

Right to Work Checks



Introduction

The Immigration, Asylum and Nationality Act 2006 (the 2006 Act), section 24B of the Immigration Act 1971, and Schedule 6 of the Immigration Act 2016, 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.

This policy applies to right to work checks conducted on or after 6 April 2022 to establish or retain a statutory excuse from having to pay a civil penalty for employing a person who is not permitted to do the work in question.

Xander Recruitment Group 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 based on 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 £60,000 per illegal worker and in serious cases, a criminal conviction carrying a prison sentence of up to five years and an unlimited fine.

How to establish a statutory excuse for right to work checks

Xander Recruitment Group will work through to confirm a prospective employee/temporary worker has the right to work in the UK by completing one of the following:

1. A manual right to work check
2. A right to work check using IDVT (Identity Document Validation Technology) via the services of an IDSP (identity service provider)
3. A Home Office online right to work check through a valid Share Code Provided by said individual
4. Use the Employer Checking Service where an individual has an outstanding application, administrative review, or appeal, or if their immigration status requires verification by the Home Office

A manual right to work check

There are three steps that Xander Recruitment Group will work through to confirm a prospective employee/temporary worker has the right to work in the UK:

1. Request original right to work documents from either List A or B
2. Validate the documents to ensure they are genuine and that the person presenting them is the prospective or existing employee, the rightful holder and allowed to do the type of work offered to them:
 - the documents are genuine, original and unchanged and belong to the person who has given them to you
 - photos are the same across all documents and look like the applicant
 - dates of birth are the same across all documents
 - if 2 documents give different names, the applicant has supporting documents showing why they're different, such as a marriage certificate or divorce decree
 - If the applicant is not a British or Irish citizen, you'll also need to check that:
 - the dates for the applicant's right to work in the UK have not expired
 - the applicant has permission to do the type of work you're offering (including any limit on the number of hours they can work)

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- for students you see evidence of their study and vacation times

3. Copy and securely store documents in line with government legislation and guidelines:

Xander Recruitment Group 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.

Xander Recruitment Group 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.

Xander Recruitment Group 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.

Xander Recruitment Group must be able to show that they have followed due process in accordance with the regulations. In addition to these standards, regularly checks 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 Xander Recruitment Group 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. As of 06/04/2022 Xander Recruitment Group will always conduct an online check for the following:

- Individuals issued with an eVisa
- Holders of Biometric Residence Card (BRC), Biometric Residence Permit (BRP) and Frontier Worker Permit (FWP).

This means that Xander Recruitment Group will no longer accept or check a physical BRC, BRP or FWP as proof of right to work.

There are three steps that Xander Recruitment Group will work through to complete an online Right to Work Check:

1. Use the Home Office online service by accessing the service 'View a job applicant's right to work details' via GOV.UK (<https://www.gov.uk/view-right-to-work>)
2. Check that the photograph on the online right to work check is of the individual presenting themselves for work
3. Copy and securely store evidence of the online right to work check

Read further details about how the online checks work on the gov.uk website.

Should it not be possible for Xander Recruitment Group to conduct a Home Office online right to work check, Xander Recruitment Group will look to conduct a manual check instead.

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Avoiding racial discrimination

Xander Recruitment group 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, Xander Recruitment Group 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 based on their colour, race, nationality, ethnic or national origins, or the length of time they have been in the UK. To avoid discrimination Xander Recruitment Group must treat all job applicants in the same way at each stage of their recruitment process and undertake document checks on every prospective employee. Xander Recruitment Group could face prosecution under the Equality Act 2010 and an unlimited fine if they are found guilty of discriminatory processes.

Follow-up checks/Renewals

Xander Recruitment group will recheck the right to work of those individuals who have time-limited permission to work in the UK. This should occur when their previous permission comes to an end. The recheck is in place to prevent people from overstaying their immigration permission where this is time limited. The Employer Checking Service can confirm the right to work of an individual who has an outstanding application or appeal to the immigration system.

It is vital that Xander Recruitment Group 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.
- are unable to provide acceptable documentation but presents other information indicating they are a long-term lawful resident of the UK who arrived here before 1988

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.

Xander Recruitment Group 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. Use the 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 Xander Recruitment Group 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. Xander Recruitment Group is required to take copies of all documentary evidence, including the Positive Verification Notice, in order to retain a statutory excuse.

National insurance numbers

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Xander Recruitment Group 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.

As of 6th April 2022, BRC, BRP and FWP holder are required to evidence their right to work using the Home Office online service only. Xander Recruitment Group cannot accept physical cards for the purposes of a right to work check even if it shows a later expiry date. BRCs, BRPs and FWPs have been removed from the lists of acceptable documents used to conduct a manual right to work check.

EEA nationals

Since 1 July 2021, EEA citizens and their family members are required to have immigration status in the UK. They can no longer rely on an EEA passport or national identity card, which only confirms their nationality, to prove their right to work. They are required to provide evidence of lawful immigration status in the UK, in the same way as other foreign nationals. There is no requirement for Xander Recruitment Group to conduct a retrospective check on EEA citizens who entered into employment up to and including 30 June 2021. Xander Recruitment Group will maintain a continuous statutory excuse against liability for a civil penalty if the initial checks were undertaken in line with the guidance that applied at the time you made the check. The EEA countries are:

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

The process followed for EEA Nationals will also be followed for Nationals from Switzerland.

Xander Recruitment Group 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. The majority of EEA citizens now prove their right to work using the Home Office online services. If an EEA citizen has been granted 'Settled Status' by the Home Office, they will have a continuous right to work. If an EEA citizen has been granted 'Pre-Settled Status' by the Home Office, they will have a time-limited right to work and Xander Recruitment Group must carry out a follow-up check. The Home Office online service will advise when a follow-up check must be carried out.

EEA citizens, and their family members, who have made a valid application to the EUSS can continue to live their life in the UK and maintain a right to work until their application is finally determined. This includes pending the outcome of any appeal against a decision to refuse status. Xander must provide prospective employees with every opportunity to prove their right to work and should not treat those with an outstanding, valid application less favourably. More information is available on the gov.uk website.

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EEA citizens with Indefinite Leave to Enter or Remain (ILE/R) or Settlement are not required to make an application to the EUSS but can do so if they wish. Since 1 July 2021, EEA citizens with ILE/R are required to prove their right to work in the same way as other foreign nationals who do not have a digital status. Xander Recruitment Group can carry out a manual check of their Home Office documentation such as an endorsement / vignette in a current passport stating, 'Settlement', 'Indefinite Leave to Enter or Remain' or 'No Time Limit'. Some may have a current Biometric Residence Permit (BRP) and this can be used to access the online right to work service

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.

Home Office Employer Checking Service

The employer checking service allows Xander Recruitment Group to establish a statutory excuse in certain circumstances. At present the employer checking service allows Xander Recruitment Group to check a candidate eligibility to work when:

1. It's presented with a document (non-digital CoA or an acknowledgement letter or email) confirming receipt of an application to EUSS on or before 30 June 2021; or
2. It's presented with a non-digital CoA confirming receipt of an application to the EUSS on or after 1 July 2021; or
3. Xander Recruitment Group checked a digital CoA, using the online service, confirming receipt of an application to the EUSS on or after 1 July 2021, and been directed to the ECS; or
4. It's presented with a valid Application Registration Card (ARC) stating that the holder is permitted to undertake the work in question. Any work will be restricted to employment in a shortage occupation; or
5. Xander recruitment Group is satisfied that it has not been provided with any acceptable documents because the person has an outstanding application with us which was made before their previous permission expired or has an appeal or administrative review pending and, therefore, cannot provide evidence of their right to work; or
6. Xander Recruitment Group considers that it has not been provided with any acceptable documents, but the person presents other information indicating they are a long-term resident of the UK who arrived in the UK before 1988

In the above circumstances, Xander Recruitment Group will establish a statutory excuse only if you are issued with a Positive Verification Notice (PVN) confirming that the named person is allowed to carry out the type of work in question.

Validating the Right to Work documents

Xander Recruitment Group without fail shall 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

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- 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 Xander Recruitment Group 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. Xander Recruitment Group shall 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.

Right to work documents

To confirm that an applicant has the legal right to work in the UK, Xander Recruitment Group 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.

Appendix 1 – Acceptable Documents for manual right to work checks

List A: acceptable documents to establish a continuous statutory excuse

Xander Recruitment Group 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 (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.

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2. A passport or passport card (in either case, whether current or expired) showing that the holder is an Irish citizen.
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(J) 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.
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.
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.
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 employer¹.
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.
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.

List B

Group 1 – documents where a time-limited statutory excuse lasts until the expiry date of permission to enter or permission to stay

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 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

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Checking Service, showing that the holder has been granted limited leave to enter or remain under Appendix EU(J) 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.

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

Group 2 – Documents where a time-limited statutory excuse lasts for 6 months

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.
2. 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.
3. A document issued by the Bailiwick of Jersey, the Bailiwick of Guernsey or the Isle of Man showing that the holder has made an application for leave to enter or remain under Appendix EU(J) to the Jersey Immigration Rules or Appendix EU to the Immigration Rules (Bailiwick of Guernsey) Rules 2008, or Appendix EU to the Isle of Man Immigration Rules together with a Positive Verification Notice from the Home Office Employer Checking Service.
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.

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