



PREVENTING ILLEGAL WORKING PROCEDURE

Rooted in Christ and Catholic tradition and under the guidance of its patron, St Edmund's aims to realise the God-given potential, in body, mind and spirit, of all members of its community through service and leadership.

Avita Pro Fide

St Edmund's is committed to ensuring the welfare and protection of children in its care and this commitment is a fundamental part of the role of every person employed by St Edmund's

1 Reason for this Procedure

- 1.1 The law places a duty upon every employer to take steps to ensure that all employees have the right to work in the UK.
- 1.2 An employer may be liable for a civil penalty of up to £20,000 per illegal worker if they employ someone - inadvertently or not - who does not have the right to undertake the work in question.
- 1.3 An employer commits a criminal offence if they employ an illegal worker and know, or have reasonable cause to believe, that the person has no right to do the work in question. This offence is punishable by up to five years in prison and / or an unlimited fine. Additionally, under the Immigration Act 2016, Immigration Officers now have powers to close down the business premises of employers who repeatedly employ illegal workers.
- 1.4 It is therefore extremely important that employers carry out "right to work" checks on all prospective employees. At St Edmund's College we take this duty very seriously.
- 1.5 Under the relevant legislation, the Home Office is required to publish a "code of practice" setting out how it will enforce the law on preventing illegal working. That code of practice includes instructions for employers on how to check whether an employee or prospective employee has the right to work in the UK. Where checks are carried out in accordance with the process outlined in this code of practice, employers will benefit from a "statutory excuse" for the duration of that individual's employment. That statutory excuse will protect the employer from a civil penalty in the event that they inadvertently employ an illegal worker who has presented them with fraudulent or forged documents.
- 1.6 The code of practice and a suite of guidance documents on illegal working can be found on the government's website, here: <https://www.gov.uk/government/collections/illegal-working-penalties-codes-of-practice-for-employers>. The documents include a detailed guidance document for employers (<https://www.gov.uk/government/publications/right-to-work-checks-employers-guide/an-employers-guide-to-right-to-work-checks-6-april-2022-accessible-version>) and other documents for reference including guidance on acceptable documents and another code of practice which deals with avoiding discrimination while preventing illegal working.
- 1.7 If you have any questions regarding this procedure or the action that you need to take in order to carry out the appropriate "right to work" checks, please contact the HR Director immediately. It is very important that the requirements set out in this



procedure are met. St Edmund's College will take any failure to comply with this procedure extremely seriously.

- 1.8 The Preventing Illegal Working Procedure is for guidance only and does not form part of your contract. The College reserves the right to amend and update it from time to time.

2 Overview of Process to be Followed

- 2.1 The process outlined in section 5 below must be followed in all cases so that St Edmund's College will benefit from a statutory excuse.
- 2.2 We must conduct a right to work check before we employ a person to ensure they are legally allowed to do the work in question for the College. If an individual's right to work is time limited, we will conduct a follow-up check shortly before it is set to expire.
- 2.3 A statutory excuse is an employer's defence against a civil penalty. In order to establish a statutory excuse against a civil penalty in the event that an employee is found to be working illegally, the College must do one of the following before the employee commences employment:
- 2.3.1 a manual right to work check
- 2.3.2 a Home Office online right to work check
- 2.4 The College may also use the [Employer Checking Service](#) where an individual has an outstanding application, administrative review or appeal, or if their immigration status requires verification by the Home Office, for example in the case of Crown Dependencies.
- 2.5 **The process involves three steps:**

- (i) First, we need to obtain documents which confirm that the prospective employee has the right to work in the UK. The list of acceptable documents is set out on the Government's website, at:
<https://www.gov.uk/government/publications/right-to-work-checks-employers-guide/an-employers-guide-to-right-to-work-checks-6-april-2022-accessible-version#AnnexA>
The following link outlines alternative /additional forms of ID for British and Irish citizens in the absence of a British / Irish Passport; <https://www.gov.uk/legal-right-work-uk>
- (ii) then, in the presence of the prospective employee, a member of the HR Department must check the documents' validity;
- (iii) finally, we need to make a copy of the documents and record the date on which the check was made.

3 Timing of Checks

- 3.1 In order to obtain a statutory excuse, checks must be conducted, and documents copied before employment commences.
- 3.2 During the recruitment process, the prospective employee must attend the HR Department in person with their documents, to have them checked and copied.



- 3.3 If an employee or prospective employee produces a document which demonstrates that their permission (also known as "leave") to work in the UK is time limited, then repeat checks must be conducted before that permission expires in order to maintain the statutory excuse.

4 Acceptable Documents

- 4.1 The list of acceptable documents, as prescribed in the Home Office's guidance, is set out in the Government website - <https://www.gov.uk/government/publications/right-to-work-checks-employers-guide/an-employers-guide-to-right-to-work-checks-6-april-2022-accessible-version#AnnexA> and consists of List A, continuous statutory excuse, and List B, time limited statutory excuse (Groups 1 and 2) documents.
- 4.2 Note that some individuals will only be able to produce **physical documents** (for example, British and Irish citizens); some will only be able to prove their status via an **online check** (this will be the case for most EU, EEA and Swiss nationals granted status under the EU Settlement Scheme or other immigration categories); and some individuals may have physical documents but can also prove their status via an online check using a Share Code issued to the individual.

5 Document Checking Process

- 5.1 To ensure that all steps are followed, the Right to Work Checklist at <https://www.gov.uk/government/publications/right-to-work-checklist>, must be followed for all prospective employees when conducting checks. If the right to work is time limited, dates are diarised for re-checking of the individual's right to work.
- 5.2 In line with our recruitment process, all offers of employment are made subject to the individual demonstrating that they have the right to work in the UK. For the reasons outlined above, it is essential that a right to work check is carried out on all prospective employees prior to the individual commencing employment. As noted above, acceptable documents may take the form of a physical document or one which is obtained following an online check.

5.3 Obtain the Required Documents (Physical Documents)

- (a) The person conducting the check needs to see the original documents (or combinations of documents) prescribed by the Home Office;
- (b) it is important that the description of each acceptable document is read carefully as the statutory excuse will only be obtained where the document produced meets the specification in that list precisely. For example, in some cases it is acceptable if the document produced has expired (e.g. a British citizen's passport), whereas in some cases, the document produced must be current (e.g. a foreign passport endorsed with indefinite leave to remain or no time limit);
- (c) additionally, some documents are only acceptable if produced in combination with another document (for example birth certificate alongside proof of National Insurance).

5.3.2 Online checks

- (a) the Home Office online right to work checking service allows employers to conduct checks in respect of individuals who hold



biometric residence permits, biometric residence cards, status issued digitally under the EU Settlement Scheme or the points-based immigration system, British National Overseas (**BNO**) visas or Frontier workers permits. Before we can conduct a check using this service the individual accesses their right to work record through <https://www.gov.uk/prove-right-to-work>. They then follow the steps required to provide us with a "share code";

- (b) the share code can be given to us directly or shared with us using the online service, in which case we will receive an email containing the share code from right.to.work.service@notifications.service.gov.uk. In addition to the share code we also need the individual's date of birth;
- (c) The College will then view the individual's right to work details, by visiting <https://www.gov.uk/view-right-to-work> and entering the share code and the person's date of birth.
- (d) For EEA nationals the online right to work check will confirm whether the EEA national has been granted "Settled Status" or "Pre-Settled Status" under the EU Settlement Scheme. EEA nationals with Settled Status have a continuous right to work and do not require a follow-up check. EEA nationals with Pre-Settled Status have a temporary right to work and require a follow-up check. The online right to work check will contain details of when a follow-up check should be conducted. The Home Office will automatically extend the permission of people with pre-settled status for a period of two years. Where it can access the necessary information to determine that a person with pre-settled status is eligible for settled status, it will convert their permission. Where it cannot, it will invite the person to apply for settled status. Employers should continue to request right to work share codes from pre-settled status holders as expiry dates approach even if they are extended automatically; the new expiry date will need to be recorded every two years

5.3.3 Additional documents

- (a) **National Insurance number documents:** Some documents in List A and List B Group 1 are only acceptable if obtained in conjunction with "an official document giving the person's permanent National Insurance number and their name issued by a government agency or a previous employer";
- (b) **Students:** If the prospective employee has leave to remain in the UK as a student then if they are permitted to work it will be subject to a restriction on the number of hours per week that they can work during term time. We are therefore also required to obtain evidence of their term dates from their education provider so that we can ensure that we are aware of the dates when they are permitted to work full-time and when their hours are restricted. See the Home Office's guidance (<https://www.gov.uk/government/publications/right-to-work-checks-employers-guide/an-employers-guide-to-right-to-work-checks-6-april-2022-accessible-version>) for more information about ensuring we have the right documents in relation to students;
- (c) **Change of name:** If there are inconsistencies in the individual's name across their documents (including other documents obtained from them during the recruitment process) then we need to check the



reasons for any different names and obtain appropriate evidence of the change (e.g. marriage certificate, divorce decree, deed poll);

5.3.4 Home Office Employer Checking Service: The list of acceptable documents now allows employers to rely on documents issued by the Bailiwick of Jersey, the Bailiwick of Guernsey or the Isle of Man but only where they have been verified as valid by the Home Office Employer Checking Service. Additionally, where an individual has an application, administrative review or appeal against refusal outstanding the Home Office Employer Checking Service can confirm whether that person is permitted to work while that process is ongoing. The process for contacting the Employer Checking Service is set out in 6.1.3 below.

5.4 Check

- 5.4.1 The document(s) must be seen in the presence of the individual, including online right to work checks.
- 5.4.2 Ensure that the document appears consistent with the information that you have about the individual and that photographs and dates of birth etc are consistent with his / her appearance.
- 5.4.3 When checking physical documents we are not required to be experts on fraudulent or forged documents, but it is important that the documents are examined carefully. Note that we are not just looking to see whether or not the document is genuine, but also whether the person presenting it is the true holder of that document or documents. In the event of any suspicions or concerns, please raise these with the HR Director immediately.
- 5.4.4 You must also check that the document or online entry confirms that the individual has the right to work in the UK and do the work in question. If the check confirms that the individual has limited leave to remain in the UK then a repeat check of their status must be conducted before their current permission to work expires. In this case the procedure at paragraph 6 below must be followed.

5.5 Copy

5.5.1 Physical documents

- a) a clear copy of the document must be made in a format which cannot later be altered;
- b) when copying passports, a copy needs to be taken of any page with the document expiry date and the holder's name, nationality, date of birth, signature, biometric details and photograph, along with any page(s) containing their current permission to live in the UK and undertake the work in question;
- c) when copying any other document, the document needs to be copied in full.
- d) annotate the copies with the date and the name of the person who undertook the check. Suggested wording for this is as follows:

"Original examined by [• name of person undertaking the check] in the presence of [• name of prospective employee] and copy taken on [• 00 month year]. [• signature of person undertaking the check].";



- e) this can simply be handwritten in pen on the photocopy (all pages) prior to filing in the personnel file. (To save time and ensure consistency an ink stamp or sticky labels with the key wording could be used instead.)

5.5.2 Online checks

A copy of the "profile" page which includes the individual's photograph and confirms their right to work must be printed or saved electronically as a pdf or html file.

5.6 Retain

- 5.6.1 The copy needs to be retained securely on the individual's personnel file, which could be either a hard or electronic copy (or both) for the duration of employment and two years after employment ends.
- 5.6.2 A record of the date the check was conducted must also be retained and stored in the employee's personnel file with the HR Department, as well as being recorded on the Single Central Register.
- 5.6.3 The acceptable documents are classified by the Home Office in their guidance as coming within "List A" or "List B". List A documents demonstrate that a person has a continuing right of residence in the UK so, where the checks are conducted properly, will give us an ongoing statutory excuse. List B documents (which are subdivided into "List B: Group 1" and "List B: Group 2") show that the holder has time-limited permission to remain in the UK, so the excuse will last until the expiry date on the document produced (where the document is from "List B: Group 1"), or for six months (where the document is from "List B: Group 2").
- 5.6.4 For anyone who has limited leave to remain in the UK when they join and present a document or documents from List B: Group 1, then a repeat check of their status must be conducted before their current permission to work expires. A diary note of this expiry date must be recorded in the HR central diary system, as well as being recorded on the Single Central Register.

6 Repeat Checks

- 6.1 When conducting repeat checks on existing employees who have previously presented a List B document there are four possible outcomes:
 - 6.1.1 The employee now presents a List A document (e.g. because they have been granted indefinite leave to remain in the UK), in which case conduct a check on that new document in line with the guidance above and we will now have a continuous statutory excuse for the remainder of their employment with us.
 - 6.1.2 The employee presents a new List B: Group 1 document (e.g. because they have been granted further limited indefinite leave to remain in the UK), in which case conduct the check on that new document in line with the guidance above and we will now have a time-limited statutory excuse which expires when the new permission to be in the UK expires. A repeat check will therefore be required before the expiry of that new document.
 - 6.1.3 The employee has an application, administrative review or appeal against refusal outstanding. In these situations the employee will continue to have a right to work provided the application to extend their stay was submitted before their leave was due to expire. The Home Office's guidance states that if on the date the employee's permission to work was due to expire we are



reasonably satisfied that they submitted an in-time application to extend their stay or have made an appeal or an administrative review against a decision on that application then our statutory excuse will continue for a grace period of 28 days. During that time we must:

- a) obtain confirmation that the application or appeal was submitted in-time (e.g. Home Office acknowledgment letter or a Home Office or appeal tribunal reference number, and proof of date of postage);
- b) contact the Home Office Employer Checking Service (<https://www.gov.uk/employee-immigration-employment-status>) to confirm that the individual has an ongoing right to work in the UK. We must get permission from the employee before making the check;
- c) the Home Office advises waiting until at least 14 days after the application, appeal or administrative review has been delivered or posted to the Home Office or the court, before requesting a verification check, because it takes this amount of time for most applications, appeals or administrative reviews to be registered with them;
- d) the Employer Checking Service aims to provide a response within five working days of receiving a valid request.

Upon receipt of a positive verification notice from the Employer Checking Service we will have a List B(Group 2) document which gives us a time limited statutory excuse which expires six months from the date specified in the notice. A repeat check will therefore be required before this notice expires.

6.1.4 the employee is unable to present a document from either List A or List B (including situations where the Employer Checking Service issue a negative verification notice), in which case we do not have a statutory excuse and termination of employment will need to be considered. In these situations please contact the HR Director immediately.

7 For any queries about any aspect of this procedure, including situations where an employee or prospective employee is adamant that they have the right to work in the UK, but unable to produce a specified document, please contact the HR Director.

Circulation	HR and all staff involved in employee recruitment
Status	Complies with: <ul style="list-style-type: none">● ss 15-25 Immigration, Asylum and Nationality Act 2006● Home Office Code of Practice on Preventing Illegal Working: Civil penalty scheme for employers, June 2021



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