

Human Resources
Goireasan Daonna

Recruiting Migrant Workers Guidance for Managers

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Introduction

The purpose of this guidance document is to update managers on the 2018 changes to the UK immigration laws and the implication of Brexit, to ensure a consistent approach to the employment of migrant workers across the Council and to ensure that illegal working is prevented.

To inform lead officers/line managers of the Highland Council's responsibility in recruiting migrant workers.

Guidance

Principles

Employers in the United Kingdom are required to ensure that any employee or potential employee is legally entitled to work in the UK and is not subject to any immigration control which would prevent them from doing so. The UK Border & Immigration Agency provides further advice.

This guidance provides information on how and when to conduct a right to work check. You should also refer to the following documents –

- [Code of practice on preventing illegal working: Civil penalty scheme for employers](#)
- [Code of practice for employers: avoiding unlawful discrimination while preventing illegal working](#)

Right-to-Work Check (responsibility of Lead Officer)

It is the Council's legal duty to carry out right-to-work checks to ensure prospective employees can legally work in the UK. A maximum fine of £20,000 may be imposed on an organisation that employs an illegal worker, so it is essential that Lead Officers undertake the right-to-work check.



Line Managers and recruitment Lead Officers are responsible for carrying out sufficient checks to ensure that they and the Council are protected from acting illegally. The purpose of this document is to provide guidance and processes that require to be undertaken by line managers and recruitment lead officers to ensure that migrant workers are lawfully recruited and employed. To find out if a potential employee has the right to work in the UK, review the [Right-to-Work Checks- Employers Guide](#).

If you conduct checks as set out in this guide and the code of practice, you will have a statutory excuse against liability for a civil penalty in the event you are found to have employed someone, who is prevented from carrying out the work in question, by reason of their immigration status. This means that if you have employed someone who does not have the right to do the work in question, but you have correctly conducted right to work checks as required, you will not receive a civil penalty for the illegal worker.

Checking and Verifying Proof of Identity and the Right-to-Work in the UK

The main requirement is for Lead Officers to undertake a manual document-based check and verify proof of identification and that individuals have the right to work in UK. Further guidance can be accessed in the [Recruitment and Selection Policy and Guidance](#) documents.

Manual Identity Checks

At each interview the Lead Officer should ask **all** candidates for proof of identity. Notification of the requirement to provide this form of identification should be detailed in the letter inviting candidates to interview. An offer of appointment should not be made until this requirement has been satisfied.

Checking the Documents

Any of the following documents are appropriate proof of identity:

- a passport showing that the holder is a British citizen
- a passport showing that the holder has a right of abode in the UK (a visa stamp)
- a passport or other travel document endorsed to show that the holder is exempt from immigration control, can stay indefinitely in the United Kingdom, or has no time limit on their stay

- a passport or other travel document endorsed to show that the holder can stay in the United Kingdom - and that this endorsement allows the holder to do the type of work you are offering provided it does not require a work permit or certificate of sponsorship
- an Application Registration Card issued by the Home Office to an asylum seeker stating that the holder is permitted to take up employment
- if the individual has an EEU or Swiss passport, settled status needs to be checked. See paragraph 4.

It is the Lead Officer's responsibility to check the documents carefully.

For manual identity checks, all the documents provided must be originals. Photocopies, printouts, or other copies are not acceptable. Documents should be checked for authenticity regarding the following:

- photographs - does the person look like the photographs on their documents?
- date of birth - is the date consistent with the appearance of the candidate?
- expiry dates - if the documents have an expiry date - are they still within the validity period?
- stamps and endorsements - do the passport stamps (visas) allow your job applicant to do the type of work you are offering?
- name - is the same name used on all the documents?

Copying and Storing Copies of the Documents

When the Lead Officer is satisfied that the candidate's documents are genuine and entitle the person to work in the UK, they must produce copies and store them securely. The Lead Officer must make a clear copy of each document in a format which cannot manually be altered and retain the copy securely: electronically or in hardcopy. A secure record of the date on which the check was made must also be retained.

All copies of documents taken should be kept securely for the duration of the worker's employment and for two years afterwards.

Recruiting After Brexit – Settled Status Scheme

On 31 December 2020, free movement of people between the UK and EU (except Ireland), EEA countries and Switzerland ended.



(Pre-) Settled Status

EU, EEA and Swiss nationals living in the UK before 1st January 2021 have to apply for 'pre-settled' status if they have been in the UK for less than 5 years, or 'settled status' if they have been in the UK for 5 years or longer.

This will give them the right to (continue) to work in the UK. To legally recruit a candidate with an EU, EEA or Swiss nationality living in the UK, the lead officer will have to check their (pre-)settled status.

To view a job applicant's right-to-work in the UK, visit the [UK Government/view-right-to-work site](#). You will need the applicant's date of birth and their right to work share code.

Until 1 July 2021, EU, EEA and Swiss nationals currently living in the UK have the right to work in the UK based on their nationality.

After 1 July 2021, they can only work in the UK if they have (pre-) settled status.

Individuals with an Irish passport do not need to apply for settled status and can continue to live and work in the UK based on their nationality.

Recruiting Candidates from outwith the UK (excluding Ireland)

As a result of EU Exit, the free movement of EU citizens ended on 31 December 2020 and a new points-based immigration system ,that applies to both European Economic Area (EEA) nationals (excluding Ireland) and non-EEA nationals, has come into effect from 1 January 2021.

How the System Will Work

Under the new system, foreign nationals including European citizens will need to pass a points-based assessment before they are given permission to enter or remain in the United Kingdom.

Skilled Worker Sponsor Licence

The Highland Council holds a Skilled Worker Licence which allows individuals to come to the UK to undertake an eligible job within the organisation.



The UK Government announced changes to the immigration system that took effect on 4 April 2024. The changes impact the criteria and requirements for the Skilled Worker sponsorship route, which allows the organisation to recruit people to work in the UK in a specific job, in an eligible skilled occupation.

Managers can only make a job offer to a candidate requiring a General Skilled Worker visa if they meet the below requirements:

- meet the new general annual salary threshold (minimum) of £38,700 (this cannot be pro-rated), **OR**
- the candidate is offered a job on the Immigration Salary List (ISL) (which replaced the Shortage Occupation List (SOL)).
 - Occupations on the ISL can be recruited to on a salary below the general salary threshold. These occupations will still need to meet a threshold of either £23,200 (for Health and Care Visas), £30,960 (for General Skilled Worker visas), or their occupation-specific threshold, whichever is higher.

Level of English

Candidates will usually need to prove their knowledge of the English language when they apply for the visa, unless they did this in a previous successful visa application.

Sponsorship before 4 April 2024

If an individual received a certificate of sponsorship (CoS) before 4 April 2024, they may be able to meet lower [salary requirements](#).

Employees can be paid whichever is higher of £29,000, or the lower going rate for their occupation if they make an application to:

- apply to this visa
- extend their visa
- update their visa
- change to this visa

Lower salary requirements will only be in place for applications made before 4 April 2030. These salary requirements will be updated regularly and their salary will still need to rise in line with the updated going rates each time they apply.

When Individuals Can be Paid Less

Individuals can be paid between 70% and 90% of the lower going rate for a job if the salary is at least £23,200 per year and they meet one of the following criteria:

- the job is on the [immigration salary list](#)
- under 26 years old, studying or a recent graduate, or in professional training
- science, technology, engineering or maths (STEM) PhD level qualification that's relevant to the job (if they have a relevant PhD level qualification in any other subject your salary must be at least £26,100)
- postdoctoral position in science or higher education

Check how much employees will need to be paid for these jobs in the [going rates table](#).

There are different salary rules for some [healthcare or education jobs](#).

There are costs attached to sponsorship and the Lead Recruiting Officer must have budget responsibility or approval to proceed.

If you are considering recruiting a candidate from out with the UK, you must contact HR for advice by emailing HR@highland.gov.uk.

Responsibilities

The Council, as a Skilled Worker Sponsor is expected to take responsibility for making sure that migrants comply with their immigration conditions. Managers must keep records on each migrant employee and report any changes to HR and the UK Border Agency, such as if they do not turn up for work, change address or leave the Council's employment. If we do not comply with these duties, we can have our licence downgraded or withdrawn.

There are legal implications if employers are found to be employing individuals who do not have the right to work in the UK. Employers could receive a civil penalty of £20,000 per worker if they do not have the right to work in the UK.

Documents that Must be Kept

Managers **must** keep the following records or documents, and be prepared to give them to UK Border Agency officials if asked:

- a photocopy or electronic copy of each sponsored migrant's passport or United Kingdom immigration status document (and in time, their ID card), showing evidence of their entitlement to work or study, including the time of their permission to stay in the United Kingdom
- each sponsored employee's contact details (address, telephone number, mobile telephone number), which must be kept up to date.

You must also update HR@highland.gov.uk with any changes to the employee's Home Address or phone number.

Further Resources

The Home Office has produced a number of [guidance booklets](#) to help employers prevent illegal working and these provide useful information for Lead Officers.

More information can be gained from the [UK Border and Immigration Agency's Contact Centres](#):

- Employers Helpline – 0300 1234699
- Work Permits Customer Line – 0114 207 4074

Quick Links

The Hyperlinks listed here will redirect you to the related guidance, letters, information, and relevant organisations mentioned in this policy.

HR Microsite	Click Here
Code of practice on preventing illegal working: Civil penalty scheme for employers	Click Here
Code of practice for employers: avoiding unlawful discrimination while preventing illegal working	Click Here
Right-to-Work Checks – Employers Guide	Click Here
Recruitment & Selection Page	Click Here
UK Government – View Right-to-Work	Click Here
Immigration Salary List (ISL)	Click Here
Skilled Worker Visa – before 4 April 2024	Click Here
Skilled Worker Visa – Going Rates	Click Here
Skilled Worker Visa – Healthcare & Education	Click Here
Home Office Guidance	Click Here

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Healthy
Working
Lives

EQUALLY SAFE AT
WORK
DEVELOPMENT

disability
confident
LEADER

ARMED FORCES
COVENANT
EMPLOYER
RECOGNITION
SCHEME
GOLD AWARD

happy to
talk flexible
working

We are a
**Living
Wage**
Employer

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