

UK Research and Innovation

UKRI Prevention of Illegal Working Policy

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Policy Statement

As an employer we have a legal responsibility to prevent illegal working in the UK. The Immigration, Asylum and Nationality Act 2006 places the requirement for all employers to conduct basic document checks on every person that they intend to employ. By undertaking the document checks we can be reassured we are complying with our legal obligations and are doing everything possible to only employ people who are allowed to work in the UK. So long as these document checks are carried out we have a 'statutory excuse' against legal liability should it later turn out that one of our employees is not entitled to work in the UK.

With effect from the 16 May 2014 the Home Office guidance for the prevention of illegal working has been amended and as such the following guidance reflects the new requirements as shown on the Home Office website at the following location:

<https://www.gov.uk/government/collections/employers-illegal-working-penalties>.

The resident population of the UK contains a diverse range of ethnic groups and there are many people from outside the UK who are legally entitled to work here. It is important to remember therefore that the checks on entitlement to work in the UK need to be conducted for every person we employ, regardless of their race, ethnicity or nationality, to avoid any potential discrimination.

1. Principles

1.1 Who does this policy apply to?

- 1.2 This policy applies to all of our employees, visitors (excluding day visitors), contractors, agency workers and prospective employees, irrespective of race, ethnicity or nationality.

2. Delegation

- 2.1 The UKRI Chief People Officer delegates responsibility to the appropriate nominated HR resourcing employee within each Council.

- 2.2 The nominated HR resourcing employee is responsible within their Council to ensure that each individual's Right to Work check is carried out in line with Home Office guidance for the prevention of illegal working.

- 2.3 Right to Work checks can only be carried out by employees of UKRI.

3. Why is it important?

- 3.1 It is unlawful to employ anyone who does not have the right to work in the UK.

- 3.2 If we are found to be employing an illegal worker, we could be subject to a fine of up to £20,000 per illegal worker.

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- 3.3 It is also a criminal offence to knowingly employ an illegal worker; if found guilty of this offence we may face an unlimited fine and the individuals responsible could face up to five years imprisonment.
- 3.4 In addition, were we to be found to be employing someone illegally this would result in very damaging adverse publicity; it could also damage our standing with the Home Office in more general terms, which in turn could have a negative impact on our ability to retain our licence as a sponsor of employees under Tier 2 of the UK's Points Based System. If we were to lose our licence this would have very far reaching implications and reputational damage to UKRI
- 3.5 Given the importance of these requirements, compliance with this policy is **mandatory**. A failure to comply with the Prevention of Illegal Working Act, will be treated as a disciplinary offence which, depending on the circumstances, could be considered an act of gross misconduct.
- 3.6 **Who has responsibility for carrying out the initial checks?**
- 3.7 Retained HR/Line managers will have the primary responsibility for carrying out the necessary checks, supported by the UK SBS Immigration Team.

4. When must the initial check be carried out?

- 4.1 For prospective employees, the right to work checks should be conducted at the interview stage of the recruitment process. If, for any reason, this is not possible, the necessary documents must be presented and verified **prior** to the first day of employment; note: in all respects only original documents must be accepted and the individual must be present at the point of check (either in person or via a live video link). If the relevant documents have not been checked and verified, the individual **will not** be permitted to commence their employment with us.

NOTE: applicants will not be entered onto the relevant HR People System without evidence of their right to work in the UK

- 4.2 Please see below for information regarding the repeat checks which may be required.

5. How to carry out a check

- 5.1 There are three steps to the process:

5.2. Step 1

- 5.2.1 Ask for and be given original documentation, consisting of either:

5.2.1.1 one of the single documents, or two of the documents in the specified combination given, from List A (attached to this Guide as Appendix B); or

5.2.1.2 one of the single documents, or two of the documents in the specified combination given, from List B (attached to this Guide as Appendix C)

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5.2.1.3 Although the full Lists A and B are included for reference at the relevant Appendices, some examples of common documents which may be presented during this process have been included on page 4.

5.2.2 You must only accept original documents.

5.3 Step 2

5.3.1 When you see the document, you must take **reasonable steps** to satisfy yourself that the person presenting the documents is the rightful holder and is allowed to undertake the work that we are offering, by:

5.3.1.1 Checking that the photographs are consistent with the appearance of the person presenting them. (This means that you will need to see the individual when they present their documents to you);

5.3.1.2 Checking the consistency of the date of birth on all the documents presented and that it matches with the person's appearance (this again means that you will need to see the individual when they present their documents to you);

5.3.1.3 Checking that the expiry dates of any visas have not passed (this means that you will need to carefully examine any visas to check they are still valid); and

5.3.1.4 Checking any UK government endorsements (biometric resident permits, stamps, stickers, visas etc) to see if the person is able to do, or to continue to do, the type of work being offered. (This means that if a person has restrictions on the type of work they can do, or the amount of hours they can work, you need to be satisfied that their work does not contravene these requirements.)

5.3.2. You should satisfy yourself, as far as possible, that the documents are genuine, have not been tampered with, and belong to the holder. If you have any concerns at this point contact the UK SBS Immigration Team.

5.3.3. The Home Office guidance for identifying fraudulent documents can be found at the following location:

[https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/455424/guide - including impostors and TDs.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/455424/guide_-_including_impostors_and_TDs.pdf)

5.3.4. If you are given two documents which state different names, you will need to ask the individual for a further document to explain this discrepancy (for example, a marriage certificate, a divorce decree absolute, a deed poll, or a statutory declaration). Again, you will need to see the original of this document.

5.4 Step 3

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- 5.4.1 You must take a copy of the relevant page(s) of the document(s). This copy must be clear; please make sure it is possible to identify any photos/stamps/endorsements etc.
- 5.4.2 In the case of a passport, or other travel document, you must copy or scan:
- 5.4.2.1 Any page containing the holder's personal details (in particular, details of nationality, date of birth, a photograph, signature, date of expiry or biometric details); and
 - 5.4.2.2 Any page containing UK Government endorsements showing that the holder has permission to be in the UK and has the right to carry out the work in question.
 - 5.4.2.3 All other documents must be copied in full (including both sides of a biometric residence permit or national identity card).
- 5.4.3. The line manager checking the document must certify the copy, using the UKRI Right to Work Verification Template, contained in Appendix E, as being a true and accurate copy of the original and that the original has been seen. The line manager must also sign, print their name and date the template.

6 What documents are acceptable?

- 6.1 The Home Office has published detailed guidance regarding the documents that must be checked. They are separated into two types - List A and List B documents; List B consists of two distinct groups of documents that have specific time limited requirements placed on them. Only documents included on these lists are acceptable; no other documents will be accepted by the Home Office.
- 6.2 There are strict rules about which documents will be acceptable to prove that an individual has the right to work in the UK. Appendix 3 includes a list of some documents which are frequently presented to employers but which are not acceptable in proving that an employee has the right to work (as they are not included in either List A or List B). Details about the documents shown above or on the attached Appendices, along with further guidance, are available in the 'Full guide for employers on preventing illegal working in the UK' which can be downloaded from the following location: <https://www.gov.uk/government/publications/right-to-work-checks-employers-guide>
- 6.3 **List A Documents**
- 6.3.1 Documents that fall within the List A category show that the holder is not subject to immigration control or has no restrictions on their ability to be in the UK, so they have an ongoing right to work in the UK. These documents only need to be checked once, at the point of recruitment. A copy of List A is included at Appendix B of this Guide.
- 6.3.2 We have set out below some of the documents which you are most likely to be presented with when you conduct these checks. However, you should speak to the

UK SBS Recruitment or Immigration team if you are in any doubt about whether the document which you have seen gives an employee the right to work.

6.4 Common List A documents (these only need to be seen on recruitment):

- UK passport;
- Passport or national identity card showing that the holder is a national of an EEA country or Switzerland;
- A biometric residence permit issued by the Home Office that indicates that the person named on it is allowed to stay in the UK indefinitely;
- A P45/P60/NI number card AND a full birth certificate issued in the UK.

6.5 List B Documents

6.5.1 Documents that fall within the List B category (either Group A or Group B) show that the holder has been granted leave to enter or remain in the UK for a limited period of time or that they have restrictions on their right to work. These documents need to be checked at specified times in accordance with Appendix C of this Guide.

6.6 Expired Passports:

6.6.1 Under the new regulations the following documents must be current (i.e. have not expired) to provide a statutory excuse:

- Biometric Residence Permits;
- Immigration Status Documents;
- Passports which are not held by a British Citizen (or a citizen of the UK and Colonies having a right of abode in the UK) or a national of a European Economic Area (EEA) country or Switzerland; and
- Residence Cards (including Accession Residence Cards and Derivative Residence Cards) issued to a non EEA national who is a family member of a national of an EEA country or Switzerland.

6.6.2 Visa Stamps in expired passports (e.g Indefinite Leave to Remain stamp). Legislation now states that visa stamps in expired passports no longer give an employer a statutory excuse under the Prevention of Illegal Working Act. If a person presents documentation in expired passports consult the UK SBS Immigration Team as early as possible in the recruitment process. Without the potential employee providing correct documentation they will not be able to commence employment with UKRI.

6.7 Retaining copies

6.7.1 After the List A or B documents have been verified and checked (as per the 3 Steps set out above), the certified template must be sent to UK SBS, via retained HR, where arrangements will be made to retain them in a secure manner on UCM. Access to these documents will be via the individual's Oracle record clipboard interface with UCM.

6.7.2 Copies must be kept for the duration of the person's employment, and then for not less than two years after they have stopped working for us. This is a Home Office requirement to which we must comply, and forms part of our Records Management Policy.

7. Repeat checks

7.1 When are the repeat checks necessary?

7.2 Repeat checks are required if the individual has a time limit on their ability to enter or remain in the UK or has restrictions on their right to work.

(I.E. whenever a List B (either Group 1 or Group 2) document (or combination of documents) is presented as evidence of the right to work.)

7.3 The repeat document checks must take place in accordance with the requirements shown at Appendix C, or, if the right to work is dependent on a visa, on expiry of the visa, whichever is sooner. The repeat checks are in addition to the initial checks carried out at the commencement of employment.

7.4 Please note that if, on a repeat check, an individual presents a List A document, then no further checks are necessary for the duration of the person's employment with us. In all cases the relevant documentation must be presented to the UK SBS Immigration team for retention as above.

7.5 For all Group 1 documents, the UK SBS Immigration team will undertake reporting actions in line with both the contract and visa expiry of the individual and review whether notification has been received from the individual and/or retained HR to evidence that further repeat checks are not required. If further repeat checks are required, in accordance with Appendix C, the UK SBS Immigration team will advise retained HR of the relevant details and appropriate actions will be taken to either make the individual a leaver, undertake further Employer Verification Checks via the Home Office or for arrangements to be made for the individual to undertake any appropriate further leave to remain application through the Home Office and any relevant sponsor.

7.6 In all cases relating to Group 2 documents, the UK SBS Immigration team will, on a monthly basis, undertake an Oracle report to identify individuals who require a further Employer Verification Check and then provide retained HR with a consolidated list of the impacted individuals; once retained HR have confirmed that there are no issues relating to the individual, the UK SBS Immigration team will contact the individual in accordance with the Appendix C process and then complete the Home Office Employer Verification Check. Subsequent actions will be initiated subject to the relevant response.

7.7 How is a repeat check carried out?

7.7.1 If a repeat check is required, please repeat Steps 1 to 3 above.

7.7.2 In summary, original documentation should be viewed, copied and verified, and the copy should be kept on the individual's personnel file via UK SBS.

7.8 Who has responsibility for carrying out the repeat checks?

7.8.1 The UK SBS Immigration team will notify both retained HR and the individual when the checks are due and retained HR will have the primary responsibility for carrying out these checks. In the event of any queries about the repeat checks please speak to a member of the UK SBS Immigration team.

8. Policy Review

8.1 This policy will be regularly reviewed to incorporate any legislative change. Trade Unions may request that the policy is reviewed.

9. Amendment History

Version	Date	Comments / Changes
1.0	10 May 2018	Publication

Appendix A - Frequently Asked Questions

1. Set out below are answers to some Frequently Asked Questions; however, if there are any questions about this policy or how it operates please speak to a member of the UK SBS Immigration team.
2. ***Can I accept an expired passport as proof of right to work?***
 - 2.1. **For UK nationals and nationals from the EEA:** You should, where possible, check a current passport or travel document which have not expired. However, if a person from the UK or the EEA does not have a current passport then you can accept evidence of their right to work in the UK in an expired passport or travel document.
 - 2.2. If you have to rely solely on an expired passport or travel document to show you that a person has a right to remain and work in the UK, then you must take particular care when examining photographs and comparing these with the current appearance of the person presenting them. Also, you should note the date of birth on the expired document and satisfy yourself that this is consistent with the current appearance of the holder.
 - 2.3. **For Non UK/EEA nationals:** Only current passports or travel documents are acceptable.
3. ***Can I accept a short form birth certificate as proof of right to work?***
 - 3.1. No, this is not one of the List A or List B documents and therefore is not effective to establish that an individual has the right to work in the UK.
4. ***Can I accept a driving license as proof of right to work?***
 - 4.1. No, this is not one of the List A or List B documents and therefore is not effective to establish that an individual has the right to work in the UK.
5. ***Can I accept a National Insurance number as proof of right to work?***
 - 5.1. No, this alone is not one of the List A or List B documents and therefore is not on its own effective to establish that an individual has the right to work in the UK. However an NI card can be used to establish the right to work in the UK if it is presented in conjunction with another document as per the List A requirements (such as a full birth certificate).
6. ***What documents do I need to see for EEA nationals?***
 - 6.1. You need to see a passport or national identity card showing that the holder is a national of an EEA country.
7. ***Which countries form the EEA?***
 - 7.1. The EEA consists of:

Austria	Belgium	Bulgaria	Croatia*
Cyprus	Czech Republic	Denmark	Estonia
Finland	France	Germany	Greece

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Hungary	Iceland	Irish Republic	Italy
Latvia	Liechtenstein	Lithuania	Luxembourg
Malta	Netherlands	Norway	Poland
Portugal	Romania	Slovakia	Slovenia
Spain	Switzerland	Sweden	UK nationals

*NB: Although they are part of the EEA, special rules apply to Croatian nationals.

8. What requirements are there for employing or engaging with Croatian Nationals?

8.1. Due to the specific requirements in place for employing or engaging with Croatian nationals, it is recommended that specific instruction is requested from the UK SBS Immigration team as soon as practicable.

9. Do I need to carry out the checks for short term staff?

9.1. Yes, all of our employees are subject to these checks; we must establish that all employees have the right to work before they start their employment.

10. Do I have to do this for all staff?

10.1. Yes, all our employees are subject to these checks; we must establish that all employees have the right to work before they start employment.

11. Why do I need to do this?

11.1. It is important to ensure that we comply with our legal obligations to make sure that all employees have the right to work in the UK. If we are found to be employing an illegal worker, we could be subject to a fine of up to £20,000 per illegal worker. It is also a criminal offence to knowingly employ an illegal worker. You, personally, could be found guilty of this offence, in which case you could face an unlimited fine and up to five years imprisonment.

11.2. In addition, any failure to comply with the terms of this policy will be treated as a serious disciplinary offence, which may be considered as an act of gross misconduct.

12. What should I do if an individual cannot provide me with a document that proves they have the right to work?

12.1. Speak to the relevant contact in the UK SBS Recruitment or Immigration team regarding potential new starters or the HR Operations or Immigration team regarding current employees.

13. Who do I contact if I need more help with carrying out the checks?

13.1. In the first instance it is recommended that retained HR are contacted for advice; if further information is required the relevant contact in the UK SBS Recruitment team (regarding potential new starters) or HR Operations team (regarding current employees) should be contacted or enquiries may be made with the UK SBS Immigration team via the following: ImmigrationTeam@uksbs.co.uk.

Appendix B – Documents which show an ongoing Right to Work

Under the regulations which came into force on 16 May 2014 you may not accept an expired passport unless it is a UK passport or a passport issued by a member state of the European Economic Area. Expired passports issued by any other country are not acceptable, even if they purport to contain older immigration stamps conferring indefinite leave to enter or remain. This is to strengthen protection against the use of forged documents by illegal workers.

If you have to rely solely on an expired passport or travel document to show you that a person has the right to remain and work in the UK, then you must take particular care when examining photographs and comparing these with the current appearance of the person presenting them. Also, you should note the date of birth on the expired document and satisfy yourself that this is consistent with the current appearance of the holder.

- A passport showing that the holder, or a person named in the passport as the 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 showing that the holder, or a person named in the passport as the child of the holder, is a national of the European Economic Area or Switzerland.
- A residence permit, registration certificate or document certifying or indicating permanent residence issued by the Home Office to a national of 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 Biometric Residence Permit issued by the Home Office to the holder which indicates that the person named in it is allowed to stay indefinitely in the United Kingdom, or has no time limit on their stay in the United Kingdom.
- A current passport or other travel document endorsed to show that the holder is exempt from immigration control, is allowed to stay indefinitely in the United Kingdom, has the right of abode in the United Kingdom, or has no time limit on their stay in the United Kingdom.

The following documents must be accompanied by an official document issued by a previous employer or a Government agency (e.g. HMRC, DWP or Jobcentre Plus) showing the person's National Insurance number and name:

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- A current immigration Status Document issued by the Home Office to the holder with an endorsement indicating that the person named in it is allowed to stay indefinitely in the United Kingdom or has no time limit on their stay in the United Kingdom.
- A full birth certificate issued in the United Kingdom which includes the name(s) of at least one of the holder's parents.
- A full adoption certificate issued in the United Kingdom which includes the names(s) of at least one of the holder's adoptive parents.
- A birth certificate issued in the Channel Islands, the Isle of Man or Ireland.
- An adoption certificate issued in the Channel Islands, the Isle of Man or Ireland.
- A certificate of registration or naturalisation as a British citizen.

Appendix C - Documents which show a Right to Work for a limited period of time

The following Table (List B) lists 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.

GROUP 1 DOCUMENTS:

- If the employee is able to produce a current document in Group 1 or 2, a follow-up check should be made using this document. Any 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, we are reasonably satisfied that the employee has an outstanding application or appeal to vary or extend their leave in the UK, any 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 us as

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the employer to verify whether the employee has permission to continue working for us.

- During this 28 day period we, via the UK SBS Immigration Team, 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. We will then need to make a further check, as above, upon its expiry.
- In the event that a **Negative Verification Notice** is received, any statutory excuse will be terminated and we should **not** engage with, employ, or continue to employ this person, as this notice confirms that they do **not** have permission to do the work in question.

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, we will not have a statutory excuse and we should no longer employ that person; further advice should be sought from the UK SBS Immigration team to identify an appropriate response to the situation.

It is possible for someone to make an application after their permission to be in the UK has expired, but it must normally be within 28 days of expiry. Although the Home Office may consider and grant such applications, it is important to note that we will not be able to employ this individual pending the outcome of their application. This is because when an application or appeal is made 'out of time' any previous permission to work expires when their previous permission to be in the UK expires. It is therefore important that a person makes an application to the Home Office before their permission to be here expires.

GROUP 2 DOCUMENTS:

If the prospective employee or employee holds one of the documents in Group 2, 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 to remain, we, via the UK SBS Immigration team, must contact the Employer Checking Service and receive a Positive Verification Notice. Any time-limited statutory excuse will last for six months from the date specified in the Positive Verification Notice. We will then need to make a further check, as above, upon its expiry.

Points for making the Employer Check:

It is suggested that before requesting any verification check, there is a delay of **14 days** from the date of the individual's visa application or appeal being made in order for that application or appeal to be registered at the Home Office.

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The UK SBS Immigration team will receive a response from the Employer Checking Service - either a Positive Verification Notice or a Negative Verification Notice - within **5 working days**. It is the responsibility of the UK SBS Immigration team to inform the person we intend to employ, or continue employing, that they are carrying out this check.

Appendix D - Documents which are not acceptable for proving Right to Work

The following documents are not acceptable for proving a person has the right to work in the UK and will not provide us with an excuse against payment of a civil or criminal penalty:

- A Home office Standard Acknowledgement Letter or Immigration Service Letter (IS96W) which states that an asylum seeker can work in the UK. If you are presented with these documents then you should advise the applicant to call the Home Office, details of how can be found at <https://www.gov.uk/visas-immigration> for information about how you they can apply for an Application Registration Card;
- A National Insurance number on its own in any format;
- A driving license issued by the Driver and Vehicle Licensing Agency;
- A bill issued by a financial institution or a utility company;
- A passport describing the holder as a British Dependant Territories Citizen which stated that the holder has a connection with Gibraltar;
- A short (abbreviated) birth certificate issued in the UK which does not have details of at least one of the holder's parents;
- A license provided by a Security Industry Authority;
- A document check by the Criminal Records Bureau;
- A card or certificate issued by the Inland Revenue under the Construction Industry Scheme.

Appendix E - UKRI Right to Work Verification Template

Name:

Employee Number:

Place Document here

I certify this is a true likeness of the original document.

Sign:

Print Name:

Date of check: