



## Right to Work Checks

It is very important for the University that only those with the appropriate Right to Work are employed. There can be very serious consequences for visa holders and the University if the laws on Right to Work are breached.

This document provides general information on visa types and detailed guidance on carrying out Right to Work checks. If you are responsible for carrying out such a check and have any doubts regarding the documents presented you should raise this with the University's UKVI Compliance Officer within the central HR Service.

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## Introduction - Legal Background

The last Labour Government introduced Right to Work legislation which took effect on 27 January 1997. This legislation introduced a Civil Penalty scheme which imposed large penalties on employers who were found to have been employing individuals illegally. The purpose of the legislation is to make it more difficult for those with no immigration permission to gain employment.

A full defence against a Civil Penalty can be claimed where an employer is able to show that they have carried out a valid Right to Work check.

Although, there is no legal duty to carry out a Right to Work check imposed on employers in general, there is a duty for employers, such as the University, who hold a Sponsor licence to comply with Right to Work legislation and this means properly carrying out Right to Work checks. Further, without a proper Right to Work check in place the University has no statutory defence against a claim of illegal employment.

## What is illegal employment?

There are two types of illegal employment:

1. Those who work who have no immigration permission to be in the UK
2. Those who have immigration permission to be in the UK, but who work in breach of their visa conditions.

The Home Office consider both (1) and (2) to constitute illegal employment.

The University requires to be particularly careful in connection with category (2). Work restrictions for various visa holders will now be considered.

## Work Restrictions for Visa Holders

### Tier 2 and Tier 5 Sponsored Employees

Tier 2 and Tier 5 migrants make up the University's sponsored workforce. Their immigration permission to live and work in the UK is sponsored by the University. Both the individual employee and the University need to exercise care that they do not breach their work restrictions on their visa. Furthermore, should any work restriction breaches be identified, the University is required to report these to the Sponsor Compliance team.

#### **Specific Work Restrictions**

1. The employee must do the job as set out in their Certificate of Sponsorship (CoS)
2. The employee may only do **supplementary work**, if it meets the following strict criterion:-
  - Is for 20 hours or less per week
  - Is at the same professional level as the work on the CoS
  - Is work listed on the Shortage Occupation List
  - Is outside the normal working hours of the work on the CoS

### **Tier 4**

The student route is a route intended for study and not employment. Students and employers need to be careful to ensure that students do not act in breach of their visa conditions.

#### **Hours of Work**

- If the student's course of study is at degree level or above, they are allowed to work up to a maximum of 20 hours per week during term time, and full-time during vacation.
- If the student's course of study is below degree level they will be able to work a maximum of 10 hours per week during term time, and full-time during vacation.

#### **What constitutes work?**

Student's work condition includes any paid work, unpaid work, voluntary work and internships. Any work carried out under this category must be added together to ensure that the total is below the relevant limit.

#### **What are the vacation periods?**

Students require to check their specific vacations for their level of course before working full-time.

#### **Undergraduate students**

These students can work full-time during vacation periods at Christmas, Easter and during the summer. Students should check the University timetable to find out when they can work full-time.

### ***Postgraduate Taught students (Masters)***

These students can only work full-time in the Christmas and Easter vacation. Full-time employment is not allowed during the summer as this period is classed as full-time study. A student who has completed their studies, i.e. finished all taught components and submitted their dissertation can work full time.

### ***Postgraduate Research students (PhD)***

The above students are entitled to a total of 8 weeks' vacation per academic year. The student can work full-time only during these 8 weeks of vacation. Any vacation periods must be agreed in writing with their supervisor and school before they work full-time. Given

**Given the restrictions relating to post graduate students any proposal to engage those on a Tier 4 visa on a full-time work must be referred to the University's UKVI Compliance Officer within the central HR Service (See contact details below).**

### ***After completion of studies***

A student can work full time after they have completed their studies. Normally, the Home Office will grant a student a further 4 months on their Tier 4 visa after their studies are due to end and they can work full time during this period.

A student cannot however fill a full-time permanent vacancy in this or any other period. The only exception to this is where the student has made an application to switch into Tier 2 and the role they are performing is the same role that their employer has issued them with a Certificate of Sponsorship (CoS) for their Tier 2 application. If the Tier 2 visa is refused then the employment would require to end.

### ***Prohibition on Self-employment***

Students are not allowed to be self-employed nor to engage in business activity. The Home Office definition of self-employment is set out below:

“Self-employed” means an applicant is registered as self-employed with HM Revenue & Customs, or is employed by a company of which the applicant is a controlling shareholder.

Students, particularly those who have a full-time right to work on completion of their studies need to be careful that they do not agree to requests from other employers or a Recruitment Agency to work on a “self-employed”, “consultancy” “contractor” or “freelance basis”

### ***Right to Work Documents***

Students should provide their Right to Work Document, i.e. their passport containing a vignette or their Biometric Residence Permit (BRP) together with evidence of their University term dates to evidence their Right to Work. A print out from the University website will suffice to evidence their term dates.

## General Right to Work Issues

### Timing

A right to work check **must** always be carried out prior to the employment starting. If the check is carried out after employment commences it will be invalid and will not be a statutory defence against a civil penalty.

### Original Documents

The right to work checker **must** have the original immigration status document(s) at the time they carry out the check. The check should be carried out in the presence of the document holder.

### *In Emergency Circumstances Only*

However, in an emergency, the original documents could be **sent in advance** to the checker and the check could be carried out with the document holder via Skype (**the checker must have the physical documents in advance of the Skype call taking place**). This is only recommended in an emergency situation.

## How to Carry Out a Right to Work Check

### Home Office Right to Work Checklist

The Home Office have produced a very helpful Right to Work checklist which contains full details of what documents are acceptable and also further instructions on the checking process at Stage 2. This checklist should be used for all RTW checks.

See [Right to Work Checklist](#)

There are three stages to a right to work check, summarised below:

#### **Stage 1: Obtain**

- Obtain the relevant document or combination of documents from List A or List B (part 1 or 2) see below for information

#### **Stage 2: Check**

- Check the document meets the requirements as set out in List A or List B
- Check the document belongs to the person in question
- Check the document is not a forgery

#### **Stage 3: Copy**

- Take a high quality colour copy of the document, ensuring that all relevant page(s) are copied
- Record the date and time that the check was made and then print and sign name of checker
- Diarise the date that a repeat check is due

Complete the Home Office Right to Work Checklist







**3. Registration Certificate or Document Certifying Permanent Residence issued by the Home Office to a national of a European Economic Area country or Switzerland.**

These documents confirm an EEA nationals' right to reside in the UK. There has been a huge upsurge in applications for these documents following Brexit.

Please note that the document may be fixed into a passport, but where this is the case the EEA passport itself will suffice as a List A document. The document could alternatively be a stand-alone cardboard document which carries a vignette certifying the holder's status.

The document may have a "renewal" date but there is no requirement for the document to be current. If an old document is relied upon pay particular attention to checking the photo and personal details.



There is no requirement for this document to be current. An expired Permanent Residence Card is a valid Right to Work document. Please note that this is the only circumstance where you can accept an expired document from a non- British/EEA employee.

A Residence Card is now issued in biometric format, similar to a BRP. Permanent Residence cards have been issued in this format since 6 April 2015

**5. A Current Biometric Immigration Document (Biometric Residence Permit (BRP)) issued by the Home Office indicating that the person named is allowed to stay indefinitely in the UK or has no time limit to stay in the UK**

This document is issued to non- EEA nationals on the basis of domestic immigration law. The document must be current to be a valid right to work document. The document requires to be renewed every 10 years, so check carefully that the document is in date.

The indefinite leave will be recorded under the heading 'Type of Permit' and should not be confused with the 'Valid Until' date. When a person has indefinite leave the valid until date will always be 10 years after the date of issue. This date is the card expiry date and not a limit on the person's permission to stay in the UK.



**6. Current passport showing the holder is exempt from immigration control or allowed to stay indefinitely in the UK (ILR), has the right of abode, or has no time limit to stay in the UK**

This document must be current, i.e. the document must not have expired. If the ILR endorsement is on an expired passport, then it is not an acceptable right to work document. The holder cannot commence employment until they have applied for a No Time Limit Document. See the Home Office guidance <https://www.gov.uk/transfer-visa>.

If the passport containing this has expired, the proof will only meet the required standard if the holder applies to renew the passport and then applies for a new Certificate.

This application can be made by post or at a premium service centre. If a postal application is made, the employee should provide evidence that they have made the application and a PVN can be sought. Employment can commence after you have been provided with a PVN.



Right of abode- This is the status automatically given to British citizens and which others may qualify for. BRPs are NOT produced to confirm this status. A Certificate of Entitlement to the Right of Abode is the required proof of status. If the passport containing the Certificate of Entitlement has expired, the holder will require to renew their passport and apply for a new Certificate in order to obtain a right of abode.

## 7. Current Immigration Status Document (ISD) containing an ILR endorsement AND official evidence of National Insurance

It will be rare to come across an Immigration Status document. These were previously issued to refugees and others who did not hold a valid passport or travel document at the point they secured leave. These documents must be combined with official evidence of national insurance to constitute a valid Right to Work document. The ISD document must be current.

Both documents are needed prior to commencement of employment in order to obtain a statutory defence. If one of the named documents is provided, but not the other, or the other is provided late, there will be no statutory defence.



**8. A full birth or adoption certificate issued in the UK AND official evidence of National Insurance**

The birth certificate must contain the name of at least one of the holder's parents. Please note you cannot accept a short or abbreviated birth certificate. Such a birth certificate will not show the name of the holder's parent(s).

Both



documents are needed prior to commencement of employment in order to obtain a statutory defence. If one of the named documents is provided, but not the other, or the other is provided late, there will be no statutory defence.

9. A full birth or adoption certificate issued in the Channel Islands, the Isle of Man or Ireland AND official evidence of National Insurance

Both documents are needed prior to commencement of employment in order to obtain a statutory defence. If one of the named documents is provided, but not the other, or the other is provided late, there will be no statutory defence.

### 10. A certificate of registration or nationalisation as a British citizen AND official evidence of National Insurance



Both documents are needed prior to commencement of employment in order to obtain a statutory defence. If one of the named documents is provided, but not the other, or the other is provided late, there will be no statutory defence.

### List B Documents- Time-limited right to work

List B documents provide a time-limited right to work check. List B is divided into 2 Groups. Group 1 documents will provide a time-limited statutory excuse which expires when the employee's permission to be in the UK expires. Group 2 documents expire 6 months from the date specified in the Positive Verification Notice.

### List B Group 1- statutory defence expires with visa expiry date



1. A **current** passport endorsed to show the person is allowed to be in the UK and their work permission. You should check carefully if the visa contains any restrictions on the hours of work the holder is permitted to do. Special care should be taken in respect of employees who are not sponsored by the University of Glasgow. For Tier 4 (students) you should ensure that you take additional documentation in respect of their term-time, e.g. a print out of the University time-table.

If you are shown a 30 day entry clearance vignette, instruct the holder to return when they have collected their BRP from the Post Office. They must collect the BRP within 10 days of their arrival. The 30 day vignette only gives them permission to work to the end of the 30 day period. You should diarise the end of this period so you can carry out a repeat check.



3. A **current** BRP confirming leave to remain. This will be a micro-chipped credit sized card. Any endorsements should be carefully checked, some visa holders will have their work restrictions endorsed on their BRP.

BRP cards should explicitly state “Work Permitted” where this is the case, within the “Remarks” or else may refer to “Restricted Work” or specify the limits on work, e.g. “Work 20 hours max in term time”





4. A current immigration Status Document containing a limited leave to remain endorsement and official evidence of National Insurance. These documents will be extremely rare.

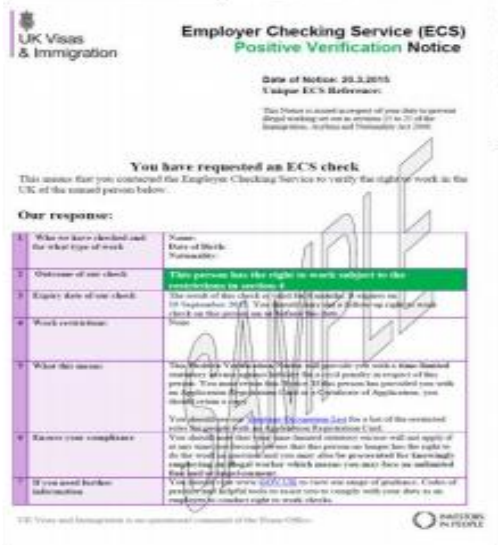


**List B Group 2- statutory defence expires 6 months after document issued by the Office**

1. A Certificate of Application (COA) - this is a paper document issued by the Home Office on receipt of an application for a Residence Card. This document must expressly state that the individual has a right to work. The check will only be valid if it expressly states that the holder has a right to work.

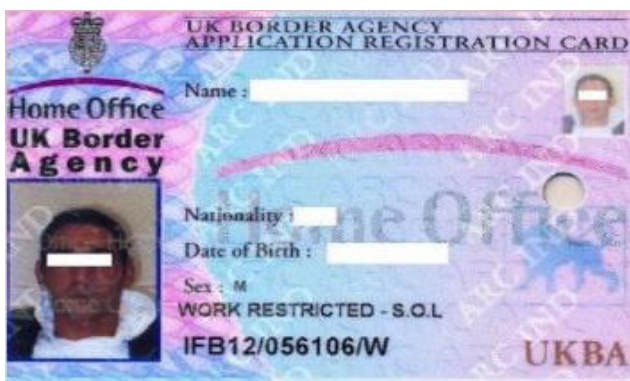
The document must not have expired in order to constitute a valid Right to Work.

The Home Office are required to issue a COA immediately on receipt of an application for a Residence Card. A Positive Verification Notice (PVN) must also be obtained from the Home Office <https://www.gov.uk/employee-immigration-employment-status>.



2. An Application Registration Card (ARC Card) issued by the Home Office stating that the holder is permitted to take the employment in question, together with a Positive Verification Notice.

This is a document issued to an Asylum Seeker. Asylum seekers have limited rights to work after their asylum claim has been outstanding for more than 12 months. A Positive Verification Notice (PVN) is also required. See (3) below.



3. A Positive Verification Notice (PVN) 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. The employer should ask the employee/prospective employee for their consent before contacting the Employer Checking Service.

An online application for this document can be made at <https://www.gov.uk/employee-immigration-employment-status>.

**UK Visas & Immigration**

**Employer Checking Service (ECS)  
Positive Verification Notice**

Date of Notice: 20.3.2015  
Unique ECS Reference:

This Notice is issued in respect of your duty to prevent illegal working set out in sections 11 to 15 of the Immigration, Asylum and Nationality Act 2006.

**You have requested an ECS check**  
This means that you contacted the Employer Checking Service to verify the right to work in the UK of the named person below.

**Our response:**

1. Who we have checked and for what type of work	Name: Date of Birth: Nationality:
2. Outcome of our check	<b>This person has the right to work subject to the restrictions in section 4</b>
3. Expiry date of our check	The result of this check is valid until midnight 19 September 2015. You should carry out a follow up right to work check on this person on or before this date.
4. Work restrictions	None
5. What this means	This Positive Verification Notice will provide you with a time-limited statutory excuse against liability for a civil penalty in respect of this person. You must retain this Notice. If this person has provided you with an Application Registration Card or a Certificate of Application, you should retain a copy. You should consult the <a href="#">Immigration Rules</a> for a list of the restricted roles. You should work in an Application Registration Card.
6. Ensure your compliance	You should note that your time-limited statutory excuse will not apply if at any time you become aware that this person no longer has the right to do the work in question and you may also be prosecuted for knowingly employing an illegal worker which means you may face an unlimited fine and/or imprisonment.
7. If you need further information	You should visit <a href="https://www.gov.uk">www.gov.uk</a> to view our range of guidance. Codes of practice and helpful tools to assist you to comply with your duty as an employer to conduct right to work checks.

UK Visas and Immigration is an operational component of the Home Office

INVESTORS IN PEOPLE

You must apply for this document where:-

- An employee/prospective employee claims they have an outstanding appeal or application with the Home Office
- An employee/prospective employee provides an ARC card with a work entitlement
- An employee/prospective employee provides a Certificate of Application

### Diarising Time-limited statutory excuses

It is very important that time-limited statutory excuses are properly monitored.

The following table highlights the diary entries that should be diarised:

	Deadline	Reminders
<b>List B—Part 1</b>	The expiry date of the document in question	Reminders to contact the employee 1 month and 2 weeks before the deadline
<b>List B—Part 2</b>	6 months from the date of the Positive Verification Notice	Reminders to contact the employee 1 month and 2 weeks before the deadline
<b>Student term date information (see also below)</b>	The start of the new academic term (precise date unknown)	Reminder to contact the employee in the 2 <sup>nd</sup> week of August to obtain new term dates

### Right to Work Queries

In the majority of situations Right to Work will be straightforward. However, if you come across a complex query or if you require any further assistance on whether you can accept an employee/prospective employee's Right to Work then please contact the University's UKVI Compliance Officer: [hr-viasandimmigration@glasgow.ac.uk](mailto:hr-viasandimmigration@glasgow.ac.uk).