

## Applicants Guide to The Prevention of Illegal Working

### 1. Introduction

- 1.1 This guidance has been updated to reflect current Home Office guidance following the UK leaving the EU as of the 1 January 2021.
- 1.2 As an employer Lime Trust (the “Trust”) has a legal obligation to prevent illegal working in the UK. It is unlawful to employ someone who does not have the right to reside and the appropriate right to work in the UK or who is working in breach of their conditions of stay.
- 1.3 To comply with our legal obligations the Trust is required to conduct right to work checks before employing someone, to make sure the individual is not disqualified from carrying out the work in question by reason of their immigration status. Therefore, offers of employment are subject to and conditional on the production of suitable documentation which indicates that applicants have a legal right to work in the UK.
- 1.4 Moreover, continued employment of any staff member is subject to a conditional on them having an ongoing legal right to work in the UK.
- 1.5 Upon a successful recruitment process with the Trust, all applicants are required to provide documentation to support their right to work in the UK before they can commence employment with the Trust.
- 1.6 All offers of employment will be subject to and conditional on an applicant’s eligibility to work in the UK and production of documents evidencing the same.
- 1.7 Where a successful applicant cannot provide evidence of their right to work in the UK any offer of employment will be immediately withdrawn. Moreover, if an applicant cannot show that they hold a continued right to work in the UK and/or ceases to hold a right to work in the UK and/or provides false information about their right to work in the UK at any time, any offer of employment will be immediately withdrawn or, where employment has already started, their employment will be terminated with immediate effect.
- 1.8 To comply with our obligation to prevent illegal working, we must:
  - i. Carry out "right to work" checks on all prospective employees before the employment starts.
  - ii. Conduct follow-up checks on employees who have a time-limited permission to live and work in the UK, or require a document to evidence their right as in the case of non-EEA family members of EEA or Swiss nationals (up to 30 June 2021 when the grace period for applying under the EU Settlement Scheme (EUSS) ends), or an application pending
  - iii. Keep records of all the checks carried out
  - iv. Not employ anyone it knows or has reasonable cause to believe is an illegal worker.

- 1.9 The Trust is an equal opportunities employer and does not make appointments on the basis of an applicant's race, nationality or any other protected characteristic. Right to work checks are carried out solely in order to meet our legal obligations under immigration rules.
- 1.10 This policy applies to all Trust employees, directors, contractors, agency workers, casual workers, job applicants and prospective employees.

### **Who can work in the UK without permission?**

- 2.1 The most common examples of people who do not require permission to work in the UK (though may still require a visa and will still be subject to right to work checks) are:
- i. British citizens. However, British Dependent Territories citizens, British nationals (overseas) and British overseas citizens do require permission to work in the UK.
  - ii. Those who have the right of abode in the UK (which gives the right to live and work in the UK permanently, without any immigration restrictions).
  - iii. Those who have indefinite leave to remain in the UK (also known as "settlement" or "permanent residence").
  - iv. Those who are nationals of the Common Travel Area (CTA), a long-standing arrangement between the UK, the Crown Dependencies (Bailiwick of Jersey, Bailiwick of Guernsey and the Isle of Man) and Ireland.
  - v. EU, European Economic Area (EEA) and Swiss nationals residing in the UK before 1 January 2021. They can apply for immigration status under the EU Settlement Scheme allowing them to remain in the UK. Applications under the EU Settlement Scheme must be submitted by 30 June 2021.
  - vi. Non-EEA family members of EEA and Swiss nationals and those with a retained or derivative right of residence who can produce a UK residence document to prove their status in the UK. Applications for settled or pre-settled status, save for in a few cases, need to be submitted by 30 June 2021.
  - vii. Persons granted refugee status or humanitarian protection.
  - viii. Some asylum claimants. Normally asylum claimants are not permitted to work, but some may be issued with an Application Registration Card that confirms certain employment is permitted.
  - ix. Some overseas students can work part-time during term time and full-time during holidays.
  - x. In addition, dependants who are successful in their application to accompany or join a migrant who has been granted permission to come to the UK for longer than six months will usually be given a general permission to work.
- 2.2 Unless listed above, an individual is likely to need specific immigration permission to work in the UK under the Skilled Worker route or one of the other work-related categories.

2.3 All applicants will need to evidence their right to work in the UK before commencing employment. The Trust cannot employ any individual purely on the basis that they claim to fall into one of the above groups.

### **3. Right to work checks for EU, EEA and Swiss nationals between 1 January – 30 June 2021**

3.1 All applicants will need to evidence their right to work in the UK before commencing employment. The Trust cannot employ any individual purely on the basis that they claim to fall into one of the above groups.

3.2 The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 ended free movement between the EU and the UK on 31 December 2020. This means that EU, EEA and Swiss nationals (and their families) arriving in the UK from 1 January 2021 onwards will be subject to UK immigration laws and the new points-based system.

3.3 The new rules applicable to EU, EEA and Swiss nationals do not apply to Irish nationals. Under the CTA British and Irish citizens can move freely and reside in either jurisdiction and enjoy associated rights and privileges, including the right to work.

3.4 There is a transition period of six months applicable to EU, EEA and Swiss nationals who were living in the UK on or before 31 December 2020. If you are an EU, EEA or Swiss citizen and you were resident in the UK on or before 31 December 2020, you should not apply for a visa under the points-based immigration system. You and your family should instead apply to the EU Settlement Scheme. Applications are free and the deadline for applying is 30 June 2021.

3.5 This means EU, EEA and Swiss nationals and their family members who were lawfully resident in the UK on or before 31 December 2020 and who apply to the EU Settlement Scheme by 30 June can continue to live and work in the UK until their application is determined. This includes pending the outcome of any appeal against a decision to refuse status. Alternatively, EEA nationals and their family members will need to obtain another form of UK immigration status to live and work in the UK after the grace period.

3.6 If you are an EU, EEA, or Swiss citizen, you can continue to use your passport or national identity card to prove you can work in the UK until 30 June 2021.

3.7 Workers who are already in receipt of confirmation of their pre-settled or settled status under the EU Settlement Scheme should consider providing this to the Trust now so as to avoid further checks after 30 June 2021.

3.8 From 1 July 2021 right to work checks will change, and all EU, EEA and Swiss nationals will be required to demonstrate they have a right to work through evidence of their immigration status, rather than their nationality, using the online service. There will be a small number of exceptions and these will be detailed in further guidance. New guidance on how to conduct right to work checks on EU, EEA and Swiss nationals from 1 July 2021 will be provided in advance of this date.

### **4. Sponsorship**

4.1 Where the Trust wishes to employ someone from outside the UK, the Trust will need to sponsor them. This includes citizens of the EU, Iceland, Liechtenstein, Norway and Switzerland who arrived in the UK after 31 December 2020.

4.2 The Trust needs to hold a sponsor licence before it can sponsor a worker.

4.3 A sponsor licence is not required to sponsor certain groups, for example:

- i. Irish citizens
- ii. those with settled or pre-settled status under the EU Settlement Scheme
- iii. those with indefinite leave to remain in the UK.

4.4 There are various routes (known as tiers) under which a person can apply to work in the UK. Under the new immigration rules the previous Tier 2 (General) work visa has now been replaced by the points-based Skilled Worker Visa.

4.5 To qualify for a Skilled Worker visa, you must:

- i. work for a UK employer that's been approved by the Home Office
- ii. have a 'certificate of sponsorship' from your employer with information about the role you've been offered in the UK
- iii. do a job that's on the list of eligible occupations
- iv. be paid a minimum salary - how much depends on the type of work you do.

4.6 You must have a confirmed job offer before you apply for the Skilled Worker visa.

4.7 You might be able to apply to change ('switch') to a Skilled Worker visa if you are already in the UK on a different type of visa. Your partner or children will need to apply separately. You must not travel outside of the UK, Ireland, the Channel Islands or the Isle of Man until you get a decision. Your application will be withdrawn if you do.

4.8 If you are not eligible for the Skilled Worker visa or to 'switch' your current visa to the Skilled Worker visa, you may be eligible for another type of visa to work in the UK. You should check here whether you need a visa and the type of visa: <https://www.gov.uk/check-uk-visa>

4.9 Licensed sponsors must tell UK Visas and Immigration (UKVI) if our sponsored workers are not complying with the conditions of their visa. We also must have HR systems in place that let us:

- i. monitor our employees' immigration status
- ii. keep copies of relevant documents for each employee, including passport and right to work information
- iii. track and record employees' attendance
- iv. keep employee contact details up to date
- v. report to UKVI if there is a problem, for example if our employee stops coming to work.

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

5.1 Asylum seekers do not normally have the right to work in the UK and may only be lawfully employed if restrictions have been lifted on them taking employment.

5.2 Asylum seekers can apply for permission to work if the Home Office has not made a decision on their initial claim within 12 months. In contrast, refugees (i.e., those who have received a positive decision on their asylum claim) have full employment rights in the UK.

5.3 If an asylum seeker is permitted to work in the UK, their permission to work will be endorsed in the remarks section of their Application Registration Card (ARC). The ARC is a credit card-sized

plastic card issued by the Home Office to individuals who claim asylum. It contains information about the holder's identity or claimed identity although it is not evidence of identity.

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- 5.5 If you are an asylum seeker and your ARC indicates that work is restricted, then the Trust must make sure that we do not employ you in breach of these restrictions.
- 5.6 As well as checking and taking copies of the ARC stating that work is allowed, the Trust will only have an excuse against a civil penalty if we have received a Positive Verification Notice from the Home Office Employers Checking Service. positive confirmation of the person's right to work from the Nationality Checking Service. This excuse will expire six months from the date of the Positive Verification Notice when a further check must be undertaken if the statutory excuse is to be retained.
- 5.7 If we receive a Negative Verification Notice from the Employer Checking Service, which informs us that the individual does not have the right to work, any offer of employment will be immediately withdrawn. Moreover, if an applicant cannot show that they hold a continued right to work in the UK and/or ceases to hold a right to work in the UK and/or provides false information about their right to work in the UK at any time, any offer of employment will be immediately withdrawn or, where employment has already started, their employment will be terminated with immediate effect.
- 5.8 Anyone who is granted permission to remain in the UK as a refugee or who is granted humanitarian protection has unrestricted access to the labour market. A refugee may demonstrate their work entitlement through their Biometric Residence Permit or Immigration Status Document (an older form of document issued to refugees and certain other categories of migrant prior to the introduction of the Biometric Residence Permit).

## 6. Right to work documentation

- 6.1 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 **6.4 List A: Evidence of eligibility to work** and **section 6.5 List B: Evidence of eligibility to work** for further information.
- 6.2 If a document or combination of documents is provided from List A there is no need to ask for documents from List B.
- 6.3 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.

#### 6.4 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 6.5, List B: Evidence of eligibility to work for further information.

##### List A

Acceptable documents to establish a continuous statutory excuse

- i. 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.
- ii. A passport or national identity card showing 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.
- iii. A Registration Certificate or Document Certifying Permanent Residence issued by the Home Office to a national of a European Economic Area country or Switzerland.
- iv. A Permanent Residence Card issued by the Home Office to the family member of a national of a European Economic Area country or Switzerland.
- v. A **current** Biometric Immigration Document (Biometric Residence Permit) issued by the Home Office to the holder indicating that the person named is allowed to stay indefinitely in the UK or has no time limit on their stay in the UK.
- vi. 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.
- vii. A **current** Immigration Status Document issued by the Home Office to the holder with an endorsement indicating that the named person is allowed to stay indefinitely in the UK or has no time limit on their stay in the UK, **together with** an official document giving the person's permanent National Insurance number and their name issued by a Government agency or a previous employer.
- viii. A birth or adoption certificate issued in the UK, **together with** an official document giving the person's permanent National Insurance number and their name issued by a Government agency or a previous employer.
- ix. A birth (short or long) or adoption certificate issued in the Channel Islands, the Isle of Man or Ireland, **together with** an official document giving the person's permanent National Insurance number and their name issued by a Government agency or a previous employer.
- x. A certificate of registration or naturalisation as a British citizen, **together with** an official document giving the person's permanent National Insurance number and their name issued by a Government agency or a previous employer.

#### 6.5 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 right to work in the UK. The Trust must therefore carry out these checks at least once every 12 months (or in some cases 6 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 or will terminate 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**

### **Group 1 – Documents where a time-limited statutory excuse lasts until the expiry date of leave**

- i. 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.
- ii. A **current** Biometric Immigration Document (Biometric Residence Permit) issued by the Home Office to the holder which indicates that the named person can currently stay in the UK and is allowed to do the work in question.
- iii. 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.
- iv. A **current** Immigration Status Document containing a photograph issued by the Home Office to the holder with a valid endorsement indicating that the named person may stay in the UK and is allowed to do the type of work in question, **together 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 2 – Documents where a time-limited statutory excuse lasts for six months**

- i. A Certificate of Application issued by the Home Office under regulation 18(3) or 20(2) of the Immigration (European Economic Area) Regulations 2016, 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 six months** old **together with a Positive Verification Notice** from the Home Office Employer Checking Service.
- ii. An Application Registration Card issued by the Home Office stating that the holder is permitted to take the employment in question, **together with a Positive Verification Notice** from the Home Office Employer Checking Service.
- iii. 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.

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

## **7. Windrush generation individuals**

- 7.1 The Government has put in place additional safeguards to ensure that non-EEA nationals who have lived lawfully in the UK since before 1988 are not denied access to work?
- 7.2 In some circumstances, individuals of the Windrush generation (those who arrived in the UK before 1973) and those non-EEA nationals who arrived in the UK between 1973 and 1988, may not be able to provide documentation from the acceptable document lists to demonstrate their entitlement to work in the UK. The Home Office has established the Windrush Help Team which is handling applications under the Windrush Scheme for confirmation of indefinite leave to remain, including a biometric residence permit or applications for British citizenship.

- 7.3 In these circumstances the Trust should contact the Employer Checking Service (ECS).
- 7.4 The ECS will notify the Windrush Help Team, who will contact the individual to confirm their circumstances and arrange for their status to be resolved. Working with the Windrush Help Team, the ECS will be able to confirm an individual's right to work in these circumstances and will do so by issuing you with a Positive Verification Notice (PVN).
- 7.5 A PVN issued by the ECS will provide the Trust with a statutory excuse for six months from the date stated in the PVN. The information provided by the ECS will clearly set out whether a repeat check will be required, and if so, when.
- 7.6 The Windrush Help Team can offer support and guidance to individuals on the Windrush Scheme and advise them how to apply. It can also help vulnerable people or those who need additional support.
- 7.7 If a prospective employee or employee has been affected, they can contact the Windrush Help Team for free:
- Telephone: 0800 678 1925  
Monday to Friday, 9am to 5pm  
Saturday and Sunday, 10am to 3pm

## **8. Refusing to provide necessary documentation and evidence of right to work**

- 8.1 All offers of employment are subject to and conditional on the successful applicant having the right to work in the UK. Continued employment is subject to the employee holding an ongoing right to work in the UK. If a successful applicant or employee refuses to provide the information necessary to confirm this, then the Trust's offer of employment will be withdrawn immediately or, in the case of those already employed, will terminate the employment. **Verifying and recording the appropriate evidence**
- 8.2 The Trust will be required to verify and retain any documentation provided for the purposes of right to work checks and evidencing that the Trust has satisfied itself that all those employed by us have an ongoing right to work, and that we are complying with our legal obligations. Any such information/documentation shall be processed in accordance with our Privacy Notice / Data Protection Policy.

## **9. False Documentation and Information relating to right to work**

- 9.1 If the Trust is presented with false documentation or information, 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 or know that the document or information in question was not genuine or true. 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.
- 9.2 Any applicant or employee who is found to have provided false documentation or information shall have any offer of employment immediately withdrawn or, where employment has already started, have their employment terminated with immediate effect.

## **10. Reaching an employment decision and ongoing employment**

### **10.1 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 and the Trust has complied with its obligations with regard to right to work and all other pre-employment checks, this applicant can commencement employment with the Trust, subject to meeting all other pre- employment vetting requirements.

### **10.2 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 and withdraw any offer of employment immediately.

### **10.3 Continued eligibility to work**

- i. Where an employee only has an entitlement to work in the UK for a limited period of time, the Trust must repeat the document checks at least every twelve months (or in some cases six months) unless the employee can demonstrate that they have an entitlement to remain indefinitely in the UK.
- ii. The Trust must be satisfied that the documents checked are valid and relate to the employee.
- iii. 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.
- iv. 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.

**10.4** It will be a condition of continued employment with the Trust that employees continue to have an ongoing 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.