

ILLEGAL WORKERS PROCEDURE

Under the Immigration, Asylum and Nationality Act 2006, it is illegal to employ an individual who does not have the right to work in the UK.

With effect from 12 July 2016, under section 21 of the 2006 Act (as amended by section 35 of the Immigration Act 2016), an employer commits an offence if he employs an illegal worker and knows or has reasonable cause to believe that the person has no right to do the work in question. This means that an employer can no longer evade prosecution where the investigating agency cannot prove that the employer knew that the employee had no permission to work. The amended offence enables employers to be prosecuted where they have reasonable cause to believe that the employee could not undertake the employment, even where they have perhaps deliberately ignored information or circumstances that would have caused the employer to know that the employee lacked permission to work. The maximum sentence on indictment for this offence has been increased from 2 to 5 years.

Employers have a duty to carry out the correct documentary checks on their direct employees, including employment agencies who employ the worker concerned.

Employers are required to carry out a right to work check on all people they intend to employ, before they employ them to establish the statutory excuse.

- If a person provides documents to show they have a permanent right to work in the UK, the employer only needs to check their documents before employing them.
- If a person provides documents to show they have a temporary right to work in the UK, then the employer will need to carry out additional checks when their immigration permission is due to expire and check it has been renewed.
- The employer should check the potential employee is not subject to an immigration restriction that prevents them from doing the work in question.

Avantgarde Tiling Limited conduct *right to work* checks on all prospect employees.

All people we are considering employing will be asked to provide us with their documents.

To ensure that we do not discriminate against anyone, we should treat all job applicants in the same way at each stage of our recruitment processes.

We do not make assumptions about a person's right to work in the UK or their immigration status on the basis of their colour, nationality, ethnic or national origins, accent or length of time they have been resident in the UK.

Conducting 'right to work' checks

There are three basic steps to conducting a *right to work* check, as set out by the Home Office:

1. Obtain the person's original documents (refer to Annex "A" for the acceptable list of documents for verification – List A and List B);

Notes on List A & List B:

List A: contains the range of documents which you may accept for a person who has a permanent right to work in the UK. If you conduct the right to work checks correctly before employment begins, you will establish a continuous statutory excuse for the duration of that person's employment with you. You do not have 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. If you conduct the right to work checks correctly you will establish a time-limited statutory excuse. You will be required to conduct a follow-up check in order to retain your statutory excuse. This should be undertaken in the same way as the original check.

2. Check them in the presence of the holder;

When checking the validity of the documents, we must ensure that we do this in the presence of the holder. This can be a physical presence in person or via a live video link. In both cases we must be in physical possession of the original documents. We may not rely on the inspection of the document via a live video link or by checking a faxed or scanned copy of the document.

Conducting the visual inspection of the documents presented to Avantgarde Tiling Limited is Avantgarde's Tiling Limited responsibility.

Whilst it may be delegated to our members of staff, the company will remain liable for the penalty. We may not delegate this responsibility to a third party.

If we are given a false document, we will only be liable for a civil penalty if it is reasonably apparent that it is false. This means that a person who is untrained in the identification of false documents, examining it carefully, but briefly, and without the use of technological aids could reasonably be expected to realise that the document in question is not genuine.

Where a person presents a document and it is reasonably apparent that the person presenting the document is not the person referred to in that document, even if the document itself is genuine, we may be liable to prosecution for knowingly employing an illegal worker.

We will not be able to rely on a statutory excuse if we knew that the documents were false or did not rightfully belong to the holder.

In order to establish a statutory excuse, we are required only to conduct an examination of the document and to check this against the holder of that document.

If someone gives us a false document or a genuine document that does not belong to them, we should report the individual to the Home Office, or call their Sponsorship, Employer and Education Helpline on 0300 123 4699, (Monday to Thursday, 9am to 5pm, Friday, 9am to 4:30pm).

There is no liability for a civil penalty if we do not employ the person

3. Make and retain a clear copy and record the date of the check.

We must keep a record of every document we have checked. This can be a hardcopy or a scanned and unalterable copy, such as a jpeg or pdf document.

We should keep the copies securely for the duration of the person's employment and for a further two years after they stop working for Avantgarde.

We should also be able to produce these document copies quickly in the event that we are requested to show them to demonstrate that we have performed a right to work check and retain a statutory excuse. By doing this, the Home Office will be able to check whether we have complied with the law if Home Office find that someone is, or has been working for us illegally.

We must also make a record of the date on which we conducted our check. This can be by either making a dated declaration on the copy or by holding a separate record, securely, which can be shown to Home Office upon request to establish our statutory excuse. This date may be written on the document copy as follows: 'the date on which this right to work check was made: [insert date]' or a manual or digital record may be made at the time we conduct and copy the documents which includes this information. We must be able to show this evidence if requested to do so in order to establish a statutory excuse.

We may be liable for a civil penalty if we do not record the date when the check was performed. Simply inserting a date on to the copy document does not, in itself, confirm that this is the actual date when the check was undertaken. If we insert a date onto the copy document itself, we must also record the fact that this is the date upon which we conducted the check.

Best Practice on Preventing Illegal Working

In addition to the legal responsibilities to carry out documentary checks, the following actions should also be considered to prevent illegal working on construction sites, even if there is no employment relationship.

Organisation: Clients

Best Practice:

- Require all employers on their projects to carry out documentary checks on their employees.

Organisation: Main Contractors

Best Practice:

- Ensure those carrying out documentary checks within their organisation have had appropriate training on how to do so.
- Ensure suppliers and sub contractors exercise due diligence and encourage them to stipulate in their contracts that right to work checks must be conducted on workers.
- Check the card carrying the CSCS logo for everyone undertaking a construction occupation on their site.
- While the new smart cards are harder to forge, the cards themselves do not provide evidence that the holder has the right to work., however, the majority of cards carrying the CSCS logo can be read electronically. When read electronically, an invalid reading could serve as an indicator that the card is fake and the individual might not have the right to work in the UK. This should be investigated further.
- Consider auditing a sample of their supply chain and self employed workers to check that right to work checks are being performed.
- Target communications at sites (through posters, toolbox talks etc.) on the risks of illegal working and how individuals can raise any concerns.
- Promote the Home Office Immigration Enforcement hotline or email where companies or individuals can anonymously report any suspected instances of illegal working – on 0300 123 7000; www.gov.uk/report-immigration-crime.

Organisation: **Sub Contractors**

Best Practice:

- Ensure those carrying out documentary checks within our organisation have had appropriate training on how to do so.
- Consider auditing a sample of our supply chain and self employed workers to check that right to work checks are being performed.
- Promote the Home Office Immigration Enforcement hotline or email where companies or individuals can anonymously report any suspected instances of illegal working – on 0300 123 7000; www.gov.uk/report-immigration-crime.

Extract:

- a) It is illegal to employ someone aged 16 or over subject to immigration control and who is not allowed to undertake the work in question**
- b) A company could face a large financial penalty known as a civil penalty of up to £20,000 for each illegal worker.**
- c) A company will commit a criminal offence under section 21 of the 2006 Act, as amended by section 35 of the Immigration Act 2016, if you know or have reasonable cause to believe that you are employing an illegal worker. You may face up to 5 years' imprisonment and/or an unlimited fine.**

When do we conduct checks:

We are required to carry out an initial right to work check on all people we intend to employ before we employ them.

Once we have completed this check, we will be required to carry out follow-up right to work checks on this person if they have time-limited permission to be in the UK and to do the work in question.

If a person provides us with acceptable documents from List A at Annex A there is no restriction on their right to work in the UK, so we establish a continuous statutory excuse for the duration of the person's employment with us. We are not required to carry out any further checks on this person.

If a person provides us with acceptable documents from List B there are restrictions on their right to work in the UK, so we will establish a time-limited statutory excuse. We are required to carry out follow-up checks on this person. The frequency of these follow-up checks depends on whether the documents we are provided with are from Group 1 or Group 2.

Group 1 documents provide a time-limited statutory excuse which expires when the person's permission to work expires. This means that we should carry out a follow-up check when permission which demonstrates their permission to work expires.

Group 2 documents provide a time-limited statutory excuse which expires six months from the date specified in our Positive Verification Notice. This means that we should carry out a follow-up check when this notice expires.

For Follow-up Checks, refer to :

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/774286/Right to Work Checklist.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/774286/Right_to_Work_Checklist.pdf)

Signed
Barbara Zanasi

Date 20/01/2024



ANNEX A

Lists of acceptable documents for right to work checks

List A

Acceptable documents to establish a continuous statutory excuse :

1. A passport 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.
2. A passport or national identity card showing the holder, or a person named in the passport as the child of the holder, is a national of a European Economic Area country or Switzerland.
3. A Registration Certificate or Document Certifying Permanent Residence issued by the Home Office to a national of a European Economic Area country or Switzerland.
4. A Permanent Residence Card issued by the Home Office to the family member of a national a European Economic Area country or Switzerland.
5. A current Biometric Immigration Document (Biometric Residence Permit) issued by the Home Office to the holder indicating that the person named is allowed to stay indefinitely in the UK, or has no time limit on their stay in the UK.
6. 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.
7. 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.
8. A full birth or adoption certificate issued in the UK which includes the name(s) of at least one of the holder's parents or adoptive parents, 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.
9. 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.
10. 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 leave

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 current Biometric Immigration Document (Biometric Residence Permit) issued by the Home Office to the holder which indicates that the named person can currently stay in the UK and is allowed to do the work in question.
3. A current Residence Card (including an Accession Residence Card or a Derivative Residence Card) issued by the Home Office to a non-European Economic Area national who is a family member of a national of a European Economic Area country or Switzerland or who has a derivative right of residence.
4. 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 Certificate of Application issued by the Home Office under regulation 17(3) or 18A (2) of the Immigration (European Economic Area) Regulations 2006, to a family member of a national of a European Economic Area country or Switzerland stating that the holder is permitted to take employment which is less than 6 months old together with a Positive Verification Notice from the Home Office Employer Checking Service.
2. 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.
3. 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.