

Human Resources  
Goireasan Daonna

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# Guidance for Managers on Recruiting Migrant Workers

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## Document Control

### A: Version History

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### B: Document Approval

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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.

## 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 [click here](#).

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?
- Dates of birth - are the dates 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?

- Names - 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 1<sup>st</sup> 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 five 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, following the link [here](#). You will need the applicant's date of birth and their right to work sharecode.

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 out with 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, migrants including European citizens will need to pass a point-based assessment before they are given permission to enter or remain in the United Kingdom.

You can only make a job offer to a candidate, who meets certain requirements in order to score points, these include:

- the job offer must meet the applicable minimum salary threshold (normally £26,500 or the going rate for that particular role, whichever is higher) OR they may earn less than this, but no less than £20,480 and use tradeable points on specific things against the salary e.g. a job offer in a shortage occupation (see list [here](#)) or having PhD relevant to the job.
- the job offer must be at the required skill level).
- meeting English language requirements set out in the scheme

Migrants will also require sponsorship from the Council which will be processed through HR. There is a cost attached to sponsorships: £1000 for the first 12 months with an additional £500 charge for each subsequent six-month period.

If you are recruiting a candidate from out with the UK you should contact HR for advice.

## Responsibilities

The Council, as a Sponsor is expected to take responsibility for making sure that migrants comply with their immigration conditions, by keeping records on each migrant, and reporting any changes to 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. Employers found to be employing individuals who do not have the right to work in the UK, risk receiving a civil penalty of £20,000 per worker.

### Documents you must keep

You 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 migrant's contact details (address, telephone number, mobile telephone number), which must be kept up to date.

**You must also update [HR@highland.gov.uk](mailto:HR@highland.gov.uk) with any changes to Home Address or phone number.**

## Further Guidance

The Home Office has produced a number of further [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

