

RIGHT TO WORK POLICY & pROCEDURE

This document outlines the University’s obligations and procedures in relation to conducting right to work checks, monitoring and reporting on migrant worker activity and preventing illegal working.

|  |
| --- |
| Table of contents[1 Purpose and scope 2](#_Toc141359693)[2 Conducting a Right to Work (RTW) check 2](#_Toc141359694)[3 Overseas student workers 6](#_Toc141359695)[4 Sponsored migrant workers (Skilled Workers) 7](#_Toc141359696)[5 Manager Responsibilities 9](#_Toc141359697) |

# Purpose and scope

* 1. The University is legally required under the provisions of the Immigration, Asylum and Nationality Act 2006 to verify, **prior to the start date of employment**, that any individual undertaking work for the University, regardless of duration and contractual status, has the legal right to work in the UK.
	2. Failure to adhere to this requirement may impact on the University’s ability to retain, or may result in restrictions being imposed upon, its sponsorship licence to employ migrant workers and potentially also its sponsorship licence to educate international students. A civil penalty of up to £20,000 per illegal worker (accurate as of August 2023) can also be imposed on the University in cases where a right to work check has not been carried out prior to them commencing in employment. From January 2024 the fines will increase to up to £45,000 for a first breach and up to £60,000 for any subsequent breaches.
	3. A statutory excuse is an employer’s defence against a civil penalty. For the University to establish a statutory excuse against a civil penalty if an individual is found to be working illegally, a right to work check must be completed before an individual commences work and must have been carried out in line with the procedures detailed in Section 2 of this document.
	4. The requirement to verify an individual’s right to work applies to all employees and workers at the University, regardless of their nationality and immigration status. Any person employed under an employment or worker contract at the University, whether full or part-time, permanent, fixed term or temporary, needs to have had a right to work check prior to the start date of their employment.
	5. There are also other groups of people invited to undertake certain paid tasks at the University and they will therefore also require a right to work check. Such groups may include but are not limited to: Exam Invigilators, Doctoral Examiners and External Examiners.
	6. The University also has some reporting and monitoring obligations for employees or workers who have only time-limited permission to work in the UK. This policy and procedure therefore also outlines the University’s legal obligations and approach to the recruitment, monitoring and management of any such individuals.

# Conducting a Right to Work (RTW) check

* 1. A right to work check must be conducted **before** the University employs any individual, to ensure that they are legally allowed to do the work in question. If an individual’s right to work is time-limited, a follow-up check must also be conducted shortly before it is due to come to an end.
	2. The University must do one of the following **before** the individual commences in employment - either:

a manual (in person) right to work check; or

a Home Office online right to work check (for non-British and non-Irish citizens only).

* 1. To ensure compliance with this requirement **before** any employment commences, such checks will usually be completed at selection interview stage.
	2. Conducting a manual (in-person) document-based RTW check
		1. There are three steps to conducting a manual (in-person) document-based RTW check. All three steps must be completed, before employment commences, to ensure the RTW check is valid.

*Step 1: Obtain*

* + 1. The University must obtain from the individual an original document from either List A or List B of acceptable documents, details of which are available [here](https://www.gov.uk/government/publications/right-to-work-checks-employers-guide/an-employers-guide-to-right-to-work-checks-6-april-2022-accessible-version#annex-a-lists-of-acceptable-documents-for-manual-right-to-work-checks). If an individual does not have any of the prescribed documentation or proof of their right to work in the UK, then they must not commence any work for the University.

*Step 2: Check*

* + 1. The Universitymust check that the documents are genuine and that the person presenting them is the individual concerned, the rightful holder and allowed to do the type of work being offered. The following must be checked:
			- That photographs and dates of birth are consistent across documents and also consistent with the appearance of the individual concerned;
			- That any expiry dates for permission to live and work in the UK have not passed;
			- The documents are genuine, have not been tampered with and belong to the holder; and
			- The reasons for any difference in names across documents (e.g. the name on their job application form is different to that on their passport) are checked and verified by supporting documents (e.g. by also seeing their original marriage certificate, divorce decree absolute, deed poll documentation etc). Any supporting documents referred to as verification should also be photocopied and retained.

*Step 3: Copy & Retain*

* + 1. The Universitymust make a clear copy of each document and retain the copy securely, either electronically and in a format which cannot later be altered (such as PDF) or in hardcopy. The University must copy and retain the following:
	+ Passports: 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 undertake the work in question.
	+ All other documents: the document in full, including both sides of any Immigration Status Document or Application Registration Card.
		1. A note must also be made of the date and time on which the check was conducted and must include the following statement on each document for which a copy has been taken:

*I certify that this is a true likeness of the individual concerned. Verified by: [name] This right to work check was conducted on: [insert date and time]*

* + 1. Human Resources will keep a record of any individuals who have time-limited right to work in the UK and will then contact the individual concerned to arrange for an updated check to be completed before it expires.
	1. Conducting an online right to work check
		1. An online right to work check can be done by using the online service, entitled ‘View a job applicant’s right to work details’. The online service supports checks in respect of those who hold:
	+ a Biometric Residence Permit (BRP) or Card;
	+ status issued under the EU Settlement Scheme (NB: EU nationals have not been able to demonstrate their right to work in the UK, using only their EU passport or ID card, since 1st July 2021);
	+ status issued under the points-based immigration system;
	+ British National Overseas (BNO) visa; or
	+ Frontier workers permit.
		1. Biometric Residence Card (BRC), Biometric Residence Permit (BRP) and Frontier Worker Permit (FWP) holders are only able to evidence their right to work using the Home Office online service. This means a physical BRC, BRP or FWP cannot be checked and accepted as proof of right to work.
		2. There are three steps to conducting an online RTW check. All three steps must be completed, before employment commences, to ensure the RTW check is valid.

*Step 1: Use the Home Office online service*

* + 1. The individual first views their own Home Office right to work record and then is required to share this information with the University by providing a ‘share code’, which, when entered along with the individual’s date of birth and institution name, enables the University to access the information.
		2. The individual may send the share code, which will be valid for up to 90 days, directly to the University or they may send this via the online service. If they send it via the service, the University will receive an email from right.to.work.service@notifications.service.gov.uk.
		3. To check the individual’s right to work details, the University will need to:
	+ access the service ‘View a job applicant’s right to work details’ via GOV.UK - <https://www.gov.uk/view-right-to-work>;
	+ enter the ‘share code’ provided by the individual (NB: to be a valid share code the code should start with ‘W’. This will indicate that the share code has been generated by a prospective or existing employee to evidence their right to work. The University will not be able to accept or use share codes which begin with the letter ‘R’ or ‘S’ as these are designed for other purposes);
	+ enter their date of birth; and
	+ enter the institution name (University of Worcester).

*Step 2: Check*

* + 1. In the presence of the individual (in person or via live video link), the University must then check that the photograph on the online right to work check is of the individual concerned.
		2. The University must only employ the person if the online check confirms they have the right to work in the UK and are not subject to a condition preventing them from doing the work in question. It is also essential to check that any expiry dates for permission to live and work in the UK have not passed.

*Step 3: Retain evidence of the online check*

* + 1. The University must securely retain evidence of the online right to work check, either electronically and in a format which cannot later be altered (such as PDF) or in hardcopy. For online checks, this should be a copy of the ‘profile’ page confirming the individual’s right to work and including the individual's photo.
		2. A note must also be made of the date on which the Stage 2 identity check was conducted and must include the following statement on the output from the online check:

*I certify that this is a true likeness of the individual concerned. Verified by: [name] This right to work check was conducted on: [insert date and time]*

* + 1. Human Resources will keep a record of any individuals who have time-limited right to work in the UK and will contact the individual concerned to arrange for an updated check to be completed before it expires.

# Overseas student workers

* 1. Not all overseas students are entitled to work while they are in the UK. An overseas student who is permitted to work will have an endorsement in their passport or on their Biometric Residence Permit stating they are permitted to work, the number of hours of work permitted during term time and the student visa expiry date.
	2. Where an overseas student does have a limited right to work, the working hours and the type of work that they may undertake must be verified via an online right to work check (see Section 2.5 above) **before** they commence in any employment with the University.
	3. A student worker must never be appointed to fill what would have otherwise been a full-time permanent vacancy.
	4. If employing an overseas student, it is essential that the University adheres to the restricted term-time hours as noted on their visa. This is usually a maximum of 20 hours per week during term-time, however it may sometimes be less. Managers will receive notification from HR of any restrictions relating to the employment of any overseas student workers they are responsible for managing and allocating work to, and it is vital that they adhere to these restrictions at all times.
	5. The University must also ensure that it retains on the student worker’s employment record, evidence to confirm their term and vacation dates for each academic year during which they are employed. Until such evidence has been obtained, the student concerned will not be permitted to work beyond the maximum term-time weekly hours specified on their visa, even if it might otherwise be believed to be a vacation period. The evidence required can be in the format of any of the options as outlined below:
	+ A copy of a letter or email addressed to the student from their education institution confirming term time dates for the student’s course; or
	+ A letter addressed to the University of Worcester as the employer, from the education institution at which the student is studying, confirming term time dates for the student’s course; or
	+ A printout from the student’s education institution’s website or other material published by the institution setting out its timetable for the student’s course of study (NB: if using this final option, employers are also advised to obtain one of the two options listed above. This is because term dates can vary between different courses and therefore information on websites may not be completely accurate or course specific).
	1. If a student worker is found to have worked in breach of their visa restrictions (i.e. they have worked in excess of their permitted 20 hours per week) then the University may withhold payment for any hours worked in the week when the breach occurred. To allow the University to identify in a timely way if any breaches have occurred, overseas student workers will be required to submit timesheets on a weekly basis and by no later than the Sunday evening at the end of each week in which they have worked. Repeated breaches of their visa restrictions will also be notified to the Home Office. It is essential therefore that the student worker also monitors and ensures that they do not accidentally or intentionally work in excess of the hours permitted by their visa restrictions.

# Sponsored migrant workers (Skilled Workers)

* 1. The University has a Home Office licence to issue Skilled Worker (previously called Tier 2) Certificates of Sponsorship for certain qualifying roles and to individuals who cannot otherwise evidence their right to work in the UK. Human Resources will determine by the nature of the role concerned, its salary and qualification requirements, whether Skilled Worker sponsorship may be available.
	2. For roles where such sponsorship is available and following an offer of employment being made to any successful candidate who requires such sponsorship, the University will apply for and issue a Certificate of Sponsorship to the individual concerned. The Certificate of Sponsorship will be for a maximum period of three years initially. The individual will then be able to apply for a time-limited visa to enter and work in the UK in the role for which they have been sponsored.
	3. The individual will initially be issued with a vignette (sticker) in their passport, which is valid for 90 calendar days to enable them to travel to the UK. Following their arrival they will have a further 10 calendar days, or before their vignette expires (whichever is later), to collect their Biometric Residence Permit (BRP) from the Post Office branch detailed in their decision letter. BRP holders must collect their card, but they prove their right to work in the UK by using the Home Office online service (see section 2.5 above). They can only provide the University with the necessary ‘share code’ after they have collected their BRP and therefore any such individuals should be encouraged to collect their BRP as soon as possible.
	4. If they need to start work prior to collecting their BRP however, they will temporarily be able to evidence their right to work by producing the short validity vignette (sticker) in their passport. In such instances a manual right to work check (see section 2.4 above) will initially need to be conducted based on this vignette and which must be valid at the time of the check, however, as this will expire 90 calendar days from issue, a repeat check using the online service will need to be conducted before the vignette’s expiry date, for the statutory excuse to continue.
	5. In addition to the job specified on the Certificate of Sponsorship, a Skilled Worker’s permission to stay in the UK also allows them to carry out supplementary employment, provided it meets the following conditions:
	+ the supplementary employment is either in a job on the Shortage Occupation List or a job in the same occupation (SOC) code as the job for which the original certificate of sponsorship was assigned; and
	+ is for no more than 20 hours a week; and
	+ the individual also continues to work for their original sponsor and therefore any supplementary work takes place outside of their contracted hours for their original sponsored employment.
	1. If an individual’s employment with the University will constitute supplementary employment for an already sponsored Skilled Worker, then in addition to the online right to work check process (see section 2.5 above) the University will also need to obtain a copy of their original Certificate of Sponsorship. This is to verify that the SOC code on the original Certificate matches to that which would apply for the supplementary part-time role they are due to commence.
	2. For any individuals to whom the University has issued a Skilled Worker Certificate of Sponsorship, the University must also report to the Home Office, via their online Sponsor Management System (SMS), any of the following specified changes to a sponsored worker’s circumstances. Unless otherwise stated, these must be reported within 10 working days of the change or relevant event occurring. Such changes include: -
	+ a sponsored worker does not start the role for which the University is sponsoring them within 28 days of the start date specified;
	+ a sponsored worker is absent from work without the University’s permission for more than 10 consecutive working days (NB: this must be reported by no later than 10 working days from the 10th consecutive working day of absence. Line managers must therefore ensure that they maintain absence records for any sponsored workers employed within their departments, in order for timely reporting to Human Resources and therefore also to the Home Office where required);
	+ a sponsored worker is absent from work without pay, or on reduced pay, for more than 4 weeks in total in any calendar year and a valid exception applies;
	+ a sponsored worker’s salary or pay is reduced from the level stated on their Certificate of Sponsorship (e.g. due to a request to reduce their working hours);
	+ there are significant changes to the details of the worker’s employment, other than those which require a change of employment application, such as a change of job role or core duties (e.g. a transfer from a teaching focused to a standard academic contract), or a promotion within the same occupation code (e.g. Lecturer to Senior Lecturer);
	+ a sponsored worker’s normal work location changes from that which was previously reported (e.g. they regularly start working on another campus or move to working a regular, rather than occasional, ‘hybrid working’ pattern);
	+ the University stops sponsoring a worker for any reason and before the originally scheduled expiry date of the Certificate of Sponsorship (e.g. due to dismissal, redundancy or the individual’s resignation; because the individual does not take up the role or the University withdraws the offer; because the individual has been granted settlement (indefinite leave to remain), or permission on an immigration route that does not require sponsorship);
	1. In addition to the above, if a sponsored worker is suspected to be, or found to have been, in breach of any of their conditions of stay then the University will be obliged to notify the Home Office of this as soon as possible. It is essential therefore that the sponsored worker is fully familiar with the conditions of their stay and adheres to those conditions at all times.
	2. The University will also be required to give to the police as soon as possible, any information that suggests any sponsored worker may be engaged in terrorism or criminal activity.

# Manager Responsibilities

* 1. The University has an obligation to ensure that all the requirements and responsibilities outlined in this policy are complied with and actioned appropriately. Managers will play a key role in ensuring that compliance.
	2. Any breaches of the requirements outlined above, whether those be in relation to a failure to complete a right to work check before employment commences or in relation to a student working more than their permitted weekly hours, will therefore be handled as follows: -
		1. HR, Payroll or Audit detect a right to work or visa restriction breach and flag this to the Deputy HR Director or Director of HR to assess risk and put in place corrective action. The relevant manager will be notified of the breach (as will the student if the breach relates to their weekly working hours) and HR will explain the correct process to be followed. Support, for example additional training, will also be offered should the manager need further guidance.
		2. If the manager has a second breach in their area of responsibility, this will also be flagged to the appropriate member of University Executive Board (UEB) via email. The email will detail the timeline of events in relation to each breach. The UEB member will take appropriate next steps in relation to the information provided, which may include speaking to the manager concerned and/or determining whether the potential commencement of disciplinary proceedings may be appropriate in relation to the manager’s repeated failure to ensure compliance.
		3. Right to work and visa restriction breaches will also be summarised to UEB each quarter to allow for trend analysis and proactive solution.

|  |  |
| --- | --- |
| Date Approved | 1st August 2023 |
| Approval Authority | University Executive Board |
| Date of Commencement | 1st September 2023 |
| Amendment Dates |  |
| Date for Next Review | 1st September 2026 |
| Related Policies, Procedures, Guidance, Forms or Templates | N/A |
| Policy/Policies Superseded by this document | N/A |