

Right to Work Guidance Document – May 2021

What is a Right To Work (RTW) Check?

All employers in the UK have a legal obligation to ensure they are not employing individuals who do not have the RTW in the UK. This legal obligation is set out in Section 15 to 25 of the Immigration Asylum Nationality Act (IANA) 2006, Section 24B of the Immigration Act 1971 and Schedule 6 of the Immigration Act 2016.

A right to work check consists of checking an original document which is deemed acceptable for demonstrating permission to work or conducting an online right to work check (for certain individuals).

RTW check must be done **before** the individual is employed to ensure they are legally allowed work in the UK. At the latest this should be the morning of their first day of employment.

Employers are also required to conduct a follow-up checks on individuals who have time-limited permission to work in the UK.

Why is a RTW check done?

All employers in the UK have a responsibility to prevent illegal working. You do this by conducting simple right to work checks before you employ someone, to make sure the individual is not disqualified from carrying out the work in question by reason of their immigration status.

If you conduct the checks as set out in this guide and the Code of Practice, you will have a statutory excuse against liability for a civil penalty in the event you are found to have employed someone who is prevented from carrying out the work in question by reason of their immigration status.

RTW checks are conducted 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 employers to ensure that they only employ people who have permission to do the work in question.

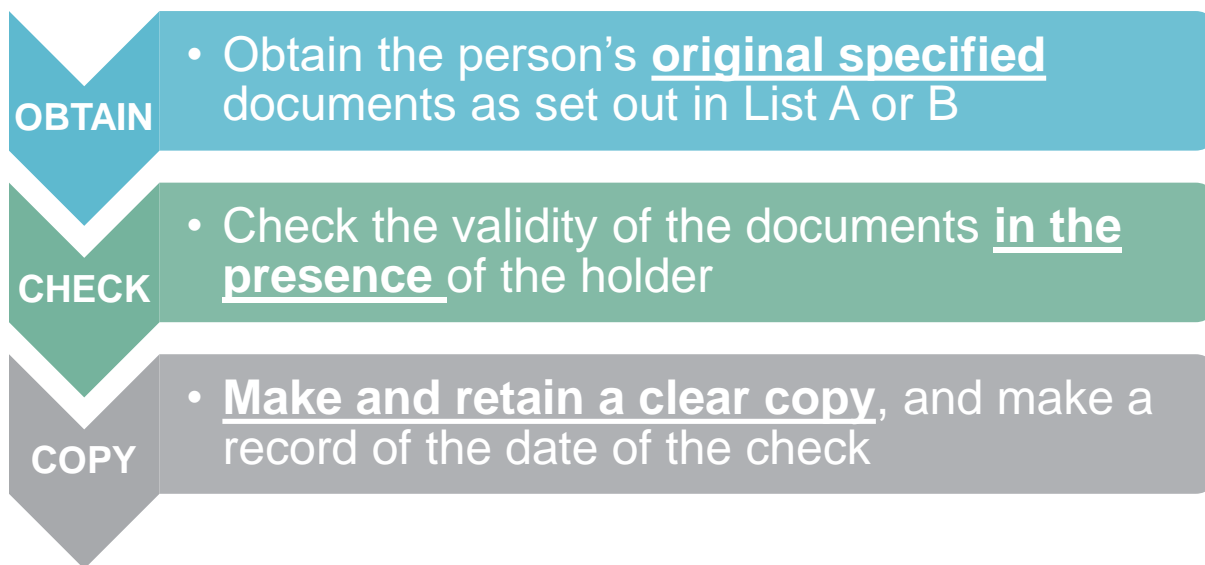
It is illegal to knowingly employ someone aged 16 or over subject to immigration control and who is not allowed to undertake the work in question.

It is important to ensure RTW checks are carried out correctly as this ensures the Company has established a statutory excuse against liability for a civil penalty. This however may be time limited as **RTW is an ongoing responsibility**.



How is a RTW check done with original documents?

Only an employee of the Company can perform the RTW check. Completing a RTW check when an individual presents you with a specified document is done in 3 steps:



Checking documents

Once you have obtained the specified documents, you then need to check them.

You must confirm:

- They are genuine
- Dates of birth are consistent across documents
- Expiry dates of permission to be in the UK have not passed
- Any work restrictions to ensure they can take up the work
- No apparent issues such as tampering, expiry, consistency
- They belong to the right person and the photographs are alike
- Reasons for any inconsistencies

Taking copies

You must ensure that;

- Clear copies are taken in a format that cannot be altered
- The copy contains all relevant details, eg. Personal details and photo page
- ID card (or similar) have both sides copied
- The copy is suitably endorsed, eg. "I confirm the date on which this right to work check was made: [insert date]. This copy is a true likeness. Signature and name of person certifying"
- The certified copy must then be securely retained for at least 2 years after the individuals employment ends
 - Certified document can be stored in hard copy or digitally (digitally storage should be backed up) as long as storage is secure.
 - Certified documents should have restricted access

Online Right to Work Checks

An online RTW check will also establish a statutory defence for the Company provided it is done correctly.

IMPORTANT: You will require permission from the individual to access their information via the online RTW check.

Some individuals are able to provide you with verification of their right to work in the UK using the UK Visas & Immigration ('UKVI') online system.

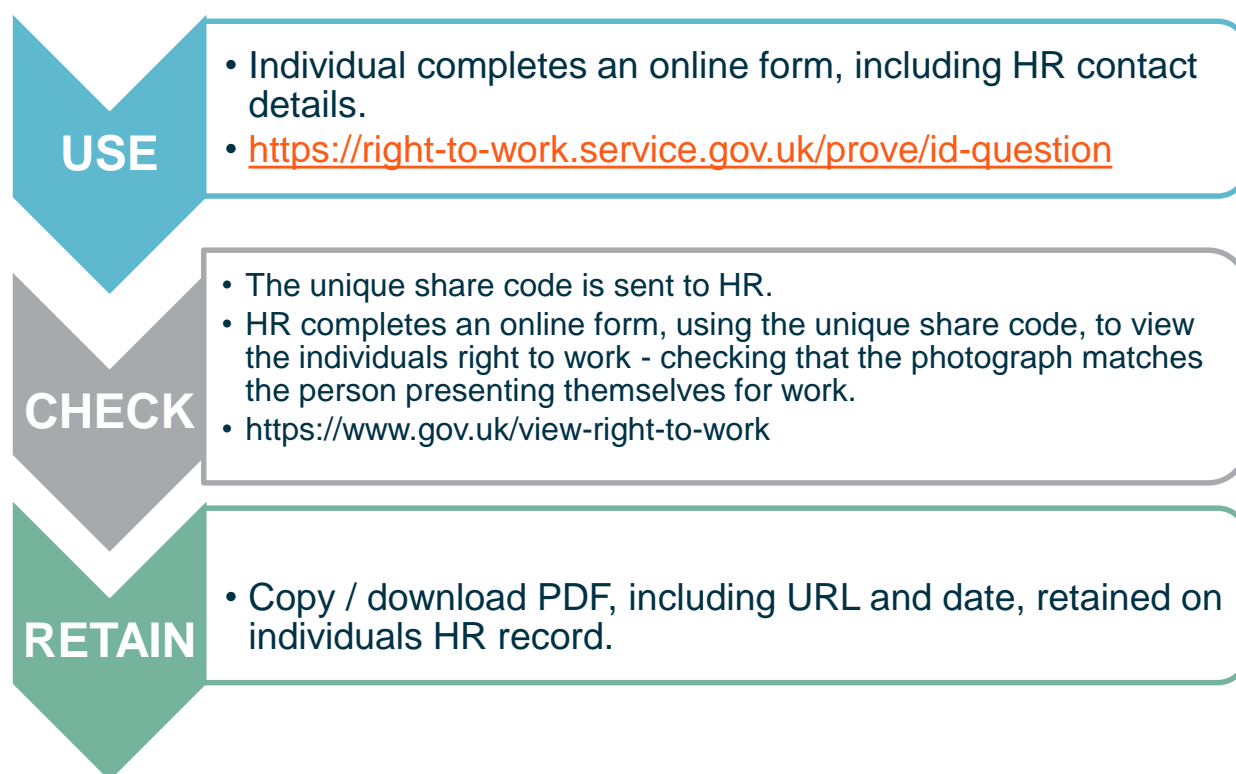
The online right to work check can be used by individuals who hold a Biometric Residence Permit (BRP) or who are an EEA national who hold settled or pre-settled status under the EU Settlement scheme.

The individual would need to complete an online form at <https://right-to-work.service.gov.uk/prove/id-question> and include an HR or Company contact email address.

HR or the Company contact would receive a unique share code which will need to be used when completing the online check at <https://www.gov.uk/view-right-to-work>. Company's must use the employers link to view the individuals status (viewing the individuals information on their profile does **NOT** establish a statutory defence).

Once on the employers link a video call (or having the individual with you) is needed to verify the photograph on the online profile check is a true likeness to the individual. A downloaded PDF of the check should be kept on the individuals HR records. The system will also log your information and the date of the check.

How is a RTW done online?



Ongoing applications with UKVI

In some circumstances an individual may have an application still pending with the UKVI and therefore unable to present the relevant RTW document (or their evidence has expired but they have made an in time application to extend their permission) or online check.

In these instances an employer should contact the Employers Checking Service. The Employers Checking service will review the information you provide and either provide you with a;

- **Positive Verification:** this establishes an individual's RTW for 6 months or until a decision is made on their application – whichever is shorter. It will be essential to ensure a further check is conducted prior to the end of the 6 month period (or sooner).
- **Negative Verification:** this establishes the individual does not have a RTW and should therefore NOT be employed.

<https://www.gov.uk/employee-immigration-employment-status>

EU Nationals

Up until 31 December 2020 EU nationals had the right to free movement in the UK – this meant they did not require permission to work or live in the UK, their passport was sufficient evidence of this.

Brexit has meant that from 1 January 2021 free movement has ended and EU nationals entering the UK from this date will require permission to work in the UK.

It is advised that you exercise caution when conducting a RTW check on an EU national as what will be required from the EU national will depend on when they entered the country and when the check is conducted. A balance needs to be struck between protecting the Company and not discriminating against an EU national.

There are different categories of EU nationals:

Entered the UK before 31 December 2020	Entered the UK from 1 January 2021	EU nationals already employed
Can use their EU passport as evidence of RTW until 30 June 2021.	Can use their EU passport as evidence of RTW until 30 June 2021.	You should have certified passport copies on file for these employees.
Must apply for settled or pre-settled status through the EU Settlement Scheme (EUSS) by 30 June 2021.	Will Require sponsorship or another UK visa in order to remain and work in the UK.*	These employees should be encouraged to apply through the EUSS as soon as possible – deadline 30 June 2021
Must use their EUSS status from 1 July 2021 to evidence their RTW. This is done online.		These employees should be encouraged to provide evidence of their EUSS status – using the online method.

*EU nationals who enter from 1 January 2021 should be encouraged to obtain the correct permission before they enter the UK. For new starters or applicants to roles who are EU nationals who are not already in the UK – seek additional assistance.

Acceptable Documents

There are specific documents which must be accepted in order to evidence a person's RTW and which establish the Company's statutory excuse. Any one of the documents included in List A OR List B or a combination of documents described below;

List A (Acceptable documents to establish a continuous statutory excuse);

- A passport showing that the holder or a person named in the passport as a child of the holder is a British Citizen, or a citizen of the United Kingdom and colonies having the right of abode in the United Kingdom.
- A passport or national identity card or a person named in the passport as the child of the holder showing that the holder is a national of a European Economic Area Country or Switzerland.
- A registration certificate or document certifying permanent residence issued by the Home Office to a national from a European Economic Area Country or Switzerland.
- A permanent Residence Card issued by the Home Office to the family member of a national of a European Economic Area country or Switzerland.
- A current passport endorsed to show that the holder is exempt from immigration control, is allowed to stay indefinitely in the UK, has the right of abode in the UK, or has no time limit on their stay in the UK.
- A current Biometric Immigration Document (Biometric Residence Permit) issued by the Home Office to the holder which indicates that the person named is allowed to stay indefinitely in the United Kingdom or has no time limit on their stay in the United Kingdom or has no time on their stay in the United Kingdom
- A current Immigration Status Document issued by the Home Office to the holder with an endorsement indicating that the named person is allowed to stay indefinitely in the UK or has no time limit on their stay in the UK, together with an official document giving the person's permanent National Insurance number and their name issued by a Government agency or a previous employer.
- A full birth certificate or a full Adoption certificate issued in the United Kingdom which includes the names of a least one of the holder's parents/adoptive parents when produced in combination with an official document giving the person's permanent National Insurance number and their name issued by a Government agency or previous employer.
- A birth (short or long) or adoption certificate issued in the Channel Islands, the Isle of Man or Ireland, together with an official document giving the person's permanent National Insurance number and their name issued by a Government agency or a previous employer
- A certificate of registration or naturalisation as a British citizen, together with an official document giving the person's permanent National Insurance number and their name issued by a Government agency or a previous employer.

List B;

- **Group 1** – Documents where a time-limited statutory excuse lasts until the expiry date of leave
 - A current passport endorsed to show that the holder is allowed to stay in the UK and is currently allowed to do the type of work in question.
 - A current Biometric Immigration Document (Biometric Residence Permit) issued by the Home Office to the holder which indicates that the named person can currently stay in the UK and is allowed to do the work in question.
 - A current Residence Card (including an Accession Residence Card or a Derivative Residence Card) issued by the Home Office to a non-European Economic Area national who is a family member of a national of a European Economic Area country or Switzerland or who has a derivative right of residence.
 - A current immigration Status Document, containing a photograph, issued by the Home Office to the holder with a valid endorsement indicating that the named person may stay in the UK, and is allowed to do the type of work in question, together with an official document giving the person's permanent National Insurance number and their name issued by a Government agency or a previous employer.
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- **Group 2** – Documents where a time-limited statutory excuse lasts for 6 months
 - A Certificate of Application issued by the Home Office under regulation 18(3) or 20 (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 from the Home Office Employer Checking service.
 - An application Registration card (ARC) issued by the Home Office stating that the holder is permitted to take employment in question, together with a Positive verification from the Home Office Employer Checking service.
 - A Positive Verification Notice issued by the Home Office Employer Checking Service to the employer or prospective employer, which indicates that the named person may stay in the UK and is permitted to do the work in question.

The cost of getting it wrong

Criminal Offence

Section 21 of the Immigration, Asylum and Nationality Act as amended by Section 35 of the Immigration Act 2016 makes it a criminal offence if you knowingly or have reasonable cause to believe that there is employment of an illegal worker.

Penalty up to 5 years' imprisonment and/or an unlimited fine.

Civil Offence

Section 15 of 2006 Act allows for Civil penalties to be applied for employing someone who does not have the RTW. A statutory excuse will only be available where the RTW check has been done correctly.

Employer issued with a notice informing them that the case is being referred to officials with responsibility for administering the civil penalty scheme, to consider liability for a civil penalty for the breach.

Penalty up to £20 000 per illegal worker, suspension or revocation of sponsor licence, publicly named with total penalty amount.

In addition therefore to the potential criminal and civil penalties, as a list of all those organisations caught is published, there is a reputational risk to the Company.

Key contacts



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