

# Right to work checks for visitors at the University of Cambridge

## 1. Summary

The following statement outlines the University's position on right to work checks for visitors where engaged by the departments/institutions of the University. For the purposes of this statement, the term "visitor" is used in its broadest and most natural sense, encompassing individuals who come to the University as something other than an employee, a student, or a worker who is paid through the casual workforce system. There is a separate right to work statement for volunteers.

The context is whether right to work checks should be undertaken in line with those conducted upon employees and workers at the University.

This statement was initially created in 2016, and was reviewed and updated in January 2022.

In summary, the University's position on right to work checks and visitors is that it is reasonable from both a risk and an administrative perspective to operate the following discretion regarding right to work checks for visitors:

- Any **unpaid** visitor coming to the University for 30 days or fewer in a six month period will not be required to undertake a right to work check. This includes individuals who will receive expenses payments only but not those who receive any other form of payment.
- Unpaid visitors coming for more than 30 days must undergo a right to work check.
- Paid visitors/workers will require a right to work check unless they fit within the narrow definition of 'self-employed (light touch)' set out in the UPS Right to Work Policy, in which case they would be exempt from undertaking right to work checks provided they meet those guidelines.
- Right to work checks must be undertaken for all Temporary Worker GAE visa visitors by virtue of the record keeping requirements contained within Appendix D of the Sponsor Guidance

The following legislation is relevant to the University's position on this matter, either because it has influenced its introduction and/or its content:

- Immigration Act 1971
- Immigration, Asylum and Nationality Act 2006
- The Immigration (Restrictions on Employment) Order 2007 (as amended)
- Immigration Act 2016
- Code of Practice on preventing illegal working (last updated June 2021)
- Employer right to work checks supporting guidance (last updated August 2021)
- Sponsor Guidance Appendix D: keeping records for sponsorship

Detailed analysis of the requirements, and the University's position on this matter is set out below.

## 2. Visitors at Cambridge

The University of Cambridge regularly hosts visitors from across the world to attend a wide range of activities and to collaborate on research projects. The sharing of knowledge and expertise on a global level is a vital part of academic and research life at the University. Formal and informal visitations from academics and researchers from across the world help forge new links and contacts, and opens up the research being undertaken at Cambridge to the global academic community.

There is an inexhaustible range of scenarios through which visitors may be hosted at the University of Cambridge, from attending/conducting conferences, meetings, seminars, workshops, lectures, to examining students, conducting viva, to undertaking collaborative or private research, to name but a few. In some cases, visitors are simply 'visiting' a department to speak briefly with a member of staff regarding a personal or professional matter.

Within the auspices of this statement, it would be impossible (and undesirable) to set out in detail the types of activities that a visitor to the University could undertake. It would also restrict the scope and purpose of this statement. Therefore, the term 'visitors' is used in its broadest and most natural sense in the context of this statement.

**Please note** that visitors sponsored by the University who hold a Temporary Worker Government Authorised Exchange (GAE) visa are **not** in scope of this statement, and in all cases a right to work check must be undertaken with these individuals regardless of the length or nature of the visit.

## 3. Legislative context

Under Section 24B of the Immigration Act 1971, and Sections 15 to 25 of the Immigration, Asylum and Nationality Act 2006, all employers in the UK have a duty to prevent illegal working in the UK by carrying out prescribed document checks on person's who are employed or work for them.

In the context of the above legislation, the definition of 'work' or 'working' in respect of the duty to prevent illegal working is defined by Section 24B of the Immigration Act 1971 (as amended by the Immigration Act 2016):

"The reference ... to a person working is to that person working—

- (a) under a contract of employment,
- (b) under a contract of apprenticeship,
- (c) under a contract personally to do work,
- (d) under or for the purposes of a contract for services,
- (e) for a purpose related to a contract to sell goods,
- (f) as a constable,
- (g) in the course of Crown employment,
- (h) as a relevant member of the House of Commons staff, or
- (i) as a relevant member of the House of Lords staff."<sup>1</sup>

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<sup>1</sup> <https://www.legislation.gov.uk/ukpga/1971/77/section/24B>

Furthermore, Section 25 of the Immigration, Asylum and Nationality Act 2006 provides a definition of ‘employment’ in respect of the duty to prevent illegal working:

“A reference to employment is to employment under a contract of service or apprenticeship, whether express or implied and whether oral or written.”

Of note, there is no specific mention of ‘visitors’ within the above or related legislation, and the Home Office take no stance as to whether such individuals require a right to work check.

Where a general obligation exists to undertake a right to work check, the employer must ensure that this is completed before the work commences, and the relevant documentation must be retained for a minimum period of two years beyond the end of the engagement/employment.

Where an employer knowingly or unknowingly allows a person with no legal status in the UK to ‘work’ or be ‘employed’ by them, there is a statutory fine of £20,000 per illegal worker, levied on the employer, and potential criminal penalties. Furthermore, incurring a single civil penalty under the illegal working regime would place the University’s Skilled Worker and Temporary Worker sponsor licenses at risk. Loss of sponsor licenses would result in all ‘sponsored individuals’ at the University immediately being dismissed and their permission to be in the UK curtailed.

#### **Legislative context in relation to visitors at Cambridge**

In mitigation against such risks, where considering if right to work checks apply to visitors at the University, it is noted that University policy requires unpaid visitors coming to the University are provided with a Visitor’s Agreement. The type of Agreement the visitor is issued depends on whether they are:

1. An employee of a third party company or institution; or
2. A student who is registered for a degree at another institution and attending the University for a short period of study, research or a work placement as part of their course; or
3. Visiting independently, that is not as an employee or a student of a third party company or institution

These Agreements would not be classed as a ‘contract’ or ‘contract of services’ such as would amount to those set out above, by way of the Immigration Acts of 1971 and 2006.

On this basis, visitors engaged by the University would not directly fall within the definition of ‘work’, ‘working’ or ‘employment’ as defined by the relevant Immigration Acts, because there is no mutuality of obligation between the University and its visitors. However, a risk remains that, for longer ‘engagements’, visitors could be deemed in law to be employees or workers, even if that is not the intention. This risk is aggravated by the large number of departments which exist within the University, and the almost inexhaustible range of scenarios in which a visitor could be engaged. In this context, longer term visitors, and visitors who were paid for their activities at the University (which is defined as anything other than expenses), are higher risk.

In addition, there are reputational risks to consider in the context of unknowingly engaging with a person who does not have the legal right to reside in the UK. Where a person was illegally present in the UK, this would loosely be defined as one of the following:

- a person who entered the UK clandestinely/illegally, or
- a person who has overstayed their current visa/permission to be in the UK, or
- a person who is undertaking an activity where that is not permitted by way of their visa conditions.

Whilst it is impossible to fully mitigate against the possibility of engaging with an 'illegal worker' without completing right to work checks on all visitors, it is relevant to consider that the types of individuals the University commonly engage as visitors are highly unlikely to be in willful breach of immigration control, and would be aware of any restrictions on their visa which may prevent them being able to undertake a particular activity.

Furthermore, the limited scope of 'visitor activities', where a person is a visitor to the University, would be permissible for the vast majority of UK visa holders under the terms of their visa. This significantly mitigates the risk of inadvertently engaging with individuals where they would be permitted to do so.

#### 4. Conclusion

The risk of engaging with a visitor at the University where doing so would invoke (directly or indirectly) our duty to prevent illegal working is sufficiently low to allow us to take a risk-based approach to undertaking right to work checks for our visitors. However, risk does exist for longer-term visitors, where over a longer period of time they could be deemed in law to be employees or workers, even if that is not the intention. The same is true for paid visitors (which would be something more than being paid expenses).

An acknowledgment must be given to the administrative burden for departments of undertaking right to work checks for all visitors where it would not be reasonable necessary. As the majority of 'visits' to the University will be short-term, it would be highly impractical to undertake document checks and retain records in the prescribed manner given the volumes and time periods involved.

Taking all of the above together, it is considered reasonable from both a risk and an administrative perspective to operate the following discretion regarding right to work checks for visitors:

- Any **unpaid** visitor coming to the University for 30 days or fewer in a six month period will not be required to undertake a right to work check. This includes individuals who will receive expense payments only (i.e. reimbursement of expenses actually incurred) but not those who receive any other form of payment.
- Paid visitors/workers will require a right to work check unless they fit within the narrow definition of 'self-employed (light touch)' set out in the UPS Right to Work Policy, in which case they would be exempt from undertaking right to work checks provided they meet those guidelines.

- Right to work checks must be undertaken for all Temporary Worker GAE visa holders by virtue of the record keeping requirements contained within Appendix D of the Sponsor Guidance.

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