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difference

Preventing Illegal Working
Policy and Procedure

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1. INTRODUCTION

- 1.1 The Council has a statutory duty to prevent illegal working by carrying out prescribed document checks on all potential and current employees in order to confirm that they have the right to work in the UK.

All checks should be carried out before the employment commences. If it is found that an employee has a time limit on their stay in the UK then these checks must be repeated at least once every 12 months to ensure that there is a continuing right to work here. Additionally if there's a restriction on the type of work they can do and, or, the amount of hours they can work, then we must not employ them in breach of these restrictions.

Failure to carry out such checks could result in a fine of up to £20,000 for each employee found to be working illegally. Furthermore the penalty for knowingly employing someone illegally is up to 2 years in prison plus an unlimited fine.

- 1.2 The Home Office have produced a comprehensive guide for employers and provided that the Council follows this and can demonstrate that all the required document checks are carried out then it will have a legal excuse (known as a statutory excuse) against payment of a civil penalty if it was found to be employing an illegal worker.

2. WHO IS ENTITLED TO WORK IN THE UK?

- 2.1 There are work restrictions on nationals from certain countries, these could be a restriction on the type of work they can do and, or the amount of hours they can work.

Swiss Nationals and nationals from the following European Economic Area (EEA) can work in the UK subject to checks that they have been granted Settled Status:

Austria	Germany	Malta
Belgium	Greece	Netherlands
Bulgaria	Hungary	Norway
Croatia	Iceland	Poland
Cyprus	Ireland	Portugal
Czech Republic	Italy	Romania
Denmark	Latvia	Slovakia
Estonia	Liechtenstein	Slovenia
Finland	Lithuania	Spain
France	Luxemburg	Sweden

- 2.2 The Council will always ask for, check and take copies of acceptable documents to confirm immigration status of **all** prospective employees.
- 2.3 **Asylum seekers**
Asylum seekers do not normally have the right to work here and may only be lawfully employed if the Home Office lift restrictions on them taking employment.
- 2.4 **Students**
Not all international students (those from outside the EEA) are entitled to work while they are in the UK, but some are allowed to take limited employment providing the conditions of their permission to study permit this.
- 2.5 Where a student does have a limited right to work, the working hours that they may undertake depend on when they applied for permission to come to or stay in the UK, the type of course they are studying and the type of educational provider with whom they are studying.
- 2.6 **Applications for employment from persons other than those allowed to work in the UK without restrictions (see paragraph 2.1) will only be considered following consultation with the Home Office.**

3. CHECKING THAT A PERSON IS ENTITLED TO WORK IN THE UK

- 3.1 **What documents are acceptable?**
The documents that are acceptable for proving someone has the right to work in the UK are split into two lists. These lists are called List A and List B. (See Appendix 1)
Any of the documents, or specified combinations of documents, described in List A show that the holder has an on-going right to work in the UK.
Any of the documents, or specified combinations of documents, described in List B show that the holder has a right to work in the UK for a limited period of time. If the checks are made correctly, these checks must be checked at least every 12 months if the Council is to be protected from prosecution and penalties.
- 3.2 **Step 1 – Documents to be produced**
All prospective employees (or existing employees, if you are carrying out repeat checks) must be asked to provide one of the single documents, or specified combinations of documents from List A or List B (see Appendix 1).
Only original documents are to be accepted.
If a new or existing employee is only able to provide documents from List B, these documents must be checked again at least once every twelve months.

3.3 **Step 2 – Examination of documents**

The Council is required to take all reasonable steps to ensure the validity of the documents produced and that they correspond in every way to the person to be employed. This should be done by:

- checking that photographs are consistent with the appearance of the person
- checking that dates of birth listed are consistent across documents and that you are satisfied that these match up with the appearance of the person
- checking that the expiry dates of any limited leave to enter or remain in the UK have not passed
- satisfying yourself that the documents are genuine, have not been tampered with and belong to the holder
- asking for a further document in explanation if you are given two documents which have different names. The further document could, for example, be a marriage certificate or a divorce decree absolute, a deed poll or statutory declaration.

These documents should also specify that the prospective employee (or an existing employee undertaking a re-check) is allowed to undertake the post.

3.4 **Step 3 – Record of documents**

All relevant pages of the document should be photocopied or scanned. Copies of passport or other travel documents must include:

- the document's front cover and any page containing the holder's personal details particularly those providing details of nationality, his or her photograph, date of birth, signature, date of expiry or biometric details; and
- any page containing UK Government endorsements indicating that the holder has an entitlement to be in the UK and is entitled to undertake the work in question.

Other documents should be copied in their entirety.

3.5 A record should then be kept of every document that has been copied. The officer who has checked and copied the document should sign and date the copy to confirm that they have checked the original document.

All copies of the documents should be kept securely in the employee's HR file for the duration of the employment and for a further two years after the employment has ceased. This will enable the Home Office to determine the Council's liability if they detect anyone who is employed illegally.

3.6 **Required documentation not produced prior to recruitment**

The Council will refuse to employ any person who fails to produce evidence of their entitlement to work in the UK.

3.7 Carrying out repeat checks

If the potential employee provides a document or documents, from List A, this will establish an "excuse" for the duration of their employment.

If the employee presents a document from List B, this is likely to indicate that they only have limited leave to be in the UK. To comply with the regulations and avoid penalty, follow-up checks must be made by repeating steps 1 to 3 at least once every 6 months until the individual provides documents indicating that they can remain permanently in the UK.

Document Type	Excuse Type	Frequency of Checks
List A	Continuous	Before employment starts only
List B – Group 1	Time limited	Before employment starts and again when permission (as set out in the document checked) expires
List B – Group 2	Time limited	Before employment starts and again after six months (as set out in the Positive Verification Notice).

3.8 If the required documentation is not produced, or it is found that the employee is no longer allowed to work or carry out the work in question in the UK the Council must terminate the contract of employment on expiry of the document confirming the right to work.

This action will only be taken in consultation with Human Resources.

4. TRANSFER OF UNDERTAKING (PROTECTION OF EMPLOYMENT)

4.1 Employees who are acquired as a result of a Transfer of Undertakings (Protection of Employment) transfer will be required to provide the documents as outlined above. The Council will have 60 days from the date of transfer to check and copy the relevant documentation.

5. AVOIDING DISCRIMINATION

5.1 It is important that the Council adopt procedures which protect us from prosecution, but equally important to ensure that these procedures do not fall foul of the Race Discrimination Laws. The Human Resource team will ensure that there are no discriminatory practices and all potential employees will be treated in the same way and be required to provide documentation as outlined in this procedure before they start work.

This will ensure that we have complied with the changes and have a valid defence against payment of a civil penalty if it is found that an employee is not legally allowed to work in the UK.

6. EQUALITY IMPACT ASSESSMENT AND MONITORING

- 6.1 The operation of this policy will be monitored for its impact on different equality groups in line with the Equality Act 2010. This will enable the Council to assess whether any differences have an adverse impact on a particular group, such that further action would be required.

7. DATA PROTECTION

- 7.1 In implementing this policy, the Council will ensure that any personal data relating to the application of this policy will be obtained, processed and destroyed in line with Data Protection requirements. .

DOCUMENTS THAT SHOW AN ONGOING RIGHT TO WORK

All prospective employees (or existing employees, if you are carrying out repeat checks) must be asked to provide one of the single documents, or specified combinations of documents from List A or List B

However documents included on list B show a right to work for up to 12 months only. Follow up checks will therefore be required at least once every 12 months to ensure legal employment.

LIST A

1. A passport (current or expired) showing 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 passport card (in either case, whether current or expired) showing that the holder is an Irish citizen.
3. A document issued by the Bailiwick of Jersey, the Bailiwick of Guernsey or the Isle of Man, which has been verified as valid by the Home Office Employer Checking Service, showing that the holder has been granted unlimited leave to enter or remain under Appendix EU to the Jersey Immigration Rules, Appendix EU to the Immigration (Bailiwick of Guernsey) Rules 2008 or Appendix EU to the Isle of Man Immigration Rules.
4. 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.
5. 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.
6. A birth or adoption certificate issued 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

7. 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.
8. 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 or travel document endorsed to show that the holder is allowed to stay in the United Kingdom and is allowed to do the type of work in question.
2. A document issued by the Bailiwick of Jersey, the Bailiwick of Guernsey or the Isle of Man, which has been verified as valid by the Home Office Employer Checking Service, showing that the holder has been granted limited leave to enter or remain under Appendix EU to the Jersey Immigration Rules, Appendix EU to the Immigration (Bailiwick of Guernsey) Rules 2008 or Appendix EU to the Isle of Man Immigration Rules.
3. 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 document issued by the Home Office showing that the holder has made an application for leave to enter or remain under Appendix EU to the immigration rules on or before 30 June 2021 together with a Positive Verification Notice from the Home Office Employer Checking Service.

2. A Certificate of Application (digital or non-digital) issued by the Home Office showing that the holder has made an application for leave to enter or remain under Appendix EU to the immigration rules (known as the EU Settlement Scheme), on or after 1 July 2021, together with a Positive Verification Notice from the Home Office Employer Checking Service.
3. A document issued by the Bailiwick of Jersey, the Bailiwick of Guernsey or the Isle of Man showing that the holder has made an application for leave to enter or remain under Appendix EU (J) to the Jersey Immigration Rules or Appendix EU to the immigration Rules (Bailiwick of Guernsey) Rules 2008, or Appendix EU to the Isle of Man Immigration Rules together with a Positive Verification Notice from the Home Office Employer Checking Service.
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.
4. 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.