

Resourcing - Managers Resource Material

Right to Work Checks – ID Checking Process

Under the Asylum and Immigration Act 1996 and subsequent amendments it is an offence to employ a person without immigration entitlement to work in the United Kingdom. Therefore it is essential that when you are recruiting you see the original ID documents and take copies in all cases before employment commences and that the documents produced relate to the individual in question. There are two lists against which documents must be checked.

List A establishes that the person has an on-going right to work in the UK and List B indicates that the applicant or employee has restrictions on their entitlement to be in the UK.

You are required to check (refer to Steps 1-3 for checking documents) and copy one, or a specified combination, of original documents from List A or List B. A copy will need to be taken and endorsed 'original seen', signed and dated by the person checking the original before forwarding the SSC. This should be carried out for **all successful candidates whether internal or external** (including relief staff) prior to the commencement of their employment.

If the employee presents a document from List B (that demonstrate that the person has been granted leave to enter or remain in the UK for a limited period of time), you must carry out follow-up checks by repeating steps 1-3 at least once every 12 months. A copy will need to be taken and endorsed 'original seen', signed and dated by the person checking the original before forwarding to the SSC.

Please note that an NI check is not an adequate check. NI may form part of the check when produced in combination with other specified documents.

The NI number must be a permanent NI number. The following do not provide evidence that a person has a permanent NI number;

- A document with an invalid NI number that ends with the letters E to Z inclusive
- A document with a temporary NI number beginning with TN
- Card/certificate from the Inland Revenue under the Construction Industry Scheme

Non EU Workers - Points Based System

The points based system covers people from outside the EU who are seeking to work or study in the UK. This system for migration is based on the Home Office's expectation of the candidates' value to the UK labour market.

Employers are not required to obtain work permits for overseas workers, but will be licensed to issue certificates of eligibility asserting that certain conditions are met justifying the appointment of a non EEA employee. The candidate must apply for entry clearance via a British Embassy, consulate or High Commission before they relocate to the UK.

Overseas workers can also apply for leave to enter under any of the five tiers. Tiers 1 and 2 cover economic migrants, while tiers 3-5 cover migrants such as foreign students, volunteers, youth mobility schemes, and those who can fill temporary gaps in the UK labour market. Sponsoring employers must apply for a licence at a cost of £1,476.

Certificates of sponsorship can be issued when;

- There is a genuine vacancy that cannot be filled by someone from the UK or the European Union
- The position being filled meets the skills requirements and is at level NVQ 3 or above
- The person will be paid a market-rate salary
- The person intends and is able to do the job in question. The sponsor should check the person has the necessary qualifications, experience and professional accreditations needed to carry out the job
- The sponsor has, where required, carried out a resident labour market test by conducting an appropriate advertising process in accordance with the UK Border Agency's guidelines
- In the case of an intra-company transfer, the person has worked for the overseas group company for at least the past six months
- They are satisfied the person is likely to qualify, bearing in mind the Tier 2 requirements and that the person is likely to comply with their conditions of leave to remain in the UK. Tier 2 requirements are that they are a skilled worker with a job offer.

Volunteers

Individuals who have been granted immigration permission to be in the UK are permitted to **volunteer**. This includes visitors who can volunteer for a registered charity for a maximum of 30 days during their visit, but volunteering cannot be the main purpose of their visit. However individuals who have limited permission to work in the UK may not carry out any **voluntary** work. As the legal distinction between volunteering and voluntary work can be quite complex it is recommended that you seek legal advice for your specific activity.

An individual who is not permitted to work might commit a criminal offence by engaging in **voluntary** work if they are subject to contractual obligations. In such circumstances, the employer might also be liable for a civil penalty for employing an illegal worker.

Exceptions to this are;

Tier 4 (General) students and Tier 4 (Child) students aged 16 and over can do voluntary work if they are permitted to work, but this work and any other (for example paid) work must not exceed the total number of hours they are permitted to work during term time. For example, if a student is permitted to work 20 hours a week during term-time and has paid work of 15 hours

a week during term time, they cannot do more than 5 hours voluntary work. **If they are not permitted to work they cannot do voluntary work.**

Students

Where a student has permission to study under Tier 4 of the Points Based System, their conditions allow them to work when they are 'following a course of study';

- At the appropriate academic level; **and**
- With a sponsor of the specified academic status that permits them to work the number of hours that they are working.

Their entitlement to work full time during vacations and during the period of permission that is granted before a course begins and after the course ends only applies if they are following or have completed, the required course of study. You are required to obtain and retain evidence of their academic term and vacation dates. Acceptable evidence to be one of the following;

- A printout from the students education institution's website or other material published by the institution setting out its timetable for the students course of study (you should check the website to confirm the link is genuine); or
- A copy of a letter or email addressed to the student from their education institution confirming term time dates for the students course; or
- A letter addressed to you as the employer from the education institution confirming the term time dates for the students' course.

In exceptional circumstances, for example where the student is following a course timetable which differs from that published, you will need to obtain bespoke evidence from the sponsor.

Where you are employing a student on a **work placement** which forms an integral part of their course, you may require a written agreement with the students' education institution about the work placement. This agreement **must** be retained as evidence that the students' work placement does not exceed the time permitted for this activity.

Non EEA Family Members of EEA Nationals

Non-EEA nationals who are family members of an EEA (or Swiss) national who is exercising Treaty rights or has permanent residence, are entitled to live and work in the UK. However not all family members of EEA nationals are permitted to work in the UK without restrictions.

Acceptable documents are;

- **Residence cards** issued to non-EEA family members of EEA nationals who are exercising Treaty rights or have permanent residence in the UK. Residence cards are included in List B of acceptable documents, and will provide a time-limited statutory excuse.
- **Permanent Residence Cards** indicating that they have lived in the UK for five years in compliance with EEA Regulations, included in List A of acceptable documents, and provide a continuous statutory excuse.

- **Accession Residence Cards** issued to non-EEA family members of Croatian nationals who are subject to worker authorisation requirements, included in List B of acceptable documents.
- **Derivative Right of Residence** entitles Non-EEA nationals to reside and work in the UK, included in List B or acceptable documents providing a time limited statutory excuse.

If you have any queries or need further clarification on the above please contact the Shared Services Centre (HR) – Pre Employment Team on 01629 535118.

List A

If the individual is not subject to immigration control, or has no restrictions on their stay in the UK, they should be able to produce a document or a specified combination of documents from the following list:

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 as 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 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 UK 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 certificate or adoption certificate issued in the United Kingdom which includes the name(s) of a least one of the holder's parents or adoptive parents **together with** an official document giving the persons 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 endorsed to show that the holder is allowed to stay in the United Kingdom and is currently allowed to do the type of work in question.
2. A **current** Biometric Immigration Document issued by the Home Office to the holder which indicates that the person named in it can currently 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 names person may stay in the United Kingdom 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 United Kingdom and is permitted to do the work in question.

European Economic Area Countries

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

Iceland, Liechtenstein, Norway and Switzerland are not members of the European Union, however the European Economic gives nationals of these countries the same rights to enter, live and work in the United Kingdom as EU citizens.

*Croatian nationals are subject to transitional restrictions (Accession of Croatia Regulations 2013) therefore Croatian nationals wishing to work in the UK will need to obtain a permission to work document before starting any employment. It is therefore recommended that managers seek further guidance from the Home Office on 0845 010 6677 if the candidate is a Croatian national.

Steps 1 – 3 for checking asylum and immigration documents

Step 1

Your prospective employee (or existing employee, if you are carrying out repeat checks) must provide to you:

EITHER

- One of the single documents, or two of the documents in the specified combinations given from List A;

OR

- One of the single documents, or two of the documents in the specified combinations given from List B

You should only accept original documents.

Step 2

You must take all reasonable steps to check that the document is genuine and satisfy yourself that your prospective employee or current employee is the person named in the document, and check that the documents allow them to do the work in question.

For each document presented, you should:

- Check any photographs are consistent with the appearance of the employee (this means you must see them in person); and
- Check any dates of birth listed are consistent across documents and that you are satisfied that these correspond with the appearance of the employee; and
- Check that the expiry dates of any limited leave to enter or remain in the UK have not passed; and
- Check any work restrictions to see if your prospective or current employee is able to do the type of work you are offering (for **students** who have limited permission to work during term-times, you **must** also obtain, copy and retain details of their academic term and vacation times covering the duration of their period of study in the UK for which they will be employed);
- Satisfy yourself that the documents are valid and genuine, have not been tampered with and belong to the holder; and
- If your employee gives you two documents which have different names, ask them for a further document to explain the reason for this. The further document could be a marriage certificate, a divorce decree absolute, a deed poll or statutory declaration.

Step 3

You must make a clear copy of the relevant pages of the document, in a format which cannot be manually altered and retain the copy securely, electronically or in hardcopy. You must also retain a secure record of the date on which you made the check. **You must copy and retain;**

- **Passports:** Any page with the document expiry date, the holder's nationality, date of birth, signature, leave expiry date, biometric details, photograph and any page containing information indicating the holder has an entitlement to enter or remain in the UK (visa or entry stamp) and undertake the work in question (the front cover no longer has to be copied)..
- **All other documents:** the document in full, including both sides of a biometric Residence Permit, Application Registration Card and a Residence Card (biometric format)

You must retain copies securely for not less than two years after the employment has come to an end. The copy must then be securely destroyed.

The Home Office recommends that employers use their;

- Employers 'Right to Work Checklist' to ensure you have correctly carried out all the steps you need to; or
- Use their online interactive tool 'Check if someone can work in the UK' which will take you through the process by asking you a series of questions.

Both will help you confirm that you have undertaken each step correctly to establish your statutory excuse.