

# Right to Work Checks

**Briefing for All staff who undertake Right to Work Checks**

**December 2021**



# Why do we need to do Checks?

- The law on preventing illegal working is set out in sections 15 to 25 of the Immigration, Asylum and Nationality Act 2006 (the 2006 Act).
- An employer may be liable for a civil penalty if they employ someone who does not have the right to undertake the work in question.
- As an employer we have a legal duty to prevent illegal working in the UK by carrying out prescribed document checks on people before employing them to ensure they are lawfully allowed to work.
- These checks should be repeated in respect of those who have time-limited permission to work in the UK
- If you carry out document checks correctly you will have a **statutory excuse** against liability for a civil penalty

# Statutory Excuse?

The checks that employers must make and the copies of the required documents that must be kept to ensure their employees have the right to work in the UK.

This is known as establishing the Statutory Excuse and failing to do so can result in fines.

# Who needs to be checked?



- Right to work checks must be conducted on **all** potential employees
- To ensure we do not discriminate against anyone, all potential employees should be treated in the same way
- Need to ensure we avoid unlawful discrimination while preventing unlawful working
- The University will be placed at risk of liability for a civil penalty if we do not carry out a check on someone we have assumed has the right to work, but is found to be an illegal worker
- Failure to carry out the correct checks puts the University 'at risk' and could result in fines and/or the affect the ability to sponsor migrants who come to the UK in the future



# When do you conduct checks?

- You are required to carry out an **initial right to work check** on all people you intend to employ **before** you employ them
- Once you have completed this check, you are required to carry out **follow-up right to work checks** on this person if they have time-limited permission to be in the UK and to do the work in question
- If the person provides you with an acceptable document where there is no restriction on their right to work in the UK (from List A), you are not required to carry out further checks on this person
- If a person provides you with acceptable documents where there are restrictions on their right to work in the UK (List B) so you will be required to carry out follow-up checks on this person. The frequency of these follow-up checks depends on the specific documents.

# How do you conduct a right to work check?

There are two types of right to work checks: a manual document-based check and an online check.

There are 3 basic steps to conducting a **manual** right to work check. Remember three KEY words:

1. **Obtain** the person's original documents from either [List A](#) or [List B](#) of acceptable documents at [Annex A](#).
2. **Check** these in the presence of the holder to ensure they are genuine, and
3. Make and **retain a clear copy**, and make a record of the date of the check Prior to them undertaking any work (on the template)



You are responsible for conducting the visual inspection of the documents presented to you. You are only required to verify someone's right to work with the [Employer Checking Service](#) where an individual has an outstanding application, administrative review or appeal, or if their immigration status requires verification by the Home Office, for example in the case of Crown Dependencies.

**N.B From 6 April 2022, Biometric Residence Card (BRC), Biometric Residence Permit (BRP) and Frontier Worker (FWP) holders will evidence their right to work using the Home Office online service only. Presentation of a physical document will no longer be acceptable and we will no longer be able to accept or check a physical BRP, BRC or FWP as valid proof of right to work.**

# How do you conduct a right to work check?

- An **online check** can be carried out by using the online service: [‘View a job applicant’s right to work details’](#).
- 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 that can be checked online. The online right to work checking service sets out what information you will need. In circumstances in which an online check is not possible, you should conduct the manual check.
- Currently, the online service supports checks in respect of those who hold:
  - A biometric residence permit
  - A biometric residence card
  - 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, or
  - Frontier workers permit



# How do you conduct a right to work check?

There are 3 steps to conducting an online right to work check:

- **1. Use the Home Office online service:** The person will view their own Home Office right to work record and will provide the employer with a 'share code' to review this information via the following page: [View a job applicant's right to work details](#). The share code will be 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.
- **2. Check:** In the presence of the individual (in person or via live video link), you must check that the photograph on the online right to work check is of the individual presenting themselves for work (i.e. the information provided by the check relates to the individual and they are not an imposter).
- **3. Retain evidence of the online check:** You must retain evidence of the online right to work check. This should be the 'profile' page confirming the individual's right to work. This is the page that includes the individual's photo and date on which the check was conducted. You will have the option of printing the profile or saving it as a PDF or HTML file. Make a record of the date of the check prior to them undertaking any work (on the template)





# Template for RTW checks



## Declaration of Rights to Work

The Rights to Work check for the below employee was conducted and confirmed on \_\_\_\_\_ (date)

by Brunel University London staff member: \_\_\_\_\_ (Print Name)

Job Title: \_\_\_\_\_

Signature: \_\_\_\_\_

**\*\*\*"PASSPORT COPY HERE"\*\*\***



# Examples of Time Limited Resident Permit

Front:



1. Your photograph.
2. Your name.
3. Valid until – the date the permit expires. This date is at the end of the time you are allowed to stay; or five or 10 years if you have been given permission to settle in the United Kingdom (known as indefinite leave to remain).
4. Place and date of issue – this is the UK followed by the date the card was issued.
5. Type of permit – this is the immigration category you are in (for example, student).
6. Remarks – these show your immigration entitlements for the length of your stay, and may continue on the back of the permit.
7. ZU1234567 – this is your unique permit number.
8. Your signature.



# Examples of Time Limited Online Check

 **View a job applicant's right to work**

**BETA** This is a new service - your [feedback](#) will help us to improve it.

---

**Right to work**

**Erika Mustermann**

They have permission to work in the UK from 6 August 2021. They can work in the UK until 6 September 2023.

**Details**

They can work in any job.



Rotate 

**If you employ this person**

To avoid a [penalty](#), you must:

- check this looks like the person you meet face to face
- keep a secure copy of this online check (either electronically or in hard copy), for the duration of the employment and for 2 years after
- do this check again when their permission to be in the UK expires on 6 September 2023

Read the [employers' code of practice](#) to find out more about right to work checks.

Details of check		
Company name	Date of check	Reference number
Acme Ltd	8 January 2018	WE-OSGKVYJ-35



# Checking the Validity of documents

- When checking the validity of documents, you must ensure that you do this in the presence of the holder.
- You are required to check the documents to the best of your ability and if you believe a document may not be genuine you should raise this with your line manager / HR who would need to report this to the Home Office on the Sponsorship, Employer and Education helpline on 0300 123 4699
- Where a person presents a document and it is reasonably apparent that the person presenting the document is not the person referred to in the document, even if the document itself is genuine you could be liable for civil penalty. If you are given a false document you will only be liable for civil penalty if it is **reasonably apparent** that it is false.
- In order to establish a statutory excuse, you are required only to conduct an examination of the document and check this against the holder of that document.



# Document Retention

You must keep a record of every document you have checked.

- This can be a hard copy of a scanned and unalterable copy such as jpeg or pdf copy
- Copies must be retained securely for the duration of the person's employment and for a further two years after they stop working for the University
- You must make a record of the date on which you conducted your check. This can be by either making a dated declaration on the copy or by holding a separate record securely, which can be shown to UKVI upon request to establish the University's statutory excuse
  - *Use template document available on HR website*
- You must be able to show this evidence if requested to do so in order to establish a statutory excuse



# Tier 4/Sponsored Student Workers

A Student (formerly Tier 4) immigration category allows migrants to study in the UK on a full-time basis. Tier 4/sponsored students are able to work part-time during term time and full-time during their university vacations/after course completion.

Rights to Work Document is located on the [Student Centre Website](#) and on [Compliance intranet page](#).

- As the primary reason for the individual is to STUDY, Brunel restricts all students to work a maximum of 15 hours per week in term time
- Students can work full time on a approved work placement, provided it is reported to UKVI and is an 'integral and assessed' part of the course
- Although full-time work can also be carried out after course completion, students **cannot fill a full-time permanent vacancy** other than a recognised foundation programme and all other requirements are met or where they are filling a post as a Student Union Sabbatical Officer.
- Some international students have no right to work at all **(Always check Visa)**.
- The majority of student workers will be recruited through the **JOB SHOP**.
- Prohibited work for Tier 4/sponsored students – professional sport or entertainment and self employment.

# Conclusion

- Please remember that it is crucial that we follow the correct processes when recruiting staff.
- If you ever need assistance, please get in contact with HR or the Compliance and Sponsorship Team ([sponsorship.compliance@brunel.ac.uk](mailto:sponsorship.compliance@brunel.ac.uk))

# Questions:

In the first instance, please refer to the Home Office guidance:

- An employer's guide to acceptable right to work documents;
- Frequently asked questions;
- Code of practice on preventing illegal working: Civil penalty scheme for employers;
- Code of practice for employers: Avoiding unlawful discrimination while preventing illegal working;

***If you cannot find the answer to your question, please contact HR or the Sponsorship, Employer and Education Helpline on 0300 123 4699.***