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**Preventing Illegal Working and Eligibility to Work Policy**

**1. Introduction**

1.1 The Immigration, Asylum and Nationality Act 2006 places a legal responsibility on employers to prevent illegal working and to only employ/ engage to work those who have a Right to Work in the UK. As a result, Queen’s, as an employer, must check that all employees/ workers are entitled to work in the UK.

1.2 The 2006 Act is breached by employing someone who is:

 (i) Subject to immigration control and;

 (ii) Aged over 16 and;

(iii) Is not allowed to carry out the work in question because either they have not been granted leave to remain in the UK or because their leave to remain in the UK:

* Is invalid;
* Has ceased to have effect (meaning it is no longer valid, whether by reason of curtailment, revocation cancellation, passage of time, or otherwise), or;
* Is subject to a condition preventing the person from doing work of that kind.

1.3 It is our statutory duty to prevent illegal working and a criminal offence to employ/ engage an illegal worker. The penalties may include a civil penalty (up to £20,000 per illegal worker) and/ or imprisonment.

**2. Scope**

2.1 This policy covers the following:

(i) Workers: Those engaged to undertake work, normally within Schools,

Hospitality Services and other professional services directorates and are in receipt of a Contract for Services including those paid through the Non Staff Payroll.

(ii) Students: Those engaged in work during their period of studies, recruited

through On Campus Jobs.

(iii) Employees: Those recruited through People and Culture who are in receipt

of a Contract of Employment and paid through the main payroll.

**CASUAL WORKERS (NSP): SCHOOLS, FACULTY AND PROFESSIONAL SERVICES**

**3. Roles and Responsibilities: Workers paid through Non Staff Payroll (NSP)**

3.1 Right to Work checks must be undertaken for each worker **before** they commence work. For the purpose of this policy the nominated Responsible Officers will be Directors of Operations (for Faculty workers), School Managers (for Schools) and Professional Services Directors (for Directorate workers). The Responsible Officers will be responsible for ensuring that Right to Work checks are effectively implemented within their relevant areas so that migrant workers do not breach their visa restrictions.

3.2 The Responsible Officers are also responsible for ensuring that any follow up checks required are referred to People and Culture.

**STUDENTS: INTERNATIONAL AND OTHERS**

**4.** **Roles and Responsibilities: Students engaged in paid work during their period of studies**

4.1 Tier 4 Students (International) have restrictions placed on their visas and cannot work more than 20 hours per week. On Campus Jobs will hold overall responsibility for monitoring Tier 4 student work hours to ensure compliance with visa restrictions and will complete the Right to Work checks for these students.

4.2 The student has primary responsibility for ensuring the work is within the restrictions of their visa. However, the person commissioning the work e.g. the line manager, has a responsibility to ensure the hours commissioned are within any visa restrictions.

4.3 All other (i.e. non-Tier 4) students who are engaged to do work will be subject to Right to Work checks as outlined in 3.1 above.

**EMPLOYEES: PEOPLE AND CULTURE**

**5. Roles and Responsibilities: Employees recruited through People and Culture**

5.1 It is responsibility of People and Culture to undertake **all** checks relating to those recruited through People and Culture and holding a Contract of Employment. These responsibilities include:

(i) Preventing Illegal Working and Right to Work Checks for all employees issued with a contract of employment;

(ii) Ensuring Sponsor Duties are met for the recruitment of Migrant Workers (Tiers 2 and 5[[1]](#footnote-1)).

5.2 The University has under 3.1(ii) above obtained a Category A Sponsorship Licence to enable the organisation to employ international staff who do not have an automatic right to work in the UK (United Kingdom). All licensed sponsors have certain duties that they are required to fulfil to ensure that immigration controls remain effective. These sponsorship responsibilities relate to non- European Economic Area (non EEA)[[2]](#footnote-2) migrants to permit them to work in the UK.

5.3 The People and Culture Director is responsible for Tier 2 and Tier 5 Sponsorship Licences. He/ she is the Authorising Officer who is the most senior person responsible for the recruitment of all migrant workers and ensuring sponsor duties are met.

5.4 The Key Contact between the University and the Home Office is the person within People and Culture responsible to the People and Culture Director for Immigration Compliance. The Key Contact maintains the University’s sponsorship licences and develops procedures and training to ensure compliance with the sponsor duties.

5.5 HR Business Partners are the designated Level 1 users of the Home Office’s online Sponsorship Management System (SMS)[[3]](#footnote-3) and undertake the day to day sponsorship activities, **assign** certificates of sponsorship under Tiers 2 and 5 using the online system, manage live certificates of sponsorship, report migrant activity including: absence, promotion, change of circumstances, change of salary.

5.6 Associate HR Business Partners are the designated Level 2 SMS users and **prepare** certificates of sponsorship under Tiers 2 and 5, manage live certificates of sponsorship and report on migrant activity.

5.7 Sponsored workers and their line managers are responsible for informing People and Culture as soon as possible of any changes to the sponsored worker’s circumstances that need to be reported to the Home Office.

**6. Responsibilities of the Migrant Worker (Sponsored)**

6.1 The migrant worker must ensure that they advise People and Culture immediately in the following circumstances:

(i) If they are unable to take up post on the date indicated on their Certificate of

Sponsorship (CoS). (Please note that the Home Office will treat the period between the CoS start date and the actual start date as unpaid leave. **If the migrant worker accumulates more than four weeks unpaid leave in any calendar year the University must stop sponsoring them)**;

(ii) If their contract comes to an end before the date on their CoS, for example if they resign.

(iii) If they move to another immigration category, such as indefinite leave to remain, that does not require sponsorship;

(iv) It there are changes in their circumstances that differ to their CoS, such as job title, core duties, hours of work or salary level including changes of salary due to maternity, paternity, long term sick leave or other unpaid leave;

(v) If they are working at another location from that stated on their CoS. The University uses the main campus address to cover all sites in the greater Belfast area including the RVH and Queen’s Road sites. If they are working off campus, even if in Northern Ireland, including the Republic of Ireland, this must be reported. (This requirement does not apply to attendance at conferences or business visits elsewhere).

**7. Responsibilities of the Migrant Worker (Non-Sponsored)**

7.1 The migrant worker must ensure that:

(i) They have provided accurate information in respect of their status to work in the UK and to assist with the provision of documents to the University to ensure that they will meet the requirements for entry clearance or leave to remain.

**8. Governance**

8.1 Senate has ultimate responsibility for governance of the University’s policy, procedures, training and auditing with regards to preventing illegal working and

sponsorship.

8.2 The Registrar, Pro-Vice-Chancellors, the Directors and the Heads of School are responsible for ensuring compliance with the policy and associated guidance within their areas of responsibility and for ensuring adequate resources are available to fulfil the objectives.

8.3 The People and Culture Director is responsible for ensuring appropriate systems and procedures are in place across the University to maintain compliance and prevent illegal working. The People and Culture Director is named as the Authorising Officer on the University’s Sponsor Licence for Tier 2 and Tier 5. As Authorising Officer the Director is responsible for ensuring that effective systems and procedures are in place to complete sponsorship duties and maintain compliance with licence requirements.

8.4 The Director of Academic and Student Affairs is responsible for students and Tier 4 responsibilities.

**9. Review**

9.1 This policy and associated guidance documents will be reviewed and updated annually and/ or:

* + When there is any legislative change;
	+ When the Home Office amends/ updates any relevant guidance;
	+ In light of messages relating to sponsorship received from the Home Office through the Sponsorship Management System.

**10. Related links**

UK Visas and Immigration – Official Site

<https://www.gov.uk/government/organisations/uk-visas-and-immigration>

 Appendix 1

**Glossary of Terms**

**1. The Home Office Five Tier Visa System**

The UK Home Office points-based system is the main UK immigration route for migrants from outside the European Economic Area (EEA) to come to the UK to work, study, invest or train.

There are five ‘tiers’. In order to obtain a visa in any of the five tiers an applicant must pass a points-based assessment. In work visa applications, points are generally awarded according to the applicant's qualifications, salary level and sponsorship by a licensed employer. A minimum threshold must be reached to be successful. The minimum number of points required varies for each tier.

The five tier visa system consists of the following:

* **Tier 1 Visa:** This visa category is for 'high-value migrants' from outside the

EEA and covers entry of entrepreneurs, investors, and those very few people who come under the 'exceptional talent' visa.

* **Tier 2 Visa:** This category is for 'skilled workers' from outside the EEA with

a job offer in the UK. It includes skilled workers who are transferred to the UK by an international company, skilled workers where there is a proven shortage in the UK, ministers of religion and sportspeople.

* **Tier 3 Visa**: This category was designed for low-skilled workers filling

specific temporary labour shortages. The Government has so far never allocated any visas under this scheme.

* **Tier 4 Visa:** This category is for students aged over 16 from outside the

EEA who wish to study in the UK. Applicants must have a place at a registered UK educational establishment before they can apply.

* **Tier 5 Visa:** This category contains six sub-tiers of temporary worker

including creative and sporting, charity, religious workers, international agreement and government authorised exchange. The University primarily uses the government authorised exchange route to sponsor researchers coming to undertake supernumerary positions.

**Other UK visas**

The five tier system covers most work, study, and investment visas. But visitor visas, family visas, and some UK business visas fall outside of the five tiers.

* UK Visitor Visas: This route allows entry to the UK as a visitor, whether for

business or pleasure. The route includes provision for business visitors, academic visitors, student visitors, each with specific eligibility requirements and permitted activities.

**2. Migrant Worker**

A migrant worker is someone who holds a Visa or other temporary permission to work in the UK.

**Categories:**

Workers include those employed by the University on a full contract of employment and those engaged on casual, more informal contracts. The University is able to sponsor workers who do not hold a visa permitting work and need sponsorship. Sponsorship under Tier 2 is for employees. The University can also sponsor temporary workers under Tier 5 Government Authorised Exchange where the worker is in a supernumerary research position. Sponsorship is not available to workers who do not hold a full contract of employment but they may hold visas that otherwise permit work.

**3. Sponsor Management System (SMS)**

The Sponsor Management System is an online tool which enables a sponsor to create, assign, modify or withdraw certificates of sponsorship, report changes of circumstances for sponsored workers and maintain access for users. It is the main means of communication with the Home Office on sponsored workers and on licence details.

**4. SMS Users**

Access to the Sponsor Management System is in two categories with Level 2 users having basic access to create and update certificates. Level 1 users have additional access for reporting and maintenance of licence details. The University restricts assigning of certificates to level 1 users.

**5. Certificate of Sponsorship (CoS)**

A certificate of sponsorship is issued to eligible applicants under Tiers 2 and 5. The certificate is held online and can be modified by adding sponsor notes up until the point of application. Applicants are issued with a copy of the certificate details but Home Office staff have access to the certificate online and therefore have immediate access to updates.

1. See Glossary [↑](#footnote-ref-1)
2. The EEA includes EU countries and also Iceland, Liechtenstein and Norway. The EU countries are Austria, Belgium, Bulgaria, Croatia, Republic of Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the UK. Switzerland is also included as it is part of the single market. [↑](#footnote-ref-2)
3. See Glossary [↑](#footnote-ref-3)