

## HR02a - Right to Work Checks – Visa

|                             |                |                             |               |
|-----------------------------|----------------|-----------------------------|---------------|
| <b>Procedure Reference:</b> |                | HR02a                       |               |
| <b>Related Policy:</b>      |                | N/A                         |               |
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| <b>Owner:</b>               | Michael Catlin | <b>Job Title:</b>           | HOP&OD        |
| <b>To be issued to:</b>     |                | Ark Management<br>All Staff |               |
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### Version Control

| Date         | Owner         | Version | Reason for Change |
|--------------|---------------|---------|-------------------|
| January 2023 | Lisa Strachan | 1       | Cyclical review   |

### Summary of Changes

| Section                 | Change                                                                                                                                  |
|-------------------------|-----------------------------------------------------------------------------------------------------------------------------------------|
| <b>Procedure Number</b> | Moved HR21 Visa Checks into HR02a for consistent numbering                                                                              |
| <b>Procedure Name</b>   | Rebranded Visa Checks procedure name to Right to Work Checks – Visa                                                                     |
| <b>4</b>                | Updated guidance from Home Office to include the requirement to ask employees for a share code as part of their right to work check     |
| <b>5 &amp; 6</b>        | Procedural information added to reflect an in invitation to an investigation meeting prior to the invitation to a disciplinary hearing. |

# Right to Work Checks – Visa

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## 1.0 Introduction

It is Ark's duty as an employer to check employees right to work in the UK and to be satisfied of the employees identify and right to work status. This procedure is intended to give Ark managers and staff clear and straightforward guidance on the right to work process. This procedure explains what Ark must do to prevent illegal working in the UK by carrying out right to work checks on people to make sure they are allowed to work.

## 2.0 Background

Ark has a statutory duty to ensure that all employees can demonstrate they have the right to work in the UK prior to and during their employment. This includes monitoring the visa status of non-British citizens. Post Brexit the rights of EU citizens have changed and they may require a visa to live and work in the UK. Ark has a duty to check the specific visa requirements for each EU citizen based on their individual circumstances.

According to the Immigration, Asylum and Nationality Act 2006, Ark must check and keep copies of documents to confirm that Ark employees have the right to work in the UK. Employers can be fined up to £20,000 per employee, without the right to be employed in the UK.

By having a procedure for right to work checks in place, Ark can ensure compliance with the UK Law and avoid any potential penalties.

## 3.0 Visa Monitoring

Prior to appointment, all potential employees must provide proof of eligibility to work in the UK when attending an interview for Ark. If, when appointed into a role within Ark and eligibility to work in the UK is for a limited period of time the following procedure will be adhered to.

On appointment, 6, 3 and 1 month diary reminders will be set up in HR Outlook calendars to alert HR that a Visa (eligibility to work in the UK) is due to expire.

HR will contact the employees Line Manager at these alerts and ask them to check in with the employee that they are aware and have plans in place for renewal and update HR, who will then update the visa monitoring sheet.

### 3.1 One Month prior to Visa Expiry

Employees cannot apply for their new visa until one month before their current visa expires.

One month before the visa expires employees are formally invited to a meeting with their Manager to request the employees right to work documentation, (see Appendix 1 for acceptable documentation) this should be set 2 weeks before the employees current documents are due to expire to allow them sufficient time to apply, if they have not already done so. An endorsed copy of the documentation proving their application for a new Visa, must be returned to HR. At this meeting the employee must supply their Case Reference Number to allow Ark to run an Employer Checking Service (ECS) check and receive the Positive Verification Notice (PVN) in time for the documents expiring.

**If employee supplies requested information, follow points 4.0 to 5.3**

**If the employee does not supply the requested information, go to point 6.0**

## 4.0 Employer Checking Service

In order to continue employment with Ark, as an organisation we are required to run an online Employer Checking Service (ECS) check with the Home Office and receive the Positive Verification Notice (PVN) in time for the documents expiring. This document allows the employee to continue to work for the period of time defined while their application to renew their status is with the Home Office. HR will run this check on the day, or as close to the day, the Visa expires. This check only requires to be run if a new Visa has not yet been issued.

The HR department will run the ECS check here: <https://www.gov.uk/employee-immigration-employment-status> and will receive confirmation within 24 hours that the check is in progress (Appendix 2). When the PVN has been received, HR will check the employee's information is correct – Name, Nationality and D.O.B. in Section 4, "Work Restrictions", and this section must advise the employee is still able to work (see Appendix 3 for an example of PVN). If an employee is not able to work they will be dismissed from employment effective immediately in line with Ark's Disciplinary Policy.

The PVN is valid for 6 months however, if an employee receives a new Visa during this time they are required to provide the original documents to allow their line manager to take copies and certify the documents. If an employee does not receive their new visa within the PVN defined timeframe HR will be required to run another ECS check. The Home Office advises to check on or before PVN expiry date however the check can take up to 5 working days therefore Ark will run the ECS check a minimum of 5 working days before the PVN expiry date. If the PVN expires, Ark are no longer covered with a time-limited statutory excuse and are no longer compliant with the Immigration, Asylum and Nationality Act 2006.

## 5.0 Confirmation of Eligibility to Work in the UK

Once the employee receives their new Visa it is their responsibility to share the original document with their manager. Managers are required to take a clear colour copy of documents provided and endorse the copies by writing "*I certify this is a true copy of the original document*", sign and date the copy before sending this to the HR department (see appendix 1).

Where a right to work check has been conducted using the online service, the information provided is in real time. Therefore, there is no requirement for employers to see or check the individual's documents. This is valid for 30 days. Once this share code is provided, HR should view the employee's right to work status and save this to the employee's records by downloading to a PDF.

## 6.0 Failure to Provide Required Documentation

If an employee fails to supply their documents at the first meeting, they will be issued an invitation to a second meeting within 7 days of the original meeting and before their current documents expire. At the second meeting the employee must provide one of the following:

1. ID that evidences right to work in the UK (as detailed in Appendix 1).
2. Acknowledgement letter from Home Office that enables an ECS check (as detailed in Appendix 1).
3. Proof they have submitted an 'in time' application that can be used for acceptable documentation (as detailed in Appendix 1).

If, on the date on which the Visa expires, Ark are reasonably satisfied that the employee has submitted an in time application (point 3 above) to extend or vary their permission to be in the UK our compliance (statutory excuse) will continue for a further period of up to 28 days to enable Ark to obtain a positive verification from the Employers' Checking Service.

## 6.1 Invitation to an Investigation Meeting

If an employee fails to supply their documents and Case Reference Number they will be invited to an investigation meeting scheduled the day before their documents expire. The investigation meeting will be held by their line manager and aims to assess the reasons for the employee not supplying their documents and/or not applying for their Visa.

## 6.2 Invitation to a Disciplinary Hearing

If the employee has not supplied documents or provided sufficient information as to why they have not proven their current Visa status during their investigation meeting, HR will issue an invitation to a disciplinary hearing, on the day their visa is due to expire, which may result in their immediate dismissal if their right to work in the UK has not been evidenced or is revoked.

## 7.0 Implementation and Review

### 7.1 Implementation

The Head of People & Organisational Development is responsible for ensuring this procedure is implemented when required.

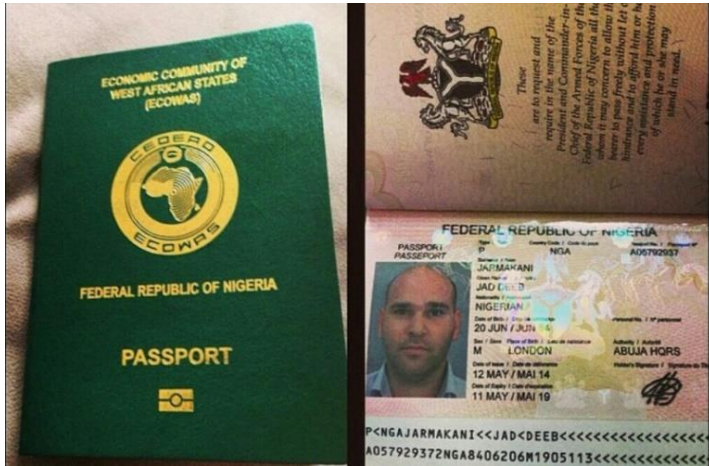
### 7.2 Review

The Head of People and Organisational Development will ensure that this procedure is reviewed at least every three years.

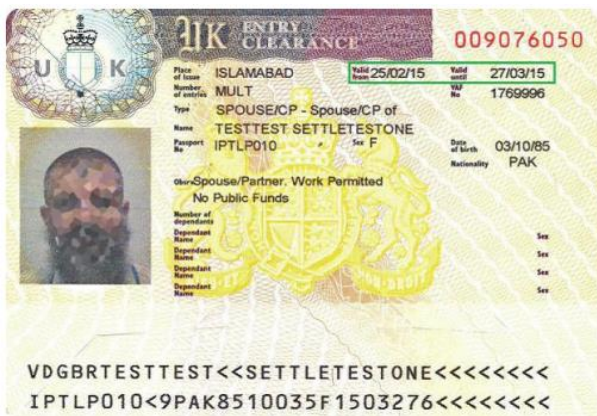
## Appendix 1

Acceptable Documentation for Right to Work from the Home Office guide.

Colour copy of passport (photo page and cover) and ensure the passport is in date:



Document inside passport:



All copies of documents must be signed and state “This is a true copy of the original document. The date on which this right to work check was made: \_\_\_\_\_.”


Since 6 April 2022, BRC, BRP and FWP holders are required to evidence their right to work using the Home Office online service only. Employers cannot accept physical cards for the purposes of a right to work check even if it shows a later expiry date. BRCs, BRPs and FWPs have been removed from the lists of acceptable documents used to conduct a manual right to work check. Retrospective checks will not be required on biometric card holders who, before 6 April 2022, used their physical card to demonstrate their right to work. Employers will maintain a statutory excuse against a civil penalty if the initial checks were undertaken in line with the guidance that applied at the time the check was made.

If at the point that permission expires and we are reasonably satisfied that our employee has an outstanding application or appeal to vary or extend their leave in the UK, your time limited statutory excuse will continue from the expiry date of your employee’s permission for a further period of up to 28 days.

Proof of an 'in time' application would be

1. Proof of postage along with a copy of the application.
2. Proof of postage along with a solicitor's letter confirming the date they sent the application.

Home Office Acknowledgement:

|                                                                                   |                                                                                                                                                                                                                                                                      |
|-----------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|  | <b>UK Visas and Immigration</b><br>Permanent Migration<br>PO Box 306<br>Liverpool<br>L2 0QN<br><b>Tel</b> 0870 606 7766<br><b>Fax</b> 0151 213 2909<br><b>Email</b><br><b>Web</b> <a href="http://www.gov.uk/ukvisas/immigration">www.gov.uk/ukvisas/immigration</a> |
| Address                                                                           | Our Ref<br>Case ID<br>Your Ref Your Ref<br>Date 04 June 2014                                                                                                                                                                                                         |

Dear Sir/Madam,

Re:

**CERTIFICATE OF APPLICATION**

Thank you for your application for a Residence Card/Permanent Residence Card/Derivative Residence Card. We will make a decision on the application as soon as we can and, in any event, within the next 6 months.

Please do not telephone or make enquiries about the progress of the application before you hear from us unless a passport or other document is needed urgently, as this diverts resources from making decisions.

We advise you not to make any non-urgent travel plans until we have decided your application and returned your passport(s) or travel document(s).

**You are permitted to accept offers of employment in the United Kingdom, or to continue in employment in the United Kingdom, whilst your application is under consideration and until either you are issued with residence documentation or, if your application is refused, until your appeal rights are exhausted.**

An employer may ask to see this document as evidence of eligibility to work, so you should keep it in a safe place until the application has been decided as it may not be replaced.

**Note for employers**

This document may form part of a statutory defence against liability to pay a civil penalty under section 15 of the Immigration, Asylum and Nationality Act 2006 for employing an illegal migrant worker. However, it should only be accepted for this purpose if presented within 6 months of the date of issue and provided you can demonstrate that the document has been verified by the Home Office Employer Checking Service.

The holder must present the original document. You should request verification of the document by downloading the Employer Checking Service form from the Home Office website and e-mailing it to [Employerchecking@ukba.gsi.gov.uk](mailto:Employerchecking@ukba.gsi.gov.uk) and retain a copy of it in your records. Further information about the Employer Checking Service and the responsibilities of employers can be found at <https://www.gov.uk/government/organisations/home-office>.

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## Appendix 2

Confirmation ECS has been received (via email from: eforms.homeoffice@toplev.com)

### **eForms Message**

**Acknowledgement of application sent from ARK Housing Association Ltd on behalf of Quathu Kapanda**

#### **Employer's or labour supplier's information**

I can confirm that the individual has been informed that a work status check may be carried out and has given permission for their personal information to be shared with the Home Office for these purposes. I understand that these details may be held by the Home Office in accordance with the Data Protection Act (1998). (The response from the Home Office will also contain personal data and should be treated accordingly.)

Contact name

Job title

Business name

Address line 1

Address line 2

Town

Postcode

Contact telephone

Contact e-mail

Business type

#### **Employee's information**

Full name (including middle names)

Date of birth

Nationality

Address line 1

Address line 2

Town

Postcode

Job title

Hours per week

Does this person already work for you?

On what date did they start working for you?

Employee acquired as a result of a TUPE transfer?

Date of TUPE transfer

Document or application type

Payment reference number of ongoing application / Case ID

IFB reference

ARC serial number

Have you seen the original documentation?

Been in the UK since before 1973?

Contact telephone number

Place of birth

Year of entry to the UK

Email

National Insurance Number



## Appendix 3

### Employer Checking Service – Positive Verification Notice



UK Visas  
& Immigration

## Employer Checking Service (ECS) Positive Verification Notice

Carol Sheridan  
ARK Housing Association Ltd  
The Priory  
Canaan Lane  
Edinburgh EH10 4SG

Date of Notice:   
Unique ECS Reference:

This Notice is issued in respect of your duty to prevent illegal working set out in sections 15 to 25 of the Immigration, Asylum and Nationality Act 2006.

### You have requested an ECS check

This means that you contacted the Employer Checking Service to verify the right to work in the UK of the named person below.

### Our response:

|   |                                                      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
|---|------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1 | <b>Who we have checked and for what type of work</b> | Name: <input type="text"/><br>Date of Birth: <input type="text"/><br>Nationality: <input type="text"/>                                                                                                                                                                                                                                                                                                                                                                                       |
| 2 | <b>Outcome of our check</b>                          | <b>This person has the right to work subject to the restrictions in section 4</b>                                                                                                                                                                                                                                                                                                                                                                                                            |
| 3 | <b>Expiry date of our check</b>                      | The result of this check is valid for 6 months. It expires on <input type="text"/> . You should carry out a follow-up right to work check on this person <b>on or before</b> this date.                                                                                                                                                                                                                                                                                                      |
| 4 | <b>Work restrictions</b>                             | <input type="text"/>                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| 5 | <b>What this means</b>                               | This <b>Positive Verification Notice</b> will provide you with a <b>time-limited statutory excuse</b> against liability for a civil penalty in respect of this person. You must retain this Notice. If this person has provided you with an Application Registration Card or a Certificate of Application, you should retain a copy.<br><br>You should see our <a href="#">Shortage Occupation List</a> for a list of the restricted roles for people with an Application Registration Card. |
| 6 | <b>Ensure your compliance</b>                        | You should note that your time-limited statutory excuse will not apply if at any time you become aware that this person no longer has the right to do the work in question and you <b>may also be prosecuted for knowingly employing an illegal worker which means you may face an unlimited fine and/or imprisonment.</b>                                                                                                                                                                   |
| 7 | <b>If you need further information</b>               | You should visit <a href="http://www.GOV.UK">www.GOV.UK</a> to view our range of guidance, Codes of practice and helpful tools to assist you to comply with your duty as an employer to conduct right to work checks.                                                                                                                                                                                                                                                                        |

UK Visas and Immigration is an operational command of the Home Office

