

PREVENTING ILLEGAL WORKING

Document Change Control

Date	Version	Comments
July 2016	1.0	First version of policy drawn up after advice from Legal Department and Director of HR.

1. About this procedure

- 1.1 The law on preventing illegal working is set out in sections 15 to 25 of the Immigration, Asylum and Nationality Act 2006 (known as the 2006 Act) which came into force on 29 February 2008.
- 1.2 The legislation is in place to:
- a. make it harder for people with no right to work in the UK to unlawfully gain or keep employment;
 - b. make it easier for employers to ensure that only people who are legally allowed to work for you are employed; and
 - c. strengthen the Government's controls on tackling illegal working by making it easier for them to take action against employers who use illegal workers.
- 1.3 It is a criminal offence to knowingly employ a person who does not have valid permission to work in the UK. The University could also face a large fine, known as a civil penalty, under section 15 of the 2006 Act for up to £20,000 for each illegal worker if it knowingly employs a person who does not have valid permission to work in the UK. The University has a duty under the 2006 Act to carry out document checks on people to make sure they have the right to work in the UK before it employs them.
- 1.4 If the UKVI finds that the University is employing an illegal worker and the University has correctly carried out the document checks required, it will have a legal excuse, known as a **statutory excuse**, against payment of a fine. However, if the University knows that the individual is an illegal worker, it will have no statutory excuse, even if has carried out the required document checks.
- 1.5 This document summarises the University policy and procedures on the prevention of illegal working.
- 1.6 This procedure applies to all employees and prospective employees of the University including full and part-time employees, those on fixed term and temporary contracts of employment regardless of length of service. It also applies to individuals working on an unpaid or supernumerary basis for the University. Checks are made on **all** employees, regardless of race or nationality.

2. Prevention of illegal working

2.1 It is a statutory requirement that all prospective employees (and/ or employees as applicable) must provide:

- One original document alone, or two original documents in the specified combinations in List A of Appendix 2 to this policy;
- One original document alone, or two original documents in the specified combinations in List B of Appendix 2 to this policy.

List A shows that the employee is not subject to immigration control, or has no restrictions on their stay. If a List A document is produced, this will establish that the person has a right to work for the duration of the individual's employment.

List B shows that the employee has a right to work for a limited period of time and/ or has restrictions on their right to work. If an individual produces a document or documents from List B, further document checks must be carried out as detailed in paragraph 2.8 below.

2.2 The following information will be checked in each case:

- Whether the employee is the person named in the document(s).
- Whether the photos are consistent with the person's appearance.
- Whether the date of birth is consistent across the documents and match up with the person's appearance.
- Whether the permission remains valid and expiry dates of any limited leave to enter or remain in the UK have not passed.
- Any UK government endorsements (Biometric Residence Permits, stamps, visas etc) will be checked to ensure that the person is able to do the type of work that they are employed to do.
- Whether the documents appear genuine, not tampered with and belong with the holder.
- If the documents are in different names, a further document such as a marriage certificate will be requested as an explanation.

2.3 A copy of the document will be taken. In respect of a passport or travel document, the following will be copied:

- Front cover;
- Page containing the individual's details i.e. nationality, photo, date of birth, signature, date of expiry and biometric details; and
- Any page containing UK Government endorsements (noting the date of expiry and any immigration endorsement) and showing the individual's permission to be in the UK and their right to carry out the work that they are employed to do.

In respect of other documents, these must be copied in their entirety (including both sides of a Biometric Residence Permit).

It is advised that the date on which the copy of the document was taken is noted on the copy of the document. A record of every copied document will be kept for the duration of employment and for a period of 2 years following termination of employment.

- 2.4 If an individual is unable to provide satisfactory documents to prove their right to work in the UK, the offer of employment is withdrawn.
- 2.5 Citizens of countries which are signatories to the European Economic Area Agreement (EEA) are able to work in the UK without obtaining any formal immigration clearances.
- 2.6 If the prospective employee presents a UK visa with no restrictions on the type of employment they can undertake, it is best practice that a fixed term contract for the role is issued in line with the end date of the UK visa.
- 2.7 If the UK visa comes with conditions attached on the type of work the prospective employee can undertake, a Tier 2 Certificate of Sponsorship is required. Tier 2 Certificates of Sponsorship are not transferable from one employer to another and are generally not available for posts at Grade 5 or below. Should an employee hold a Tier 2 Certificate of Sponsorship with the University and wishes to change their job, the changes must be reported to UKVI and it be necessary to apply for a new Tier 2 CoS.
- 2.8 If an employee produces a document from Group 1 of List B, (See **Appendix 1**) document checks must be carried out prior to the expiry date of the recorded visa, in addition to being carried out before the employment begins. If an employee produces a document from Group 2 of List B, document checks must be carried out 6 months from the date of the Positive Verification Notice.
- 2.9 The Human Resources Department is responsible for ensuring these checks take place and the information is recorded on the payroll system (Trent) and on the employees' personal file. Assistance will be sought from the employees' line manager should they prove difficult to contact or are not responding to requests to present their documents. Failure to provide identification documents may lead to formal action under the University's *Disciplinary Procedure* as the employee is not complying with legislative requirements.

3. Responsibilities

- 3.1 The **Human Resources Department** is responsible for:
- Ensuring the pre-employment checks for all employees, temporary and agency workers and students, is carried out satisfactorily, recorded and documents stored in order to be presented for inspection by the UKVI if required;
 - Carrying out checks on right to work in the UK on all employees before the expiry of their UK visa;
 - Ensuring document retention requirements of UKVI are met.
- 3.2 The **Schools and Functions** are responsible for:
- Ensuring that start dates are agreed with prospective employees once their Right to Work in the UK has been confirmed.
 - Ensuring the migrant presents current, original identification to prove their Right to Work in the UK when required by the University;
- 3.3 The **Employee** is responsible for:
- Presenting current, original identification to prove their Right to Work in the UK when required by the University;

- b. Keeping the University informed of their current UK address, email address, UK telephone number and mobile number.
- c. Informing the University of any changes to their immigration status.
- d. Co-operating with the University and the UKVI, particularly if the UKVI makes a compliance check or requires further information.

Appendix 1 – Acceptable Documents

Information taken from:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/378926/employers_right_to_work_checklist_november_2014.pdf

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 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 a European Economic Area country or Switzerland.
4. A permanent residence card issued by the Home Office to the family member of a national of a European Economic Area country or Switzerland.
5. A **current** 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 time limit on their stay in the UK.

Combinations:

7. An official document giving the person's permanent National Insurance number and their name issued by a Government agency or a previous employer, **together with:**
 - a. 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;
 - b. 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;
 - c. A birth or adoption certificate issued in the Channel Islands, the Isle of Man or Ireland; or
 - d. A certificate of registration or naturalisation as a British citizen.

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 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 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:

5. 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.
6. 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.
7. 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.