

Right to Work Check Policy

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1. Introduction

Brunel University London is required by law to conduct right to work checks (“RTW”) to ensure that all prospective employees are eligible to live and work in the United Kingdom. Failure to conduct the right to work checks before employment starts means that the University will not have a statutory excuse against liability for a civil penalty in the event that it is found to have employed someone who does not have the right to do the work in question.

A statutory excuse is an employer’s defence against a civil penalty. In order to establish a statutory excuse against a civil penalty, the employer must do one of the following before the individual commences employment:

- (i) a manual right to work check (for UK and Irish citizens) **or**
- (ii) a right to work check using IDVT provider via the services of an IDSP (online checking) (for UK and Irish citizens)
- (iii) a Home Office online right to work check (for all non-UK and Irish citizens)

This policy has been designed to provide clarity on all types of work, for an employee, worker or visitor undertaking tasks at the University. The policy also aims to support staff who recruit or invite people to the University to perform certain functions and supports those who undertake the administrative task of conducting the RTW checks.

Although the policy makes specific references to Home Office regulations around RTW checks, any staff required to perform these tasks should read and have an understanding of the [Employer’s Guide to Right to Work Checks](#).

2. The Importance of a Right to Work Check

All UK employers have a legal obligation under current legislation to take appropriate steps to prevent illegal working based on the Immigration, Asylum and Nationality Act 2006. It is a criminal offence to knowingly employ, or have reasonable cause to believe an illegal worker is employed, and doing so could incur serious sanctions. The Right to Work Check Policy is designed to prevent this.

The main sanction available to the Home Office is a civil penalty – a fine of up to £20,000 for each illegal worker. A range of other sanctions may be applied when illegal working is identified, such as a criminal conviction and an unlimited fine, closure of the business and a compliance order issued by the court, and seizure of earnings made as a result of illegal working.

More significantly, Brunel University London is a UKVI sponsor under the Student, Skilled Worker and Government Authorised Exchange visa routes, and has a legal obligation to prevent abuse of the UK immigration system¹. If the Home Office has concerns about an organisation employing illegal workers or not taking appropriate steps to prevent this, it has the power to revoke the UKVI licence. This would mean that the University could no longer sponsor the visas of international staff and students. Employers also face criminal sanctions if illegal workers are recruited intentionally or through serious failings of the organisation.

¹ [Workers and Temporary Workers: Guidance for Sponsors \(page 7\)](#)

If the University is issued with a civil penalty, it will be the Department responsible for the recruitment and failure to undertake the correct RTW check that would be held liable for the payment of the fine. Internal disciplinary action may be taken against staff found to have failed to follow the appropriate RTW check process leading to the Home Office sanctions.

3. Conducting the Right to Work Check

Brunel University is required by law to conduct [right to work checks on all prospective employees](#) who will be working in the UK **prior to the start date of employment**, to ensure that the individual is not disqualified from carrying out the work in question by reason of their immigration status.

As of 30 September 2022, right to work checks using the temporary COVID-19 adjusted check measures have ended. There is no requirement to carry out retrospective checks on those who had a COVID-19 adjusted check between 30 March 2020 and 30 September 2022 (inclusive).

Following the end of the temporary COVID-19 adjusted check measures on 30 September 2022, the University is obliged to do one of the following **before** an employee commences employment:

For UK and Irish Citizens:

A manual right to work check:

A full list of acceptable documents for manual RTW check can be found in the Home Office Guidance for [Employer's Right to Work checklist](#).

OR

A right to work check using an IDVT certified provider:

The supplier will provide a sophisticated technology to verify identity and that the documents provided are genuine, and saved on a secure platform for the employer to download. The employer is also required to legally verify true likeness of the person via a videocall or in person.

For Non-UK and Non-Irish Citizens:

A Home Office online right to work check using the website below: <https://www.gov.uk/view-right-to-work>

AND

Verification of true likeness through a videocall or in person meeting, on the same day of the online right to work check.

Since 6 April 2022, Biometric Residence Card (BRC), Biometric Residence Permit (BRP) and Frontier Worker (FWP) holders are required to evidence their right to work using the Home Office online service **only**. Employers cannot accept physical cards for the purposes of a right to work check.

Most commonly, RTW checks will be undertaken by staff in Human Resources. However, other members of staff across the University will sometimes be required to do this as part of their role, for example Departmental Administrators. This is clearly mentioned in the tables found below.

4. Who needs a RTW check?

Brunel University should ask all prospective employees to demonstrate their right to work through the methods described above.

To ensure that the University does not discriminate against anyone, it should provide every opportunity to enable an individual to prove their right to work.

A RTW check needs to be conducted on any individual who is employed under a contract of employment. This can be a contract of service or apprenticeship, whether expressed or implied and whether verbal or in writing, which **may** also include unpaid work. If an individual is deemed to be employed, then a right to work check will be required.

Any person employed under an employment contract at the University for a full or part-time job, including permanent, fixed term or temporary contracts, needs a RTW check that should be conducted by the appropriate Department².

As a Higher Education Institution, there are also other groups of people invited to undertake certain tasks at the University that may be employed and will therefore require a RTW check. Such groups may include but are not limited to: Hourly Paid Staff, One-off Payment Employees, Visiting Academics, Guest Speakers/Lecturers, Digital Examiner Invigilators, Honorary Visitors, and External Examiners.

Please note that some individuals may still be on the University's payroll but may have a gap in their employment contract with Brunel, and therefore no continuity of employment service. These individuals can only be regarded as employed for the duration of their contracts, not in between contracts. These individuals must be treated as prospective employees for the purposes of RTW checks. As a result, RTW checks must to be carried out before any new contract of employment starts. This is the case regardless of their status in CHIME or such other payroll system.

5. Follow-up Right To Work Checks

For individuals who have time-limited permission to live and work in the UK, for example, employees on a skilled worker visa or any other immigration status with an expiry date, Brunel University is legally required to do a follow-up RTW check on the new visa through the online checking service.

When the employee has applied to extend their leave and the application is outstanding and not yet decided, the employer is required to conduct a check by using the [Employer Checking Service](#). Once leave is granted, the University should do a follow-up RTW check.

6. Overseas Employees

For anyone who may undertake their duties from overseas exclusively they need to prove that they hold the legal right to work in that country. This can be supported by providing copy of documentation that can show their immigration status in that country. If any employees work exclusively outside the UK, they are not subject to UK immigration control and Brunel does not

² See tables below

need to conduct right to work checks, subject to this policy. If an overseas employee is required to carry out some of their duties in person in the UK, a right to work check should be conducted before they begin the UK based work.

Table A: Individuals requiring a Right to Work Check

The table below outlines those individuals whom the University regards as a prospective employee/worker and therefore requiring a RTW check before undertaking the work in question, as set out in the Home Office Guidance This is not an exhaustive list and guidance should be sought from Human Resources or the Compliance and Sponsorship Manager if an individual does not fall under one of these categories.

Type of staff/visitor that require a RTW Check	Who conducts the RTW Check?
Contracted employee, including but not limited to full-time and part-time staff, on a temporary, casual/zero hours, fixed-term or permanent contract	Human Resources or IDVT certified provider
Sponsored International Researcher (Temporary Worker - Government Authorised Exchange Visa)	Human Resources or IDVT certified provider
Visiting and Honorary Appointments	Human Resources or IDVT certified provider
Student Worker (employed to work on campus)	HR Jobshop or IDVT certified provider
Hourly Paid Lecturers, Graduate Teaching Assistants (GTA) and Demonstrators	Departmental Administrator (College/Department) or IDVT certified provider
External Examiners for taught UG and PGT programmes	Quality Assurance Office or IDVT certified provider
External Examiner for PhD theses	Quality Assurance Office or IDVT certified provider
External Examiner for taught UG/PGT programmes	Quality Assurance Office or IDVT certified provider
Guest Speaker/Lecturer teaching to students (both paid and unpaid) – Core Work	Departmental Administrator (College/Department) or IDVT certified provider
Guest Speaker/Facilitator at conferences or events (when being reimbursed for the task through payroll) – Non-Core Work	Departmental Administrator (College/Department) or IDVT certified provider

7. Who does NOT require a Right to Work Check?

For clarity, the following types of visitors do not require any form of documentation check as the University does not regard these as undertaking any form of work and there is no mutuality of obligation. This is not an exhaustive list and further guidance should be sought from Human Resources if necessary.

Table B: Visitors who do NOT require a RTW Check:

Type of Visitor
A self-employed Guest Lecturer/Speaker giving an optional/public talk. In order to assess whether someone is genuinely self-employed or not, we need to check the following elements: mutuality of obligation, Control of work, Personal service, Payment employment-related benefits. Please contact the HR team for more information and assistance.
Attendees at conferences or events who are not delivering any content.
Voluntary artistic performances at an event where there is no form of payment, i.e. music, poetry reading etc.
External interview panel members or interviewees.
Agency workers as these are employed by the agency.
Contractors who are employed by another organisation contracted to deliver a service.
External Committee Members.

Appendix 1: Further guidance on RTW Checks

RIGHT TO WORK CHECK REQUIREMENTS AND COMMON SCENARIOS

It is essential that a right to work (“RTW”) check is completed before an individual commences work. **A RTW check made after work has commenced will not provide a statutory excuse against sanction from the Home Office if the individual is later found to be working illegally.** This Guidance is designed to assist Departments and Colleges in determining whether a RTW check is required in various common or uncommon scenarios. If you are unsure, please contact Human Resources who will be able to help you.

Employees (All employees require a right to work check before work commences)

Scenario	Right to Work Check required?
All new starters inc. Skilled Workers, Temporary Workers -Government Authorised Exchange	Yes , in all cases.
Re-hiring a previous employee	Yes , in all cases. A break in employment requires a new RTW check.
Casual worker moving to employee status	Yes , in all cases. This also applies to workers supplied by the HR Job Shop who are later taken on as a permanent or fixed term employee.
Employee change of appointment	No , for change of appointment between departments or for an extension of the employment contract. Transfers from department to department do not require a new RTW check if there has been no break in service BUT the original RTW documents must be checked that copy is clear. Care should be taken for visa holders to ensure that permission to work in the new post remains valid.
Secondary (additional) appointment (not casual)	No , for employees taking a second appointment within the University and the individual holds a List A document BUT the original RTW documents must be checked that copy is clear. Care should be taken for visa holders to ensure the visa remains valid and permits work in the new post.

Job Shop and Hourly Paid Workers

HR Job Shop student workers, Graduate Teaching Assistants, Demonstrators and Hourly Paid Lecturers require a right to work check **before work commences**.

Scenario	Right to Work Check required?
Re-hiring a previous worker	Yes, in all cases.

Guest Lecturers/Speakers

Scenario	Right to Work Check required?
Guest Lecturers	<p>Yes. If Guest Lecturers are added to Brunel’s payroll system, paid subject to statutory deductions and/or paid holiday pay. This will also apply to unpaid Guest Lecturers (either entirely unpaid or reimbursed for reasonable expenses only) if they are added to Brunel’s payroll system. The University is treating them as employees, so a RTW check is required.</p> <p>Yes. If unpaid (including those only reimbursed their reasonable expenses) and completing an activity that is essential (i.e. if a Guest Lecturer is doing an activity that if not done by them, the Department would pay someone to do instead). This would be classed as unpaid work and requires a RTW check.</p> <p>No. If unpaid (including those only reimbursed their expenses) and only taking part in activities which are not essential to the function of the Department/College. These Guest Lecturers would be volunteers and therefore a RTW check would not be required. With that said, if they are added to Brunel’s payroll system, a RTW check will be required.</p> <p>No. If unpaid and attend an event or a conference, or participate in a meeting, or be invited as a speaker in a Brunel University event, or research event not part of a student module, to present/discuss their research findings and project, and share their experience to an audience.</p> <p>No. If paid but genuinely self-employed.</p> <p>These are people providing a service for which they invoice the Department or College under a contract for services and for which they are self-employed according to HMRC rules (please refer to HMRC guidance for further information). Individuals who are self-employed are paid directly, usually on invoice and are not paid via payroll.</p> <p>Guest Lecturers vary greatly across the University, so the assessment as outlined above will help to clarify how the work is being carried out and whether a RTW check is required. If a Guest Lecturer appears to be employed under HMRC rules, then a RTW check will be required. If you are unsure, please contact the Human Resources team for further guidance.</p>

Temporary and Casual workers

Casual workers are workers who are hired on an irregular basis for a short period of time (no more than 6 weeks). Further information about the University's policies on casual workers can be found here [Temporary/Casual Worker \(maximum of six weeks\)](#)

Scenario	Right to Work Check required?
Agency Workers	No. Where a Department or College is paying an agency and not the worker directly (in these circumstances the agency is responsible for checking RTW). This also applies to workers supplied by the Temporary Staffing Service.
Re-hiring a previous casual worker	Yes , in all cases. A break in employment requires a new RTW check.
Work Experience	Yes , in all cases (except where the individual is under the age of 16). Work Experience can fall under unpaid work.
External Examiners (including PhD viva)	Yes. Examiners paid as casuals must have their RTW checked.
External Reviewers	Yes. External Reviewers paid as casuals must have their RTW checked.

Self-employed

Individuals who are self-employed are paid directly (usually on invoice) and are not paid via the casual or main payroll.

Scenario	Right to Work Check required?
Self-employed individuals	No , RTW checks are not required for those who are engaged in genuine self-employment. However, this may need to be re-assessed if they are paid through payroll or added to the University's employee systems.

Visitors and Honorary Appointments

An Immigration Status Check must be carried out on anyone invited from outside the UK/Republic of Ireland as an Academic visitor. This is similar to a right to work check whereby the passport and visa/stamp is checked, copied, signed, dated and retained for the duration of the visit.

Scenario	Immigration Check Required?
Visitors and Honorary Appointments	Yes. Visitors invited from outside the European Economic Area must be issued a letter of invitation to enter the UK as an Academic visitor. See Honorary & Visitors process.

Where there is any doubt on whether a right to work check is required, please contact Human Resources to discuss the situation well in advance of any work or visit being undertaken.