

Right to Work Procedures

1. Introduction

Under the Immigration, Asylum and Nationality Act 2006, the University has a legal responsibility to ensure that all employees have the right to work in the UK. Checks on right to work must be carried out for every person the University intends to employ regardless of their race, ethnicity or nationality before they begin any work because assumptions about a person's nationality and, hence, their legal right to work may be incorrect.

The goal of the right to work check process is to prevent working by individuals who are not legally permitted to undertake employment in the UK. The Home Office take the view that illegal working leads to vulnerable individuals being exploited and unethical business behaviour, which is an unfair disadvantage to employers who act legally and honestly.

As an employer, the University has a duty to carry out document checks on **all** individuals to make sure they have the right to work in the UK **before** they are employed. This ensures the University only employs people who are legally allowed to work.

A civil penalty is a fine that can be imposed under the prevention of illegal working legislation. Civil penalties are issued by the Home Office once they have discovered that an employer is employing a person who does not have permission to work in the UK. Employers can avoid liability for a civil penalty if the correct right to work checks were carried out before the individual commenced employment. Employers can also face criminal penalties if they had reasonable cause to believe an employee did not have to right to work and the employer disregarded right to work regulations and **knowingly** employed illegal immigrants.

Where a worker is not eligible or no longer allowed to work in the UK, the University is committing an offence and is liable for a civil penalty or may even be prosecuted for non-compliance. UKVI periodically undertakes compliance audits to ensure licence-holders are meeting their responsibilities. If UKVI deems any University employees or processes (e.g. Right to Work checks) to be non-compliant, they can also take the following actions:

- Downgrading of licence status
- Suspension of licence
- Compulsory improvement plan and increased UKVI monitoring
- Revocation of sponsorship licence

The University could also lose its licence to sponsor migrants. This would be a significant loss of revenue for the University and would cause reputational damage to the University and impact on future recruitment. It is therefore extremely important for the University to remain compliant and Units must adhere strictly to the University procedures and UKVI guidance.

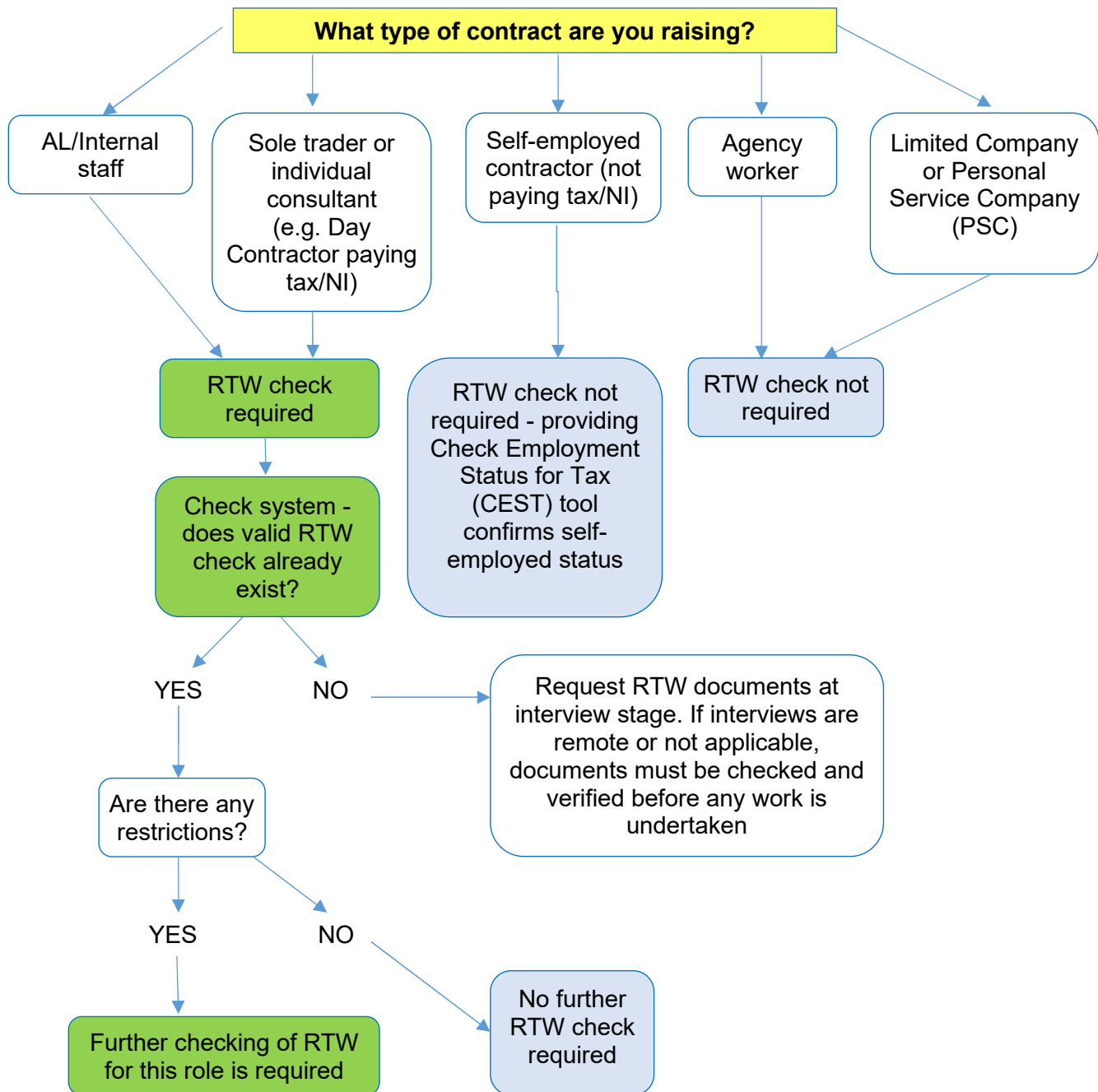
Note on giving immigration advice to individuals:

- Immigration advice or services in the UK can only be provided by people whose organisations are regulated by the Office of Immigration Services Commissioner (OISC) or by members of certain professions, such as The Law Society of England and Wales.

- Job applicants and University staff who have individual queries relating to their immigration status or who require help with their immigration applications should be referred either to the UKVI website ([gov.uk-visas-and-immigration](https://www.gov.uk-visas-and-immigration)) or the OISC website ([gov.uk/oisc](https://www.gov.uk/oisc)). The UKVI website provides general immigration information and the OISC website keeps a list of registered and approved immigration advisers who can be contacted by an individual for more detailed advice.

2. Determining whether a right to work check is required

It is important to establish whether or not a Right to Work (RTW) check is required early in the engagement process, i.e. when defining the work and deciding which type of contractual arrangement is appropriate. The following diagram summarises the process for determining whether a RTW check is required:



A RTW check is required if the worker is a member of staff or a consultant/contractor who is not self-employed (as confirmed by the HMRC online Check Employment Status for Tax (CEST) tool). In these instances, the documents that show they are eligible to work in the UK must be asked for, verified, copied and retained following the guidance in these procedures before they are allowed to start work. The University is not required to carry out a RTW check if the worker is engaged through an agency (as responsibility lies with the agency concerned), is engaged through Procurement as a limited company or Personal Service Company (PSC), or if the person is a sole trader or self-employed contractor with self-employed status as confirmed by the CEST tool.

Please refer to the 'Consultants' section of the People Services Intranet A-Z or Ask People Services for further information on engaging consultants/contractors including guidance on how to check the employment status of a worker using the CEST tool.

Part of the checking process involves obtaining original documents from a prescribed list of acceptable documents (known as 'List A' and 'List B'). Where 'List A' documents have been provided, the University has a 'continuous statutory excuse' which is valid for the whole duration of the individual's employment as it means there are no restrictions on their permission to be in the UK. Where there has been a break in service, a new RTW check will be necessary.

3. When and how to check right to work

Appendix 1 shows a diagram of the RTW checking process. It is intended as a quick reference guide to be read in conjunction with the information below.

An Immigration Right to Work Podcast is available, which must be viewed by all University staff responsible for conducting RTW checks. Sign in [here](#) first to view the podcast [here](#) (please note this was created prior Brexit).

In all instances, the right to work check must be carried out by a member of University staff who has received appropriate training or instruction.

When to check right to work

It is a UKVI requirement that eligibility to work is checked **before** the University employs a person to ensure they are legally allowed to do the work in question. In order to comply with this requirement, standard University policy is that the People Services Resourcing Team must check and make endorsed copies of appropriate documentation and complete a Right to Work Checklist for each candidate at interview. (unless a valid check is already in place). In exceptional circumstances, where it is necessary for the administrative aspects of a Unit's recruitment process to take place in a separate location to the interviews, it may not be practical for the check to be undertaken at the interview itself. This is acceptable as long as the requirements outlined in these procedures are fully adhered to.

When candidates are invited to interview, they should be advised to bring the relevant documentation to their interview (the standard invite to interview letter available contains appropriate wording).

Where the selection process does not involve an interview (e.g. named candidates) or if the interview is held remotely and the individual does not attend in person, arrangements should be made to check eligibility prior to the individual's first day of employment.

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, employers must do one of the following before the employee commences employment:

- a manual right to work check

- a right to work check using Identity Document Validation Technology (IDVT) via the services of an Identity Service Provider (IDSP), TrustID
- a Home Office online right to work check

A physical right to work document check or an online check may be undertaken to establish the right to work. Where a right to work check has been conducted using the online [share code](#) service, the information is provided in real-time, directly from Home Office systems, and there is no requirement to see original documents. This applies to non-British/Irish nationals.

Where a right to work check has been conducted using the services of an IDSP on British and Irish citizens (non-expired documents), a continuous statutory excuse will have been established and there is no requirement to see original documents or to carry out a follow up check.

A Home Office online right to work check will provide you with a statutory excuse against a civil penalty in the event of illegal working involving the subject of the check. You can do an online check by using the online service, entitled '[View a job applicant's right to work details](#)' on GOV.UK.

It will not be possible to conduct a Home Office online right to work check in all circumstances, as not all individuals will have an immigration status that can be checked online. The online right to work checking service sets out what information you will need to complete an online check. In circumstances in which an online check is not possible, you should conduct the manual check.

Currently, the Home Office online service supports checks for a range of individuals, depending on the type of immigration documentation they are issued with. The use of digital proof of immigration status forms part of the Home Office move towards a UK immigration system that is digital by default. Some individuals have been issued with an eVisa and can only use the online service to prove their right to work.

Biometric Residence Card (BRC), Biometric Residence Permit (BRP) and Frontier Worker Permit (FWP) holders are also only able to evidence their right to work using the Home Office online service. This means you cannot accept or check a physical BRC, BRP or FWP as proof of right to work.

Right to work considerations

A Right to Work [Checklist](#) must be completed when the RTW check is undertaken.

Units should not employ any individual purely on the assumption of a person's right to work in the UK on the basis of their colour, nationality, ethnic origin, accent or length of time they have been resident in the UK. Checks must always be made to verify such claims. The Home Office has issued guidance for employers in the form of a statutory code of practice: [Avoiding unlawful discrimination while preventing illegal working](#). The code states:

Employers should:

- be consistent in how they conduct right to work checks on all prospective employees, including British citizens
- ensure job selections are made on the basis of suitability for the post
- ensure that no prospective job applicants are discouraged or excluded, either directly or indirectly, because of known or perceived protected characteristics

Employers should not:

- discriminate when conducting right to work checks
- only check the status of those who appear to the employer likely to be migrants

- make assumptions about a person's right to work in the UK or their immigration status on the basis of their colour, nationality, ethnic or national origins, accent, surname or the length of time they have been resident in the UK.

If a prospective employee is unable to present specified documentation in line with the prescribed right to work checks, but provides information indicating that they commenced their residence in the UK before 1988, they may qualify for British Citizenship under the Windrush Scheme. Where this situation arises, the Immigration Compliance Team should be contacted in the first instance. The Immigration Compliance Team will ask for the Windrush Scheme Form to be completed and will then liaise with the government's Employer Checking Service to obtain a Positive Verification Notice (PVN) prior to the individual commencing employment with the University. The PVN will provide the University with a statutory excuse against liability for a civil penalty in the event of illegal working. This statutory excuse has a duration of six months from the date stated in the PVN. Appendix 4 explains the process in full.

In order to employ a worker from **outside the UK**, the University will need to sponsor them before they can get permission to enter or remain in the UK, unless they already hold permission to work in the UK. Please refer to the 'Guidance on Sponsoring a Migrant' on the People Services Intranet or contact the Immigration Compliance Team (immigration-queries@open.ac.uk) for further advice.

Students who undertake paid employment with the University are subject to the same immigration checks as all employees of the University. A student who is permitted to work will have a clear endorsement in their passport or BRP stating this, as well as the number of hours per week allowed during term time (e.g. 10 hours or 20 hours in a week, considered to be Monday to Sunday). If this information is not set out in these documents, the student does not have the right to work. Students who have the right to work are permitted to work full-time during vacations. The work undertaken must not be a full-time permanent vacancy and they must not be self-employed. If presented with documents indicating the holder is a student with limited right to work in the UK during term time, Units are required to obtain and retain evidence of their academic term and vacation dates. Guidance on this is found on the '[Student Visa Declaration Form](#)' on the People Services Intranet. For further information, contact the Immigration Compliance Team (immigration-queries@open.ac.uk).

Notwithstanding the limitations imposed on students by UKVI through their visa, the Open University's Student Regulations stipulate that no student should carry out more than six hours of paid work per week without the express consent of the University. Specifically, [Research Degree Regulation 8.6](#) states: '*Full-time students must declare any paid work they undertake to their supervisors and the Research Degrees team, or the Affiliated Research Centre Research Degrees Coordinator, if registered through an Affiliated Research Centre. Where a student, regardless of mode of study is funded, they must comply with the terms and conditions of their offer letter. Any work undertaken must not lead to a failure to comply with the requirement of regulation RD 8.4 nor impact on their ability to complete the research degree.*'

Any requests for paid work over six hours per week must be considered by the Chair of the Research Degrees Committee. Upon completion of the course, until the expiry of their visa, student visa holders must continue to work within the term time restrictions of their visa, until written proof of completion of their studies has been submitted and accepted by the Immigration Compliance Team.

The condition permitting students to work is linked to that person following a particular course of study. If the student ceases studying before completing their course or there is a change in their circumstances (e.g. they change their course, switch sponsor, stop studying or have their permission to study curtailed) this can impact on their right to work. The University will be liable if Units knowingly employ a student who no longer has the right to work. Please contact the Immigration Compliance Team for further advice.

The person checking documents is not expected to be an expert in identifying forged documents, but the University would be penalised if the forgery was reasonably apparent. Where the person responsible for checking the documents is unsure of the validity of a passport, they should contact the Immigration Compliance Team (immigration-queries@open.ac.uk) immediately for advice if they believe that fraudulent documents or documents not belonging to the person have been produced, so that this can be reported to the UKVI. In these instances, the Unit must not proceed with engaging the individual until the situation has been satisfactorily resolved.

How to complete a Right to Work Check

Step 1: Obtain

When carrying out a manual right to work check, you must obtain original documents from either List A or B of acceptable documents.

List A

1. A passport (current or expired) showing the holder is a British citizen or a citizen of the UK and Colonies having the right of abode in the UK.
2. A passport or passport card (in either case, whether current or expired) showing that the holder is an Irish citizen.
3. A document issued by the Bailiwick of Jersey, the Bailiwick of Guernsey or the Isle of Man, which has been verified as valid by the Home Office Employer Checking Service, showing that the holder has been granted unlimited leave to enter or remain under Appendix EU to the Jersey Immigration Rules, Appendix EU to the Immigration (Bailiwick of Guernsey) Rules 2008 or Appendix EU to the Isle of Man Immigration Rules.
4. 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.
5. 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.
6. A birth or adoption certificate issued 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^{[footnote 1](#)}.
7. 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.
8. 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.

List B Group 1

1. 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^{[footnote 2](#)}.
2. A document issued by the Bailiwick of Jersey, the Bailiwick of Guernsey or the Isle of Man, which has been verified as valid by the Home Office Employer Checking Service, showing that the holder has been granted limited leave to enter or remain under Appendix EU to the Jersey Immigration Rules, Appendix EU to the Immigration (Bailiwick of Guernsey) Rules 2008 or Appendix EU to the Isle of Man Immigration Rules.
3. 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.

List B Group 2

1. A document issued by the Home Office showing that the holder has made an application for leave to enter or remain under Appendix EU to the immigration rules on or before 30 June 2021 together with a Positive Verification Notice from the Home Office Employer Checking Service.
2. A Certificate of Application (digital or non-digital) issued by the Home Office showing that the holder has made an application for leave to enter or remain under Appendix EU to the immigration rules (known as the EU Settlement Scheme), on or after 1 July 2021, together with a Positive Verification Notice from the Home Office Employer Checking Service.
3. A document issued by the Bailiwick of Jersey, the Bailiwick of Guernsey or the Isle of Man showing that the holder has made an application for leave to enter or remain under Appendix EU (J) to the Jersey Immigration Rules or Appendix EU to the immigration Rules (Bailiwick of Guernsey) Rules 2008, or Appendix EU to the Isle of Man Immigration Rules together with a Positive Verification Notice from the Home Office Employer Checking Service.
4. 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.
5. 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.

Step 2: Check

You must check that the documents are genuine and that the person presenting them is the prospective or existing employee, the rightful holder and allowed to do the type of work you are offering. You must check that:

1. photographs and dates of birth are consistent across documents and with the person's appearance in order to detect impersonation
2. expiry dates for permission to be in the UK have not passed
3. any work restrictions to determine if they are allowed to do the type of work on offer (for students who have limited permission to work during term-times, you must also obtain, copy and retain details of their academic term and vacation times covering the duration of their period of study in the UK for which they will be employed)
4. the documents are genuine, have not been tampered with and belong to the holder
5. the reasons for any difference in names across documents can be explained by providing evidence (for example, original marriage certificate, divorce decree absolute, deed poll). These supporting documents must also be photocopied and a copy retained

Step 3: Copy

You must make a clear copy of each document in a format which cannot manually be altered and retain the copy securely: electronically or in hardcopy. You must also retain a secure record of the date on which you made the check. Simply writing a date on the copy document does not, in itself, confirm that this is the actual date when the check was undertaken. If you write a date on the copy document, you must also record that this is the date on which you conducted the check.

You must copy and retain copies of:

1. Passports: any page with the document expiry date, the holder's nationality, date of birth, signature, immigration permission, expiry date, biometric details, photograph and any page containing information indicating the holder has an entitlement to enter or remain in the UK (visa or entry stamp) and undertake the work in question (the front cover no longer has to be copied).
2. All other documents: the document in full, including both sides of an Immigration Status Document and an Application Registration Card.

Know the type of excuse you have

If you have correctly carried out the above 3 steps you will have a statutory excuse against liability for a civil penalty if the prospective or existing employee is found working for you illegally. However, you need to be aware of the type of excuse you have as this determines how long it lasts for, and if, and when you are required to do a follow-up check.

If the documents that you have checked and copied are from:

- List A: You will establish a continuous statutory excuse for the duration of that person's employment with you if you have conducted the right to work checks correctly before employment begins. You do not have to conduct any further checks on this individual.
- List B group 1: You will establish a time-limited statutory excuse which expires when check the person's permission to be in the UK expires. You should carry out a follow-up when the document evidencing their permission to work expires.
- List B group 2: You have a time-limited statutory excuse which expires six months from the date specified in your Positive Verification Notice. This means that you should carry out a follow-up check when this notice expires.

You must obtain original documents from either List A or List B of acceptable documents for a manual right to work check.

If the above 3 steps have been correctly carried out, The University will hold a statutory excuse in defence to a civil penalty even if the work later transpired to be illegal. However, there is a need to know whether there is a continuous or a time-limited excuse, because this determines how long it lasts for, and if and when follow-up checks are required.

3 basic steps to conducting an online right to work check

1. Use the Home Office online right to work checking service (the [View a job applicant's right to work details](#) on GOV.UK) in respect of an individual and only employ the person, or continue to employ an existing employee, if the online check confirms they are entitled to do the work in question.
2. Satisfy yourself that any photograph on the online right to work check is of the individual presenting themselves for work.
3. Retain a clear copy of the response provided by the online right to work check (storing that response securely, electronically or in hardcopy) for the duration of employment and for two years afterwards.

Using an Identity Service Provider (IDSP) - TrustID

Employers can use IDVT via the services of an IDSP to complete the digital identity verification element of right to work checks for British and Irish citizens who hold a valid passport (including Irish passport cards). The University has appointed the services of TrustID that is a Home Office approved IDSP.

If you use the services of an IDSP for digital identity verification, holders of valid British or Irish passports (or Irish passport cards) can demonstrate their right to work using this

method. This will provide you with a continuous statutory excuse. It is your responsibility to obtain the IDVT check from the IDSP.

3 basic steps to conducting a right to work check using an IDSP (TrustID)

1. Use TrustID to carry out digital identity verification
2. Satisfy yourself that the photograph and biographic details (for example, date of birth) on the output from the IDVT check are consistent with the individual presenting themselves for work (i.e. the information provided by the check relates to the individual and they are not an imposter) via video call or in-person.
3. Retain a clear copy of the IDVT identity check output for the duration of employment and for two years after the employment has come to an end.

4. Ongoing obligations

Follow up checks (List B documents)

Where a person presents acceptable documents from **List B**, this means there are restrictions on their right to work in the UK, and the Immigration Compliance Team is responsible for carrying out **follow-up checks** on them. The frequency of these follow-up checks depends on whether the documents are from Group 1 or Group 2. For Group 1 documents, a follow up check is required when permission to work (as set out in the document(s) checked) expires. For Group 2 documents, a follow up check is required when the Positive Verification Notice (PVN) expires.

An application or appeal to vary or extend a right to work must be made by the individual **before** their permission to be in the UK and do the work in question expires, in order to be deemed 'in time' and valid. The Immigration Compliance Team will request proof of an in-time visa application and seek written consent from the employee to undertake an enquiry with the Home Office Employers Checking Service (ECS). If the Employers Checking Service results in an issue of a Positive Verification Notice (PVN), the employee will have a continued right to work, and the PVN will last for a further six months from the date specified in the Notice. The Immigration Compliance Team will make a further check upon its expiry. If the UKVI issue a Negative Verification Notice (NVN) stating that the person does not have permission to undertake the work in question, the statutory excuse will terminate, and the employee will have no right to work. The Immigration Compliance Team will advise the employee and Unit of next steps.

The Immigration Compliance Team run reports to identify in advance where follow-up checks are required.

Guidance on newly arrived overseas migrant workers e.g. sponsored workers and other visa type holders

IMPORTANT: Check that the candidate entered the UK during the validity period of their visa. If they entered before the 'valid from' date on their visa, they will not have permission to begin employment. If this happens, contact the Immigration Compliance Team immediately.

In most cases, a candidate's date of entry can be checked by looking for an entry stamp, in the form of a wet ink stamp, from an immigration officer. This will normally be endorsed on the worker's visa vignette. Make and retain a copy of the stamp. If the candidate needs to start work prior to collecting their BRP, they can evidence their right to work by producing the short validity vignette in the passport they used to travel to the UK. A RTW check can be conducted on the basis of this vignette. However, you must conduct a further RTW check on the basis of the BRP (online) before the vignette expires.

There are some circumstances where the worker will not have an entry stamp, including:

- those who hold a valid visa and entered the UK through Ireland – as they are unlikely to have encountered an immigration officer on arrival, their passport will not be stamped.
- [EU, EEA](#) and Swiss nationals who proved their identity when they applied for a visa using the 'UK Immigration: ID Check' app – their immigration status is proved by an eVisa (a digital version of their immigration status information), rather than in the form of a physical visa or ink stamp.
- [EU, EEA](#) and Swiss nationals, and nationals of Australia, Canada, Japan, New Zealand, Singapore, South Korea and the United States of America - nationals of these countries can use automated e-Passport gates ('e-Gates') to enter the UK if they hold a valid visa, biometric residence permit, or eVisa.

If the worker does not have an entry stamp in their passport, check that they did not enter the UK before their visa became valid by asking to see other evidence, including, but not limited to, travel tickets or a boarding pass (in paper or electronic form). Make a record of the date that the worker entered the UK and retain evidence of the date.

If there are any concerns, please contact the Immigration Compliance Team for advice.

Retaining and destroying documents

Eligibility documents and completed RTW checklists for workers must be uploaded to and stored in the system for the duration of the individual's employment plus a further two years after their employment terminates, to comply with the University's Document Retention Schedule and UKVI rules. The People Services Hub will ensure electronic records relating to workers are deleted from the system two years after their employment terminates.

For data protection reasons, all eligibility documents copied from unsuccessful candidates should be destroyed as soon as they are no longer required.

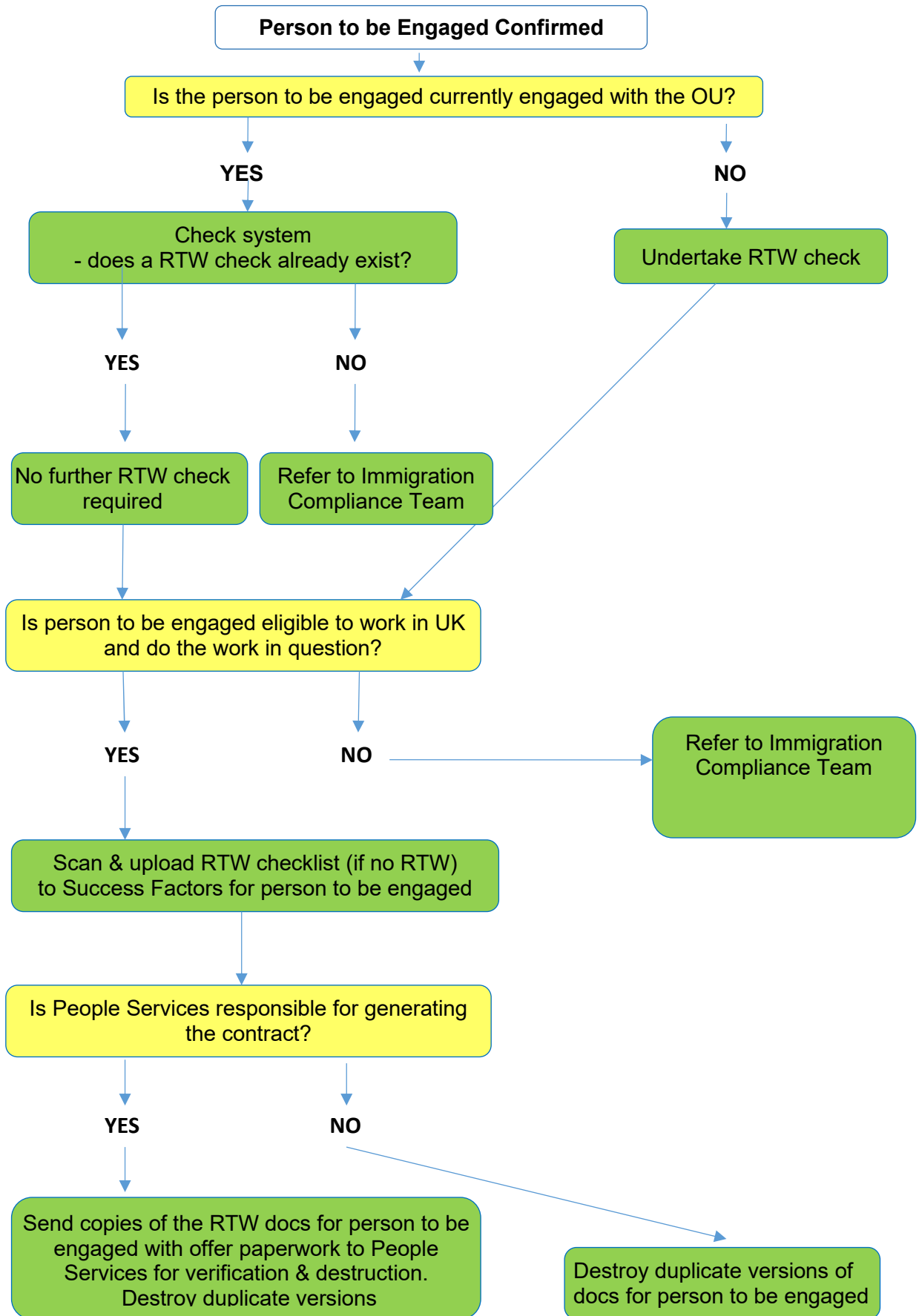
5. Useful references

Right to Work Checklist
Immigration Right to Work Podcast
Open University Retention Schedule
Engagement of Consultants Policy and Procedure
Guidance on Sponsoring a Migrant
Visiting Academics

6. Appendices

Appendix 1: Quick reference guide to the Right to Work checking process
Appendix 2: The Windrush Scheme process

Appendix 1 - Quick reference guide to the Right to Work checking process



Appendix 2 - The Windrush Scheme process

