

A GUIDE TO RIGHT TO WORK CHECKS IN 2023



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RIGHT TO WORK LEGISLATION IN 2023

According to the Immigration, Nationality and Asylum Act 2006, employers must carry out proper due-diligence to confirm any potential permanent, part-time, or temporary employee has the right to work in the UK before they can begin work.

UK businesses need to conduct right to work checks to ensure compliance with immigration laws and to prevent illegal employment. The right to work checks are a legal requirement for employers in the UK, and failing to carry out these checks can result in severe penalties, including fines and potential criminal charges.

It is important for businesses to familiarise themselves with the specific requirements and procedures for conducting right to work checks, as these may vary depending on factors such as the type of employment, the immigration status of the individual, and any recent updates to immigration legislation. The UK government provides detailed guidance and resources to support employers in fulfilling their obligations and conducting these checks correctly.

Right to Work checks apply to any work experience or unpaid workers. All businesses are required by the Home Office to keep evidence of all the right to work checks they carry out, as well as checking the document provided is genuine and the applicant is its rightful holder.



PENALTIES FOR HIRING DISQUALIFIED PERSONS

Failing to carry out proper right to work checks can lead to significant penalties for businesses.

Under the Immigration Act 2014, employers can face civil penalties of up to **£20,000 per illegal worker** for each instance of non-compliance. The Immigration Act 2016, added that in serious cases, employers may also face criminal charges, including **imprisonment and unlimited fines**.

In addition to any financial penalties, business should also consider the reputational damage that may come from hiring illegal workers and the moral/ethical dilemma. Modern slavery and human trafficking is a much larger problem than many realise in the UK. In addition to Right to Work checks, businesses can take additional measures to help prevent modern slavery such as verifying the bank accounts of new employees.

How to avoid such penalties?

There are only a few ways an employer can avoid such penalties if found to have hired an individual without the legal right to work in the UK. To obtain a statutory excuse employers must conduct Right to Work checks that follow the latest UK guidelines including conduct imposter checks within that process.

HOW TO CONDUCT RIGHT TO WORK CHECKS

As of the 1st of October 2022, the rules regarding how businesses must verify a new employees Right to Work in the UK changed.

Businesses are now able to use a certified Identity Service Provider (IDSP) like Credas to verify an individual's identity for Right to Work checks. This replaces the Covid-19 adjusted process introduced by the Home Office which ended on 30th September 2022 and which allowed for ID documents to be received via email or video chat.

There are clear guidelines as to what is expected of businesses and if they follow these guidelines they can establish a statutory excuse against a civil penalty in the event that they employ someone who does not have the legal right to work in the UK.

To establish a statutory excuse a business must do one of the following before a new employee starts:

1. a manual right to work check
2. a right to work check using Identity Verification Technology (IDVT) via the services of an Identity Service Provider (IDSP)
3. a Home Office online check

Credas is one of only a few companies that are certified for both 'Right To Work' and 'Right to Rent' checks against the Home Office requirements of the UK DIATF.



HOW TO OBTAIN A STATUTORY EXCUSE

Businesses will obtain a statutory excuse where they can demonstrate that they have complied with all the statutory requirements to conduct Right to Work checks.

Where they have used an IDSP, the statutory excuse will only be obtained where that IDSP has also complied with the required steps.

For businesses to be able to rely upon the IDVT identity check carried out by an IDSP to prove eligibility for the purpose of a RTW check and obtain a statutory excuse, a valid British or Irish passport (including passport cards) must be provided to the IDSP and checked by them using IDVT for the purposes of identity verification.

Where an IDSP is used, businesses retain obligations that they must comply with under the RTW Scheme. The business still needs to complete the following steps before the employment starts to ensure a prescribed check has been undertaken, in order to establish a statutory excuse.

- Use an IDSP to check a prospective employee's valid British or Irish passport (or Irish passport card) using IDVT.
- Obtain an output of the IDVT identity check from the IDSP containing a copy of the IDVT identity check, and the document checked, in a clear, legible format that cannot be altered.
- 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 (i.e. the information provided by the check relates to the individual and they are not an imposter).



You cannot receive ID documents by email



You cannot validate ID documents over video calls



You should use Certified Identity Service Providers



HOW TO OBTAIN A STATUTORY EXCUSE

- Where names differ between documents, the business must establish why this is the case and must not hire 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.
- Businesses must retain this information securely for the duration of the employment and for two years afterwards. The copy must then be securely destroyed.

In Conclusion

If you use an IDSP certified to do Right to Work checks, and once they do the check you review the report to check

1. It's an in-date valid UK/Irish passport
2. The identity has been verified
3. The identity matches the person you met during the interview...

and you keep all the data for the duration of the employment + 2 years; you should be confident in obtaining a statutory excuse.

WHAT ABOUT VIDEO CALLS?

Last year, changes Home Office guidance prevented the use of video calls for ID verification. With more and more businesses offering remote working this method had proven popular as a means to validate an employees ID so why has the government changed their minds?

Firstly, the initial guidance that allowed the use of video calls was brought in as a special exception during the covid pandemic and was never intended to be made into permanent legislation.

The main reason is that whilst you might be able to confirm the likeness between an individual and their ID document on a video call, there are no checks being undertaken on the ID document to confirm whether the document is genuine or not.

In person, it's a lot easier to see if an ID document has been tampered with or is missing any hard-to-replicate security features such as holographs. Over a video call, the quality of the camera and lighting makes it difficult to determine whether a document is genuine.

If you still wish to conduct Right to Work checks remotely, then under the most recent guidance, these should be conducted via a certified IDSP.



WHAT IS A CERTIFIED IDSP?

A IDSP or Identity Service Provider is a business that offers identity verification through a range of methods including using biometric facial recognition, machine reading and NFC technology.

Over the last few years IDV technology has been widely adopted across multiple industries playing a vital role in combating fraud and money laundering. Due to this widespread adoption and the varying degrees of capabilities between vendors, the UK Government developed a new Digital Identities and Attributes Trust Framework (DIATF) that set out clear standards IDSP should adhere to.

The Trust Framework also introduced a new accreditation programme that allowed IDSPs to be independently assessed against the standard and be awarded certification if successful. All certified IDSPs can be found on the Gov website allowing businesses to easily choose a suitable supplier.

Data Protection & Digital Information Bill

In April 2023, the government's Data Protection & Digital Information Bill was revealed outlining reforms to data protection law in the UK. The second part of the bill sets out the government's stance on digital verification services, which will put the Digital Identities and Attributes Trust Framework, register and trustmark, into legislation. Business should be prepared in advance for the legislation by ensuring they are working with certified IDSPs.

WHAT ARE IMPOSTER CHECKS?

When using an IDSP to perform a right to work check there is the requirement to verify that the evidence submitted matches the applicant.

This additional check has become known as an imposter check and is an important step to prevent disqualified persons from working in the UK.

What does the guidance say?

Satisfy yourself that the photograph and biographic details (for example, date of birth) on the output from the IDSP 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). This can be done in person or by video call.

Why do I need to do an imposter check?

Imposter checks are designed to prevent “bait and switch” techniques where a legally qualified worker goes through the recruitment process then a different individual turns up to work. Criminal gangs often target employers than recruit either remotely or centrally, exploiting the fact that those managing the interview process aren’t always present when the candidate starts work.

Do you need to conduct imposter checks for manual verifications?

Imposter checks are required no matter what methodology you use to determine a candidate’s right to work in the UK.



HOME OFFICE ONLINE REPORTS

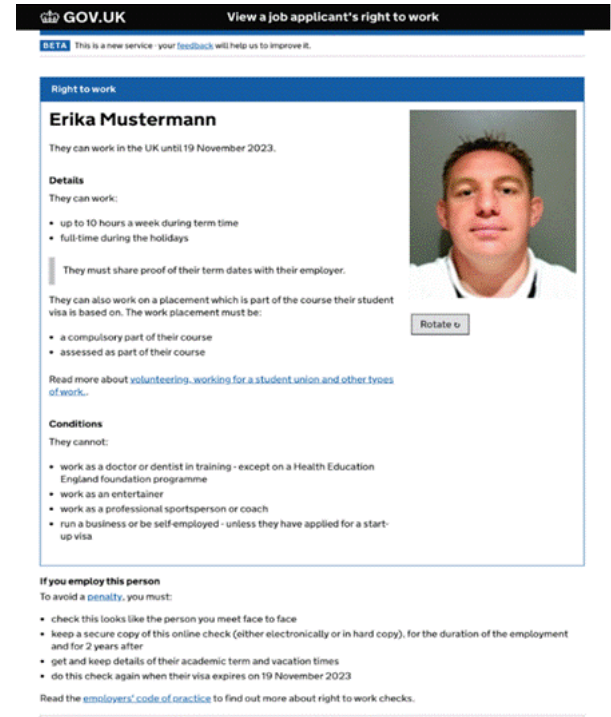
The Home Office online check service allows you to check the legal status of non British or Irish nationals.

To access the system your candidate must obtain a share code from the system which will allow you access to their report. You will then need to access the Home Office online check system, enter your candidates share code and date of birth. Once you have completed this step you will then have access to your candidates Home Office online report.

You must check that person in the report matches the individual you interviewed and that their details allow them to legally work in the UK. You must also retain evidence of the online right to work check by downloading the profile page as either a PDF or HTML file. The report should be stored securely, either electronically or as a hardcopy, for the duration of employment plus two years afterwards.

Can an IDSP get a home office online report on my behalf?

The Home Office's guidance states that an employer will only establish a statutory excuse against prosecution where they have obtained the Right to Work Report from the Home Office Online Service using a Share Code provided by the employee. Where an IDSP obtains the report on an employer's behalf, the employer will not establish a statutory excuse.



The screenshot shows a web page from GOV.UK titled "View a job applicant's right to work". The page displays a report for "Erika Mustermann". The report includes a photo of the individual, a "Rotate" button, and the following information:

- Right to work:** 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
- 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 sportsperson or coach
 - run a business or be self-employed - unless they have applied for a start-up visa

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.

MODERN SLAVERY IN THE UK

While the National Crime Agency does not have exact numbers it believes that modern slavery is on the increase in the UK.

Whilst the majority of victims would have been trafficked from overseas – frequently from eastern Europe, south east Asia, and Africa, British national and legal overseas works also fall foul of modern slavery. These workers are enticed by promises of well-paid work and decent accommodation, which proves a cruel lie, end up trapped and exploited, with their wages taken from them.

What can you do to help prevent modern slavery?

Conducting compliant right to work checks is an important step in combating modern slavery and exploitation in the UK. In addition to checking a candidate right to work you can also look out for signs of forced labour. Here are a few key signs identified by the NCA:

- Are their wages being paid directly into their account or to a proxy?
- Did they provide you with ID documents directly or through another individual?
- Were they able to easily state their home address when questioned?
- Do they appear to be under control or instruction of a third-party?
- Do they appear to be reliant upon a third-party for food, shelter, and/or transportation to / from work
- Do they appear to be scared, anxious or withdrawn or fearful when others/you mention the authorities

These are just some of key indicators that someone is a victim of modern slavery and exploitation. Another way to help is through awareness and training staff members and thorough due diligence of your business partners.

Modern Slavery: National Referral Mechanism Key results*

- 4,746 potential victims of modern slavery were referred to the Home Office in January to March 2023, representing a 7% increase compared with October to December 2022 (4,416) and a 26% increase from January to March 2022 (3,773)
- The number of referrals received this quarter is the highest since the NRM began in 2009
- 79% (3,768) were sent to the Single Competent Authority (SCA) for consideration and 21% (978) to the Immigration Enforcement Competent Authority (IECA)
- Albanian nationals were the most commonly referred nationality, followed by UK nationals, and both recorded their highest quarterly numbers since the NRM began
- 3,528 reasonable grounds and 2,275 conclusive grounds decisions were issued this quarter; of these, 58% of reasonable grounds and 75% of conclusive grounds decisions were positive
- The Home Office received 1,420 reports of adult potential victims via the DtN process, the highest since the DtN began in 2015

<https://www.gov.uk/government/statistics/modern-slavery-national-referral-mechanism-and-duty-to-notify-statistics-uk-january-to-march-2023/modern-slavery-national-referral-mechanism-and-duty-to-notify-statistics-uk-quarter-1-2023-january-to-march>

FREQUENTLY ASKED QUESTIONS

Since the changes were made in October 2022, Credas has assisted hundreds of companies compliantly conduct Right to Work checks. Here are some of the most frequent questions we get asked.

With the remote RTW checks via an IDSP do you have to have a physical copy of their passport also?

No, the candidate would use our app to either scan their physical passport (via NFC) or take a live photo of it. Our technology has been tested and certified against the UK Government's Digital Identity and Attributes Trust Framework to ensure a high level of confidence in us capturing and verifying genuine documents.

If someone only has a British birth certificate and NI number can they email it across to us to verify?

No – all documents need to be the originals, in your physical possession, unless an IDSP is used to capture a UK passport.

If a UK passport worker lives far away from the recruitment office do they always have to send the physical passport to us so we can then verify it over skype?

You can either use an IDSP to capture their passport information remotely and securely, or they need to send you the passport. You cannot verify ID documents over skype.

What happens if my candidate submits an expired passport?

Only current British / Irish passport are accepted via an IDSP. If the candidate submits an expired passport the IDV technology will detect this and will not pass the document. In this situation who will need to conduct a manual check to obtain a statutory excuse.

What documents are accepted for manual checks?

For right to work checks conducted through a certified Identity Service Provider only a current British or Irish passport is accepted.

For manual right to work checks please refer to official home office guidance which can be found here <https://www.gov.uk/government/publications/right-to-work-checks-employers-guide/an-employers-guide-to-right-to-work-checks-6-april-2022-accessible-version>

HOW CREDAS CAN HELP

As a certified Identity Service Provider, Credas can help business remain compliant by offering remote Identity Verification that meets Right to Work guidelines.

Credas helps clients perform ID checks in real-time using cutting-edge facial recognition and NFC document verification – reducing the complex, time-consuming, resource intensive and often, expensive processes. ID checks can be completed through our industry leading Credas mobile app or via a standard internet browser.

Our online verification process is an excellent choice if you want to make sure you are completing your right to work due-diligence quickly and cost-effectively. Start your free trial with Credas today.

Key features of our solution


- ✓ Up to 97.7% accuracy with our facial recognition software
- ✓ NFC document verification
- ✓ Remote and in-person ID checks
- ✓ Bank Account verification
- ✓ Customisable data capture forms
- ✓ Full platform branding – customise the full employee journey
- ✓ All data stored in the UK – Microsoft Azure Cloud – a globally recognised, secure and trusted platform
- ✓ Simple, seamless integration with your existing onboarding processes
- ✓ Government G-cloud approved provider

BENEFITS OF DIGITAL CHECKS

- ✓ Verify anytime, anywhere - no more meetings
- ✓ One consistent easy to follow process across the business
- ✓ GDPR compliant secure central storage of all documents
- ✓ A fully downloadable audit trail of evidence
- ✓ Reduced staff training and administration time



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