



Preventing Illegal Working Policy and Procedure

Contents

		Page
1.	Introduction	1
2.	Who is entitled to work in the UK	1
3.	Checking that a person is entitled to work in the UK	2
4.	Transfer of Undertakings (Protection of Employment)	5
5.	Avoiding Discrimination	5
6.	Equality Impact Assessment and Monitoring	5
7.	Data Protection	5
Appendix 1: Documents that show an ongoing right to work		6

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 without restriction:

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

- 2.2 Their immediate family members are also able to work freely in the UK while their adult EEA family members are legally residing and working here.
- 2.3 The Council will always ask for, check and take copies of acceptable documents to confirm immigration status of **all** prospective employees.
- 2.4 **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.

2.5 **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.

2.6 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.

2.7 **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 **Online Checks**

Historically employers have had to carry out physical checks of documentation (as set out below) however since January 2019 an online facility has been available which requires applicants to confirm their right to work with the home office online before providing their new employer with an access code.

There may be circumstances where an online check is not possible due to the person's immigration status and a manual check will therefore be required.

Currently the online checking service supports checks in respect of those who hold:

- A biometric residence permit;
- A biometric residence card; or
- Status issued under the EU Settlement Scheme (alternatively, these individuals continue to be able to demonstrate their right to work by presenting their EU passport or ID card until the end of the planned implementation period).

3.1.1 **Step 1**

The service works on the basis of the individual sharing their Home Office right to work record by providing a 'share code'.

The employer's part of the service – 'View a job applicant's right to work details' - is then accessed using the share code and the individual's date of birth.

3.1.2 **Step 2**

Check that the photograph on the online right to work check is of the individual presenting themselves for work.

Check confirmation that they have the right to work and are not subject to a condition preventing them from doing the work in question.

3.1.3 **Step 3**

The 'profile' page confirming the individual's right to work will need to be retained and stored securely.

3.2 **Manual Checks**

3.2.1 **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, this will establish a time-limited excuse. They must then be checked again at least every 12 months if the Council is to be protected from prosecution and penalties.

3.2.2 **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

3.2.3 **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; and
- 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; and
- checking that the expiry dates of any limited leave to enter or remain in the UK have not passed; and
- checking any UK government endorsements (Biometric Residence Permits, stamps, stickers, visas) to see if the person is able to do, or can continue to do, the type of work you are offering; and
- satisfying yourself that the documents are genuine, have not been tampered with and belong to the holder; and

- 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.

3.2.4 **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.

3.2.5 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.

3.3 **Retention**

All copies of the documents taken for manual checks or the ‘profile’ page for online checks 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.

3.4 **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.

3.5 **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).
------------------	--------------	---

- 3.6 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 Undertakings (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 showing that the holder, or a person named in the passport as the child of the holder, is a British citizen or a citizen of the United Kingdom and Colonies having the right of abode in the United Kingdom.
2. A passport or national identity card showing that the holder, or a person named in the passport as the child of the holder, is a national of the European Economic Area 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 of a European Economic Area country or Switzerland.
5. A **current** Biometric Immigration Document (Biometric Residence Permit) issued by the Home Office to the holder which indicates that the person named in it is allowed to stay indefinitely in the United Kingdom, or has no time limit on their stay in the United Kingdom.
6. A **current** passport or other travel document endorsed to show that the holder is exempt from immigration control, is allowed to stay indefinitely in the United Kingdom, has the right of abode in the United Kingdom, or has no time limit on their stay in the United Kingdom.
7. An **current** Immigration Status Document issued by the Home Office to the holder with an endorsement indicating that the person named in it is allowed to stay indefinitely in the United Kingdom or has no time limit on their stay in the United Kingdom, **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 United Kingdom 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 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 **current** Biometric Immigration Document (Biometric Residence Permit) issued by the Home Office to the holder which indicates that the person named in it can stay in the United Kingdom 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.