

Right to Work Policy & Procedure

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Index

Policy Statemer Purpose and Sc Abbreviations U Definitions	cope	2 2 2 3
1.0. Roles & I	Responsibilities	3
2.0. Implement	ntation and Dissemination of Document	4
3.0. Processe	es and Procedures	4
3.1. Im	portance of Right to Work Checks	4
3.2. Ri	ght to Work Checks	4
3.3. Th	e Management of Visas	7
3.4. Vi	sa Expiry	7
4.0. Statemer	nt of Evidence/References	9
5.0. Governa	nce	11
Appendix 1: Acc	ceptable Documents for Right to Work Checks	14
Appendix 2: Em	ployer Checking Service Consent Form	16

Policy Statement

This policy details the procedure which should be followed when conducting right to work checks and managing visas for Trust employees and applicants. It also outlines the process which should be followed should a visa expire or satisfactory evidence of an applicant/employee's right to work not be provided.

Purpose and scope

The policy is intended to ensure that right to work cases are managed in a fair and consistent manner. The Trust believes all employees and potential employees should be treated equally and therefore the right to work checks stipulated in this policy will be conducted on all potential employees during their pre-employment checks. Once appointed, any employees who have a temporary right to work in the UK will be required to provide evidence of their continuing right to work at the point of their current visa expiring, or at the request of the Human Resources Department.

The policy applies to all employees of Milton Keynes University Hospital NHS Foundation Trust (hereby known as the Trust) on substantive and fixed term contracts and those who join the Trust bank.

Abbreviations used

ECS: Employer Checking Service

HRBP: Human Resources Business Partner

ERA: Employee Relations Advisor

Definitions

Right to Work Check – A right to work check is when an employer checks acceptable documents to establish that an applicant/employee has the right to work in the UK. This should be undertaken before employing an applicant and during employment if the original evidence of a right to work was temporary and not permanent.

In-time Application – An in-time application is an application made before an individual's permission to work in the UK expires. Applications made before the date of expiry mean that the existing right to work will continue until such a time that the application has been determined. It is important individuals make applications before their current permission expires as failing to do so has an impact on their right to work.

Employer Checking Service – The employer checking service is an online platform which allows employers to check the immigration status of an employee or a potential employee.

1.0 Roles and Responsibilities:

1.1 Chief Executive

• The **Chief Executive** has overall responsibility for ensuring that the Trust has appropriate policies in place and that robust monitoring arrangements are embedded.

1.2 Chief People Officer

• The **Chief People Officer** has delegated responsibility for this procedure. They or their Deputy will also be responsible for authorising the suspension of employees under this policy.

1.3 Human Resources

The Human Resources Department are responsible for:

- Providing advice and guidance on the application of this procedure to line managers and employees.
- Undertaking a thorough check of potential employees' right to work in the UK before they commence employment with the Trust.
- Ensuring all applicants to the Trust are subject to a right to work check.
- Monitoring the expiration of visas for current employees of the Trust, ensuring appropriate action is taken to address employees whose right to work in the UK has expired.

1.4 Line Managers

Line Managers are responsible for:

- Ensuring adherence to the processes and procedures outlined in this policy.
- Ensuring that their employees are aware of this procedure. Employees should be made aware of the consequences of not maintaining their right to work in the UK.
- Liaising with Human Resources to confirm when their employees' visas are scheduled to expire and notifying the employee of this fact, providing support to them throughout the process.
- •

1.5 Employees

Employees are individually responsible for:

- Ensuring adherence to the processes and procedures outlined in this policy.
- Providing appropriate documentation to evidence their right to work in a timely manner.
- Ensuring their right to work in the UK does not lapse and making 'in-time' applications to make sure this does not happen.
- Keeping Human Resources and their line manager up to date with the process of applying for an extension to their visa (if applicable).
- Attending disciplinary hearings in relation to right to work lapses when required unless extenuating circumstances would prevent attendance. These circumstances must be reported to the appropriate manager.

2.0 Implementation and dissemination of document

Employees will be aware of this policy via their line managers, the Trust's intranet page and the Human Resources Department. The policy will be accessible to everyone through the Trust's intranet, departments where printed and by request to the Human Resources Department. This document will also be published on the Trust Intranet under HR policies.

3.0 **Processes and Procedures**

3.1 Importance of Right to Work Checks

A right to work check determines whether an individual has a legal right and permission to work in the UK. It is an offence to employ an illegal worker and all employers have a legal requirement to check their employees have the right to work in the UK in accordance with The Immigration, Asylum and Nationality Act 2006.

Employers found to be employing a person who is not allowed to work in the UK can be fined up to £60,000 for each worker. If an employer is found to have knowingly employed an illegal worker, they could receive the maximum penalty of up to five years' imprisonment and/or an unlimited fine. A company's right to sponsor migrants may also be revoked.

By carrying out the checks outlined in section 3.2 the Trust will have a statutory excuse against payment of a civil penalty if it later transpires an employee does not have a right to work in the UK.

3.2 Right to Work Checks

A right to work check is how an employer verifies an employee's right to work in the UK. This could include checking a document which is acceptable for showing permission to work in the UK or checking an individual's right to work in the UK using the Home Office's online service. This check must take place **before** the Trust employs a person (during the pre-employment checks) to ensure they are legally allowed to do the work the Trust has appointed them for. The Trust is also required to conduct follow-up checks on employees who have time-limited permission to work in the UK.

Right-to-work checks should be conducted on **all** potential employees. To ensure that we do not discriminate against anyone all applicants should be treated equally at every stage of the recruitment process. Assumptions should not be made about an applicant's right to work in the UK or their immigration status on the basis of their colour, nationality, ethnic or national origins, accent, or length of time they have been a resident in the UK.

Additionally, employees for supplementary employment (individuals sponsored by another employer for their main employment role), will be required to provide additional evidence to confirm that they are not working more than 20 hours of supplementary employment per week. This evidence can include a letter from their sponsor and confirmation from the employee regarding any additional work with another employer. They will also need to provide evidence to confirm that they have the right to work under the occupation code that they have applied for.

If employees are acquired as a result of a Transfer of Undertakings Protection of Employment (TUPE) the Trust cannot rely on another employer's right to work checks and should therefore undertake a right to work checks on all new TUPE employees. The Trust will have a 60 calendar day grace period to undertake the checks following the date of transfer.

3.2.1 Online Right to Work Checks

Non-UK nationals wishing to work in the UK can confirm their right to work through the Home Office online checking portal. This can speed up the recruitment process, allowing applicants to start sooner and enhance assurances regarding their right to work status. This portal supports checks in respect of individuals who hold:

- A Biometric Residence Permit (BRP)
- A Biometric Residence Card (BRC)
- Status under the EU Settlement Scheme (EUSS)
- Status under the points-based immigration system
- A British National Overseas (BNO) visa, or
- A Frontier Workers Permit (FWP)

Conducting an online check of an individual's right to work in the UK is done in four steps:

- 1. Obtain the applicant/employee's share code (generated when the individual accesses their details online, and valid for 90 days from point of issue). Share codes should begin with a 'W', employers cannot accept a share code beginning with the letter 'R' or 'S'.
- 2. Enter the share code and date of birth in the online service to view the individuals' details.
- 3. In the presence of the individual (in person or via video link) check the photograph on the online right to work check is of the individual presenting themselves for work and confirm that the individual named and pictured is allowed to work in the UK and is allowed to carry out the work in question.
- 4. Make and retain a copy of the online right to work check. This should be a copy of the 'profile page' which includes their photo, and the date on which the check was conducted.

The Trust should retain a copy of the online check for the duration of employment and for at least two years after it has come to an end.

Where individuals choose not to or are unable to have their right to work status verified online, the Trust must undertake manual checks as outlined under section 3.2.2. Individuals who hold a Biometric Resident Permit (BRP), Biometric Resident Card (BRC) or a Frontier Workers Permit (FWP) will **only** be able to prove their right to work using the online checking service. The Trust are not able to accept or check a physical copy of these documents as proof of right to work.

3.2.2 Manual Right to Work Checks

Manually checking an individual's right to work in the UK is done in three steps:

- 1. Obtain their **original** documents (see appendix 1 for acceptable documents List A and B)
- 2. Check the documentary evidence with the holder to verify they are genuine, that the holder is the owner of the documents, and they are permitted to do the type of work being offered (This check can be done by video link, but the Trust (line manager) must have physical possession of the **original** documents).
- 3. Make and retain a copy of the documents in a format which cannot later be altered and record the date on which they were checked by writing the following onto the document; 'the date on which this right to work check was made: [insert date] [insert name, job title and signature]'

The Trust uses identification scanning technology to confirm the authenticity of documents provided; all employees will have their original documents verified during the recruitment process using this technology.

The Trust should retain a copy of the documents provided for the duration of employment and for at least two years after it has come to an end.

3.2.3 Employer Checking Service (ECS)

In certain circumstances the Trust may need to contact the Home Office's Employer Checking Service to confirm an individual's right to work. The Trust must ask the Home Office to verify that an individual has a right to work in the UK in the following circumstances:

- They cannot provide any acceptable documents because of an outstanding application with the Home Office which was made before their previous permission expired or has an outstanding appeal or administrative review.
- They have a valid Application Registration Card stating they are permitted to undertake the work in question.
- They have a document (non-digital CoA or an acknowledgement letter/email) confirming receipt of an application to the EUSS on or before 30 June 2021.
- They have a non-digital Certificate of Application confirming receipt of an application to the EUSS on or after 1 July 2021.
- They have a digital Certificate of Application confirming receipt of an application to the EUSS on or after 1 July 2021, which when checked directed the Trust to the ECS.
- They cannot provide any acceptable documents, but the person presents other information indicating they are a long-term resident of the UK who arrived in the UK before 1988.
- They have not provided the necessary documents to perform a check using the online service.

It is the Trust's responsibility to inform the individual that they are conducting this check and obtain their permission to do so. Applicants/employees will be asked to complete an ECS consent form (Appendix 2) to confirm their consent for this check to be undertaken and to provide confirmation of when the application/appeal/review was made.

If an individual is allowed to carry out the type of work in question, the home office will issue the Trust with a Positive Verification Notice (PVN).

3.2.4 Follow-up checks

The Trust is required to carry out a follow-up check on employees who have time-limited permission to work in the UK (those providing documentation from List B in Appendix 1). A follow -

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up check does not have to be undertaken if the employee began working in the UK prior to 1988. This follow-up check is undertaken by the HR Administrator and the employee's line manager and can be either an online check or a manual check.

If on the date the permission expires the Trust is satisfied the employee has either:

- Submitted an 'in-time' application (before the previous permission expired) to the Home Office to extend or vary their permission to be in the UK.
- Has made an appeal or administrative review against a decision on that application which is outstanding.
- Is unable to provide acceptable documentation but presents other information indicating they are a long-term lawful resident of the UK who arrived here before 1988.

Then the statutory excuse will continue for a further 28 days from the expiry date of the permission to enable the Trust to obtain a Positive Verification Notice (PVN) from the Employer Checking Service.

If during these 28 day or the six-month PVN period the employee provides evidence that permission to remain has been granted, together with documentation from List A or List B, group 1, or they provide a share code, these documents/code can be checked in the normal way to verify the employee has a right to work. If documentation is only provided from List B, group 2, the Trust still requires verification from the Employer Checking Service to establish whether the employee has a right to work in the UK.

If there is an outstanding appeal/review, confirmation from the Employer Checking Service is required to confirm an employee's right to work. A letter from a solicitor indicating a successful appeal/review or a court judgement will not be sufficient evidence.

The duration of pre-settled status extensions under the EU Settlement Scheme has increased from two years to five years. Additionally, the Trust is not required to repeat right-to-work checks for existing employees with pre-settled status under the EU Settlement Scheme after an initial right-to-work check has been completed.

3.2.5 Lack of a Right to Work

If, after carrying out the checks listed above, the applicant does not have the right to work in the UK the Trust must not allow the applicant to commence employment.

If the applicant is likely to obtain the relevant permissions within an acceptable time period, then it is at the discretion of the line manager (in discussion with their HRBP) as to whether they agree to wait until the permission is received or withdraw the offer of employment. If there is no evidence that permission to work in the UK is forthcoming, then the offer of employment must be withdrawn.

Furthermore, the Trust will take immediate and appropriate action against employees who are EEA nationals (or non-EEA nationals) who do not hold pre settled or settled status under the EU Settlement Scheme or do not hold another visa entitling them to work.

3.3 The Management of Visas

Once employed by the Trust it is the employee's responsibility to manage their visa status, ensuring that their permission to work in the UK does not expire.

Employees are responsible for making 'in-time applications' to extend their visas to ensure they do not lose their right to work in the UK. Employees should provide their share code, original visa documents or proof of their ongoing visa application to their line manager for verification prior to their current visa expiring. If an employee submits documentary evidence (where this is accepted), line managers should photocopy the original documents, add their name, job title and signature and date, in line with the format set out under section 3.2.2. A copy should be placed on the employee's personnel file and should also be shared with their ER Advisor.

The Trust retains a record of all employees currently working at the Trust under a visa and the date at which their current visa expires. Line managers will be informed of an impending visa expiry by Human Resources at least one month before expiry if no information as to a renewal/ extension has been received from the employee. Line managers will be asked to contact the employee regarding their visa extension.

3.4 Visa Expiry

If at any point whilst working for the Trust an employee's visa expires and they are unable to evidence that they have the right to work in the UK, have submitted an in-time application to extend their permission or have appealed against a decision on an application they have made, the employee will be unable to work for the Trust.

If an employee's visa expires, they will be suspended without pay from the date of expiry.

3.4.1 Right to Work Suspension

The HR Administrator/ERA will notify the HRBP of the impending visa expiry when they remind the line manager of the fact. If an employee has not been able to demonstrate their right to work the day before the visa expires the HR Administrator/ERA will advise the HRBP that the employee's visa will expire the following day. The HRBP will then contact the line manager to inform them that the employee will no longer have the right to work from the following day.

The HRBP should then contact the Chief People Officer (or their deputy) to obtain permission to suspend the employee. Following this they should complete the suspension checklist (Appendix 3) with the line manager and on the employee's date of expiry assist the manager in suspending the employee without pay. The employee should receive a letter confirming their unpaid suspension due to no longer having the right to work within 5 days of being suspended. This letter should confirm that this could result in the termination of their contract of employment and provide a date for their disciplinary hearing due to their lack of a right to work in the UK. The line manager should contact the HR services team to inform them that the employee's pay should be stopped from the date of suspension.

During any period of suspension, the employee is not permitted to enter Trust premises without permission except for the purpose of seeking medical treatment, attending an Occupational Health appointment, or accompanying a member of their family who requires healthcare. In any of those circumstances the employee is required to notify the Trust in advance that he or she intends to visit the Trust and the reason for their visit.

The manager should not discuss the reason for the employee's absence with the employee's colleagues. They should be informed that the person will not be at work for some time.

3.4.2 Right to Work Disciplinary Hearing

Following a right to work suspension an employee will be referred to a disciplinary hearing to consider the termination of their contract of employment for some other substantial reason (SOSR) due to the fact they no longer have the right to work in the UK.

A disciplinary hearing should be scheduled for 4 weeks after the suspension of the employee, allowing time for a fast-track investigation to take place to establish the facts. The employee must be given at least 14 calendar days' notice of the hearing date and be informed of the allegations against them as well as being provided with a management pack of the information that will be presented at the hearing.

If during the suspension period the employee does not provide any evidence of their right to work, the hearing should take place as planned. If the employee provides evidence within the suspension period, the employee's suspension should end, and they can return to work.

The disciplinary hearing should be conducted in line with the hearing process outlined in the Trust's Disciplinary Policy and Procedure, including being chaired by an employee with the authority to act as a dismissing officer.

The employee has the right to be accompanied at the hearing by a trade union representative or a colleague acting in the capacity of a companion.

A letter confirming the outcome of the hearing will be sent to the employee by the Chair, normally within 7 calendar days of the hearing. If the employee is dismissed the letter will state:

- The reason for the dismissal (SOSR)
- The date on which their employment was terminated
- That the dismissal is without notice
- Remind the employee of the right to appeal and how it might be exercised

3.4.3 Appeal

Employees have the right to appeal against the outcome of a disciplinary hearing and this must be done in line with the Trusts Appeals Procedure.

Employees cannot appeal against a dismissal on the grounds of right to work if their visa is approved after the date of the hearing as they will have already been dismissed at the point of renewal/extension.



4.0 Statement of evidence/references

References:

Immigration, Asylum and Nationality Act 2006

April 2021, '*Recruitment and Selection Policy*' Milton Keynes University Hospital NHS Foundation Trust

April 2022, 'Right to Work Checklist' Home Office

April 2022, 'Employer right to work checks' Home Office

July 2021, '*Right to Work Checks*' NHS Employers

August 2021, '*Disciplinary Policy and Procedure*' Milton Keynes University Hospital NHS Foundation Trust

External weblink references:

Right to work checks (nhsemployers.org)

- Right to work checks: an employer's guide GOV.UK (www.gov.uk)
- Employers' right to work checklist GOV.UK (www.gov.uk)

Use the Employer Checking Service - GOV.UK (www.gov.uk)

Checking a job applicant's right to work - GOV.UK (www.gov.uk)

Right to work checks standard | NHS Employers

Please note that although Milton Keynes University Hospital NHS Foundation Trust may include links to external websites, the Trust is not responsible for the accuracy or content therein.



5.0 Governance

5.1 Document review history

Version number	Review date	Reviewed by	Changes made
1.1	07 April 2022		Amended policy to reflect changes to Home office guidance on how right to work can be checked.
2	June 2024		Amended policy to reflect changed to Home Office guidance on RTW checks and fines. Amended policy to reflect Job Title Changes namely Chief People Officer, Employee Relations Advisors. Amended to add changes EU Settlement Scheme
			including the increase in extensions and removal of requirement for follow up checks

5.2 Consultation History

Stakeholders Name/Board	Area of Expertise	Date Sent	Date Received	Comments	Endorsed Yes/No
Policy Review Group	Staff Side	June 2024	July 2024	Approved	Yes
JCNC	Staff Side	July 2024	July 2024	Approved	Yes
Management Board	Executive	Sept 24	Sept 2024	Approved	Yes

5.3 Audit and monitoring

Criteria of Audit Committee/Board		Responsible Committee/Board		Audit Lead	ΤοοΙ	Audit/Monitoring Criteria
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Pre-employment Checks	TRAC	Recruitment	Quarterly	Workforce Board
Right to Work Suspensions	ER Case Tracker	Employee Relations Team	Quarterly	Workforce Board
Right to Work Disciplinary Hearings	ER Case Tracker	Employee Relations Team	Quarterly	Workforce Board

5.4 Equality Impact Assessment

As part of its development, this policy and its impact on equality has been reviewed. The purpose of the assessment is to minimise and if possible, remove any disproportionate impact on the grounds of race, gender, disability, age, sexual orientation, religion or belief, pregnancy and maternity, gender reassignment or marriage and civil partnership. No detriment was identified.

Equality Impact Assessment						
Division		Workforce		Department		Human Resources
Person completing the EqIA	Do	onatella Ahmadu-Charles		Contact No.		
Others involved:		oyee Relation NC, Managem		Date of assessment:		June 2024
Existing policy/service		Yes New policy/service				
Will patients, carers, the public or staff be affected by the policy/service?			Staff			
If staff, how many/whic affected?	h group	os will be		pject to a check of their righ ht to work will be more affe		in the UK – staff who have a his policy.
Protected characteristic	An	y impact?		Comr	nents	
Age		NO				
Disability		NO	No identifiable detriment for these protected characteristics. Positive impact as the policy aims to ensure all staff are treated equally during th pre-employment stage of employment.			
Gender reassignment		NO				
Marriage and civil partnership		NO				
Pregnancy and maternity		NO				
Race		NO				
Religion or belief		NO				
Sex		NO				
Sexual orientation		NO				
What consultation meth carried out?	hod(s) h	nave you	HR Employee Relations Team, PRG, JCNC, Management Board			
How are the changes/a policies/services comm	nunicate	ed?		published on the intranet		
What future actions need	to be ta					
Who will lead this?		Who will lead		Who will lead this?		Who will lead this?
N/A			N/A	N/A		N/A
Review date of EqIA		April 2025				

Appendix 1 – Acceptable documents for Right to Work Checks

List A – Acceptable documents for an individual with a permanent right to work in the UK

	Acceptable documents to establish a continuous statutory excuse
1.	A passport (current or expired) showing the holder is a British citizen or a citizen of the UK and Colonies having the right of abode in the UK
2.	A passport or passport card (current or expired) showing that the holder is an Irish citizen.
3.	A document issued by the Bailiwick of Jersey, the Bailiwick of Guernsey or the Isle of Man, which has been verified as valid by the Home Office Employer Checking Service, showing that the holder has been granted unlimited leave to enter or remain under Appendix EU(J) to the Jersey Immigration Rules, Appendix EU to the Immigration (Bailiwick of Guernsey) Rules 2008 or Appendix EU to the Isle of Man Immigration Rules
4.	A current passport endorsed to show that the holder is exempt from immigration control, is allowed to stay indefinitely in the UK, has the right of abode in the UK, or has no time limit on their stay in the UK.
5.	A current Immigration Status Document issued by the Home Office to the holder with an endorsement indicating that the named person is allowed to stay indefinitely in the UK, or has no time limit on their stay in the UK, together with an official document giving the person's permanent National Insurance number and their name issued by a government agency or a previous employer
6.	A birth or adoption certificate issued in the UK, together with an official document giving the person's permanent National Insurance number and their name issued by a government agency or a previous employer
7.	A birth or adoption certificate issued in the Channel Islands, the Isle of Man or Ireland, together with an official document giving the person's permanent National Insurance number and their name issued by a government agency or a previous employer.
8.	A certificate of registration or naturalisation as a British citizen, together with an official document giving the person's permanent National Insurance number and their name issued by a government agency or a previous employer.

List B – Acceptable documents for an individual with a temporary right to work in the UK

Grou	o 1 – Documents where a time-limited statutory excuse lasts until the expiry date of permission to enter or permission to stay
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 document issued by the Bailiwick of Jersey, the Bailiwick of Guernsey or the Isle of Man, which has been verified as valid by the Home Office Employer Checking Service, showing that the holder has been granted limited leave to enter or remain under Appendix EU(J) to the Jersey Immigration Rules, Appendix EU to the Immigration (Bailiwick of Guernsey) Rules 2008 or Appendix EU to the Isle of Man Immigration Rules
3.	A current Immigration Status Document containing a photograph issued by the Home Office to the holder with a valid endorsement indicating that the named person may stay in the UK, and is allowed to do the type of work in question, together with an official document giving the person's permanent National Insurance number and their name issued by a government agency or a previous employer
	Group 2 – Documents where a time-limited statutory excuse lasts for six months
1.	A document issued by the Home Office showing that the holder has made an application for leave to enter or remain under Appendix EU to the immigration rules (known as the EU Settlement Scheme) on or before 30 June 2021 together with a Positive Verification Notice from the Home Office Employer Checking Service.
2.	A Certificate of Application (digital or non-digital) issued by the Home Office showing that the holder has made an application for leave to enter or remain under Appendix EU to the immigration rules (known as the EU Settlement Scheme) on or after 1 July 2021, together with a Positive Verification Notice from the Home Office Employer Checking Service.
3.	A document issued by the Bailiwick of Jersey, the Bailiwick of Guernsey or the Isle of Man showing that the holder has made an application for leave to enter or remain under Appendix EU(J) to the Jersey Immigration Rules or Appendix EU to the Immigration (Bailiwick of Guernsey) Rules 2008, or Appendix EU to the Isle of Man Immigration rules together with a Positive Verification Notice from the Home Office Employer Checking Service
4.	An Application Registration Card issued by the Home Office stating that the holder is permitted to take the employment in question, together with a Positive Verification Notice from the Home Office Employer Checking Service.
5.	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

Appendix 2 – Employer Checking Service Consent Form Employer Checking Service - Consent Form

Please provide the following details so that the Trust can check your Right to Work status.

Full Name:	
Date of Birth:	Nationality:
Job Title:	
Hours Worked Per Week:	Permanent/Fixed Term/Bank:
Home Address:	
Start Date with the Trust:	Year of Arrival in the UK:
Home Office Reference Number/ Case ID:	

Do you currently have any of the following? (please tick as appropriate)

A document confirming receipt of an application to EUSS	S on or before 30 June 2021
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- A non-digital CoA confirming receipt of an application to the EUSS on or after 1 July 2021
- A digital CoA confirming receipt of an application to the EUSS on or after 1 July 2021 that when checked has directed us to the ECS
- A valid Application Registration Card stating you are permitted to undertake the work in question
- None of the above

Are you a long-term lawful resident of the UK who arrived here before 1988?

Do you have an outstanding application, administrative review or appeal pending?

I confirm that the above information is correct to my knowledge.

I am happy for the Trust to share the above information with the Home Office to check my Right to Work in the UK whilst my application for visa extension/ permanent residency is under consideration at the Home Office.

Signature:	
Print Name:	Date:

Received by Human Resources on: [HR insert date]