

HR21 – Right to Work Policy

XXXX Council

COUNCIL LOGO

Adopted:
Revised:
Review: Biannually or as changes are required.

HR21 - Right to Work Policy

1. Introduction

- 1.1. We have legal duties as an employer to make sure that all those working for us have permission to work in the UK. We are at risk of substantial civil penalties if we do not check that those who work for us have the right to work in the UK. We take our responsibilities to prevent illegal working seriously.
- 1.2. We are an equal opportunities employer. We will carry out right to work checks on all prospective employees and workers, regardless of nationality. Please see our [*Recruitment Policy*] for more details of our commitments in this area.
- 1.3. This Policy:
 - a Explains the current right to work system in the UK
 - b Sets out the checks we will undertake in relation to the right to work
 - c Sets out your obligations to keep us informed of your immigration status
- 1.4. This Policy applies to all employees, prospective employees, workers and prospective workers in the Council. Please note that it does not form part of any contract. We reserve the right to amend or remove this policy.
- 1.5. The law on the right to work is complex and changes frequently. This policy does not set out every possible route for working within the UK, nor is it a comprehensive statement of what the law says. It is a basic guide for you and for our managers. We cannot give you advice on the technicalities of the law on right to work.

2. Right to work checks

- 2.1. We will follow a three-step process in all right to work checks which we carry out:
 - a **Obtain:** We will either request original documents, as required by Home Office guidance to establish your right to work, or request such information we need to check your right to work online. Please note that where you are a biometric card holder, we will only be able to check your right to work using the Home Office online service. Physical biometric residence cards cannot be accepted.
 - b **Check:** We will make sure that these checks show that you have the right to work in the UK. We will check that the documents are genuine, relate to you and allow you to undertake the role for which you are applying.
 - c **Copy:** We will copy and date any documents which have been checked manually. We will save the 'profile page' from any online checks. We will record the date for any follow-up check.

3. Documents we will use to establish your right to work in the UK

3.1. The Home Office has published a list of acceptable documents which can be used when checking an employee's right to work in the UK (the **Home Office List**). This list is used for manual checks and those using an Identity Service Provider (see 4.1). A link to the current active list can be found in section 10. The list is split into two sections: List A and List B. Documents in List A show a permanent right to work in the UK. Documents in List B show a temporary right to work in the UK. If a document from List B is used to show your right to work, then we will need to re-check your right to work before your temporary entitlement expires.

4. The different types of right to work check

There are three different ways in which we may conduct right to work checks. We have set out below the different approaches and when they might be used.

4.1. Using the IDVT system

For British and Republic of Ireland Nationals, we may conduct remote checking using Identification Document Validation Technology (**IDVT**). We will use the services of an Identity Service Provider (**IDSP**) to verify electronic or copy documentation from the relevant Home Office List. This is an alternative to the manual checking system. You agree to provide us [*and our nominated IDSP*] with all reasonable assistance to allow these online checks to take place. In addition to the remote checking carried out by our IDSP, we will also arrange for a face-to-face meeting to take place to check that you are the same person indicated on the documentation. We will keep a record of the IDVT check alongside a record of our face-to-face meeting.

4.2. Manual checks

We may choose to conduct a manual check as an alternative to using the IDVT system for British and Republic of Ireland Nationals, and also where non-British and Republic of Ireland Nationals hold immigration documents which are not also available digitally. In conducting manual checks, we will follow the three steps set out in paragraph 2.1 and will ask to see a document from either List A or List B of the Home Office List. We will need to see the actual document and not a copy. We will arrange a face-to-face meeting in order to do this in order to check that you are the same person shown on your documentation.

4.3. Digital Checks for Non-British or Republic of Ireland Workers (where available)

The number of right to work checks carried out digitally is increasing. It is now the way we must carry out right to work checks for all those with digital status or a biometric residence permit (even if they also hold some form of physical documentation). It covers, but is not limited to, the following:

- a Those with a Biometric Residence Permit/Card
- b Those with EU Settled Status
- c Those with a Certificate of Application for EU Settled Status before 30 June 2021
- d Those with a British National Overseas Visa
- e Anyone with status issued digitally under the points-based immigration system (see section 5)

For us to conduct a digital check, you need to log on to the Home Office website and generate a 'share code' so that we can view your immigration information. You must provide us with this 'share code', together with your date of birth, on request. We will use this information to log on to the employer section of the Home Office website and view your immigration information. In order to check that the person we are looking to employ is the same person whose details we are able to see online, we will arrange a face-to-face meeting with you. We will retain a copy of the report, together with details of the meeting which has been held with you.

5. An introduction to the points-based immigration system

- 5.1. EEA Nationals who arrived in the UK after 31 December 2020 and other workers from outside the UK and Republic of Ireland have to meet specific criteria to stay in the UK.
- 5.2. The UK operates a points-based immigration system which now applies to almost all people coming to the UK for work from all countries other than the UK and Republic of Ireland. Under this system, a certificate of sponsorship can be awarded by prospective employers to those who gain enough points, and this can be used to obtain a working visa.
- 5.3. In order to employ a foreign national under the points-based immigration system and issue a certificate of sponsorship, we are required to hold a sponsor licence. [*Insert either* [We hold a sponsor licence.] *or* [We do not currently hold a sponsor licence, but we would consider making an application for one where the circumstances required it in order to give a preferred applicant the right to work in the UK.]]
- 5.4. To be eligible for a certificate of sponsorship, jobs have to meet a certain skill level and certain salary thresholds. Generally, a total of 70 points is needed to be able to assign a certificate of sponsorship to a role in the UK. These points are awarded based on factors such as salary, the skill level of the employee, the skill level of the job and the employee's English language skills. We will check whether the job meets the necessary requirements (taking account of any trading which may be possible against any of your specific characteristics) and, if we believe that the thresholds are met, we will issue you with a certificate of sponsorship. This takes the form of an electronic number.
- 5.5. When we issue you a certificate of sponsorship, you must then use it to apply for a Skilled Worker visa within three months. Failure to do so could result in the termination of your employment. You must provide us with evidence that you have made the application, along with details of your date of birth and share code to enable us to verify your right to work. We will follow the three-step test set out in paragraph 2.1 in relation to these checks.

6. Where your right to work cannot be established or is unclear

- 6.1. If we are unable to confirm your immigration status via a review of physical documents or an online check, then we will usually contact the Home Office using the Employer Checking Service to check it. Situations in which we may need to take this step include:
 - a Where you have an outstanding appeal, review or application with the Home Office
 - b Where you arrived in the UK before 1989 and do not have documents to prove your immigration status or right to work
 - c Where you have a digital or non-digital Certificate of Application that says we need to ask the Home Office to check your right to work
 - d Where you have an Application Registration Card

6.2. The Employer Checking Service will send us a 'Positive Verification Notice' to confirm that you have the right to work. We will keep this document. A Positive Verification Notice is valid for a limited time (usually six months), and we will contact the Employer Checking Service towards the end of the validity period to obtain confirmation that you have a continuing right to work.

7. Where the right to work is temporary

7.1. If the outcome of our right to work checks shows that your right to work in the UK is temporary, then we will re-check your right to work before the end date shown on your right to work documentation. You must agree to comply with all reasonable requests in this regard.

8. Where an employee no longer has the right to work in the UK

8.1. If you become aware that you no longer have the right to work in the UK for any reason, then you should tell us immediately. We have a legal obligation not to employ workers who lack the right to work. A change in your right to work status may lead to the immediate termination of your employment with us. It would be illegal for your employment with us to continue.

8.2. If you are employed by us under a sponsorship licence, then your continued employment is dependent upon us retaining our sponsorship licence with the Home Office. We will inform you if, at any point, our sponsorship licence is revoked. This may result in the immediate termination of your employment with us.

9. Retention of right to work documents

9.1. We will store any and all documents provided as part of our right to work processes securely for the duration of your employment. In line with Home Office guidance, we will retain these documents for two years following the end of your employment with us.

9.2. For more information regarding our policy in relation to your personal data, please see our [Data Protection Policy].

10. Useful links and contacts

10.1. The following links and contacts may be of use [amend as appropriate]:

- a <https://www.gov.uk/government/publications/right-to-work-checklist>
- b [Data Protection Policy]
- c [Equal Opportunities Policy]
- d [Insert link to any other supporting documents]

11. Administration of the Right to Work Policy

11.1. [Insert name of relevant person or department] is responsible for the administration of the Right to Work Policy. Should you have any feedback, please contact [insert contact details].