

SECTION 1: Introduction and Background

1. Introduction

Under the Immigration, Asylum and Nationality Act (2006) employers have a responsibility to prevent illegal immigrants working or studying in their organisations.

The UK Government operates a Points-Based System (PBS) which determines the rules for people seeking to work and study in the UK. Codes of Practice are an integral part of the immigration system relating to migrant workers. They identify which jobs are skilled to the necessary level, minimum rates of pay and how employers should carry out a Resident Labour Market Test (RLMT).

Immigration policy and processes in the UK are managed by UK Visas and Immigration, a department of the Home Office.

1.1 Purpose of the Procedure for the Employment of Migrant Workers

The purpose of the Procedure for the Employment of Migrant Workers (the Procedure) is to provide guidance on how UEL will ensure compliance with the Immigration, Asylum and Nationality Act 2006.

The primary objectives are:

- To ensure the fair recruitment and engagement of employees from outside the European Union (EU);
- To ensure that checks are made in an appropriate manner and in accordance with the Data Protection Act, along with the requirements of the Immigration, Asylum and Nationality Act 2006, and in line with best practice. These checks will include right to work, annual check of details and absence from work;
- To provide guidance on how UEL can ensure a continued right to work in the UK and the monitoring of staffing issues, such as absence from duty, changes in circumstances (domestic, contact and in employment terms) and the monitoring of this information.

1.2 Roles and Responsibilities

1.2.1 Managers

Managers will:

- Ensure that fair recruitment processes are adhered to in line with our Policy on Recruiting and Selecting Staff;
- Ensure that all relevant permits are obtained *prior* to any staff member starting work at UEL, including those on temporary contracts, for example hourly-paid and guest lecturers. These include sponsorship certificates, Resident Worker status confirmation etc.;
- Ensure that all staff sickness absences are reported in accordance with our Code of Practice for the Management of Sickness Absence;
- Ensure that all staff members follow UEL's procedures for requesting annual leave and any other form of leave;
- Ensure that HR Services are informed immediately of all staff resignations and retirements;
- Engage positively with all staff in a fair and equitable manner, ensuring compliance with UEL's Equality and Diversity Policy, and with the requirements of the Equality Act 2010.
- Notify HR Services immediately where there is unauthorised absence by a staff member.

1.2.2 Staff Members

New appointees will not be able to start employment at UEL until their right to work has been established. This will include identity checks for UK citizens (in line with HR Services' procedure) and confirmation of successful sponsorship status for migrant workers.

Staff members will:

- Ensure that all absences are authorised under the relevant UEL policies and procedures, e.g. annual leave, sickness absence, career break leave, maternity leave, compassionate leave etc.

- Ensure that any change in personal circumstances (e.g. home address) is reported immediately to line managers and to HR Services.
- Obtain permission, such as a new sponsorship status, prior to taking up any new role.

1.2.3 HR Services

HR Services will work with managers to:

- Ensure compliance with the Immigration, Asylum and Nationality Act 2006, including obtaining the relevant permits prior to the engagement of migrant workers and checking information related to recruitment, changes in circumstances, such as hours worked or change of address, annual checking of continued right to work in the UK, absence recording and resignation or redundancy.
- Ensure that fair and transparent recruitment procedures are adhered to at all times, allowing for the fair employment of migrant workers and the prevention of illegal working.
- Ensure that all data and information is stored in an appropriate manner and any changes are checked to ensure that employment may continue under the relevant permission, such as sponsorship status.

1.3 Equality Impact Assessment and Monitoring

To avoid discrimination UEL will treat all members of staff and job applicants, including migrant staff, equitably. UEL will follow its policy on Recruiting and Selecting Staff and ensure all necessary eligibility checks are conducted. Schools and services, including HR Services, will ensure that sponsorship responsibilities are conducted in line with legislation and best practice. For all recruitment activities the relevant documentation will be requested from all prospective employees.

1.4 Data Protection Act 1998

Personal data relating to the application of this policy will be obtained, processed and destroyed in line with the requirements of the Data Protection Act 1998.

1.5 Penalties for failing to comply with the legislation

Under the legislation an employer may face civil penalties of up to £20,000 per illegal employee. In addition, the criminal offence of knowingly employing an illegal worker may result in an unlimited fine and or up to two years' imprisonment.

1.6 Transfer of undertaking

Should UEL acquire new members of staff as a result of a TUPE transfer, there will be a 'grace' period of 60 days following the transfer during which HR Services will undertake the necessary document checks.

SECTION 2: Sponsorship under Tier 2 for skilled workers from outside the UK and European Economic Area (EEA)

2. Tier 2 Skilled Workers

Sponsoring a skilled worker under Tier 2 is the main route for UEL to employ a migrant worker. This will be to fill a genuine vacancy that cannot be filled by a suitably qualified or skilled settled worker to undertake a specific skilled job role.

UEL will issue a Certificate Of Sponsorship (COS) to each sponsored person. To be issued with a valid visa by the Home Office the applicant must also

- meet English language requirements (at least level B1 of the Common European Framework of Reference or hold an academic qualification that was taught in English and is recognised by [UK NARIC](#) as being equivalent to a UK bachelor's degree); and
- have sufficient maintenance funds. Maintenance is currently set at £945 and £630 per dependent. Funds must be held in his/her bank account for at least 90 days before the date of application.

Recruiting managers may select the best candidate, regardless of whether they are a settled worker, for vacancies in PhD-level

occupations only ie. 2311 Higher Education Teaching Professionals.

2.1 Sponsoring a skilled migrant worker

UEL can apply for a COS up to three months ahead of the planned start date of the prospective employee.

Before we can sponsor a skilled migrant, HR Services will check that the role we are sponsoring meets the conditions of the sponsored skilled worker tier (Tier 2). The job must meet the conditions of the relevant Codes of Practice.

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/423732/codes_of_practice_april_2015.pdf

To fulfil the COS criteria:

- the post applied for is on the national shortage occupation list , or
- the job must be skilled at NQF level 6; and
- the job must be paid at the appropriate rate or above (as set out in the relevant Code of Practice); and
- we must normally have carried out a RLMT for the job, using at least one of the methods listed in the relevant Code of Practice, before sponsoring a migrant worker,

UEL does not have any roles which would be considered under the national shortage occupation list.

2.2 Resident Labour Market Test

In order to fulfil the requirements of the RLMT, UEL must advertise the vacancy for either a single continuous period with a minimum closing date of 28 calendar days from the date the advertisement first appeared or in two stages, with each stage being advertised for no fewer than 7 calendar days but where both stages total a minimum of 28 calendar days.

The RLMT requires us to advertise relevant jobs on the UEL website and the sector website jobs,ac,uk.

The RLMT is not required in the following circumstances:

2.2.1 Permission to stay in the UK under Tier 4

The RLMT is not required if the migrant worker currently has permission to stay in the UK as a Tier 4 migrant or as a student and they have received final results confirming that they have passed and will be (or have been) awarded:

- a UK recognised bachelor or postgraduate degree; or
- a UK postgraduate certificate in education; or
- they have completed a minimum of 12 months study in the UK towards a UK PhD.

2.2.2 High Earners

A RLMT is not required if the migrant worker will be doing a job with a gross annual salary of £155,300 or more.

SECTION 3: Checking eligibility to work in the UK

3.1 Complying with the law

UEL must check a migrant worker's eligibility to work in the UK by copying either one original document, or two of a specified combination, from List A or List B (**see Appendices A and B**). Individuals who have no time restrictions on their stay in the UK or are not subject to immigration control should produce the required document(s) from List A. Those for whom there are time-restrictions on their leave to enter and/or remain in the UK will produce documents from List B.

With regard to Guest Lecturers or visiting Academic staff it is essential that the individual concerned arranges a relevant visa if she or he is a visa national prior to entering the UK.

Guidance on visa requirements is provided by the Home Office as follows:

Visa Requirements:

Entry Clearance into the UK:

3.2 Complying with the law

To ensure that it is complying fully with UK government immigration laws, UEL must:

- Ensure that a migrant who is coming to work for UEL is legally entitled to do the job in question and has the appropriate qualifications/ professional accreditation.
- Not employ a migrant worker if the conditions on the migrant worker's leave (or the migrant's lack of leave) mean that he or she is not allowed to undertake the work in question, and to stop employing any migrant worker who ceases, for any reason, to be entitled to undertake the work;
- Only issue Certificates of Sponsorship to migrant workers who, to the best of UEL's knowledge and belief, will meet the requirements of the Tier 2 category or other relevant category of the PBS under which the COS is issued, and who are likely to comply with the conditions of their leave. The requirements and conditions of leave are set out in the immigration rules.

3.3 Procedure for checking documentation

Once UEL has obtained the specified documents from either List A or List B we must carry out some basic checks to ensure that the documentation presented relates to the individual in question. **Please see Appendix C for full guidance on checking documents.**

Chairs of selection panels or designated staff in services or schools will need to check the following:

- that any photograph in the document(s) provided bears a reasonable resemblance to the individual;
- that any date of birth on the document(s) appears to correspond to the individual's age;
- that any expiry date regarding limited leave to enter or remain in the UK has not passed;
- that a document does not appear to be a forgery, or to have been altered in any way - for example, indications that a passport photograph has been replaced. UEL staff are not required to be expert in identifying forged documents.
- Where two documents are provided and the names on the documents are different, UEL will ask the individual for an explanation, together with further documentary evidence to support this explanation - for example, a marriage certificate or a divorce decree.
- Once the relevant documentation has been obtained and checked, copies of the documentation will be made. If the document is not a passport or other travel document, a copy of the entire document should be taken. If the document is a passport or other travel document, the pages that should be copied are:
 - the front cover;
 - any page containing the holder's personal details, including nationality;
 - any page containing the holder's photograph;
 - any page containing the holder's signature;
 - any page containing the date of expiry; and
 - any page containing endorsements by officials of the Home Office or UK Visas.
- Copies of the documents need to be kept securely for a period of not less than two years after the employment has come to an end. The standard HR Services' archiving procedures apply, namely the keeping of all leavers files for the appropriate timescales as set out in the Data Protection Act and good practice procedures.

If an individual has not or is not able to produce the appropriate documents, the school/service should contact its HR Manager. Where an individual is unable to produce a document and indicates that this is the result of having an outstanding application for leave to remain, UEL will also use the Department of Immigration's Employer Checking Service to verify the individual's right to work in the UK. It is HR Services' responsibility to inform the individual if it intends to make such checks with the Service.

General advice on the prevention of illegal working can be obtained from HR Services and the national Employers' Helpline: 0845 010 6677.

The onus is on the individual to establish that he or she does have permission to work in the UK. If the HR Manager is not satisfied with an applicant's documentation, UEL may decide not to proceed with the offer of work.

3.4 Ongoing checks

Where an individual produces the required documentation from List A, and this has been checked and copied, UEL is not required to carry out any subsequent document checks on the individual. We do, however, have an on-going responsibility to check

documentation for those staff whose documents are from List B at least once every 12 months.

HR Services are responsible for on-going checks for all permanent and fixed-term members of staff.

Schools and services are currently responsible for on-going checks for hourly-paid lecturers, guest lecturers and external examiners. This responsibility will move to HR Services with effect from September 2015.

- In relation to such members of staff, UEL is excused from paying a penalty for a period of 12 months from the date that the member of staff produced the documentation.
- If the member of staff's leave to remain expires sooner than 12 months from the last review date, HR Services (or in the case of hourly-paid lecturers, guest lecturers or external examiners, the school or service) must ensure that it checks immigration status prior to the leave expiring. If the member of staff does not make a valid application for leave to remain prior to the expiry, she or he will automatically become an overstayer. As a result of this, if the individual continues in employment UEL could be liable for a civil penalty and/or criminal liability.

Please note that non-compliance with this Procedure may be a disciplinary offence.

3.5 Reporting Duties

UEL is obliged by law to report information concerning migrant workers' non-attendance, non-compliance or disappearance to UK Visas and Immigration, within any time limit specified. All schools and services will be responsible for informing HR Services of such occurrences, who will in turn report the information to UK Visas and Immigration. Information to be reported:

- If a sponsored migrant does not turn up for his or her first day of work, at the expected time, a report must be provided to UK Visas and Immigration within 10 working days and must include any reason given by the migrant for his or her non-attendance (e.g. missed flight);
- If a sponsored migrant is absent from work or study for more than 10 working days, without UEL's reasonably granted permission, a report must be provided to UK Visas and Immigration within 10 working days of the tenth day of absence;
- If the migrant's contract of employment or registration is terminated (including where the migrant resigns or is dismissed) a report must be provided within 10 working days of the event in question, and should include the name and address of any new employer or institution that the migrant has joined, if UEL knows it;
- If UEL stops sponsoring the migrant for any other reason (e.g. if the migrant moves into an immigration route that does not require a sponsor);
- If there are any significant changes in the migrant's circumstances, for example a change of job or salary (but not job title or annual pay rise);
- Any suspicions UEL has that a migrant is breaching the conditions of his or her leave;
- If there are any significant changes in the sponsor's circumstances - for example if a UEL trading arm ceases trading or becomes insolvent, substantially changes the nature of its business, is involved in a merger or is taken over;
- Details of any third party or intermediary, whether in the UK or abroad, that has assisted it in the recruitment of migrant employees.

UEL will give the police any information it may have that suggests that the migrant may be engaging in terrorism or other criminal activity. If you suspect this may be the case, please contact your HR Manager in the first instance.

3.6 Record keeping duties

UEL will keep the following records or documents and make them available to officials of the HOME OFFICE on request:

- A photocopy or electronic copy of each sponsored migrant's passport or UK immigration status document and his or her ID card, showing evidence of his or her entitlement to work or study.
- Each sponsored migrant's contact details (address, telephone number, mobile telephone number). These details must be updated as necessary (**Appendix D**).

3.7 Co-operating with the HOME OFFICE

To allow the HOME OFFICE to manage the Sponsorship system properly, UEL will:

- Allow HOME OFFICE staff access to any of its premises on demand. Visits may be either prearranged or unannounced;
- Adhere to any action plan set by the HOME OFFICE;
- Seek to minimise the risk of immigration abuse by complying with any good practice guidance that the HOME OFFICE or that any sector body may produce for sponsors in particular Tiers or Sectors, with the HOME OFFICE agreement.

SECTION 4: Croatian Nationals

Since 1st July 2013, as European Economic Area (EEA) nationals, Croatians have been able to move and reside freely in any European Union (EU) Member State. However, Member States may apply restrictions on access to the labour market for a transitional period. The UK has applied such transitional restrictions. These are applied by the Accession of Croatia (Immigration and Worker Authorisation) Regulations 2013.

Under these Regulations, a Croatian national who wishes to work in the UK and who is subject to the worker authorisation requirement will need to obtain an accession worker authorisation document (permission to work) before starting any employment. A Croatian national will only be able to work in UK if he or she holds a valid accession worker authorisation document or if he or she is exempt from work authorisation.

(HR Services - August 2015)

- [Employment of Migrant Worker - Appendices A-F](#)
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