



Review Sheet



Last Reviewed
22 May '20



Last Amended
22 May '20



Next Planned Review in 12 months, or
sooner as required.

Business impact



Changes are important, but urgent implementation is not required, incorporate into your existing workflow.

Reason for this review

Scheduled review

Were changes made?

Yes

Summary:

The policy has been updated to include the changes to Right to Work Checks during the current Covid-19 pandemic. The policy governs the method to be used when ensuring that recruits have the right to work in the UK.

Relevant legislation:

- Immigration Act 2014
- Asylum and Immigration Act 1996
- Immigration Act 2016
- Immigration, Asylum and Nationality Act 2006
- General Data Protection Regulation 2016
- Data Protection Act 2018

Underpinning knowledge - What have we used to ensure that the policy is current:

- Author: Government, (2019), *Right to work checks: an employer's guide*. [Online] Available from: <https://www.gov.uk/government/publications/right-to-work-checks-employers-guide> [Accessed: 22/5/2020]
- Author: Government, (2019), *Prove your right to work to an employer*. [Online] Available from: <https://www.gov.uk/prove-right-to-work> [Accessed: 22/5/2020]
- Author: Government, (2019), *Apply to the EU Settlement Scheme (settled and pre-settled status)*. [Online] Available from: <https://www.gov.uk/settled-status-eu-citizens-families> [Accessed: 22/5/2020]
- Author: Government, (2020), *Coronavirus (COVID-19): right to work checks*. [Online] Available from: <https://www.gov.uk/guidance/coronavirus-covid-19-right-to-work-checks> [Accessed: 22/5/2020]

Suggested action:

- Encourage sharing the policy through the use of the QCS App
- Share 'Key Facts' with all staff
- Develop training sessions for relevant staff
- Ensure the policy is discussed in planned supervision sessions with relevant staff
- Ensure relevant staff are aware of the content of the whole policy

Equality Impact Assessment:

QCS have undertaken an equality analysis during the review of this policy. This statement is a written record that demonstrates that we have shown due regard to the need to eliminate unlawful discrimination, advance equality of opportunity and foster good relations with respect to the characteristics protected by equality law.



1. Purpose

1.1 To ensure that Inspiring Aspirations Plus Ltd T/A Inspiring Support does not commit offences of illegal working.

1.2 To support Inspiring Aspirations Plus Ltd T/A Inspiring Support in meeting the following Key Lines of Enquiry:

Key Question	Key Lines of Enquiry
WELL-LED	W2: Does the governance framework ensure that responsibilities are clear and that quality performance, risks and regulatory requirements are understood and managed?

1.3 To meet the legal requirements of the regulated activities that {Inspiring Aspirations Plus Ltd T/A Inspiring Support} is registered to provide:

- | Immigration Act 2014
- | Asylum and Immigration Act 1996
- | Immigration Act 2016
- | Immigration, Asylum and Nationality Act 2006
- | General Data Protection Regulation 2016
- | Data Protection Act 2018



2. Scope

2.1 The following roles may be affected by this policy:

- | All staff

2.2 The following Service Users may be affected by this policy:

- | Service Users

2.3 The following stakeholders may be affected by this policy:

- | Commissioners



3. Objectives

3.1 To ensure that Inspiring Aspirations Plus Ltd T/A Inspiring Support carries out all required right to work checks on all potential new staff before employing them.



4. Policy

4.1 Inspiring Aspirations Plus Ltd T/A Inspiring Support will carry out document checks to ensure they meet its responsibilities under the Immigration, Asylum and Nationality Act 2006, and its regulations, and thereby ensures that only persons who are entitled to work in the UK are employed and that those who are employed, are employed in accordance with any restrictions imposed on their employment. Checks should be made on everyone before they begin work with Inspiring Aspirations Plus Ltd T/A Inspiring Support.

4.2 Should Inspiring Aspirations Plus Ltd T/A Inspiring Support become aware that an individual does not have the right to work in the UK, Inspiring Aspirations Plus Ltd T/A Inspiring Support will ensure that it does not continue to employ such an individual if they do not have the relevant permissions.

4.3 Rights to Work

- | UK nationals have unrestricted rights to work and be employed in the UK
- | Nationals of Switzerland or the European Economic Area (EEA) have unrestricted rights to work and be employed in the UK
- | Migrant workers may not be employed unless the employer has registered with UK Visas and Immigration as a sponsor for that purpose, and the applicant is eligible, according to UK Visas and Immigration rules, to work in the UK
- | An asylum seeker may only work in the UK if they possess a Home Office issued Application Registration Card. Inspiring Aspirations Plus Ltd T/A Inspiring Support must check the validity of the card with the Home Office
- | Specific rules apply to students studying in the UK

4.4 Brexit

Permission to work in the UK for EU Nationals is subject to change once the UK has left the European Union. It has been agreed between the EU and the UK that there will be a "transition period" up to 31st December 2020 and free movement will continue until that date. However, EU Nationals who arrive during the transition period who intend to stay longer than 3 months may be required to register. Details of the registration scheme have not yet been made available.

EU citizens who have lived in the UK for 5 years or more up to 30th June 2021 can apply for "settled status" and will be free to live and work in the UK indefinitely. Those who will have lived in the UK for less than 5 years by this date can apply for "pre-settled status" until they obtain the 5 years to move to settled status but will also be free to live and work in the UK during this time.

Applications for status under the EU Settlement Scheme must be submitted by 30th June 2021.

EU Nationals who arrive in the UK from 1st January 2021 will need to meet the requirements of the new UK points-based immigration system, in the same way as non-EU Nationals.



5. Procedure

5.1 There are three steps to be taken for all applicants for employment to avoid contravening the Act and being subject to substantial fines which are:

Step 1

Inspiring Aspirations Plus Ltd T/A Inspiring Support, using the [HM Government document](#) as a guide, must ask for and be given either:

- 1 One of the single documents, or two of the documents in the specified combinations given, from List A; or
- 1 One of the single documents, or two of the documents in the specified combinations given, from List B.

Inspiring Aspirations Plus Ltd T/A Inspiring Support **must only accept original documents.**

Step 2

Inspiring Aspirations Plus Ltd T/A Inspiring Support must take all reasonable steps to check that the document is genuine and to satisfy itself that the holder is the person named in the document. Inspiring Aspirations Plus Ltd T/A Inspiring Support should also check that the document allows them to do the work in question.

For each document given to you, you must:

- 1 Check any photographs are consistent with the appearance of the person; and
- 1 Check any dates of birth listed are consistent across documents and that you are satisfied that these match with the appearance of the person; and
- 1 Check that the expiry dates of any limited leave to enter or remain in the UK have not passed; and
- 1 Check any UK Government endorsements (biometric residence permits, stamps, stickers, visas) to see if the person is able to do, or can continue to do, the type of work you are offering; and
- 1 Satisfy yourself that the documents are genuine, have not been tampered with and belong to the holder; and
- 1 If you are given two documents which have different names, ask them for a further document to explain the reason for this. The further document could, for example, be a marriage certificate or a divorce decree absolute, a deed poll or statutory declaration.

Step 3

Take a copy of the relevant page or pages of the document, in a format which cannot later be altered, for example, a photocopy or scan (where an electronic copy is made of a document, it must be made using a non-rewritable format, such as CD-R). In the case of a passport or other travel document, the following parts must be photocopied or scanned:

- 1 The document's front cover and any page containing the holder's personal details. In particular, you should copy any page that provides details of nationality, their photograph, date of birth, signature, date of expiry or biometric details; and
- 1 Any page containing UK Government endorsements showing that the holder has permission to be in the UK and has the right to carry out the work in question.

You must copy other documents in full; this includes both sides of a biometric residence permit. It is recommended that you write on the copy of the document the date on which you took the copy.

You must then keep a record of every document you have copied. It is recommended that you keep copies of the documents securely for the duration of the person's employment and for a further two years after they stop working for you. By doing this, the UKBA (UK Border Agency) will be able to check whether you have complied with the law or if you are required to pay a civil penalty if you are found to have anyone working illegally for you.

The UK Border Agency recommends that you use the UKBA 'Employers' Right to Work Checklist' and FULL GUIDE FOR EMPLOYERS ON PREVENTING ILLEGAL WORKING IN THE UK to help you make sure that you have correctly carried out all the steps required of you in your duty to prevent illegal working and to get, and then keep, a statutory excuse.

You are only required to carry out these document checks for people who started working for you on or after 29 February 2008. The rules of the Asylum and Immigration Act 1996 still apply to staff who started working for you between 27 January 1997 and 28 February 2008.

5.2 Online Right to Work Checking Service



Inspiring Aspirations Plus Ltd T/A Inspiring Support

As an alternative to the above paper process, Inspiring Aspirations Plus Ltd T/A Inspiring Support may instead opt to use the UK Online Right to Work Checking Service to carry out right to work checks for staff. Should Inspiring Aspirations Plus Ltd T/A Inspiring Support wish to do so, it will seek authorisation from the prospective member of staff who will then be expected to share details of their right to work in the UK through the online service. So long as Inspiring Aspirations Plus Ltd T/A Inspiring Support ensures that the Online Right to Work Checking Service process is followed correctly and in full, it will have a defence to any civil penalty should it subsequently be the case that the individual does not, in fact, have the right to work. The online service can be used in respect of non-EEA nationals who hold biometric residence permits or cards, and EEA nationals who have been granted 'settled status' or 'pre-settled status' under the scheme available to those wishing to retain their right to live and work in the UK once it leaves the EU. EEA nationals who have not yet applied for settled status will still be required to provide documentary proof of their right to work in the UK, for example, by way of a national passport.

5.3 False Documents Provided

If Inspiring Aspirations Plus Ltd T/A Inspiring Support is given a false document, it will only be required to pay a civil penalty if it is reasonably apparent that it is false. The UKBA considers the falseness to be reasonably apparent if an individual, who is untrained in the identification of false documents, examining it carefully, but briefly, and without the use of technological aids, could reasonably be expected to realise that the document in question is not genuine.

Equally, where a person presents a document and it is reasonably apparent that the person presenting the document is not the person referred to in that document, even if the document itself is genuine, then you may be liable to prosecution for knowingly employing an illegal worker.

Inspiring Aspirations Plus Ltd T/A Inspiring Support will not have an excuse against payment if Inspiring Aspirations Plus Ltd T/A Inspiring Support knew that the document, or documents, were false or did not rightfully belong to the holder.

5.4 When an Existing Employee no Longer has the Right to Work

If Inspiring Aspirations Plus Ltd T/A Inspiring Support has carried out repeat checks and found that an existing employee is no longer allowed to work in the UK or to carry out the work in question, then Inspiring Aspirations Plus Ltd T/A Inspiring Support will no longer have an excuse against payment of a civil penalty. If Inspiring Aspirations Plus Ltd T/A Inspiring Support continues to employ a person who no longer has the right to work for Inspiring Aspirations Plus Ltd T/A Inspiring Support, then Inspiring Aspirations Plus Ltd T/A Inspiring Support will be committing the criminal offence of knowingly employing an illegal worker.

If Inspiring Aspirations Plus Ltd T/A Inspiring Support is considering the potential dismissal of an employee, it should seek independent legal advice.

5.5 Follow up Checks for those Needing Immigration Permission

If an employee commenced employment between 29 February 2008 and 15 May 2014 at Inspiring Aspirations Plus Ltd T/A Inspiring Support and presents documents listed in List B as they have limited leave to remain or enter the UK for a particular period, Inspiring Aspirations Plus Ltd T/A Inspiring Support must repeat the three step process set out above within 12 months of the employee's start date and then every 12 months until such time as the individual no longer has a limit on the duration of their stay in the UK.

If Inspiring Aspirations Plus Ltd T/A Inspiring Support fails to conduct the checks every 12 months, Inspiring Aspirations Plus Ltd T/A Inspiring Support will not be able to establish the statutory excuse and may incur a civil penalty.

5.6 Temporary Changes due to COVID-19

Due to the COVID-19 outbreak, temporary changes have been made to the right to work check requirements to make the process easier for employers. From 30th March 2020, employers can:

- 1 Ask an employee to submit a scanned copy or a photo of their original documents by email or using a mobile app
- 1 Arrange a video call with the individual and ask them to hold up their original documents to the camera so that they can be checked against the digital copy they have seen; and
- 1 Record the date they conducted the check and note "adjusted check undertaken on [DATE] due to COVID-19" on a copy of the documents

If an employee has a biometric residence card or permit; or status under the EU Settlement Scheme, the employer can use Government's 'online right to work checking service' during a video call with the employee, but the employee must give Inspiring Aspirations Plus Ltd T/A Inspiring Support permission to view their details.



If an employee is unable to provide copies of the required documents, the employer should contact the Home Office's Employer Checking Service. If the employee has the right to work in the UK, an employer will receive a "positive verification notice". This provides a statutory excuse for six months from the date of the notice.

Employers then have 8 weeks from when the COVID-19 measures end to carry out the retrospective right to work checks, in the usual way, on the employees who commenced employment or required a follow up check while these measures are in place. On the copy of the any documents reviewed as part of the retrospective check, the employer should note, "The individual's contract commence on [DATE]. The prescribed right to work check was undertaken on [DATE] due to COVID-19". Copies of both checks should be held on file.



6. Definitions

6.1 Migrant Worker

- | A "migrant worker" is a person who either migrates within their home country or outside it to pursue work such as seasonal work. Migrant workers usually do not have an intention to stay permanently in the country or region in which they work. A migrant worker is considered to be someone who is, or has been, working in Great Britain (GB) in the last 12 months and has come to GB from abroad to work within the last 5 years

6.2 Asylum Seeker

- | An asylum seeker is a person who has made an application to be recognised as a refugee under the 1951 United Nations Convention Relating to the Status of Refugees and the 1967 Protocol on the basis that it would be contrary to the UK's obligations to remove them from the UK

6.3 British National

- | The term "United Kingdom national" is not defined in the nationality law of the United Kingdom. It has been defined in various ways and at various times for the purposes of other United Kingdom legislation, international agreements and treaties. The significance of the term "national" in international law is that it signifies a person connected with a State by a special legal tie entitling that State to protect the person in its relations with other States. Generally speaking, the term "United Kingdom national" or, more colloquially, "British national" covers:
 - | British citizens
 - | British Dependent Territories citizens
 - | British Overseas citizens
 - | British subjects (under Part IV of the BNA 1981)
 - | British protected persons
 - | British Nationals (Overseas)

6.4 Settled Worker

- |
 - | Is a national of the UK
 - | Is a national of Austria, Belgium, Bulgaria, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, the Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden or Switzerland who is exercising an EU Treaty Right in the UK
 - | Is a British Overseas Territories citizen, except those from Sovereign Base Areas in Cyprus. Those included are Anguilla, Bermuda, British Antarctic Territory, British Virgin Islands, British Indian Ocean Islands, Cayman Islands, Falkland Islands and dependencies, Gibraltar, Montserrat, Pitcairn Islands, St. Helena and Dependencies and Turks and Caicos Islands
 - | Is a Commonwealth citizen who was allowed to enter or to remain in the UK under the UK ancestry rules on the basis that a grandparent was born here
 - | Has settled status in the UK within the meaning of the Immigration Act 1971 (as amended from time to time)



Key Facts - Professionals

Professionals providing this service should be aware of the following:

- 1 Inspiring Aspirations Plus Ltd T/A Inspiring Support must ensure that it carries out proper document checks which confirm an individual's right to work in the UK before employment starts
- 1 Right to work checks must be carried out on all prospective employees and not just those who are suspected of being from outside the UK



Key Facts - People affected by the service

People affected by this service should be aware of the following:

- 1 It is essential that Service Users are able to be confident that the individual members of staff providing services to them are legally able to do so from a trust and confidence perspective and from a health and safety perspective



Further Reading

As well as the information in the 'underpinning knowledge' section of the review sheet we recommend that you add to your understanding in this policy area by considering the following materials:

Employer Enquiry helpline

Telephone: 0300 123 5434

Monday to Thursday, 9 am to 4:45 pm

Friday, 9 am to 4:30 pm

Business helpdesk - BusinessHelpdesk@homeoffice.gsi.gov.uk

GOV.UK - Use the Employer Checking Service:

<https://www.gov.uk/employee-immigration-employment-status>

Rising proportion of EU citizens in UK given temporary 'pre-settled status'

<https://www.theguardian.com/politics/2019/nov/14/rising-proportion-of-eu-citizens-being-granted-presettled-status>



Outstanding Practice

To be 'outstanding' in this policy area you could provide evidence that:

- 1 Inspiring Aspirations Plus Ltd T/A Inspiring Support has robust recruitment procedures in place and workers' personal data is stored safely and in line with data protection laws.
- 1 The wide understanding of the policy is enabled by proactive use of the QCS App.
- 1 Inspiring Aspirations Plus Ltd T/A Inspiring Support carries out all right to work checks fully and comprehensively and prior to any member of staff starting employment.
- 1 Inspiring Aspirations Plus Ltd T/A Inspiring Support has clear and concise procedures in place to address any circumstances where an individual member of staff may have a limited right to remain in the UK and takes appropriate action in good time ahead of any deadline.



Forms

Currently there is no form attached to this policy.