



Prevention of Illegal Working Policy & Procedure



Core Documentation Cover Page

Prevention of Illegal Working Policy & Procedure

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Equality Impact

Positive equality impact (i.e. the policy/procedure/guideline significantly reduces inequalities)	
Neutral equality impact (i.e. no significant effect)	X
Negative equality impact (i.e. increasing inequalities)	

If you have any feedback or suggestions for enhancing this policy, please email your comments to: quality@uco.ac.uk

PREVENTION OF ILLEGAL WORKING POLICY AND PROCEDURE

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1. SCOPE

- 1.1 Employing someone who is not allowed to work in the UK is illegal. As an employer, we have a duty under the Immigration, Asylum and Nationality Act 2006 to carry out document checks on all potential employees/workers, to make sure they have the right to work in the UK before any employment/work is carried out.
- 1.2 This Procedure applies to the recruitment of all staff and other workers to the University College of Osteopathy (UCO). The Human Resources Department are principally responsible for ensuring that the policy is complied with and must be informed of all recruitment needs in advance. All staff involved in recruitment are responsible for ensuring that new staff are appointed in accordance with the Recruitment and Selection Policy & Procedure.

2. THE LAW RELATING TO PREVENTION OF ILLEGAL WORKING

- 2.1 It is a criminal offence to employ someone who does not have the right to work in the UK. An offence is punishable by a civil penalty currently up to £20,000 per illegal worker or if knowingly employing an illegal worker, currently an unlimited fine and/or up to 5 years imprisonment.
- 2.2 Legislation gives employers a statutory defence against conviction for employing an illegal worker by checking and copying certain original documents belonging to the person.
- 2.3 Legislation obliges employers to ensure that their recruitment practices do not discriminate against individuals on racial grounds.

3. WHO CAN LEGALLY WORK IN THE UK?

- 3.1 The following main groups are not subject to immigration control and can be employed without restriction:
 - a) British Citizens
 - b) Commonwealth Citizens with the right of abode
 - c) Nationals from the Common Travel Area (United Kingdom, Channel Islands, Isle of Man, Republic of Ireland)
 - d) Nationals from European Economic Area (EEA) countries and Switzerland, (except for Croatian nationals who have restrictions placed on them)
 - e) Family members of adult nationals from EEA countries and Switzerland, providing the EEA/Swiss national is lawfully residing in the UK

3.2 The following countries are part of the EEA:

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

*Restrictions on Croatian nationals ended on 1 July 2018

3.3 In addition, from 1st June 2002, nationals from Switzerland have also had the same free movement and employment rights as existing EEA nationals.

4. PROCEDURE FOR ESTABLISHING THE RIGHT TO WORK

4.1 In order for the UCO's recruitment practices to comply with the legal requirements, the following steps will be applied for every potential employee/worker before they commence working for the organisation:

- a) Step 1: Prior to commencing any employment/work, all potential employees/workers will be asked to provide relevant original documents, (or combinations of documents as applicable), contained in either List A or List B. Candidates will be informed that they are required to bring their original documents when attending an interview. The HR department will copy documentation from all candidates. Copies of documentation for unsuccessful candidates will be shredded within six months of attending an interview.
- b) Step 2: It is a requirement to ensure that the potential employee/worker is the rightful holder of the documents presented. The following reasonable steps will therefore be carried out when checking the documents provided by the potential employee/worker:
 - i. check any photographs, where available, to ensure they are consistent with the appearance of the potential employee;
 - ii. check the dates of birth listed to ensure that these are consistent with the appearance of the potential employee;
 - iii. check that the expiry dates of any limited leave to enter or remain in the UK have not passed;
 - iv. check any UK Government endorsements, (Biometric Residence Permits, stamps, stickers, visas), to see if the person is able to do, or can continue to do, the type of work being offered;

- v. be satisfied that the documents are genuine, have not been tampered with and belong to the holder;
 - vi. ask for further documents in explanation if two documents show different names. This may include a marriage certificate or a divorce decree absolute, a deed poll or statutory declaration.
- c) Step 3: A copy of the relevant pages of the document must be taken, in a format that cannot later be altered, for example, a photocopy or scan. In the case of a passport or other travel document, the following parts must be copied:
- i. The front cover and all of the pages containing the holder's personal details, including their photograph and signature.
 - ii. Any page containing UK Government endorsements showing their permission to be in the UK and their right to carry out the work being offered.
- 4.2 Documents must be copied in full; this includes both sides of a Biometric Residence Permit.
- 4.3 All documents should be endorsed with the phrase "I certify that this is a true copy of the original document" and signed and dated by the person who checked the original documentation.
- 4.4 List A and B provide a checklist to ensure that the appropriate checks are undertaken and copies of relevant documents are retained. Checks must be completed for all those being offered employment/work before any work commences. Documents must be retained securely for the duration of the person's employment and for a further two years after their employment ends at the UCO, for examination by the Immigration Service should this be required.

5. AVOIDANCE OF RACIAL DISCRIMINATION

- 5.1 In order to avoid discrimination in recruitment practices, all potential employees will be treated in the same way regarding document checks.

6. OTHER ISSUES

- 6.1 Forged Documents: The UCO will be liable to prosecution if a false document is provided and the falseness is reasonably apparent, meaning that we could have been reasonably expected to realise that the document in question is not genuine. It is therefore important that the checks described in Step 2 are carried out accurately.
- 6.2 Refusal or Inability to Provide Documents: It is the responsibility of the person looking for work to provide evidence that they are allowed to work. If the person is not able or refuses to provide evidence, the matter should be referred to the HR Manager immediately. The UCO is unable to offer employment to any person who cannot satisfy the requirements of this procedure and/or current legislation.
- 6.3 Employer Checking Service: When checking documents, there are certain circumstances when confirmation will be needed from the UK Border Agency that a person has the right to work in the UK. This includes where an individual has:
- a) an outstanding application or appeal with UKBA, which was made at the correct time;

- b) presented an Application Registration Card (ARC) which states that the holder is allowed to work;
 - c) presented a Certificate of Application issued to or for a family member of an EEA or Swiss national, which states that the holder is allowed to work.
- 6.4 In the above circumstances, positive confirmation of a person's right to work must be obtained from the UKBA Employer Checking Service before employment/work commences. Copies of all documents and correspondence relating to the check and the confirmation of right to work received from the UKBA will be retained on the person's Personnel File. Following initial confirmation of a person's right to work in the UK, repeat checks using the UKBA Employer Checking Service must be carried out at least once every 12 months.
- 6.5 A request form is available at:
www.ukba.homeoffice.gov.uk/sitecontent/applicationforms/ecs/requestform
- 6.6 Once completed fully, the form should be emailed to the UKBA at:
Employerchecking@ukba.qsi.gov.uk
- 6.7 Prior to using the UKBA Employer Checking Service, the person being checked must be informed that the UCO has requested these checks through the UKBA.
- 6.8 Repeat Confirmation Checks: In circumstances where an individual does not have unlimited leave to remain and to carry out the type of work being offered, repeat document confirmation checks must be undertaken at least once every 12 months and recorded in accordance with this procedure. Where a person's leave to remain and right to work in the UK is due to expire within 12 months of the date of the last check, then a further check must be undertaken not later than 3 months before the expiry date.
- 6.9 Non-EEA Family Members of EEA nationals: Non-EEA nationals who are the family members of an EEA (or Swiss) national, who are exercising Treaty rights or have permanent residence, are also entitled to live and work in the UK. Not all family members of EEA nationals are permitted to work in the UK without restrictions and it should not be assumed that we can employ any individual simply on the basis that they claim to be the family member of an EEA national. When the current residence card, permanent residence card, accession residence card or derivative residence card is inserted into the holder's national passport, there is no requirement for that passport to be current. However, the checks should still be undertaken to ensure that the passport belongs to that person, with particular care taken when checking the passport photograph. From 6 April 2015, they may be issued in biometric format.
- 6.10 Sponsoring Workers From Outside the EEA: It is extremely unlikely that any post at the UCO could qualify for the right to recruit from outside the EEA, any manager considering this should talk to the HR Manager at the earliest opportunity.

- 6.11 Employing Asylum Seekers, Refugees and those granted Humanitarian Protection: Asylum Seekers do not normally have the right to work in the UK unless the UKBA have lifted restrictions on them taking employment. If an asylum seeker is allowed to work, they will hold a Home Office issued Application Registration Card stating one of the following:
- a) Allowed to work
 - b) Employment permitted
 - c) Work Restricted – SOL (which stands for Shortage Occupation List)
 - d) Work Restricted – Student
 - e) Work Restricted – Other
- 6.12 Some asylum seekers have restrictions placed on the type of work they can do. If an asylum seeker presents a card stating that work is restricted, then in addition to the standard checks contained within this procedure, the UKBA Employer Checking Service must also be used prior to the person commencing work, (see Employer Checking Service in section 6.3).
- 6.13 An asylum seeker whose claim is successful is granted refugee status. Where a person does not qualify for refugee status, but there are substantial grounds for believing they would face serious harm if removed to their country of origin, humanitarian protection is granted instead. Refugees and those recognised as requiring humanitarian protection have no restrictions on the type of work they can do in the UK, as long as they continue to hold this qualifying status.
- 6.14 Employing Students: Students from outside the EEA are permitted to take limited employment in the UK providing their conditions of entry to the UK allow this. There are strict conditions on the type of work students can carry out and the hours they can work while studying in the UK. Students studying in the UK who have entered as ‘student visitors’ are not allowed to work.

7. VALIDITY OF PASSPORTS AND TRAVEL DOCUMENTS (LIST A & B)

- 7.1 Wherever possible current passports or travel documents should be used for checking purposes, i.e. those that have not expired. However, if a person does not have a current passport or travel document, evidence of their right to remain and work in the UK in an expired passport or travel document can be accepted. It is important to check that the stamp or endorsement in the document continues to allow the person to work by virtue of their status, (i.e. their stay is indefinite), or the date of the end of their permitted stay has not expired.
- 7.2 In circumstances where we have to rely solely on an expired passport or travel document to verify that a person has the right remain and work in the UK, care must be taken when examining photographs and comparing these with the current appearance of the person presenting them. The date of birth on the expired document must be checked against the current appearance of the document holder to ensure it is consistent.

- 7.3 The above applies solely to the UK Border Agency requirements to verify that a person has the right to remain and work within the UK. It does not apply to the identification requirements associated with an application for an Enhanced DBS Disclosure, for which current valid documents are always required.

A) LIST A - DOCUMENTS WHICH SHOW AN ON-GOING RIGHT TO WORK

- 7.4 There are two instances where an expired passport or travel document is unacceptable evidence of the right to remain and work in the UK:
- a) A Certificate of Entitlement to the Right of Abode must be endorsed in a valid passport.
 - b) A Biometric Residence Permit must not have expired to be considered acceptable as evidence of the right to work.
- 7.5 Any one of the following documents (unless specified otherwise) may be provided to confirm the right to work in the UK:

List A
Acceptable documents to establish a continuous statutory excuse
A passport showing the holder, or a person named in the passport as the child of 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, or a person named in the passport as the child of 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 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.

A letter issued by the Home Office, the Border and Immigration Agency or the UK Border Agency to the holder which indicates that the person named in it is allowed to stay indefinitely in the United Kingdom when produced in combination with an official document giving the person's National Insurance Number and their name issued by a Government agency or a previous employer.

B) LIST B – DOCUMENTS WHICH SHOW A RIGHT TO WORK FOR UP TO 12 MONTHS

- 7.6 A Biometric Residence Permit must not have expired to be considered acceptable as evidence of the right to work.
- 7.7 Any one of the following documents (unless specified otherwise) may be provided to confirm the right to work in the UK:

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 work permit or other approval to take employment issued by the Home Office, the Border and Immigration Agency or the UK Border Agency when produced in combination with either a passport or another travel document endorsed to show the holder is allowed to stay in the United Kingdom and is allowed to do the work in question, or a letter issued by the Home Office, Border and Immigration Agency or UK Border Agency to the holder or the employer or prospective employer confirming the same.
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.

8. DOCUMENTS THAT ARE NOT ACCEPTABLE FOR PROVING THE RIGHT TO WORK IN THE UK

- 8.1 The following documents are not acceptable for proving a person has the right to work in the UK and will not provide the Statutory Excuse against prosecution and payment of a Civil Penalty:
- a) A Home Office Standard Acknowledgement Letter or Immigration Service Letter (IS96W), which states that an asylum seeker can work in the UK. If presented with these documents the applicant should be advised to contact the UK Border Agency on 0151 237 6375 for information about how they can apply for an Application Registration Card.
 - b) A national insurance number on its own in any format.
 - c) A driving licence issued by the Driver and Vehicle Licencing Agency.
 - d) A bill issued by a financial institution or a utility company.
 - e) A passport describing the holder as a British Dependent Territories Citizen, which states that, the holder has a connection with Gibraltar.
 - f) A short (abbreviated) birth certificate issued in the UK, which does not have details of at least one of the holder's parents.
 - g) A licence provided by the Security Industry Authority.
 - h) A document check by the Disclosure and Barring Service.
 - i) A card or certificate issued by the Inland Revenue under the Construction Industry Scheme.

9. FURTHER INFORMATION

- 9.1 Further information and advice about any aspect of the law on preventing illegal working is available from Human Resources and the following sources:
- a) UKBA Sponsorship and Employers' Helpline 0300 123 4699
 - b) The online interactive tool: www.gov.uk/legal-right-work-uk
 - c) The guidance contained with the Home Office: An employer's guide to right to work check
- 9.2 For further information on avoiding racial discrimination refer to the May 2014 guidance contained within the 'Code of practice for employers: Avoiding unlawful discrimination while preventing illegal working', which can be found at: www.gov.uk/government/publications/right-to-work-checks-code-of-practice-on-avoiding-discrimination