Right to Work Checks

How and when to complete a right to work check to prevent illegal working

8 March 2022
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Why do we undertake right to work checks?

The University has a responsibility to prevent illegal working in the UK by ensuring that our employees have the right to work here.

By undertaking a right to work check we are providing the University with a statutory excuse against liability for a civil penalty. There are serious penalties for non-compliance including:

- a civil penalty of up to £20,000 per illegal worker
- a criminal conviction carrying a prison sentence of up to five years and an unlimited fine
- not being able to sponsor migrants

The Home Office have created a brief video regarding UK right to work checks, which you may find useful.

When to undertake a right to work check

Checks must be carried out on all potential employees, regardless of their nationality, race or ethnicity and must be undertaken before employment/work commences.

If an individual’s right to work is time-limited, a further follow-up check would be needed before their existing right to work comes to an end. HR will undertake any follow-up checks.

- **Interview Candidates**
  All interview candidates are currently required to send scanned copies of their documentation to HR before the interview day. HR would then undertake a formal right to work check prior to the employee’s first day in post.

- **Part Time Hourly Paid Lecturers/Casual Pool Applicants**
  A right to work check must be undertaken by the School/Service who are engaging the individual. This check must be completed prior to the applicant
undertaking any work and the eligibility documentation must be submitted with the relevant pool application pack.

If a candidate requires sponsorship or is awaiting a valid right to work document, they must not start work until the visa (or other relevant work document) is obtained and a right to work check is undertaken.

How to complete a right to work check

There are two types of right to work check:

- **Manual Document Based Check** *(face to face or via video call during Covid provisions)*
  This can be used for all except those who hold digital proof of their immigration status in the UK – an online check is required in those instances.

*From 6 April 2022, certain visa holders will not be able to use their physical card to demonstrate their right to work but will need to use the Home Office checking service instead. Please see the Biometric Card Holders section for more information.*

- **Online Check** *(using the Home Office online right to work checking service)*
  Currently this service supports checks in respect of those who hold:

  - a biometric residence permit
  - a biometric residence card
  - Frontier workers permit
  - status issued under the EU Settlement Scheme
  - a digital Certificate of Application to the EU Settlement Scheme issued on or before 30 June 2021
  - status issued under the points-based immigration system
  - British National Overseas (BNO) visa

**Conducting a Manual Document Based Check**

This is a three step process:

1. Obtain
2. Check
3. Copy

All three steps must be completed to ensure we have undertaken a check in the prescribed manner, in order to establish a statutory excuse.
Step 1: Obtain

There is a list of documents which are deemed acceptable when proving someone has the right to work.

Please refer to the Acceptable Documents for Right to Work Checks for further information on which documents can be accepted.

You must obtain original documents from either List A or List B (Group 1 or 2):

- List A documents are for those with a permanent right to work in the UK and no further right to work check is required during their employment with us.

- List B documents are for those with a temporary right to work in the UK. A follow-up right to work check will be required before their current right to work expires. HR will undertake any follow-up checks.

Please Note: Some individuals will be required to provide more than one document to evidence their right to work in the UK. For example, if a UK birth certificate is provided, an official document which shows their national insurance number is also required. The birth certificate alone is not a valid right to work check.

Where a Positive Verification Notice is required they will not be permitted to commence work until this has been received. The HR Team will use the Employer Checking Service to undertake this check. If a positive outcome is received, and work is permitted, we will notify the recruiting manager and advise of any restrictions on their right to work in the UK. Only at that point can the individual begin employment, subject to any other pre-employment checks.

Unacceptable Documents

- Driving Licences
  These do not evidence someone’s right to work in the UK instead documentation from List A or B must be provided.

- EU Passports or Identity Cards
  EU/EEA/Swiss nationals must now evidence their right to work by providing a share code for an online right to work check. This excludes Irish nationals who can continue to evidence their right to work in the UK by producing a passport or passport card showing they are a national of the Republic of Ireland.

- Visa in an Expired Passport
  The individual must apply to replace their visa (or wet ink stamp) in their passport with a Biometric Residence Permit. This includes those with indefinite leave to remain in the UK.

- Tier 2/Skilled Worker Visa Holder Elsewhere
  Those who hold a Tier 2 or Skilled Worker Visa which is sponsored by another organisation are not automatically permitted to commence employment with the University. In some cases individuals may undertake ‘additional work’ with a Tier 2/Skilled Worker visa subject to the following:
❖ The employment is for no more than 20 hours per week

❖ In a job which is either:
  ❖ In the same occupation code and at the same level as their main job

  Or

  ❖ In a shortage occupation

❖ The additional work falls outside of the working hours in their main role

In these instances they will need to provide a letter from their current employer confirming their current role, occupation code and working pattern. **If they are evidencing their right to work from 6 April 2022, they cannot use their Biometric Card and an online right to work check will need to be undertaken.**

If they are not going to be working under the ‘additional work’ guidelines they will need to apply for a new Skilled Worker visa with the University of Huddersfield as their sponsor before they can commence employment.

Not all roles are able to be sponsored and this will be checked once interviews have been held and the preferred candidate is known.

Those applying to the Part Time Hourly Paid Pool would not be eligible for sponsorship.

**Step 2: Check**

When checking the validity of the documents you should ensure that you do this in the presence of the holder. This can be a physical presence in person or via a live video link but in both cases you **must** be in possession of the original documents*. For example, an individual may choose to send their documents to you by post to enable you to conduct the check with them via live video link.

*Whilst COVID-19 measures are in place we are permitted to undertake an Adjusted Right to Work check with scanned copies of documentation. Please see the How to conduct an Adjusted right to work check section.

You must check that the documents are genuine and that the person presenting them is the prospective employee/employee and is allowed to do the type of work you are offering.

You must check that:

❖ **Photographs and dates of birth** are consistent across documents, where multiple documents are provided, and with the person’s appearance.
Visas are in date and permit the work in question: Certain visas (such as Tier 2/Skilled Worker, Tier 5 and Student/Tier 4) carry restrictions on what work the holder can undertake and/or the hours they are permitted to work. The visa should clearly state any conditions/restrictions but if you are unsure, please contact the HR Officer Team for guidance.

Please note that there are additional restrictions in place for University of Huddersfield students with regards to working hours. Please refer to the Student Working Hours guidance for more information.

The documents are genuine and belong to the holder: We are not expected to be experts in recognising fraudulent documents but are expected to reject a document where it is ‘reasonably apparent’ that the document is not genuine and/or does not belong to the holder.

You may wish to read the online guidance about recognising fraudulent identity documents - Guidance on examining identity documents.

Difference in names across documents: In these instances you must obtain further documentation (such as marriage certificate, decree absolute, deed poll etc) to explain any difference in names across documents. You must see the original documentation which confirms the name change and retain a copy with the right to work check.

Current/Expired documents: If the list of acceptable documents states that the document must be current, you should check that it has not expired.

Where you are permitted to used an expired document to show that someone has the right to work in the UK then you must ensure that their image and date of birth is consistent with the appearance of the holder.

You will not obtain a statutory excuse if:

- the check is performed by an individual who is not employed by the University
- it is reasonably apparent that the person presenting the document is not the person referred to in that document, even if the document itself is genuine. The University may be liable to prosecution if we know or have reasonable cause to believe that the individual does not have immigration permission to work
- you know that the individual is not permitted to undertake the work in question
- you know that the documents are false or do not rightfully belong to the holder

Step 3: Copy

You must make a clear copy of each document in its entirety as follows:

- Passports: Copies must include any page with the document expiry date, the holder’s nationality, date of birth, signature, leave expiry date, biometric
details, photograph and any page containing information indicating the holder has an entitlement to enter or remain in the UK (visa or entry stamp) and undertaken the work in question. The front cover of a passport no longer needs to be copied.

❖ **All other documents:** the document in full, including both sides of a Biometric Residence Permit, Application Registration Card and a Residence Card (biometric format).

When photocopying documents please make sure that each copy captures the whole page or document so no edges or text is missing and ensure that the copies are clear and not distorted. Where possible please take colour copies of documentation.

You must add the following to **each** photocopy taken:

❖ This declaration: “The date on which this right to work check was made: [insert date].”

❖ Your full name (written legibly)

❖ Your signature

**You are no longer required to complete a Right to Work Checklist.**

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**How to Conduct an Adjusted Right to Work Check**

On 30 March 2020 the Home Office brought in temporary changes to right to work checks as a result of the Covid-19 pandemic. From that date and **until 30 September 2022 (inclusive)** employers are able to carry out all checks via video call.

The process for an Adjusted Right to Work Check is as follows:

❖ Ask the individual to submit a scanned copy or a photo of their original documents to you via email. Please make sure that each copy captures the whole page or document so no edges or text is missing and ensure that the copies are clear and not distorted.

❖ Once you have received these, arrange a video call with the individual.

❖ During the video call ask them to hold the original documents up to the camera and check them against the digital copies you have received. Where documents contain a photograph you must also compare this to the individual presenting the documents.
The Covid-19 adjusted checks end on 30 September 2022 (inclusive). New right to work check guidance will be issued prior to 1 October 2022.

**Biometric Card Holders**

**Right to work checks on biometric card holders up to and including 5 April 2022**

Biometric Residence Card (BRC), Biometric Residence Permit (BRP) and Frontier Worker Permit (FWP) holders can currently choose to use either the Home Office online service or their physical card to evidence their right to work to an employer.

Up to and including 5 April 2022, we can continue to conduct manual checks on physical cards for evidence of a right to work.

During this time, we cannot insist that individuals use the online service, and should not discriminate against those who wish to use their physical card. We can, however, ask individuals if they would like to use the online service.

**Right to work checks for biometric card holders from 6 April 2022**

From 6 April 2022, BRC, BRP and FWP holders will evidence their right to work using the Home Office online service only.

We will no longer be able to accept physical cards for the purposes of a right to work check even if it shows a later expiry date. BRCs, BRPs and FWPs will be removed from the list of acceptable documents used to conduct a manual right to work check.

Retrospective checks will not be required on biometric card holders who, before 6 April 2022, used their physical card to demonstrate their right to work. We will maintain a statutory excuse against any civil penalty if the initial checks were undertaken in line with the guidance that applied at the time the check was made.

If an employer chooses to undertake a retrospective check and identifies an existing employee who no longer has a right to work, they are required to take the appropriate action. If the employee is an EEA citizen or non-EEA family member, further information on what steps to take is available at pages 46 – 47 in Annex B of this guidance.

This list of acceptable documents will be updated shortly to take into account the changes coming into effect for Biometric Card holders from 6 April 2022.

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You must add the following to each digital copy:

- This declaration: “Adjusted check undertaken on [insert date] due to Covid-19.”
- Your full name (written legibly)
- Your signature

You are no longer required to complete a Right to Work Checklist.
**Conducting an Online Right to Work Check**

It will not be possible to conduct an online right to work check in all circumstances as not all individuals will have an immigration status which can be checked online.

In circumstances where an online check is not possible, you should conduct the manual check.

While you may choose to encourage the use of the online check, you are not permitted to mandate online checks except for those individuals who have been provided with digital evidence of their immigration status (known as an eVisa).

If an individual does not wish to demonstrate their right to work using the online service, even if their documentation is compatible with the online service, you should conduct a manual check.

**Step 1: Use the Home Office Online Service**

The Home Office online service works on the basis of the person first viewing their own right to work record. They may then share this information with you by providing a ‘share code’. When this code is entered, along with the person’s date of birth, it enables you to access their right to work profile page.

A share code is valid for 30 days and can be used as many times as needed within the 30 days, after which a new code will be required in order to conduct an online check.

The individual may provide the share code to you directly, or they may choose to send this to you via the service. If they choose to send it to you via the service, you will receive an email from right.to.work.service@notifications.service.gov.uk.
To check the person’s right to work details, you will need to:

- access the service ‘View a job applicant’s right to work details’ via GOV.UK
- enter the ‘share code’ provided to you by the individual
- enter their date of birth
- enter University of Huddersfield

It is not sufficient to simply view the details provided to the individual on the migrant part of the service and doing so will not provide you with a statutory excuse.

**Step 2: Check**

In the presence of the individual, either in person or via live video link, you must check that the photograph on the ‘profile’ page matches the appearance of the individual presenting themselves.

The ‘profile’ page will also state an end date if they have a temporary right to work in the UK. If they have a permanent right to work in the UK this will be stated.

You must also check whether there are any restrictions listed which will prevent the individual from undertaking the work in question.
EXAMPLE: The image below is from the online service and shows the individual has a continuous right to work in the UK.
You must ensure that you print or download a copy of the ‘profile’ page using one of the links at the bottom of the webpage as this document evidences the individual’s right to work in the UK.

**Follow-Up Checks**

Where an individual requires a follow-up check, these will be undertaken by HR.
### Breaks in Service for Current Staff

The University will allow returning employees to ‘re-use’ their previous right to work check (where it remains valid) provided there has not been a break in service of more than 7 days from the previous employment ending. This 7 day period must include a weekend.

In all other cases a new right to work check must be undertaken before the new employment begins.

### How to Process/Retain/Dispose of Right to Work Check Copies

Once you have identified a preferred candidate and sent their documentation to HR you must destroy all copies of the right to work checks for all candidates. If you do not have access to a confidential waste bin please send these documents to HR for disposal.

If you hold any copies electronically please ensure that these are deleted and that you empty your deleted items folder.

In line with the University’s retention and disposal schedule, right to work documentation for employees will be kept securely within HR on the individual’s file and documentation for all other candidates will be destroyed or deleted accordingly.

### Acceptable Documents for Right to Work Checks

This list of acceptable documents will be updated shortly to take into account the changes coming into effect for Biometric Card holders from 6 April 2022.

<table>
<thead>
<tr>
<th>List A</th>
</tr>
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<tbody>
<tr>
<td>Contains the range of documents you may accept for a person who has a permanent right to work in the UK. If you conduct the right to work checks correctly before employment begins, you will establish a continuous statutory excuse for the duration of that person’s employment with you. You do not have to conduct any further checks on this individual.</td>
</tr>
<tr>
<td>1 A passport (current or expired) 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.</td>
</tr>
<tr>
<td>2 A passport or passport card (current or expired) showing that the holder is a national of the Republic of Ireland.</td>
</tr>
<tr>
<td>3 A current document issued by the Home Office to a family member of an EEA or Swiss citizen, and which indicates that the holder is permitted to stay in the United Kingdom indefinitely.</td>
</tr>
<tr>
<td>4 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</td>
</tr>
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remain under Appendix EU 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.

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<tbody>
<tr>
<td>5</td>
<td>A <strong>current</strong> Biometric Immigration Document (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.</td>
</tr>
<tr>
<td>6</td>
<td>A <strong>current</strong> 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.</td>
</tr>
<tr>
<td>7</td>
<td>A <strong>current</strong> 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, <strong>together with</strong> an official document giving the person’s permanent National Insurance number and their name issued by a government agency or a previous employer.</td>
</tr>
<tr>
<td>8</td>
<td>A birth or adoption certificate issued in the UK, <strong>together with</strong> an official document giving the person’s permanent National Insurance number and their name issued by a government agency or a previous employer.</td>
</tr>
<tr>
<td>9</td>
<td>A birth or adoption certificate issued in the Channel Islands, the Isle of Man or Ireland, <strong>together with</strong> an official document giving the person’s permanent National Insurance number and their name issued by a government agency or a previous employer.</td>
</tr>
<tr>
<td>10</td>
<td>A certificate of registration or naturalisation as a British citizen, <strong>together with</strong> an official document giving the person’s permanent National Insurance number and their name issued by a government agency or a previous employer.</td>
</tr>
</tbody>
</table>

**List B**

Both Group 1 and Group 2 contain a range of documents you may accept for a person who has a temporary right to work in the UK. If you conduct the right to work checks correctly, you will establish a time-limited statutory excuse. You will be required to conduct a follow-up check in order to retain your statutory excuse. This should be undertaken in the same way as the original check.

**List B – Group 1**

Documents where a time-limited statutory excuse lasts until the expiry date of leave

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<tbody>
<tr>
<td>1</td>
<td>A <strong>current</strong> 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</td>
</tr>
<tr>
<td>2</td>
<td>A <strong>current</strong> Biometric Immigration Document (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.</td>
</tr>
</tbody>
</table>
3 A current document issued by the Home Office to a family member of an EEA or Swiss citizen, and which indicates that the holder is permitted to stay in the United Kingdom for a time limited period and to do the type of work in question.

4 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 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.

5 A frontier worker permit issued under regulation 8 of the Citizens’ Rights (Frontier Workers) (EU Exit) Regulations 2020.

6 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.

**List B – 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 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 to the Jersey Immigration Rules or Appendix EU to the Immigration (Bailiwick of Guernsey) Rules 2008 together with a Positive Verification Notice from the Home Office Employer Checking Service.

3 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.

4 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.

5 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.