



**MOMENTUM  
ELECTRICAL**  
DESIGN | SUPPLY | INSTALL

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## Right To Work Policy

### 1. Introduction

#### 1.1. Importance of right to work checks

1.1.1. A right to work check determines whether an applicant has the legal right and permission to work in the UK. The Immigration, Asylum and Nationality Act 2006 (amended by the Immigration Act 2016) provides employers with a statutory excuse against a civil penalty where they can clearly demonstrate that they have carried out all the necessary checks to mitigate any risks of employing illegal workers.

1.1.2. Momentum Electrical Ltd accept that all employers are at risk of facing a civil penalty if they are found to be employing an illegal worker and they haven't carried out a correct right to work check. A civil penalty can be anything up to £20,000 per illegal worker. Criminal sanctions may also apply where the employer is found to have knowingly appointed or continues to employ an individual who does not have a right to work in the UK.

### 2. Minimum requirements

#### 2.1. Who requires a right to work check and when?

2.1.1. To avoid discrimination, Momentum Electrical Ltd complete right to work checks on all successful applicants before they are allowed to take up employment.

2.1.2. Momentum Electrical Ltd make no assumption about an individual's right to work on the grounds of colour, race, nationality, ethnic or national origins, accent, or the length of time they have been resident in the UK.

#### 2.2. Online checks

2.2.1. Non-UK nationals wishing to work in the UK can confirm their right to work themselves through the Home Office online checking portal, the digital service supports checks in respect of those who hold:

- i) a biometric residence permit;
- ii) a biometric residence card:



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- iii) status under the EU Settlement Scheme;
- iv) status under the points-based immigration system;
- v) a British National Overseas (BNO) visa, or;
- vi) a frontier workers permit.

2.2.2. Momentum Electrical Ltd inform applicants that they can also provide their share code so that their right to work status can be checked digitally instead of requiring them to present documentary evidence. The share code is generated when the applicant accesses their details online.

2.2.3. Since 06 April 2022, changes have been applied to checks currently conducted on holders of the Biometric Residence Card (BRC), a Biometric Residence Permit (BRP) and Frontier Work Permit (FWP). From this date Momentum Electrical Ltd no longer accept physical biometric cards for BRC, BRP and FWP holders to evidence right to work check. They will need to evidence right to work using the Home Office checking portal only.

2.2.4. Where Momentum Electrical Ltd can evidence that they have undertaken a right to work check using the online portal and have confirmed that the photograph on the check is of the individual presenting themselves for work, this will provide them with a statutory excuse. The same follow up checks must be undertaken where the individual's right to work status indicates that they have limited leave to remain. Where individuals choose not to have their right to work status verified online, employers must conduct manual checks as described in section 2.3.

2.2.5. It is not currently possible to conduct a digital right to work check for British and Irish citizens, instead see the manual process described in section 2.3. However, from 06 April 2022, a new system for digital checks of candidates' right to work in the UK has been introduced, allowing all employers to verify British and Irish citizens' eligibility to work, via a certified third party, without having to check physical documents.

2.2.6. Momentum Electrical Ltd will still be required to confirm that the photograph provided to the third-party provider they use is a true likeness of the prospective employee. This can be in person or via a video call, as outlined in Home Office guidance. Momentum Electrical Ltd will also retain a clear copy of the identity check output for the duration of employment and for two years after the employment has come to an end.

2.2.7. There will be occasions where a digital right to work check for British and Irish citizens will not be possible and therefore a manual check of the original document to obtain a statutory excuse e.g. if an individual is reliant upon an expired British or Irish passport,



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will be required. Momentum Electrical Ltd agree to follow Home Office guidance about the documents required for the purposes of verifying right to work digitally via a certified provider.

2.2.8. Momentum Electrical Ltd will endeavour to become familiar with the new right-to work regulations, and to ensure that staff involved in arranging identity and right to work checks have the necessary training on for example, what information they must obtain from the third-party to confirm a candidate's identity; what the information can be used for; and what other requirements they still need to fulfil to establish eligibility to work.

2.2.9. The same process will be followed for the purpose of verifying an individual's identity, as part of an application for a DBS check.

### 2.3. Manual checks

2.3.1. It will not be possible to conduct an online right to work check in all circumstances, as not all individuals will have an immigration status that can be checked online, or an individual may choose not to demonstrate their right to work using the online service. In such cases Momentum Electrical Ltd will conduct a manual check.

2.3.2. When conducting manual checks, there are three steps that Momentum Electrical Ltd will take to confirm an individual has the right to work in the UK:

- i) Obtain the person's original documents from List A or List B of the acceptable documentary evidence as outlined below.
- ii) Check all documentary evidence with the holder to verify that the documents are genuine, that the individual is the rightful owner of those documents, and they are permitted to do the type of work being offered.
- iii) Make a clear copy of all documentary evidence seen and record the date of the check (documents may be photocopied or scanned and uploaded onto the electronic staff record (ESR) or other internal HR system).

2.3.3. Momentum Electrical Ltd will retain all copies securely for the duration of the individual's employment, and for at least two years after the employment has come to an end. Copies of personal information will only be retained for the purpose of establishing a statutory excuse as defined by Section 15 of the Immigration, Asylum and Nationality Act 2006 (as amended in 2014) and retained in line with data protection



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laws (as amended in 2018).

2.3.4. Momentum Electrical Ltd will always refer to Home Office guidance which can be found on the [www.gov.uk](http://www.gov.uk) website:

- i) Right to work checks: employer guidance.
- ii) An employer's guide to the administration of the civil penalty scheme.
- iii) The code of practice on preventing illegal working: civil penalty scheme for employers.

#### 2.4. Acceptable right to work documents

2.4.1. The Home Office has provided guidance which outlines the type and range of acceptable right to work documents (List A and List B) that must be obtained and verified to prove an individual's right to work in the UK.

2.4.2. Momentum Electrical Ltd will insist upon seeing:

- i) one document or a combination of documents as specified in List A OR;
- ii) one document or a combination of documents as specified in List B.

2.4.3. Momentum Electrical Ltd will not accept any other documents or combination of documents other than those stipulated by the Home Office in Lists A and B to retain a statutory excuse.

2.4.4. Momentum Electrical Ltd will ensure that all documents are original and show that the holder is entitled to do the type of work being offered.

2.4.5. Those that contain an expiry date should be valid and current. Photocopies and documents downloaded from the internet will not be accepted.

2.4.6. An indefinite leave to remain stamp in an expired passport will not be accepted. Where an individual presents an expired passport with indefinite leave to remain, Momentum Electrical Ltd will endeavour to provide the individual with opportunity to obtain and provide current documents, such as a Biometric Residence Permit.

#### 2.5. Frequency of checks



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2.5.1. Momentum Electrical Ltd will carry out an initial right to work check to prevent illegal working on all individuals we intend to employ before employing them. Once we have completed this check, we will carry out follow-up right to work checks if the individual's permission to be in the UK and to do the work in question is time-limited to ensure we retain a statutory excuse. There are two categories of statutory excuse:

i) Continuous excuse - This is where an individual can provide one document or combination of documents from List A and there are no restrictions on their right to work in the UK. Once documents from List A have been checked, copied, and retained, there is no requirement to conduct any repeat checks on the worker for the duration of their employment. This also applies where documentary evidence shows that the individual has indefinite leave to remain in the UK.

ii) Time-limited excuse - This is where an individual can provide a document or combination of documents from List B which means they have time-limited and restricted right to work in the UK. The individual's permission to work in the UK ends when their visa or other right to work document expires. Some visas carry restrictions as to the number of hours the individual can work and/or the type of work they can do. This means that another check must be made before the expiry date of the visa if we wish to continue to employ them.

2.5.2. The statutory excuse will continue for a further period of up to 28 days from the expiry date given in the employee's document, where Momentum Electrical Ltd can obtain the necessary assurances that they:

- i) have submitted an in-time application to UKVI, or:
- ii) have made an appeal against an immigration decision before the expiry date specified in their document.

2.5.3. Where relevant, Momentum Electrical Ltd will make it a contractual condition for workers to maintain their right to work status for the full term of employment.

## 2.6. In-time applications

2.6.1. An employee's application for further immigration permission to stay in the UK must be made before their existing permission expires for it to be deemed in-time. Any right to work will continue until the outcome of the application is determined.

2.6.2. Momentum Electrical Ltd will:



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- i) Seek acceptable proof of an in-time application being made, such as a Home Office acknowledgement letter or proof of postage which indicates that an application was sent to the Home Office.
- ii) Go to the Home Office's online employer checking service portal to confirm that an application has been received and the individual continues to have a right to work while their application/appeal is being determined. The Home Office advises to wait for 14 days after the individual has submitted their application or appeal to ensure this has been registered. Momentum Electrical Ltd agree to inform prospective or current employees when they are carrying out a check with the service.

2.6.3. The Home Office will then issue a positive verification notice which confirms that the named individual is permitted to carry out the type of work in question. Positive verification notices are valid for a period of six months from the issue date.

2.6.4. Momentum Electrical Ltd will take copies of all documentary evidence, including the positive verification notice, to retain a statutory excuse.

## 2.7. Validating, copying, and storing documents

2.7.1. When validating documents presented by applicants, Momentum Electrical Ltd will:

- i) check photographs, where available, and dates of birth are consistent with the appearance of the individual;
- ii) check that expiry dates of any limited leave to enter or remain in the UK are still valid;
- iii) check any government stamps or endorsements to ensure the individual is entitled to do the work being offered;
- iv) If the applicant provides documents that have different names, Momentum Electrical Ltd will request further documentation to explain the reason for this (marriage/civil partnership certificate, divorce certificate, deed poll, adoption certificate or statutory declaration) and;
- v) dates must be cross-referenced with identity documents and work permits or confirmed by contacting appropriate embassies and consulates.

2.7.2. All documents will be copied and retained on file securely either electronically or in hard copy to provide proof against a penalty, in line with data protection laws. A record of the date on which a check was made will be retained, either by making a dated declaration on the copy or in a separate record, held securely, which can be shown to



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the Home Office upon request to establish the statutory excuse.

2.7.3. Momentum Electrical Ltd will make a copy of the relevant page or pages of the document in a format that cannot be subsequently altered, for example a photocopy or scan. In the case of a passport or other travel document, the following parts will be photocopied or scanned:

- i) Passports: any page with the document's expiry date, nationality, date of birth, signature, leave expiry date, biometric details and photograph, and any page containing information indicating the holder has an entitlement to enter or remain in the UK and undertake the work in question.
- ii) Biometric residence permits and residence cards (biometric format): copy both sides.
- iii) All other documents: the document in full.

2.7.4. Momentum Electrical Ltd will keep a record of every document copied in line with data protection laws. Copies of the documents will be kept securely for the duration of the individual's employment and for a further two years after their employment has ceased. The person taking the copy will sign and date it to show it has been certified.

### **3. Failure to carry out checks**

- 3.1. Failure to carry out the necessary checks can result in the Home Office issuing the employer with a civil penalty of £20,000 per illegal worker or imposing up to five years' imprisonment and/or an unlimited fine where they are found to have knowingly employed an illegal worker.
- 3.2. Migrants found to be working illegally may also face a maximum custodial sentence of six months and/or an unlimited fine (in England and Wales). Wages paid to an illegal migrant will be recoverable under the Proceeds of Crime Act 2002.
- 3.3. In certain circumstances, immigration officers can close an organisation for up to 48 hours or place it under special compliance requirements where it is suspected of employing an illegal worker. Where employers can provide the sufficient evidence that all right to work checks have been conducted and that they have taken all reasonable steps to prevent illegal working, the 'closure notice' may be cancelled.

### **4. Right to work evidence – scenarios**



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#### 4.1. EEA nationals

4.1.1. The UK has left the European Union (EU) and the EU Withdrawal Act 2020 ended free movement law in the UK on 31 December 2020. There followed a grace period of six months (until 30 June 2021) during which relevant aspects of free movement law were saved to allow eligible EEA citizens and their family members resident in the UK by 31 December 2020 to apply to the EU Settlement Scheme.

4.1.2. Since 01 July 2021, EEA nationals and their family members have required immigration status in the UK, in the same way as other foreign nationals. They can no longer rely on an EEA passport or national identity card to prove their right to work. EEA nationals must demonstrate their right to work either with the pre-settled or settled status under the EU Settlement Scheme, or with a visa under the points-based immigration system.

4.1.3. Most EEA national's resident in the UK will have made an application to the EU Settlement Scheme and will have been provided with digital evidence of their UK immigration status. They will evidence their right to work by sharing their immigration status digitally, using the Home Office online right to work checking service. This service allows employers to check an applicant's right to work status online instead of requiring them to present documentary evidence.

4.1.4. There will, however, be other EEA nationals who have another form of leave in the UK, which is held in a physical document, for example an endorsement in a passport, visa or vignette, those are included in the Home Office acceptable right to work document lists.

4.1.5. Irish nationals continue to have the right to work in the UK under Common Travel Area arrangements and as such they can continue to use a passport or passport card to prove their rights in the UK. They did not have to apply for status under the EU Settlement Scheme, but may have chosen to do so, meaning they can also use their settled or pre-settled status to prove their right to work.

4.1.6. Momentum Electrical Ltd will always refer to Home Office guidance on employing EEA citizens in the UK for more information.

4.1.7. EEA nationals can be directed to Home Office guidance on viewing and proving their immigration status for support with the process.





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## 4.2. Non-EEA nationals

4.2.1. Non-EEA nationals can use an immigration status document listed in the Home Office acceptable right to work documents to prove their right to work.

4.2.2. Those who hold a biometric residence permit, biometric residence card or status under the points-based immigration system can also prove their right to work using the Home Office online checking service. If an applicant uses the online service, this will generate a share code so that employers can check an applicant's right to work status online instead of requiring them to present documentary evidence.

## 4.3. Asylum seekers

4.3.1. An asylum seeker is a person who has made an application for asylum, but whose application is yet to be decided upon. Asylum seekers generally do not have the right to work in the UK. For the very small number who do, it will state employment permitted or allowed to work on their application registration card (ARC).

4.3.2. Momentum Electrical Ltd will always seek a positive verification notice from the Home Office to confirm the individual's status and right to work in the UK before they are allowed to start work. This will be done by going to the online employer checking service portal. Momentum Electrical Ltd accept that it is employers' responsibility to inform prospective or current employees when they are carrying out a check with the service.

4.3.3. Further information about employing asylum seekers can be found in the Home Office guidance for employers on preventing illegal working in the UK.

## 4.4. Refugees

4.4.1. A refugee is a person who has had a positive decision on their claim for asylum under the 1951 United Nations Convention Relating to the Status of Refugees (the Refugee Convention). Individuals who do not meet the Refugee Convention's criteria for refugee status may qualify either for humanitarian protection (granted for five years), or discretionary leave to remain (granted for up to three years).

4.4.2. Refugees have rights under the Geneva Convention to be treated no less favourably than citizens of the host nation. This means that they can work and are able to move and reside freely in the UK. They are also eligible for mainstream benefits and services,



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including access to education and NHS treatment, in the same way as UK citizens.

4.4.3. Refugees with humanitarian protection or discretionary leave to remain are entitled to apply for further leave before their right to remain expires. A refugee's entitlement to employment and training continues during this period of waiting for a decision on their application.

4.4.4. Refugees are unlikely to have a passport or copies of other official documentation, such as a birth certificate or drivers licence.

4.4.5. They are not a part of the points-based immigration system. If granted leave to remain in the UK, a refugee will be issued with a Home Office Immigration Status document (ISD) which will indicate their refugee status. Momentum Electrical Ltd may ask the individual to present this and accept this as evidence of their identity.

#### 4.5. International students

4.5.1. International students are often able to work part time (20 hours per week) when studying in the UK, and full time during their holidays and any period between completing their studies and their permission to be in the UK expiring. Some international students have no right to work at all.

4.5.2. Before employing a student with limited right to work during term time, Momentum Electrical Ltd will obtain evidence of their academic term and vacation dates that cover the duration of their studies in the UK for which they will be employed by you. Momentum Electrical Ltd will request this evidence from the student.

4.5.3. This evidence should originate from the education institution that is sponsoring the student. Momentum Electrical Ltd will obtain the dates for the entire duration of the course or, if this is not possible, Momentum Electrical Ltd will obtain and copy them annually providing the information you hold is current at the time of the student's employment.

4.5.4. Acceptable evidence includes one of the following:

- i) A printout from the student's education institution's website, or other material published by the institution setting out its timetable for the student's course of study.
- ii) A copy of a letter or email addressed to the student from their education institution, confirming term-time dates for the student's course.



iii) A letter addressed to Momentum Electrical Ltd as the employer from the education institution, confirming term-time dates for the student's course.

4.5.5. In exceptional circumstances, for example where the student is following a course timetable that differs from the one published, Momentum Electrical Ltd will obtain bespoke evidence from the sponsor.

#### 4.6. Staff acquired under Transfer of Undertakings Protection of Employment

4.6.1. Should Momentum Electrical Ltd acquire staff because of a transfer of undertaking protection of employment (TUPE) transfer, we will not rely on another employer's right to work checks. Momentum Electrical Ltd will undertake the appropriate document checks within 60 days following the date of transfer.

### 5. What to do if an applicant does not have the right to work

5.1. If, after carrying out these checks, it is established that the applicant is not permitted to work in the UK, Momentum Electrical Ltd will not allow the individual to commence employment.

5.2. If a person is likely to obtain the relevant permission within an acceptable period, then it is at the discretion of Momentum Electrical Ltd as to whether we agree to wait until the permission is received or withdraw the offer of employment. If there is no evidence that the relevant permission is going to be forthcoming promptly, then the offer of employment will be withdrawn.