



## IMMIGRATION AND VISA GUIDANCE

### Important Information - Home Office Requirement –Right to Work Checks from September 2023

*This Guidance Note should be distributed to Hiring Managers and local admin support for information only.*

***Only colleagues in the HR Directorate should carry out Right To Work Checks for employment or casual engagements. Only nominated and trained staff should carry out Right to Work checks for Unitemps engagements.***

*This Guidance applies to any new employee or casual worker starting on or after 4th September 2023*

#### 1. Introduction

Under the Immigration, Asylum and Nationality Act 2006, Heriot-Watt University, as an employer has a duty to carry out document checks on prospective and current employees and any worker undertaking casual or occasional work.

The check must be carried out:

- before the employee or casual worker starts to work.
- When a contract is extended
- When an existing employee applies for a new visa

During the Covid pandemic, the Home Office requirement to carry out in-person right to work checks was waived so that documents could be checked and verified via Zoom, Skype or Teams. The verification had to be annotated to show that the check had been carried out remotely.

Government rules changed in 2022 so that;

- The remote checking service for British and Irish Nationals was withdrawn and either an in-person right to work check or a check carried out by a verified external provider must now be undertaken
- The Government [online right to work checking service](#) must be used for all other nationalities who hold a biometric card or EU Settled Status or status under the Points Based Scheme (PBS).<sup>1</sup>

This Guidance Note sets out the key principles and processes for checking right to work in the UK.

#### 2. Key Principles

The following Key Principles apply to any engagement, whether for an employee or a casual worker, including students, of any nationality or visa status.

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<sup>1</sup> This has been a requirement since 6<sup>th</sup> April 2022

- We will not allow anyone to start work until we have a signed, dated and verified right to work check, regardless of nationality (known or assumed)
- We will not backdate any contract, engagement or payment to a date prior to that on the right to work check
- Where we do not have written evidence that a student on a Student Visa is able to work more than 20 hours per week, only 20 hours per week will be approved and paid
- **Payment for work carried out before the check has taken place cannot be made.** It is a disciplinary offence for a manager to allow work to start or payment to be made; or for an employee or worker to continue to work knowing that a check has not been carried out. **Please see the Addendum at the end of this document for further details**
- It is not permissible to make a payment after the check has been carried out which takes account of work which may have been done before the check.

We recognise that many of our colleagues are working in line with our Connected Hybrid Principles and as such, will be expected to attend campus at least on a part-time basis, including to attend an in-person check where required.

### 3. What are the options for right to work checks?<sup>2</sup>

There are three options when carrying out right to work checks:

- a) Provide an on-line check. This is a quick, cheap and (hopefully) easy way to provide right to work documents. This route has been in place since 6<sup>th</sup> April 2022 for all but UK and Irish Nationals. See Section 4 below.
- b) Provide an on-line check via an external provider for British and Irish Nationals  
The University has engaged an external provider called TrustID to enable us to carry out checks for British and Irish Nationals. See Section 6 below.
- c) Carry out an in person check for all UK and Irish Nationals. This may be necessary or preferred if a UK or Irish National does not have a passport, or who has an expired passport; or if the individual prefers that we carry out an in-person check. See Section 7 below.

### 4. Carrying out an Online Check

Employees and casuals who are overseas nationals and who hold the following MUST make use of the Home Office online right to work checking service while doing a video call:

- a biometric residence permit;
- a biometric residence card;
- status issued under the EU Settlement Scheme;
- status issued under the points-based immigration system;
- British National Overseas (BNO) visa
- Ukraine Family Visa

It is no longer acceptable to check biometric evidence via a manual or Teams check –the [online right to work checking service](#) must be used.

### 5. How does the online checking service work?

For the new employee/casual worker

The service works on the basis of them first viewing their own Home Office right to work record.

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<sup>2</sup> Only HR team members can carry out right to work checks.

They may then share this information by providing a 'share code', which, when entered along with the individual's date of birth, enables Heriot-Watt University to access the information.

They may provide this directly to a named individual (the person carrying out the check) or choose to send this via the service, in which case Heriot-Watt University will receive an email from [right.to.work.service@notifications.service.gov.uk](mailto:right.to.work.service@notifications.service.gov.uk)

#### Heriot-Watt HR Team Member carrying out the check<sup>3</sup>

To check the person's right to work details, HR will:

- access the service 'View a job applicant's right to work details' via GOV.UK
- enter the 'share code' provided to you by the individual, and
- enter their date of birth.
- It is not sufficient to simply view the details provided to the individual on the migrant part of the service.

On receiving the share code from the employee or casual, or via the notification service, HR must access the service using the employer part of the service <https://www.gov.uk/view-right-to-work> and type in both the share code and the individual's date of birth.

HR then arranges a short video call with the employee or casual to check that the photo in the online check is a photo of them.

The share code will be valid for 30 days, after which a new code will be required in order to conduct an online check.

Further details on how to check the right to work are available here:

<https://www.gov.uk/check-job-applicant-right-to-work>

<https://www.gov.uk/prove-right-to-work>

## 6. Carrying out a Check via TrustID

It is now possible to undertake on-line checks for most UK and Irish Nationals through an external provider.

- The employee, candidate or casual for whom a check is required will receive an email from TrustID outlining what you need to do
- You share the documentation required on a safe and secure platform uploading the relevant information to TrustID
- HR will confirm that the right to work check is complete

However, if you do not have a **current** British or Irish passport, HR will have to carry out an in-person check. See Section 7 below.

## 7. Carrying out an "In Person" Check

This option is applicable to British and Irish Nationals if they do not wish to use the Trust ID service; or they do not have a current passport; or unless for some reason an overseas

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<sup>3</sup> A RTW check must not be carried out by anyone other than a member of the HR Directorate or nominated manager for Unitemps engagements

national is unable to provide a share code for an online check and we are advised that an in-person check is required alongside an Employer Checking Service check.

For in-person checks, we are required to check the validity of the original documents in the presence of the holder.

A British or Irish employee or casual worker using this process will therefore need to attend the relevant UK Campus **before** their first day of employment or casual engagement, bringing the appropriate documents with them. A member of the HR Recruitment Team will arrange a suitable time and date to visit the campus the employee or casual worker will be based at and a contact name and number for that campus.

If an employee or casual worker is unable to attend in person before their start date, either they or their line manager must contact [Recruitment@hw.ac.uk](mailto:Recruitment@hw.ac.uk) for advice. It may be possible to undertake a check via a live video link but we must be in possession of original documents. **We cannot carry out this check without the documents in our physical possession.**

ORIGINAL documents should be sent to:

**FAO HR Recruitment, Heriot-Watt University, Riccarton, EH14 4AS**

Documents should be sent to the Edinburgh Campus regardless of the UK campus the employee or casual worker will be working from, as the HR Recruitment Team based in Edinburgh will carry out the check with the individual.

Please ensure the FAO line is clear so the mail room can prioritise the sorting and safe storage of documents. Documents may also be sent via recorded delivery; this cost will be reimbursed.

An HR colleague will then need to contact the employee or casual worker via Teams or Zoom to make a visual comparison of the individual/their documents. The passport (and BRP card where appropriate) will then be copied, signed, scanned and returned as quickly as possible via recorded delivery.

The HR colleague carrying out the check must

- Check the individual presenting the documents and the original document match
- Check the documents are genuine
- Check the documents presented allow the holder to undertake the type of work being offered
- Take a clear colour copy or scan of each document
- Record the date you made the check and mark it as “seen and verified by [name] on [date].
- Store the information SECURELY on ERP.
- Once HR confirm the scanned document/s have been received and uploaded, SECURELY RETURN THE ORIGINALS TO THE OWNER

Appendix 1 sets out the type of documents that a candidate must present when carrying out a remote check.

[Appendix 2](#) sets out what to look for when carrying out a remote check.

**8. What if HR is not sure whether the check is valid?**

In certain cases, we may need to undertake a further check via the Employer Checking Service (ECS). If so, we will ask the individual to complete the form at [Appendix 3](#) and the check will be carried out by a member of the HR Team. This check usually takes 5 working days and work MUST NOT be carried out until the reply has been received and checked within HR.

Only HR staff may carry out an Employer Reference Check, and to do so, they will need some personal details about the candidate (name, address, date of birth, nationality) and the candidate's permission for us to do so, by asking them to complete the form at [Appendix 3](#)

If you have any queries or concerns about the information provided in this Guidance, please raise a ticket with [HR helpdesk](#) in the first instance.

## APPENDIX 1 LISTS OF ACCEPTABLE DOCUMENTS FOR RIGHT TO WORK CHECKS

### [Employers Guide to Right to Work Checks](#)

#### **List A –Lists of Acceptable Documents for manual right to work checks (where the right to work is not time-bound)**

1. A passport (current or expired) showing the holder is a British citizen or a citizen of the UK and Colonies having the right of abode in the UK.
2. A passport or passport card (in either case, whether current or expired) showing that the holder is an Irish citizen.
3. A document issued by the Bailiwick of Jersey, the Bailiwick of Guernsey or the Isle of Man, which has been verified as valid by the Home Office Employer Checking Service, showing that the holder has been granted unlimited leave to enter or remain Jersey, Guernsey or Isle of Man Immigration Rules.
4. 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.
5. 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.
6. A birth or adoption certificate issued 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.
7. 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.
8. 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 Group 1 – documents where right to work is time-limited for more than 6 months**

1. 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<sup>4</sup>.
2. A document issued by the Bailiwick of Jersey, the Bailiwick of Guernsey or the Isle of Man, which has been verified as valid by the Home Office Employer Checking Service, showing that the holder has been granted limited leave to enter or remain under Jersey, Guernsey, or Isle of Man Immigration Rules.
3. 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.

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<sup>4</sup> This includes a current passport endorsed with a stamp showing an individual has been granted leave to enter and there are no work-related conditions attached. If, under the conditions of the individual's leave, work was restricted or prohibited the endorsement placed in the individual's passport would explicitly set that out as a condition.

## **List B Group 2 – documents where a time-limited statutory excuse lasts for six months**

1. A document issued by the Home Office showing that the holder has made an application for leave to enter or remain under Appendix EU to the immigration rules (known as the EU Settlement Scheme) on or before 30 June 2021 together with a Positive Verification Notice from the Home Office Employer Checking Service.
2. A Certificate of Application (digital or non-digital) issued by the Home Office showing that the holder has made an application for leave to enter or remain under Appendix EU to the immigration rules (known as the EU Settlement Scheme), on or after 1 July 2021, together with a Positive Verification Notice from the Home Office Employer Checking Service.
3. A document issued by the Bailiwick of Jersey, the Bailiwick of Guernsey or the Isle of Man showing that the holder has made an application for leave to enter or remain under Jersey, Guernsey) or Isle of Man Immigration Rules together with a Positive Verification Notice from the Home Office Employer Checking Service.
4. 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.
5. 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.

## **Appendix 2: HR/UNITEMPS REP USE ONLY<sup>5</sup>**

### **WHAT TO LOOK FOR WHEN CHECKING DOCUMENTS IN PERSON (UK AND IRISH NATIONALS ONLY)**

#### Checking the Documents

When looking at the documents presented (usually a passport), ask to see:

- The front cover
- Any page containing personal details, including nationality
- Any page containing the holders photo
- Any page with an expiry date
- Any page with visa information

#### Verifying the information

You are not expected to be an expert in verification, but you are expected to carry out a reasonable check to see if there are any obvious anomalies between the information presented and the information you have about the individual.

- Does the document belong to the person presenting it?
- Does the photo look like the person presenting it?
- Do the personal details (name, date of birth, nationality etc.) match the information on the application form?
- Is the passport or other document current?

Expired passports may be accepted for UK or Irish Nationals, but you are still expected to check that the individual reasonably looks like their photo, so if you are presented with a passport that was issued as a child, or a long time in the past, you may need to ask for additional evidence from List A to verify.

Once you have seen the documents, please ensure you save screen shots as outlined in section 6 above.

If in doubt, contact [Helen Hymers](#).

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<sup>5</sup> Only members of the HR Directorate or nominated manager for Unitemps engagements can carry out RTW Checks



**APPENDIX 3**

**Employee Consent Form**

I,

..... **Full Name**

..... **Nationality**

..... **Date of Birth**

..... **Current UK Address**

agree to the undernamed

- NAME/JOB TITLE/ Authorising Officer/ Key Contact/ Level 1 User

Of

**Heriot-Watt University Sponsor Licence number PDX4W43T6**

Receiving information about me from UK Visas and Immigration giving an update on the

progress of my current application..... **insert reference number (if known)**

and/ or right to work in the United Kingdom (delete as appropriate)

Signed .....

Dated .....

Valid for 6 months from date of signature

**HR USE ONLY:**

*New Start / Current Employee (delete as appropriate)*

*Job Title.....*

**The original of this form must be retained on the employee’s HR file in either a paper or electronic format and may be requested by a visiting officer when inspecting your records.**

## **ADDENDUM – NO BACKDATED START DATES OR PAYMENTS FOR STAFF AND CASUALS**

Under the Immigration, Asylum and Nationality Act 2006, Heriot-Watt University, as an employer has a duty to carry out document checks on prospective and current employees and any worker undertaking casual or occasional work.

These checks are required to ensure individuals demonstrate that they are (and continue to be) eligible to live and work in the UK.

This Addendum reiterates the importance of carrying out timely right to work checks and the impact on the worker, the university and the manager or member of staff offering the employment or work if an employee or casual starts work before the right to work check is carried out or if payment is subsequently backdated.

The following rules apply to any engagement, whether for an employee or a casual worker, including students, of any nationality or visa status.

- We will not allow anyone to start work until we have a signed, dated and verified right to work check or valid online check, regardless of nationality (known or assumed)
- We will not backdate any contract, engagement or payment to a date prior to that on the right to work check
- Where we do not have written evidence that a student is able to work more than 20 hours per week, only 20 hours per week will be approved and paid
- It is not permissible to make a payment after the check has been carried out which takes account of work which may have been done before the check.

Failure to comply with the above will result in:

- The employee or casual not receiving payment for any work carried out prior to the right to work check or
- The casual student not being paid for hours worked over 20 per week even if legitimate

The employee or manager who offered the work or processed a timesheet without ensuring the right to work check had been carried out and approval sought will be subject to investigation under the University Disciplinary Policy, the outcome of which may lead to dismissal under Gross Misconduct if the outcome of the failure to comply results in the Home Office investigating and taking action against the University.

Such action may include

- A fine of up to £10,000 per illegal worker or worker engaged or paid prior to the check being carried out
- Criminal prosecution
- Suspension and/or revocation of our Sponsor Licence. This would mean all current sponsored employees would no longer be able to work at Heriot-Watt University; we would not be able to appoint any new sponsored employees or casual workers until the Licence were to be reinstated; and our Student Licence may also be in jeopardy.

The Home Office receives information from HMRC and other Government Bodies and may carry out spot checks at any time on employers; we are also due to be formally audited in coming months, therefore the risk of even one instance of non-compliance is significant.