

Immigration and Right to Work Update – January 2015

1. Recent right to work change for certain visa holders

We can now employ any individual holding an EEA Residence Card, EEA Permanent Residence Card and/or EEA Accession Worker Card (which currently are only issued to Croatian nationals) where they hold one of these cards and a valid **or** expired passport. Previously we could only accept a valid passport.

Please note that we still cannot accept evidence indefinite leave to remain, or visas other than those mentioned above, in an expired passport.

Where an individual presents a valid visa inside an expired passport as proof of right to work, please immediately contact the Compliance Team for guidance on how to proceed.

2. Right to work for new employees

Please note that right to work must be checked and copied for all new employees. This includes:

- Individuals who were previously employed by the University (i.e. they left and are not transferring as a current employee);
- Individuals who are currently or have previously been a temporary worker with the Temporary Employment Service or other employment agency.

Please do not assume that because an individual has worked for you before (as an employee or a worker) that their right to work does not need to be taken again. If someone is made a leaver, it is a legal requirement that their right to work is taken again before they can start any new work.

Work must not commence before valid evidence of right to work has been checked and copied. It is strongly recommended that this check is completed at interview (or otherwise in advance of the first day of work) in order to avoid additional administrative processes required when checking right to work on an individual's first day. Please see the [Right to work section](#) of the Recruitment Guidance for further details.

3. Right to work processes for Tier 4

Departments/institutions are reminded that very specific right to work processes must be followed for individuals who hold a Tier 4 visa and will be carrying out work for the University. These are as follows:

- New employees – in addition to taking copies of the passport and visa/Biometric Residence Permit, the department must complete the [HR35 Tier 4 Right to Work Student Checklist](#) and send it to the New Appointment team with the supporting documents specified within the checklist and the normal appointment paperwork.
- Individuals to be paid through UPS – in addition to taking copies of the passport and visa/Biometric Residence Permit, the department must complete the [HR35A Tier 4 UPS Right to Work Checklist](#) and retain this on their local file alongside the relevant [Tier 4 working conditions letter](#).
- Individuals to be payrolled through the Temporary Employment Service (TES) – as is the case for all TES payrollers, please ensure that you do not allow individuals to begin work for you prior to them attending an appointment with TES so that right to work can be checked and copied. For Tier 4 visa holders, additional documentation must also be checked in relation to each individual's studies. An appointment is arranged after you have submitted a [Payroller Temporary Worker Form](#) to TES. TES will not be able to make any payments for work prior to the required documentation being provided at this appointment.

4. Benefits of individuals switching from Tier 4 to Tier 2

Where a department/institution wishes to employ an individual who holds a Tier 4 visa, please be aware if he/she is a PhD student and has completed a minimum of 12 months of study, he/she will be eligible to switch into Tier 2. There are significant benefits to doing so, including:

- There is no requirement to have met the Resident Labour Market Test, meaning that there is no need to submit copies of adverts, interview notes or selection criteria to the Compliance Team in support of the CoS application.
- The Certificate of Sponsorship (CoS) will be treated as 'unrestricted', which means it is not subject to approval from UK Visas and Immigration and can be issued more expediently.
- If the student has already received their final results, they can start work as soon as they have submitted their Tier 2 visa application and evidence of both has been checked by the Compliance Team.

5. The Resident Labour Market Test (RLMT) and RLMT guide

Please be reminded that, where the successful applicant for a vacancy requires a Tier 2 Certificate of Sponsorship, there will normally be a requirement to have met the Resident Labour Market Test (RLMT). The RLMT is a means of the University demonstrating to UK Visas and Immigration (UKVI) that the vacancy was made available to individuals who already have right to work in the UK. The RLMT's requirements cover:

- [What you advertise](#) (i.e. the content of your advert)
- [Where you place your adverts](#)
- [Your selection decisions](#)

Departments/institutions are advised to meet the RLMT for all vacancies wherever possible. However, it is particularly important to do so for academic and research positions and any other roles where it can be difficult to recruit suitably qualified candidates from within the European Economic Area.

Please review the web pages linked to above if you have not done so recently and encourage recruiters within your department/institution to review the [Guide to RLMT](#), which provides a short summary of key RLMT requirements, as well as example adverts and selection documents.

Key points to remember are:

- Include information about the key duties of the role and selection criteria (the required knowledge/skills/experience for the role) in adverts. This needs to be sufficient detail so that UKVI officers would be able to understand the day-to-day activities of the role and how selection decisions will be made.
- Include details of any guaranteed and ongoing bonuses or salary supplements in the adverts. Wording is provided in the [Recruitment Guidance](#) for this purpose.
- Publish the HR7 Further Information document as part of the Job Opportunities advert when using the Recruitment Administration System (RAS).
- Record reasons for decisions made in the selection process (based on the selection criteria specified in the job adverts) and retain all documentation relating to the final stage (e.g. interview notes made by members of the Appointing Body).