

PERSONNEL COMMITTEE – 17TH DECEMBER 2019

Report of the Head of Strategic Support

Part A

ITEM 9 PREVENTION OF ILLEGAL WORKING GUIDANCE NOTES FOR MANAGERS AND EMPLOYEES

Purpose of Report

For the Personnel Committee to note the proposed amendments to the Prevention of Illegal Working Guidance Notes for Managers and Employees.

Recommendation

That the revisions to the Prevention of Illegal Working Guidance Notes for Managers and Employees be noted.

Reason

The policy and document amendments have been made to take account of key changes to right to work checks and best practice.

Policy Justification and Previous Decisions

The Prevention of Illegal Working Guidance Notes for Managers and Employees was last updated by agreement of the Personnel Committee on 23rd January 2019. The amendments relate to key changes to right to work checks and minor updates on policy wording.

Implementation Timetable including Future Decisions

It is recommended that the amendments be published on the intranet, following the Personnel Committee meeting.

Financial Implications

There are no immediate financial implications arising from this decision.

Risk Management

There are no specific risks associated with this decision.

Background Papers: none

Annex 1: Prevention of Illegal Working Guidance Notes for Managers and Employees

Officer to contact: Adrian Ward
Head of Strategic Support
Telephone: (01509) 634573
Email: adrian.ward@charnwood.gov.uk

Part B

Background

1. The guidance document has been updated to reflect key changes regarding right to work checks. Additionally, minor amendments have been made to the wording of the policy in some areas. All changes are outlined below:
2. The introduction of an online right to work check
 - 2.1 Right to work checks for some individuals can now be carried out online via the “View a job applicant’s right to work details” website. In order for managers to use this service the individual must have an immigration status which can be checked online and have:
 - a) viewed their own Home Office right to work record by accessing the website “Prove your right to work to an employer” and
 - b) confirmed they wish to share this information with the manager by providing the manager with a “share code”.
 - 2.2 The use of this service however is not mandatory for these individuals. Managers must not discriminate on the basis of whether or not an individual is able and/or willing to demonstrate their right to work using the online checking service. If an individual does not wish to demonstrate their right to work using the online service, the manager should conduct a manual check instead.
3. Amendments have been made on the types of documents accepted in List A
 - A short birth certificate issued in the UK, Channel Islands, the Isle of Man or Ireland can now be accepted **when produced in combination with** an official document giving the person’s permanent National Insurance number and their name issued by a Government agency or a previous employer.
4. The following sections have also been amended to reflect current Home Office guidance.
5. Employing students from outside of the European Economic Area
 - 5.1 Main changes include;
 - A student who is able to work will have a clear endorsement in their passport or Biometric Residence Permit. This will state they are permitted to work and the number of hours they can work during term-time. This is either 10 or 20 hours per week (with a week considered to be Monday to Sunday).
 - Students who are permitted to work are also allowed to work full time during vacations and undertake full time work both before their course commences and after their course finishes, as long as they have leave to remain in the UK and are following or have completed the required course of study.

- If a student's passport or Biometric Residence Permit does not contain information about their right to work, they are not permitted to work in the UK.
- Those studying in the UK on a "**Short-term Student**" visa are not permitted to undertake employment or a paid or unpaid work placement as part of their choice.
- Managers must immediately report some changes in the student's circumstances to Human Resources.

6. Employing asylum seekers, refugees and those granted humanitarian protection

6.1 The wording on Home Office issued Application Registration Cards which identifies whether work is permitted or work is permitted with restrictions has been updated.

7. Employing Workers from outside of the European Economic Area (EEA)

7.1 Legal clarification has been sought on this area to clarify the interpretation of this section from the current policy. The revised policy is much clearer in outlining the criteria under which a worker from outside of the EEA can be employed and the circumstances under which sponsoring workers from outside of the EEA would apply.

Prevention of Illegal Working Guidance Notes for Managers and Employees

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Purpose

This guidance has been produced to assist managers in preventing the employment of individuals who do not have the right to work in the UK. It also provides information to employees regarding the importance of maintaining their right to work in the UK and the potential consequences of failing to provide, when requested, confirmation of this entitlement.

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Scope

This guidance applies to any employee or worker, or prospective employee or worker, of Charnwood Borough Council. This includes casuals who work on an ad hoc/as and when basis.

The principles of this guidance also apply to individuals who are engaged by the Council (including contractors and consultants). Relevant checks should therefore be made by the manager to ensure they are entitled to work in the UK.

In the case of volunteers, managers should ensure before engaging an individual that they have no restrictions on them volunteering with the Council.

If an individual is employed through an agency (e.g. employment agency) or another company (e.g. consultancy), it is the responsibility of that agency/company to check and confirm the individual's right to work in the UK. Managers should however confirm the relevant checks detailed in this guidance have taken place and be properly satisfied of that person's entitlement to work in the UK.

Managers must understand their responsibilities and comply with this guidance to ensure all employees or workers within the Council have the right to work in the UK.

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Penalties for failing to undertake the relevant checks

Failing to undertake relevant checks before engaging an employee or worker can give rise to significant penalties. The potential financial penalty the Council could face if it was found to be employing an illegal worker depends upon a number of factors. However, the maximum penalty is £20,000 per illegal worker. There is also a significant risk of damage to the Council's reputation which should not be underestimated.

Individuals who knowingly employ or have reasonable cause to believe they are employing an illegal worker may also face criminal sanctions which could include imprisonment for up to 5 years and/or an unlimited fine.

It is therefore imperative that managers carry out the necessary checks in accordance with this guidance to avoid any possible sanction on the Council or themselves.

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How to check whether someone is eligible to work in the UK

Once a provisional offer has been made, the manager should check the individual has the right to work in the UK. There are two types of right to work checks; a manual check and an online check.

All relevant documents must be checked and copied/saved **prior** to the commencement of employment. Failure to do so could lead to the penalties described in the section titled; [‘Penalties for failing to undertake the relevant checks’](#)

Any offer of employment made before these checks have been completed must be made subject to confirmation of an individual’s right to work in the UK. **A contract will not be issued nor the individual set up on the payroll system until this information has been received by Human Resources.**

Conducting an online right to work check

In order to use the online right to work check the individual must have an immigration status that can be checked online.

Currently, the online checking service supports checks in respect of those who hold:

- a biometric residence permit;
- a biometric residence card; or
- status issued under the EU Settlement Scheme (alternatively, these individuals can continue to demonstrate their right to work by presenting their EU passport or ID card until the end of the planned implementation period).

The use of the online right to work check is **not** a mandatory requirement. However for such individuals, managers must not discriminate on the basis of whether or not an individual is able and/or willing to demonstrate their right to work using the online checking service.

If an individual does not wish to demonstrate their right to work using the online service, the manager should conduct a manual check instead.

How the service works

Managers can complete an online check by using the online service, entitled [‘View a job applicant’s right to work details’](#) on gov.uk.

Prior to this the individual must first view their own Home Office right to work record by accessing the website [‘Prove your right to work to an employer’](#). If they wish to they can then share this information with the manager by providing the manager with a ‘share code’. When entered along with the individual’s date of birth, this enables the manager to access the information. The share code will be valid for 30 days, after which a new code will be required in order to conduct an online check.

Managers **must** access the employer part of the service ([‘View a job applicant’s right to work details’](#)) in order to obtain a statutory excuse. It is not sufficient for the manager to view the information provided to the individual via the migrant part of the Home Office online right to work checking service (the ‘Prove your right to work to an employer’ website). The Home Office has an audit record of online checks conducted by employers using the service. Managers **will not** establish a statutory excuse by viewing the migrant part of the service.

There are 3 steps to conducting an online right to work check.

Step 1 - Use the Home Office online right to work checking service

If the individual wishes to share their right to work with the manager using the Home Office online right to work checking service, they will provide the manager with a 'share code' generated by the service. They may provide this to the manager directly, or choose to send this to the manager via the service, in which case the manager will receive an email from; right.to.work.service@notifications.service.gov.uk.

Example of an email providing the share code



You can now view Lee Jones' right to work details

They have used the online 'prove your right to work to an employer' service on GOV.UK to email you a share code to view their details.

To view their right to work information you will need to go to the employer service 'view a job applicant's right to work details' on GOV.UK and enter their:

- date of birth
- share code **805-732-567**

The share code will expire on Saturday, 20 February 2019.

The manager will then have 30 days to access the employer part of the online right to work checking service '[View a job applicant's right to work details](#)'.

Example of the start page of the employer part of the online right to work checking service

View a job applicant's right to work details

Check a job applicant's right to work in the UK if they've used the online 'prove your right to work to an employer' service to [share their details with you](#).

You can check:

- the types of work they're allowed to do
- how long they can work in the UK for

You'll need:

- the job applicant's date of birth
- a code the job applicant will share with you

You can use this service instead of [checking a job applicant's documents in person](#). Either option will ensure you avoid a [penalty](#).

[Start now >](#)

To view the individual's right to work details, the manager will need to type in the share code and the individual's date of birth.

Step 2 - Check

The Manager must check that the photograph on the online right to work check is of the individual presenting themselves for work (i.e. the information provided by the check relates to the individual and they are not an imposter).

An individual can only be employed, or continue to be employed (if conducting a follow-up check), if the online check confirms they have the right to work and are not subject to a condition preventing them from doing the work in question.

Managers must seek advice from Human Resources as soon as possible if the online right to work check indicates;

- the individual does not have the right to work in the UK;
- or it is reasonably apparent from the photograph that the individual the manager wishes to employ or continue to employ is not the individual to whom the information provided in the check relates.

An example of an on-line check response;

GOV.UK View a job applicant's right to work

BETA This is a new service – your [feedback](#) will help us to improve it.



Lee Jones can work in the UK until 30 April 2020

Details
On their current visa, you can employ them to do any job except those listed in the conditions below.

Conditions
They cannot:

- work as a doctor or dentist in training
- play or coach professional sports.

These conditions are the standard requirements for their visa.

If you employ this person
To avoid a [penalty](#), you must:

- check that this looks like the person you meet face to face
- keep a secure copy of this online check (either electronically or in hard copy), for the duration of the employment and for two years after
- do this check again when their visa expires on 30 April 2020

Read the [employers' code of practice](#) to find out more about right to work checks.

Details of check

Company name	Date of check	Reference number
	9 June 2017	WE-0000000-XX

[View a PDF of this page](#)

[Finish and leave service](#)

Step 3 Retain evidence of the online check

Evidence of the online right to work check must be retained. For online checks, this should be the 'profile' page confirming the individual's right to work. This is the page that includes the individual's photo and date on which the check was conducted.

Managers will have the option of printing the profile (the response provided by the Home Office online right to work checking service), or saving it as a PDF or HTML file.

Managers should save a copy of the profile page. This should then be provided to Human Resources along with the other appointment paperwork.

Conducting a manual right to work check

Once a provisional offer has been made, the recruitment manager should ask the successful candidate to bring in copies of **original documents** confirming their entitlement to work in the UK. Acceptable documents for proving this entitlement are split into two lists:

- **List A** - These documents demonstrate the individual has a permanent right to work in the UK. If an applicant provides a single document or combination of documents specified in this list then they are entitled to work for the Council for an indefinite period. There is no requirement to undertake any repeat checks of their documentation;

- **List B** - These documents demonstrate the individual has been granted a temporary right to work in the UK and/or has restrictions on their right to work. If an applicant provides a single document or combination of documents specified in this list then it is important that any time limits or restrictions are noted and adhered to. There is also a requirement for repeat document checks to be undertaken during the individual's employment with the Council. Further information regarding the frequency and content of these rechecks can be found in the section titled '[Continuation of employment - undertaking repeat checks](#)'.

In order to establish whether the successful candidate has the right to work in the UK the manager should undertake the following three step check:

Step one - Obtain

Managers must obtain original documents (either a single document or specified combination of documents) from [List A](#) or [List B](#). It is not acceptable for the individual to provide **photocopies or scanned copies of documents**.

Some of the documents detailed in [List B](#) require verification by the Home Office Employer Checking Service. Where this is specified, the recruiting manager should inform the individual that this check is required and seek their permission before submitting an application. Details of how to make the application and the information required are available on the [Home Office website](#). Support is available from Human Resources if required.

Copies of the documents relating to this check and the **positive verification notice** received from the Employer Checking Service **must** be provided to Human Resources along with the other appointment paperwork.

If a **negative verification notice** is received from the Employer Checking Service it **will not** be possible to progress the individual's appointment as this notice confirms they do not have permission to do the work in question. In these situations, advice should be sought from Human Resources on the action that will need to be taken to withdraw the provisional offer of employment.

Step two - Check

In the presence of the individual, the manager must confirm the validity of each document. Inspection of a document via a video link is not acceptable nor is checking a faxed or scanned copy of the document.

The Manager must check that:

- Any photographs are consistent across documents and with the appearance of the individual;
- Any dates of birth listed are consistent across documents and correspond with the appearance of the individual;
- The expiry dates of any limited leave to enter or remain in the UK have not passed;

- Any work restrictions found on UK government endorsements such as Biometric Residence Permits, stamps, stickers, visas, etc. do not restrict the individual from undertaking the type of work being offered;
- The documents appear to be genuine (i.e. no typographical errors, etc.), have not been tampered with and belong to the individual.

If the individual provides two documents that have different names, the manager should ask for a further document to explain the reason for this. The further document could be, for example, a marriage certificate, a divorce decree absolute, a deed poll, or statutory declaration.

If there is any suspicion that a document provided is not genuine or legitimate then advice should be sought from Human Resources as soon as possible as it may be necessary to make further enquiries or to report the individual to the Home Office.

Step three - Copy

Take a **clear** photocopy of each document.

Managers must copy and retain:

1. Passports

- Any page containing the individual's personal details including their nationality, photograph, date of birth, signature, or biometric details;
- Any page with the document expiry date and/or leave to remain expiry date.
- Any page containing information indicating that the individual has permission to enter or remain in the UK (e.g. a visa or entry stamp) and can undertake the work in question.

2. All other documents

- The document in full, including both sides of a Biometric Residence Permit, Application Registration Card or a Residence Card (biometric format).

Each photocopy must be signed and dated by the manager using the following statement: **'This right to work check was made on [insert date]**. This is to confirm the original document has been checked. The photocopies should then be returned to Human Resources along with the completed Personal File- Appointee's Checklist.

Human Resources will ensure that details of any List B documents are recorded on i-Trent so that expiry dates and restrictions can be monitored.

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Who can work in the UK without restriction

The following groups of people can be employed in the UK without any restrictions. However, the document checks detailed in the section titled ['How to check whether](#)

[someone is eligible to work in the UK](#) **must still be** undertaken before the individual starts work:

- British citizens;
- Commonwealth citizens with the right of abode;
- Nationals from the Common Travel Area (i.e. the UK, the Channel Islands, the Isle of Man and Ireland);
- Nationals from Switzerland and the following European Economic Area (EEA) countries:

Austria	Belgium	Bulgaria	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			

- Family members of adult nationals from EEA countries and Switzerland, providing the EEA/Swiss national is lawfully residing in the UK.

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Employing workers from outside of the European Economic Area (EEA)

Workers from outside of the EEA or Switzerland can be employed provided they have the legal right to work and reside in the UK. Managers should follow the three step checking process set out in the 'How to check whether someone is eligible to work in the UK' section prior to the individual commencing their employment.

Sponsoring workers from outside of the European Economic Area (EEA)

In order to employ a worker from outside of the [European Economic Area](#) or Switzerland, who doesn't have the legal right to work and reside in the UK, the Council will need to act as their sponsor. The Council does not currently hold a sponsorship licence to be able to do this. Further advice must be sought from Human Resources.

Employing students from outside of the European Economic Area

Students from outside of the [European Economic Area](#) (EEA) can work in the UK providing their conditions of entry into the UK allow this. Those who have a Tier 4 (general) or student visa (issued prior to the introduction of Tier 4) can work in the UK, subject to certain restrictions.

A student who is able to work will have a clear endorsement in their passport or Biometric Residence Permit. This will state they are permitted to work and the number of hours they can work during term-time. This is either 10 or 20 hours per week (with a week considered to be Monday to Sunday). Any work undertaken for the Council must not exceed this limit.

They are also permitted to work full-time during vacations and undertake fulltime work both before their course commences and after their course finishes, as long as they have leave to remain in the UK and are following or have completed the required course of study.

If a student's passport or Biometric Residence Permit does not contain information about their right to work, they are **not** permitted to work in the UK.

There are strict conditions on the type of work students can undertake. They must not:

- Work on a self-employed basis; or
- Seek to pursue their career by filling a permanent full-time vacancy.

Those studying in the UK on a 'Short-term Student' visa are not permitted to undertake employment or a paid or unpaid work placement as part of their course.

Managers should follow the three step checking process set out in the '[How to check whether someone is eligible to work in the UK](#)' section prior to the individual commencing their employment.

Where the documents provided indicate the student has a limited right to work in the UK, the student **must** also provide evidence of their academic term and vacation dates for the duration of their studies in the UK for which they will be employed by the Council. This evidence should originate from the education institution which is sponsoring the student and may include:

- A printout from the student's education institution's website or other material published by the institution setting out its timetable for the student's course of study (managers 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 student's course; or
- A letter addressed to the Council from the education institution confirming term time dates for the student's course.

A copy of the evidence provided should be provided to Human Resources along with the other appointment paperwork.

Any offer of employment made prior to these checks being completed must be made subject to the receipt of the appropriate documentation to confirm an individual's right to work in the UK. **A contract will not be issued nor the individual set up on the payroll system until this information has been received by Human Resources.**

Managers must contact Human Resources immediately if there is a change in the student's circumstances and they have:

- Changed or are in the process of changing their education sponsor; or
- Changed their course (even if it is with the same education sponsor); or
- Stopped studying; or
- Finished their course early; or
- Been informed that their education sponsor has had their licence revoked or ceased trading.

The above circumstances may impact upon their right to work in the UK and in some cases could mean they are no longer able to work.

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Employing asylum seekers, refugees and those granted humanitarian protection

An asylum seeker is an individual who has made an application to be recognised as a refugee under the Geneva Convention or has otherwise made an application for international protection. They do not normally have the right to work in the UK and can only be lawfully employed if these restrictions have been lifted.

If an asylum seeker is allowed to work they will hold a Home Office issued Application Registration Card which states either work is permitted or work is permitted with restrictions. For example:

- Work Permitted;
- Work Permitted - SOL (i.e. Shortage Occupation List);
- Work Permitted - Student; or
- Work Permitted - Other.

If an asylum seeker's Application Registration Card states that work is permitted with restrictions, the manager should ensure their employment does not breach these restrictions.

In addition to checking and taking copies of the card stating that work is allowed, the manager will need to make an application to the Home Office Employer Checking Service for verification. The individual should be advised that this check is required and their permission sought before submitting the application. Details of how to complete this check and the information required are available on the [Home Office website](#). Support is available from Human Resources if required.

If a **positive verification notice** is received from the Employer Checking Service it **must** be uploaded onto the recruitment portal along with the other appointment paperwork.

If a **negative verification notice** is received from the Employer Checking Service it **will not** be possible to progress the individual's appointment as this notice confirms they do not have permission to do the work in question. In these situations, advice should be sought from Human Resources on the action that will need to be taken to withdraw the provisional offer of employment.

An asylum seeker whose claim is successful is granted refugee status. Where a person does not qualify for protection under the Geneva Convention, they may be granted humanitarian protection instead. Refugees and those recognised as requiring humanitarian protection have no restrictions on the type of work they can do in the UK, as long as they continue to hold this qualifying status. A refugee will normally be able to provide proof of their status and their right to work in the UK with a combination of documents set out at [List B](#). Managers should follow the three step checking process set out in the '[How to check whether someone is eligible to work in the UK](#)' section.

Checks on an asylum seeker's or refugee's documentation **must** be carried out prior to the individual commencing their role and during their employment. The frequency of the follow up checks will depend on the documents provided as proof of right to work. Please refer to the section titled '[Continuation of employment - undertaking repeat checks](#)' for further information.

Any offer of employment made prior to these checks being completed must be made subject to the receipt of the appropriate documentation to confirm an individual's right to work in the UK. **A contract will not be issued nor the individual set up on the payroll system until this information has been received by Human Resources.**

The Council does not need to sponsor an asylum seeker, refugee or individual with humanitarian protection (providing they have the right to work in the UK) in order to employ them.

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The use of volunteers

The following groups of people are permitted to volunteer in the UK without any restrictions:

- Individuals with refugee status or those recognised as requiring humanitarian protection;
- Nationals of the countries listed below:

Austria	Belgium	Bulgaria	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	Switzerland	United Kingdom	

Citizens from other countries will need to confirm their entitlement to volunteer in the UK. It is the individual's responsibility to contact UK Visas and Immigration to check their visa or entry clearance conditions. Before accepting a volunteer, managers are advised to obtain confirmation of their entitlement to volunteer from the individual.

Asylum seekers are only allowed to volunteer with public sector organisations, registered charities, voluntary organisations or bodies that raise funds for either.

Individuals on a visitor or student visitor visa are not allowed to volunteer in the UK.

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Withdrawing an offer of employment

If the successful candidate fails to provide appropriate evidence within a specified timescale (**which must be before they start in the role AND before a contract of employment or contract for services is issued**) it may be justifiable to withdraw the offer of employment. Advice should be sought from Human Resources before withdrawing an offer of employment for this reason.

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Continuation of employment - undertaking repeat checks

Where documents only grant temporary permission to work in the UK, once employed, the Council is required to check that the individual's right to work in the UK continues during the whole period of their employment.

The required frequency of these repeat checks is as follows:

- Documents from List B (Group One) - a follow up check must be undertaken shortly before permission (as set out in the document checked) expires;
- Documents from List B (Group Two) - a follow up check must be undertaken six months after the positive verification notice was received;
- Online right to work check which indicates the individual's right to work is time limited - a follow-up check must be undertaken shortly before permission (as set out in the online check) expires.

Follow-up checks, may be completed by the manager using either the manual right to work check or the online right to work check (where applicable) as described in the earlier section '[How to check whether someone is eligible to work in the UK](#)'. Either check can be

used irrespective of the type of check conducted originally, before employment commenced.

The manager will complete the New Appointment Checklist and return this to Human Resources along with a photocopy of the relevant document(s). Some of the documents detailed in [List B](#) require verification by the [Home Office Employer Checking Service](#). Where this is specified, Strategic HR will make an application and advise the individual that this check is being undertaken. Copies of the documents relating to this check and the **positive verification notice** received from the Employer Checking Service **must** be kept on the employee's personal file.

If, during the rechecking process, the employee provides a single document or combination of documents specified in List A then there is no requirement to undertake any further checks for the remaining duration of their employment with the Council.

If at the time of checking the employee is unable to provide evidence of their right to work due to an outstanding application with the Home Office or an appeal to extend their leave in the UK, Strategic HR will contact the [Home Office Employer Checking Service](#).

This service will confirm whether the individual has the right to continue to work in the UK. If a **negative verification notice** is received from the Employer Checking Service then the procedure set out in the '[Failure to Maintain Right to Work](#)' section will be followed.

Failure to undertake these checks may result in the Council being liable to a penalty if the employee is found to be working illegally or potentially criminal sanctions being imposed.

Where the line management of an individual transfers to another manager, the original manager should detail in writing to the new manager the status of the individual's permission to work in the UK and their responsibilities in reference to this guidance. They should also set out any dates where such permission to work in the UK is due to expire and any restrictions that are in place (e.g. maximum working hours, etc.).

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Failure to maintain right to work

If the manager or Human Resources becomes aware, either as part of the recheck process or from another source (e.g. UK Visas and Immigration), that an employee may no longer have the right to work in the UK then the following process should be followed.

- The manager should meet with the employee as soon as possible to ascertain whether they have the required documentation to evidence their continued right to work in the UK (see [Appendix A](#) and [Appendix B](#) for a list of acceptable documents).
- The employee should be given 48 hours to provide the required (original) documentary evidence.
- If the employee provides the required evidence, the manager, with support from Human Resources, should complete the New Appointment Checklist and return it to the Human Resources with a copy of the relevant document(s).

- If the employee fails to provide the required evidence, the reasons for this should be fully discussed with the employee. The manager should consider whether suspension is necessary. This should be discussed with a representative from Human Resources and approved by a Strategic Director.
- If approved, a meeting should be held with the employee and the employee informed that they will be suspended from work, without pay, pending confirmation of their entitlement to work in the UK. The manager should confirm the reason for the suspension in writing to the employee as soon as possible (usually the next working day at the latest). A template letter is attached at [Appendix D](#).
- Periods of suspension will be kept as short as possible and managers are expected to undertake a weekly review of the case.
- During the process, the employee may advise that their case is currently being dealt with by the Home Office. In such cases the manager should make contact with the [Home Office Employer Checking Service](#) in order to verify this information.
- If the employee is subsequently able to provide evidence of their right to work in the UK, the suspension should be lifted and the employee's salary reinstated from the date of suspension. In some circumstances (e.g. repeated failure to provide relevant documents on request) it may be necessary to consider whether disciplinary action is appropriate.
- If the employee is unable to provide evidence of their right to work in the UK and enquiries with other agencies (e.g. the Home Office) do not confirm their entitlement, then a meeting should be arranged to consider the employee's continued employment. The employee should be advised in writing of the reason for the meeting and that a potential outcome is termination of their employment without notice. It must also include details of the employee's right to be accompanied at the meeting by a work colleague or Trade Union representative. Where this is the case, the manager should also contact Human Resources to discuss informing the Home Office of the situation.

Where it is necessary to consider the termination of an employee's employment then the following process should be followed. The outcomes of such a meeting will usually be that the employee's employment should be terminated without notice or payment in lieu of notice, that it should not be terminated, or that the employee should be given a further period to demonstrate that they have the right to work in the UK.

The Meeting

- The meeting should be held with the employee's line manager (or their line manager).
- A representative from Human Resources should be present.
- The employee has a right to be accompanied by a work colleague or Trade Union representative.
- The employee must take all reasonable steps to attend the meeting. If the employee fails to attend the meeting, the manager should make enquiries as to the reason for their non-attendance. If the employee was unable to attend for a valid

reason, then the manager should rearrange the meeting. If the employee fails to provide an acceptable reason or fails to attend the rearranged meeting, the meeting will go ahead in the employee's absence.

- The employee should be given the opportunity to present any evidence to prove their continued right to work in the UK.
- Notes should be taken of the meeting and a copy provided to the employee.
- At the end of the meeting the employee will be informed of the decision. This should be confirmed in writing within 5 working days.
- The employee has the right to appeal the decision.

Appeal

- The appeal must be submitted to the manager who made the original decision within 7 working days of receiving written notification of the outcome and set out the reasons for the appeal in full.
- The appeal will be heard by an appropriately designated manager from the employing department and a representative from Human Resources.
- The employee has a right to be accompanied by a work colleague or Trade Union representative.
- The employee must take all reasonable steps to attend the meeting. If the employee fails to attend the meeting, the manager should make enquiries as to the reason for their non-attendance. If the employee was unable to attend for a valid reason, then the manager should rearrange the meeting. If the employee fails to provide an acceptable reason or fails to attend the rearranged meeting, the meeting will go ahead in the employee's absence.
- The employee should be given the opportunity to present any evidence to prove their continued right to work in the UK.
- Notes should be taken of the meeting and a copy provided to the employee.
- After the meeting the employee must be informed of the final decision. This should be confirmed in writing within 5 working days.

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Transfer of Undertakings

Right to work checks for employees who are TUPE transferred into the Council must be completed within 60 days of the transfer taking place. Managers should follow the checking process set out in the '[How to check whether someone is eligible to work in the UK](#)' section.

Human Resources should be contacted immediately if an employee who is due to be TUPE transferred or has been TUPE transferred either into or out from the Council is working in the UK under the points based sponsorship system (i.e. on a Tier 2 or Tier 5 visa).

Appendix A - List A: Documents which satisfy the continuous right to work in the UK

- A passport showing that 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;
- 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;
- A registration certificate or document certifying permanent residence issued by the Home Office to a national of a European Economic Area country or Switzerland;
- A permanent residence card issued by the Home Office to the family member of a national of a European Economic Area country or Switzerland;
- 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 UK, or has no time limit on their stay in the UK;
- A **current** passport 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;
- A **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 UK or has no time limit on their stay in the UK, **when produced in combination with** an official document giving the person's permanent National Insurance number and their name issued by a Government agency or a previous employer;
- A birth or adoption certificate issued in the UK **when produced in combination with** an official document giving the person's permanent National Insurance number and their name issued by a Government agency or a previous employer;
- A birth (short or long) or adoption certificate issued in the Channel Islands, the Isle of Man or Ireland, **when produced in combination with** an official document giving the person's permanent National Insurance number and their name issued by a Government agency or a previous employer;
- A certificate of registration or naturalisation as a British citizen, **when produced in combination with** an official document giving the person's permanent National Insurance number and their name issued by a Government agency or a previous employer.

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Appendix B - List B: Documents which satisfy the right to work in the UK for a time-limited period

Group One - Documents where a time-limited statutory excuse lasts until the expiry date of leave

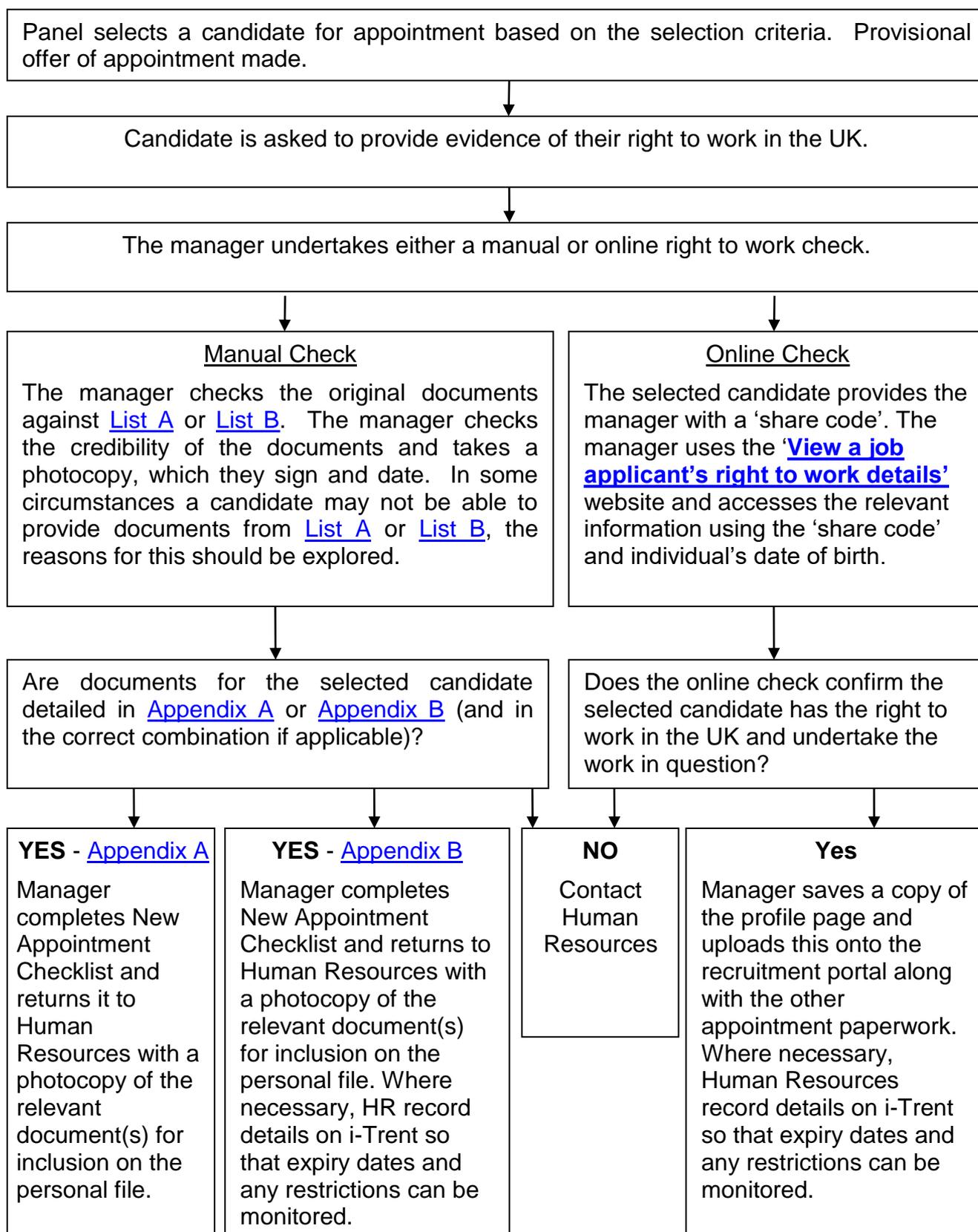
- A **current** passport endorsed to show that the holder is allowed to stay in the UK and is currently allowed to do the type of work in question;
- A **current** Biometric Immigration Document (Biometric Residence Permit) issued by the Home Office to the holder which indicates that the person named in it can currently stay in the UK and is allowed to do the work in question;
- 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;
- A **current** Immigration Status Document containing a photograph issued by the Home Office to the holder with a valid endorsement indicating that the person named in it can stay in the UK, and is allowed to do the type of work in question **when produced in combination 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 Two - Documents where a time-limited statutory excuse lasts for 6 months

- A Certificate of Application issued by the Home Office under regulation 18(3) or 20(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 month old when produced in combination with a positive verification notice** from the Home Officer Employer Checking Service;
- An Application Registration Card issued by the Home Office stating that the holder is permitted to take the employment in question, **when produced in combination with a positive verification notice** from the Home Office Employer Checking Service;
- 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 UK and is permitted to do the work in question.

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Appendix C - Checking right to work in UK flowchart



Appendix D - Letter confirming employee's suspension

STRICTLY PRIVATE AND CONFIDENTIAL

[Name]

[Address]

[Date]

Dear [Name],

I am writing to confirm the outcome of our meeting on [date] during which you were advised that, as you have failed to provide evidence of your continued right to work in the UK, you were being suspended from work, without pay, with immediate effect.

Whilst on suspension you must be contactable at all times during your normal working hours and you will be required to make yourself available for meetings as appropriate. You have the right to be accompanied at any such meetings and this can be a work colleague or a Trade Union representative.

Please note that if you are unable to provide evidence of your right to work in the UK by [date] and enquiries with other agencies do not confirm your entitlement, then a meeting will be arranged to consider your continued employment with the Council.

If you are able to provide evidence of your right to work in the UK, the suspension will be lifted and your salary reinstated from the date of suspension. In some circumstances (e.g. repeated failure to provide relevant documents on request) it may be necessary to consider whether disciplinary action is appropriate.

During your suspension I will contact you on a weekly basis to confirm progress however in the meantime if you have any updates then please contact me immediately on [telephone number].

I appreciate that this is a concerning time for you and would like to remind you that the services of AMICA Telephone Counselling Service are available to you on 0116 2544388.

A copy of the Prevention of Illegal Working Guidance is enclosed for your information.

If you have any questions regarding the contents of this letter then please do not hesitate to contact me on [telephone number].

Yours sincerely,

[Name of manager]

[Job Title]

Appendix E - Letter lifting employee's suspension

STRICTLY PRIVATE AND CONFIDENTIAL

[Name]

[Address]

[Date]

Dear [Name],

I am writing to advise that following my letter dated [date of suspension letter] I have reviewed your suspension.

As I am now in receipt of confirmation of your entitlement to work in the UK it has been decided that your suspension from work is to be lifted with effect from [date] and your salary reinstated from [date].

In order to assist you with your return to work, I would be grateful if you would attend a meeting with me at [time] on [date] in [location] to discuss how this could be best facilitated.

Please do not hesitate to contact me on [telephone number] if you have any questions regarding the contents of this letter.

Yours sincerely,

[Name of manager]

[Job Title]

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Appendix F - Letter inviting employee to meeting

STRICTLY PRIVATE AND CONFIDENTIAL

[Name]

[Address]

[Date]

Dear [Name],

Further to my letter dated [date] confirming your suspension from work, I am now writing to invite you to attend a meeting at [time] on [date] in [location]. Also in attendance will be [name] from Human Resources and [name] to take notes. On arrival you should report to [location] and ask for [name].

The purpose of the meeting is to consider whether you are still entitled to work in the UK and therefore if your employment with the Council should continue. You may, if you wish, be accompanied at the meeting by a work colleague or Trade Union representative.

Please note that if you are unable to provide copies of the relevant documents confirming your entitlement to work in the UK then your employment with the Council will be terminated with immediate effect.

Enclosed is a copy of the documents that will be considered at the meeting. During the course of the meeting you will have the right to hear and question all of the evidence presented. You will also have the opportunity to present your case and to provide any evidence which confirms your entitlement to work in the UK.

I would be grateful if you would please confirm that you are able to attend the meeting. Please note that failure to attend without an acceptable reason may result in the meeting going ahead in your absence.

If you, or your representative, require any special arrangements in order to attend the meeting, please contact me as soon as possible so that I can facilitate these for you.

A copy of the Prevention of Illegal Working Guidance is enclosed for your information. Please do not hesitate to contact me if you have any questions regarding the contents of this letter.

Yours sincerely,

[Name of manager]

[Job Title]

Appendix G - Letter confirming outcome of meeting

STRICTLY PRIVATE AND CONFIDENTIAL

[Name]

[Address]

[Date]

Dear [Name],

I am writing to confirm the outcome of our meeting on [date] which I conducted with support from [name] in Human Resources. Also present were [name] as your representative and [name] as note-taker.

The purpose of the meeting was to consider your eligibility to still work in the UK and therefore if your employment with the Council should continue.

Option One

As you were able to provide copies of the required documentation showing your entitlement to work in the UK, I can confirm that your employment with the Council will continue as per your contract of employment.

Your suspension from work will be lifted with effect from [date] and your salary reinstated from [date].

It is a condition of your employment that you continue to maintain your entitlement to work in the UK throughout your employment with the Council and produce, when requested, copies of any original documentation confirming this entitlement or the information required to conduct an online right to work check. You must also notify the Council immediately if your entitlement ceases at any time during your employment.

Option Two

As you failed to provide copies of the required documentation showing your entitlement to work in the UK, I have no other option but to terminate your employment with the Council with immediate effect. Your P45 will be forwarded to you shortly.

Please note that I will also be contacting the Home Office to make them aware of this decision.

You are required to return any property which is still in your possession and [name] will be in contact with you to arrange this.

You have the right to appeal against this decision and should submit this to me within 7 working days of receiving this letter, setting out the reasons for your appeal in full. Should you decide to appeal; the effect of the dismissal will still stand pending the outcome of the appeal meeting.

A copy of the notes taken at the meeting is enclosed for your information.

Yours sincerely,

[Name of manager who held the meeting]

[Job Title]

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Appendix H - Invitation to Appeal Meeting

STRICTLY PRIVATE AND CONFIDENTIAL

[Name]

[Address]

[Date]

Dear [Name],

Following receipt of your appeal against the decision to terminate your employment for failing to provide confirmation of your continued right to work in the UK, I am writing to invite you to attend an appeal meeting.

Your appeal will be heard by [name, job title] with support from [name] in Human Resources at [time] on [date] in [location]. [Name] will also be in attendance to take notes. On arrival you should report to [location] and ask for [name]. You may, if you wish, be accompanied at the meeting by a work colleague or Trade Union representative.

Enclosed for your attention is a copy of management's response to your appeal statement, along with supporting documents. I will be in attendance at the meeting to present the management case.

The outcome of the appeal hearing will be to either:

- Uphold the original decision taken (i.e. your dismissal will still stand);
- Overturn the original decision and reinstate your employment.

Please be advised that the decision of the appeal hearing will be final and there is no further right of appeal.

I would be grateful if you would please confirm that you are able to attend the meeting. Please note that failure to attend without an acceptable reason may result in the meeting going ahead in your absence.

If you, or your representative, require any special arrangements in order to attend the meeting, please contact me as soon as possible so that I can facilitate these for you.

If you have any questions regarding the contents of this letter, please do not hesitate to contact me on [telephone number].

Yours sincerely,

[Name of manager]

[Job Title]

Appendix I - Outcome of Appeal Hearing

STRICTLY PRIVATE AND CONFIDENTIAL

[Name]

[Address]

[Date]

Dear [Name],

I am writing to confirm the outcome of the appeal meeting held on [date] which was heard by me with support from [name] in Human Resources. Also present was [name] as your representative and [name] as note-taker.

You appealed against the decision to terminate your employment as a result of your failure to provide confirmation of your continued right to work in the UK. The reason for your appeal was [reason].

Having considered the evidence provided at the hearing, I have decided to [uphold the original decision to terminate your employment as you have still not provided the required documentation to confirm your entitlement to work in the UK] or [overturn the original decision to terminate your employment as you have now provided the required documentation to confirm your entitlement to work in the UK]. Include details of any additional actions/ recommendations and reasons for decision.]

The decision of the appeal hearing is final and there is no further right of appeal.

A copy of the notes taken at the meeting is enclosed for your information.

Yours sincerely,

[Name of manager hearing appeal]

[Job Title]