Management Guidance
Employing non EEA Nationals

GENERAL

The information in this document is intended to provide an overview of how the right to work in the United Kingdom (UK) system operates, specifically in relation to the University. It is not intended as definitive guidance to be followed by recruiting Schools/Research Institutes/Departments etc.

Where there is a requirement to employ a non-EEA national (migrant workers) or there are any queries in relation to the employment of migrant workers, please contact your Link Human Resources team for support and advice.

INTRODUCTION

Nationals from non-EEA countries who apply for vacant positions within the University will require authorisation to work in the United Kingdom.

It is a Civil Offence to employ a migrant worker who does not have the right to work in the UK. It is also a criminal offence to knowingly employ a migrant worker who does not have the right to work in the UK and penalties include a fine of up to £20,000 per illegal worker.

In order to ensure that applicants have the right to work in the UK, their documentation should be checked in accordance with the guidance contained on the Human Resources pages on the Keele website.

http://www.keele.ac.uk/media/keeleuniversity/hr/recruitment/Right%20to%20Work%20Checklist%20-%20July%202015.pdf

LEGISLATION

UK Visas and Immigration (UKVI) operate a Points Based System (PBS) of immigration and migrant workers are required to satisfy their criteria to ensure that they are eligible to work in the UK.

Under this system migrant workers are allocated points to determine their suitability to enter and work in the UK. Points are awarded based on attributes such as experience, qualifications and previous or prospective salary. The PBS applies to workers from outside the European Economic Area (EEA) and Switzerland. EU citizens are not affected.

What is the Points Based System (PBS)?

The PBS is a Five Tier system allows organisations to recruit the skills they need from abroad while providing assurances that only those migrants we need will be able to come to the UK.

The Five Tiers

- **Tier 1 – Entrepreneur/Exceptional Talent/Graduate**
- **Tier 2 - Skilled workers with a job offer**
- Tier 3 - currently suspended

- **Tier 4 – Students**
- **Tier 5 – Sponsored Temporary workers/Government Authorised Exchange category**

Tier 1

Non EEA Nationals who have been awarded leave to remain under Tier 1 do not require sponsorship by the University to accept a job offer. The usual eligibility to work checks must be carried out prior to an individual commencing employment.

Tier 2

Tier 2 (General) is the skilled worker category for people coming to the UK with a job offer to fill a gap in the workforce that cannot be filled by a settled worker. The University can sponsor migrant workers under the Tier 2 route through one of two categories:

1. **Restricted** – The migrant worker will apply from overseas and will score at least the minimum number of points required to obtain entry clearance/leave to remain.
2. **Unrestricted** – The migrant worker will apply from within the UK to change their employment so that they may work for a new sponsor. Note: an unrestricted certificate of sponsorship is also issued to extend an individual's permission to stay in the UK.

Further information on Tier 2 (General) is available on the UKVI website**: https://www.gov.uk/government/organisations/uk-visas-and-immigration**

Recruitment & Selection

If the University wishes to recruit a migrant worker to a skilled job that is not on the list of shortage occupations, we may only do so if the job is a genuine vacancy and we complete a resident labour market test (RLMT). If the RLMT is not met we cannot issue a certificate.

> Definition:
> The **resident labour market test** is the process an employer must follow before employing a person who is not a permanent resident of the United Kingdom. The employer is required to show that no resident worker could be found to take a job. The only exception to showing that no suitable settled worker is available to fill the job is if the job falls within one of the PhD SOC Codes. For such PhD roles the most suitable candidate must be appointed. All vacancies must be advertised to settled workers for 28 calendar days. The advertising method for each role is determined by UKVI.

UKVI can audit Keele University to ensure the recruitment and selection process meets all conditions.

Conditions that Keele University must meet, in order to sponsor staff

The HR Department is responsible for issuing a Tier 2 (General) Certificate of Sponsorship on behalf of the University.

If there is a requirement to issue a **restricted** Certificate of Sponsorship an application has to be made to the UKVI panel who meet on a monthly basis to consider applications (they meet around 11th of each month to consider applications submitted prior to 5th each month). There is a monthly allocation of restricted Certificate of Sponsorship available. If the restricted Certificate of Sponsorship is granted it must be assigned within 3 months of it being granted. The applicant must then pass the points based assessment in order to be able to obtain entry clearance/leave to remain which is assessed on; qualifications; future expected earnings; sponsorship; English language skills; and available maintenance (funds); a minimum of 70 points are required.

If there is a requirement to issue an **unrestricted** Certificate of Sponsorship to an applicant, the University can do this without approval from UKVI. The requirements of the Points Based System must still be met and an unrestricted Certificate of Sponsorship cannot be used in place of a restricted Certificate of Sponsorship.

Line Manager's reporting duties

The University is fully responsible for the actions of any migrant worker it employs. This is an important feature, and affects schools/departments as well as HR. For further information please refer to the overview of Line Manager reporting duties, http://www.keele.ac.uk/media/keeleuniversity/hr/recruitment/Responsibilities%20of%20managers%20of%20sponsored%20migrants.pdf

Tier 4 – Students

The University is permitted to employ International (Non EEA) Students who have been granted permission to study in the United Kingdom with a student visa (Tier 4).

There are strict rules relating to the number of hours that an International Student is permitted to work.

If the international student is studying at **Degree level or above** they are permitted to work **for only 20 hours per week during term time and full time during vacations**.

If the international student is studying **below Degree level (including Foundation year)** they are permitted to work **for only 10 hours per week during term time and full time during vacations.**

The number of hours that the International student is permitted to work will be clearly stated on their Visa/Biometric Residence Card/leave to remain.

It is not acceptable for the number of working hours to be breached. If the International student is permitted to work for longer than the hours specified in their leave to remain it will constitute a breach of the regulations and could result in the University losing its sponsorship licence and therefore its ability to offer places to International students and employ non-EEA nationals.

In March 2017, the University took the decision to place additional restrictions on the hours of work that the University may offer to students on a Tier 4 visa. Records must be maintained in relation to the number of hours that International students are working for the University. Please refer to https://www.keele.ac.uk/media/keeleuniversity/hr/recruitment/Responsibilities%20of%20Managers%20employing%20Tier%204%20international%20students%20Mar17%20(1).pdf for more information.

Tier 5 – Sponsored Temporary workers/Government Authorised Exchange category

This category is for migrants coming to the UK through approved schemes that aim to share knowledge, experience and best practice. This category cannot be used to fill job vacancies and the migrant worker must undertake work which is additional to the University staffing requirements. The employment must conform with all relevant UK and European legislation.

The University may employ sponsored researchers under this tier who will be given a maximum of 24 months permission to stay. The HR Department is responsible for issuing a Tier 5 certificate of sponsorship on behalf of the University.