
HR IMMIGRATION: RIGHT TO WORK CHECKS

Quick Guide for HR Operations; Recruitment; Hiring Managers and local admin support only

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This HR RTW Quick Guide sets out the key principles and processes for checking right to work in the UK.

1. Why are right to work checks required?

Under the Immigration, Asylum and Nationality Act 2006 (UK legal legislation that we must abide by), 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.

Who can complete a RTW check:

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

A RTW check must be carried out:

- Before the employee or casual worker is due to start work (before first day).
- When a contract is extended (follow up)
- When an existing employee applies for a new visa inside the UK
- When an existing employee receives a new visa decision inside the UK (follow up)

UK Government rules:

- British and Irish Nationals: either a Manual in-person right to work check or a check carried out by a Digital Identity service (Trust-ID) must be undertaken
- All other nationalities: The Government [online right to work checking service](#) must be used for all other nationalities who have UKVI online eVisa access such as EU settlement Scheme and status under the UK Points Based visa system (skilled worker/global talent etc). An ECS check can also be done in limited cases. A Manual check may be required if they do not have eVisa access.

Always refer to the [HR Immigration Guidance](#) onenote for further guidance.

2. Key Principles for any HWU work engagements

The following Key Principles 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, 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.
- Do not discriminate when conducting a Right to Work check.

Colleagues are expected to work in line with our [Connected Hybrid Working Principles](#) and Policy 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.

Do not discriminate:

To ensure that you do not discriminate against anyone, you should provide reasonable opportunity to enable an individual to prove their right to work (via one of the three methods). You should not discriminate when conducting right to work checks.

To avoid this, you should:

- be consistent in how you conduct right to work checks on all prospective employees, including British citizens
- ensure job selections are made on the basis of suitability for the post
- ensure that no prospective job applicants are discouraged or excluded, either directly or indirectly, because of known or perceived protected characteristics.

You should not:

- discriminate when conducting right to work checks
- only check the status of those who appear to you likely to be migrants
- make assumptions about a person's right to work in the UK or their immigration status on the basis of their colour, nationality, ethnic or national origins, accent, surname or the length of time they have been resident in the UK.

Otherwise, you may be acting in a discriminatory manner, and it could be used as evidence against you in proceedings under the Equality Act 2010 (UK).

[UKVI RTW discrimination guidance](#)

3. What type of right to work check should be used?¹

You should ask prospective employees to demonstrate their right to work through **one** of the appropriate methods:

1. MANUAL

2. ONLINE

3. DIGITAL

The choice will depend on the applicant’s nationality, passport and immigration status (and applicant preference in some cases). To comply with UK legislation, we must use **one appropriate** method:

Types of right to work check	Tools/documents required	Who can use this check	Applicant Identity Comparison
<p>1. MANUAL</p> <p>In-person documents</p>	<p>Applicant’s original Passport or ID document and immigration documents</p>	<p>For British and Irish Nationals usually if we cannot do the DVS check.</p> <p>This may be used for any nationality where they haven’t been given online evisa access</p>	<p>The employer must conduct an in-person document check only, verifying the documents match the individual.</p>
<p>2. ONLINE</p> <p>eVisa/UKVI online account share code</p>	<p>Applicant’s valid eVisa share code and DOB</p>	<p>For international nationalities with online immigration/eVisa access.</p>	<p>To ensure a person’s identity matches a valid right-to-work status, an employer must physically (in-person) or virtually (video call) compare the individual to the photo on their online right-to-work check using their eVisa share code.</p>
<p>3. DIGITAL</p> <p>Trust-ID</p>	<p>British/Irish national applicant to use a digital verification service (DVS) - ‘TrustID’</p>	<p>DVS can only be used for British/Irish citizens with a <u>valid passport</u> (or Irish passport card)</p>	<p>The employer must conduct an in-person or video call check verifying that the DVS RTW report matches the individual’s identity.</p>

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4. ONLINE check (UKVI account/eVisa access)

International only - A Home Office online right to work check is used for non-British and non-Irish citizens that have UKVI online eVisa access.

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.

The following should have eVisa access:

- Recent visa decisions issued with eVisa access
- expired biometric residence permit (no longer issued)
- biometric residence card (no longer issued)
- immigration status issued under the EU Settlement Scheme;
- immigration status issued under the points-based immigration system (PBS) i.e. skilled worker visa;
- British National Overseas (BNO) visa
- Ukraine immigration routes

Where an employee's existing permission to stay is due to expire: as confirmed via the initial check, will we need to carry out a follow-up RTW check to maintain a statutory excuse.

How to complete an ONLINE right to work check:

- **ENTER SHARE CODE AND DOB:** Use the Home Office Online right to work checking service at <https://www.gov.uk/view-right-to-work> and enter the eVisa 'share code' provided to you by the individual and their date of birth.
- **STATUS - CHECK NAME AND RIGHT TO WORK IN JOB:** Check that the online check confirms that the employee named in it is allowed to work in the UK and is allowed to carry out the work in question.
- **VERIFY IDENTITY OF PERSON (Video call/In-person imposter check):** Satisfy yourself that the photograph on the online right to work check is of the individual presenting themselves for work (i.e. the information provided by the check relates to the individual and they are not an imposter). This needs to be done in person or by video call.
- **IF THEY ARE A STUDENT VISA HOLDER, OBTAIN TERM TIME/VACATION EVIDENCE:** If the employee or prospective employee is a student who has permission to work for a limited number of hours per week during term time whilst studying in the UK, ask for details of their programme's term time/vacation dates and retain this information.
- **KEEP COPY OF DOCUMENTS:** Retain evidence of the online right to work status check and imposter check. This should be the 'profile' page confirming the individual's right to work. You should store this securely, (electronically or in hardcopy) for the duration of employment and for two years afterwards. The file must then be securely destroyed. You should also be able to produce these document copies quickly in the event that you are requested to show them to demonstrate that you have performed a right to work check and

retain a statutory excuse

- **VERIFICATION CONFIRMATION STATEMENT (signed):** You may wish to include a declaration in line with the check, such a statement could include:

'I confirm that I have carried out the right to work check above in compliance with the instructions within and I believe a valid statutory excuse is established for this worker'

PENDING in-time application made inside the UK (online eVisa access):

If a UK visa holder has made a valid, in-time visa application inside the UK (applied before visa expiry date) their existing/most recent visa conditions will just continue for longer (inc. right to work) until they receive a new visa decision.

Their legal status continues with their existing visa conditions, even if the processing wait time goes beyond their original visa expiry date. This is called 'Section 3C leave' in UK Immigration law. This is triggered from the following day of their original visa expiry date if a valid in-time visa application has been made inside the UK and they're yet to receive a new visa decision. If the visa expiry date hasn't yet passed, Section 3C leave won't have technically been triggered yet.

- Has an in-time pending application inside the UK and we make a RTW check before their visa expiry date: We can complete a HOME OFFICE ONLINE check (eVisa) if it evidences their right to work.

This check will provide the employer with a statutory excuse for a 6 month period. We must carry out a follow up right to work check before the end of this 6 month period OR once they have notified us of their new visa decision.

OR

- Has an in-time pending application but visa expiry date has passed (Section 3C leave): We can only make a verification request via the UKVI Employer Checking Service (ECS) to check their right to work.

The Employer Checking Service (ECS): A ECS request asks for positive verification from UKVI that an individual has the right to work in the UK (where they have an outstanding application and cannot present valid right to work evidence) before they start work as a casual or employee (i.e. they are waiting on their new visa decision and their recent visa expiry date has already passed - 'Section 3C leave'). Check the HR Immigration onenote for further details on ECS checks.

5. DIGITAL check (Trust-ID for British/Irish valid passports)

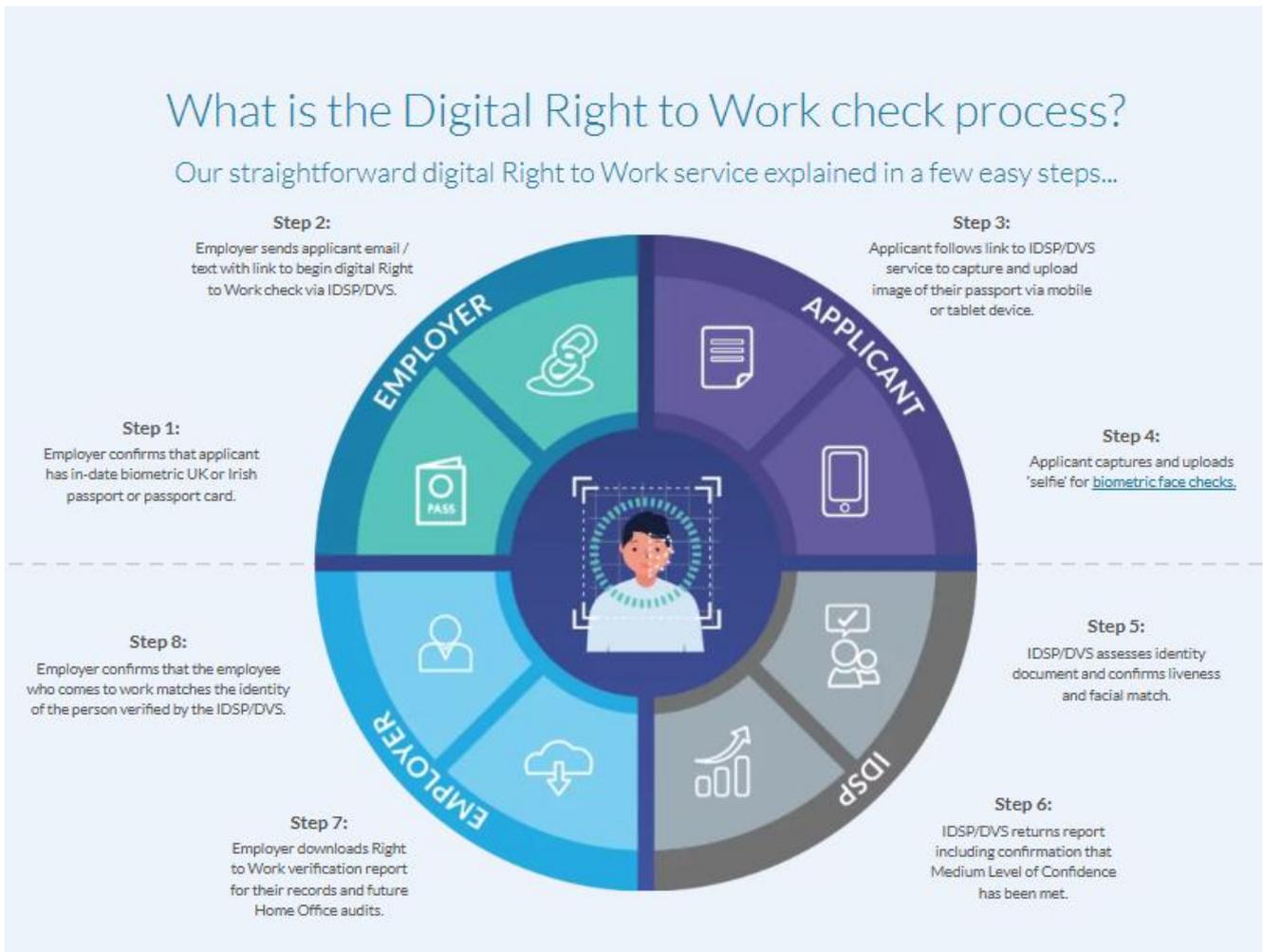
It is now possible to undertake on-line checks for most UK and Irish Nationals through an external provider.

- 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

If the British/Irish national does NOT have a valid British or Irish passport for a DVS check, HR will have to conduct a MANUAL right to work check (in-person) instead.

About TrustID:

Under the latest Home Office Digital Scheme, an employer can carry out a digital Right to Work check on holders of UK & Irish citizen in-date biometric passports using an accepted Digital Verification Service (DVS). The DVS provider will share a Right to Work report for the employer’s records. As a long-established Right to Work provider, TrustID were one of the first [certified DVs](#). This means their ID check services are certified against the UK Government’s Digital Identity and Attributes Trust Framework and compliant with GPG45 standards. A Digital DVS Right to Work



check through the TrustID service will give the employer a statutory excuse to avoid a civil penalty.

6. MANUAL check (in-person documents)

For any nationality if appropriate (i.e. does not have eVisa access OR British/Irish cannot do a Digital identity check)

- This option is applicable to British and Irish Nationals if they do NOT wish to use the Trust ID service; or do NOT hold a valid British/Irish Passport (i.e. if it's expired).
 - We are required to check the validity of the original documents in the presence of the holder.
 - A British/Irish national employee or casual worker will therefore need to attend the relevant UK Campus **before** their first day of employment or casual engagement bringing the appropriate documents with them.
 - ONLY USE A MANUAL RTW CHECK IF THEY CANNOT DO A DIGITAL IDENTITY DVS CHECK (for British/Irish nationals only).
 - A member of the HR Recruitment Team would 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 **recruitmentuk@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 an alternative live video link without the documents in our physical possession (for a MANUAL CHECK).
- [Appendix 1 \(Annex A\)](#) 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.

MANUAL – Further guidance:

If the person is unable to do an in-person check before first day of work, there may be an alternative method in this case. However, it carries risk as it involves having to post original Passport/immigration documents to HWU in advance of their first day of work.

- *FAO HR Recruitment, Heriot-Watt University, Riccarton, EH14 4AS* - HWU postal address for original documents (MANUAL CHECK)
- Documents should be sent to the Edinburgh Campus regardless of the UK campus where the employee or casual worker will be working. 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 MS Teams/Zoom (video call) to make a visual comparison of the individual/their documents (identity check). The original passport and any immigration documents must be copied,

signed, scanned and returned as quickly as possible via recorded delivery.

Completing this type of MANUAL check:

- Check the individual presenting the documents and the original document match.
- Check the documents are genuine.
- Check the documents presented and 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

7. Unsure whether the RTW check is valid?

- Please refer to the [HR Immigration Guidance onenote](#)
- If you have any queries, please raise a ticket (HR Operations) via [HR helpdesk \(SSP\)](#) in the first instance.
- In certain cases, we may need to undertake a further check via the UKVI Employer Checking Service (ECS). If so, we will ask the individual to complete a consent form (template location explained in [Appendix 3](#)) with their details (name, address, date of birth, nationality). The ECS check will be carried out by a member of the HR Team. This ECS check usually takes 5 working days and we must await a UKVI reply before we can allow them to work.

8. USEFUL LINKS

- Follow the [UKVI RTW guidance](#)
- The online interactive tool: [‘Check if someone can work in the UK’](#)
- An employer’s [‘Right to Work Checklist’](#)
- The [code of practice on preventing illegal working: Civil penalty scheme for employers](#)
- The [code of practice for employers: Avoiding unlawful discrimination while preventing illegal working](#)
- Guidance on [‘An employer’s guide to the administration of the civil penalty scheme’](#)
- The online interactive tool: [‘Employer Checking Service’](#)
- UKVI Employer Enquiry helpline on 0300 790 62

9. APPENDIX 1: Annex A - Lists of acceptable documents for MANUAL RTW checks

Where a right to work check has been conducted using the ONLINE (eVisa) right to work checking service, the information is provided in real-time directly from Home Office UKVI systems and there is NO requirement to check any of the lists/ documents in Annex A.

Annex A of the 'UKVI Right to Work Guidance' applies to MANUAL RTW checks only.

ANNEX A Document Lists for MANUAL Checks only:

- [List A – acceptable documents to establish a continuous statutory excuse](#)
- [List B Group 1 – documents where a time-limited statutory excuse lasts until the expiry date of permission to enter or permission to stay](#)
- [List B Group 2 – documents where a time-limited statutory excuse lasts for six months](#)

10. APPENDIX 2: For MANUAL RTW CHECK for HR and UNITEMPS staff use only²

MANUAL IDENTITY CHECK: WHAT TO LOOK FOR WHEN CHECKING DOCUMENTS IN PERSON

This appendix applies to UK/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.

²Only members of the HR Directorate or nominated manager for Unitemps engagements can carry out RTW Checks

11. How to ask HR Immigration for further help:

If in doubt, please send the context of your staff query and your questions to HR Immigration on the Self-Service Portal (HR Operations).

If you need urgent assistance with a RTW check, you may need to send a MS Teams message or email to [Kristy Clark – Immigration and Global Mobility Advisor](#). We kindly ask that you send all queries via the Self-Service Portal (HR Operations) or email us at HRHelp@hw.ac.uk

Please always send us a query ticket via SSP so we can record all staff interactions.

12. APPENDIX 3

The 'ECS consent' template is listed in the HR Immigration onenote - *HR Guides and Templates / ECS Consent Form*

[ECS Consent form](#) ([Web view](#))

The completed consent 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.

13. ADDENDUM- RIGHT TO WORK CHECKS AND START DATES or PAYMENTS FOR STAFF AND CASUALS

KEY PRINCIPLES:

- NO employee, casual or student may undertake any type of work, whether paid or unpaid, unless a full right to work check has been carried out
- Only HR / Unitemps staff can carry out right to work checks
- Pay and start dates CANNOT be backdated to a date prior to a right to work check being carried out.
- 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.
- It is a disciplinary offence for any member of staff to allow anyone (including students) to carry out work without a right to work check being carried out and HR/Unitemps approving and confirming the right to work

IMPACT:

This note 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. This is in line with the Asylum & Immigration Act 2006 and subsequent changes regarding the method of carrying out right to work checks.

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, 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 the 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 worker not receiving payment for any work carried out prior to the right to work check or
- Any student on a Student visa not being paid for hours worked over 20 per week even if this is allowed for in their visa terms.

NON-COMPLIANCE CONSEQUENCES:

Failure to comply with Right to Work check requirements poses a serious risk to our sponsor visa licences. A breach from a single college or department (including those who do not have carry any Skilled Worker sponsored visa holders) may result in potentially serious consequences for the entire University.

Employment Consequences

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 (UKVI) investigating and acting against the University.

Wider University Consequences (serious cases)

Illegal working is tackled through a 'whole government approach'. Co-ordination across agencies in government, including HMRC, to ensure that illegal working is detected more effectively, is conducted through the sharing of intelligence and joint enforcement operations. When illegal working is identified, a range of sanctions are applied.

If you are found to be employing someone illegally and you have not carried out the prescribed checks, you may face sanctions including:

- Heriot-Watt University sponsor licences withdrawn with all sponsored workers/students required to leave the University and UK
- In serious cases, closure of the business and a compliance order issued by the court
- Licence could be downgraded – may retain current visa holders but not sponsor new visa holders
- Prevent the recruitment of international talent (students, academics, professional services and other employees)
- On-the-spot fines of up to £60,000 for each "illegal worker"
- In serious cases, a maximum 5-year prison sentence and/or an unlimited fine
- Financial and reputational loss

The Home Office receives real-time information from HMRC and other Government Bodies and may carry out spot checks at any time on employers; we may be due for a formal audit in the coming months, therefore the risk of even one instance of non-compliance is significant for the business.