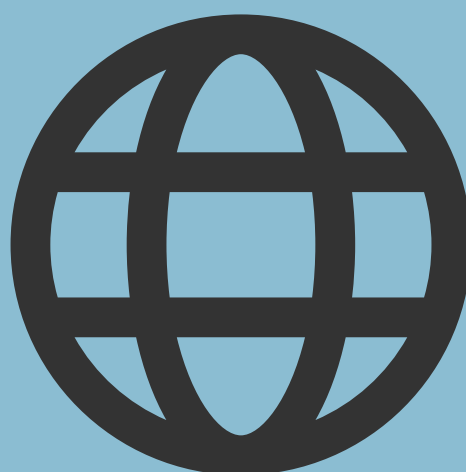


Right to Work Checks

Guidance for employers and HR professionals



Right to Work Checks

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Right to Work Checks

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What are Right to Work checks?

A right to work check is a legal requirement for employers to verify the lawful immigration status of all job applicants (and in some cases, existing employees) before an offer can be made. Failure to do so may result in the employer being liable for a civil penalty of up to £20,000 for each employee who is working illegally in the UK. In some instances, there are also criminal offences and sanctions. Where employers are also sponsor licence holders, they risk downgrading/revocation of the sponsor licence, in cases of illegal working.

Right to work checks are required for everyone (including British and Irish nationals as well as EEA and non-EEA nationals) prior to commencing employment and, for anyone with time limited permission to work in the UK, follow up checks must be undertaken prior to their visas expiring.

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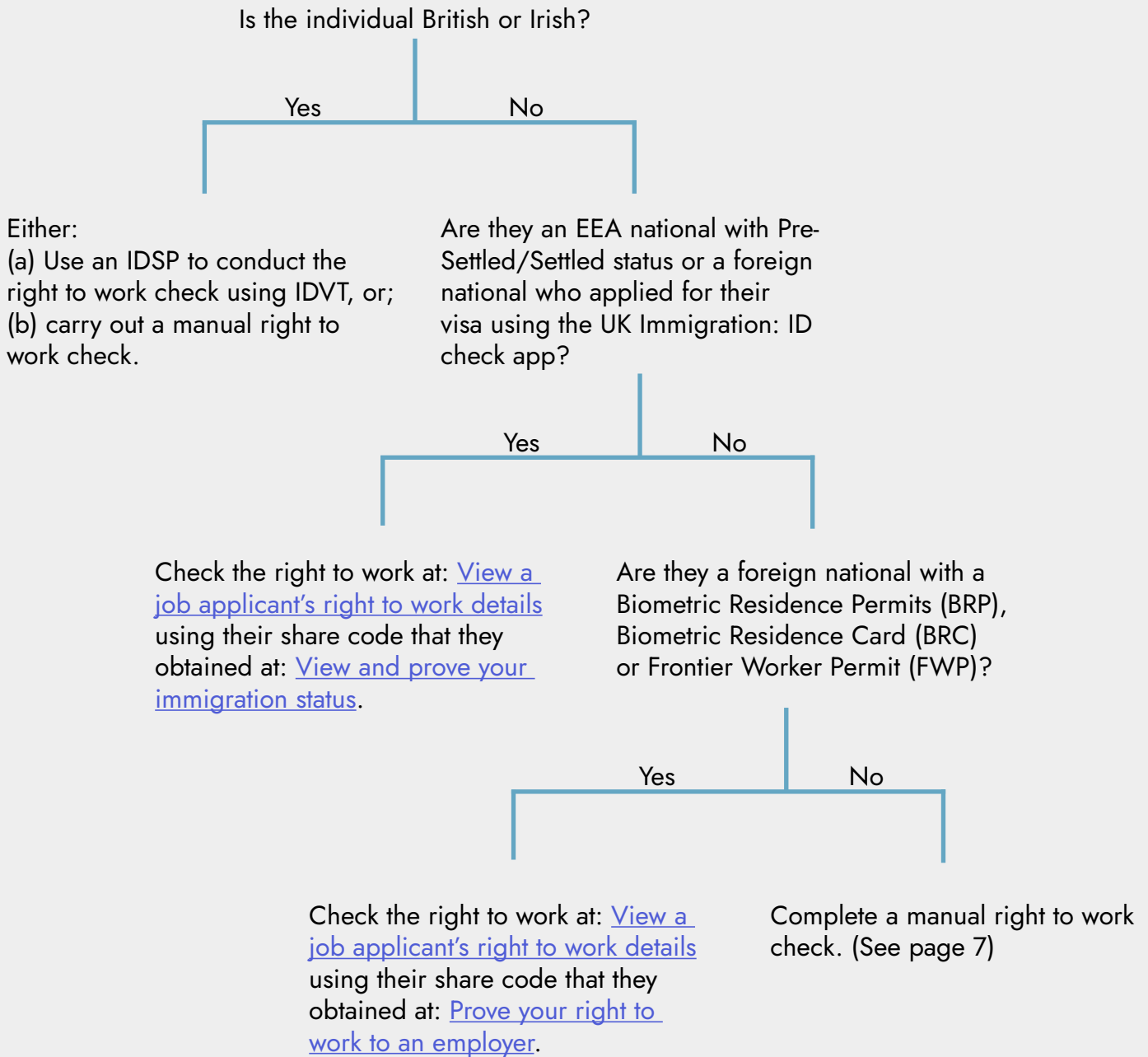
What's changing from 1st of October?

- The Home Office online checking service will still be mandatory for Biometric Residence Permits (BRP), Biometric Residence Cards (BRC) or Frontier Worker Permits (FWP) holders. European nationals with Settled or Pre-Settled status also demonstrate their status (and their right to work), online.
- For foreign nationals without these cards, manual checks will still be accepted but, the covid-19 concession which permitted employers to check scanned copy documents (from one of two lists of acceptable evidence) during the manual check, will end. In other words, for these individuals, employers will need to request, review, copy and verify (in person or via video call with the individual) original, physical documents.
- To establish the right to work of British/Irish nationals, employers must either: a) revert to the previous (cumbersome) “manual” right to work checks of original, physical identity documents outlined above (it will no longer be permissible to rely on scanned copy documents, as set out above) and verify these against the appearance of the individual either in person or via video call, or b) they must conduct a digital check via an Identity Service Provider (IDSP) using Identity Document Validation Technology (IDVT). The latter, new digitised approach will be better suited for the modern workforce, with homeworking more common and for businesses which operate across several offices. Correct use of an IDSP to complete the right to work check, will, allow the employer, as the “relying party” to have a statutory defence against civil penalties for illegal working.
- After all digital ID checks (in-date British/Irish or eVisa), an employer must confirm the candidate's identity either via video call or in person after the check and before employment commences.

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What's changing from 1st of October?



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Checklist for employers and HR professionals

EEA national with Pre-Settled/Settled Status or foreign nationals who applied for their visa using the UK ID check app

You can ask the employee for their “share code” issued to them by the UK Home Office so that you can conduct an online right to work check via the Home Office. You will need the person’s date of birth and their work “share code” before starting. The individual will need to visit: [View and prove your immigration status](#) to access their account to demonstrate their status and obtain their share code.

Biometric Residence Permits (BRP), Biometric Residence Cards (BRC) or Frontier Worker Permit (FWP) holders

Again, you can ask the employee for their “share code” issued to them by the UK Home Office so that you can conduct an online right to work check via the Home Office. You will need the person’s date of birth and their work “share code” before starting. These individuals will need to visit: [Prove your right to work to an employer](#) to access their account to demonstrate their status and obtain their share code.

Foreign nationals with a visa which is not an e-visa and is not contained in a BRP, BRC or FWP

You must conduct a “manual” right to work check of original, physical identity documents. (See page 7)

British and Irish nationals

You can either: a) conduct a “manual” right to work check (see page 7) of original, physical identity documents, or b) you must conduct a digital check via an Identity Service Provider (IDSP) using Identity Document Validation Technology (IDVT).

Right to Work Checks

A checklist for employers and HR professionals

IDVT

IDSPs use IDVT for right to work checks. IDVT verifies the identity of a person by analysing a digital copy of a physical document relating to that person and identifying whether that person is the rightful holder of the document. To rely on this technology, the individual must upload a digital copy of either a valid (i.e. current/not expired):

- British passports
- Irish passports
- Irish passport cards

IDSPs

Employers will be encouraged (though it will not be mandatory to) to use a Home Office accredited IDSP, using IDVT. However, even where the IDSP is accredited, employers must note that the responsibility for conducting and recording right to work checks accurately still falls on the employer. Employers will also be advised to provide appropriate training and guidance to their staff for example, on what information they must obtain from an IDSP to confirm verification of identity, what the information can be used for, and the additional steps they must take to establish eligibility to work (e.g. where there is a difference in the individual's name across the documentation).

Record Keeping

The Home Office has indicated what information must be compiled, provided to and then stored by the employer as part of a right to work check using an IDSP which includes, name, DOB, nationality, copy of the document, copy of the photo of the original, who undertook the check and the Good Practice Guide 45 (GPG45) profile (which requires the IDSP to follow a five part process known as "identity checking", following which the IDSP must have at least "medium confidence" in the verification of the identity).

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Can the employer fully delegate responsibilities to IDSPs?

No. As well as requiring the employer to ensure that the IDSP carried out the check correctly and to obtain and retain specific evidence of the check (see above), the Home Office guidance states that the employer must:

- “carry out their own due diligence to satisfy themselves to a reasonable belief that their chosen IDSP has completed the check correctly in the prescribed manner.
- satisfy themselves that the photograph and biographic details (for example, date of birth) on the output from the IDVT identity 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).
- where names differ between documents, the employer must establish why this is the case and must not employ that individual unless they are satisfied that the documents relate to them. A statutory excuse will not be obtained where it is reasonably apparent that the prospective employee is not the individual linked to the identity which was verified by the IDSP.

This documentation/information must be retained securely by employers for the duration of employment and for a further two years after the employment has ended. The copy must then be securely destroyed.”

Right to Work Checks

Checklist for employers and HR professionals

Manual Right to Work checks

Obtain original documents

You must obtain original documents (it will no longer be permissible to rely on scanned copy documents). Note that depending on which list the document falls into, you may need to carry out more than one right to work check. (See pages 8 - 9)

Check the documents

You must check the original documents provided by the employee to confirm they are genuine and include all the required rights to work to carry out their role. You must also verify the documents against the appearance of the individual, either in person or via video call.

Does the photograph match the person's appearance, and the date of birth is consistent across documents?

Can any differences in name be explained with evidence (for example a marriage certificate)? (Any supporting documents must also be photocopied)

Have the expiry dates for the documents passed?

Are there any restrictions on the person to carry out this type of work (for example, if they are in the UK on a student Visa)?

Is the document genuine and has not been tampered with?

Copy the documents

You must make a clear copy of the documents provided by the employee. The copy should be in a format that cannot be manually altered. You should ensure that any copies are retained securely (electronically or in hard copy). You must also keep a secure record of the date the check was conducted on the document.

For Passports: any page with the document expiry date, the holder's nationality, date of birth, signature, immigration permission, 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.

For all other documents: the document in full, including both sides of an Immigration Status Document and an Application Registration Card.

Right to Work Checks

A checklist for employers and HR professionals

Obtaining Original Documents

You must obtain original documents from either List A or List B

List A: Any of the following

You do not have to carry out any further checks

- A passport (**current or expired**) 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.
- A passport or passport card (**current or expired**) showing that the holder is a national of the Republic of Ireland.
- 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.
- 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** 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 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.

Right to Work Checks

List B Group 1: Any of the following

You will need to carry out a further right to work check when the document provided has expired to confirm that person still has the right to work

- 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 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.
- A current document issued by the Home Office to a family member of an EEA or Swiss citizen, and which indicates that the holder is permitted to stay in the United Kingdom for a time-limited period and to do the type of work in question.
- 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.

List B Group 2: Any of the following

You will need to carry out a further right to work check when the document provided has expired to confirm that person still has the right to work

- 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 on or before 30 June 2021 together with a Positive Verification Notice from the Home Office Employer Checking Service.
- 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.
- A Certificate of Application (digital or 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.
- 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.
- 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.

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How Abbiss Cadres can help?

Abbiss Cadres LLP offers UK immigration compliance training and consultations to employers including on right to work check compliance as well as on sponsor duties for employers who are also registered sponsors in the UK.

[Contact Us](#)