



PREVENTING ILLEGAL WORKING POLICY

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 Policy

- 1.1 The law places a duty upon every employer to take steps to ensure that all employees have a 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/employers-illegal-working-penalties>. The documents include a detailed guidance document for employers (<https://www.gov.uk/government/publications/right-to-work-checks-employers-guide>) 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 policy 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 policy are met. St Edmund's College will therefore take any failure to comply with this policy extremely seriously.
- 1.8 The Preventing Illegal Working Policy 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 at section 5 below must be followed in all cases so that St Edmund's College will benefit from a statutory excuse. The process involves three steps:
 - 2.1.1 First, we need to obtain original documents which confirm that the prospective employee has the right to work in the UK. The list of acceptable documents is set out in Appendix 1;
 - 2.1.2 then, in the presence of the prospective employee, we must check the documents' validity;
 - 2.1.3 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 office in person with their documents in order 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 Appendix 1.
- 4.2 Note that the guidance now permits employers to conduct an online right to work check in relation to individuals who have been issued a biometric residence permit, a



biometric residence card or have status issued under the EU Settlement Scheme. In the overwhelming majority of cases, checks will need to be conducted on physical documents, but if an online check is available this is also acceptable. Details on how to conduct an online right to work check are set out in paragraph 6 below.

5 Document Checking Process

5.1 In order to ensure that all steps are followed, the right to work checklist at Appendix 2 must be followed and completed for all prospective employees when conducting checks. Once the check has been conducted and the checklist completed, the checklist should be stored in the employee's personnel file with the HR Department, as well as being recorded on the Single Central Register.

5.2 In line with our recruitment process, all offers of employment should be 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.

5.3 Obtain

5.3.1 The person conducting the check needs to see the original documents (or combinations of documents) prescribed by the Home Office (set out at Appendix 1 to this policy).

5.3.2 The acceptable documents are classified by the Home Office in its 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").

5.3.3 Note that some people may produce a "biometric residence permit" which is now the main document issued to foreign nationals granted visas longer than six months or extensions of stay in the UK.

5.3.4 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.

5.3.5 Additionally, some documents are only acceptable if produced in combination with another document.

5.4 Check

5.4.1 The original document(s) must be seen in the presence of the individual prospective employee.

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. The right to work checklist at Appendix



2 contains a list of prompts to be used when checking the validity of the document(s).

- 5.4.3 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 Note that if the prospective employee has leave to remain in the UK as a student, then the Home Office require additional checks to be conducted, which include obtaining evidence of their term dates from their education provider. See the Home Office's guidance (<https://www.gov.uk/government/publications/right-to-work-checks-employers-guide>) for more information about ensuring we have the right documents in relation to students.

5.5 Copy

- 5.5.1 A clear copy of the document must be made in a format which cannot later be altered.
- 5.5.2 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.
- 5.5.3 When copying any other document, the document needs to be copied in full. For biometric residence permits this means copying both sides.
- 5.5.4 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]."
- 5.5.5 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.)
- 5.5.6 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.
- 5.5.7 A record of the date the check was conducted must also be retained both on the individual's personnel file, and in the Single Central Record.
- 5.5.8 For anyone who has limited leave to remain in the UK when they join and presents 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 and also in the Single Central Record.



5.6 Employer Checking Service

- 5.6.1 Where a prospective employee has limited leave to remain in the UK but cannot present List B: Group 1 documents because they have an immigration application or appeal outstanding, then they will only be able to start work for us once we have obtained documents from List B: Group 2, which in all cases will require us to conduct a check with the Home Office Employer Checking Service.
- 5.6.2 Information on how to conduct a check through the Employer Checking Service can be found here: <https://www.gov.uk/employee-immigration-employment-status>.
- 5.6.1 In these cases, employment can only commence after we have received a positive verification notice from the Home Office and the statutory excuse will only last six months from the date of the notice. That expiry date must be recorded in the HR central diary system and also in the Single Central Record so that a follow-up check is conducted before the expiry date.
- 5.6.2 Reference may also need to be made to the Employer Checking Service for existing employees. See paragraph 5.7.1(c) below.

5.7 Repeat Checks

- 5.7.1 When conducting repeat checks on existing employees who have previously presented a List B document there are four possible outcomes:
- (a) 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;
 - (b) 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;
 - (c) 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:
 - (i) 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);



- (ii) contact the Home Office Employer Checking Service in order 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;
- (iii) 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;
- (iv) 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.

- (d) 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.

6 Online Right to Work Check

- 6.1 In addition to checking the original documents listed in Appendix 1, we are also able to obtain a statutory excuse through the Home Office online right to work checking service. This service allows employers to conduct checks in respect of individuals who hold biometric residence permits, biometric residence cards or have been granted pre-settled status or settled status under the EU Settlement Scheme.
- 6.2 In order to conduct a check using this service the individual in question first needs to access their Home Office right to work record and then provide us with a "share code" so that we can access their details ourselves. The steps which need to be taken are as follows:

6.2.1 Share

- (a) The individual accesses their right to work record through <https://www.gov.uk/prove-right-to-work>. They then take 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) To view the individual's right to work details, visit <https://www.gov.uk/view-right-to-work> and enter the share code and the person's date of birth.



6.2.2 Check

- (a) Ensure that the digital photograph on the webpage matches the appearance of the individual.
- (b) You must also check that the online right to work check 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 5.5.8 above must be followed.

6.2.3 Retain

- (a) A copy of the "profile" page which includes the individual's photograph and confirms their right to work must be retained. The profile can be either printed or saved electronically as a pdf or html file.
- (b) The copy must be stored securely (electronically or in hard copy) for the duration of employment and two years after employment ends.

7 For any queries about any aspect of this policy, 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.

Owner of policy:	HR Director		
Reviewed by:	HR Director		
Frequency of review:	Annually		
Policy last reviewed:	Lent	2021	
Next review date:	Michaelmas	2021	
Sub-Committee reviewed at:	Finance Sub-Committee		



Appendix 1 List of Acceptable Documents

List A	
Acceptable documents to establish a continuous statutory excuse	
1	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.
2	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 an EEA country or Switzerland.
3	A registration certificate or document certifying permanent residence issued by the Home Office to a national of an EEA country or Switzerland.
4	A permanent residence card issued by the Home Office to the family member of a national an EEA country or Switzerland.
5	A current 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.
6	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.
7	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.
8	A birth (long or short) 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.
9	A birth (long or short) 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.
10	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: Documents where a time-limited statutory excuse lasts until the expiry date of leave	
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.
2	A current 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.
3	A current residence card (including an accession residence card or a derivative residence card) issued by the Home Office to a non-EEA national who is a family member of a national of a EEA country or Switzerland or who has a derivative right of residence.
4	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 six months	
1	A certificate of application issued by the Home Office under regulation 18(3) or 20(2) of the Immigration (European Economic Area) Regulations 2016, to a family member of a national of an EEA country or Switzerland stating that the holder is permitted to take employment which is less than six months old together with a positive verification notice from the Home Office employer checking service.
2	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.
3	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.

Home Office online right to work checking service
Evidence of right to work obtained through the Home Office online right to work checking service on gov.uk (in respect of individuals holding a biometric residence permit, a biometric residence card or with status issued under the EU settlement scheme) may also be accepted and will demonstrate either ongoing or time-limited right to work in the UK.



Appendix 2 Right to work checklist

Name of person:		
Date of check:		
Check conducted by:		
Type of check:	<input type="checkbox"/> Initial check before employment	<input type="checkbox"/> Follow-up check on an employee

Step 1: Obtain

You must **obtain original** documents from either **List A** or **List B** of acceptable documents.

List A

- | | |
|--------------------------|---|
| <input type="checkbox"/> | 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. |
| <input type="checkbox"/> | 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 EEA country or Switzerland. |
| <input type="checkbox"/> | A registration certificate or document certifying permanent residence issued by the Home Office, to a national of a EEA country or Switzerland. |
| <input type="checkbox"/> | A permanent residence card issued by the Home Office, to the family member of a national of a EEA country or Switzerland. |
| <input type="checkbox"/> | A current 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. |
| <input type="checkbox"/> | 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. |
| <input type="checkbox"/> | 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. |
| <input type="checkbox"/> | 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. |
| <input type="checkbox"/> | 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.
<input type="checkbox"/>	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.
<input type="checkbox"/>	Proof of immigration status obtained through the view a job applicant's right to work page on gov.uk and accessed using a share code. The online check must indicate that the person is allowed to stay indefinitely in the UK, or has no time limit on their stay in the UK.
List B: Group 1	
<input type="checkbox"/>	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.
<input type="checkbox"/>	A current 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.
<input type="checkbox"/>	A current residence card (including an accession residence card or a derivative residence card) issued by the Home Office to a non-EEA national who is a family member of a national of a EEA country or Switzerland or who has a derivative right of residence.
<input type="checkbox"/>	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.
<input type="checkbox"/>	Proof of immigration status obtained through the view a job applicant's right to work page on gov.uk and accessed using a share code. The online check must indicate that the individual is currently allowed to do the type of work in question.
List B: Group 2	
<input type="checkbox"/>	A certificate of application issued by the Home Office under regulation 18(3) or 20(2) of the Immigration (European Economic Area) Regulations 2016, to a family member of a national of a EEA country or Switzerland stating that the holder is permitted to take employment which is less than six months old together with a positive verification notice from the Home Office employer checking service.
<input type="checkbox"/>	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.
<input type="checkbox"/>	A positive verification notice issued by the 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, that the person presenting them is the prospective employee or employee, the rightful holder and allowed to do the type of work you are offering.			
Are photographs consistent across documents and with the person's appearance?	Yes <input type="checkbox"/>	No <input type="checkbox"/>	N/A <input type="checkbox"/>
Are dates of birth consistent across documents and with the person's appearance?	Yes <input type="checkbox"/>	No <input type="checkbox"/>	N/A <input type="checkbox"/>
Are expiry dates for time-limited permission to be in the UK in the future i.e. they have not passed (if applicable)?	Yes <input type="checkbox"/>	No <input type="checkbox"/>	N/A <input type="checkbox"/>
Have you checked work restrictions to determine if the person is able to work for you and do the type of work you are offering? (For students who have limited permission to work during term-times, you must also obtain, copy and retain details of their term dates covering the duration of their period of study in the UK for which they will be employed).	Yes <input type="checkbox"/>	No <input type="checkbox"/>	N/A <input type="checkbox"/>
Are you satisfied the document is genuine, has not been tampered with and belongs to the holder?	Yes <input type="checkbox"/>	No <input type="checkbox"/>	N/A <input type="checkbox"/>
Have you checked the reasons for any different names across documents (e.g. marriage certificate, divorce decree, deed poll)? (Supporting documents should also be photocopied and a copy retained.)	Yes <input type="checkbox"/>	No <input type="checkbox"/>	N/A <input type="checkbox"/>

Step 3: Copy	
You must make a clear copy of each document in a format which cannot later be altered, and retain the copy securely: electronically or in hardcopy. You must copy and retain:	
<input type="checkbox"/>	Passports: any page with the document expiry date, nationality, date of birth, signature, leave expiry date, biometric details and photograph, and any page containing information indicating the holder has an entitlement to enter or remain in the UK and undertake the work in question.
<input type="checkbox"/>	Proof of digital immigration status: a copy of the individual's "profile" page (the page that includes their photo and date on which the check was conducted) either printed as a hard copy or saved as a pdf or html file.
<input type="checkbox"/>	All other documents: the document in full (NB: both sides of a biometric residence permit).
You must also record and retain the date on which the check was made.	



Know the type of excuse you have

If you have correctly carried out the above three steps we will have an excuse against liability for a civil penalty if the above named person is found working for us illegally. However, the excuse may be time limited depending on the type of check conducted. Use the checklist below to determine how long the excuse lasts for, and if, and when we are required to do a follow-up check.

The documents that you have checked and copied are from:

- List A:** we have a **continuous statutory excuse** for the **full duration** of the person's employment with us.
We are **not** required to carry out any repeat right to work checks on this person.
- List B: Group 1:** we have a **time-limited statutory excuse** which expires when the person's permission to be in the UK expires.
We must carry out a **follow-up check before the document evidencing their permission to work expires.**
 - Note the expiry date of the person's permission to be in the UK in the box below; and
 - record in the HR Central diary system and also in the Single Central Record.
- List B: Group 2:** we have a **time-limited statutory excuse** which expires **six months** from the date specified in the positive verification notice issued to us by the Home Office employer checking service.
This means that we need to carry out a follow-up check before that notice expires.
 - Note the date the positive verification notice expires in the box below; and
 - record in the HR Central diary system and also in the Single Central Record.

Deadline for conducting follow-up check:	
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