

# Prevention of Illegal Working Policy and Procedure

## 1 Introduction

Whilst the University expects its employees and staff to comply with this policy, it does not confer contractual rights or form part of any contract of employment and may be amended by the University or replaced at any time following appropriate consultation and negotiation with recognised trade unions.

Breach of this policy may be addressed via the University's disciplinary and code of conduct policies.

This policy will be reviewed by the Human Resources department on a 3 year basis or amended in response to changes in future legislation and/or case law.

## 2 Ownership

The Human Resources department owns and manages this policy on behalf of The University of Northampton.

## 3 Organisational Scope

This Prevention of Illegal Working policy is a corporate policy and applies to all employees (and workers, as applicable) of The University of Northampton including any wholly owned subsidiaries, unless an alternative policy exists, subject to any qualifying conditions.

## 4 Definitions

4.1 UKVI – UK Visas and Immigration which is part of the Home Office.

Certificate of Sponsorship – a reference number that holds information about the job and an individuals personal details. The university applies for this on the candidates/employees behalf.

## **5 Policy Statement**

- 5.1 The University has a legal obligation under the Asylum and Nationality Act 2006 and Immigration Act 2016 to prevent illegal working by carrying out document checks to confirm if a person has the right to work in the UK.
- 5.2 Failure to comply with the requirements of the Acts will result in a fine of up to £20,000 per illegal employee.
- 5.3 It is a criminal offence to knowingly employ someone who is not entitled to work in the UK. The penalty can be up to five years imprisonment.
- 5.4 Illegal working is a criminal offence in its own right, with a maximum penalty of six months imprisonment and/or an unlimited fine for the individual.
- 5.5 The Immigration Act 2016 includes the power to close premises for up to 48 hours.
- 5.6 This policy and procedure reflects the requirements to prevent illegal working and establish or retain an excuse against a liability for a civil penalty for employing someone who is not permitted to work for the University.

## **6 Key Principles**

- 6.1 A legal worker is a worker who has permission to work within the UK. This permission can be gained via an individual having citizenship of the UK, or citizenship of a member state of the EEA or Switzerland, or through having the appropriate work permit, visa, certificate of sponsorship or other immigration document expressly granting the holder the permission to work within the UK.
- 6.2 A person commits the offence of illegal working if they are:
- Subject to immigration controls and works when disqualified from doing so by reason of his immigration status; and
  - At the time they know or have reasonable cause to believe they are disqualified from working by reason of their immigration status.

The offence of illegal working is not limited to working under a contract of employment and is intended to cover all types of work including apprenticeships and self-employment.

- 6.3 The University will undertake basic documents checks to ensure that all employees are eligible to work legally within the UK. It is expected that all employees will cooperate with these checks and provide the appropriate documentation as required.

- 6.4 The University holds a licence to sponsor tier two visa applicants within the current points based immigration system and will comply with all sponsor obligations including those to make specific reports to the Home Office.
- 6.5 The University will ensure that all checks carried out under this policy are conducted in a non-discriminatory manner which means that assumptions will not be made about an individual's eligibility and all applicants for employment and current employees will be required to demonstrate this.
- 6.6 If a potential employee is unable to demonstrate their eligibility to work in the UK an offer of employment will be withdrawn.
- 6.7 If an employee subject to any visa conditions are notified of a change to their status, they must notify the University as soon as possible. Failure to do so could result in disciplinary action.
- 6.8 If for any reason an employee becomes ineligible to work at any point in the duration of their employment, the University may dismiss the employee. Should this situation arise this will be conducted in a fair and reasonable manner.
- 6.9 The University reserves the right to report any legitimate suspicions regarding illegal working to the UKVI.
- 6.10 The University reserves the right to instigate the Disciplinary Policy and Procedure in any case of non-compliance with the Prevention of Illegal Working Policy and Procedure.
- 6.11 Unauthorised voice recording of conversations is prohibited. Anyone in breach of this may be subject to disciplinary action.

## **7 Procedure**

### **Right to Work Checks**

- 7.1 Before an individual commences employment, the University needs to ensure that the person is legally allowed to do the work. Checking a person's documents involves three steps:
- Obtain the person's original documents;
  - Check them in the presence of the holder; and
  - Make and retain a clear copy, and make a record of the date of the check.
- 7.2 Detailed information regarding Right to Work Checks can be found in the "Right to Work – Document Checks" Guidance (Appendix 1) including the current list of acceptable documents.

- 7.3 When recruiting to a new job, it is the responsibility of the recruiting manager or nominated individual to take copies of the original documents of all candidates attending the interview. Successful candidates who fail to provide their original documentary evidence at interview stage must provide it on or before their first day of employment. If the employee can only provide documents on their first day, the copy must be taken before work commences and the copy should be time stamped.
- 7.4 Any copies of documents that are taken but no longer required due to the candidate not being successful at interview will be securely disposed of.
- 7.5 For British citizens, a citizen of the UK and Colonies having the right of abode, a national of an European Economic Area country or Switzerland or their family members with permanent residence, where possible, current passports or travel documents that have not expired should be checked. However, if the individual does not have one then it is possible to accept evidence of their right to remain and work in the UK in an expired document. Please liaise with HR in these circumstances.
- 7.6 An expired passport cannot be accepted unless it is a UK passport or a passport issued by a member state of the European Economic Area. Expired passports issued by any other country are not acceptable.
- 7.7 Where someone has an expired passport endorsed to show that they are allowed to stay in the UK indefinitely, they will need to submit a No Time Limit application to the Home Office to be issued with a biometric residence permit showing that they have indefinite leave to remain in the UK. Right of abode in the UK is only valid while the passport it is endorsed in is current, when the passport expires, the holder will need to re-apply to the Home Office for a new certificate of entitlement to be issued in their new passport.
- 7.8 If it is identified during the document checks that the candidate does not have the right to work then the offer of employment will be withdrawn. It is the candidates responsibility to prove to you that they have the right to do the work. Please contact HR in this situation.
- 7.9 When conducting checks, if documents are presented indicating that the holder is a student with a limited right to work in the UK during term time, the university is required to obtain and retain evidence of their academic term and vacation dates. Please contact HR in this situation.
- 7.10 If an employee has a time limit on their right to work e.g. they have provided a List B document, their original documents must be checked at least once every 12 months.

- 7.11 The University reserves the right to request a document check at any time in order to ensure that full records are maintained. Failure to comply may result in disciplinary action.
- 7.12 If after a repeat check it is identified that an existing employee is no longer allowed to work in the UK or carry out the work in question, this is potentially a dismissal situation. Depending on the circumstances then the person may also need reporting to the UKVI. Please contact HR.
- 7.13 If an employee or candidate who has been offered employment has an outstanding application or appeal, HR will contact the Employer Checking Service to verify the person's right to work in the UK. Any copies of documents relating to the check and the confirmation of right to work must be retained by HR.
- 7.14 Where the University acquires employees through TUPE regulations, right to work documents should be checked as soon as possible upon transfer but within 60 days from the date of transfer.

## **Tier 2 (General) Visa**

- 7.15 The University has a sponsor licence which means that it is possible to employ people from outside the European Economic Area (EEA) who require a Certificate of Sponsorship to work in the UK.
- 7.16 If it is possible that the job may attract applicants from outside the EEA we are required to demonstrate that we have fulfilled the Resident Labour Market Test. To meet these conditions the job must be advertised for a minimum period of 28 days on a minimum of two websites. It is recommended that all specialist and senior management roles are advertised for this period.
- 7.17 When a Certificate of Sponsorship is required the University will cover the cost for the application for the certificate. HR are responsible for processing the application via the sponsor management system and will provide the number to the candidate. The candidate will need to pay for the application for the Tier 2 visa. The cost of this will depend on the individuals circumstances.
- 7.18 Certificate of sponsorships are valid for 3 months from the date that they are assigned and may be issued for up to 5 years, 14 days.
- 7.19 Employment under a Tier 2 visa is subject to continued eligibility to live and work in the UK and all contracts are in line with the visa end date. The total stay under Tier 2 visas can be no longer than 6 years.

7.20 As a sponsor there are a number of reporting duties that the University must comply with including keeping up to date contact details, keeping an up to date absence record and reporting any change in immigration status to the UKVI. All migrants on a Tier 2 visa have a responsibility to notify the University of any changes as soon as possible. All Tier 2 employees are provided with the Tier 2 Employee's Responsibilities document.

#### **Tier 4 Student Visa**

7.21 Students from outside the European Economic Area are allowed to take limited employment in the UK. The limits on a student's working hours depend on when they applied for permission to enter the UK, the type of course they study and the educational provider they are studying with.

7.22 Students on a Tier 4 visa may be employed for up to 20 hours per week only during term time or full time outside of their term time e.g. during vacations and following completion of their course, although they must still have valid leave.

7.23 Where a student applied for an extension to their stay from within the UK before their existing permission to stay has expired, but their permission runs out before a decision has been made on their application, then the University may continue to employ them while they are awaiting a decision.

7.24 The terms of the visa should not be breached under any circumstances

7.25 All employees who hold a Tier 4 student visa are asked to complete the Tier 4 Student - Employment Declaration Form and are provided with information on Tier 4 Student Work Restrictions.

#### **Academic Visitors**

7.26 Academic Visitors coming to the UK for research may stay in the UK for up to 12 months.

7.27 University of Northampton employees wishing to invite an Academic Visitor to the University should use the Academic Visiting Researcher Approval form and consult the Academic Visitors Guidance document.

7.28 Some Academic Visitors may require entry clearance if they are not from the EEA and are here for any period of time, including for academic and research purposes. Therefore before you make any offers or arrangements please contact HR.

## 8 Associated Documents

- 8.1 Right to Work Document Checks Guidance.  
Tier 2 Employees Responsibilities.  
Tier 4 Student Employment Declaration.  
Academic Visiting Researcher Approval Form.  
Academic Visitors Guidance.

## 10 Equality Analysis

An Equality Impact Assessment must accompany this document.

## 12 Version Control

<b>Version Control</b>		<b>Approval record</b>	
Author:	HR	Approval:	TU Liaison – 28/06/17 UMT – 04/07/17 JCNC – 13/07/17 Board – 17/07/17
Date written:	May 2017	Updates:	
Current status:	Approved		
<b>Record of Amendments</b>			
Date	Details of Change	Approval	
May 2017	Policy completely re-written to incorporate recent legislative changes to Asylum and Immigration. Also the process for dealing with failure to provide appropriate asylum and immigration documents removed as these failures would be dealt with through the current Disciplinary procedure. Policy simplified as most of the information has been incorporated as part of guidance documents (mentioned in 8. Associated Documents) and appendix 1.		

## **Appendix 1**

### **Right to Work – Document Checks**

This guide explains what managers need to know when conducting right to work checks and why it is important to do them.

A right to work check means that you check a document which is accepted for showing permission to work in the UK. This must be done **before** an individual is employed to ensure they are legally allowed to do the work in question.

The check includes 3 key steps:

- The documents must be **originals**
- Check in the presence of the holder
- Make a clear, signed copy, recording the date of the check

You are responsible for conducting the visual inspection of the documents presented to you.

As an employer, we have a legal duty to prevent illegal working in the UK. Failure to carry out these checks correctly and employing someone illegally could result in a **civil penalty** of up to **£20,000** for each illegal worker and jeopardise our Tier 2 and Tier 4 (Student) licenses.

Right to work checks should be conducted on all employees, this avoids discrimination as all potential employees are treated in the same way.

### **The 3 Step Check**

1. You must obtain **original** documents from either List A or List B below.
2. You need to check that they are **genuine**, that the person presenting them is the employee, the rightful holder and they are allowed to do the type of work you are offering. You must check:
  - Photographs and dates of birth are consistent across the documents and with the person's appearance.
  - The documents are genuine, have not been tampered with and belong to the holder
  - Any reasons for different names are supported by additional documents (e.g. marriage certificate, divorce decree)

- Expiry dates for permission to be in the UK have not passed
- Any work restrictions

If you have any doubts that the documents are not genuine or do not belong to the person presenting them, please contact your HR Advisor.

3. You must make **a clear copy** of each document, using the template at the end of this guidance.
  - For passports – copy any page with the expiry date, the holder’s nationality, date of birth, signature, photograph, plus any leave expiry date or biometric details.
  - Other documents – copy in full. E.g. both sides of a Biometric Residence Permit.

Lists of acceptable documents for right to work checks

### **List A - Acceptable documents**

List A contains documents acceptable for a person who has a permanent right to work in the UK.

- **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.
- **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.
- **A Registration Certificate** or Document Certifying Permanent Residence issued by the Home Office to a national of a European Economic Area country or Switzerland.
- **A Permanent Residence Card** issued by the Home Office to the family member of a national of a European Economic Area country or Switzerland.
- **A current 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.
- **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.
- **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, 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.

- **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, 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.
- **A birth or adoption certificate** issued in the Channel Islands, the Isle of Man or Ireland, 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.
- **A certificate of registration** or naturalisation as a British citizen, together with an official document giving the person's permanent National Insurance number and their name issued

**List B - Acceptable documents to establish a statutory excuse for a limited period of time**

List B contains a range of documents that are acceptable for a person who has a temporary right to work in the UK. Further checks will be required.

**Group 1** - Documents where a time-limited statutory excuse lasts until the expiry date of leave

- **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.
- **A current 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.
- **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.
- **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** – Documents where a time-limited statutory excuse lasts for 6 months

- **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<sup>2</sup> from the Home Office Employer Checking Service.

- **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.
- **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.

**Please Note:**

- A driving licence is **not** an acceptable form of a person's right to work in the UK.
- The responsibility for checking the document is yours; this should not be delegated to a third party.
- An individual with a Tier 4 visa will generally have restricted working hours, check that you can accommodate this restriction.
- An individual requiring a Tier 2 visa does not have an automatic right to work. The University would need to issue a Certificate of Sponsorship, which means the position needs to meet certain criteria. Please check the details with your HR contact.

**Before making an offer to a candidate that currently has or requires a visa, please check the details with your HR contact.**