

NORTH LINCOLNSHIRE COUNCIL

POLICY AND RESOURCES CABINET MEMBER

ASYLUM AND IMMIGRATION CHECKS

1. OBJECT AND KEY POINTS IN THIS REPORT

- 1.1 To outline and seek approval for the council's revised Asylum and Immigration Checks document.

2. BACKGROUND INFORMATION

- 2.1 The law requires the council to check that all potential employees are entitled to work in the UK. The Asylum and Immigration Checks document outlines the process the council follows to ensure that appropriate documents are checked and copied before a person is allowed to start work.
- 2.2 Citizens from countries within the European Economic Area (EEA) are free to enter, live in and work in the UK with no restrictions. Any person from a non-EEA country (a migrant) wishing to work in the UK requires a 'sponsor', must meet the requirements of immigration rules and qualify through a points based system before taking up employment.
- 2.3 In 2009 the council was licensed by the UK Border Agency to sponsor up to eight people under what are known as the Tier 2 (General) provisions. This allows the employment of certain skilled workers to fill gaps in the council's workforce.
- 2.4 Since 2009, the council has never sponsored a migrant worker. The likelihood of the council needing to in the future is very small. This is because certificates of sponsorship can only be issued where the council has been unable to fill a Tier 2 skilled job with a settled worker. For this to happen, there are two possible routes:
- A post would need to be on the shortage occupation list which is determined by the Migration Advisory Committee. Posts that are on the shortage occupation list that apply to the council are, secondary school teachers of maths and pure sciences (physics/chemistry), special needs education teaching professionals and social workers in children's and family services. Also, with 9 of 13 secondary schools already having transferred to academy status this further reduces the likelihood of issuing certificates of sponsorship for teaching posts.
 - The other potential route is where the council has conducted a resident labour market test that proves a settled worker is not available to fill the

post. This involves advertising a vacancy for a minimum of 28 days through Job Centre Plus and following this, if no settled worker applies and is successful in obtaining the post at this point the post could be offered to a suitable migrant worker and a certificate of sponsorship would then need to be issued.

- 2.5 The council is currently an A* rated authority with regard to compliance on asylum and immigration checks and this will remain unaffected by not renewing our sponsorship licence.

3. OPTIONS FOR CONSIDERATION

- 3.1 To approve the revised policy.
- 3.2 To reject the revised policy.
- 3.3 To recommend amendments to the revised policy.

4. ANALYSIS OF OPTIONS

- 4.1 Accepting the revisions will mean that the council will no longer be able to sponsor migrant workers to undertake skilled jobs, saving £1500 on the renewal fee of the sponsorship licence.
- 4.2 Rejecting the policy would result in the council needing to renew its sponsorship licence with the UK Border Agency at a cost of £1500.
- 4.3 Recommending further changes to the policy would require further consultation and delay implementation.

5. RESOURCE IMPLICATIONS (FINANCIAL, STAFFING, PROPERTY, IT)

5.1 Financial

To renew the sponsorship licence would cost the council £1500.

5.2 Staffing

There are no implications for existing staff.

5.3 Property

None.

5.4 IT

None.

6. **OTHER IMPLICATIONS (STATUTORY, ENVIRONMENTAL, DIVERSITY, SECTION 17 - CRIME AND DISORDER, RISK AND OTHER)**

6.1 An integrated impact assessment has considered the diversity implications of these revisions (see attached).

7. **OUTCOMES OF CONSULTATION**

7.1 The trade unions have been consulted and are in agreement with the proposals.

8. **RECOMMENDATIONS**

8.1 That the revised policy be approved and adopted.

ASSISTANT DIRECTOR HUMAN RESOURCES

Civic Centre

Ashby Road

SCUNTHORPE

North Lincolnshire

DN16 1AB

Author: Rebecca Stanford

Date: 30 April 2013

Background Papers used in the preparation of this report

None

1.0 Introduction

- 1.1 The Immigration, Asylum and Nationalities Act 2006 requires all employers to make basic document checks on every person they intend to employ **before** commencement of employment. The documents checked must be the originals. Photocopies, printouts or any other form of copy are unacceptable. The Act also requires that copies (photocopies or scanned copies) be taken and retained on file for the duration of the employment and at least two years beyond.
- 1.2 Assumptions must not be made about a person's right to work or immigration status. For example, on the basis of their colour, race, nationality, ethnic or national origins, or the length of time they have been in the UK. To avoid discrimination all applicants should be treated in the same way at each stage of the recruitment process and checks should be undertaken on every prospective employee.
- 1.3 In addition to following the procedure for basic document checks outlined at paragraph 2.0 on all successful external applicants, certain foreign nationals may have unique paperwork requirements. These requirements can be broken down into three specific categories as follows:

European Economic Area (EEA)		A2 countries in the EU	Countries outside of the EU
European Union (EU) plus*			
Austria Belgium Cyprus Czech Republic Denmark Estonia Finland France Germany Greece Hungary Republic of Ireland Italy Latvia	Lithuania Luxembourg Malta The Netherlands Poland Portugal Slovakia Slovenia Spain Sweden United Kingdom *Iceland *Liechtenstein *Norway	Bulgaria Romania	Any country not listed in this table
*Switzerland (<i>not in the EEA</i>)			
See section 3.0		See section 4.0	See section 5.0

1.4 It is a criminal offence to employ a person aged 16 or over who is subject to immigration control and who has no permission to work in the United Kingdom (UK). **Under no circumstances must a person be allowed to commence employment until the documents have been checked and copied.**

2.0 Document checks

2.1 The person checking the documentation must ensure that:

- Any photograph seen matches the applicant
- The applicant's appearance is consistent with their date of birth
- Any expiry dates have not lapsed
- Correct immigration stamps are present
- The same name and date of birth appears on all documents
- If there is a name change there is evidence of a legitimate reason and there is further documentary evidence to support this
- Documents are photocopied and the document checker prints and signs their name and dates the copy.

2.2 In the case of a passport or other travel document, the following parts must be photocopied or scanned:

- the document's front cover and any page containing the holder's personal details. In particular, a copy should be taken of any page that provides details of nationality, his or her photograph, date of birth, signature, date of expiry or biometric details; and
- any page containing UK Government endorsements indicating that the holder has entitlement to be in the UK and is entitled to undertake the work in question.

2.3 Other documents should be copied in their entirety.

2.4 The UK Border Agency provides guidance including samples of UK Government stamps and endorsements to which you should refer to help satisfy you that an employee from overseas is entitled to work in the UK. www.ukba.homeoffice.gov.uk/sitecontent/documents/employersandsponsors/preventingillegalworking

2.5 All successful external applicants must provide an original document or a specified combination of documents from the following list (known as List A):

LIST A

Single documents:

- A passport showing that the holder is a British citizen or a citizen of the United Kingdom and Colonies having the right of abode in the United Kingdom.
- A passport or national identity card showing that the holder is a European Economic Area (EEA) or Swiss national. *See section 4.0 for exemptions*
- Residence permit, registration certificate or Home Office or Border Agency document indicating rights of permanent residence to an EEA or Swiss national or family member
- A passport, biometric ID card or other travel documents indicating the holder is exempt from immigration control, is allowed to stay indefinitely in the country or has no time limit on their stay.

Combinations of documents:

- P45, P60, NI number card or letter from an approved Government agency. (Please note that a National Insurance number does not automatically indicate that the individual is eligible to work, and is not sufficient evidence), plus:
 - Immigration Status Document (ISD) with indefinite leave to remain, or
 - Full UK, Channel Islands, Isle of Man or Irish birth certificate (listing at least one parents name), or
 - Full UK, Channel Islands, Isle of Man or Irish adoption certificate (listing at least one parents name), or
 - Certificate of registration or naturalisation as a British citizen, or
 - Letter issued by the Home Office or UK Border Agency indicating indefinite leave to remain

2.6 An applicant who provides documentation from the above list will have unlimited access to employment in the UK. It is only necessary to check and copy the required document/s once prior to the start of the period of employment.

2.7 If an applicant does not have List A documents they must be requested to provide an original document or a specified combination of documents from the following list (known as List B):

LIST B

Single documents:

- Passport or travel document endorsed for specific types of work, provided a Certificate of Sponsorship is not required
- Biometric Immigration document indicating the person is permitted to stay in the UK and do the work in question
- A residence card or document issued to a family member of an EEA or Swiss national

Combinations of documents:

(You must check and copy one of the following three combination options)

- A certificate of sponsorship plus passport, ISD or other travel document indicating entry clearance / leave to remain
- Certificate of application for a family member of a national of a EEA country or Switzerland stating that the holder is permitted to take employment which is less than 6 months old (this must be checked by the Border Agency Employer checking service), or
- An Application Registration Card issued by the Home Office or the Border Agency stating that the holder is permitted to take employment (applies to a limited number of asylum seekers). This must be checked by the Border Agency Employer checking service.
- P45, P60, NI number card or letter from an approved Government agency plus ISD giving limited leave to remain or Letter from the Home Office or Border Agency confirming limited leave to remain

2.8 If a document/s is provided from List B the checks must be repeated every 12 months unless or until a document or documents from List A is provided.

2.9 All successful external applicants should be provided with Appendix 1 (Asylum and Immigration Form) in order to fulfill the above requirements.

3.0 Countries within the European Economic Area (EEA)

- 3.1 Most citizens from countries within the EEA are free to enter, live in and work in the UK with no restrictions. The EEA is made up of the EU countries, plus citizens of Iceland, Liechtenstein and Norway who have the same rights to enter, live in and work in the UK as EU citizens. However, the UK Government has imposed a requirement for authorisation to work on nationals from two (A2) of the EEA countries. See section 4.0.
- 3.2 Under the terms of their separate bilateral agreement with the EU countries, Swiss nationals also have the same rights to enter, live in and work in the UK as EU citizens. Non-Swiss and non EEA family members of Swiss nationals who are or intend to come to the UK in order to exercise their rights under the Swiss Agreement will require a family permit.

Worker Registration Scheme

- 3.3 The Worker Registration Scheme, which closed on 30 April 2011 was for nationals of the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia or Slovenia (known as the 'A8' countries).
- 3.4 As of 1 May 2011 A8 nationals have the right to work in the UK without restrictions or the need to obtain additional permission from the UK Border Agency. There are no mandatory documents in order to show their right to work in the UK beyond those outlined in section 2.0.

4.0 Employing citizens from A2 countries in the EU (Accession Worker Card)

- 4.1 If the potential employee is from Romania or Bulgaria they must have authorisation from the Home Office **before** taking up employment in the UK. The council may also need to apply for a work permit for the potential employee.
- 4.2 Potential employees from Romania or Bulgaria must have valid Accession Worker Authorisation or a valid Exemption Registration Certificate. The former will be in the form of a card or certificate, which will set out any conditions on the person's

employment. The latter will state that the person has unconditional access to work in the UK.

- 4.3 Notably, if the serial number on the authorisation card begins with H, the holder can work for the employer noted on the card, but cannot take any supplementary employment. If the serial number on the card begins with a G, the holder can work for the employer noted on the card and supplementary work is permitted (however, new authorisation is still required).
- 4.4 The council will normally need to apply for a work permit from the UK Border Agency where the A2 worker:
- already had a work permit with another employer;
 - is changing posts within the council;
 - has a change to the duties and conditions of work from those of the previous work permit application.
- 4.5 In some cases potential employees can apply to the UK Border Agency for Accession Worker Authorisation without the need for the council to apply for a work permit i.e. Teachers or language assistants on approved exchange schemes.

Authorisation Process

- 4.6 The process for obtaining authorisation to work is normally in two stages:
- 4.6.1 The council first applies for approval for the employment under the work permit arrangements by completing work permit application forms using relevant notes. More information is available at www.bia.homeoffice.gov.uk/workingintheuk/tier2/workpermits
- 4.6.2 If this application is approved a letter of approval is issued to the council and the prospective employee. This letter on its own is not authorisation to work in the UK.
- 4.6.3 On receipt of the letter of approval the prospective employee must then apply for an accession worker card on form BR3 and submit both

the letter and form to the UK Border Agency. The form and guidance notes can be found at

www.ukba.homeoffice.gov.uk/workingintheuk/bulgariaromania/applying

4.6.4 Only on receipt of Accession Worker Authorisation can the individual start work for the council.

4.6.5 If an A2 worker does not take up the post or if the employment of a work permit holder ends (whether the employee leaves voluntarily or is dismissed) HR must inform the UK Border Agency immediately.

Exemptions

4.7 An A2 worker will be exempt from Accession Worker Authorisation if:

- They have leave to remain that was obtained before 1 January 2007 and permission to undertake the work in question.
- They have arrived, or applied for work after 1 January 2007 and who automatically have entitlement to work in the UK and are exempt from authorisation. We should require these workers to provide documentary evidence of their exemption.
- They are a student intending to work up to 20 hours a week during term time and full time during school holidays and are in possession of a Yellow Registration Certificate from the UK Border Agency confirming they are a student.
- They have worked legally as an employee in the UK for 12 months without a break and as a result have full rights of free movement and will no longer require permission to take work.
- They hold a Blue Registration Certificate that states they have unconditional access to the UK labour market.

4.8 In all cases the potential employee should be asked to provide documentary evidence of their exemption and copies must be taken.

5.0 Employment of non-EEA foreign nationals

5.1 Most people from a non-EEA country (migrants) who wish to work in the UK require a 'sponsor' and must be able to meet the requirements of immigration rules and qualify through a points based system **before** taking up employment.

5.2 The council is not licensed by the UK Border Agency to sponsor migrants under the Tier 2 (General) provisions.

6.0 Useful documents and contacts

6.1 Please be aware that guidance contained in this document only represents a summary of the law in these areas. Document checkers should refer to the following sources for further information and clarification on the basis of individual circumstances.

UK Border Agency: **0845 010 6677**

www.ukba.homeoffice.gov.uk

www.ukba.homeoffice.gov.uk/workingintheuk/eea/wrs/employers/

Immigration Enquiry Bureau: **0870 606 7766**

Email: ukbapublicenquiries@ind.homeoffice.gsi.gov.uk

UK Visa and entry requirements:

www.ukvisas.gov.uk

UK Border Agency Sponsorship and Employers helpline: **0300 1234 699**