

Prevention of Illegal Working Guidance on the Immigration, Asylum and Nationality Act 2006

As an employer, we have a responsibility to prevent illegal working in the UK. The law on the prevention of illegal working is set out in the Immigration, Asylum and Nationality Act. The provisions below cover full-time, part-time, permanent, fixed-term and casual part-time hourly paid employees. The Act stipulates the documents that we have to check in order to be compliant. It is a criminal offence for us to employ someone who is not entitled to work in the UK, to do so could result in a civil penalty up to £20,000 per illegal worker or face criminal conviction. Checks must be carried out **BEFORE** the new employee starts work by the 3 step process detailed below.

Nationals from the following European Economic Area (EEA) countries and Switzerland can **enter** and **live in** the UK without needing to apply for permission from the UK Border Agency:

Austria	Belgium	Bulgaria	Cyprus	Czech Republic
Denmark	Estonia	Finland	France	Germany
Greece	Hungary	Iceland	Ireland	Italy
Latvia	Liechtenstein	Lithuania	Luxembourg	Malta
Netherlands	Norway	Poland	Portugal	Romania
Slovakia	Slovenia	Spain	Sweden	Switzerland
UK				

EEA nationals, have the right to apply for a registration certificate under the 2006 EEA Regulations confirming that they are exercising a Treaty right as a worker. There is, however, no requirement to be in possession of such a document in order to work legally.

Croatia is part of the European Union which means Croatian nationals can move and reside freely in any EU Member State. However the UK applied restrictions on Croatian national's access to the labour market via the Accession of Croatia (Immigration and Worker Authorisation) Regulations 2013. This means that a Croatian national will only be able to work in UK if they hold a valid Work Authorisation Document or if they are exempt from work authorization. The process for obtaining authorisation to work is in two stages: BU must issue a Certificate of Sponsorship and the Croatian worker must then apply for a Work Authorisation Document .

STEP 1

What documents are valid?

There are 2 lists detailed below that we need to refer to, List A and List B. To comply with the Act, we can take:

Either

- One of the single documents, or two of the documents in the specified combinations given from List A;

Or

- One of the single documents, or two of the documents in the specified combinations given from List B.

WE ONLY ACCEPT ORIGINAL IN-DATE DOCUMENTS.

LIST A – show that the holder is not subject to immigration control, or has no restrictions on their stay in the United Kingdom. If an original document from List A is produced the individual may work for us for an indefinite period.

Single documents:

- 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.

Combination documents:

- 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 by a Government agency or a previous employer.

LIST B – demonstrate that the holder has been granted leave to enter or remain in the UK for a limited period of time and / or has restrictions on their right to work in the UK. List B is divided into List B - Group 1 and List B - Group 2.

Documents must be presented before employment starts from List B – Group 1, as well as when the permission expires.

Documents must be presented before employment starts from List B – Group 2, and again after 6 months.

List B – Group 1

Single documents:

- 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.

Combination documents:

- 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

Single documents:

- 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.

Combination documents:

- 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** 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.

Tier 4 Students

Students with Tier 4 (General) visas may be allowed to work while they are in the UK, however they may not fill a full-time permanent vacancy. They may only be employed on a temporary basis.

There are limits on the number of hours they can work. If studying at degree level (NQF level 6 or equivalent) with a sponsor which is a UK recognised body or a UK Higher Education Institution, they are allowed to work:

- Up to 20 hours per week* during term time. This includes paid and unpaid work. A week is defined as any consecutive seven day period from the contract start date. For example:
 - A contract starts on Monday 1 February, the week therefore runs from Monday to Sunday, continuously until the end of the contract
 - A contract starts on Wednesday 3 February, the week therefore runs from Wednesday to Tuesday continuously until the end of the contract
 - A contract starts on Friday 5 February, the week therefore runs from Friday to Thursday continuously until the end of the contract
- full-time during holidays. This is a period when they are not required to study. (NB. Re-submission of assignments or coursework is classed as term-time.)
- full-time from the course end date. The student must provide a letter to confirm the course has ended prior to working full-time.
- On a work placement as part of the course, providing the work placement does not amount to more than 50% of the course;

*NB. With effect from 1 April 2016 the University has reduced the permitted number of working hours per week for students from 20 to 15 hours per week during term-time for all new contracts of employment.

In addition to the checks outlined above there is an additional requirement to obtain documentary evidence of term and vacation dates as part of the right to work in the UK check for Tier 4 students. This will ensure we do not employ students outside of their visa conditions in relation to working hours.

The following is acceptable as evidence and must be copied and provided to Human Resources:

- **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 us as the employer** from the education institution confirming term time dates for the student's course.

STEP 2

We must take all reasonable steps to check that the document is genuine and to satisfy ourselves that the individual is the person named in the document, and to check that the documents allow them to do the work in question.

For each document presented, you should:

Check any photographs provided – are they consistent with the person's appearance; and

Check the dates of birth listed are consistent across documentation and you are satisfied this is consistent with the person's age; and

Check any expiry dates have not passed; and

Check any work restrictions for example, UK Government stamps, Biometric Residence Permits or endorsements to determine if the person can work, as well as any restrictions; and

Satisfy yourself that the documents are valid and genuine, have not been tampered with and belong to the holder; and

If the person produces documents in different names you need to see a further document to explain the reason for this – e.g. marriage certificate, divorce certificate, deed poll, adoption certificate or statutory declaration; and

Check supporting documents for any different names, for example, marriage certificate, divorce decree or deed poll.

STEP 3

Photocopy – take a clear copy of each document in a format which cannot later be altered, and retain the copy securely; electronically or in hardcopy. **You must retain a record of the date and time on which you made the check.**

For passports this must include any page with the document expiry date, nationality, date of birth, signature, leave expiry date, biometric details and photograph, and any page containing information indicating the holder has an entitlement to enter or remain in the UK and undertake the work in question; and

Any page containing a UK Government endorsements which allows your potential employee to do the type of work offered

Other documents should be copied in their entirety; this includes **both** sides of a Biometric Residence Permit.

All photocopies must have been from the original document and document the date and time the copy was taken and the person's initials that have seen the original written on the copy and **forwarded to Human Resources**. Copies of the documents will be kept for the duration of the person's employment.

Consequences of failing to undertake an eligibility to work check

Human Resources will undertake a regular audit of copies of List A and List B documentation, to ensure that the 3 step process outlined above has been fully completed **prior** to the individual commencing work, including providing term dates when employing Tier 4 students.

If the eligibility to work check is not fully completed at the appropriate time this could result in a civil penalty up to £20,000 per illegal worker reported or criminal conviction. In addition, Human Resources will undertake an investigation in line with the [Disciplinary Procedure](#) which may result in disciplinary action for the member of staff who has allowed the individual to work without the appropriate eligibility to work check having taken place.

Regular workshops are run by Human Resources on the Prevention of Illegal Working. Full details of the workshops and additional relevant resources can be found on the [Organisational Development Staff Intranet pages](#). The workshop briefing can be accessed [here](#).

Please contact Human Resources if you require further advice and guidance in relation to an individuals right to work in the UK and for the University. Human Resources contact details can be found on the [Staff Intranet](#) or alternatively the team can be contacted by phone on 01202 961133 or via email at hrenquiries@bournemouth.ac.uk.