



**London Borough
of Hounslow**

Right to Work in the UK

Transformation & Human Resources

Issued by HR Policy Team
Effective from 28 July 2014

RIGHT TO WORK IN THE UK POLICY

1 Introduction

- 1.1 This policy sets out the requirements of the Immigration, Asylum and Nationality Act 2006 as it relates to the employment of staff.
- 1.2 It forms part of the pre-employment screening of the Council's recruitment and selection process and supplements the process outlined in 8.2 of the Recruitment Policy.

2 Scope

- 2.1 This policy applies to all candidates who are offered employment with the Council, except those employed in schools under the control of Governing Bodies, for whom procedures adopted by the Governing Body will apply.
- 2.2 Employees are as defined in section 230 of the Employment Rights Act 1996 or any substituting or amending legislation. This policy applies equally to persons being offered permanent and temporary employment and those engaged to perform a service for the council e.g. casual / sessional workers, consultants, contractors.
- 2.3 With agency workers it is the responsibility of their employing agency to ensure that all the pre-employment screening is satisfactorily completed and that workers are legally entitled to work in the UK.

3 Immigration, Asylum and Nationality Act

- 3.1 Under section 15 of the Immigration, Asylum and Nationality Act 2006, an employer may not employ an adult, subject to immigration control, if s/he has not been granted leave to enter or remain in the UK or if their leave to enter or remain in the UK is either invalid, has ceased to have effect or is subject to a condition preventing them from accepting that employment.
- 3.2 The Act places a duty on employers to prevent illegal working by carrying out document checks to confirm that applicants have the right to work in the UK. It is an offence to employ an illegal worker.

Penalties

- 3.3 Employers found to be employing a person who is not allowed to work in the UK can be fined up to £20,000 for each illegal worker. If an

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employer is found to have knowingly employed an illegal worker, they could receive the maximum penalty of two years' imprisonment.

- 3.4 By carrying out the checks as required in section 4 employers will have **an excuse** against payment of a civil penalty if it later turns out that an employee does not have a right to work in the UK.

4 Right to Work Document checks

- 4.1 All applicants who have been offered employment with the Council must show they have a right to work in the UK, except for:
- Existing employees whose employment with the Council commenced prior to 27 January 1997
 - Current employees whose right to work in the UK without limitation was confirmed when they joined the Council.
- 4.2 To have a valid **excuse**, employers must:
- Have correctly undertaken the checks on acceptable documents before a person starts working by following the 3 step process which is outlined below
 - Conduct a repeat document check when the employee's permission to remain in the UK and undertake work expires
 - Ensure that any restrictions on the type or amount of work a person can do are complied with
- 4.3 Regardless of any document checks if an illegal worker is knowingly employed then the excuse defence will not apply.

The 3 Step process to be followed

- 4.4 To ensure that an individual has the right to work in the UK, HR will administer the following 3 step process:
- Step 1 Ask for and receive an "acceptable document" or combination of documents. The documents produced must be originals
- Step 2 Take all reasonable steps to ensure that the document(s) is/are genuine and that the holder is who they say they are. Check also that the document allows them to do the work in question
- Step 3 Take and retain a copy of the document, in a format that cannot later be altered. The HR officer who checks the documents will sign the copies as "certified true copy", followed by date, name and signature.
- 4.5 Managers should note that a right to work may be subject to a work permit, certificate of sponsorship and/or Leave to Remain which is due to expire, or that the work the employee has been offered differs from

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the type of work for which the work permit/certificate of sponsorship was issued.

- 4.6 In this case consent from the Home Office will be required to extend employment or to change the permit / certificate of sponsorship to cover the nature of the work being offered. (See section 5).

Acceptable documents

- 4.7 The documents that are acceptable evidence of someone's right to work in the UK are split into two lists. These are:

List A

Documents on this list show that the holder is not subject to immigration control or has no restrictions on their stay; therefore they have an ongoing right to work in the UK.

List B

Documents on this list show that the holder has been granted leave to enter or remain in the UK for a limited period of time and / or has restrictions on their right to work.

The different types of documents from Lists A and B are attached at Appendix A. Care should be taken to check the validity of the documentation provided. The guide referred to in paragraphs 4.11 and 4.12 provides useful advice on immigration documents, stamps and endorsements.

Repeat checks

- 4.8 Employees who had provided a specified document or combination of documents from List B will require a repeat check to be carried out at the point of expiry ¹ to ensure that they still have the right to work in the UK.
- 4.9 In Hounslow the repeat check should be conducted between six/four weeks prior to the expiry date. The onus is on the employee to have made an "in time" application.
- 4.10 When a Certificate of Application or an Application Registration Card is presented as evidence as right to work or the employee has no acceptable documents because they have an outstanding application to the Home Office or appeal against an immigration decision, the follow- up verification check is required 6 months after the date of the initial check (see section 5 for details on carrying out verification checks).

¹ Code of Practice on preventing illegal working May 2014

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An employer's guide to right to work checks

- 4.11 The Home Office has produced the above guide for employers. It provides useful advice on the process and examples of what to look for when checking immigration documents. Helplines are also provided for further advice. The guidance will be updated to reflect changes.
- 4.12 The right to work legislation is ever changing and staff undertaking these checks are strongly advised to use the guidance. The Guide is accessible on:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/311639/2014-05-15_An_employers_guide_to_right_to_work_checks.pdf

5 Verifying the right to work in the UK

- 5.1 In the following circumstances the Council is required to seek confirmation that a person has the right to work in the UK. This is in addition to the right to work checks set out in section 4.
- 5.2 The verification check is done through the Employer Checking Service (ECS) where an individual has:
- An outstanding application or appeal which has been made at the correct time
 - Presented a Application Registration Card, which states that the holder is allowed to work
 - Presented a Certificate of Application issued to or for a family member of an EEA or Swiss national which states that the holder is allowed to work
- 5.3 To verify someone's right to work the HR Advisory Team should complete the request form on the following website:
www.ukba.homeoffice.gov.uk/sitecontent/applicationforms/ecs/requestform
- 5.4 Completed forms are returned to: Employerchecking@ukba.gsi.gov.uk
The ECS will process the request and send a written notification of the outcome within 5 working days.
- 5.5 This confirmation letter is essential if the excuse defence is to be used against payment of a civil penalty. A copy of the documents relating to the check and the confirmation of right to work letter from the ECS must therefore be retained. In the meantime the applicant or employee should be informed that a verification check is being undertaken.

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Prospective Employees

- 5.6 If a successful applicant has indicated that they have an outstanding application with the Home Office or has submitted an appeal to extend their leave in the UK, ensure that verification is carried out as outlined in paragraphs 5.2-5.5 before confirming an appointment offer.
- 5.7 Where the verification check indicates an applicant does not have the right to work the appointment cannot be confirmed and they must not be employed.

Existing Employees

- 5.9 During a repeat check it may transpire that an employee has an outstanding application with the Home Office or has submitted an appeal to extend their leave in the UK. If so a verification check must be carried out as outlined in paragraphs 5.2-5.5.
- 5.10 Where the ECS confirms that an employee has made an in time application to extend their right to work, it is acceptable for the employee to remain in employment until a decision has been made on their application or appeal.
- 5.11 If the ECS cannot satisfactorily confirm that an application has been made, the employee's contract should be terminated following the procedure set out in section 6.

6 Employees who no longer have the right to work in the UK

- 6.1 The line manager, in conjunction with HR, will establish the position regarding the employee's right to work in the UK. This will involve contacting the Home Office and seeking verification of the employee's circumstances, see 5.2-5.5.
- 6.2 It is a criminal offence to employ anyone who does not have the right to work in the UK. Therefore, if it appears that an existing employee no longer has the right to work for the Council, managers must address the matter quickly and effectively.
- 6.3 The termination of a contract in these circumstances is a potentially fair reason for dismissal, however there is an onus on the Council to show that a statutory ban actually exists or is believed to exist, which makes it impossible to continue employing the employee. It is also necessary to follow a fair procedure when dismissing the employee.
- 6.4 An existing employee whose leave to remain in the UK has expired, but who has made a valid in-time application to extend their leave, will not be dismissed until the application is properly determined.

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- 6.5 Where confirmation is received from Home Office or ECS that an existing employee appears to have lost the right to work in the UK, managers are advised to take the following steps:

Meeting

- 6.5 The employee must be invited to an early meeting to discuss the situation – ideally on the same day that questions regarding their right to work are discovered. They have the right to be accompanied at this meeting by a trade union official or a work colleague.
- 6.6 The purpose of the meeting is to set out the evidence the Council has regarding the change in the employee's circumstances and to explain that a statutory ban prevents the council from continuing to employ the individual.
- 6.7 The employee should be asked for any further information and evidence they have in support of their right to work in the UK.
- 6.8 If the employee presents any other information, the manager must consider this and, if necessary take further advice from HR before proceeding. It may be appropriate to consider suspending the employee if further investigation is required before a decision can be made.
- 6.9 An employee who has been suspended pending investigation into their immigration status will be suspended on pay. If they are subsequently dismissed on the ground of "some other substantial reason" then they will receive notice pay.

Decision

- 6.10 Where the employee is unable to present any evidence which supports their right to continue working in the UK, they must be informed that their employment is being terminated.
- 6.11 Where the expiry date has already expired the termination will be with immediate effect, there is no notice period.
- 6.12 If the expiry date is forthcoming the employee should be notified that, unless documentation is provided, prior to the expiry of their right to work, which clearly states this right has been extended their contract will be ended on the date their right to work expires.
- 6.13 This decision must be followed with written confirmation that the contract will or has been terminated and the reason is that continued employment would contravene a statute. The letter should give right of appeal.

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Appeal

- 6.14 Any appeal must be made in writing no later than 5 working days of the dismissal letter being received and include full supporting evidence of the grounds for appeal.
- 6.15 Appeal letters should be sent to the HR Manager who will make arrangements for the appeal to be heard by officers, not involved in the original decision. The employee has the right to be accompanied either by a trade union representative or work colleague.

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Asylum & Immigration Act – Right to Work in the UK

Acceptable Documents - List A

The documents from this list show an ongoing right to work

1. A valid 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 UK and Colonies having the right of abode in the UK.
2. A valid 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 (EEA) or Switzerland.
3. A residence permit, registration certificate or document certifying or indicating permanent residence issued by the Home Office or the Border & Immigration Agency to a national of an EEA country or Switzerland.
4. A permanent residence card issued by the Home Office or the Border & Immigration Agency to the family member of a national of an EEA country or Switzerland.
5. A biometric Immigration Document issued by the Border & Immigration Agency to the holder indicates that the person named in it is allowed to stay indefinitely in the UK, or has no time limit on his or her stay in the UK.
6. A valid passport or other travel document 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 his or her stay in the UK.
7. An Immigration Status Document issued by the Home Office or the Border & Immigration Agency to the holder with an endorsement indicating that the person named in it is allowed to stay indefinitely in the UK or has no time limit on his or her stay in the UK.
8. A full birth certificate issued in the UK that includes the name(s) of at least one of the holder's parents.
9. A full adoption certificate issued in the UK that includes the name(s) of at least one of the holder's adoptive parents.
10. A birth certificate issued in the Channel Islands, the Isle of Man or Ireland.
11. An adoption certificate issued in the Channel Islands, the Isle of Man or Ireland.
12. A certificate of registration or naturalisation as a British citizen.
13. A letter issued by the Home Office or the Border & Immigration Agency to the holder that indicates that the person named in it is allowed to stay indefinitely in the UK.

Acceptable Documents - List B

Documents from this list show a right to work for up to 12 months

1. A passport or travel document endorsed to show that the holder is allowed to stay in the UK and is allowed to do the types of work in question, provided that it does not require the issue of a work permit.
2. A Biometric Immigration Document issued by the Border & Immigration Agency to the holder that indicates that the person named in it can stay in the UK and is allowed to do the work in question.
3. A work permit or other approval to take employment issued by the Home Office or the Border & Immigration Agency when produced in combination with either a passport or another travel document endorsed to show the holder is allowed

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- to stay in the UK and is allowed to do the work in question, or a letter issued by the Home Office or the Border & Immigration Agency to the holder or the employer or prospective employer confirming the same.
4. A certificate of application issued by the Home Office or the Border & Immigration Agency to or for a family member of a national of an EEA country or Switzerland stating that the holder is permitted to take employment that is less than six months old when produced in combination with evidence of verification by the Border & Immigration Agency Employer Checking Service.
 5. A residence card or document issued by the Home Office or the Border & Immigration Agency to a family member of a national of an EEA country or Switzerland.
 6. An Application Registration Card issued by the Home Office or the Border & Immigration Agency stating that the holder is permitted to take employment, when produced in combination with evidence of verification by the Border & Immigration Agency Employer Checking Service.
 7. An Immigration Status Document issued by the Home Office or the Border & Immigration Agency to the holder with an endorsement indicating that the person named in it can stay in the UK, and is allowed to do the type of work in question, when produced in combination with an official document giving the person's permanent national insurance number and his or her name issued by a government agency or a previous employer.
 8. A letter issued by the Home Office or the Border & Immigration Agency to the holder or the employer or prospective employer that indicates that the person named in it can stay in the UK and is allowed to do work in question.

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