

GUIDANCE FOR SCHOOLS ON CONDUCTING RIGHT TO WORK CHECKS (OCTOBER 2022)

Since 1 January 2021 a new points-based immigration system has applied to people arriving in the UK and EU citizens moving to the UK to work since this date need to get a visa in advance.

EU citizens applying for a skilled worker visa will need to show they have a job offer from an approved employer sponsor to be able to apply. The council has made the decision **not** to apply for a sponsorship licence at this time. This means that we are not able to sponsor anyone under the new immigration system, and are only able to consider job applications from those who have the right to work in the UK.

Checking a candidate's right to work in the UK from 1 January 2021

You may 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 Home Office systems and there is no requirement to physically see documents.

Details of the documents that may be obtained for a physical check can be found in the [Employers right to work checklist](#)

If a candidate uses the online checking service this will generate a share code. Schools must then use the [employers' online service](#) to check the candidate's right to work using this share code.

EU Settlement Scheme

EU, EEA or Swiss citizens and their family members who are 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.

Right to Work check – obtain, check and copy the documentation

Use the Home Office [Right to Work Checklist](#) to ensure you correctly carry out all the steps you need to; or their online interactive tool '[Check if someone can work in the UK](#)' which will take you through the process by asking you a series of questions. Both will help you to confirm that you have undertaken each step correctly.

You need to establish that the successful candidate is a national of a [European Economic Area \(EEA\) country](#) (see [Annex B](#) of the Home Office employer's right to work check guide – Nationals from the EEA and their family members), a citizen of Switzerland or legally entitled to work in the UK.

Complete the following steps in order to conduct a manual right to work check. You need to complete all three steps before employment can commence.

1. You must check that the successful candidate has produced one of the documents, or combination of documents, described in the UK Border Agency's [List A or List B](#) (set out at Annex A of the Home Office employer's right to work check guide).

2. You must check that the documents are genuine and that the person presenting them is the successful candidate, the rightful holder and allowed to do the type of work you are offering. You must check:
 - photographs and dates of birth are consistent across documents and with the person's appearance in order to detect impersonation;
 - expiry dates for permission to be in the UK have not passed;
 - any work restrictions to determine if they are allowed to do the type of work on offer (for students who have limited permission to work during term-times, you must also obtain, copy and retain details of their academic term and holiday times covering the duration of their period of study in the UK for which they will be employed);
 - the documents are genuine, have not been tampered with and belong to the holder; and
 - the reasons for any difference in names across documents can be explained by providing evidence (e.g. original marriage certificate, divorce decree absolute, deed poll). These supporting documents must also be photocopied, and a copy retained.

Further information about checking the validity of documents can be found within the [Home Office employer's right to work check guide](#). If you are unsure if a document is valid or not, call the Home Office Employer Enquiry Helpline on 0300 123 5434.

3. You must make a clear copy of each document in a format that cannot manually be altered. You must also retain a secure record of the date on which you made the check. 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 (e.g. **'the date on which this right to work check was made: [insert date]'**). You must also record the date of the check on the Single Central Record.

Do not retain a person's original documents, except for the purpose of copying them. Original documents should not be retained for more than a day. If documents are deliberately kept, or retained without consent, this may be classed as an offence.

What should be copied?

Passports - any page with the document expiry date, the holder's nationality, date of birth, signature, leave expiry date, biometric details, photograph and any page containing information indicating the holder has an entitlement to enter or remain in the UK (visa or entry stamp) and undertake the work in question (the front cover no longer has to be copied).

All other documents - the document in full, including both sides of a Biometric Residence Permit, Application Registration Card and a Residence Card (biometric format).

If you establish that the successful candidate is not permitted to work in the UK

You are entitled to refuse employment to that person. The onus is on the successful candidate to show you that they have the right to work in the UK.

If you conduct an online right to work check and the information provided by the Home Office online right to work checking service indicates that the successful candidate's right to work is time-limited, you must conduct a follow-up right to work check shortly before that permission (as set out in the online check) expires. If the individual's right to work is not time-limited, there is no requirement for you to repeat the check.

List A and List B documents and Follow-up checks

If a document (or documents) from **List A** is provided, there is no restriction on the right to work in the UK. There is no requirement to conduct any follow-up checks.

If a document (or documents) from **List B** is provided, there are restrictions on the right to work in the UK and you are required to conduct follow-up checks. The frequency of these follow-up checks depends on the document(s) you were provided with. For **Group 1** documents, follow-up checks should be undertaken before the person's permission to work expires. For **Group 2** documents, follow up checks should be undertaken prior to the expiry of the Positive Verification Notice.

When undertaking a follow-up check, you should follow the same manual process outlined above. A copy of the documentary evidence provided should be scanned and stored on the employee's personal file. If the employee is unable to provide the necessary documents at the time of the follow-up check, you should not allow them to work. Contact the Schools HR Team for further advice.

Important information:

- It is down to the employer to provide the necessary defence when challenged.
- Failure to provide the required information could leave you open to possible civil penalties.
- It is an employer's responsibility to be satisfied of the successful applicant/employee's right to work in the UK in having a defence in meeting the 2006 Act.

Further external links:

1. [Preventing illegal working FAQs](#)
2. [Right to work checks: an employer's guide](#)