



# LEGAL RIGHT TO WORK IN THE UK POLICY

**BADGER GROUP**  
Badger House  
121 Glover Street  
Birmingham, B9 4EY

Destroy All Previous Issues

This document is the property of Badger and must not be reproduced, published or used by any third party without prior written authorisation from Badger.

Author	Issue Date	Version	Document Ref	Approved By	Approval Date	Next Review	Page i
HR Department	Oct 2023	V5.0	HR-05	Exec	Oct 2023	Oct 2026	

# Contents

1	INTRODUCTION	1
2	RIGHT TO WORK CHECKS	1
3	HOME OFFICE VERIFICATION CHECKS	2
4	EMPLOYEES FROM EUROPE	2
5	DOCUMENTATION CHECKS WHEN ACQUIRING A NEW BUSINESS	3

# DOCUMENT CONTROL

## Document Storage

Location: p:\ops team\central policies & procedures - development - word docs\hr - human resources policies & procedure\hr-05 legal right to work in the uk policy v5.0.doc

## Version Control Log (Only last 3 versions, earlier versions can be found in the appropriate archive directory for the document)

Version	Date	Author	Description of Changes
V4.1	June 2022	HR Dept	Under review
V4.2	June 2023	HR Dept	Under review
V5.0	Oct 2023	S Parmar	All sections revised and updated

## Approval

Version	Name	Position	Signature	Approved Date
V2.0	S Longland	HR Employee Relations Manager		13 Jan 2011
V2.0	N Farmer	CEO		
V2.1	Exec	Executive Team		June 2012
V3.0	Exec	Executive Team		Nov 2015
V4.0	Exec	Executive Team		25 July 2019

## Glossary

Term	Description

## 1 INTRODUCTION

This policy reflects the company's approach to employing foreign workers.

It is the company's policy to comply with all its legal obligations in relation to foreign workers

Under United Kingdom immigration rules, it is a criminal offence to employ a person who is subject to immigration control and who has not been granted leave to enter or remain in the UK, or does not have permission to remain in the UK.

The Company has a legal obligation to carry out document checks to make it harder for people with no right to work in the UK to unlawfully obtain or stay in employment. It is also a requirement that the Company retains copies of the relevant documents.

To avoid potential unlawful discrimination claims the Company will carry out appropriate checks on all candidates.

## 2 RIGHT TO WORK CHECKS

Compliance with the prescribed right to work checks results in the Company being excused from paying a civil penalty where it is found to have employed an illegal worker. This is referred to as a 'statutory excuse'. The Company must carry out the checks itself, it is unable to establish a statutory excuse if the check is performed by a third party, such as an independent payroll company.

The Company can rely on the statutory excuse, under the Immigration, Asylum and Nationality Act 2006, if it can demonstrate that prior to the candidate starting employment, it carried out either a documentary right to work check or an online check using the Home Office's Right to Work Checking Service.

### Documentary right to work checks

When carrying out manual documentary checks, the Company will be required to check at least one of a range of documents verifying the individual's right to work in the UK. The Company must check that the documents are genuine and that the person presenting them is the prospective employee or employee, the rightful holder and allowed to do the type of work the Company is offering.

The documents that the Company may accept are set out in two lists – List A and List B.

List A contains the range of documents that the Company may accept for a person who has a permanent right to work in the UK. If the Company conducts the right to work checks properly before employment begins it will establish a continuous statutory excuse for the duration of the person's employment and it will not be necessary to conduct any further checks.

List B contains a range of documents which may be accepted for a person who has a temporary right to work in the UK. Providing the Company carries out the checks correctly it will establish a time-limited statutory excuse and will be required to conduct follow up checks in order to retain the statutory excuse.

Where an employee has only limited permission to remain or work in the UK, the Company is required to note the expiry date of the documentation and put a reminder system in place to check the documents again prior to expiry.

Should the Company be presented with documents indicating that an individual is a student with a limited right to work in the UK during term time, it must also check and copy evidence of their academic term dates.

The Company must ensure that the verifying documents are originals and that the candidate is the rightful owner of any document he or she presents. For example, is the photograph and date of birth consistent with the appearance of the individual? The Company should also check that the documents allow the candidate to do the type of work that is being offered. Should the Company inadvertently accept a forgery it could be subject to legal action if it is reasonably

apparent that the document is false. This means that an untrained person could reasonably be expected to realise that the document is not genuine or the prospective employee is not the rightful owner.

Lists A and B of acceptable documents, and further detailed guidance, is available from the UK Visas and Immigration (UKVI) website:

<https://www.gov.uk/government/publications/right-to-work-checks-employers-guide>

### **Online right to work checks**

Where the immigration status of the individuals is compatible, the Company can carry out an online check using the Home Office's Checking Service.

In order to carry out an online right to work check, the Company will require the individual's date of birth and an 'employee share code' to be provided by the individual. When this information is inputted into the service, the Company will receive a confirmation page stating whether the individual has the right to work in the UK.

Where the online service confirms the individual has the right to work in the UK, the Company will maintain a record of this confirmation page, which includes the date the check was carried out, in an uneditable format. If the service confirms there is a time limited right to remain in the UK, the Company will be required to carry out a further right to work check in advance of the date of expiry.

### **Failure to carry out right to work checks**

If the Company fails to carry out the checks correctly, or at all, and is found to be employing someone illegally it could face a civil penalty of up to £20,000 for each illegal worker. Employers who knowingly employ an illegal worker or have reasonable cause to believe that the person has no right to do the work in question, may face a criminal penalty of up to five years' imprisonment and/or an unlimited fine for employing them.

## **3 HOME OFFICE VERIFICATION CHECKS**

When conducting checks to verify that someone has the right to work in the UK, the Company is required to contact the Home Office to establish or retain the statutory excuse in the following circumstances:

- if presented with a Certificate of Application which is less than 6 months old and which indicates that work is permitted
- if presented with an Application Registration Card stating that the holder is permitted to undertake the work in question
- where the Company is satisfied that it has not been provided with any acceptable documents because the person in question has an outstanding application with the Home Office which was made before their previous permission time expired or has an appeal or administrative review pending against a Home Office decision and therefore cannot provide evidence of their right to work.

## **4 EMPLOYEES FROM EUROPE**

Prior to 1 January 2021, all citizens of the European Economic Area (EEA) and Switzerland had right to free movement to come into the UK without the need for a work permit. This covered nationals from the following countries:

Austria, Belgium, Bulgaria, 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, Switzerland and the UK.

As of 1 January 2021, free movement of persons between the UK and the EU has ended. All employees seeking to work in the UK from overseas now need to follow the same procedures.

**EU Settlement Scheme**

All EU nationals currently working for the Company, who were doing so prior to 31 December 2020, are encouraged to apply for 'settled status' through the EU Settlement Scheme. As per government guidance, successful applicants will be granted the right to live and work in the UK indefinitely.

To be granted 'settled status', employees must have lived in the UK for a minimum of five years. Those who have not will be granted 'pre-settled status' until this five-year period is reached, which by then they will be able to apply for 'settled status'.

Applications for the scheme can be made through use of the government website and close on 30 June 2021. It is the responsibility of staff to make the application. The Company highly encourages employees to ensure that they have complied with Government requirements by the Scheme's deadline of 30 June 2021.

**5 DOCUMENTATION CHECKS WHEN ACQUIRING A NEW BUSINESS**

When an employee transfers to the Company under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE), it is the Company's responsibility to carry out documentation checks to ensure each employee has the right to work and remain in the UK. There is a grace period of 60 days during which the Company has to carry out the necessary checks to comply with the regulations.

Where these checks identify that an employee does not have the legal right to work in the UK, they may be dismissed. The Company is also under a duty to inform the Home Office and this will reduce any penalty imposed.