

Right to Work requirements in various scenarios

It is essential that a Right to Work (RTW) check is completed before an individual commences work. A check made after work has commenced will not provide a statutory excuse against sanction from the Home Office if the individual is later found to have been working illegally. This guidance is designed to assist departments and colleges in determining whether a RTW check is required in various common scenarios.

Employees

All employees (casual workers are dealt with separately) require a right to work check before work commences. In some limited circumstances, departments can rely on a previous right to check.

Scenario	Right to Work Check required?
Re-hiring a previous employee	Yes in all cases. A break in employment requires a new RTW check.
Casual worker moving to employee status	Yes in all cases. This also applies to workers supplied by the Temporary Staffing Service who are later taken on as a permanent/fixed term employee.
Employee transfers	No for transfer between departments. Transfers from department to department do not require a new RTW check if there has been no break in service BUT the original RTW documents must be transferred with the employee and checked that copy is clear. Care should be taken for List B document holders to ensure the visa permits work in the new post. Yes for transfers from college to college or transfers between a department and a college (or vice versa) because colleges are separate employers.
Joint appointments	Yes in all cases. RTW check usually done by majority employer (i.e. college or department). Majority employer may share RTW check with other party BUT other party not absolved of legal responsibility if original RTW check was not sufficient (so may wish to complete their own check). If relying on a copy, must make sure copy is clear and has been done correctly (i.e. dated and includes name of person who did the check) and be aware of where the original check is kept.
Secondary appointment (not casual)	No for department employees taking a second appointment with another department and the individual holds a List A document. Must seek a copy from the primary employing department and ensure copy is clear. Yes for department employees taking a second appointment with another department and the individual holds a List B document or a college or department employee taking a second appointment with another college because colleges are separate employers. Additional guidance applies to college and department employees taking casual work as out-tutors in other colleges. These groups may be paid as self-employed, existing staff or be paid as casuals depending on the circumstances. It is important that tutor payments are correctly classified, so please contact the Staff Immigration Team for further guidance. Tutors paid as casuals must have their RTW checked.

Casual workers

Casual workers are workers who are hired on an irregular basis for a short period of time (no more than 12 weeks). If there is an expectation that the work will be ongoing (even if it is intermittent), the individual should normally be offered an employment contract relevant to the work required. Further information about the University's policies on casual workers can be found at <https://hr.admin.ox.ac.uk/casual-workers-and-casual-teachers>

Scenario	Right to Work Check required?
Re-hiring a previous casual worker	<p>No if re-hired by same department or college and individual is a List A document holder and there has not been a break of more than 15 months. Previous check can be relied on as long as it meets the current RTW check requirements and the original paperwork from the original check has been retained.</p> <p>Yes if individual is a List B document holder or if a List A document holder is being re-hired by a different college or department than hired them previously.</p>
Second jobs (as casual work)	<p>No if a department/college employee is taking casual work with another department/college and is a List A document holder. A copy may be obtained from the other department/college. Must ensure copy is clear. Note that a department/college is not obliged to provide a copy. If department/college declines to provide a copy, a RTW check must be completed.</p> <p>Yes if individual is a List B document holder / a college or department employee taking a second job with another college because colleges are separate employers.</p>
Volunteers	<p>No if volunteer is only taking part in activities which are not essential to the function of the department/college.</p> <p>Yes if activity is essential (i.e. if a volunteer is doing an activity that if not done by the volunteer, the department would pay someone to do instead) This would be classed as unpaid work and requires a RTW check. .</p>
Work Experience	Yes in all cases (except where the individual is under the age of 16). Work Experience is classed as unpaid work.
Agency Workers or Temporary Staffing Service Workers	No where a department or college is paying an agency and not the worker directly (in these circumstances the agency is responsible for checking RTW). This also applies to workers supplied by the Temporary Staffing Service.
External Examiners	These groups may be paid as self-employed, existing staff or be paid as casuals depending on the circumstances and the type of examining undertaken. It is important that examiner payments are correctly classified, so please contact the Staff Immigration Team for further guidance. Examiners paid as casuals must have their RTW checked.
Out Tutors	These groups may be paid as self-employed, existing staff or be paid as casuals depending on the circumstances. It is important that tutor payments are correctly classified, so please contact the Staff Immigration Team for further guidance. Tutors paid as casuals must have their RTW checked.

Self-employed

Individuals who are self-employed are paid directly (usually on invoice) and are not paid via the casual or main payroll.

Scenario	Right to Work Check required?
Self-employed individuals	<p>No. RTW check not required for self-employed individuals.</p> <p>Note that HMRC do not usually consider Graduate students (even those who are not Tier 4) as self-employed so all students require a RTW check and Tier 4 students are prohibited from being self-employed under the terms of their visa.</p>

Visitors

Departments and colleges are required to conduct an Immigration Status Check on anyone they have invited into the country as an Academic, Business or PPE visitor. This is similar to a Right to Work check whereby the passport and visa/stamp is checked, copied, signed, dated and retained for the duration of the visit.

Scenario	Immigration Check Required?
Visitors	<p>Yes for visitors invited from outside the UK and Ireland and to whom the department/college has issued a letter of invitation required for their application to enter the UK as an Academic, Business or Permitted Paid Engagement visitor. Please destroy the data when the visit is finished.</p> <p>From 1 January 2021 all EU, EEA, and Swiss nationals, that have not been resident in the UK before 31 December 2020, will need to enter the UK under the appropriate Visitor visa route.</p> <p>No for visitors who are nationals of the UK or the Republic of Ireland, or who are already in the UK with Pre-Settled or Settled status or a work visa.</p>

Where there is any doubt on whether a Right to Work check is required, please contact the Staff Immigration Team well in advance of the individual commencing work to discuss.

Right to Work guidance

Full guidance on Right to Work requirements and how to complete Right to Work checks is available on the SIT website <https://staffimmigration.admin.ox.ac.uk/rtw>

If you are unsure or have any queries about Right to Work issues please contact the Staff Immigration Team (SIT) <https://staffimmigration.admin.ox.ac.uk/contact-us>

Staff Immigration Team

<https://staffimmigration.admin.ox.ac.uk/>