



EMPLOYING FOREIGN NATIONALS

GUIDANCE FOR MANAGERS

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Preventing Illegal Working

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. Under these rules, employers have a duty to prevent illegal working. An employer may be liable for a civil penalty if they employ someone who does not have the right to work in the UK.

Where these regulations are not complied with, an employer may face a financial penalty (civil penalty) and in some cases, prosecution. An employer can avoid becoming liable for a civil penalty and prosecution by carrying out the required document checks on prospective employees to ensure they are allowed to work in the UK. Conducting these checks will provide a statutory excuse from a civil penalty. Where the employee has limited permission (immigration leave) to be in the UK, these checks must be repeated to retain the excuse.

It should be noted that:

- It is a criminal offence if you know or have reasonable cause to believe that you are employing an illegal worker. You may face up to 5 years in jail and pay an unlimited fine.
- You can also be penalised if you employ someone who doesn't have the right to work and you didn't do the correct checks, or you didn't do them properly. In these circumstances, you might have to pay a civil penalty (fine) of up to £20,000 for each illegal worker.
- There is a list of acceptable documents for right to work checks, employers need to comply with;
- The documents that are considered acceptable for demonstrating right to work in the UK are set out in two lists – List A and List B.
- There is not a requirement for annual follow-up checks for people with a time-limited right to stay in the UK. Rather the frequency of check depends upon the employee's immigration leave;
- The list B documents for right to work checks are separated into two groups, Group 1 and Group 2, to clearly distinguish the frequency of repeat checks required depending on the document presented;
- The statutory excuse period is a maximum of 28 days beyond the expiry date of immigration leave where the employer is reasonably satisfied that an employee has submitted an application to the Home Office or has an appeal pending against a Home Office decision.

Employer Process

To avoid a penalty, managers must follow Steps 1 – 3 set out in this guidance for every new potential employee they are considering, whether it is for permanent, fixed term, relief, casual, full-time or part-time work. This requirement applies to **all** candidates.

The guidance is designed to help managers understand what documents they must ask prospective employees to produce when they attend for interview to establish whether they can legally work in the UK.

STEP 1 – OBTAIN

The manager must **obtain** original documents from either List A or List B of acceptable documents (refer to Appendix A).

List A has the range of documents you may accept for a person who has a permanent right to work in the UK.

List B has the range of documents you may accept for a person who has a temporary right to work in the UK.

STEP 2 – CHECK

The manager must **check** the documents are genuine, that the person presenting them is the prospective employee (or current employee), the rightful holder and allowed to do the type of work you are offering.

Check the following:

- the photographs and dates of birth are consistent across documents and with the person's appearance in order to detect impersonation;
- the expiry dates for permission to be in the UK have not passed;
- 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);
- the documents are genuine, have not been tampered with and belong to the holder; and
- reasons for any different names across documents (e.g. marriage certificate, divorce decree, deed poll). Supporting documents should also be photocopied and the copy retained.

STEP 3 – COPY

The manager must make a clear **copy** of each document in a format which cannot later be altered and retain the copy securely: electronically or in hard copy. The manager must make a record of the date on which they made the check and verify that the originals were seen (“certified as a true likeness, original seen by [your name] on [date]”) before forwarding copies to the HR Service Centre.

Copy and retain:

- Passports: any page with the document expiry date, nationality, date of birth, signature, leave expiry date, biometric details and photograph, and any page containing information indicating the holder has an entitlement to enter or remain in the UK (visa or entry stamp) and undertake the work in question (the front cover no longer has to be copied).
- All other documents: the document in full, including both sides of a Biometric Residence Permit, Application Registration Card and a Residence Card (biometric format).

Questions and Answers

Q1. In terms of paperwork what am I required to copy and send to the HR Service Centre (HRSC)?

For **all** employees we need to retain copies of identification as evidence of their right to live and work in the UK. The acceptable documents are summarised in the Prevention of Illegal Working List A and B (see Home Office website).

- List A – ID provides proof of an ongoing right to work in the UK
- List B – ID provides proof of right to work in the UK for a limited period

We also need to evidence that the original documents have been checked and verified by a line manager or by a representative from the HR Service Centre (documents should be signed and dated when verified stating the following – “certified as a true likeness, original seen by [your name] on [date]”).

Q2. Do I need to keep a copy of the paperwork?

If the original documents have been presented to you they must be checked, verified and copied, then sent to the HRSC. It is not necessary for you to keep copies yourself.

Q3. If the Visa states ‘limited time to remain’ do I need to keep a note of the date of expiry?

It would be useful to note this date and discuss with the employee prior to expiry to remind and encourage them to provide you with evidence of renewal from the Home Office. The HRSC will also issue a reminder to you and the employee prior to the date of expiry.

Proof of renewal paperwork must be issued to the HRSC for the personal file. Original paperwork should be signed and dated when verified.

Q4. At what point do I check the candidate’s paperwork?

During the recruitment stage prior to the preferred candidate stage.

Q5. What do I do if a candidate cannot or forgets to bring in their passport/visa for checking? Is a photocopy/scan acceptable?

We cannot progress any offers of employment until the **original** paperwork has been verified.

Q6. I have a sponsored employee, can they apply for other posts within the Council i.e. transfers, promotions etc?

If they are sponsored by Aberdeen City Council on a Tier 2 Visa, the sponsorship certificate is for the post not the person. The certificate is not transferable with the person if they are transferred or promoted into another post.

Q7. I have an employee who is absent from work and their Visa is due to expire, do I need to contact them or can it wait until they return to work?

No, this cannot wait. You must contact them immediately as they are required to provide written proof of their right to live and work in the UK.

This includes when they are absent from work due to illness, on annual leave, maternity leave, paternity leave, unpaid leave, career breaks, suspension etc.

Q8. A student has applied for a full-time post, are they allowed to work full-time hours?

This depends on what the individual is studying; generally they can work between 10-20 hours per week only and increase to full time hours during vacations.

To be sure please check the Home Office website. You should also check the term time dates with the Education institution. Please note that you are required to obtain and retain evidence of the student's academic term and vacation dates.

Q9. I have an employee who has a Spouse/Dependant Visa and I am aware that their personal circumstances have changed. What should I do?

You should discuss your concerns with the employee, they must be made aware of the importance of being honest and the potential consequences in terms of their right to live and work in the UK.

Q10. Do I need to check a volunteer's right to live and work in the UK?

It is not a legal requirement however best practice is to check as they will be working in our premises. Some Visas have restrictions in that they have the right to live in the UK but not work so please check as part of process.

Volunteer work is usually permitted.

Q11. My employee's Visa has expired, what do I do?

Speak to the employee and ask if they have applied for an extension or appealed against a decision, if so a grace period will apply and they will continue to have the right to live and work until this is progressed but they must provide written proof of this from the Home Office.

If they can't provide written proof that this is being processed in the system, the HRSC can also check with the Home Office. However, if valid documents are not received and there is no evidence of an application pending the contract of employment must be terminated.

Q12. We have a candidate who has requested sponsorship as their Visa expires in 6 weeks, do we have sponsorship available?

Aberdeen City Council is not providing further sponsorship.

Q13. We have had an applicant on a Tier 5 Youth Mobility Visa, do they require sponsorship?

No, but there is criteria; generally this visa allows individuals to live, work, and study in the UK for 2 years without having to be sponsored. The UK has an agreement with all Commonwealth countries such as Canada, Australia, etc.

Check <https://www.gov.uk/tier-5-youth-mobility> for more information on eligibility.

Q14. What should I do if I have concerns about the documents presented to me?

If you are not satisfied that the person is the rightful holder of the documents they have produced, or that the documents are genuine, you can request other documentation from them.

Q15. What happens if a potential employee who has lived and worked in the UK for the majority of their life does not have a British Passport, Visa, Biometric Residency Permit etc?

They should be advised to contact the Home Office regarding discretionary long term residency.

The recruitment process cannot be processed until the potential employee notifies us of the outcome.

Q16. Many British citizens do not have a UK passport or a full birth certificate, is the short birth certificate acceptable?

No, this is because the abbreviated birth certificate is a document that has proved vulnerable to forgery.

APPENDIX A: Lists of acceptable documents for right to work checks

The documents that are considered acceptable for demonstrating right to work in the UK are set out in two lists – **List A and List B**.

List A contains the range of documents which may be accepted for checking a person who has a permanent right to work in the UK. If the employer follows the set right to work checks they will establish a **continuous statutory excuse** for the duration of that person's employment.

List B contains the range of documents which may be accepted for checking a person who has a temporary right to work in the UK. If the employer follows the set right to work checks, they will establish a **time-limited statutory excuse**. They will be required to carry out a follow-up check as set out below.

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 – Acceptable documents to establish a statutory excuse for a limited period of time

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.

Follow-up right to work checks

These are required where someone has time-limited permission to be in the UK and should be completed when their previous permission comes to an end.

In following the set right to work checks, a statutory excuse will be applied:

In List A: the statutory excuse will be for the whole duration of the employee's employment because there are no restrictions on their permission to be in the UK. There is no requirement to repeat the right to work check.

In List B: the statutory excuse will be limited because the employee has restrictions on their permission to be in the UK and to do the work in question. In order to retain the excuse, the employer must undertake follow-up right to work checks as follows:

Group 1 documents:

If the employee is able to produce a current document from Group 1 in List B, the employer should make a follow-up check using this document. The time-limited statutory excuse will continue for as long as the employee has permission to be in the UK and do the work in question, as evidenced by the document, or combination of documents the employee produced for the right to work check.

If however, at the point that permission expires, and the employer is reasonably satisfied that the employee has:

- submitted an in-time application to the Home Office to extend or vary their permission
- made an appeal or an administrative review against a decision on that application
- 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 before 1998

then time-limited statutory excuse will continue from the expiry date of the employee's permission for a further period of up to 28 days. This is to enable the employer to verify whether the employee has permission to continue working.

During this 28 day period the employer must contact the Employer Checking Service and receive a Positive Verification Notice confirming the employee continues to have the right to undertake the work in question.

In the event that a Positive Verification Notice is received the statutory excuse will last for a further six months from the date specified in the Notice. A further check will then need to be made upon its expiry.

In the event that a Negative Verification Notice is received, the statutory excuse will be terminated.

An application or appeal must be made on or before a person's permission to be in the UK and do the work in question expires in order to be deemed 'in-time' and valid.

In the event that a Negative Verification Notice is received from the Employer Checking Service stating that the employee does not have permission to undertake the work in question, there will no longer be a statutory excuse and the employee should no longer be employed.

Group 2 documents:

If the prospective or current employee holds one of the documents in Group 2 in List B, or is unable to present an acceptable document because they have an outstanding application with the Home Office or an appeal in respect of their leave, the employer must contact the Employer Checking Service and receive a Positive Verification Notice. The time-limited statutory excuse will last for six months from the date specified in the Positive Verification Notice. The employer will then need to make a further check upon its expiry.