

## Applicants Guide to The Prevention Of Illegal Working

### 1.0 Introduction

Under the Immigration, Asylum and Nationality Act 2006, the Trust is required to consider all new employees' eligibility to work in the United Kingdom before they commence employment. Therefore, offers of employment are subject to the production of suitable documentation which indicates that applicants are allowed to work in the United Kingdom.

All external applicants are required, upon a successful recruitment interview with the Trust, to provide documentation to support their right to work in the UK.

Any offers of employment will be dependent on an applicant's eligibility to work in the UK.

An illegal worker is someone subject to immigration control, who is aged over 16 and who is not allowed to do the work in question and the law is in place to:

- make it harder for people with no right to work in the UK to unlawfully gain or keep employment
- make it easier for the Trust to ensure that we only employ people who are legally allowed to work.

Employing someone who is not allowed to work in the UK is illegal. As an employer, the Trust has a duty under the 2006 Act to carry out documentation checks on people to make sure they have the right to work in the UK **before** employing them.

### 2.0 Who can the Trust/Academy employ without restriction?

The groups of people the Trust can employ without restriction are:

- British citizens;
- Commonwealth citizens with the right of abode;
- Nationals from the Common Travel Area
- Nationals from European Economic Area (EEA) countries and Switzerland,
- Family members of adult nationals from EEA countries and Switzerland, providing the EEA/Swiss national is lawfully residing in the UK.

The Trust cannot employ any individual purely on the basis that they claim to be a national of one of these groups.

### 2.1 Employing European Economic Area (EEA) countries nationals

Nationals from European Economic Area (EEA) countries and Switzerland can enter the UK without any restrictions.

Nationals from all EEA countries and Switzerland must produce a document showing their nationality. The legitimate documents are covered in List A. Please refer to section 5.1 List A: evidence of eligibility to work for further information.

Nationals from the following EEA countries can enter and work freely in the UK without restriction. Their immediate family members are also able to work freely in the UK while their adult EEA family member is legally residing and working here. However, the Trust must continue to check their documents to demonstrate this entitlement.

**Austria, Belgium, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland Ireland, Italy, Latvia, Lithuania Liechtenstein, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, Ireland and the UK.**

Nationals from Switzerland and their family members also have the same free movement and employment rights as EEA nationals.

## **2.2 Workers from A8 countries (Accession State Workers)**

The Worker Registration Scheme (A8 countries) closed on 30th April 2011 because under the terms of the Treaty of Accession, the UK cannot apply transitional restrictions on A8 nationals' access to the labour market for more than 7 years.

This means that A8 nationals (countries listed below) are able to access the UK labour market on the same terms as other EU nationals and are no longer required to register their employment with the UK Visa and Immigration Service:

**Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia**

## **2.3 Workers from A2 countries (Bulgaria and Romania)**

Under the terms of the Treaty of Accession, the UK cannot apply transitional restrictions on A2 nationals' access to the labour market for more than 7 years.

This means that A2 nationals (countries listed below) are able to access the UK labour market on the same terms as other EU nationals and are no longer required to register their employment with the UK Visa and Immigration Service.

**Bulgaria and Romania**

## **3.0 Sponsoring workers from outside the European Economic Area**

If the Trust wishes to employ workers from outside the European Economic Area (EEA), the Trust will need to sponsor them. There are various routes (known as tiers) under which a person can apply to work in the UK. Employers must have a licence before they can sponsor skilled or temporary workers.

Licensed sponsors are responsible for ensuring that migrants comply with their immigration conditions, by keeping records on them and reporting any changes (such as a failure to turn up for work).

## **4.0 Employing asylum seekers, refugees and those granted humanitarian protection**

Asylum seekers have made an application to be recognised as a refugee under the Geneva Convention, or have otherwise made an application for international protection. Asylum seekers do not normally have the right to work here and may only be lawfully employed if restrictions have been lifted on them taking employment.

If an asylum seeker is allowed to work they will hold a Home Office issued Application Registration Card stating one of the following:

- Allowed to Work
- Employment Permitted
- Work Restricted – SOL (Shortage Occupation List)
- Work Restricted – Student
- Work Restricted – Other

Some asylum seekers have restrictions on the type of work they can do. If an asylum seeker gives the Trust a card stating that work is restricted then the Trust must make sure that we do not employ them in breach of these restrictions. As well as checking and taking copies of a card stating that work is allowed, the Trust will only have an excuse against a civil penalty if we have received positive confirmation of the person's right to work from the Nationality Checking Service.

An asylum seeker whose claim is successful is granted refugee status. Where a person does not qualify for protection under the 1951 Geneva Convention but there are substantial grounds for

believing that there is a real risk that if they were removed to their country of origin they would face serious harm, humanitarian protection is granted instead.

Refugees and those who have been recognised as requiring humanitarian protection will have no restrictions on the type of work they can do in the UK, as long as they continue to hold this qualifying status.

## **5.0 Right to work documentation**

To confirm that a successful applicant has the legal right to work in the UK, the Trust must see one of the documents or combinations of documents specified in **List A** or one of the documents or combinations of documents specified in **List B**. No other documents or combinations of documents are acceptable. Please refer to section 5.1 List A: Evidence of eligibility to work and section 5.2 List B: Evidence of eligibility to work for further information.

If a document or combination of documents is provided from List A there is no need to ask for documents from List B.

All documents must be valid, current and original. However, following an amendment to policy, the Trust are able to accept evidence of indefinite leave to remain where it is produced in an expired (out of date) passport. This exception is only in relation to proof of indefinite leave to remain, the Trust must undertake the same checks to verify an expired passport as they would for a valid (in date) passport and copies of documentation will need to be kept on file to avoid a penalty notice. Photocopies as evidence will not be accepted. The documents must show that the holder, the successful candidate / employee, is entitled to undertake or to continue to undertake the type of work being offered.

### **5.1 List A: Evidence of eligibility to work**

The Trust must see one of the original documents or combinations of documents specified in this list. If the individual cannot provide documents from this list, the Trust must ask for documents from **List B**. Please refer to section 5.2, List B: Evidence of eligibility to work for further information.

#### **List A**

- 1.** A passport showing 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 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 a European Economic Area country or Switzerland.
- 3.** A residence permit, registration certificate or document certifying or indicating permanent residence issued by the Home Office, the Border and Immigration Agency, or the UK Border Agency to a national of a European Economic Area country or Switzerland
- 4.** A permanent residence card or document issued by the Home Office, the Border and Immigration Agency, or the UK Border Agency to the family member of a national of a European Economic Area country or Switzerland.
- 5.** A Biometric Residence Permit issued by the UK Border Agency to the holder which indicates that the person named in it is allowed to stay indefinitely in the UK, or has no time limit on their stay in the UK.
- 6.** A 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 their stay in the UK.
- 7.** An Immigration Status Document issued by the Home Office, the Border and Immigration Agency, or the UK Border 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 their

- stay in the UK **together with** an official document issued by a previous employer or Government agency with the person's name and National Insurance number (a P45, P46, National Insurance card, or letter from a Government agency).
8. A **full birth or** adoption certificate issued in the UK which includes the name(s) of at least one of the holder's parents **together with** an official document issued by a previous employer or Government agency with the person's name and National Insurance number (a P45, P46, National Insurance card, or letter from a Government agency).
  9. A birth **or** adoption certificate issued in the Channel Islands, the Isle of Man or Ireland **together with** an official document issued by a previous employer or Government agency with the person's name and National Insurance number (a P45, P46, National Insurance card, or letter from a Government agency).
  10. A certificate of registration or naturalization as a British citizen **together with** an official document issued by a previous employer or Government agency with the person's name and National Insurance number (a P45, P46, National Insurance card, or letter from a Government agency).
  11. A letter issued by the Home Office, the Border and Immigration Agency, or the UK Border Agency to the holder which indicates that the person named in it is allowed to stay indefinitely in the UK **together with** an official document issued by a previous employer or Government agency with the person's name and National Insurance number (a P45, P46, National Insurance card, or letter from a Government agency).

## 5.2 List B: Evidence of eligibility to work

The Trust only uses this list if the individual cannot provide documents from **List A**.

If the prospective employee shows the Trust one of these original documents, or combinations of documents, it indicates that they only have limited leave to work in the UK. The Trust must therefore carry out these checks at least once every 12 months and record the date on which we carried out these checks. At this point the employee must produce new documents from **List A or B** or the Trust will withdraw the offer of employment. Where the individual provides a document or documents from List A, no further checks are required for the duration of their employment.

### List B

1. A passport or other travel document endorsed to show that the holder is allowed to stay in the UK and is allowed to do the type of work you are offering.
2. A Biometric Residence Permit issued by the UK Border Agency to the holder which indicates that the person named in it can stay in the UK and is allowed to do the type of work you are offering.
3. A residence card or document issued by the Home Office, the Border and Immigration Agency, or the UK Border Agency to a family member of a national of a European Economic Area country or Switzerland.
4. A work permit or other approval or other approval to take employment issued by the Home Office, the Border and Immigration Agency or the UK Border Agency **together with either** a passport or travel document endorsed to show the holder is allowed to stay in the UK and is allowed to do the work you are offering **or** a letter issued by the Home Office, the Border and Immigration Agency or the UK Border Agency to the holder or to you confirming the same.
5. A Certificate of Application which is **less than 6 months old** issued by the Home Office, the Border and Immigration Agency or the UK Border Agency to or for the family member of a national of a European Economic Area country or Switzerland stating the holder is allowed to take employment **together with** a positive verification letter from the UK Border Agency's Employer Checking Service.

6. An Application Registration Card (ARC) issued by the Home Office, the Border and Immigration Agency stating that the holder is 'ALLOWED TO WORK' or 'EMPLOYMENT PERMITTED' **together with** a positive verification letter from the Nationality Checking Service.
7. An Immigration Status Document issued by the Home Office, the Border and Immigration Agency or the UK Border Agency to the holder with an endorsement indicating that the person named on it can stay in the UK and is allowed to do the type of work you are offering **together with** an official document issued by a previous employer or Government agency with the person's name and National Insurance number (a P45, P46, National Insurance card, or letter from a Government agency).
8. A letter issued by the Home Office, the Border and Immigration Agency, the UK Border Agency or Uk Visa and Immigration Service to the holder or to you as the potential employer or employer, which indicates that the person named in it can stay in the UK and is allowed to do the type of work you are offering **together with** an official document issued by a previous employer or Government agency with the person's name and National Insurance number (a P45, P46, National Insurance card, or letter from a Government agency).

\*Lists A and B were correct at the time of publishing but may be subject to change.

### **5.3 Refusing to provide documentation**

All offers of employment are subject to eligibility to work within the UK. If a successful applicant refuses to provide the appropriate information to confirm this, then the Trust's offer of employment will be withdrawn.

### **6.0 Verifying and recording the appropriate evidence**

The Trust will be required to verify and retain any documentation.

#### **6.1 False Documentation**

If the Trust is represented with false documentation, the Trust will only be required to pay a fine if the falseness of the documentation is reasonably apparent, meaning that the Trust could not have been reasonably expected to realise that the document in question was not genuine. The Trust will not have a 'statutory excuse' against a fine if it knew that the document, or documents, were false or did not rightfully belong to the holder.

### **7.0 Reaching an employment decision**

#### **7.1 Applicant IS allowed to work in the UK**

If the successful applicant has provided the required documentation to confirm their eligibility to work in the UK, this applicant can commencement employment with the Trust, subject to meeting all other pre-employment vetting requirements.

#### **7.2 Applicant IS NOT allowed to work in the UK**

If the Trust has carried out the required checks and has found that a person is not allowed to work in the UK, then the Trust is entitled to refuse employment to that person. It is up to the person looking for work to show that they are allowed to do the work that the Trust is offering.

### **8.0 Continuing eligibility to work**

Where an employee only has an entitlement to enter or remain in the UK for a limited period of time, the Trust must repeat the document checks at least every twelve months, unless the employee can demonstrate that they have an entitlement to remain indefinitely in the UK. The Trust must be satisfied that the documents checked are valid and relate to the employee. The Trust will not acquire

or retain this statutory excuse if we know that the individual is not entitled to undertake the work in question.

Where a re-check is required on an employee, this must be undertaken by the Trust, the documentation along with photocopies of the evidence provided must be retained.

It will be a condition of employment with the Trust that employees continue to have the right to work in the UK, without any additional approvals. Employees are required to notify the Trust immediately if this position changes at any time during their employment with the Trust and failure to comply with this condition may result in disciplinary action being taken up to and including dismissal.