

HUMAN RESOURCES MEMORANDUM No. 2

EMPLOYMENT OF PERSONS WHO DO NOT MEET CIVIL SERVICE NATIONALITY REQUIREMENTS

Scope and Purpose

1. Civil Service Nationality Requirements place restrictions on who can be employed as a civil servant. Any person who is seeking employment as a civil servant and who does not meet these nationality requirements is known in the legislation as an “alien”. This Memorandum sets out the circumstances under which “aliens” can be employed within the Forestry Commission and the procedures that must be followed for such appointments to be approved.

Background

2. Civil Service nationality requirements broadly state that civil servants must be UK nationals, nationals of a Commonwealth country or nationals of a member country of the European Economic Area, which includes EU countries. All persons who do not belong to any of the above groups cannot be employed as civil servants except under exceptional circumstances. (fuller information on nationality groups is set out at Annex A)

Action

3. In general, where applicants for Forestry Commission posts fall into the category of “aliens” as defined above, they should be removed at sift stage and not invited to interview. The only exception to this is where an applicant looks likely to meet the three conditions laid out overleaf for the employment of “aliens”. Nationality requirements apply to all Forestry Commission posts whether permanent, fixed term, short term, student placements, seasonal workers, secondments from outside the civil service etc.

Where an “alien” has been successful at interview and is to be offered the job, HR must be notified at the earliest possible stage, if they are not already aware. HR will then arrange with you for a business case to be drawn up and submitted to the Cabinet Office for Ministerial approval. NB *Ministerial approval must be granted before an individual can start work.*

Contacts

4. General enquiries on this Memorandum should be directed to Stephen Gray in HR Services in Silvan House.

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1. Employment of “aliens”

Civil Service Nationality Requirements are quite specific about who can be employed as a civil servant.

Potential civil servants must belong to one of the following groups;

- UK national
- National of a Commonwealth country
- National of a member state of the European Union (EU)
- Certain other groups*
- Turkish nationals (under certain circumstances)

NB The nationality rules apply to **all** posts in the Forestry Commission, including permanent posts, short term and fixed term posts, seasonal posts as well as posts such as student placements.

* Definitions of these groups, plus some other groups who also have entitlement to become civil servants, are set out at Annex A.

2. Exceptions to the nationality rules

Under certain exceptional circumstances, an “alien” may be appointed as a civil servant when they satisfy the following conditions:

- a. no suitable qualified candidate who satisfies the nationality rules is available; or
- b. the alien possesses exceptional qualifications for appointment; and
- c. the post is not a reserved post*.

** At present the only posts that are likely to fall into the reserved category are those of the DG, Country Directors, Secretary/Head of Corporate and Forestry Support, Head of International Policy, Head of Plant Health and the Departmental and IT Security Officers. However, this list is currently under review and is expected to be shortened at some future date. You should seek advice from HR if you are considering filling a reserved post with an “alien”.*

3. Dealing with applications from “aliens”

Where recruitment exercises are carried out through HR in Silvan House, the HR team will highlight to Board members any applicants who might not satisfy Civil Service Nationality Requirements. As a general rule, these applicants should be weeded out at sift stage and not invited to interview. The only exceptions to this rule are where such applicants are likely to satisfy the conditions set out in para 2 above

Where recruitments are carried out locally for short term temporary appointments, student placements, seasonal workers, secondments from outside the civil service etc. it will be for managers locally to apply the nationality rules and to seek advice from HR Services as appropriate.

4. What if you want to make a job offer to an “alien”

If HR are not already aware, then you must inform them immediately you have decided you want to offer a post to an “alien”. At this stage you should also be in a position to show why this “alien” satisfies the exception rules shown at para 2.

NB You should note that where an “alien” also requires a work permit, this should be dealt with as a separate matter through your HR Services Team.

5. What HR will do

HR will help you prepare a business case setting out the circumstances surrounding the appointment and asking you to demonstrate how this case meets the criteria set out in para 2.

When this has been done, HR will make an application to Cabinet Office for an Alien Certificate. Under the Act, the employing department’s Minister is empowered, with the approval of the Minister for the Civil Service, to issue a certificate of employment where the conditions are met.

This certificate is valid only for a period of 5 years and is not transferable between government departments.

HR will keep a record of alien certificates issued and make an annual return to the Cabinet Office.

Definitions of main eligible groups

UK national

UK national is as defined in the UK Declaration on nationality for EC purposes made with effect from 1 January 1983. This comprises: British citizens, British subjects under Part IV of the British Nationality Act 1981 having the right of abode in the UK, and British Overseas Territories citizens. The Declaration also notes the reference, in connection with the Channel Islands and the Isle of Man, that 'any citizen of the UK and Colonies' is to be understood as referring to 'any British citizen'.

Commonwealth citizen and British Protected Person

Commonwealth citizen means any person who has the status of a Commonwealth citizen under the British Nationality Act 1981.

National of EU member state

EU Member States (besides the UK) comprise, from 1 May 2004, Austria, Belgium, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, the Republic of Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain and Sweden. From 1 May 2004, the Accession Treaty, signed in Athens on 16 April 2003, granted to Cyprus and Malta the same rights to work in another Member State (including the UK) as are enjoyed by the nationals of the other States of the European Economic Area. The European Union (Accessions) Act 2003 enabled the Accession Treaty to be implemented in UK law and approved the provisions of that Treaty insofar as they related to the powers of the European Parliament. It also provided the power, from 1 May 2004, to grant to the nationals of the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia the same rights to work in the UK as are enjoyed by nationals of the other States of the European Economic Area.

Other eligible groups

EFTA Member States

These comprise the following European Free Trade Area Member States: Iceland and Norway from 1 January 1994 and Lichtenstein from 1 May 1995.

EEA national

EEA national means a national of an EU or EFTA Member State as defined above. Although Switzerland is not part of the EEA, and Swiss nationals are not EEA nationals, the EU-Swiss Agreement (1 June 2002) confers upon Swiss nationals many of the same rights as are enjoyed by EEA nationals and their family members, including employment in the Civil Service.

Family members of EEA nationals

Family member means a specified family member of an EEA national who has moved to the UK from another EEA Member State for an approved purpose. The categories of family member are:

- the EEA national's spouse;
- a descendant of the EEA national or the spouse who is under 21 years of age or is their dependant;
- a dependent relative in the ascending line of the EEA national or the spouse.

Turkish Nationals

Although Turkey is still in the process of negotiating membership of the EU, under certain circumstances, Turkish nationals can work in the Civil Service. Turkish nationals who have been lawfully employed in the UK for four years in any job, or who have been lawfully employed for three years in a job within the same "occupation" as the post for which they have applied for in the Forestry Commission, can work in the Civil Service.