Torbay and South Devon NHS Foundation Trust

Right to Work Policy

(R1)

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Author:	Recruitment and Temporary Staffing Manager		
Directorate:	People Directorate		
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Links or overlaps with other policies:			
Recruitment and Selection Procedure number 107			
Disciplinary & Appeals Policy			
Grievance and Disputes Policy			
Leavers Policy and Procedure number 47			
Equality and diversity policy			
NHS Employers Right to Work Check Standards			

Amendment History

Issue	Status	Date	Reason for Change	Authorised
1	**Draft 1.1**	**DEC 21**	First draft	HR Management
2	V1.2	April 2022	Updated Right to work varication process	Recruitment and Temporary Staffing Chair
2	V1.2 Approved	April 2022	6 April 2022 Extension to review date	Staffside Chair Extension to review date Staffside chair

Rapid (E)quality Impact Assessment (EqIA) *(for use when writing policies)*

Policy Title (and number)	Right to Work Policy (R1)	**Version and Date**	5th April 2022
Policy Author	Recruitment and Temporary Staffing Manager		

An (e)quality impact assessment is a process designed to ensure that policies do not discriminate or disadvantage people whilst advancing equality. Consider the nature and extent of the impact, not the number of people affected.

Who may be affected by this document?

Patients/ Service Users ☐	Staff ☒	Other, please state… ☐

Could the policy treat people from protected groups less favorably than the general population?
PLEASE NOTE: Any 'Yes' answers may trigger a full EIA and must be referred to the equality leads below

Age	Yes ☐ No☒	Gender Reassignment	Yes ☐ No☒	Sexual Orientation	Yes ☐ No☒
Race	Yes ☐ No☒	Disability	Yes ☐ No☒	Religion/Belief (non)	Yes ☐ No☒
Gender	Yes ☐ No☒	Pregnancy/Maternity	Yes ☐ No☒	Marriage/ Civil Partnership	Yes ☐ No☒

Is it likely that the policy could affect particular 'Inclusion Health' groups less favorably than the general population? (substance misuse; teenage mums; carers[1]; travellers[2]; homeless[3]; convictions; social isolation[4]; refugees)	Yes ☐ No☒

Please provide details for each protected group where you have indicated 'Yes'.

VISION AND VALUES: Policies must aim to remove unintentional barriers and promote inclusion

Is inclusive language[5] used throughout?	Yes ☒ No☐ NA ☐
Are the services outlined in the policy fully accessible[6]?	Yes ☒ No☐ NA ☐
Does the policy encourage individualised and person-centered care?	Yes ☐ No☐ NA ☒
Could there be an adverse impact on an individual's independence or autonomy[7]?	Yes ☐ No☐ NA ☒

EXTERNAL FACTORS

Is the policy a result of national legislation which cannot be modified in any way?	Yes ☐ No☒

What is the reason for writing this policy? (Is it a result in a change of legislation/ national research?)

Who was consulted when drafting this policy?

Patients/ Service Users ☐	Trade Unions ☒	Protected Groups (including Trust Equality Groups) ☒
Staff ☐	General Public ☐	Other, please state… ☐

What were the recommendations/suggestions?

Does this document require a service redesign or substantial amendments to an existing process? ***PLEASE NOTE: 'Yes' may trigger a full EIA, please refer to the equality leads below***	Yes ☐ No☒

ACTION PLAN: Please list all actions identified to address any impacts

Action	Person responsible	Completion date

Please contact the Equalities team for guidance: For Torbay and South Devon NHS Trusts, please call 01803 656676 or email pfd.sdhct@nhs.net **This form should be published with the policy and a signed copy sent to your relevant organisation.**

[1] Consider any additional needs of carers/ parents/ advocates etc, in addition to the service user
[2] Travelers may not be registered with a GP - consider how they may access/ be aware of services available to them
[3] Consider any provisions for those with no fixed abode, particularly relating to impact on discharge
[4] Consider how someone will be aware of (or access) a service if socially or geographically isolated
[5] Language must be relevant and appropriate, for example referring to partners, not husbands or wives
[6] Consider both physical access to services and how information/ communication in available in an accessible format
[7] Example: a telephone-based service may discriminate against people who are d/Deaf. Whilst someone may be able to act on their behalf, this does not promote independence or autonomy

Torbay and South Devon NHS Foundation Trust

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1. POLICY STATEMENT AND PURPOSE

1.1 This guidance explains what employers must do to prevent illegal working in the UK by carrying out document checks on people before employing them to make sure they are allowed to work.

1.2 The aim of this policy is to ensure all individual's employed by Torbay and South Devon NHS Foundation Trust ("the Trust) have the right to work in the UK following best practice and the right to work checks that NHS organisations (across England) are required to undertake in the appointment and ongoing employment of individuals in the NHS. The NHS Employers organisation has developed these standards with the Department of Health and employers in the NHS.

1.3 The standards include those that are required by law, those that are Department of Health (DH) policy in relation to compliance with the Government's core standards outlined within the Standards for Better Health, and those that are required for access to the NHS Care Record. The Right to Work check document was further revised in June 2014 to bring in line with changes to Home Office requirements around the civil penalty scheme and the type of documents employers should ask individuals to provide, to evidence their right to work in the UK.

1.4 This policy and procedure incorporates both pre-employment and on-going checks that need to be undertaken whilst an individual has a relationship with the Trust.

1.5 The NHS Employment Check standards apply to all applications for NHS positions and individual's in ongoing NHS employment. This includes permanent employee's, employees on fixed-term contracts, volunteers, students, trainees, contractors, temporary workers (including locum doctors), those working on the Trust bank and other workers supplied by an agency.

1.6 This policy sets out the process for all employment checks. Failure by an individual to provide accurate and truthful information at the time of applying for a position will be considered as a disciplinary matter and will be dealt with in line with the Trust's Conduct policy.

This Procedure should be read in conjunction with:

- Leavers Policy and Procedure number 47
- Recruitment and Selection Procedure number 107
- NHS Employers Right to Work Check Standards
- Right to work checks (nhsemployers.org)

- UK VISAS AND IMMIGRATION Points-based system: guidance for sponsors The UK's points-based immigration system: an introduction for employers (accessible version) - GOV.UK (www.gov.uk)

2. EQUALITY AND DIVERSITY STATEMENT

2.1 The Trust is committed to preventing discrimination, valuing diversity and achieving equality of opportunity. No person (staff, patient or public) will receive less favourable treatment on the grounds of the nine protected characteristics (as governed by the Equality Act 2010): sexual orientation; gender; age; gender re-

assignment; pregnancy and maternity; disability; religion or belief; race; marriage and civil partnership. In addition to these nine, the Trust will not discriminate on the grounds of domestic circumstances, social-economic status, political affiliation or trade union membership.

2.2 The Government has issued a Code of practice for employers to strengthen the safeguards against unlawful discrimination when recruiting people. Link to: Avoiding discrimination while preventing illegal working: code of practice, 2014 - GOV.UK (www.gov.uk)

3. INTRODUCTION

3.1 It is the responsibility of the Trust that all employees have the Right to Work in the UK.

3.2 It is the responsibility of the employee to ensure that their right to work status is maintained at all times. Where right to work status changes, the employee must inform their line manager immediately.

3.3 New employees will be required to provide evidence of their right to work prior to commencement with the Trust.

3.4 For potential new employees, following the interview, Recruitment will verify the individual's right to work status by viewing the necessary documents or applying for a Certificate of Sponsorship by the Occupational Shortage Register held by the (UK VISAS AND IMMIGRATION).

3.5 A copy of the right to work documents must be made and filed on the employees personnel file by the line manager and key information logged on the Electronic service record system by Recruitment.

3.6 The Trust is registered to sponsor migrant workers through the UK VISAS AND IMMIGRATION Sponsor Management System.

Support and guidance are provided by the Resourcing Hub and queries can be directed to tsdft.resourcinghub@nhs.net or by visiting the (right to work ICON page)

4. DEFINITIONS

4.1 **CQC: Care Quality Commission**
CQC is the independent regulator of health and adult social care in England.

Certificate of sponsorship (CoS)
A CoS is an electronic document, which is required when the Trust can sponsor a foreign worker under the UK Home Office's points based visa system. An individual would use their allocated CoS to apply for their visa. The Trust currently has a licence for Skilled Worker visas.

Conditional Offer of Employment
An offer of employment that is made following a successful interview that will be subject to satisfactory completion of the employment checks.

Unconditional Offer of Employment
An offer of employment that is made once satisfactory employment checks are in place. This is also the point that a contract of employment will be issued.

DBS: Disclosure and Barring Service
The Disclosure and Barring Service is a government agency responsible for providing information to employers with regards to the past criminal record within the UK of an individual.

Online right to work check
Is a service provided by United Kingdom Visa and Immigration (UKV&I) to check an individual's right to work in the UK status in a limited number of circumstances such as the applicant has a biometric residence permit or a British National Overseas (BNO) visa. It is not possible to conduct an online right to work check in all circumstances, as not all individuals will have an immigration status that can be checked online. The online right to work check provides the Trust with a statutory excuse against a civil penalty in the event of illegal working involving the subject of the check.

Employer Checking Service (ECS): Verification Check
There may be certain circumstances where the manual or online check cannot be conducted, (e.g. where no documentation can be provided such as when an application or appeal is in progress) and the Trust will be to contact the ECS to establish a statutory excuse). If a Positive Verification Notice is issued the Trust's statutory excuse will be satisfied. The employer checking service will inform the Trust whether an individual is able to work in the UK whilst their application is in progress.

ESR: The Electronic Staff Record
ESR is the central database used in the Trust that includes the records of employment checks for employees of the Trust.

NHS Employers:
NHS Employers is the organisation that represents individual NHS organisations to be the voice of workforce leaders, experts in HR, and negotiate fairly to get the best deal for patients.

Revalidation:
Revalidation is the process by which all licensed doctors on the General Medical Council Register are required to demonstrate on a regular basis that they are up to date and fit to practice in their chosen field and able to provide a good level of care. Revalidation also applies to Nurses and Midwives registered with the Nursing and Midwifery Council who have to demonstrate that they practice safely and effectively.

UKV&I: United Kingdom Visa and Immigration
UK Visas and Immigration is the Home Office Department responsible for making decisions on who has the right to visit, stay and work in the UK.

5. Duties and Responsibilities

5.1 People Directorate

- To ensure that all necessary employment checks are completed (both pre and post employment).
- To ensure that the Trust complies with both legal standards and best practice guidance with regards to the completion and recording of these checks.
- To provide expert advice with regards to the appropriate action to be taken when checks are either failed or have the potential to be unsatisfactory.
- To provide expert advice to the organisation and to seek relevant guidance from external agencies with regards to any additional support that may be required in determining and delivering the appropriate level of check.
- To ensure that all information collected in relation to employment checks is appropriately recorded and stored in line with both legal requirements, such as the Data Protection Act, and best practice guidance as determined by NHS Employers guidance documents.

5.2 Recruitment Team

- To administer all pre-employment checking processes in such a way as to minimise the opportunity for bias, intentional or otherwise, in line with the Trust's Equality & Diversity policy so that the Trust is compliant with legal, CQC and NHS employer's standards.
- To inform recruiting managers of relevant information - such as a positive DBS disclosure.
- To provide support to managers to make appropriate decisions where checks have not met the required standard.
- To administer post employment checks in such a way as to minimise the opportunity for bias, intentional or otherwise, in line with the Trust's Equality & Diversity policy so that the Trust is compliant with legal, CQC and NHS employer's standards.
- To provide support to managers to make appropriate decisions where checks have not met the required standard.
- To administer reminders for post employment checks as outlined in this policy.

5.3 Workforce Information Team

- To own and monitor all information systems related to employment checks, including local systems such as ESR and national systems.

5.4 Agency

- To administer all agency staff bookings ensuring that suppliers on Framework Agreements undertake employment checks and that the worker supplied has the correct level of clearances in place commensurate with the roles they will be required to undertake.

5.5 Recruiting Managers

- To familiarise themselves with the Trust policies relevant but not limited to recruitment, selection and HR prior to undertaking any recruitment activity, seeking guidance as required.
- To proactively support the employment checking process for all existing and prospective employees and contract holders.
- To be responsible and accountable for employees who commence in post prior to the conclusion of their complete pre-employment checks. Including undertaking risk assessments and following up on employment checks to ensure that the Trust is compliant with CQC and NHS Employers requirements.

5.6 Individuals: employees, prospective employees and contract holders

- Provide the Trust with timely and accurate information for all requested checks at any stage in their future or existing employment or contracts.
- Ensure that professional registration is maintained and revalidated (where applicable).
- When applying for internal opportunities, to be responsible for partaking fully and willingly with the required checking processes
- Advise their line manager of any change to their circumstances with regard to any of the information referenced in this policy.
- As per Trust's Code of Expectations, individuals will inform their line manager should they be charged with an offence or their status (with regard to the above checks) changes during their relationship with the Trust.

6. Employment Checks

The NHS Employment Check Standards apply to permanent employees, those on fixed term contracts, temporary employees, volunteers, students, trainees/apprentices, contractors and staff employed through an agency. Document name: Employment Check policy Ref.: 168 Issue date: 15 July 2021 Status: 4.0 Final Author: Emily Rose, Recruitment Manager Page 9 of 42

The Trust makes it clear to prospective employees that appointment to any position is conditional on the necessary checks being satisfactory and that any information disclosed on the application form will be checked. Where an applicant already holds a contract with the Trust, their existing checks will be updated in line with the latest NHS Employers guidance and CQC requirements.

There are 6 employment checks that the Trust must carry out and that successful applicants are required to satisfy. These are recorded on ESR for referencing and monitoring purposes.

The 6 checks which apply are:

- Eligibility to Work in the U.K.
- Occupational Health Clearance

- Disclosure and Barring Service (DBS) and overseas police clearance where appropriate.
- Identity Check
- Employment history and reference checks
- Professional Registration and Qualifications

For more detail please refer to the Recruitment and Selection Policy and NHS Employers webpages.

6.1 Eligibility to work in the UK

The Immigration, Asylum and Nationality Act 2006 (amended in February 2008) makes it a criminal offence for the Trust to knowingly employ illegal migrant workers and reinforces the continuing responsibility on the Trust to check the ongoing entitlement of migrant workers to work in the UK. The Trust risks breaking the law if a prospective employee's right to work in the UK is not checked before they start employment.

No assumption should be made about a person's right to work or immigration status on the basis of their colour, race, nationality, ethnic or national origins, or the length of time they have been in the UK. Changes to the civil penalty scheme introduced in May 2014 means that failure to check could now result in a civil penalty of up to £20,000 per illegal worker. For staff in ongoing employment, the checks that should have been undertaken before amendments made to the Immigration, Asylum and Nationality Act on 29 February 2008 will depend on when the employee was recruited. A partial right to work check is not a mitigating factor in the calculation of a civil penalty.

Please note that individuals who have entered into an honorary contract (and are therefore not Trust employees) are not required to provide evidence of their right to work in the UK. For more details please refer to the Honorary Contracts policy.

6.1.2 Pre Employment

The right to work status of a candidate should not be taken into consideration when assessing their suitability for a role and a candidate should not be discriminated against on this basis.

The individual will be asked to provide evidence of their right to work in the UK at the pre-employment stage. There are three steps that the Trust must work through to confirm a prospective employee has the right to work in the UK:

- request right to work documents
- validate the documents in the presence of the holder
- copy, making a record of the date of the check, and securely store documents

To confirm that an individual has the right to work in the UK they must present specific documents which are outlined in the NHS Employment Check Standards and the 'An employer's guide to right to work checks' document issued by the Home Office https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/969123/An_employer_s_guide_to_right_to_work_checks.pdf

All documents which contain an expiry date must be valid, current and original. The only Document name exception is where the individual is a citizen of the UK, where they may present an expired passport.

An individual will not commence in post without this evidence being held by the Trust. If the individual cannot produce sufficient evidence (as determined by UKV&I) the Trust may withdraw any offer of employment.

6.1.3 Candidates who do not have the right to work in the UK.

From the 1 January 2021, immigration requirements changed and employers wanting to recruit workers outside the UK's resident labour market had to be registered as Home Office licensed sponsor. The Trust has this registration which enables us to recruit workers from anywhere in the world. For the Trust to act as the sponsor for a worker who does not have the right to work in the UK, the role must meet the current conditions set by UKV&I to be eligible for a skilled worker visa. This is a points based system, and each set of criteria has a point value associated to it. To qualify for a Skilled Worker visa, a candidate must:

- work for a UK employer that's been approved by the Home Office
- have a 'certificate of sponsorship' from the employer with information about the role they have been offered in the UK
- do a job that's on the list of eligible occupations
- be paid a minimum salary - how much depends on the type of work undertaken
- Demonstrate they can speak English to an acceptable, specified level

If the most suitable candidate for a role does not have the right to work in the UK, the Trust can apply for a Certificate of Sponsorship (CoS) to enable the candidate to obtain a visa, known as a skilled worker visa granting them the right to work in that role for a time limited period (usually 3 or 5 years). In this instance, an offer of employment is made subject to the candidate producing evidence of right to work in that role in the form of the skilled worker visa.

There is different eligibility and criteria applied to a Health and Care Visa, which is a subcategory of the skilled worker visa. The Health and Care visa can only be issued to a defined list of occupations. The current list of eligible occupations can be found at:

Health and Care Worker visa: Your job - GOV.UK (www.gov.uk)

Further information and guidance can be found at:

https://www.gov.uk/skilled-worker-visa

A CoS is a virtual document: a reference number is generated and the Trust will give this number to the individual. They will then quote it in their application for entry clearance (if outside the UK) or leave to remain to support their application at the current, specified period from the date it was assigned. During this period the individual cannot be assigned another CoS by any other sponsor. If the candidate does not use the CoS within the current period specified by UKVI to make an application, it will expire.

Details of the requirements, responsibilities and process can be found at:

at https://www.gov.uk/skilled-worker-visa

Unless otherwise agreed, it is the responsibility of the individual to organise and meet the cost of the visa itself. The individual may not commence in post until they have provided evidence of the visa to the Trust to satisfy that they have the right to work in the post.

Right to work checks for EEA and Swiss nationals

The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 ended free movement between the EU and the UK on 31 December 2020 (11pm). This means that EEA and Swiss nationals (and their families) arriving in the UK from 1 January 2021 onwards will do so under UK immigration laws and not under EU free movement. There is a grace period of 6 months which began immediately after the end of the transition on 31 December 2020 and will end with the EU Settlement Scheme (EUSS) application deadline of 30 June 2021.

The Citizen's Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020, commonly referred to as the grace period statutory instrument (SI), is secondary legislation introduced to implement the UK's obligations in respect of citizens' rights under the Withdrawal Agreement, and corresponding agreements, with EEA EFTA states and Switzerland ("the Agreements"). The grace period SI protects the rights of those EEA nationals and their family members who are lawfully resident in the UK at the end of the transition period, but who haven't yet been granted status under the EUSS. They will need to apply by the deadline of 30 June 2021. This means EEA nationals and their family members who apply by the deadline and have not yet been granted status under the EUSS can continue to live their life in the UK as now and maintain a right to work 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.

Right to work checks for EEA nationals will not change until after 30 June 2021. Until then, EEA nationals can use their passport or national identity card to evidence their right to work.

There is no mandatory requirement for retrospective checks to be undertaken on EEA national who were employed on or before 30 June 2021. The Trust will maintain a continuous statutory excuse against a civil penalty in the event of illegal working if the initial right to work check was undertaken in line with right to work legislation and in line with the Home Office's 'An Employers Guide to Right to Work Checks'.

From the 1 July 2021 the right to work checks will change, and all EEA 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.

Further details of the documents that can be accepted for right to work checks can be found here:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/969123/An_employer_s_guide_to_right_to_work_checks.pdf

6.1.4 Post Employment

Some individuals will be subject to a regular recheck as determined by the UKV&I legislation. However, the Trust may request to see evidence of an individual's right to work at any time.

Checks will be undertaken by the Recruitment Team on all staff who hold a temporary right to work in the UK to ensure all documents are in order.

Individuals have a duty to inform the Trust of any change to their right to work status. If an employee fails to inform the Trust of a change of their right to work status, which prevents them from working, the Recruitment Team will inform the individual that they must stop work immediately and pay will be stopped.

Where an individual's temporary right to work is reaching its expiry date the Recruitment Team will issue a reminder to the individual. Individuals are responsible for renewing their status documents before they expire and providing updated evidence to the Trust of their continued right to work in their post or that they are in the process of an application or appeal.

Where an individual's visa application is in process, the Trust can use the Employer's Checking Service to verify the status of the individual's right to work in the UK and they may continue in employment for as long as the employer's checking service allows, or they receive a decision on their visa application, whichever is sooner.
https://www.gov.uk/employee-immigration-employment-status

If the individual is not able to provide satisfactory evidence that they have the right to work, they will be invited to attend a meeting to discuss their lack of right to work with their Line Manager and a member of the Recruitment Team and a decision will be taken in relation to the continuation of their employment.

If the individual is not able to provide evidence to confirm their right to work, or evidence that they have applied and are waiting on a decision by the UKV&I regarding their right to work, their employment with the Trust will be terminated.

Appeals to this decision will be heard in line with the Trust Appeals Policy.

6.1.5 EU Settlement Scheme

The Trust can provide help and support to prospective and existing employees to obtain the immigration status they need beyond 30 June 2021 and can invite those who already have status under the EU Settlement Scheme, or status under the points based immigration system, to evidence their right to work using the Home Office online service. The Trust cannot insist that EEA national use the online service or discriminate against those who wish to use their passport or national identity card during the grace period.

7. MONITORING OF RIGHT TO WORK STATUS

7.1 All Right to work statuses are recorded on ESR. Reminder emails are issued by Workforce Information will alert line managers and the resourcing hub when employees are within 3 months of their expiry.

7.2 Departments must ensure that they have an appropriate record of right to work evidence on the personnel file.

7.3 Individual employees will be required to provide their manager with evidence of their right to work status and the expiry date. At renewal, evidence of continued right to work must be shown. The Manager will have responsibility for ensuring that employees right to work status is verified by checking documents listed in Appendix 1, the trust are required to keep copies of the right to work documents within the individual's personnel file and record on ESR.

5.4 Employees who fail to produce evidence of right to work status should be suspended immediately without pay.

5.5 If a member of individual's allows their right to work status to lapse, legally they are unable to work for the Trust. It is therefore vital that individuals ensure their right to work status is maintained and that the renewals are monitored.

5.6 Any changes to right to work status must be updated on the Electronic Individual's Record held by Workforce Information

5.7 Any changes of a job role for an individual who works under a Residence Permit issued by the UK VISAS AND IMMIGRATION, must be reported to the Resourcing Hub who will update the Electronic Individual's Record and inform UK VISAS AND

IMMIGRATION within 10 working days of the change. It is worth noting that changes to job role may affect an individual's right to work status.

6 PROCEDURE OF IDENTIFICATION OF A LAPSE OF RIGHT TO WORK STATUS

6.1 If an individual allows their right to work status to lapse or fails to produce their right to work documents, the following steps must be actioned:

- The employee will be suspended without pay until the right to work status is renewed.
- The employee may be allowed to take outstanding annual leave until the renewal is received.
- UK VISAS AND IMMIGRATION must be informed of the right to work lapse within 10 working days.

6.2 Managers should advise the employee that they are required to take immediate measures to have their right to work status reinstated.

6.3 Under no circumstances can an employee be allowed to work without the necessary right to work evidence. Managers must inform Recruitment and seek advice from Human Resources.

7. INVESTIGATION OF A LAPSE IN RIGHT TO WORK STATUS

7.1 Failure to maintain the right to work in the UK will have serious implications for both the employee and the Trust. In all cases of lapsed right to work the issue must be fully investigated and the employee advised that the outcome of the investigation could lead to their Contract of Employment being terminated in accordance with the Trust's Disciplinary Policy and Procedure.

7.2 An Investigating Manager, who will normally be the individual's Line Manager, should be appointed to gather all the facts, Human Resources will assist the Investigating Manager in this process.

7.3 The Investigating Manager and Human Resources will interview the employee concerned. The employee will be entitled to bring a trade union representative or work colleague with them to the meeting if they so wish.

7.4 Once in full possession of available evidence, if the Investigating Manager believes there is a case to answer and warrants a disciplinary action, then a disciplinary hearing will be arranged in accordance with the Trust's Disciplinary Policy

7.5 Should the employee be dismissed the manager needs to inform Recruitment within 5 working days. Recruitment must inform UK VISAS AND IMMIGRATION of the change of work status within 10 working days.

8 PROCEDURE FOR DEALING WITH EMPLOYEES WHO REFUSE OR CHOSE NOT TO RENEW THEIR RIGHT TO WORK STATUS

8.1 The procedures outlined in sections 4 / 5 / 6 / 7 will be followed in the first instance

8.2 If during the investigatory interview the employee refuses to take steps to renew their right to work status, the employee needs to be informed as they have lost the legal authority to work in the UK they are in breach of their Contract of Employment. As such their contract of employment with the Trust will be terminated accordingly.

8.3 The HR People Hub will assist and advise the Investigating Manager and Manager with dismissing authority, on all stages within this section.

9. Employer Checking Service

You must ask the Home Office to check an employee's or potential employee's immigration status if any of the following are true:

- they cannot show you their documents because of an outstanding appeal, review or application with the Home Office
- they have an Application Registration Card
- they have a Certificate of Application that's less than 6 months old
- they're a Commonwealth citizen who started living in the UK before 1988
- You'll need to get the employee or potential employee's permission to make the check.
- if the worker has a current Biometric Residence Permit or Biometric Residence Card or has been granted status under the EU Settlement Scheme or the points-based immigration system you can use the online right to work checking service while doing a video call – the applicant must give you permission to view their details.

9.1 COVID-19 Adjusted Right to work checks

The following temporary changes were made on 30 March 2020 and remain in place until 5 April 2022 (inclusive):

- checks can currently be carried out over video calls asking the candidate to hold up the original documents to the camera and check them against the digital copy of the documents, record the date you made the check and mark it as "adjusted check undertaken on [insert date] due to COVID-19"
- job applicants and existing workers can send scanned documents or a photo of documents for checks using email or a mobile app, rather than sending originals
- employers should use the Home Office Employer Checking Service if a prospective or existing employee cannot provide any of the accepted documents

10. Review

A review of this document will be conducted every 2 years or following a change to associated legislation and is the responsibility of the Recruitment and Temporary Staffing Manager

Torbay and South Devon NHS Foundation Trust

APPENDIX 1

Employers right to work checklist

Step 1 for physical check

You must obtain original documents from either List A or List B of acceptable documents for a manual right to work check.

List A

1. A passport (current or expired) 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.
2. A passport or passport card (current or expired) showing that the holder is a national of the Republic of Ireland.
3. A current document issued by the Home Office to a family member of an EEA or Swiss citizen, and which indicates that the holder is permitted to stay in the United Kingdom indefinitely.
4. A document issued by the Bailiwick of Jersey, the Bailiwick of Guernsey or the Isle of Man, which has been verified as valid by the Home Office Employer Checking Service, showing that the holder has been granted unlimited leave to enter or remain under Appendix EU to the Jersey Immigration Rules, Appendix EU to the Immigration (Bailiwick of Guernsey) Rules 2008 or Appendix EU to the Isle of Man Immigration Rules.
5. 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.
6. 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.
7. 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.
8. 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.
9. A birth 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.
10. 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.

List B Group 1

1. 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.
2. 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.

3. A current document issued by the Home Office to a family member of an EEA or Swiss citizen, and which indicates that the holder is permitted to stay in the United Kingdom for a time-limited period and to do the type of work in question.
4. A document issued by the Bailiwick of Jersey, the Bailiwick of Guernsey or the Isle of Man, which has been verified as valid by the Home Office Employer Checking Service, showing that the holder has been granted limited leave to enter or remain under Appendix EU to the Jersey Immigration Rules, Appendix EU to the Immigration (Bailiwick of Guernsey) Rules 2008 or Appendix EU to the Isle of Man Immigration Rules.
5. A document issued by the Bailiwick of Jersey or the Bailiwick of Guernsey, which has been verified as valid by the Home Office Employer Checking Service, showing that the holder has made an application for leave to enter or remain under Appendix EU to the Jersey Immigration Rules or Appendix EU to the Immigration (Bailiwick of Guernsey) Rules 2008, on or before 30 June 2021.
6. A frontier worker permit issued under regulation 8 of the Citizens' Rights (Frontier Workers) (EU Exit) Regulations 2020.
7. 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.

List B Group 2

1. A document issued by the Home Office showing that the holder has made an application for leave to enter or remain under Appendix EU to the immigration rules on or before 30 June 2021 together with a Positive Verification Notice from the Home Office Employer Checking Service.
2. A document issued by the Bailiwick of Jersey or the Bailiwick of Guernsey, showing that the holder has made an application for leave to enter or remain under Appendix EU to the Jersey Immigration Rules or Appendix EU to the Immigration (Bailiwick of Guernsey) Rules 2008 on or before 30 June 2021 together with a Positive Verification Notice from the Home Office Employer Checking Service.
3. 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.
4. 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.

Step 2 - Check

You must check that the documents are genuine and that the person presenting them is the prospective employee or employee, the rightful holder and allowed to do the type of work you are offering.

1. Are photographs consistent across documents and with the person's appearance?
2. Are dates of birth correct and consistent across documents?
3. Are expiry dates for time-limited permission to be in the UK in the future i.e. they have not passed (if applicable)?

4. Have you checked work restrictions to determine if the person is able to work for you and do the type of work you are offering? (For students who have limited permission to work during term- time, you must also obtain, copy and retain details of their academic term and vacation times covering the duration of their period of study in the UK for which they will be employed.)
5. Are you satisfied the document is genuine, has not been tampered with and belongs to the holder?
6. Have you checked the reasons for any different names across documents (e.g. marriage certificate, divorce decree, deed poll)? (Supporting documents should also be photocopied and a copy retained.)

Step 3 - Copy

You must make a clear copy of each document in a format which cannot later be altered, and retain the copy securely; electronically or in hardcopy. You must copy and retain:

1. Passports: any page with the document expiry date, nationality, date of birth, signature, leave expiry date, biometric details and photograph, and any page containing information indicating the holder has an entitlement to enter or remain in the UK and undertake the work in question.
2. All other documents: the document in full, both sides of a biometric residence permit. You must also record and retain the date on which the check was made

You must obtain original documents from either List A or List B of acceptable documents for a manual right to work check.

Home Office online right to work checking service

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

- a biometric residence permit; or
- a biometric residence card; or
- status issued under the EU Settlement Scheme; or
- status issued under the points-based immigration system; or
- British National Overseas (BNO) visa; or
- Frontier Worker permit

There are three basic steps to conducting an online right to work check:

1. use the Home Office online right to work checking service (the 'View a job applicant's right to work details' page on GOV.UK) in respect of an individual and only employ the person, or continue to employ an existing employee, if the online check confirms they are entitled to do the work in question;
2. satisfy yourself that any photograph on the online right to work check is of the individual presenting themselves for work; and
3. retain a clear copy of the response provided by the online right to work check (storing that response securely, electronically or in hardcopy) for the duration of employment and for two years afterwards.