



Preventing Illegal Working in the UK Policy

Inmind Reference:	HR06
Category:	Human Resources
Version Number:	1
Reviewed on:	February 2018
Next review date:	February 2020
Lead Officer:	HR Manager
Equality Impact Assessment completed:	Yes

Applicable Legislation/Regulations:
Immigration, Asylum and Nationality Act 2006 The Immigration Act 2016
Codes of Practice:
Purpose:
To ensure that Inmind Healthcare Group complies with its legal responsibilities in accordance with immigration legislation. To provide guidance for all managers and employees on pre-employment and subsequent checking of documents to ensure ongoing compliance

Version Control Table		
Date Ratified	Version Number	Status
	1	Live

Date	Key Revision
11/02/18	New policy to meet legislative requirements

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1.0 The Policy

- a) Inmind Healthcare Group will ensure, to the best of the Company's knowledge, that all individuals employed by the Company are legally entitled to undertake work in the United Kingdom.
- b) Inmind will check the entitlement to work in the UK of all its employees, regardless of nationality or ethnicity.
- c) The Company will ensure that it has robust checking systems in place, in accordance with the current best practice guidance.
- d) Inmind will cooperate fully with the Home Office in all situations and will allow Home Office employees access to any of its premises on demand and comply with any action plan set by the Home Office.
- e) Inmind cannot legally continue to employ an individual who does not have a current entitlement to undertake work of the nature or duration for which they are employed by the Company, as if it were to do so this would be in contravention of its statutory requirement under the Immigration, Asylum and Nationality Act 2006 (and Immigration Act 2016). Therefore, any such individuals will be summarily dismissed from employment in accordance with statutory procedures.

2.0 The Procedure

2.1 Who is eligible to work in the UK

- a) Different groups of workers have varying rights in relation to eligibility to work in the UK. Therefore, for full detail of which groups are eligible to work in the UK, and what documentation they require.

2.2 Eligibility checking process for new employees

- a) Inmind will check the entitlement of all new employees to undertake work in the UK prior to the commencement of their employment with the Company in accordance with its *Recruitment and Selection Policy*. It is the responsibility of the Registered Manager to ensure that any individual within their service, to whom this check is delegated, has received appropriate instruction and guidance on undertaking this check.
- b) All UK eligibility checks must be completed on an Employee Right to Work Checking Form (Appendix 2).
- c) The employee must provide documentation as set out on the Checking Form and in the Guidance Notes (Appendix 3).
- d) The individual conducting the check must ensure that they:
 - Undertake the check in the physical presence of the prospective employee
 - accept original documentation only for the purpose of the check
 - take full colour copies of all documents as stated on the form
 - sign and date each photocopy taken to indicate when the original document was checked and by whom
- e) Once completed, if done so by a nominated deputy, the Checking Form must be counter-signed by the Registered Manager who must check the form has been fully completed.
- f) If an employee provides documents from List A of the Guidance, Inmind Healthcare Group is not required to carry out any repeat right to work checks on the individual for the duration of their employment with the Company.
- g) However, if the documents provided by the individual are from List B, the Company is required to conduct further checks, the procedure for which is set out below.

2.3 Time-limited Eligibility

- a) If the employee holds any form of immigration documentation which is time-limited (i.e. belongs in Group B as there is an expiration date on their leave to remain in the UK), the Company is required to conduct a repeat check as set out within the guidance notes on the Right to Work Checklist.

- b) It is the responsibility of the Registered Manager to ensure that they maintain full records of all employees' right to work in the UK, to make all appropriate checks in accordance with statutory guidance, and to ensure that all employees within their service meet this criteria.
- c) All rechecks must be completed using the Employee Right to Work Checking Form (Appendix 2).

2.4 Procedure to be followed prior to the expiry of List B: Group 1 document

- a) 3 months prior to their expiry date, the Registered Manager should write to the employee to remind the employee that their entitlement to work in the UK is due to expire.
- b) 1 month prior to the date, the Registered Manager should:
 - write again to the employee requesting that they produce documentation to prove their on-going eligibility no later than one week prior to their leave expiry date
 - Arrange to meet with the employee to remind them of the importance of making their application to the Home Office in a timely manner.
- c) 2 weeks prior to the leave expiry date, the Registered Manager must write to the employee inviting them to attend an informal meeting no less than one week before their leave expiry date.
- d) The purpose of this meeting will be to again discuss the employee's situation in relation to the pending expiry and explain clearly to the employee that if they are unable to provide proof of eligibility that can be verified by the Company through the Home Office's employee checking service **prior** to the expiry date of their leave, Inmind may have no alternative but to dismiss the employee on the grounds of a contravention to the Company's statutory duty under the Immigration, Asylum and Nationality Act 2006.

2.5 Formal Process to be followed if continuing eligibility cannot be established

- a) On the day of the informal meeting, if the employee has not provided documentation to prove their eligibility to continue to work after their expiry date, the employee will be invited, in writing, to attend a formal meeting chaired by the Registered Manager and another appropriate manager to occur on the date their leave expires (or the next office working day thereafter).
- b) This letter must confirm to the employee that if they are unable to provide proof of eligibility (a Certificate of Application with a reference number that can be verified by the Company through the Home Office's Employee Checking Service) prior to the expiry date of their leave, Inmind may have no alternative but to dismiss the employee on the grounds of a contravention to the Company's statutory duty under the Immigration, Asylum and Nationality Act 2006. This letter must also include copies of any documentation which Inmind will be presenting at the formal meeting as evidence of the employee's lack of eligibility to work in the UK. A copy of this policy should also be enclosed with the letter.

- c) Registered Managers must note that the employee cannot be scheduled to work on any date after their leave has expired, unless further evidence of eligibility has been produced, and should plan duty rotas accordingly.
- d) Employees are expected to take all reasonable steps to attend this formal meeting and failure to attend without good reason could result in the meeting being held and a decision being taken in the individual's absence. If an employee fails to attend the meeting, the decision as to whether or not to proceed in their absence will be taken by the Panel on the date of the meeting.
- e) At the formal meeting, the Company will present to the individual the information which has led it to believe that the individual can no longer continue to be employed by Inmind due to its statutory duty under the Immigration, Asylum and Nationality Act 2006. A summary of written minutes will be taken of the meeting, to which the individual is entitled to a copy.
- f) During this meeting the employee has a right to be accompanied by a companion or representative. This may be:
 - a work colleague
 - an accredited trade union official
- g) A companion is allowed to address the meeting, to put forward and sum up the employee's case, respond on behalf of the employee to any views expressed at the meeting, and confer with the employee during the meeting. The companion does not however have the right to answer questions on the employee's behalf, address the meeting if the employee does not wish it, or prevent the Company from explaining their case.
- h) Where the companion is an employee of Inmind, they are entitled to paid time off to attend a meeting that takes place within their normal working hours. The companion must inform their line manager of this no later than three days prior to the meeting so that cover can be arranged, if appropriate, whilst they attend the meeting.
- i) The employee must then have opportunity to present their own case to the meeting panel, if they feel the Company is incorrect in its belief.
- j) If the employee cannot provide the meeting panel with documentary evidence to prove their continuing eligibility to work in the UK, and the meeting panel have reasonable belief from the evidence provided that Inmind would be in contravention of its statutory duty under the Immigration, Asylum and Nationality Act 2006 should it continue to employ the individual, then the meeting panel will have no alternative but to summarily dismiss the employee on these grounds.
- k) The outcome of the formal meeting must be confirmed in writing to the employee by the meeting Chair within three working days of the meeting. This letter must be sent via a recorded delivery service.
- l) If at any point the Registered Manager believes they need additional advice, the Group Operations Director or a member of the Executive Team should be contacted, who may recommend that legal advice is sought.

2.6 The Appeal Process

- a) If the outcome of the meeting is dismissal on the grounds of a contravention of Inmind's statutory duty to comply with immigration legislation, the employee has the right to appeal this decision.
- b) An employee may choose to appeal because:
 - He/ she feels that the finding is unfair
 - New evidence has come to light
 - He/ she thinks that the procedure was not applied correctly
- c) The name of the individual to whom an appeal should be directed will be contained within the employee's outcome letter.
- d) The appeal letter from the employee should outline the reason for the appeal and should be received within seven normal office working days from the employee receiving written notification of the disciplinary action to be applied.
- e) The Appeal Panel will comprise of a minimum of two senior managers within the Company who have not been previously involved in the case. The Appeal Panel Chair will write to the employee inviting them to attend an appeal meeting and inform them of their statutory right to be accompanied at the appeal meeting.
- f) Whilst an appeal should normally be held within twenty working days of receipt of the Appeal Form, this timescale may be extended in order to allow additional time for the employee to obtain the documentation they require from the Home Office.
- g) The Appeal Panel may believe it is appropriate for the meeting to be adjourned in order to give the employee further reasonable opportunity to provide proof of their continuing eligibility to work. In such circumstance, the panel should agree with the employee an appropriate timescale for this (it would be expected that this timescale be no longer than eight weeks following the expiry date).
- h) The Chair of the Appeal Panel must confirm in writing with the employee the outcome of the Appeal Hearing within five working days of the meeting.
- i) The decision of the Appeal Panel is the final part of the process.

2.7 Confirmation of pending applications - use of the Employer Checking Service

- a) If, at any stage of the checking process, the employee presents a letter from the Home Office stating that they have a pending application for an extension to their leave to remain, the Registered Manager must verify this pending application with the Home Office using their online Employer Checking Service (ECS) at:

<https://www.gov.uk/employee-immigration-employment-status>
- b) If documentation from the Home Office relating to a pending application is presented by the employee during the formal meeting to determine whether the Company can legally

continue to employ the individual, the Registered Manager (or nominated deputy) should adjourn the meeting to complete the ECS process. The employee should be informed that the Company is undertaking this check.

- c) If the response from the ECS is a Positive Verification Notice, the Registered Manager must store a copy of the notice in the employee's file.
- d) If, at this time, the individual is awaiting the conclusion of their formal meeting to determine whether the Company can legally continue to employ them, the Registered Manager should write to the employee to conclude the meeting and inform them that their continuing eligibility to work in the United Kingdom has been confirmed subject to the usual continuing statutory checks as set out within this policy.
- e) If a negative response is received from the Employer Checking Service, at any point in the checking process, the Registered Manager will have no alternative other than to dismiss the employee on the basis that Inmind would be in contravention of its statutory duty under the Immigration, Asylum and Nationality Act 2006 should it continue to employ the individual.
- f) In order to do this fairly, the procedure in Points 2.5 (b-l) and 2.6 must be followed.

2.8 Restrictions on conditions of employment

- a) All Registered Managers must be aware of, and abide by, any restrictions stated on the individual's leave documentation which may restrict the nature or duration of employment which they can undertake.
- b) If any manager has a query relating to such restrictions, they should contact the Group Operations Director for further guidance.
- c) If an individual is employed on the basis of a Student visa/permit, the Registered Manager must, each academic year, seek verification in writing from the employee's education institute to confirm their registration on the course and the term/semester timetable for the year. The Registered Manager must ensure that worker does not exceed the number of hours (dependent on the course of study) stated on their visa/permit.

2.9 Audit

- a) It is the responsibility of all Registered Manager to ensure that accurate records are kept regarding the eligibility of all staff within their service.

Appendix 1

Equality Impact Assessment for this policy

Protected Characteristic (domain)	Area of conflict	Resolution
Age	Nil	N/A
Disability	Nil	N/A
Gender Reassignment	Nil	N/A
Pregnancy & Maternity	Nil	N/A
Race	Nil	N/A
Religion or Belief	Nil	N/A
Sex	Nil	N/A
Sexual Orientation	Nil	N/A
Marriage and Civil Partnership	Nil	N/A

All relevant persons are required to comply with this policy and must demonstrate sensitivity and competence in relation to diversity in race, faith, age, gender, disability and sexual orientation. If you feel you are disadvantaged by this policy, please contact the Registered Manager and the service will actively respond to the enquiry.

Appendix 2

Right to Work Check List

Employee Name		
Employee Job title:		
Location:		
Contracted Hours:		
Date of Eligibility Check:		
Type of Check: (please tick)	Pre-employment check	
	Repeat check	

STEP 1: OBTAIN ACCEPTABLE DOCUMENTS SHOWING RIGHT TO WORK	
<i>You must obtain original documents from either List A or List B of acceptable documents. Please record the type of document/s viewed by ticking the corresponding box.</i>	
List A	
	1. A passport 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 national identity card showing that the holder, or a person named in the passport as the child of the holder, is a national of a European Economic Area country or Switzerland.
	3. A Registration Certificate or Document Certifying Permanent residence issued by the Home Office to a national of the European Economic Area country or Switzerland.
	4. A permanent residence card or document issued by the Home Office to the family member of a national of a European Economic Area country or Switzerland.
	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 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 previous employer.
	8. A full birth or adoption certificate issued in the UK which includes the name(s) of at least one of the holder's parents or adoptive parents together with an official document giving the person's Permanent National Insurance number and their name issued by a Government agency or 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 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 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 Residence Card (including an Accession Residence Card or a Derivative Residence Card) issued by the Home Office to a non-European Economic Area national who is a family member of a national of a European Economic Area country or Switzerland or who has a derivative right of residence.
	4. 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 questions, together with an official document giving the person's Permanent National Insurance number and their name issued by a Government agency or previous employer.
List B Group 2	
	1. A Certificate of Application issued by the Home Office under regulation 17(3) or 18A (2) of the Immigration (European Economic Area) Regulations 2006, to 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 together with a Positive Verification Notice from the Home Office Employer Checking Service.
	2. An Application Registration Card issued by the Home Office stating that the holder is permitted to take the employment in questions, together with a Positive Verification Notice from the Home Office Employer Checking Service.
	3. 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 THE VALIDITY OF THE DOCUMENTS

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

Please answer all the below questions:

		Yes	No	N/A
1)	Are photographs consistent with the appearance of the person?			
2)	Are the dates of birth consistent both across documents and with the appearance of the person?			
3)	Are expiry dates for limited leave to enter or remain 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-times, you must obtain, copy and retain details of their academic term and vacation times covering the period of study in the UK for which they will be employed)			
5)	Are you satisfied that the documents are genuine, have not been tampered with and belong 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: TAKE A COPY OF THE DOCUMENTS

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

STEP 4: KNOW THE TYPE OF 'EXCUSE' YOU HAVE

If the above check has been carried out correctly, the Company will have an excuse against payment of a civil penalty if the above named person has been working for the Company illegally. However, the Registered Manager needs to know whether the Company has a continuous or time-limited excuse, because this determines how long it lasts for, and if and when the Company is required to do a follow-up-check.

- | | |
|--|--|
| | 1. List A – Inmind has a continuous statutory excuse for the full duration of the person's employment with the Company and is not required to carry out any repeat right to work checks on the person. |
| | 2. List B: Group 1 – Inmind has a time limited statutory excuse which expires when the person's permission to be in the UK and undertake the work in question expires. Inmind must carry out a follow-up check when the document evidencing their permission to work expires. |
| | 3. List B: Group 2 – Inmind has a time-limited statutory excuse which expires 6 months from the date specified in their Positive Verification Notice. This means that Inmind must carry out a follow up check when this notice expires. |

Date repeat check required:	
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Name of individual completing this form:	
Signature:	
Job title:	
Signature of Registered Manager (if checking completed by a nominated deputy)	
Date of authorisation by Registered Manager:	

Appendix 3

Eligibility to Work in the United Kingdom Guidance for Applicants

Before anyone starts work with Inmind Healthcare Group we have a legal obligation to confirm that they are eligible to work in the United Kingdom. This check must be carried out on every potential new employee, regardless of their nationality. Failure to confirm someone’s eligibility to work in the UK due to their nationality would be contrary to both legislation and Inmind’s Recruitment and Selection policy.

When you attend your interview a nominated person will verify that you have produced the required evidence of your eligibility to work in the UK and that all your documents are valid and original (**please do not take photocopies as they are not acceptable forms of evidence**).

At your interview you must produce documentation in the form of one of the following documents/combinations of documents from either List A or List B below:

List A
A passport 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.
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 a European Economic Area country or Switzerland.
A Registration Certificate or Document Certifying Permanent residence issued by the Home Office to a national of the European Economic Area country or Switzerland.
A permanent residence card or document issued by the Home Office to the family member of a national of a European Economic Area country or Switzerland.
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.
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 limit on their stay in the UK.
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 previous employer.
A full birth or adoption certificate issued in the UK which includes the name(s) of at least one of the holder's parents or adoptive parents together with an official document giving the person’s Permanent National Insurance number and their name issued by a Government agency or previous employer.
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 previous employer.
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 previous employer.

List B Group 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.

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.

A **current** Residence Card (including an Accession Residence Card or a Derivative Residence Card) issued by the Home Office to a non-European Economic Area national who is a family member of a national of a European Economic Area country or Switzerland or who has a derivative right of residence.

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 questions, **together with** an official document giving the person's Permanent National Insurance number and their name issued by a Government agency or previous employer.

List B Group 2

A Certificate of Application issued by the Home Office under regulation 17(3) or 18A (2) of the Immigration (European Economic Area) Regulations 2006, to 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 together with a Positive Verification Notice** from the Home Office Employer Checking Service.

An Application Registration Card issued by the Home Office stating that the holder is permitted to take the employment in questions, **together with a Positive Verification Notice** from the Home Office Employer Checking Service.

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.

Additional Guidance

Please be aware that if the document(s) you provide are from list A, Inmind Healthcare Group are not required to carry out any repeat right to work checks on you for the duration of your employment.

However, if the documents you provide are from List B: Group 1, the Company is required to conduct a repeat check on the expiry of your current documentation to find out if you continue to have the right to work. If the documents you provide are from List B: Group 2, the Company is required to conduct a repeat check 6 months after the previous check.