**PREVENTION OF ILLEGAL WORKING**

**GUIDANCE ON THE IMMIGRATION, ASYLUM AND NATIONALITY ACT**

**Introduction**

As an employer, we have a responsibility to prevent illegal working in the UK. The law on the prevention of illegal working is set out in the Immigration, Asylum and Nationality Act 2006 (amended by the Immigration Act 2016).

**All**potential employees require a right to work check, regardless of their nationality and immigration status. This **must**be conducted **before** employment/work commences.

The legislation stipulates the documents (under List A or List B referenced below) that we must check to be compliant and a three-step process outlined in Section 1 below. Failure to check an employee or worker's right to work is a breach of Home Office guidance and could result in a civil penalty of up to £60,000 if the University is found to be employing an illegal worker. This risks losing our licence to sponsor anyone requiring a visa (this applies to staff and students).

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**SECTION 1 – Right to Work Check**

There are 2 types of right to work check: Manual (in-person) or a Home Office Online check.

We may also use the [Employer Checking Service](https://www.gov.uk/employee-immigration-employment-status) where an individual has an outstanding application, administrative review or appeal, or if their immigration status requires verification by the Home Office, for example in the case of Crown Dependencies.

**STEP 1 – Obtain A Valid Document**

Valid documents are listed under List A or List B and the relevant list is determined by a person’s current immigration status.

|  |  |
| --- | --- |
| **List A Documents** | **List B Documents** |
| Applicable to individuals who have a **permanent** **and unrestricted right to work in the UK.**  | Applicable to individuals who have who have **been granted leave to enter or remain in the UK for a limited period of time and / or has restrictions on their right to work in the UK** |
| * [List A](https://www.gov.uk/government/publications/right-to-work-checklist/employers-right-to-work-checklist-accessible-version) contains the range of documents which you may accept for an individual who has a **permanent** right to work in the UK. This includes all UK and Irish citizens, EU/EEA and Swiss nationals, and their family members, where granted settled status, and non-EEA nationals holding Indefinite Leave to Remain (also known as settlement) or Right of Abode in the UK.
* The most up to date version of List A documents will always be on the Home Office website [here](https://www.gov.uk/government/publications/right-to-work-checklist/employers-right-to-work-checklist-accessible-version).

A driving licence, National Insurance Number on its own or in any format or a bill issued by a financial institution or a utility company are not considered acceptable identification documents. There is **no requirement** to carry out a repeat check for these individuals during their employment (unless there is a break in service). | * List B contains the range of documents which may be accepted for an individual who has a **temporary** right to work in the UK.
* The most up to date version of List B documents will always be on the Home Office website [here](https://www.gov.uk/government/publications/right-to-work-checklist/employers-right-to-work-checklist-accessible-version).

There is **a requirement** to carry out a repeat check before the individual’s current identification document expires for them to continue working.For students who have limited permission to work during term-times, they must also provide details of their **academic terms and vacation times** covering the duration of their period of study in the UK for which they will be employed. Please see section 2 for further details.  |

Please note that the university is not currently using the services of an Identity Service Provider (IDSP). Unless otherwise stated within the relevant List, we only accept original documents.

**STEP 2 – Check the Document**

The type of check will depend on the person's nationality, as follows:

|  |
| --- |
| **UK Citizens** and **Irish Citizens** |
| Where presenting either a passport or a birth certificate as evidence:* Original document must be presented.
* Undertake the manual check in the presence of the holder.
* Check that photographs and dates of birth are consistent across documents and with the person’s appearance.
* Ensure that the documents are valid and genuine, have not been tampered with and belongs to the holder. The Home Office provides [guidance on examining identity documents](https://www.gov.uk/government/publications/recognising-fraudulent-identity-documents). For right to work purposes you are only expected to undertake ‘reasonable checks’ on a document.
* Obtain an additional document if the individual provides two documents that have different names and ask them to explain the reason. The additional document could be a marriage certificate, a divorce decree, a deed poll or statutory declaration.
 |
| **Non-UK/Irish Citizens** |
| Non-UK/Irish citizens wishing to confirm their right to work will do so online via the following:* To prove EU Settled, EU Pre-Settled status or e-visa status the individual raises a share code via the [Home Office View and Prove](https://www.gov.uk/view-prove-immigration-status) online service.
* To prove visa status (biometric cardholders) the individual raises a share code via the [Home Office Prove your right to work](https://www.gov.uk/prove-right-to-work) online service.
* To prove right to work in the UK where a visa application or appeal has not yet been decided, an e-visa holder raises a share code via the [Home Office View and Prove](https://www.gov.uk/view-prove-immigration-status) online service which will confirm extended 3C leave. Alternatively a non-e-visa holder shares the application reference number of their in-time visa application and the [Employer Checking Service](https://www.gov.uk/employee-immigration-employment-status) will be used to request verification of extended 3C leave.

On receipt of a share code the university will:1. Use the Home Office online right to work checking service (the View a job applicant’s right to work details on GOV.UK) in respect of an individual and only employ the person, or continue to employ an existing employee, if the online check confirms they are entitled to do the work in question.
2. Ensure that any photograph on the online right to work check is of the individual presenting themselves for work.

Certify and retain a clear copy of the response provided by the online right to work check (storing that response securely, electronically or in hardcopy) for the duration of employment and for two years afterwards.  |

### **STEP 3 - Copy**

Photocopy – take a clear copy of each original document in a format which cannot later be altered, and retain the copy securely, electronically or in hardcopy. **On each copied page, you must provide your signature and print your name, the date, and time, to confirm that you have seen the original page or pages of the document. You must also include the statement ‘I confirm that this is a true copy of the original, taken on [DATE AND TIME]’.**

For passports this must include any page with the document expiry date, nationality, date of birth, signature, remain in the UK and undertake the work in question; and

Any page containing a UK Government endorsement to show that the holder is exempt from immigration control which allows your potential employee to do the type of work offered

For online right to work checks, you must retain a clear copy of the check and include the date and time the check was undertaken and the name of the employee who completed the check.

**IMPORTANT - if the worker has a current Biometric Residence Permit, Biometric Residence Card or a status under the EU Settlement Scheme, we must use the** [Home Office online right to work checking service](https://www.gov.uk/view-right-to-work) **in order to evidence their right to work.**

**SECTION 2 – Student/Tier 4 visa Holders**

Student/Tier 4 visa holders may be allowed to work while they are in the UK, however they may not fill a full-time permanent vacancy. They may only be employed on a temporary basis.

There are limits on the number of hours they can work. If studying at degree level (NQF level 6 or equivalent) with a sponsor which is a UK recognised body or a UK Higher Education Institution, they are allowed to work:

* Up to 15 hours per week during term time. This includes paid and unpaid work. For the purposes of work, a week is defined as a period of seven days starting on a Monday and ending on a Sunday.
* full-time during holidays. This is a period when they are not required to study. (NB. Re-submission of assignments or coursework/resits are classed as term-time.)
* full-time from the course end date. The student must provide a letter to confirm the course has ended prior to working full-time.
* On a work placement as part of the course, providing the work placement does not amount to more than 50% of the course;

The University limits the number of working hours at the University to 15 hours per week during term-time for all Undergraduate students and those students undertaking full time studies at any level, across all contracts of employment with the University.

In addition to the List B check outlined above there is an additional requirement to obtain documentary evidence of term and vacation dates as part of the right to work in the UK check for Student visa holders. This will ensure we do not employ students outside of their visa conditions in relation to working hours.

The following is acceptable as evidence and must be copied and provided to Human Resources:

* **A copy of a letter or email addressed to the student** from their education institution confirming term time dates for the student’s course; or
* **A letter addressed to us as the employer** from the education institution confirming term time dates for the student’s course.
* **A letter from the Doctoral College (or equivalent) confirming pre-booked annual leave dates (PGR students only)**

For Student/Tier 4 visa holders, working hours must be agreed and input into the Immigration Spreadsheet by the line manager a minimum of 24 hours in advance of the student undertaking work in line with the conditions of their visa and the University’s policy. The Immigration Spreadsheet is used to record all working hours offered to Student/Tier 4 visa holders across the organisation. This is to ensure, that even where there are multiple contracts, the University does not offer hours in excess of 15 per week in total during term time. **Line managers have a personal responsibility to follow this step of the procedure, updating the** [**Immigration Spreadsheet**](https://livebournemouthac.sharepoint.com/%3Ax%3A/s/CasualStaffCompliance/EQh-zCdrp0RKhTHRePKLkl8B_RnKDjGsSI5NAi7ExPpF0Q?e=NTE8a3)**, and failure to do so will be treated seriously by the University.**

To be granted access to the [Immigration Spreadsheet](https://livebournemouthac.sharepoint.com/%3Ax%3A/s/CasualStaffCompliance/EQh-zCdrp0RKhTHRePKLkl8B_RnKDjGsSI5NAi7ExPpF0Q?e=NTE8a3), line managers must complete mandatory [Part Time Hourly Paid line manager training.](https://brightspace.bournemouth.ac.uk/d2l/le/lessons/25709/units/1071694) This training, alongside the Immigration Spreadsheet [guidance page](https://livebournemouthac.sharepoint.com/sites/CasualStaffCompliance/SitePages/Casual-Staff-Compliance%281%29.aspx), provides line manager support and guidance to fulfil this responsibility.

**PTHP pay claims must be checked against the immigration spreadsheet before they are approved.** **No retrospective changes to the immigration spreadsheet should be made**, however where more hours have been worked than were recorded in the immigration spreadsheet, this must be immediately reported to Humans Resources.

**SECTION 3 – Skilled Worker/Tier 2/Temporary Worker visa holders on a Part Time Hourly Paid contract**

In addition to the work for which their visa was issued, Skilled Worker/Tier 2 and Temporary Worker visa holders may take up supplementary work so long as the role is **either:**

* + A job in the same profession **and** at the same professional level as the work for which the Certificate of Sponsorship was assigned; **Or**
	+ A job on the [Shortage Occupation List](https://www.gov.uk/guidance/immigration-rules)

**And**:

* + Is for **no more than 20 hours** per week;
	+ is conducted outside of the normal working hours for which the Certificate of Sponsorship was assigned, **and**
	+ the person remains working for the sponsor in the job for which the CoS was assigned

Prior to a sponsored individual undertaking supplementary employment at BU, if they are not a current employee of the University, a [right to work check](http://intranetsp.bournemouth.ac.uk/policy/Immigration%20Regulations%20%28Guidance%29.docx) must be taken and a letter provided confirming:

* They’re still working for their sponsor;
* The job description and occupation code of their sponsored employment (if supplementary employment is not in a shortage occupation);
* Their normal working hours.

In addition, we require confirmation from the new member of staff in writing that they are not doing any other supplementary employment with another employer to ensure they will not be doing more than 20 hours a week in total of supplementary employment.

Working hours must be agreed and input into the Immigration Spreadsheet by the line manager a minimum of 24 hours in **advance** of the visa holder undertaking supplementary work in line with the conditions of their visa and the University’s policy. The Immigration Spreadsheet is used to record all working hours offered to visa holders with restricted working hours across the organisation. This is to ensure that even where a Skilled Worker/Tier 2/Temporary Worker visa holder holds multiple contracts, the University does not offer hours in excess of 20 per week in total. **Line managers have a personal responsibility to follow this step of the procedure, updating the** [**Immigration Spreadsheet**](https://livebournemouthac.sharepoint.com/sites/CasualStaffCompliance/SitePages/Casual-Staff-Compliance%281%29.aspx)**, and failure to do so will be treated seriously by the University**

To be granted access to the [Immigration Spreadsheet](https://livebournemouthac.sharepoint.com/%3Ax%3A/s/CasualStaffCompliance/EQh-zCdrp0RKhTHRePKLkl8B_RnKDjGsSI5NAi7ExPpF0Q?e=NTE8a3), line managers must complete mandatory [Part Time Hourly Paid line manager training](https://brightspace.bournemouth.ac.uk/d2l/le/lessons/25709/units/1071694). This training, alongside the Immigration Spreadsheet [guidance page](https://livebournemouthac.sharepoint.com/sites/CasualStaffCompliance/SitePages/Casual-Staff-Compliance%281%29.aspx), provides line manager support and guidance to fulfil this responsibility.

**PTHP pay claims must be checked against the immigration spreadsheet before they are approved.** **No retrospective changes to the immigration spreadsheet should be made**, however where more hours have been worked than were recorded in the immigration spreadsheet, this must be immediately reported to Humans Resources.

**SECTION 4 – Consequences of Failing to Undertake A Right to Work Check**

Human Resources will undertake a regular audit of copies of List A and List B documentation, to ensure that the 3 step process outlined above has been fully completed **prior** to the individual commencing work, including providing term dates when employing Student visa holders.

If the eligibility to work check is not fully completed at the appropriate time this could result in a civil penalty up to £60,000 per illegal worker reported or criminal conviction. In addition, Human Resources will undertake an investigation in line with the [Disciplinary Procedure](http://intranetsp.bournemouth.ac.uk/policy/disciplinary-procedure.doc) which may result in disciplinary action for the member of staff who has allowed the individual to work without the appropriate eligibility to work check having taken place.

Please contact Human Resources if you require further advice and guidance in relation to an individual’s right to work in the UK and for the University. Human Resources contact details can be found on the [Staff Intranet](https://intranetsp.bournemouth.ac.uk/documentsrep/HROD_OrgChart.pdf) or alternatively the team can be via email at hrenquiries@bournemouth.ac.uk.

Workshops can be delivered by Human Resources on the Prevention of Illegal Working. For further information please email BUVI@bournemouth.ac.uk.

**SECTION 5 - FREQUENTLY ASKED QUESTIONS**

**What is a right to work check?**

The University has a legal responsibility to ensure that all employees have the legal right to work in the UK.  Checks on right to work must be carried out for every person the University intends to employ regardless of their nationality before they begin any work.  This is a Home Office requirement and if we do not comply with our duty to ensure our employees have the right to work in the UK, there are serious penalties for non-compliance such as significant fines, downgrading or withdrawal of the University’s sponsor licence.

A right to work check means that acceptable documents are checked for showing permission to work **before starting work at the University.**No work of any nature is permissible in advance of this check including induction, training and preparation work. Failure to produce valid documents for a right to work check will result in the start of the work being

delayed. Follow-up checks are also required for those with time-limited right to work in the UK **before** their permission/visa is due to expire.

**What documents are acceptable for the right to work check?**

The most up to date version of the list of acceptable documents will always be on the Home Office website [here](https://www.gov.uk/government/publications/right-to-work-checklist/employers-right-to-work-checklist-accessible-version).

From **1 July 2022**, all EU citizens and biometric card (Biometric Residence Permit - BRP, Biometric Residence Card - BRC) holders must evidence their right to work using the [Home Office online service](https://www.gov.uk/view-right-to-work) only. Employers will no longer be able to accept physical documents for the purposes of a right to work check even if it shows a later expiry date.

### **When should a right to work check be completed?**

Right to work must be checked before a worker or employee does any work for the University. If the right to work is time-limited, it must be rechecked before it expires, to allow the person to continue working.

**Who is automatically entitled to live and work in the UK?**

There are a number of ways in which individuals may already be eligible to live and work in the UK.

Some of the main categories are:

* British Citizens
* EU Citizens holding Pre-Settled or Settled Status
* Nationals of countries granted indefinite leave to remain
* Valid Global Talent Visa holders

These categories are subject to change from time to time. You are therefore advised to check your own eligibility via the [UK Visas and Immigration web pages](https://www.gov.uk/government/organisations/uk-visas-and-immigration).

**I have EU Settlement – what do I need to provide?**

Those who have made a successful application to the EU Settlement Scheme will have been granted their immigration status digitally and can only prove their right to work using Home Office online service ‘prove your right to work to an employer’ available on GOV.UK: <https://www.gov.uk/prove-right-to-work>.

To prove their right to work EU settled/pre-settled individuals will provide the University with a share code and their date of birth, which will enable us to check their Home Office immigration status via the online service available on GOV.UK: <https://www.gov.uk/view-right-to-work>.

**I cannot produce a Share Code**

Unfortunately, there will be times when an individual cannot access the online right to work check system to produce a share code.

 In this scenario the individual should contact the UK Visas and Immigration contact centre:

Telephone: +44 (0)300 790 6268 - select option 3
Telephone: +44 (0)203 875 4669, if they are unable to dial 0300 numbers

The service is open Monday to Friday, 8am to 8pm and Saturday and Sunday, 9:30am to 4:30pm

Further information can be found on the [Government website](https://right-to-work.service.gov.uk/prove/help%3E).

**What is an eVisa?**

‘eVisa’ refers to a digital visa provided by the Home Office as evidence of a person’s immigration status (permission to enter or stay in the UK).

**What is the Employer Checking Service?**

The Employer Checking Service refers to the enquiry and advice service operated by the Home Office that employers are required to contact in certain circumstances to check whether a person is allowed to work in the UK and, if so, the nature of any restrictions on that person’s right to do so.

**What is the Home Office online right to work checking service?**

This is the online system allowing employers to check whether a person is allowed to work in the United Kingdom and, if so, the nature of any restrictions on that person’s right to do so. For the avoidance of doubt, this system is accessible for employers on the ‘[View a job applicant’s right to work details](https://www.gov.uk/view-right-to-work)’ page on GOV.UK. No other online portal relating to immigration status may be used instead for right to work checking purposes.

**What is pre-settled status?**

Pre-settled status means a person has applied for settled status in the UK under the EU Settlement Scheme. Individuals with pre-settled status can stay in the UK for five years from the date they received pre-settled status.

**What is settled status?**

Settled status means the person has be awarded pre-settled status conditions can stay in the UK as long as they like.

**I have EEA pre-settled status which is due to expire, what should I do?**

The Home Office has also confirmed that from September 2023 they will automatically extend EUSS pre-settled status holders’ immigration status before the current grant of pre-settled status expires to ensure indivdiuals do not lose any rights and entitlements where a further application to the EU Settlement Scheme has not been made.

The extension will be applied automatically to your digital status by the Home Office one or two months before the expiry date of their pre-settled status. This will be reflected in your digital profile when proving your right to work using the Home Office online service. BU will be required to conduct a right to work check prior to the expiry date of your pre-settled status.

Pre-settled status may be cancelled or curtailed if the requirements can not be met.

**Are checks required for an Asylum Seeker?**

An asylum seeker is a person who has made an application for asylum, but whose application is yet to be decided upon. Asylum seekers generally do not have the right to work in the UK. For the very small number who do, it will state employment permitted or allowed to work on their application registration card (ARC). We must seek a positive verification notice from the Home Office to confirm the individual’s status and right to work in the UK before they can be allowed to start work. This can be done by going to the [online employer checking service portal](https://www.gov.uk/employee-immigration-employment-status).

**Are checks required for Refugees?**

A refugee is a person who has had a positive decision on their claim for asylum. Refugees have rights under the Geneva Convention to be treated no less favourably than citizens of the host nation. This means that they can work and are able to move and reside freely in the UK and will be able to evidence their right to work.

**Where can I find more information on right to work checks?**

Further information is available [here](https://www.gov.uk/government/publications/right-to-work-checks-employers-guide/an-employers-guide-to-right-to-work-checks-6-april-2022-accessible-version) in the Employers Guide to Right to Work