

The IAC logo consists of the letters 'IAC' in a white, bold, sans-serif font, centered within a dark purple square. The background of the top half of the slide features a photograph of green trees against a blue sky, partially obscured by a dark purple geometric shape on the right side.

IAC

**Broaden Your
Talent Pool...**

Visa 101!

5TH OCTOBER | 10AM - 11AM (UK)
ZOOM WEBINAR



IAC Webinar: Work Visas Legal Update

IAC

jmw



Dipesh Shah

Partner | London | Head of Immigration

D: 0203 675 7597 M: 07732 065 402

F: 0203 675 7576 E: Dipesh.Shah@jmw.co.uk



Chris Deeley

Solicitor | London | Employment

D: 0203 987 7122 M: 07936 035 916

F: 0203 675 7576 E: Chris/Deeley@jmw.co.uk



JMW Solicitors LLP



jmw.co.uk

The New Points Based System

Key Changes



- For the first time the controls will apply to EU nationals and thousands of migrants will have to provide proof of a job offer in the UK.
- UK borders will be closed to non-skilled workers – and all migrants will have to speak English.
- The skills threshold for foreign nationals wanting to work in the UK will be lowered from degree level to A-levels or their equivalent.
- The cap on the numbers of skilled workers is being scrapped – and a small number of highly skilled workers will be allowed to come in without a job.

How to become a Sponsor

- Individuals seeking entry under this tier must be sponsored by an employer who is licensed for this purpose and will issue a certificate of sponsorship (“CoS”) before the would be migrant can apply for leave to remain.
- The sponsor is responsible for ensuring the migrant has the necessary points to qualify under this tier.
- Sponsors also have ongoing compliance and reporting obligations after a CoS has been issued.

The Need to apply for a Sponsor Licence



- As a result of the proposed immigration rules UK employers will find they need to give much more resources, time and money towards visa applications for EU & Non-EU citizens.
- Many UK employers will not be familiar with engaging in the UK immigration system if they have not generally been required to employ non-EU citizens.
- The processing times for Sponsor Licence applications are generally quite quick – completion is often within 8 weeks under a standard service or 10 working days under a priority service.
- The world becomes your oyster in sourcing the best talent and you are ahead of the game in terms of holding a diverse workforce bringing unique skills.
- You are considered more attractive as an employer holding a Sponsor Licence.

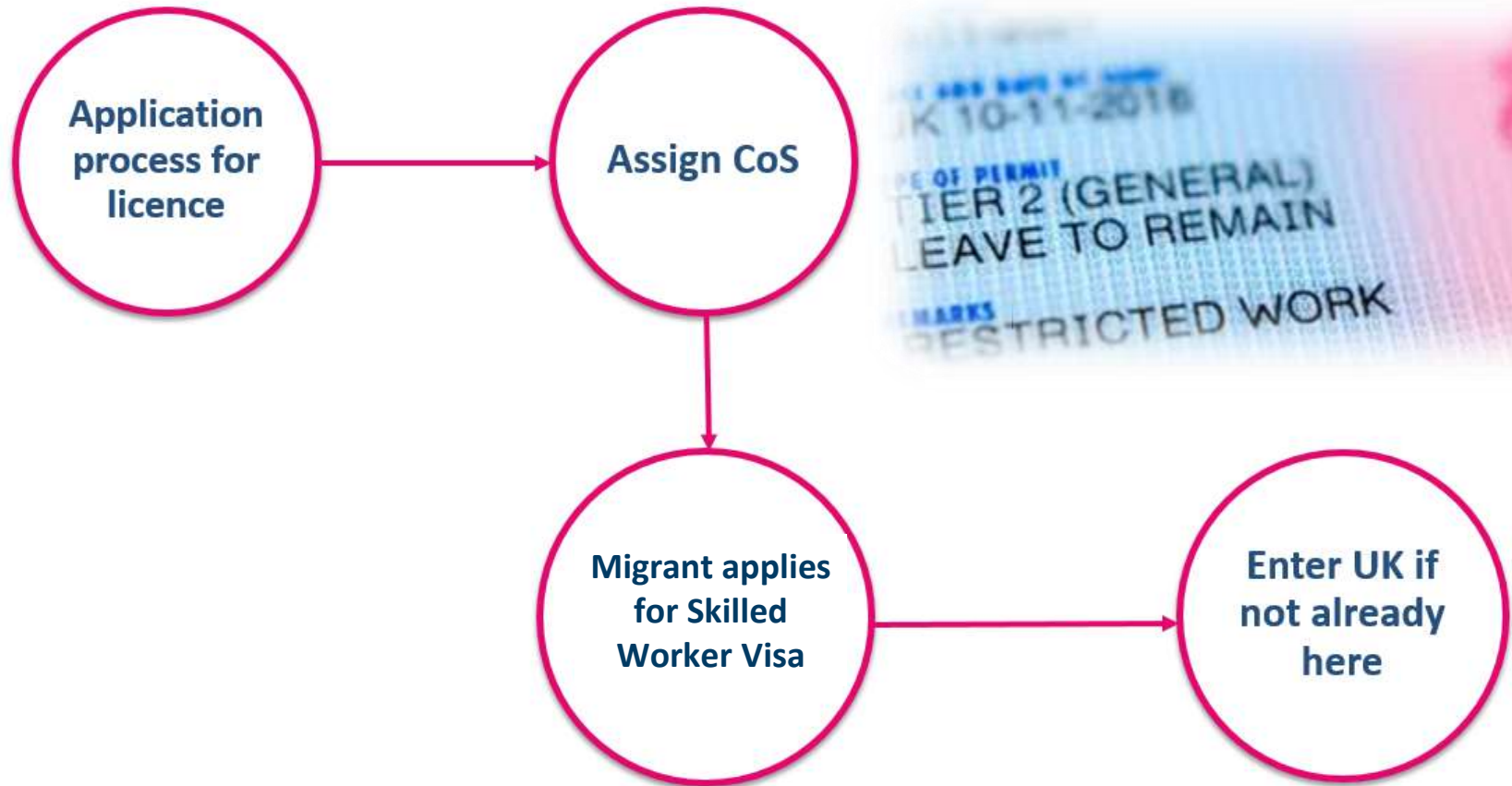
Sponsorship Licence Requirements

- UK Visas and Immigration (UKVI) must be satisfied:
 - that you are a genuine organisation operating lawfully in the UK;
 - that you have relevant HR processes and systems in place; and
 - that you have a genuine need for a Skilled Worker Sponsor Licence.

• *How do you meet these requirements?*



Overview of process



Application Process



- Online Application Process
- Provide a minimum of four documents to evidence you are a genuine UK Entity.
- Ensure that you have the correct mechanisms in place to monitor your staff
- Need to be sent to UKVI with signed submission sheet 5 working days from submitting online.
- Application processed by UKVI within 8 weeks of submission or 10 working days under a Priority Service.



Application Process

- Applicants will also need to provide some general information set out in Appendix A to the Immigration Rules
- This involves:
 - An explanation of why you are applying
 - Sector you operate in and operating hours
 - Are you filling an immediate vacancy (if so details need to be provided) or the reason for the application
 - Details of how the potential candidate was recruited and any potential migrant candidates already employed or identified.
 - Full details can be found on:
<https://www.gov.uk/government/publications/supporting-documents-for-sponsor-applications-appendix-a>

Cost

- You need to pay a fee for the application:
 - £1,476 for medium or large employer
 - £536 for small employers or charities
 - £500 for a 10 working day priority service.
- You are a small employer if: (Any 2 must apply)
 - Turnover is £10.2 million or less
 - Balance Sheet is less than £5.1 million.
 - Employ fewer than 50 employees



Sponsor Licence Administration



- Administer through the Sponsorship Management System (SMS).
- Granted for 4 years.
- Renewable.
- Continued compliance – implement HR systems to manage sponsored migrants.
- Management roles are required to be fulfilled by (i) Authorising Officer, (ii) Key Contact, (iii) Level 1 User.

Sponsor Management System (SMS)

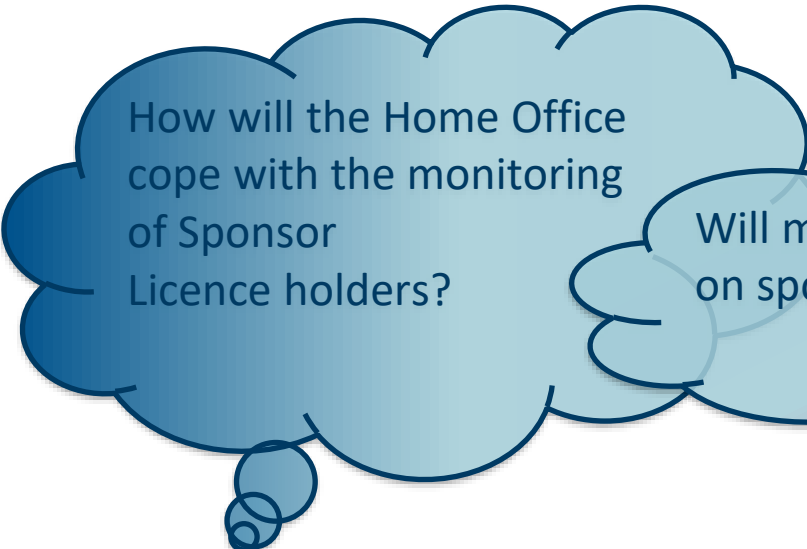


- Keep updated with the SMS
- You assign CoS through the SMS
- Key for reporting requirements
- Key Contact and Level 1 users have access to update the system




Home Office maintain an overarching power to look into company affairs...

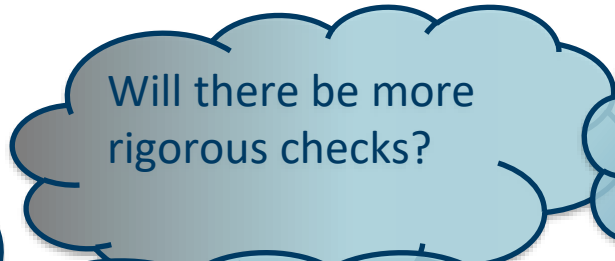
But with a phenomenal increase in sponsor licences being granted the question is...

A large, light blue thought bubble with a dark blue outline and a small tail at the bottom left. It contains the text: "How will the Home Office cope with the monitoring of Sponsor Licence holders?"

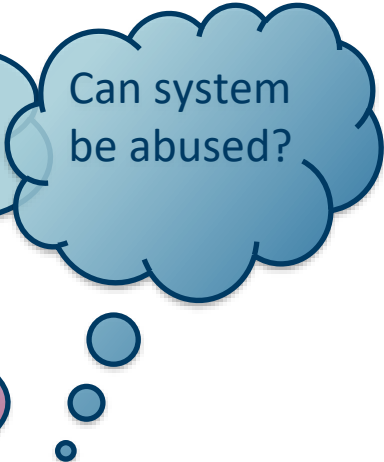
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Will more trust be placed on sponsors?

A light blue thought bubble with a dark blue outline and a small tail at the bottom left. It contains the text: "Will there be more rigorous checks?"

Will there be more rigorous checks?

A light blue thought bubble with a dark blue outline and a small tail at the bottom left. It contains the text: "Can system be abused?"

Can system be abused?

Compliance visit?

- UKVI could undertake a compliance visit before granting licence or at any time during the validity of your Sponsor Licence
- This is to ensure your business has the relevant HR systems in place to monitor migrants and right to work checks
- It does not happen for every application and unlikely in current climate but could so be prepared!



Overview of sponsor's duties



Employees Monitoring

- Process to monitor and track employee and visa expiry dates



- ✓ All documents submitted as part of the licence application
- ✓ For any sponsored migrant:
 - Copy of their passport, other ID, visa, NI number
 - Up to date contact details including address and mobile number
 - history of detailed record of any absences
 - Employment Contract



Hold appropriate registration or qualifications



UK employment law, e.g. NMW and holiday entitlement



BRP Remarks:
No Work.
No Business.
Max 30 Days Study.



Genuine vacancy

Only issue a CoS to migrants who will meet the requirements of the category

Certificate of Sponsorship



- Also known as “CoS”
- A virtual document (not a paper certificate)
- Assign your CoS to your candidate – a reference number is generated and you must pass this number to your candidate
- Through a sponsorship management system (SMS)
- An online form: -
 - Information about the migrant;
 - Work description;
 - Salary.

Assign CoS successfully?



- Show in your SMS as 'used'.
- Can only be used once.
- If migrant's application is withdrawn or rejected, it will show in your SMS as 'assigned'.
- If migrant wishes to re-apply, you must assign a new CoS.
- If the migrant has not used the CoS within 3 months, it will show in your SMS as 'expired'.



Cost of Assigning a CoS

- **£199 fee** every time you assign a Certificate of Sponsorship to an employee.
- Immigration Skills Surcharge of **£364/£1000 per year** of employment per employee. Thus if you are sponsoring an employee's visa for a period of 3 years the Immigration Health Surcharge will be **£1092/£3000** depending on the size of your organisation.
- Should an employee leave your organisation within this 3 year period any portion of the Immigration Skills Surcharge that is unspent will be **refundable**.

Skilled Worker Visa-The Process

IMMIGRATION SKILLS SURCHARGE

- You may have to pay the Immigration Skills Surcharge each time to assign a certificate of sponsorship. If you are deemed a small sponsor you will pay £364 per year or £1000 if you are deemed a large sponsor.
- You do not need to pay the Skills Surcharge in the following circumstances:
 - a. They are applying for entry clearance for less than 6 months.
 - b. They are being sponsored under certain exempt SOC occupations.
 - c. They are a Student who is switching to a Skilled Worker visa.
 - d. They had been assigned a CoS under Tier 2 (General) or (ICT) before 06 April 2017 and they have continued to hold leave under the Tier 2/Skilled Worker category.

ENGLISH LANGUAGE REQUIREMENT- 10 POINTS

All applicants must score 10 points for English language by either:

- Being a national of a majority English speaking country
- Holding a degree that was taught in English and has been deemed by UK Naric as being equivalent to a UK Bachelors/Master's degree and taught in English
- Passing a Home Office approved English Language test in all 4 components (reading, writing, speaking and listening).

MAINTENANCE REQUIREMENT

All Applicants must also have at least £1270 in their bank account to show they can support themselves in the UK. They will need to have had the money available for at least 28 days in a row prior to their application Day 28 must be within 31 days of applying for this visa. If they have been in the UK with a valid visa for at least 12 months or their employer has certified their maintenance requirement for the first month in the UK they will not need to show their bank statements as proof of maintenance,

STEP 2: AFTER YOU HAVE ASSIGNED CERTIFICATE OF SPONSORSHIP

Once you have assigned a valid CoS to a worker and have paid an Immigration Skills Surcharge the worker can then use the CoS to make an application for entry clearance or leave to remain within 3 months of the date you assign it.

Skilled Worker Visa- Tradeable Points

SALARY REQUIREMENTS

- You must ensure that you pay any worker you wish to sponsor at least £25,600 or the minimum salary specified in the SOC for their role.
- Any changes to a worker's salary must be reported via your Sponsor Management System (SMS).
- The Home Office will undertake regular checks via HMRC via your Employer PAYE Reference and compliance visits to ensure that you are paying the amount you said you would.
- Allowances and guaranteed bonuses can be included but not performance related bonuses.

Option	Requirements
A: Salary Only	The applicant's salary equals or exceeds BOTH: <ul style="list-style-type: none"> • £25,600 a year; and • The going rate for their SOC
B: Relevant PhD	PhD in a subject relevant to their job and the applicant's salary equals or exceeds BOTH: <ul style="list-style-type: none"> • £23,040 per year; and • 90% of the going rate for their SOC
C: Relevant STEM PhD	PhD in a Science, Technology, Engineering or Mathematics (STEM) subject relevant to their job and the applicant's salary equals or exceeds BOTH: <ul style="list-style-type: none"> • £20,480 per year; and • 80% of the going rate for their SOC
D: Shortage Occupation	Job is in a listed shortage occupation and the applicant's salary equals or exceeds BOTH: <ul style="list-style-type: none"> • £20,480 per year; and • 80% of the going rate for their SOC
E: New Entrant	Applicant is a new entrant to the labour market and their salary equals or exceeds BOTH: <ul style="list-style-type: none"> • £20,480 per year; and • 70% of the going rate for their SOC
F: Listed Health or Educational Occupation	Job is a listed health or education occupation and the applicants salary equals or exceeds both: (All Health or Education SOC's can only be awarded points from F) <ul style="list-style-type: none"> • £20,480 per year; and • The going rate for their SOC

English Language

For new applicants



PRE 31 DECEMBER 2020

EU NATIONALS

There is no English Language requirement for EU nationals to work or settle in the UK

NON-EU NATIONALS

- Pass an approved English language test with at least CEFR level B1
- Have a NARIC recognised qualification at Bachelors Degree level or above

POST 31 DECEMBER 2020

EU NATIONALS & NON EU NATIONALS

- Pass an approved English language test with at least CEFR level B1
- Have a NARIC recognised qualification at Bachelors Degree level or above

Exemption:

No English requirement if you're a national of a majority English speaking country

Skilled Worker Visa-The Costs

Skilled Worker Application Fees:

For candidates applying from outside the UK (payable in local currency in the country of application):

- **£625** per person if you are assigning their CoS for less than 3 years. (**£479** if their role falls within the Government shortage occupation List).
- **£1235** per person if you are assigning their CoS for more than 3 years (**£943** if their role falls within the Government Shortage Occupation List).

For candidates applying from within the UK:

- **£719** per person if you are assigning their CoS for less than 3 years. (**£479** if their role falls within the Government shortage occupation List).
- **£1423** per person if you are assigning their CoS for more than 3 years (**£943** if their role falls within the Government Shortage Occupation List).

Health Surcharge

- Candidates will also need to pay the healthcare surcharge for each year of their stay which will usually be **£624 per year**

RIGHT TO WORK CHECKS

- What is the procedure for right to work checks after 30 September 2022?
- Who do these checks apply to?
- What are the sanctions against illegal working?
- What are the repercussions?



Right to work checks

Conduct a simple right to work check before you employ someone to ensure they are able to carry out the work in question by reason of their immigration status

Conducting checks set out in the Code of Practice will give you a statutory excuse against liability for a civil penalty

Important that you as the employer carry out the right to work checks and **not** third parties, such as a recruitment agency



Who does this apply to?

- The right to work checks should be carried out by employers who employ staff under:
 - contract of employment, service or apprenticeship,
 - whether expressed or implied and
 - whether oral or in writing.



Who and When?



Who do you conduct right to work checks on?

- All prospective employees should be asked to demonstrate their right to work.

When do you conduct follow up checks?

- You will be required to do a follow up right to work check if the individual's permission to be in the UK and to do the work in question is time-limited.
- The frequency of the follow-up checks depends on whether the documents you are provided with are from Group 1 or Group 2.

Sanctions against illegal working

If you are found to be employing someone illegally and you have failed to carry out the prescribed checks, you may face the following sanctions:

- A civil penalty of up to £20,00 per illegal worker
- A prison sentence of up to 5 years and an unlimited fine
- Closure of the business and disqualification as a director
- Not being able to sponsor migrants
- Seizure of earnings made as a result of illegal working



Types of right to work checks

You should conduct a right to work check **BEFORE** you employ a person to ensure they are legally allowed to do the work in question for you.

Employers must do one of the following before the employee commences employment which if conducted properly will provide you with a statutory excuse:

- Manual right to work check
- A right to work check using IDVT via the services of an IDSP
- A Home Office on-line right to work check.



Manual right to work check

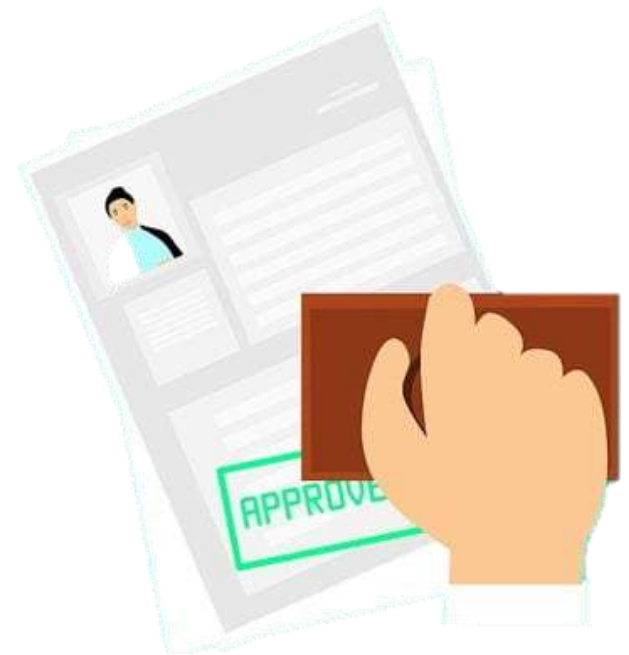
Obtain

Check

Copy

You must obtain original versions of one or more acceptable documents from either List A or B acceptable document listed.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1071247/Employer_s_Guide_to_Right_to_Work_Checks_PDF_.pdf



Manual right to work check

2. You must check the document's validity in the presence of the holder. This can be a physical presence in person or through a live video link.

<https://www.gov.uk/government/publications/identity-document-validation-technology>

3. You must make and retain a clear copy and record the date the check was made. This may be by either making a dated declaration on the document copy or by holding a separate record.

An example of how to correctly document the date of the check is as follows:

“ ***The date on which this right to work check was made: [insert date]***”.

Obtain

Check

Copy



Using an IDSP Provider

- Employers can use the Identity Document Validity Technology (IDVT) via the services of an IDSP to complete the digital identity verification element of right to work checks for British & Irish citizens
- This is the process of obtaining evidence of the prospective employee's identity, checking it is valid and belongs to the person who is claiming it.
- Only British & Irish citizens who hold a **VALID** passport can use this service (including Irish passport cards).
- If the IDSP has carried out their checks in accordance with the RTW guidance it will provide you with a continuous statutory excuse.



Using an IDSP Provider

- The Home Office recommends that employers only accept checks via a certified IDSP provider:
(<https://www.gov.uk/government/publications/digital-identity-certification-for-right-to-work-right-to-rent-and-criminal-record-checks>)
- You must satisfy yourself that the photograph and biographic detail on the output from the IDVT check are consistent with the individual presenting themselves for work
- You must retain a clear copy of the IDVT identity check out for the duration of the employment and for two years after the employment has come to an end.



How can EEA citizens prove their right to work from 1 July 2021?

EEA citizens granted status under EU Settlement Scheme (EUSS)


- Employers can still use the Home Office online right to work service to prove their right to work.
- EEA citizens must provide their share code and their date of birth which will enable employers to check their Home Office immigration status via online service.
- An EEA citizen with Settled Status will have continuous right to work, in the same way as someone with Indefinite Leave to Enter/ Remain status.
- An EEA citizen with Pre-Settled Status, will have a time-limited right to work and employers must carry out a follow-up check. The Home Office will advise when a follow-up check must be carried out.

Changes to right to work checks for EEA and Swiss nationals from 1 July 2021

- Can no longer rely on EEA passport or national identity card to prove their right to work. Instead, EU nationals will need to provide you with an Employer Share Code which you will then need to verify in order to confirm that they have a Right to Work.
- There is no mandatory requirement for retrospective checks to be undertaken on EEA nationals who were employed on or before 30 June 2021. However, it is best practice to have a record of your workers' profile as at 30 June 2021.

Online right to work check

- The use of digital proof of immigration status forms part of the Home Office's move towards a UK immigration system that is digital by default.
- Some individuals (such as EU Citizens) would have been issued with an e-Visa and can only use the online service to prove their right to work.
- Biometric Residence Card (BRC), Biometric Residence Permit (BRP) & Frontier Worker Permit (FWP) holders are also only able to evidence their right to work using the Home Office on-line service.
- This means you cannot accept or check a physical BRC, BRP or FWP as proof of right to work.



GOV.UK

You can now view Lee Jones' right to work details

They have used the online 'prove your right to work to an employer' service on GOV.UK to email you a share code to view their details.

To view their right to work information you will need to go to the employer service 'view a job applicant's right to work details' on GOV.UK and enter their:

- date of birth
- share code **805-732-567**

The share code will expire on Saturday, 20 February 2019.

Email providing the share code

<https://www.gov.uk/view-right-to-work>

Online right to work check

1. Use the Home Office online right to work checking service on GOV.UK. Here is an example of what you will be able to see when accessing the online service.

<https://www.gov.uk/legal-right-work-uk>



The screenshot shows an email from GOV.UK. The header features the GOV.UK logo. The main heading reads "You can now view Lee Jones' right to work details". The body text explains that the recipient has used the online service to receive a share code. It then lists the information needed to view the details: date of birth and the share code 805-732-567. A note states that the share code will expire on Saturday, 20 February 2019. At the bottom, there is a section titled "Email providing the share code".

GOV.UK

You can now view Lee Jones' right to work details

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The share code will expire on Saturday, 20 February 2019.

Email providing the share code

Online right to work check

2. Check that any photographs on the online right to work check is of the individual presenting themselves for work.
3. Retain a clear copy of the response provided by the online right to work check.

The screenshot shows the 'View a job applicant's right to work' page on GOV.UK. It features a profile picture of Lee Jones and the following information:

Lee Jones can work in the UK until 30 April 2020

Details
On their current visa, you can employ them for an any job except those listed in the conditions below.

Conditions
They cannot:

- work as a doctor or dentist in training
- play or coach professional sports

These conditions are the standard requirements for their visa.

If you employ this person
To avoid a penalty, you must:

- check that this is you (the person you must 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 two years after
- do this check again when their visa expires on 30 April 2020

Read the [employer's guide to checking](#) for find out more about right to work checks.

Details of check

Company name	Date of check	Reference number
	8 June 2017	WV 123456789

[View a PDF of this form](#)

[Track and save settings](#)

Searchable online with reference: 1212201

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How does the online service work?

- The service works on the basis of the individual first viewing their own Home Office right to work record.
- They may then share this information with you, by providing you with a 'share code', which, when entered along with the individual's date of birth, enables you to access the information.
- The share code will be valid for 30 days.
- It is vital that you access the service using the employer part of the service in order to obtain a statutory excuse.



What to do if you are unable to do a manual or online check?

- You will need to contact the Home Office's Employer Checking Service to establish a statutory excuse. These are when:
 - Certificate of Application - less than six months old and which indicates that work is permitted; or
 - You consider that you have not been provided with any acceptable documents, but the person presents information indicating they are a long-term resident of the UK who arrived in the UK before 1988.
 - You will then establish a statutory excuse only if you are issued with a Positive Verification Notice from the Home Office.



Employee's visa expires

- If, on the date on which your employee visa expires and you are reasonably satisfied that your employee:
 - ❖ has submitted an in-time application to us to extend or vary their permission to be in the UK; or
 - ❖ is unable to provide acceptable documentation but presents other information indicating they are a non-EEA long-term lawful resident of the UK who arrived here before 1988
- Your statutory excuse will continue from the expiry date of your employee's permission for a further period of up to 28 days to enable you to obtain a Positive Verification from the Employer Checking Service.

If the job applicant or existing worker cannot show their documents

- You must contact the [Home Office Employer Checking Service](#). If the person has a right to work, the Employer Checking Service will send you a 'Positive Verification Notice'.
- This provides you with a statutory excuse for 6 months from the date in the notice.

Home Office – Contact Details



- Contact the employer enquiry helpline for information about employing workers.

Employer enquiry helpline

Telephone: **0300 790 6268**

Monday to Thursday, 9am to 4:45pm

Friday, 9am to 4:30pm

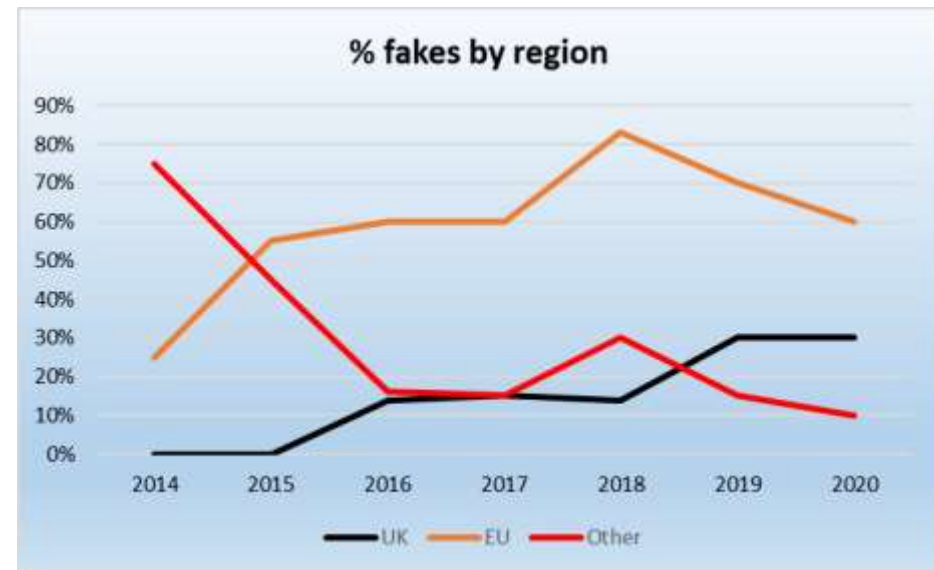
False documentation



If someone gives you a false document or a genuine document that does not belong to them, you should use this link to report the individual to the Home Office, or call their Employer Enquiry helpline on:

0300 790 6268.

(Monday to Thursday, 9am to 4:45pm; Friday 9am to 4:30pm).



Recovering immigration fees

- Contracts are key
- Granularity
 - Sliding scales over time
 - Good / bad leavers
 - Deduction from final salary
- Where should this be contained?
 - Offer letter
 - Employment contract
 - Separate loan / retention agreement?



Recovering Immigration Fees

- Pitfalls
 - Unlawful deduction from wages
 - Penalty clauses
 - Restraint of trade
- Fundamental rationale – have you had the value you have paid for?
- Employers cannot pass on the Certificate of Sponsorship and Immigration Skills Charge fee.



Right to work and employment

- Cover yourself with contracts
 - Be specific
 - Warranties
 - Fulfilling duties, not punishment
- Terminating when no right to work
 - How certain are you?
 - Illegal to perform contract – no notice pay
 - Uncertainty – SOSR – notice pay due
 - Be proactive and thorough



How we can assist...

Experts in Skilled Worker Visas and Sponsor Licence applications with an unblemished track-record...

- 30 minutes free initial consultation:
 - To assess if the employer is able to meet the legal requirements and that the type of employee they wish to recruit would satisfy the Skilled Worker requirements.
 - Explain process and the legal requirements and documents
- We can come on board as a level 1 user, key contact and manage all their contact with the Home Office.
- Assign the Certificate of Sponsorship for the employer
- Assist with processing of visa applications for the employees.
- Provide sponsor management service to monitor and adhere to the rules and requirements.

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in
your
corner



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AND YOUR BUSINESS**

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