

# Asylum and Immigration Evidence Guidance

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Last updated: March 2025

Version: 4.3.0

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## Purpose

The purpose of this guidance document is to outline the processes and responsibilities employers must follow to verify an employee's right to work in the UK, in compliance with Asylum and Immigration laws. It ensures that all potential employees meet the legal requirements to live and work in the UK before commencing employment with the Royal Borough of Windsor and Maidenhead (RBWM).

## Principles and guidance

- As an employer we have a duty to obtain documents that verify an employee's right to work before the commencement of employment.
- Right to work in the UK is a pre-requisite of completing the application form and so anyone coming into interview should hold right to work in the UK, however this must be verified as part of the pre-employment stage.
  - Candidates will be advised in any invite to interview correspondence that should they require a visa or other arrangements to work in the UK, that they discuss the details, and any restrictions imposed at the interview.
  - In order that employers do not knowingly employ persons not entitled to work in the UK, identity documentation to support Asylum & Immigration will be requested. All successful applicants will be advised in any offer letter that they will be required to bring supporting documentation to confirm eligibility to live and work within the UK and HR will verify the original documents and take copies of these.
  - Further details will be provided to any successful candidate, and they can arrange an appointment with Human Resources (HR).
- The Asylum and Immigration requirements (as detailed in Appendix A) sets out the requirements.
- We must as an employer obtain original documents BEFORE an employee commences work from either List A or List B of acceptable documents for a manual right to work check. When the right to work check is carried out, you must make a note of the date on which you conducted the check. This can be by either making a dated declaration on the copy or by holding a separate record securely. 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.
- Failure to record the date could result in a civil penalty. Simply writing a date on the copy document does not, in itself, confirm that this is the actual date when the check was undertaken. If you write a date on the copy document, you must also record that this is the date on which you conducted the check
- Those who apply for immigration status are now issued with an eVisa and are no longer issued physical immigration documents (such as Biometric Residence Permits) as proof of their immigration permission in the UK. Individuals with an eVisa are only able to use the Home Office online service to evidence their right to work.

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- Their right to work will need to be verified via an online check by using the online service: Check a job applicant's right to work: use their share code on GOV.UK. To use the service, you will need to request the prospective employee's share code and date of birth. Simply viewing the details provided by an applicant on their part of the service is not sufficient, rather you need to ensure you perform the check through the official employer portal linked above. You should satisfy yourself that the photograph on the online right to work check is of the individual presenting themselves for work and retain a clear copy of the response provided for the duration of employment and for 2 years afterwards.
- We must also complete an online home office (Employee Checking Service – ECS) check in respect of those who hold the following:
  - Status issued under the EU Settlement Scheme; or
  - Status issued under the points-based immigration system; or
  - British National Overseas (BNO) visa; or
  - Frontier Worker permit.
- Follow up checks as required will then occur to ensure expiry dates are not exceeded.
- RBWM do not pay for the use of the services of an Identity Service Provider.

RBWM reserves the right to revise this guidance or any of its components. Employees should review these terms periodically for any updates or changes.

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## Appendix A

### ASYLUM & IMMIGRATION CHECKLIST

Section 8 of the Asylum and Immigration Act 1996 **sets out the law on the prevention of illegal working**. It makes it a criminal offence for employers to employ someone aged 16 or over, who has no right to work in the United Kingdom, or no right to do the work we are offering. Employers in the United Kingdom are required to make documentation checks on every person they intend to employ.

A statutory excuse is an employer's defence against a civil penalty. In order to establish a statutory excuse against a civil penalty in the event that an employee is found to be working illegally, employers must do one of the following before the employee commences employment:

- a manual right to work check (all)
- a right to work check using Identity Document Validation Technology (IDVT) via the services of an Identity Service Provider (IDSP) (British and Irish citizens only)
- a Home Office online right to work check (non-British and non-Irish citizens)

#### 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 as set out below and in the linked guidance: [Annex A](#)

List A contains the range of documents you may accept for a person who has a continuous right to work in the UK (including British and Irish citizens). 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 follow-up checks on this individual.

List B contains a range of documents you may accept 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.

<b>Requirements effective from</b>	Immigration Asylum and Nationality Act 2006 (updated)
<b>Applies to</b>	All new employees from the above date
<b>General requirement</b>	Checks are made so that employers do not knowingly employ persons not entitled to work in the UK
<b>Legal defence</b>	Photocopy of original document – verified and signed by authorised person.
<b>Step 1: Obtain Documentation required</b>	<p>As an employer you must conduct a physical document check or perform an online check to establish a right to work. Where a right to work check has been conducted using the online service, the information is provided in real-time, directly from the Home Office systems and there is no requirement to see the documents listed below.</p> <p>You must obtain original documents from either List A or List B of acceptable documents for a manual right to work check.</p> <p><b>List A</b></p> <ol style="list-style-type: none"><li>1. A passport (current or expired) showing the holder, is a British citizen or a citizen of the UK and Colonies having the right of abode in the UK.</li></ol>

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	<ol style="list-style-type: none"><li>2. A passport or passport card (in either case, whether current or expired) showing that the holder is an Irish citizen.</li><li>3. A document issued by the Bailiwick of Jersey, the Bailiwick of Guernsey, or the Isle of Man, which has been verified as valid by the Home Office Employer Checking Service, showing that the holder has been granted unlimited leave to enter or remain under Appendix EU to the Jersey Immigration Rules, Appendix EU to the Immigration (Bailiwick of Guernsey) Rules 2008 or Appendix EU to the Isle of Man Immigration Rules.</li><li>4. 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.</li><li>5. 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.</li><li>6. 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.</li><li>7. 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.</li><li>8. 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.</li></ol> <p><b>List B Group 1</b></p> <ol style="list-style-type: none"><li>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.</li><li>2. A document issued by the Bailiwick of Jersey, the Bailiwick of Guernsey, or the Isle of Man, which has been verified as valid by the Home Office Employer Checking Service, showing that the holder has been granted limited leave to enter or remain under Appendix EU to the Jersey Immigration Rules, Appendix EU to the Immigration (Bailiwick of Guernsey) Rules 2008 or Appendix EU to the Isle of Man Immigration Rules.</li><li>3. 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.</li></ol>
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	<p><b>List B Group 2</b></p> <ol style="list-style-type: none"> <li>1. A document issued by the Home Office showing that the holder has made an application for leave to enter or remain under Appendix EU to the immigration rules (known as the EU Settlement Scheme) on or before 30 June 2021 together with a Positive Verification Notice from the Home Office Employer Checking Service.</li> <li>2. A Certificate of Application (non-digital) issued by the Home Office showing that the holder has made an application for leave to enter or remain under Appendix EU to the immigration rules (known as the EU Settlement Scheme), on or after 1 July 2021, together with a Positive Verification Notice from the Home Office Employer Checking Service</li> <li>3. A document issued by the Bailiwick of Jersey or the Bailiwick of Guernsey, showing that the holder has made an application for leave to enter or remain under Appendix EU to the Jersey Immigration Rules or Appendix EU to the Immigration (Bailiwick of Guernsey) Rules 2008 on or before 30 June 2021 together with a Positive Verification Notice from the Home Office Employer Checking Service.</li> <li>4. 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.</li> <li>5. 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</li> </ol>
<p><b>Step 2: Check</b></p>	<p>You must check that the documents 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.</p> <p>When checking the validity of documents, ensure you do this in the presence of the holder, either in person or via a live video link, while being in physical possession of the original documents. You cannot rely on viewing scanned copies.</p> <p>You will only be liable for a civil penalty for accepting a false document if it is reasonably apparent that it is false.</p> <p>When checking documents, ensure:</p> <ol style="list-style-type: none"> <li>1. Are photographs consistent across documents and with the person's appearance?</li> <li>2. Are dates of birth correct and consistent across documents?</li> <li>3. Are expiry dates for time-limited permission to be in the UK in the future i.e., they have not passed (if applicable)?</li> <li>4. Have you checked work restrictions to determine if the person is able to work for you and do the type of work you are offering? (For students who have limited permission to work during term-time, 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.)</li> </ol>

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	<ol style="list-style-type: none"> <li>Are you satisfied the document is genuine, has not been tampered with and belongs to the holder?</li> <li>Have you checked the reasons for any different names across documents (e.g., marriage certificate, divorce decree, deed poll)? (Supporting documents should also be photocopied and a copy retained.)</li> </ol>
<b>Step 3: Copying and Storage of documents</b>	<p>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 copy and retain:</p> <ol style="list-style-type: none"> <li>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 and undertake the work in question.</li> <li>All other documents: the document in full, including both sides of an Immigration Status Document and an Application Registration Card.</li> </ol> <p>Copies of documents should be retained for the duration of an individual's employment and for two years after termination.</p>
<b>Online right to work checks</b>	<p>A Home Office online right to work check will provide you with a statutory excuse against a civil penalty in the event of illegal working involving the subject of the check. You can do an online check by using the online service, entitled <a href="#">'View a job applicant's right to work details'</a> on GOV.UK.</p> <p>We recommend you use the:</p> <ul style="list-style-type: none"> <li>employers' <a href="#">'Right to Work Checklist'</a> to ensure you have correctly carried out all the steps you need to; or</li> <li>online interactive tool <a href="#">'Check if someone can work in the UK'</a>, which will take you through the process by asking you a series of questions.</li> </ul> <p>Both will help you to confirm that you have undertaken each step correctly to establish your statutory excuse.</p> <p>It will not be possible to conduct a Home Office online right to work check in all circumstances, as not all individuals will have an immigration status that can be checked online. The online right to work checking service sets out what information you will need to complete an online check. In circumstances in which an online check is not possible, you should conduct the manual check.</p> <p>Currently, the Home Office online service supports checks for a range of individuals, depending on the type of immigration documentation they are issued with. The use of digital proof of immigration status forms part of our move towards a UK immigration system that is digital by default. This will be simpler, safer, and more convenient.</p>



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	<p>Some individuals have been issued with an eVisa and can only use the online service to prove their right to work.</p> <p>This means you cannot accept or check a physical BRC, BRP or FWP as proof of right to work.</p> <p><b>3 basic steps to conducting an online right to work check</b></p> <ol style="list-style-type: none"> <li>1. Use the Home Office online right to work checking service (the <a href="#">'View a job applicant's right to work details'</a> on GOV.UK) in respect of an individual and only employ the person, or continue to employ an existing employee, if the online check confirms they are entitled to do the work in question.</li> <li>2. Satisfy yourself that any photograph on the online right to work check is of the individual presenting themselves for work.</li> <li>3. Retain a clear copy of the response provided by the online right to work check (storing that response securely, electronically or in hardcopy) for the duration of employment and for 2 years afterwards.</li> </ol>
<p><b>Using an Identity Service Provider (IDSP)</b></p>	<p>Employers can use IDVT via the services of an IDSP to complete the digital identity verification element of right to work checks for British and Irish citizens who hold a valid passport (including Irish passport cards)</p> <p>If you use the services of an IDSP for digital identity verification, holders of valid British or Irish passports (or Irish passport cards) can demonstrate their right to work using this method. This will provide you with a continuous statutory excuse.</p> <p>It is your responsibility to obtain the IDVT check from the IDSP. You will only have a statutory excuse if you reasonably believe that the IDSP has carried out their checks in accordance with this guidance.</p> <p>If you are using the services of an IDSP, please refer to the Digital Identity Verification annex: <a href="#">Right to work checks: an employer's guide</a></p> <p><b>3 basic steps to conducting a right to work check using an IDSP</b></p> <ol style="list-style-type: none"> <li>1. Use levels of confidence. The Home Office recommends that employers only accept checks via an IDSP that satisfy a minimum of a Medium Level of Confidence. A list of certified providers is available for you to choose from on GOV.UK: <a href="#">Digital identity certification for right to work, right to rent and criminal record checks</a> It is not mandatory for you to use a certified provider; you may use a provider not featured within this list if you are satisfied that they are able to provide the required checks.</li> <li>2. Satisfy yourself that the photograph and biographic details (for example, date of birth) on the output from the IDVT check are consistent with the individual presenting themselves for work (i.e., the information provided by the check relates to the individual and they are not an imposter).</li> <li>3. Retain a clear copy of the IDVT identity check output for the duration of employment and for two years after the employment has come to an end.</li> </ol>



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<b>The Penalty</b>	<p>If you have correctly carried out the above 3 steps, Obtain, Check and Copy, you will have a statutory excuse against liability for a civil penalty if the prospective or existing employee is found working for you illegally. However, you need to be aware of the type of excuse you have as this determines how long it lasts for, and if, and when you are required to do a follow- up check.</p> <p>If the documents that you have checked and copied are from:</p> <ul style="list-style-type: none"><li>• List A: You will establish a continuous statutory excuse for the duration of that person's employment with you if you have conducted the right to work checks correctly before employment begins. You do not have to conduct any further checks on this individual.</li><li>• List B group 1: You will establish a time-limited statutory excuse which expires when check the person's permission to be in the UK expires. You should carry out a follow-up when the document evidencing their permission to work expires.</li><li>• List B group 2: You have 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.</li></ul> <p>You must obtain original documents from either List A or List B of acceptable documents for a manual right to work check.</p> <p>You will commit a criminal offence under section 21 of the Immigration, Asylum and Nationality Act 2006, 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 five years' imprisonment and/or an unlimited fine.</p>
<b>Current Home Office guidance on A&amp;I checking</b>	<p>For further guidance on the prevention of illegal working in the UK and in particular List A and B documents, refer to:</p> <ul style="list-style-type: none"><li>• <a href="#">Employer's guide to right to work checks</a></li><li>• <a href="#">Employers' right to work checklist</a></li></ul>

## Document History

Version	Date	Contributor	Approver	Descriptions
V4.3.0	March 2025	Lead HR Business Partner HR Recruitment and Resourcing Specialist HR Policy and Reward Manager	Service Lead - HR Operations and Corporate Projects	Updated in line with the Home Office's recent update to the Employer Guide on Right to Work Checks in February 2025.