

Eligibility

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Introduction

The Immigration, Asylum and Nationality Act 2006 (amended 2008) makes it a criminal offence for employers who knowingly employ illegal migrant workers and reinforces the continuing responsibility on employers of migrant workers to check their ongoing entitlement to work in the UK.

One Call 24 risks breaking the law if we do not check the entitlement to work in the UK for all prospective employees, before they start employment. No assumption should be made about a person's right to work or immigration status on the basis of their colour, race, nationality, ethnic or national origins, or the length of time they have been in the UK.

Failure to check could result in a civil penalty of up to £20,000 per illegal worker. For staff in ongoing employment, the checks that should have been undertaken before amendments made to the Immigration, Asylum and Nationality Act on 29 February 2008 will depend on when the employee was recruited.

There are three steps that One Call 24 will work through to confirm a prospective employee/temporary worker has the right to work in the UK:

1. request right to work documents
2. validate the documents
3. copy and securely store documents

One Call 24 must assess the eligibility of an individual's right to work in the UK by verifying specified documentation from Appendix 1: Lists A and B.

One Call 24 must validate documentation from all prospective employees/temporary workers to ensure they are eligible to reside and work in the UK and also to meet the requirements of anti-discrimination legislation. All documents must be valid, current and original. Documents downloaded from the internet must not be accepted.

One Call 24 should only accept original documentation which are valid and current (except for UK passports which may be accepted when expired), even if the individual is registered with a professional regulatory body. If an illegal migrant is employed because the individual supplied

fraudulent documents that could not have been detected as fraudulent, the employer can establish a statutory excuse ('the excuse') against payment of a civil penalty.

One Call 24 must be able to show that they have followed due process in accordance with the regulations. In addition to these standards, you should regularly check the Home Office website for the latest information.

These checks are concerned only with an individual's right to work in the UK and should be undertaken in conjunction with verification of identity checks, so that One Call 24 can ensure that the applicant is the rightful owner of the documents they present.

This document has been prepared in accordance and compliance with current NHS employment check standards, from which this document is derived and adapted.

Online Right to Work Checks

Historically, employers have had to carry out a physical check of documentation, although from the end of January 2019, employers have been able to check documentation online in real time. This facility requires applicants to confirm their right to work with the home office online before providing their new employer with an access code. Read further details about how the online checks work on the gov.uk website.

Avoiding racial discrimination

One Call 24 has a legal duty under current equality legislation to avoid unlawfully discriminating on grounds of race. Where complaints of racial discrimination are upheld by an employment tribunal, One Call 24 can be ordered to pay compensation for which there is no upper limit. Assumptions must not be made about a person's right to work or immigration status on the basis of their colour, race, nationality, ethnic or national origins, or the length of time they have been in the UK. To avoid discrimination One Call 24 must treat all job applicants in the same way at each stage of their recruitment process and undertake document checks on every prospective employee. One Call 24 could face prosecution under the Equality Act 2010 and an unlimited fine if they are found guilty of discriminatory processes.

Points-based immigration system

The Home Office points-based immigration system regulates the number of individuals from outside of the European Economic Area (EEA) and Switzerland wishing to work, train or study in the UK. There are four tiers. Please note tier 3 was never implemented and remains suspended:

- Tier 1: Persons of exceptional talent and graduate entrepreneur routes (previous general and post-study work routes are now closed to new applicants)
- Tier 2: Skilled workers with a job offer to fill gaps in UK labour force
- Tier 3: Limited numbers of low skilled workers needed to fill specific temporary labour shortages (this tier is suspended indefinitely)
- Tier 4: Students. UK education providers will act as a sponsor for students from outside the UK/EEA and will have to apply for a licence from the Home Office. There are two types of visas available within this tier

- Tier 5: Youth mobility and temporary workers. People allowed to work in the UK for a limited period of time to satisfy primarily non-economic objectives such as exchange schemes or agreements.

Right to work documents

To confirm that an applicant has the legal right to work in the UK, One Call 24 must see one of the documents or a combination of documents as specified in List A, or one of the documents or combinations of documents, specified in List B. No other documents or combinations of documents are acceptable.

If a document or combination of documents is provided from List A, there is no need to ask for documents from List B. All documents must be original, valid and current. There are two exceptions to the valid and current rule. One Call 24 may accept evidence of an applicant's indefinite leave to remain where this is produced in a passport which has expired, or where the applicant is a UK citizen and presents an expired UK passport. One Call 24 must undertake the same checks to verify an out-of-date passport as they would for a valid (in-date) passport and copies of documentation will need to be kept on file to avoid a penalty notice. Photocopies must not be accepted. The documents must show that the holder is entitled to do the type of work being offered.

Follow-up checks/Renewals

In certain circumstances, employers may be required to carry out follow-up checks to ensure they retain a statutory excuse. There are two categories of statutory excuse:

Continuous excuse

This is where an individual can provide one document or combination of documents from List A and there are no restrictions on their right to work in the UK. Once documents from List A have been checked, copied and retained, you do not need to conduct any repeat checks on the worker for the duration of their employment. This also applies where documentary evidence shows that the individual has indefinite leave to remain in the UK.

Time-limited excuse

This is where an individual can provide a document or combination of documents from List B which means they have time-limited and restricted right to work in the UK. The individual or

other right to work document expires. Some visas carry restrictions as to the number of hours the individual can work and/or the type of work they can do. This means that you will need to conduct a repeat check before the expiry date of the visa if you wish to continue to employ them.

The frequency of any follow-up checks depends on whether the documents presented are from Group 1 or Group 2 in List B (see table below).

Document type	Excuse type	Frequency of checks
LIST A	Continuous	<u>Before</u> employment starts only. No further checks are required for the duration of their employment.
LIST B – GROUP 1	Time-limited	<u>Before</u> employment starts and again <u>when permission expires</u> (as indicated within the document presented).
LIST B – GROUP 2	Time-limited	<u>Before</u> employment starts and again <u>after six months</u> , as set out in the Positive Verification Notice (see section on in-time applications below).

It is crucial that One Call 24 records the date of any follow-up checks required on workers who have limited leave to remain in the UK, and that these checks are completed at the correct time to retain in order to retain a statutory excuse.

The statutory excuse will continue for a further period of up to 28 days from the necessary assurances that they:

- have submitted an in-time application to UKVI, or
- have made an appeal against an immigration decision before the expiry date specified in their document.

In-time applications - The workers application must be made before their permission to work in the UK until the outcome of the application is determined.

One Call 24 must:

1. seek acceptable proof of an in-time application being made, such as a Home Office acknowledgement letter or proof of postage which indicates that an application was sent to the Home Office
2. Employer Checking Service portal to confirm that an application has been received and the individual continues to have a right to work while their application/appeal is being determined. The Home Office advises to wait for 14 days after the individual has submitted their application or appeal to ensure this has been registered. It when they are carrying out a check with the service.

The Home Office will then issue One Call 24 with a Positive Verification Notice which confirms that the named individual is permitted to carry out the type of work in question. Positive verification notices are valid for a period of six months from the issue date. One Call 24 is required to take copies of all documentary evidence, including the Positive Verification Notice, in order to retain a statutory excuse.

Appendix 1 – Acceptable Documents

List A

One Call 24 must see one original form of evidence from the single acceptable documents list or a combination of documents as specified in this list. If the individual cannot provide documents from this list, ask for documents from List B.

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 birth or adoption certificate issued 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.
9.	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.
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.

The documents listed below can be accepted where produced with an official document giving the individuals permanent national insurance (NI) number and name. This could be a P45, P60, National Insurance Card, or a letter from a Government agency or previous employer:

List A: Acceptable document combinations	
	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 birth or adoption certificate issued 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 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

Documents are only required from this list if the individual cannot provide a document or combination of documents from List A. If a prospective worker provides one of the single documents, or a combination of documents as outlined in the list below, it indicates that they only have limited leave to work in the UK. One Call 24 must therefore carry out these checks as required by the Home Office.

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 18(3) or 20(2) of the Immigration (European Economic Area) Regulations 2016, 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.

*The Home Office provides an employer checking service for verifying an individual's right to work in the UK

National insurance numbers

One Call 24 should note that the provision of a National Insurance number in isolation is not sufficient evidence for the purposes of having a statutory excuse and this must only be accepted when presented in combination with one of the appropriate documents specified in Lists A or B.

Biometric residence permit

Formerly known as the identity card for foreign nationals, Biometric Residence Permits (BRP's) allow employers to check a migrant's right to work in the UK. They are part of a national identity system that helps the UK Government, employers and other organisations check the immigration status and other entitlements of foreign nationals.

Biometric residence permits are applicable to foreign nationals of countries outside the EEA and Switzerland who are granted leave to remain in the UK. One Call 24 may accept these permits, alongside the other recommended documents, to verify the individual's identity and right to work in the UK.

EEA nationals

Nationals from EEA countries and Switzerland can enter the UK without any restrictions however they must produce a document showing their nationality. The legitimate documents are covered in List A. Nationals from the following EEA countries can enter and work freely in the UK without restriction. Their immediate family members are also able to work freely in the UK while their adult

EEA family member is legally residing and working here. However, One Call 24 will check their documents to demonstrate this entitlement.

Austria	Ireland	Spain
Belgium	Italy	Sweden
Bulgaria	Latvia	
Croatia	Liechtenstein	
Cyprus	Lithuania	
Czech Republic	Luxembourg	
Denmark	Malta	
Estonia	Netherlands	
Finland	Norway	
France	Poland	
Germany	Portugal	
Greece	Romania	
Hungary	Slovakia	
Iceland	Slovenia	

Nationals from Switzerland and their family members also have the same free movement and employment rights as EEA nationals.

There will be no changes to the ways that EU, EEA and Swiss citizens can prove their right to work until 30 June 2021.

The Home Office EU Settlement Scheme, meanwhile, has been devised to provide EU citizens and their families a further route to living and working in the UK after 31 December 2020.

One Call 24 can also view settlement status through the Home Office online service once the applicant has given you their date of birth and unique share code. This information should be maintained in line with data protection requirements.

EU Settlement Scheme

EU, EEA or Swiss citizens and their family members who were living in the UK before 1 January 2021 need to apply to the EU Settlement Scheme to continue living in the UK after 30 June 2021.

One Call 24 will not require an EEA national (or their family member) to evidence they have applied for or have been granted UK immigration status under the EU Settlement Scheme until after 30

June 2021. One Call 24 will not discriminate between those who have been granted a status under the EU Settlement Scheme and those who have not.

Irish nationals

Irish citizens will continue to have right to work in the UK under Common Travel Area arrangements. No matter what the UK's exit from the European Union, there is a commitment to maintain right to work rights between the UK and the Republic of Ireland. More information is available on the gov.uk website.

Turkish workers already residing in the UK

The European Community Association Agreement (ECAA) with Turkey provides Turkish nationals who are already legally employed in the UK with certain rights when they want to extend their stay. They can:

- apply to extend their permission to stay in the UK after they have worked in the UK for one year so that they can continue to work for the same employer (if a job is available)
- change employers after they have worked in the UK for three years, provided they are continuing to work in the same occupation
- have full access to the UK labour market and are free to work in any type of job for any employer after they have worked in the UK for a period of four years.

If an applicant is successful, UKVI will give them permission to stay as a Turkish ECAA worker and the individual will be issued with a vignette in their passport and receive a letter confirming their status. Employers will be able to use this documentation to check a potential or existing employee's right to work in the UK. However, a Turkish ECAA worker visa does not give the individual an automatic right to apply for indefinite leave to remain and any application to UKVI for indefinite leave to remain will be rejected. The duration of leave granted to an individual will be between 12 and 36 months. At the end of this period, another application must be made if further leave to remain is required.

A Turkish worker will, however, be eligible to apply for indefinite leave to remain after they have legally resided in the UK for a period of ten years, or two to 14 years of continuous residence of any legality.

Visas

Non-EEA nationals may need entry clearance before they can travel to the UK. The entry clearance process for the UK is carried out by the Home Office (UK Visa and Immigration) through a network of visa application centres around the world that process applications for entry clearance.

Particular scrutiny should be given to those individuals who present student visas and One Call 24 contact the Home Office if they are in any doubt regarding the suitability and authenticity of these documents. Individuals who currently hold a visa and who have existing leave to enter or remain granted under the old visa arrangements, will be able to extend their leave under tier two but are not required to change their status, until their leave to remain expires.

Home Office Employer Checking Service

The employer checking service allows One Call 24 to check if the migrant worker has an outstanding application or appeal with the Home Office and as a result cannot provide One Call 24 with the documents required. At present the checking service allows employers to check against the following:

1. exceptional leave to remain (ELR) and indefinite leave to remain (ILR)
2. non EEA dependants and spouses
3. discretionary leave
4. humanitarian protection
5. A2 Nationals (Bulgarian and Romanian)
6. validation of Application Registration Cards (ARC).

Validating the Right to Work documents

One Call 24 must carry out all of the following checks on all documentation:

- check photographs, where available, to satisfy yourself that they are consistent with the appearance of the individual
- check that the date of birth is consistent with the individual's identity documents and the appearance of the applicant
- check that expiry dates of any limited leave to enter or remain in the UK are still valid
- check any Government stamps or endorsements to ensure the individual is entitled to do the work being offered
- if the applicant provides documents that have different names One Call 24 must request further documentation to explain the reason for this (marriage/civil partnership certificate, divorce certificate, deed poll, adoption certificate or statutory declaration)
- dates must be cross-referenced with identity documents and work permits or confirmed by contacting appropriate embassies and consulates.

Copying and storing documents

All documents provided must be photocopied and retained on file to provide an ongoing defence against a penalty. One Call 24 make a copy of the relevant page or pages of the document in a format that cannot be subsequently altered, for example a photocopy or scan. In the case of a passport or other travel document, the following parts must be photocopied or scanned:

- for passports and travel documents, a copy should be taken of the document's front cover and any page containing the holder's personal details. In particular, you should copy any page that provides details of nationality, his or her photograph, date of birth, signature, date of expiry or biometric details
- any page containing UK Government endorsements, noting the date of expiry and any relevant UK immigration endorsement that allows your prospective or current employee to do the type of work you are offering.

Other documents should be copied in their entirety. Where you have been provided with a national identity card, both sides of the card should be photocopied. You should then keep a record of every document you have copied. The copies of the documents should be kept securely for the duration of the individual's employment and for a further six years after their employment has ceased.

The person taking the copy must sign and date the copy to show it has been certified. Although employers may request to see and take copies of other documentation of an individual's identity, only those from lists A and B in this document will be eligible for submission to establish a statutory excuse against a civil penalty.

Temporary COVID-19 Rules:

One Call 24 will apply the following measures to conduct Right to work checks during COVID-19:

- Ask the worker to submit a scanned copy or a photo of their original documents via email or using a mobile app
- Arrange a video call with the worker – ask them to hold up the original documents to the camera and check them against the digital copy of the documents
- Record the date the check was made and mark it as “adjusted check undertaken on [insert date] due to COVID-19”
- If the worker has a current Biometric Residence Permit or Biometric Residence Card or status under the EU Settlement Scheme One Call 24 will use the online right to work checking service while doing a video call - the applicant must give One Call 24 permission to view their details

This Policy will be updated in advance when these measures will end. After that date, One Call 24 will follow the checking process set out in right to work checks: an employer's guide.

One Call 24 will be asked to carry out retrospective checks on existing employees who:

- started working during these measures
- required a follow-up right to work check during these measures

One Call 24 will mark this check: “the individual's contract commenced on [insert date]. The prescribed right to work check was undertaken on [insert date] due to COVID-19.”

The retrospective check will be carried out within 8 weeks of the COVID-19 measures ending. Both checks will be kept in the candidate files for records.

Review

This policy statement will be reviewed annually as part of our commitment to upholding professional standards. It may be altered from time to time in the light of legislative changes, operational procedures or other prevailing circumstances.