

The Newcastle upon Tyne Hospitals NHS Foundation Trust

Prevention of Illegal Working Policy

Effective: February 2011

Review: February 2014

1. Introduction

As an employer, the Trust has a responsibility to prevent illegal migrant working in the UK. As part of an ongoing strategy to improve the way in which illegal working is addressed, the Government changed the law on employing illegal workers in 2008. The law on the prevention of illegal migrant working is set out in the Immigration, Asylum and Nationality Act 2006 (referred to in this policy as the '2006 Act') and became effective from 29 February 2008. This policy should be read in conjunction with the Trust's Recruitment and Selection Policies and applies equally to all employees and prospective employees of the Trust.

2. Sponsorship Management System

2.1 The Trust has been awarded a Category A Sponsorship Licence enabling the Trust to issue Certificates of Sponsorship under Tier 2 of the Points Based System. From 6 April 2011 the Trust is only permitted to issue 'unrestricted' Certificates of Sponsorship i.e. to those who currently hold a Work Permit/Certificate of Sponsorship or those who currently hold a visa in a category where it is permitted to transfer to Tier 2 (General).

For those who do not currently hold such right to work documents an application must be made by the Trust directly to UKBA for a 'restricted' Certificate of Sponsorship – such applications are considered by UKBA on a monthly basis. A certificate of sponsorship is not an actual certificate or paper document like a work permit. It is a unique reference number that is issued to the migrant worker to enable them to apply for permission to enter if outside the United Kingdom (known as 'entry clearance'), or permission to stay if inside the United Kingdom (known as 'leave to remain').

2.2 What is the Sponsorship Management System used for?

- to manage users of the system and to log changes in the Organisation's circumstances
- view all certificates of sponsorship;
- create and assign certificates of sponsorship;
- comply with sponsorship duties such as reporting migrant activity and withdrawing certificate of sponsorship
- pay for certificates of sponsorship

3. Documents That Show a Person's Entitlement to Work

The documents that establish someone's entitlement to work are split into two lists. In the case of non-medical staff these documents are checked by the Human Resources Department prior to agreeing a start date. For medical and dental staff, documents must be checked by the Recruiting Manager at the time of interview. Documents are checked again for all staff by the Human Resources Department upon commencement of employment with the Trust. The latter is

to ensure originals are copied, signed, filed on the employee's personal file and the appropriate data entered into Electronic Staff Record system (ESR).

- 3.1 List A (see Appendix A) documents show that the holder is not subject to immigration control, or has no restrictions on their stay in the UK. If the prospective or existing employee produces a List A document (or one of the combinations of documents specified), they can work for an indefinite period. When the appropriate checks on List A documents have been carried out, the Trust will have an excuse against liability to pay a civil penalty.
- 3.2 If an employee provides a document or documents from List A, no further checks are necessary for the duration of employment in the post to which they have been appointed. If further internal recruitment activity takes place all documents must be rechecked. Please refer to 'carrying out repeat checks' below for more details on what repeat checks are required and when.
- 3.3 List B (see Appendix B) documents demonstrate that the person has been granted leave to enter or remain in the UK for a limited period of time. If the prospective or existing employee provides documents from List B, further follow-up checks must be undertaken by the Human Resources Department every 12 months. There is a requirement to carry out repeat checks in order for the Trust to have an excuse against liability to pay a civil penalty whenever List B documents are provided.
- 3.4 The new arrangements for establishing the excuse only apply to employees who started working for the Trust on or after 29 February 2008.
- 3.5 Biometric identity cards. On 25 November 2008 the UK Border Agency changed the way in which it issued permission to stay (i.e. grants leave to remain) in the UK. Identity cards are a form of residence permit, and replace the vignettes (or stickers) previously placed in passports. This only applies to foreign nationals of countries outside the European Economic Area and Switzerland who are granted leave to remain in the UK. The card is proof of the holder's right to stay, work or study in the UK. With effect from 6 January 2010 the cards were also issued to migrant workers sponsored under Tier 2. The roll out of the cards will be phased according to immigration category and those not yet requiring biometric enrolment will continue to receive a vignette in their passport.

4. Complying with the Document Checks

- 4.1 Undertaking the necessary checks will ensure that the Trusts recruitment practices comply with legislation covering the employment of migrant workers, and ensure the Trust will not be liable for payment of a civil penalty for employing or continuing to employ person(s) illegally.
- 4.2 It should be noted that the provision of a properly documented permanent National Insurance number in List A and B, in isolation is not sufficient for the purposes of having establishing a statutory excuse. The National Insurance number can only be used for this purpose when presented in combination with one of the appropriate documents, as specified in List A and B.
- 4.3 Step 1 - Provision of Information

A prospective employee (or existing employee, if carrying out repeat checks in the case where an employee has temporary leave to remain) must provide:

- one of the single documents, or two of the documents in the specified combinations given, from List A; or,
- one of the single documents, or two of the documents in the specified combinations given, from List B.
- The offer of employment may be withdrawn if the prospective employee cannot demonstrate an entitlement to work legally within 8 weeks of the verbal offer of employment being made. An extension of the timescale will normally be given where a longer period is required for migrant workers coming to work in the UK to obtain registration with their professional body.
- Employment will be withdrawn for a prospective employee, or terminated in the case of an employee, if the individual cannot demonstrate an entitlement to work legally in the UK.

4.4 Only original documents will be accepted.

4.5 Step 2 – Validation of Information

The Recruiting Manager and Human Resources must;

- take all reasonable steps to check that the document is valid
- satisfy themselves that the prospective employee or current employee is the person named in the document
- check that the documents will allow them to do the work in question.

For each document presented for medical and dental staff, the Recruiting Manager at the time of interview, and for non-medical staff prior to a start date being agreed, the Human Resources Department must:

- check all photographs are consistent with the appearance of the employee
- check all dates of birth listed are consistent across all documents and satisfy themselves that photographs correspond with the appearance of the employee
- check that the expiry dates of any limited leave to enter or remain in the UK have not passed
- check any UK Government endorsements (stamps, visas, etc.) to ensure the prospective or current employee is able to do the type of work being offered or undertaken

- ensure the documents are valid and genuine, have not been tampered with and belong to the holder;
- seek further documentation if the employee or prospective employee has provided two documents which have different names. (The further document could be a marriage certificate, a divorce decree, a deed poll or statutory declaration).

4.6 Step 3 – Copying of Information

The Human Resources Department will be responsible for ensuring a copy is taken, signed and dated, placed on the employee's personal file of the relevant page or pages of all documents presented prior to a start date being agreed. The Human Resources Department will also be responsible for ensuring that the employees ESR record is updated. In the case of a passport or other travel document, the following parts must be photocopied or scanned:

- the document's front cover and any page containing the holder's personal details. In particular, a copy must be taken of any page that provides details of nationality, photograph, date of birth, signature, date of expiry or biometric details
- any page containing UK Government endorsements indicating that the employee has an entitlement to be in the UK and is entitled to undertake the work in question.
- All other documents should be copied in their entirety.

A record must be kept of every document copied on the employee's personal file and ESR must be updated. Copies of the documents will be kept securely for the duration of the employee's employment on their personal file, and must be kept in accordance with the Trust's Non Health Related Records and Documents Retention Schedules after they cease employment with the Trust.

If the Steps 1 – 3 have been carried out, as detailed, and the Trust is not satisfied that the prospective employee is the rightful holder of the documents they have produced, then the Trust will withdraw the offer of employment.

If there are concerns about the validity of the documents presented, the Recruiting Manager or a member of the Human Resources Department should contact the Immigration Enquiry Bureau for further advice.

5. Applicant Requires a Certificate of Sponsorship

If, as result of recruitment activity, the applicant requires a certificate of sponsorship, provided that the position is on the shortage occupation list or the resident labour market test has been satisfied by advertising the post for 28 days externally, the Human Resources Department will either raise a 'unrestricted' certificate of sponsorship for the applicant or apply to the UKBA for a 'restricted' Certificate of Sponsorship. All migrants applying for leave to enter the UK from overseas must be coming to fill a vacancy that is at or above graduate level. The same applies to migrants who are already in the UK under another immigration category who are eligible to switch into Tier 2 (General). This does not mean that the person employed to fill the job must be educated to graduate level, it means that the work that person will do is pitched at graduate level. Once the

certificate is raised the certificate number will be given to the applicant and they will need to renew their leave to remain.

The certificate and leave to remain is unique to the organisation, if an employee changes employers they will require a new certificate of sponsorship.

5.1 Extension of Leave to Enter/Remain

Trust employees who are work permit holders and have existing leave to enter or remain granted under the old work permit arrangements are able to extend their leave under tier 2 but are not required to change their status until their leave to remain expires. To continue in post they will need a Certificate of Sponsorship which must confirm that the job is at or above S/NVQ level 3 and is paid at or above the appropriate rate for the job (where their leave was granted under the rules in place before 6 April 2011). If the Certificate of Sponsorship is required to extend their employment and this will take them beyond five years in total of working in the UK then all the Tier 2 requirements must be met before the Certificate of Sponsorship can be issued, this includes the resident labour market test if the post is not on the shortage occupation list at the time of assigning the Certificate of Sponsorship.

For individuals who are already working in the UK either under Tier 2 (General), Tier 2 (Intra-company Transfer) or a Work Permit, where their leave was granted under the rules in place before 6 April 2011, the job must be at or above S/NVQ level 3 and paid at or above the appropriate rate for the job

Individuals whose Certificate of Sponsorship with the Trust under Tier 2 (general) is due to expire need to request a further 'unrestricted' Certificate of Sponsorship from the Trust. It is the individual's responsibility to apply to extend their leave to remain. Individuals who currently hold a visa and who have existing leave to enter or remain granted under the old visa arrangements will be able to extend their leave under Tier 2 but are not required to change their status until their leave to remain expires. Any further Certificate of Sponsorship (i.e. an extension) can only be given for a maximum of two years.

5.2 Documents that do not show a person is entitled to work in the UK

- The short birth certificate is a document that has proved vulnerable to forgery and must not be accepted as eligibility to work in the UK. A full birth certificate provides valuable background information which is absent from the short birth certificate, the names of the parents, where they were born, the parents occupation, their address at the time of birth and the place where the child was born. All this information may be used to verify personal details if necessary.
- A National Insurance number cannot be relied upon as a single document. The purpose of the National Insurance (NI) number is primarily to monitor an individual's National Insurance contributions and credited contributions. The NI number is also used as a reference number for individuals within the social security system; it was neither intended, nor designed to be a tool for identifying or determining an individual's immigration status. Not all NI number holders will be entitled to work in the United Kingdom. Therefore, the provision of a NI number in isolation is not acceptable.

6. Employment of Post-Graduate Doctors and Dentists

- 6.1 General Students are allowed to undertake a recognised Foundation Programme as a postgraduate doctor or dentist in the General Student category, providing they have met all of the requirements for the category.
- 6.2 The General Student must have successfully completed a recognised United Kingdom degree in medicine or dentistry from;
 - a) a Tier 4 sponsor who has a licence to bring in students, or
 - b) a United Kingdom publicly funded institution of further or higher education, or
 - c) an institution on the Department for Innovation, Universities and Skills list of recognised bodies or listed bodies list, which keep satisfactory records of enrolment and attendance. These lists can be found at <http://www.dcsf.gov.uk/recognisedukdegrees/>
- 6.3 The General Student must have been given permission to stay in the United Kingdom as a student under the rules in place before 31 March 2009 or as a General Student. This permission must have covered his/her final academic year and at least one other academic year of his/her studies leading to the above degree.
- 6.4 The General Student can get a maximum period of three years permission to stay as a General student to do a recognised Foundation Programme as a postgraduate doctor or dentist
- 6.5 To be sponsored (Tier 4) by the United Kingdom Foundation Programme Office (UKFPO) a Foundation Doctor must work full time in a Foundation Programme
- 6.6 The following provisions apply to doctors who hold a current Student/Tier 4 Visa that remains valid
 - a) a Foundation Doctor may commence a Foundation Programme before receiving a new Tier 4 visa and without authorisation from the UKBA, providing the doctor has an old style student visa, issued prior to Tier 4, that remains valid and the UKBA are in receipt of the new Tier 4 application before the expiry date of the current visa.
 - b) a Foundation Doctor who has a Tier 4 Visa granted before 5 October 2009 (that remains valid) may commence a Foundation Programme before receiving a new Tier 4 Visa, provided the doctor writes to the UKBA to inform them and they are in receipt of the doctors application for a new Tier 4 before the expiry date of the current Visa. The UKBA will write back to confirm the doctor has permission. The UKBA could refuse permission. If permission is refused employment will be terminated
 - c) If a Foundation Doctor has a Tier 4 Visa granted on or after 5 October 2009 the doctor cannot commence the Foundation Programme before the new Tier 4 visa is approved.

7. Employing Nationals from the European Economic Area (EEA)

7.1 Nationals from the countries detailed in the list below which are part of the EEA can live and work in the UK without restrictions.

Austria	Germany	Luxembourg	Sweden
Belgium	Greece	Malta	Switzerland
Cyprus	Iceland	Netherlands	UK
Denmark	Ireland	Norway	
Finland	Italy	Portugal	
France	Liechtenstein	Spain	

7.2 Their immediate family members are also able to work without restriction in the UK while the family member is legally residing and working here. Documents must still be checked to demonstrate an entitlement to work.

8. Worker Registration Scheme (WRS)

8.1 On 1 May 2004, the following new countries joined the European Union and became part of the EEA:

Czech Republic	Hungary
Lithuania	Slovakia
Estonia	Latvia
Poland	Slovenia

Nationals from these countries are free to travel to the UK to live and seek employment.

8.2 Workers from these eight countries are often referred to as 'Accession State Workers, and the countries referred to as 'A8 countries'

8.3 From 1 May 2011 A8 nationals are able to access the labour market on the same terms as other EU nationals (with the exception of Bulgarians and Romanians)

8.4 On 1st January 2007 Bulgaria and Romania joined the European Union and became part of the EEA. These countries are referred to as 'A2' countries.

- A2 workers (i.e. worker from these A2 countries) are also free to come to live in the UK, but may be subject to worker authorisation. This means that they are only able to work in the UK if they hold a valid accession worker authorisation document or if they are exempt from authorisation. The Trust may need to apply for a work permit for A2 workers. If so, the individual will need to wait for the UKBA to grant the work permit (issued for a specific individual to work in a specific job) and issue them with a letter of approval. The individual will then use this to apply for an accession worker card. Checks must be undertaken to clarify the expiry date of the authorisation document. If this is not evident from the documentation then UKBA must be contacted for advice.
- Once the individual has been legally working in the UK for a continuous period of 12 months they gain full rights of free movement and Home Office restrictions no longer apply

For A2 workers the Human Resources Department must:

- copy and retain their completed application form and any documentation issued by the UKBA to validate that they are not exempt
- retain a copy of the registration certificate once sent by the UKBA

Where the application is refused by UKBA the employee must provide the Human Resources Department with a copy of the refusal letter as soon as it is received. In this situation the individual has no entitlement to continue working and their employment will be terminated.

9. Employment of Refugees and Asylum Seekers

- 9.1 An asylum seeker is a person who has made an application for asylum but whose application is yet to be decided upon. Since 2003 asylum seekers do not have the right to work in the UK.
- 9.2 Only a very small number of asylum seekers will have the right to work, in such cases it will state 'employment permitted' or 'allowed to work' on their Application Registration Card (ARC). To establish a statutory excuse the Human Resources Department must verify an 'employment permitted' ARC or 'work allowed' with the Employer Checking Service. This is a List B document.
- 9.3 Asylum seekers who are successful in their asylum claim are awarded Refugee Status.
- 9.4 A refugee is a person who has had a positive decision on their claim for asylum under the 1951 United Nations Convention Relating to the Status of Refugees (the Refugee Convention). Individuals who do not meet the Refugee Convention's criteria for Refugee status may qualify either for Humanitarian Protection (granted for five years) or Discretionary Leave to Remain (granted for up to three years). In the UK, refugees have the right to work and are able to move and reside freely. Refugees with Humanitarian Protection or Discretionary Leave to Remain are entitled to apply for further leave before their current leave expires; they continue to be entitled to work during this period of awaiting the decision on their application.
- 9.5 Refugees are issued with an Immigration Status Document (ISD) when they are granted leave to remain in the UK. A refugee can also apply to the Home Office for a Travel Document. Before April 2004, the Home Office also issued a letter when a refugee was granted leave to remain. The following documents evidence a refugee's entitlement to work in the UK:
- List A – ISD – the ISD stating that the holder has Indefinite Leave to Enter or Remain **and** an official document issued by a Government agency such as HM Revenue and Customs (HMRC) or Department for Work and Pensions (DWP), or a previous employer and giving the person's permanent NI number and name e.g. P45, P60 or National Insurance card.

- List B – ISD – the ISD **and** an official document issued by a Government agency, such as HMRC or DWP, or a previous employer and giving the person’s permanent NI number and their name (examples above).
- List A – Home Office Letter – The Home Office Letter stating that the holder has indefinite leave to remain **and** an official document issued by a Government agency, such as HMRC or DWP, or a previous employer and giving the person’s permanent NI number and their name (examples above).
- List B – Home Office Letter – The Home Office Letter **and** an official document issued by a Government agency, such as HMRC or DWP, or a previous employer and giving the person’s permanent NI number and their name (examples above)

There are three types of Travel Documents:

- 1) The Convention Travel Document (blue colour) which is issued to people granted refugee status and entitles the holder to travel to any country except their country of origin i.e. from where the holder fled persecution
- 2) Certificate of Identity (brown colour) which is issued to people granted Humanitarian Protection and Discretionary Leave. On 17 March 2008 this changed its name to the Certificate of Travel and changed in colour from brown to black. The brown document can be used until it expires
- 3) Stateless person’s travel document (red colour)
 - List A Travel Documents – stating that the holder has indefinite leave to enter or remain in the UK (i.e. no time limit on the holder’s stay in the UK)
 - List B Travel Documents – the travel document

9.6 Refugees who have been granted indefinite leave to enter or remain in the UK should be able to produce documents from List A. When verified and copied the Trust will have a statutory excuse for the remainder of the employee’s employment.

9.7 12 month follow up checks are required for all List B documents.

10. Employing Turkish workers already residing in the UK

10.1 The European Community Association Agreement (ECAA) with Turkey provides Turkish nationals who are already working legally in the UK with certain rights when they need to extend their stay. Individuals will only be accepted as a Turkish ECAA worker if they meet the criteria set by the UK Border Agency (UKBA). Individuals:

- a) can only apply to extend their permission to stay and work in the UK for the same employer (if a job is available) after they have worked in the UK for a period of one year
- b) can change employers after they have worked in the UK for a period of three years – this must be in the same type of occupation

- c) will have full access to the UK labour market and will be free to work in any type of job for any employer after they have worked in the UK for a period of four years.

- 10.2 Once the UKBA grants permission for an individual to stay as a Turkish ECAA worker, the individual will be issued with a vignette in their passport and receive a letter confirming their status.
- 10.3 The Human Resources Department must retain a copy on the employee's personal file. Employers will be able to use this documentation to check a potential or existing employee's right to work in the UK.
- 10.4 A Turkish ECAA worker visa does not give the individual an automatic right to apply for indefinite leave to remain and any application to the UKBA for indefinite leave to remain will be rejected. The duration of leave granted to an individual will be between 12 and 36 months. At the end of the granted period, another application must be made if a further extension is required.
- 10.5 A Turkish worker will, however, be eligible to apply for indefinite leave to remain after they have legally resided in the UK for a period of 10 years.

11. Employment of Students

- 11.1 Students from outside the EEA who are over the age of 16 are permitted to take some employment in the UK, providing their conditions of entry to the UK allow this.
- 11.2 There are strict conditions on the type of work a student can undertake while they are studying in the UK. A student who is undertaking a course of degree level study or above, or a foundation degree course can be employed providing they have valid leave of entry:
 - for up to 20 hours per week only during term time. (An exception to this is where a student may have been placed to meet the definition of a sandwich course or internship).
 - full-time, outside of their term time only and following completion of their course

Students granted leave under the Immigration Rules in force prior to the points based system (31 March 2009) can undertake a course of study below degree level with the conditions listed above.

Student granted leave under the Immigration Rules in force from 31 March 2009 under the points based system (Tier 4 students) who undertake a course of study below degree level can be employed providing they have a valid leave of entry:

- a) for up to 10 hours per week only during term time or
- b) full time outside of their term time and following completion of their course

- 11.3 Students who have entered the UK as 'student visitors' are not allowed to work.

- 11.4 The onus remains on the student, as it does for all prospective employees, to demonstrate that they are able to work legally. Requests for extra documents can be made to reassure the Trust that the person is a student. This could include an authorised letter from their place of study confirming their student status.
- 11.5 It is accepted that a postgraduate course may involve research work as part of course requirements. Researchers who are specifically employed by an institute will require a work permit or certificate of sponsorship, whereas Junior Research Fellows in receipt of scholarships are essentially treated as students and are subject to restrictions on the hours that they can work.
- 11.6 Tier 4 students will be allowed to do a work placement as part of their course of study, as long as the work placement is an assessed part of the course and they are:
- a) a Tier 4 (General) student studying a course of degree level study or above or
 - b) a Tier 4 (General) student studying a foundation degree course or
 - c) a Tier 4 (General) student studying a course with a highly trusted sponsor or
 - d) a Tier 4 (Child) student who is 16 years old or over
- 11.7 A Tier 4 student is not permitted to take a work placement which occupies more than 50% of the course or period of study (except where there is a statutory requirement). There is no specified maximum period for work placements which form part of a pre-Tier 4 student's course of study provided the requirement below are met.
- 11.8 Pre-Tier 4 students (those who applied for leave before 31 March 2009) can do a work placement as part of a sandwich course i.e. a course which includes a clearly defined work placement approved by the institution providing the course. A student is permitted to follow a sandwich course provided:
- a) the course leads to a recognised degree or to a qualification awarded by a nationally recognised examining body and
 - b) the work placement does not extend beyond the end of the course
- 11.9 Tier 4 (General) students whose leave to remain is for less than 12 months – their family member will not be allowed to work whilst in the UK
- 11.10 Family members of students studying for a qualification below degree level, that is not a foundation degree course, cannot work unless they have their own visa

12. Medical Training Initiative (MTI)

- 12.1 The MTI is designed to allow Doctors to enter the UK from overseas to benefit from training and development in NHS services. The scheme is designed to allow overseas Doctors to undertake up to two years of training and experience in the UK.

- 12.2 The MTI operates under Tier 5 of the UK Border Agency points based immigration system and has the backing of the Medical Royal Colleges, English Postgraduate Medical Deaneries, NHS Employers, Skills for Health and the Department of Health
- 12.3 Overseas Doctors can be offered an International Training Fellowship under the Medical Training Initiative (Tier 5) Scheme. The following outlines the process for MTI Tier 5 applications;
- a) following written confirmation .by the Supervising Consultant that the doctor and post would be suitable for the MTI, the Royal College will issue a check list for the Doctor to obtain a certificate of sponsorship. It is the Doctors responsibility to complete and return the documentation.
 - b) where the Royal College approve the Doctor's application, they will issue the Doctor with a formal letter providing notification of their decision.
 - c) the Royal College will issue a Certificate of Sponsorship (for GMC registration purposes only - this is not a Tier 5 certificate)
 - d) the Doctor is then responsible for submitting the certificate to the GMC with their application for registration.
 - e) the Supervising Consultant must in tandem complete and sign Part 1 of the MTI application form.
 - f) Medical HR signs Part 2 of the MTI application form and gathers the relevant supporting documentation ready to submit to the Dean. The paperwork includes:
 - i) evidence of funding
 - ii) the letter from the Royal College confirming they will sponsor the Doctor
 - iii) job Description
 - iv) timetable (rota)
 - v) a copy of the Passport
 - g) the doctor will receive confirmation from the GMC inviting them to attend an ID check. It is the doctor's responsibility to notify Medical HR that this has been requested.
 - h) Medical HR must then submit the confirmation inviting the doctor to attend an ID Check along with the MTI application form to the Recruitment Project Director at the Northern Deanery who will forward it to the Dean for signature. The signed application will be returned to Medical HR
 - i) Medical HR will then forward all documentation to the MTI Programme Manager at the Academy of Royal Colleges.
 - j) the MTI Programme Manager will issue the Certificate of Sponsorship under Tier 5 and e-mail the Certificate to the HR Representative.

- k) Medical HR will forward the Certificate of Sponsorship to the Doctor to allow an application to be made for the visa
- l) Medical HR must write to the Recruitment Project Director at the Northern Deanery to advise them of the Doctor's start date. This **must** be done within five days of the Doctor commencing in post.

13. Reporting Migrant Activity

As a licensed sponsor, the Trust must report information or events to the UKBA, within the time limits specified by them. The UKBA will use this information to decide on enforcement action against the migrant worker or the Trust.

There are additional Trust management arrangements to be observed for doctors appointed to stand alone posts on the Foundation Programme and doctors appointed to the VTS Scheme who require a Certificate of Sponsorship and will rotate outside of the Trust during their employment with the Trust. In such circumstances the Trust is required to report through the SMS that the migrant will temporarily be working at a different address for the defined period. In such circumstances Medical HR will confirm a named contact within each external organisation and ensure the contact is aware of the Trusts responsibilities in reporting migrant activity .

13.1 Migrant Arrives for Employment

As a licensed sponsor, the Trust must report to the UKBA, via the Sponsorship Management System that a migrant has arrived for duty on their first day of employment.

13.2 Migrant Does Not Arrive for Employment

The Trust must report to the UKBA if a migrant does not arrive for employment on their first day. The following specific responsibilities will apply:

- If an employee does not attend for work on their first day of employment, the Line Manager must make every effort to contact the employee to establish the reason.
- It is the responsibility of Line Managers to ensure that the Senior Human Resources Manger or, in the case of medical and dental staff, the Senior Human Resources Manager (Medical and Dental) is informed that the migrant has or has not reported for employment when they were expected to. The Line Manager must also confirm the situation in writing to the appropriate Senior Human Resources Manager who will ensure the UKBA are informed via the appropriate systems.

13.3 Maintaining Migrant Contact Details

As a licensed sponsor, the Trust must keep up to date records of migrants contact details, i.e. address, home telephone number and mobile telephone number. The Trust must be able to make this information available to the UKBA on request. Therefore it is essential that contact details up to date so that accurate paper and electronic records can be maintained. The following specific responsibilities will apply:

- It is the responsibility of individual employees to ensure that they notify their Line Manager of any change to their contact details.
- It is the responsibility of Line Managers to ensure that the relevant Human Resources Officer is informed of the change.
- It is the responsibility of Line Managers to ensure that individual employees are aware of the procedure they should follow.

13.4 Maintaining Migrant Details

As a licensed sponsor, the Trust must ensure that the UKBA are informed of any changes to an employee's circumstances, e.g. change of marital status, name, job, site of work or salary (but not job title or annual pay rise). This also includes any change to the migrant's immigration circumstances and that of their dependants.

If the migrant worker's salary reduces below the level stated on their Certificate of Sponsorship (other than organisation-wide reductions defined as acceptable in the Sponsor Guidance, or reductions due to maternity or adoption leave), a change of employment application will be required.

The following specific responsibilities will apply:

- It is the responsibility of individual employees to ensure that they notify their Line Manager of any change in their circumstances.
- It is the responsibility of Line Managers to ensure that the Senior Human Resources Manager or, in the case of medical and dental staff, the Senior Human Resources Manager (Medical and Dental) is informed of the change.
- It is the responsibility of Line Managers to ensure that individual employees are aware of the procedure they should follow.

13.5 Unauthorised Absence

As a licensed sponsor, the Trust must report incidents of unauthorised absence from work or study leave. The following specific responsibilities will apply:

- If an employee is absent from work or study leave without the appropriate authorisation, the Line Manager must make every effort to contact the employee to establish the reason.
- The Line Manager must ensure that they inform the Senior Human Resources Manager or, in the case of medical and dental staff, the Senior Human Resources Manager (Medical and Dental) both verbally and subsequently in writing, immediately of the situation so that the UKBA can be informed accordingly.
- It is the responsibility of Line Managers to ensure that individual employees are aware of the procedure they should follow to have annual and study leave agreed

and authorised as well as correct reporting procedures when they are absent due to sickness.

13.6 Disciplinary Action taken against a Migrant

As a licensed sponsor, the Trust must report all incidents of disciplinary action taken against a migrant worker during their employment. The following specific responsibilities apply:

- The Investigating Manager/Human Resources Officer must ensure that they inform the Senior Human Resources Manager or, in the case of medical and dental staff, the Senior Human Resources Manager (Medical and Dental), both verbally and subsequently in writing, so that the UKBA can be informed accordingly.

13.7 Termination of Employment

As a licensed sponsor, the Trust must ensure that the UKBA are informed if a sponsored migrant discontinues their employment or studies or if the migrant's contract of employment or registration is terminated (including where the sponsored migrant resigns or is dismissed).

- It is the responsibility of individual employees to ensure that they notify their Line Manager of their intention to leave the Trust.
- It is the responsibility of Line Managers to ensure that they inform the relevant Human Resources Officer any termination of a migrant's contract to ensure that the correct process is followed.
- It is the responsibility of Line Managers to ensure that the relevant Human Resources Officer is advised of a migrant's intention to leave the Trust and that this is done in line with Trust procedure.

13.8 Breach of conditions of stay in the UK

If the Trust suspects the migrant worker has breached their conditions of stay in the UK e.g. criminal activity, terrorism the Senior HR Manager must be informed (followed up with written confirmation of the suspicion) so that they can seek appropriate advice from UKBA.

13.9 Changes to Employment Circumstances

If the individual changes positions while with the same employer but the Standard Occupation Classification Code (SOC) does not change they do not require a new certificate of sponsorship.

However:

- If the migrant's salary reduces below the level stated on their Certificate of Sponsorship (other than company-wide reductions defined as acceptable in the Sponsor Guidance, or reductions due to maternity or adoption leave), a change of

employment application will be required. A change of employment application will not be required for increases in salary.

- If the migrant changes jobs within the SOC code from a job which is on the shortage occupation list to a job which is not on the shortage occupation list, a change of employment application will be required. A change of employment application will not be required if the migrant stays in the same job, but that job is removed from the shortage occupation list.
- If a migrant is remaining with the same sponsor but changing jobs to a different SOC code, a change of employment application is required. Change of employment applications are considered against the same criteria as initial applications. This means that, for Tier 2 (General) applications, a Resident Labour Market Test is required unless the new job is in a shortage occupation.
- It will continue to be a duty for sponsors to report any changes in a migrant's pay, other than those due to annual increments or bonuses, and to report any changes in start / end dates of employment or changes in working location. Sponsors should refer to the Sponsor Guidance for a comprehensive list of reporting duties.
- If a migrant worker applies for a different post, not on the shortage occupation list, the requirements of the resident labour market test must be met i.e. the post must be advertised externally to the Trust for a minimum of 28 days and, if the migrant worker is assessed as being the best candidate for the post, a new certificate of sponsorship must be applied for and successfully obtained prior to the migrant worker's commencement in the new post (refer to Recruitment and Selection policies for further information) if the SOC changes.
- In the case of organisational change which affects a migrant worker, advice must be sought from the appropriate Senior Human Resources Manager.

13.10 Doctors in Training

The restriction on working as a doctor in training in all four Tier 1 categories has been amended from 6 April 2010 to prevent overseas doctors from depriving resident doctors of training placements. This restriction has been extended so that it also applies to working as a dentist in training. The restriction has also been amended so that it does not apply to anyone who has a degree in medicine or dentistry from a recognised UK institution, ensuring that doctors and dentists who have studied in the UK will have open access to training opportunities to further their careers in the UK. These changes also apply to dependants of Points-Based System migrant workers.

The Tier 1 (Post-Study Work) points table has been amended from 6 April 2010 so that doctors can switch into Tier 1 (Post-Study Work) within 12 months of completing the Foundation Programme. This will allow a migrant with a UK medical degree to undertake their Foundation Programme training in Tier 4 and then switch into Tier 1 (Post-Study Work) as they begin specialty training or training as a GP. Following two years in Tier 1 they will then be able to switch into either Tier 1 (General) or Tier 2 (General) depending on their level of earnings. It should be noted that with effect from 23 December 2010

UKBA ceased accepting Tier 1 (General) applications made overseas. Tier 1 (General) applications will not be accepted after 5 April 2011.

Doctors who have leave in the old permit-free Postgraduate Doctor and Dentist category will be allowed to switch into Tier 1 (Post-Study Work) on completion of the Foundation Programme as long as they meet the relevant UKBA requirements

14 Sponsor Circumstances

As a licensed sponsor, it is the responsibility of the Human Resources Department on behalf of the Trust to inform the UKBA of any significant changes to the organisation's circumstances. This would include:

- Changes to the size or status of the organisation
- Changes to individuals holding areas of responsibility, i.e. .Authorising Officer, Contact Officer, Level 1 and 2 Users

15. Monitoring

15.1 Operation of this policy will be monitored by the Director of Human Resources who will report monitoring annually through the HR Heads meeting.

15.2 Monitoring will include reporting on ESR information and personal file audits to identify:

- a) all appointments are made in accordance with the necessary Right to Work checks required in this policy and documentary evidence is recorded on ESR and in the personal file
- b) the number of dismissals due to failure to renew right to work documentation within the required timescales

Author: Director of Human Resources

List Documents Which Provide an Ongoing Excuse

1. A passport showing that the holder, or a person named in the passport as the child of the holder, is a British citizen or a citizen of the United Kingdom and Colonies having the right of abode in the United Kingdom.
2. A passport or national identity card showing that the holder, or a person named in the passport as the child of the holder, is a national of the European Economic Area or Switzerland.
3. A residence permit, registration certificate or document certifying or indicating permanent residence issued by the Home Office, Border and Immigration Agency or UK Border Agency to a national of a European Economic Area country or Switzerland.
4. A permanent residence card issued by the Home Office, Border and Immigration Agency or UK Border Agency to the family member of a national of a European Economic Area country or Switzerland.
5. A Biometric Immigration Document issued by the UK Border Agency to the holder which indicates that the person named in it is allowed to stay indefinitely in the United Kingdom, or has no time limit on their stay in the United Kingdom.
6. A passport or other travel document endorsed to show that the holder is exempt from immigration control, is allowed to stay indefinitely in the United Kingdom, has the right of abode in the United Kingdom, or has no time limit on their stay in the United Kingdom.
7. An Immigration Status Document issued by the Home Office, Border and Immigration Agency or UK Border Agency to the holder with an endorsement indicating that the person named in it is allowed to stay indefinitely in the United Kingdom or has no time limit on their stay in the United Kingdom, **when produced in combination 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 full birth certificate issued in the United Kingdom which includes the name(s) of at least one of the holder's parents, **when produced in combination 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 full adoption certificate issued in the United Kingdom which includes the name(s) of at least one of the holder's adoptive parents **when produced in combination 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 birth certificate issued in the Channel Islands, the Isle of Man or Ireland, **when produced in combination with** an official document giving the person's permanent National Insurance Number and their name issued by a Government agency or a previous employer.

11. An adoption certificate issued in the Channel Islands, the Isle of Man or Ireland, **when produced in combination with** an official document giving the person's permanent National Insurance Number and their name issued by a Government agency or a previous employer.
12. A certificate of registration or naturalisation as a British citizen, **when produced in combination with** an official document giving the person's permanent National Insurance Number and their name issued by a Government agency or a previous employer.
13. A letter issued by the Home Office, Border and Immigration Agency or UK Border Agency to the holder which indicates that the person named in it is allowed to stay indefinitely in the United Kingdom **when produced in combination 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

Documents Which Provide an Excuse For Up To 12 Months

1. A passport or travel document endorsed to show that the holder is allowed to stay in the United Kingdom and is allowed to do the type of work in question, provided that it does not require the issue of a work permit.
2. A Biometric Immigration Document issued by the UK Border Agency to the holder which indicates that the person named in it can stay in the United Kingdom and is allowed to do the work in question.
3. A work permit or other approval to take employment issued by the Home Office, Border and Immigration Agency or UK Border Agency **when produced in combination with** either a passport or another travel document endorsed to show the holder is allowed to stay in the United Kingdom and is allowed to do the work in question, or a letter issued by the Home Office, Border and Immigration Agency or UK Border Agency to the holder or the employer or prospective employer confirming the same.
4. A certificate of application issued by the Home Office, Border and Immigration Agency or UK Border Agency to or for 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 6 months old **when produced in combination with** evidence of verification by the UK Border Agency Employer Checking Service.
5. A residence card or document issued by the Home Office, Border and Immigration Agency 29 or UK Border Agency to a family member of a national of a European Economic Area country or Switzerland.
6. An Application Registration Card issued by the Home Office, Border and Immigration Agency or UK Border Agency stating that the holder is permitted to take employment, **when produced in combination with** evidence of verification by the UK Border Agency Employer Checking Service.
7. An Immigration Status Document issued by the Home Office, Border and Immigration Agency or UK Border Agency to the holder with an endorsement indicating that the person named in it can stay in the United Kingdom, and is allowed to do the type of work in question, **when produced in combination 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 letter issued by the Home Office, Border and Immigration Agency or UK Border Agency to the holder or the employer or prospective employer, which indicates that the person named in it can stay in the United Kingdom and is allowed to do the work in question **when produced in combination with** an official document giving the person's permanent National Insurance Number and their name issued by a Government agency or a previous employer.

Prevention Illegal Working Policy

Glossary of Terms

Tier 1

A category of the points-based system for coming to the United Kingdom to work, train or study. It applies to people who are looking for highly skilled employment in the United Kingdom, or are self-employed or setting up a business.

Tier 2

A category of the points-based system for coming to the United Kingdom to work, train or study in the United Kingdom. It applies to skilled people with a job offer who are looking for employment in the United Kingdom.

Tier 2 (General) - Skilled Worker

A category of the points-based system for coming to the United Kingdom to work, train or study. It applies to skilled people with a job offer who are looking for employment in the United Kingdom, or are self-employed or setting up a business.

Tier 2 - Intra-Company Transfers

A category of the points-based system for coming to the United Kingdom to work, train or study. It applies to sponsors who are transferring employees within an organisation to a skilled job under Tier 2.

Tier 2 Religious Workers

A category of the points-based system for coming to the United Kingdom to work, train or study as a religious worker. Its applies to skilled people with a job offer who are looking for employment in the United Kingdom.

Tier 2 Sports Workers

A category of the points-based system for coming to the United Kingdom to work, train or study. It applies to skilled people with a job offer who are looking for employment in the United Kingdom.

Tier 3

Limited numbers of low skilled workers needed to fill specific temporary labour shortages (this tier is suspended indefinitely)

Tier 4

Applies to people who are coming to the UK to undertake a course of study at a UK educational establishment.

Tier 5

Applies to people who are coming to the UK to undertake a period of temporary work or coming to the UK via the Youth Mobility Scheme

**THE NEWCASTLE UPON TYNE HOSPITALS NHS FOUNDATION TRUST
IMPACT ASSESSMENT – SCREENING FORM A**

This form must be completed and attached to any procedural document when submitted to the appropriate committee for consideration and approval.

Policy Title:	Prevention of Illegal Working	Policy Author:	Ms K Pearce
		Yes/No?	You must provide evidence to support your response:
1.	Does the policy/guidance affect one group less or more favourably than another on the basis of:	No	Policy applies to all employees of the Trust. It is underpinned by Trust's overriding policy on Equal Opportunities.
	• Race	No)
	• Ethnic origins (including gypsies and travellers)	No)
	• Nationality	No)
	• Gender	No)
	• Culture	No) as above
	• Religion or belief	No)
	• Sexual orientation including lesbian, gay and bisexual people	No)
	• Age	No)
	• Disability – learning difficulties, physical disability, sensory impairment and mental health problems.	No)
2.	Is there any evidence that some groups are affected differently?	No	All staff are required to provide documentation which evidences their right to work – documentation will vary depending on the employee's nationality
3.	If you have identified potential discrimination, are any exceptions valid, legal and/or justifiable?	No	Legislation stipulates which documents provide the right to work
4(a).	Is the impact of the policy/guidance likely to be negative? (If "yes", please answer sections 4(b) to 4(d)).	No	
4(b).	If so can the impact be avoided?	No	
4(c).	What alternatives are there to achieving the policy/guidance without the impact?	No	
4(d).	Can we reduce the impact by taking different action?	No	

Comments:	Action Plan due (or Not Applicable):
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Name and Designation of Person responsible for completion of this form: Karen Pearce Date: 02/2/2011

Names & Designations of those involved in the impact assessment screening process: The Employment Policies and Procedures Consultative Group

(If any reader of this procedural document identifies a potential discriminatory impact that has not been identified on this form, please refer to the Policy Author identified above, together with any suggestions for the actions required to avoid/reduce this impact.)