made before their permission to be in the UK and to do the work in question 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 the Employer 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 possible for someone to make an application to extend or vary their leave after their permission to be in the UK has expired, but it must normally be made within 28 days of expiry. Although we may consider and grant such applications, it is important to note that you will not be able to employ this individual pending the outcome of their application. This is because when an application is made 'out-of-time' any previous permission to work expires when their previous permission to be in the UK expires. **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.**

Please be aware that where a Tier 4 migrant has stopped studying, there are only limited circumstances when an in time application which is awaiting a decision will entitle them to work. See [Annex B](#) for further information.

No follow-up checks are required for employees who, before employment commenced, supplied documents from [List A](#) (which includes people with Indefinite Leave to Remain) because there are no restrictions on their right to be in the UK and do the work in question.

## Appeals and Administrative Reviews

A Positive Verification Notice from the Home Office Employer 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 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 the Employer Checking Service, to confirm that an administrative review may be made or has not been determined. 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 because it would be unjust not to consider it. If so, any permission to work will continue **from the date** we accept that the administrative review is valid. This will be confirmed by a Positive Verification Notice from the Employer 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 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 checks correctly, the buyer would be liable for a penalty if an employee is later found to be working illegally. Also, a check by the buyer would be necessary to determine when any follow-up check should be carried out. For these reasons, employers who acquire staff through TUPE regulations should undertake a right to work check on all new TUPE members of staff.

We recognise that there may be practical problems in undertaking these checks before the employment commences for workers acquired as a result of a TUPE transfer and for this reason a period of grace has been provided during which you should undertake the check. Since 16 May 2014, this period is 60 days from the date of the transfer of the business to correctly carry out their first statutory document



checks in respect of these new TUPE employees. There is no such grace period for any subsequent follow-up checks.

### **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 a civil penalty liability.

## 7. Do you have any questions?

In the first instance, please refer to the [Home Office guidance](#):

- [An employer's guide to the administration of the civil penalty scheme](#);
- [An employer's guide to acceptable right to work documents](#);
- [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](#);
- An employers' ['Right to Work Checklist'](#);
- The online interactive tool ['Check if someone can work in the UK'](#); and
- The online interactive tool ['Employer Checking Service Enquiries'](#).

If you cannot find the answer to your question, please contact our Sponsorship, Employer and Education **Helpline** on **0300 123 4699**.



## 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 a European Economic Area country or Switzerland.
5.	A <b>current</b> 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 <b>current</b> 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 <b>current</b> 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, <b>together with</b> 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 <b>full</b> 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, <b>together with</b> 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, <b>together with</b> 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, <b>together with</b> 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)) 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.

Where a student does have a limited right to work, the working hours that they may undertake depend on **when** they applied for permission to come to or stay in the UK, **the type of course** they are studying and the **type of educational provider** with whom they are studying. Certain categories of employment are however, not permitted. Full details are set out in [Table 2](#).

For students with permission to study under Tier 4 of the Points Based System, the condition permitting a student to work is linked to that person 'following a course of study':

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

Therefore, if a Tier 4 student has ceased studying before they complete their course, they will normally have no right to undertake employment because they are no longer following a course of study. If there is a change in their circumstances (e.g. they change their course, switch to another sponsor, stop studying or have their permission to study curtailed) this can impact on their right to work. Further information on how a change in circumstances impacts on a Tier 4 student's right to work is set out below.

You may be liable to prosecution or a civil penalty if you knowingly employ a student who no longer has the right to work because that student is no longer studying.

A migrant student who is permitted to work will have a clear endorsement in his or her passport or Biometric Residence Permit which states they are permitted to work, and the number of hours of work allowed during the term time e.g. 10 hours or 20 hours. If this information is not set out in these documents, the student does not have the right to work. Short-term students are not permitted to work, either in the term time or the vacation, or do a work placement.

## Work placements

Tier 4 students, including child students aged 16 or over, are allowed to undertake work placements where they are an integral and assessed part of the course. Where their Tier 4 sponsor is a Probationary Sponsor, such courses must be at least QCF or NQF level 6 or SCQF level 9. 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.

Since 6 April 2012, 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;
- 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 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 where:
  - they have applied to the Home Office 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 do 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, the Home Office 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 / 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 and you should not employ them.

**Table 2: Summary of employment permitted by international students**

Date of application	Education Provider	Course Type	Age of migrant?	Work Conditions
Before 2 March 2010	Any	Any	n/a	<ul style="list-style-type: none"> <li>- Max. 20 hours per week during term time.</li> <li>- Any duration during vacations.</li> <li>- Employment as part of course related work placement (no more than half of total length of course).</li> <li>- Employment as Student Union Sabbatical Officer (max 2 years).</li> <li>- Employment as a postgraduate doctor or dentist on a recognised Foundation programme.</li> <li>- No self-employment</li> <li>- No employment as a professional sports person (including a sports coach)</li> </ul>
From 3 March 2010 to 3 July 2011 (inclusive)	Any	<ul style="list-style-type: none"> <li>- Degree level (NQF 6 and above)</li> <li>- Foundation degree course (NQF 5)</li> </ul>	n/a	<ul style="list-style-type: none"> <li>- Max. 20 hours per week during term time.</li> <li>- Any duration during vacations.</li> <li>- Employment as part of course related work placement (no more than half of total length of course).</li> <li>- Employment as Student Union Sabbatical Officer (max 2 years).</li> <li>- Employment as a postgraduate doctor or dentist on a recognised Foundation programme.</li> <li>- No self-employment</li> <li>- No employment as a professional sports person (including a sports coach) or an entertainer.</li> </ul>
	Any	Below degree level (NQF 5 and below)	n/a	<ul style="list-style-type: none"> <li>- Max. 10 hours per week during term time.</li> <li>- Any duration during vacations.</li> <li>- Employment as part of course related work placement (no more than half of total length of course).</li> <li>- Employment as Student Union Sabbatical Officer (max 2 years).</li> </ul>

		degree course)		<ul style="list-style-type: none"> <li>- Employment as a postgraduate doctor or dentist on a recognised Foundation programme.</li> <li>- No self-employment</li> <li>- No employment as a professional sports person (including a sports coach) or an entertainer.</li> </ul>
On or after 4 July 2011	Tier 4 (General) Students Higher Education Institution (HEI – e.g. University) or sponsored by an overseas HEI to undertake a short-term Study Abroad Programme in the UK.	Degree level (NQF 6) or above	n/a	<ul style="list-style-type: none"> <li>- Max. 20 hours per week during term time.</li> <li>- Any duration during vacations.</li> <li>- Employment as part of course related work placement (no more than half of total length of course)*</li> <li>- Employment as Student Union Sabbatical Officer (max 2 years).</li> <li>- Employment as a postgraduate doctor or dentist on a recognised Foundation programme.</li> <li>- No self-employment</li> <li>- No employment as a professional sports person (including a sports coach) or an entertainer.</li> </ul>
		Below degree level (NQF 5 and below)	n/a	<ul style="list-style-type: none"> <li>- Max. 10 hours per week during term time.</li> <li>- Any duration during vacations.</li> <li>- Employment as part of course related work placement (no more than half of total length of course)*</li> <li>- Employment as Student Union Sabbatical Officer (max 2 years).</li> <li>- Employment as a postgraduate doctor or dentist on a recognised Foundation programme.</li> <li>- No self-employment</li> <li>- No employment as a professional sports person (including a sports coach) or an entertainer.</li> </ul>



Tier 4 (General) Students at a publicly- funded further education college	Any	n/a	<ul style="list-style-type: none"> <li>- Max. 10 hours per week during term time.</li> <li>- Any duration during vacations.</li> <li>- Employment as part of course related work placement (no more than a third of the total length of course).*</li> <li>- Employment as Student Union Sabbatical Officer (max 2 years).</li> <li>- Employment as a postgraduate doctor or dentist on a recognised Foundation programme.</li> </ul>
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				<ul style="list-style-type: none"> <li>- No self-employment</li> <li>- No employment as a professional sports person (including a sports coach) or an entertainer.</li> </ul>
Tier 4 (General) Students privately funded Further Education College	Any	n/a		No work allowed.
Tier 4 (Child) Students (Children under 16 yrs of age may only be educated at independen t fee paying schools)	Any	Aged 16 or over		<ul style="list-style-type: none"> <li>- Max. 10 hours per week during term time.</li> <li>- Any duration during vacations.</li> <li>- Employment as part of course related work placement (no more than half of total length of course).</li> <li>- Employment as Student Union Sabbatical Officer (max 2 years).</li> <li>- Employment as a postgraduate doctor or dentist on a recognised Foundation programme.</li> <li>- No self-employment</li> <li>- No employment as a professional sports person (including a sports</li> </ul>
		Under 16		No work allowed

\* For Tier 4 (General) Student cases that were granted leave between 4 July 2011 and 5 April 2012 (inclusive), employment as part of a course-related work placement was restricted to half the total length of the course undertaken in the UK. For Tier 4 (General) Student cases granted leave from 6 April 2012 onwards, employment 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 an HEI or by an overseas HEI to undertake a short-term Study Abroad Programme in the UK, or there is a statutory duty for the course length to be longer than one third of the course length.

Visitors are not permitted to undertake work whilst in the UK. This includes work placements that form part of a course/period of study undertaken as a short-term student.

## 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.

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 2006](#) (‘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 also be aware that not all EEA nationals are permitted to work in the UK without restrictions (please see the list at the end of this section).

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:

- |                          |                |                          |               |
|--------------------------|----------------|--------------------------|---------------|
| <input type="checkbox"/> | Austria        | <input type="checkbox"/> | Latvia        |
| <input type="checkbox"/> | Belgium        | <input type="checkbox"/> | Liechtenstein |
| <input type="checkbox"/> | Bulgaria       | <input type="checkbox"/> | Lithuania     |
| <input type="checkbox"/> | Cyprus         | <input type="checkbox"/> | Luxembourg    |
| <input type="checkbox"/> | Czech Republic | <input type="checkbox"/> | Malta         |
| <input type="checkbox"/> | Denmark        | <input type="checkbox"/> | Netherlands   |
| <input type="checkbox"/> | Estonia        | <input type="checkbox"/> | Norway        |
| <input type="checkbox"/> | Finland        | <input type="checkbox"/> | Poland        |
| <input type="checkbox"/> | France         | <input type="checkbox"/> | Portugal      |
| <input type="checkbox"/> | Germany        | <input type="checkbox"/> | Romania       |
| <input type="checkbox"/> | Greece         | <input type="checkbox"/> | Slovakia      |
| <input type="checkbox"/> | Hungary        | <input type="checkbox"/> | Slovenia      |
| <input type="checkbox"/> | Iceland        | <input type="checkbox"/> | Spain         |
| <input type="checkbox"/> | Ireland        | <input type="checkbox"/> | Sweden        |
| <input type="checkbox"/> | Italy          |                          |               |

Nationals of Switzerland may also work without restriction.

## Croatian nationals

Separate restrictions on Croatian nationals' access to the labour market are set out in the Accession of Croatia (Immigration and Worker Authorisation) Regulations 2013. Please refer to the '[Code of practice for employers civil penalties: illegal employment of a Croatian national](#)'.

Since 1 July 2013, as EU nationals, Croatians have been able to move and reside freely in any EEA Member State. However, the UK has applied transitional restrictions on their access to the labour market. These are set out in the Accession of Croatia ([Immigration and Worker Authorisation](#)) Regulations 2013. Under these Regulations, a Croatian national who wishes to work in the UK and who is subject to the worker authorisation requirement will need to obtain an accession worker authorisation document (permission to work) before starting any employment.

This means that since 1 July 2013, a Croatian national will only be able to work in the UK if they hold a valid accession worker authorisation document (such as a purple registration certificate) or if they are exempt from work authorisation. Under the 2013 Regulations you are required to carry out document checks to confirm if a Croatian national is either exempt from work authorisation or holds a valid worker authorisation document for the work in question. You should check, validate and keep dated copies of original acceptable documents before they start working for you. The list of exempt categories is contained in our guidance.

Croatian students who have been issued with a yellow registration certificate are only permitted to work for 20 hours a week during term time and full time during vacation periods.

If you do not carry out these checks and you are found to be employing a Croatian national who does not have a right to work, you may be required to pay a civil penalty. If you knowingly employ a Croatian national illegally, you will commit a criminal offence.

You can find out more information on your duty under the Accession of Croatia Regulations 2013 in our separate [Code of practice for employer civil penalties: illegal employment of a Croatian national](#).

## 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.

When the current residence card, permanent residence card, accession 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. From 6 April 2015, they may be issued in biometric format. For more information please see [Residence Cards \(biometric format\)](#)

**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.

**Accession Residence Cards:** Accession residence cards are issued by us to **the non-EEA family members of Croatian nationals** who are subject to worker authorisation requirements. Accession residence cards are included in [List B](#) of acceptable documents, and will provide you with a time-limited statutory excuse if checked and copied correctly **before** the person starts working for you. Accession Residence Cards will not be issued in a biometric format.

**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.

## 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)

From 6 April 2015, we started issuing 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 old 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

From 6 April 2015, an application by a non EEA Family Member of an EEA National for a Residence Card or Derivative Residence Card will only be 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 enrol. If they fail to enrol their biometrics after the 10 days has 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;
- The valid EEA passport or national identity card for the EEA national;
- 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 the Home Office's 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.

Those applicants who are not direct family members or who 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 the 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 who 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 who do not hold documentation issued by the Home Office.

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 the Home Office or to obtain documentation issued by the Home Office.

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 member<sup>1</sup> 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, an employer 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, the employer would be liable to payment of a civil penalty unless they checked the documents as set out in this document. Further guidance on EEA and non-EEA family members of EEA nationals can be found in the [European casework instruction](#) page on GOV.UK.

## Entrepreneur

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<sup>1</sup> 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.



A person granted leave 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

## **Employment of other categories**

For information about other immigration categories including the employment of former members of the Armed Forces and refugees and asylum seekers, please refer to the [Frequently Asked Questions document](#).