



## Right to Work in the UK Policy

### Contents

1.	Introduction	2
2.	Scope and purpose of policy	2
3.	Roles and responsibilities	2
4.	Obtaining eligibility to work documents	2
5.	Checking eligibility to work documents	3
6.	EEA nationals	5
8.	Non-EEA/EU citizens with a derivative right of residence	6
9.	Certificate of application	6
10.	International students	6
11.	Supporting Information	7
12.	Further information	7
13.	Appendix	8



## 1. Introduction

The law on preventing illegal working is set out in sections 15 to 25 of the Immigration, Asylum and Nationality Act 2006. Under section 15 of 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 offered.

In order to establish a defence in the event that the Company is found to be employing a person who does not have the right to work in the UK, the Company is required to obtain, check and copy original documentation relating to all of its employees. A copy of the documentation should be retained on file.

If the Company fails to carry out these checks correctly, or at all, and is found to be employing an individual illegally it could be fined up to £20,000 for each illegal worker.

Likewise, if the Company knowingly employs an individual who is not allowed to work in the UK the penalty is up to 2 years' imprisonment and/or an unlimited fine.

## 2. Scope and purpose of policy

The 'Right to Work' is the legal right to live and work in a country. The Immigration, Asylum and Nationality Act 2006 is the UK legislation that requires OCS to make basic document checks on every potential new employee they intend to employ before they start working for OCS.

The purpose of the policy is to:

- Ensure the Company's employment practices are robust and to ensure that all employees hold current and valid permission to work in the UK;
- Prevent people without the Right to Work from gaining employment;
- Avoid negative PR; and
- Enable us to take a proactive stance to ensure that we are complying with this legislation and to provide the Company with a defence against prosecution.

This policy applies to all employees within the Company.

## 3. Roles and responsibilities

The line manager of any prospective employee is responsible for checking that they have the right to work in the UK for the role in which they will be employed.

Under no circumstances should any individual commence employment with the Company until evidence of their right to work in the UK has been obtained, checked and copied. Assumptions should never be made about any individual's right to work.

## 4. Obtaining eligibility to work documents

The government will only accept specific documents as proof of an employee's eligibility to work. These change from time to time but the version in effect as at the date of this policy is included as an Appendix.



List A documents show that the holder is not subject to immigration control, or has no restrictions on their stay, so they have an ongoing right to work in the UK. If a manager correctly carries out checks on List A documents, they and the Company will avoid a fine for the duration of that individual's employment. List B documents show 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. Managers are required to carry out follow-up checks on the individual.

The frequency of these follow-up checks depends on whether the documents provided are from **Group 1** or **Group 2**, as above:

- **Group 1** documents provide a time-limited statutory excuse which expires when the individual's permission to work expires. This requires managers to carry out a follow-up check when permission for them to work expires.
- **Group 2** documents provide a time-limited statutory excuse which expires 6 months from the date specified, as set out in the **Positive Verification Notice**.

## 5. Checking eligibility to work documents

There are four steps to successfully conducting a right to work check; obtain, check, copy and retain.

### Obtain

- Obtain original documents from either List A or List B (please see Appendix).

### Check

- Photographs and dates of birth are consistent across documents and with the appearance of the individual. Conduct checks in the presence of the individual.
- Expiry dates of any limited leave to enter or remain have not passed.
- UK Visa and Immigration Agency or Home Office endorsements to verify the individual is permitted to take up the kind of work to be offered.
- Documents are genuine and do not show signs of tampering or alteration.
- If different names have been provided throughout the application process or on documentation, obtain further evidence to explain this including an original marriage certificate, divorce decree absolute or deed poll. Supporting documents should also be photocopied and a copy retained.
- Where available, all documents should be checked under UV light to ensure all security features are present.

### Copy

- 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 the entitlement to enter or remain in the UK and undertake the work in question (the front cover no longer has to be copied).
- All other documents; the document in full, including both sides of a Biometric Residence Permit.



## Retain

- You must retain the copy or copies securely for not more than six years after the employment has come to an end.
- Managers must make a clear copy of each document in a format which cannot later be altered, and retain the copy securely, electronically or in hardcopy. The retained copy must be signed and dated as confirmation the original document has been seen and the relevant checks carried out
- A copy of every document that has been checked should be kept on the employee's personal file to ensure the Company can defend any claim that they have employed a worker illegally.
- A copy of every document that has been checked should also be uploaded to SAP.

## Identify

The line manager should:

- Determine if there are any restrictions, for example a temporary or other visa, or international student working restrictions; and
- Ensure that the applicant/employee has the necessary permissions to do the work that the Company needs them to do.

## Tier 2 Visas

OCS Group UK Limited does not hold a sponsorship licence with the Home Office to allow it to employ Tier 2 Visa holders.

A Tier 2 Visa relates to a specific person and a specific job. Therefore they will only provide a right to work for the particular employer and the particular employment to which the permit relates. The Tier 2 visa scheme lets UK employers recruit or transfer people from outside the European Economic Area (EEA), while still protecting the interests of resident workers in the UK.

## Temporary Visas

Colleagues or applicants on a temporary visa will be from outside the European Economic Area (EEA). They will be subject to immigration control and may have been given current leave to work in the UK. They will be able to demonstrate this by producing a UK Government stamp or endorsement in their national passport or travel document.

The Company is required to:

- Check that the visa does not prohibit the person from carrying out the work in question;
- Conduct checks in advance of the expiry of a temporary visa; and
- Ensure the person does not work past the expiry date of their visa.



## Transfer of undertakings

Transfer of Undertakings (Protection of Employment) (TUPE) regulations provide that right to work checks must be carried out by the transferee (the buyer) within 60 days of the date of transfer. Failure to do so will mean that an employer will not be able to obtain the benefit of the “statutory excuse” and may be liable for a penalty if an employee is later found to be working illegally.

## 6. EEA nationals

Citizens of the UK, Switzerland and any EEA states (with the exception of Croatia) are free to work in the UK in any capacity.

See the table below for members of EEA states:

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

To verify citizenship of these states, managers must obtain and copy the passport, National Identity Card or a combination of the candidate’s birth certificate issued in one of the states and an official document detailing the individual’s National Insurance number and name. Copies should be retained on file.

## 7. Citizens of Croatia

Since 1<sup>st</sup> July 2013, as European Economic Area (EEA) nationals, Croatians have been able to move and reside freely in any European Union (EU) Member State. However, the UK has applied transitional restrictions on their access to the labour market under the Accession of Croatia (Immigration and Worker Authorisation) Regulations 2013. Under these Regulations, a Croatian national who wishes to work in the UK and who is subject to the worker authorisation requirement will need to obtain an accession worker authorisation document (permission to work) before starting any employment.

This means that since 1<sup>st</sup> July 2013 a Croatian national can only work in the UK if they hold a valid accession worker authorisation document or if they are exempt from work authorisation. Under the 2013 Regulations managers have a duty to carry out document checks to confirm if a Croatian national is either exempt from work authorisation or holds a valid worker authorisation document for the work in question. Managers should check, validate and keep dated copies of original acceptable documents before they start working for the Company.



## 8. Non-EEA/EU citizens with a derivative right of residence

Some non-EEA citizens possess a 'derivative right of residence' in the UK based on their relationship with an EEA (or Swiss) national or a British citizen. These rights only arise in a limited range of circumstances and only where the specific conditions are met. Non-EEA citizens with a derivative right of residence are entitled to reside and work in the UK. Derivative residence cards are listed under List B of acceptable documents, and will provide a time limited statutory excuse if checked, copied and retained correctly.

## 9. Certificate of application

Where a non-EEA citizen applies for a residence card or a derivative residence card, the Home Office will provide them with a certificate of application pending a decision on their application. In certain circumstances, a certificate of application will state that the individual has the right to work in the UK whilst their application is being considered.

The certificate of application will only give a statutory excuse if it is less than six months old, permits work and is accompanied by a **Positive Verification Notice** issued by the Home Office employer checking service stating that the holder has permission to do the work in question.

If the employee or potential employee's certificate of application is more than six months old, but the individual's application for a residence card or derivative residence card has not been finally determined, they can apply to the Home Office for a replacement certificate of application which will

again be valid for six months. If work has been permitted, this must be verified by the Home Office Employer Checking Service.

## 10. International students

The student should not pursue a career with the Company by filling a permanent full time vacancy.

Provided that their conditions of entry do not prevent it, international students over the age of 16 may take employment in the UK for the following reasons:

- To undertake spare time and vacation work.
- To undertake a work placement with an employer which is part of their course of study (sandwich students).
- To undertake an internship placement.

Individuals studying here who have entered as a "student visitor" are not permitted to work. Student visitor visas may be given to individuals who are coming to the UK to study for a maximum period of 6 months.

An international student should provide the Company with evidence of their right to work in the UK and must, in addition, provide a letter from the educational establishment which they attend to demonstrate that they are studying a genuine and current course.

- Students studying foundation degree courses, and courses at degree level or above can work 20 hours per week during term time and full time during vacation periods;



- Students studying below degree level (excluding those on foundation degree courses) can work 10 hours per week during term time and full time during vacation periods.

The hours set out above are the maximum which can be worked over singular or multiple jobs.

A migrant student who is permitted to work will have a clear endorsement in their passport or biometric residence permit which states they are permitted to work and the number of hours of work permitted during term time, for example 10 or 20 hours.

The Company requires its line managers to monitor the working hours of international students to ensure they do not breach the terms of their working visa.

Every week the manager must check that no international student has worked in excess of 10/20 hours per week (unless during holiday time).

If any employee has worked in excess of the 10 or 20 hours per week:

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- The individual must be able to provide documentation on file to prove that the work was completed during a holiday period and not term time.
- If this is not the case, immediately escalate the matter to HR.

## 11. Supporting Information

Working with the Local Enforcement Authorities:

It is good practice to form a good working relationship with local UK Visa and Immigration Agency enforcement authorities and they can help to give advice and to check documentation. The enforcement authorities may make contact if they are investigating an employee currently working for the Company.

It is not uncommon for the authorities to request the Company not to advise an employee of these external investigations. In this case written confirmation of the request should be obtained to ensure we are not knowingly employing an illegal worker.

The Company would follow advice and guidance from the UK Border Agency and UK Visa and Immigration Agency with regards to suspension pending investigation or ending an individual's employment.

## 12. Further information

Further guidance on the prevention of illegal working and example documents can be found at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/304793/full-guide-illegal-working.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/304793/full-guide-illegal-working.pdf)

The government right to work checklist is also useful: <https://www.gov.uk/government/publications/right-to-work-checklist>



## 13. Appendix

### List A - Acceptable documents to establish a continuous statutory excuse

- A passport showing 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 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.
- 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

#### Group 1 - Documents where a time-limited statutory excuse lasts until the expiry date of leave

- 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.



- 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.

**Group 2 - Documents where a time limited statutory excuse lasts for 6 months**

- 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.
- 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.