

Right to work checks



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What we will cover

1. Why right to work checks are important
2. What can go wrong
3. The statutory excuse
4. Types of right to work checks
5. Section 3(c) leave
6. Employer Checking service
7. Some tricky areas
8. Employment law considerations

Why is this important?

“The ability to work illegally is a driver of illegal migration. It leaves people vulnerable to exploitation and results in unscrupulous employers undercutting compliant businesses. It can also negatively impact on the wages of lawful workers and is linked to other labour market abuse such as tax evasion, breach of the national minimum wage and exploitative working conditions, including modern slavery in the most serious cases.

All employers in the UK have a responsibility to prevent illegal working.”

– Gov.uk Employer’s guide to right to work checks

UPDATES

The Home Office published new right to work guidance on 8 February 2024 for right to work checks conducted **on or after 13 February 2024**:

- Increased civil penalties
- Removal of 28-day concession for EU settlement scheme
- Additional obligations in respect of supplementary work

Why do employers need to carry out right to work checks?

Civil penalty of up to
£45,000 - £60,000
per worker*

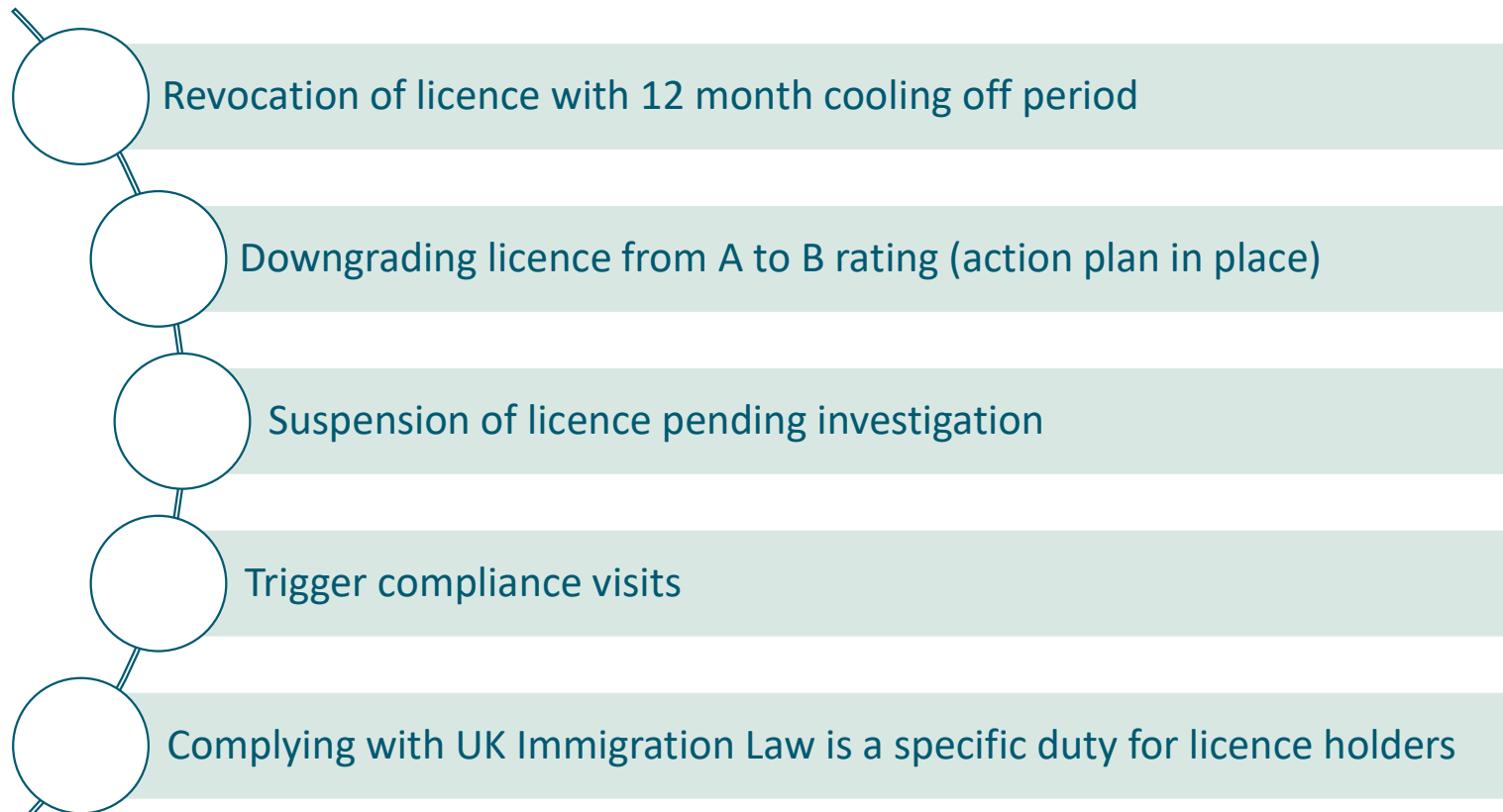
Reputational damage

Impact on Sponsor
Licence (application
or existing)

Possible criminal
prosecutions
(fines/imprisonment)

Closure Notice
(where flagrant
abuse)

Potential impacts on Sponsor Licence



So, how do you avoid those risks?

Employers can establish a **statutory excuse** by carrying out a right to work check in the prescribed manner before they employ an individual

- A Statutory excuse is a defence against a civil penalty
- Even if it transpires a worker does not have the correct permission to work in the UK, provided a right to work check has been carried out properly, the employer will have a statutory excuse

Who do you need to conduct right to work checks for?

The obligation to carry out right to work checks applies to **employees only**; however, given the risks in determining employment status, it is advisable for right to work checks to be carried out on all workers

What about agency workers?

- In an agency relationship, the worker remains employed by the agency and so the agency is obliged to conduct a right to work check

What about self-employed contractors?

- For employment status purposes, self-employed contractors are not employees; however, this is not always a simple determination

Types of right to work checks

1. Manual Check

- Suitable for British & Irish citizens

2. Online Check

- Suitable for:
- Non-British and non-Irish citizens
 - Those with Biometric Residence Permit/Card
 - Those with frontier worker permit

3. Identity Service Provider Check

- Suitable for British & Irish citizens only
- Appropriate for valid passports only

When do we need to conduct a right to work check?

Employers must conduct a right to work check **before** an individual starts work

- Previous Home Office guidance referred to checks being completed on the morning of the individual's first day but this has been **removed**
- Employers should consider undertaking checks as part of the recruitment process

Follow up checks should be diarised where a person's permission is time-limited

Manual Right to Work Check

OBTAIN:

Employer obtains **original** documents from UKVI List A or List B

CHECK:

Check the documents are genuine and the person presenting them is the worker. Check the documents in the presence of the holder, either physically or via video link

COPY:

Make a copy of each document in full in a format that cannot manually be altered. Make a secure record of the date of the check.

RETAIN:

All copies must be kept securely for the duration of the worker's employment and for 2 years afterwards (digital or hard copy)

Original Documents: List A & B

List A: person who has continuous right to work in the UK (including British & Irish citizens)	List B: person who has temporary right to work in the UK
<ul style="list-style-type: none">• Passport (current or expired) showing the holder is a British or Irish citizen	<ul style="list-style-type: none">• Current passport showing the holder is permitted to stay in the UK and allowed to do the work in question
<ul style="list-style-type: none">• Current passport showing the holder is exempt from immigration control, e.g. they are allowed to stay indefinitely in the UK	<ul style="list-style-type: none">• Current immigration status document (including photo) confirming the holder is permitted to stay in the UK and do the work in question
<ul style="list-style-type: none">• Birth/Adoption certificate issued in the UK together with an official document with the person's name and NI number	
<ul style="list-style-type: none">• Certificate of registration or naturalisation as a British citizen	



What do you need to check for?

- Check photos and dates of birth are consistent across documents and with the person's appearance
- Check the **expiry dates** of the permission to be in the UK have not passed
- Check any **work restrictions** to ensure the individual can carry out the work offered
- Check the documents look **genuine** and have not been tampered with
- If there are differences in names, obtain **further evidence**, for example marriage certificate, divorce decree or deed poll

Online Right to Work Check

Worker obtains share code and shares this with the employer

Employer uses share code and worker's DOB to submit online right to work check

Employer must satisfy themselves the photo of the individual is the individual presenting for work, they have the right to work and there are no relevant restrictions

Employer must retain clear copy of online result for duration of employment and for 2 years afterwards

Example 1

BETA This is a new service - your [feedback](#) will help us to improve it.

Right to work

Erika Mustermann

They can work in the UK.

Details

They can work in any job. There is no limit on how long they can stay in the UK.



Rotate ↻

If you employ this person

To avoid a [penalty](#), you must:

- check this looks like the person you meet face to face
- keep a secure copy of this online check (either electronically or in hard copy), for the duration of the employment and for 2 years after

You don't need to do the check again.

Read the [employers' code of practice](#) to find out more about right to work checks.

Details of check

Company name	Date of check	Reference number
Acme Ltd	8 January 2018	WE-RHQDFMC-57

[Print page](#) [Download PDF](#)

[Finish and leave service](#)

Example 2

BETA This is a new service - your [feedback](#) will help us to improve it.

Right to work

Erika Mustermann

They have permission to work in the UK from 19 October 2021. They can work in the UK until 19 November 2023.

Details

They can work in any job.



Rotate

If you employ this person

To avoid a [penalty](#), you must:

- check this looks like the person you meet face to face
- keep a secure copy of this online check (either electronically or in hard copy), for the duration of the employment and for 2 years after
- do this check again when their permission to be in the UK expires on 19 November 2023

Read the [employers' code of practice](#) to find out more about right to work checks.

Details of check

Company name	Date of check	Reference number
Acme Ltd	8 January 2018	WE-6KFEUUN-64

[Print page](#) [Download PDF](#)

[Finish and leave service](#)

Example 3

GOV.UK

View a job applicant's right to work

BETA This is a new service - your [feedback](#) will help us to improve it.

Right to work

Erika Mustermann

They can work in the UK until 19 November 2023.

Details

They can work:

- up to 10 hours a week during term time
- full-time during the holidays

They must share proof of their term dates with their employer.

They can also work on a placement which is part of the course their student visa is based on. The work placement must be:


- a compulsory part of their course
- assessed as part of their course

Read more about [volunteering, working for a student union and other types of work.](#)

Conditions

They cannot:

- work as a doctor or dentist in training - except on a Health Education England foundation programme
- work as an entertainer
- work as a professional sports person or coach
- run a business or be self-employed - unless they have applied for a start-up visa



Rotate

If you employ this person
To avoid a [penalty](#), you must:

- check this looks like the person you meet face to face
- keep a secure copy of this online check (either electronically or in hard copy), for the duration of the employment and for 2 years after
- get and keep details of their academic term and vacation times
- do this check again when their visa expires on 19 November 2023

Read the [employers' code of practice](#) to find out more about right to work checks.

Details of check

Company name	Date of check	Reference number
Acme Ltd	8 January 2018	WE-YVFCXEU-86

[Print page](#) [Download PDF](#)


[Finish and leave service](#)

Identity Service Provider (IDSP)


- Introduced in April 2022
- Employer delegates digital identify verification element of the check to a third party IDSP
- The check provides a statutory excuse but an employer still needs to verify the worker's identity against the check via a face to face meeting or video call
- Responsibility and liability remains with the employer

Using an Identity Service Provider


IDSP acting on behalf of the employer carries out digital identity verification for a worker before they start work



IDSP provides a response to the employer "in a clear legible format that can be stored securely by the relying party in electronic or hard copy for audit and investigation purposes"



Employer carries out own checks to satisfy themselves to a "reasonable belief" that: IDSP completed the check correctly in the prescribed manner and the photo + bio details on the IDVT identity check match the individual presenting themselves for work



The check must be kept securely for duration of employment and for two years afterwards

Considerations for engaging an IDSP

Find a certified IDSP

**Consider costs £20-
£100 per check**

**Onboard the chosen
IDSP**

**Review internal
recruitment processes
to accommodate IDSP
checks**

**Train staff on using
IDSP**

Can we perform a right to work check via video call?

No.

During COVID, employers were permitted to conduct a right to work check remotely by checking a person's documents via video call. This adjustment ended on **30 September 2022** and is no longer permitted.

Section 3 (c) leave

If a worker has applied for **fresh permission** before their current leave has expired, they will be protected by Section 3(c) leave (section 3(c) Immigration Act 1971)

- This extends the worker's current permission until they receive a decision on their pending application
- Employers should satisfy themselves a new application has been made (copy of application, Home Office acknowledgment)
- Employers should use the Employer Checking Service to confirm the worker's status

What if a worker cannot produce documents or a share code?

- Where an employee cannot produce documents or a share code, employers can use the **Employer Checking Service**
- It may be appropriate in circumstances where the worker has an outstanding application, review or appeal with the Home Office
- Employer must be satisfied an application is pending



Positive & Negative Verification Notices

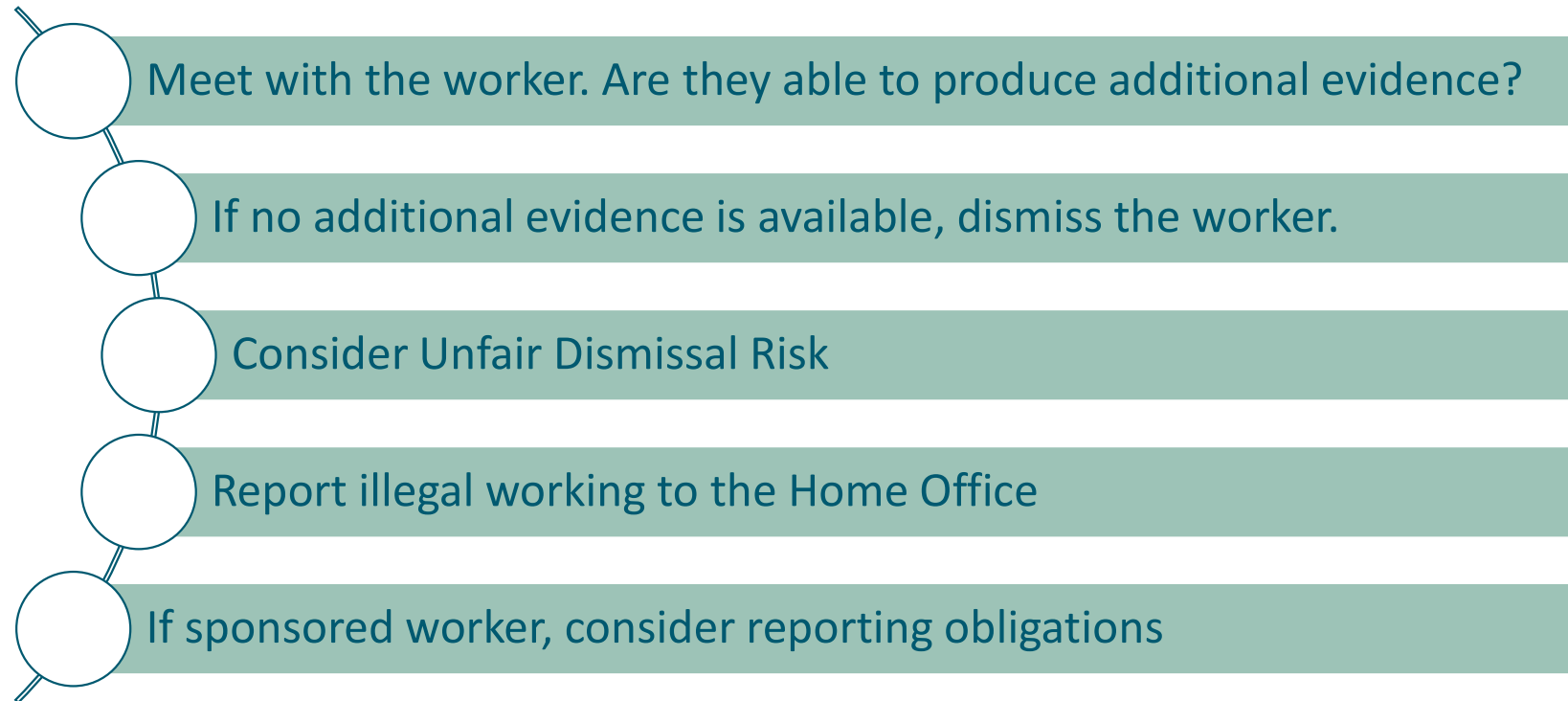
Positive Verification Notice

- Confirms worker has right to work
- Time-limited for 6 months (check must be repeated if individual's application not yet decided)

Negative Verification Notice

- Confirms worker does not have the right to work
- If correct, employer will need to dismiss

What to do if someone does not have the right to work?



Myth-busters!

Illegal working only occurs if an individual doesn't have permission to be in the UK

We only need to do one right to work check at the start of employment

The expiry on a worker's BRP is the expiry of their right to work permission

Students

- Not all students are permitted to work in the UK. Those that are allowed to work, often face restrictions on when they can work and for how long.
- Students are not permitted to undertake a permanent role.
- Employers must hold a copy of term dates for the **entirety** of the student's course.
- To prevent identity fraud, employers should confirm that the student is studying where indicated.

Supplementary employment

Previously, Home Office guidance stated employers had to “ensure the individual is able to carry out the employment you are offering”

New guidance now sets out what steps employers should take:

1. Conduct a right to work check to ensure the individual can do supplementary employment
2. Obtain a letter or other evidence from the worker’s sponsor confirming they are still employed, job description, SOC code and their normal working hours
3. Asking the individual if they are doing any other supplementary employment to ensure they will not do more than 20 hours a week in total.

Employment Law Considerations

Discrimination

Carry out right to work checks on **all workers** to mitigate the risk of a discrimination claim

→ Avoid making assessment of who you “think” may be a migrant

Contracts of Employment

Consider amending your contracts for the employee to warrant they have the right to work

For sponsored workers, consider a contractual obligation to update you as to any changes of name, address or permission

Practical Tips

Review your practices and procedures



Review filing systems



Train staff



Consider an audit

Further resources

- UKVI Right to Work Checklist – [Right to work checklist – GOV.UK \(www.gov.uk\)](https://www.gov.uk/right-to-work-checklist)
- UKVI Online interactive tool – [Check if a document allows someone to work in the UK – GOV.UK \(www.gov.uk\)](https://www.gov.uk/check-if-a-document-allows-someone-to-work-in-the-uk)

Questions?

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Thank you



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