

UNIVERSITY OF BIRMINGHAM

**CODE OF PRACTICE ON COMPLIANCE WITH STUDENT IMMIGRATION VISA PERMISSIONS
AND OBLIGATIONS**

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TO NOTE: - Terminology changes to Visa Category - Immigration Rules 5 October 2020

With effect from 5 October 2020, students using a Confirmation of Acceptance for Studies Certificate (CAS) will be granted a visa called a 'Student Visa'. For the purposes of this Code of Practice, the term 'Student Visa' refers to new visas and previously named 'Tier 4' visas.

1. Purpose

- 1.1 The purpose of this Code of Practice is to reflect the University's obligations as a Student Sponsor. It provides information about student responsibilities in maintaining immigration permissions and sets out the procedures taken to address non-compliance.
- 1.2 This Code of Practice applies to Registered Students (including student in Thesis Awaited status and students returning from Leave of Absence) who are subject to UK immigration control.
- 1.3 Student attendance / engagement requirements and reasonable diligence processes are dealt with under the Code of Practice on Student Attendance / Engagement and Reasonable Diligence.
- 1.4 References to the Academic Registrar or the Pro-Vice-Chancellor (Education) include their nominee.

2. Responsibilities and Duties

- 2.1 The University is a Student Sponsor under Immigration Rules. Appendix 1 outlines the University's responsibilities and duties in respect of being a sponsor for students who hold a visa to study in the UK. The University will at all times act to ensure compliance with the law and its duties and responsibilities as a Student Sponsor.
- 2.2 Students are responsible for ensuring that they comply with the requirements set out in University of Birmingham Regulation 5 in respect of immigration permissions' requirements. The University may withdraw its immigration sponsorship of a student and / or withdraw a student from their programme and / or the University where it is determined that the student has failed to comply with the requirements of Regulation 5 and / or the conditions of their visa.
- 2.3 Students are also responsible for ensuring that they comply with the requirements set out in Regulation 5 in respect of personal details. It is a requirement and condition of study that students who require immigration permissions to study in the UK must as soon as possible provide the University with their UK University address and contact details and must at all times ensure that these details are kept up-to-date.

3. Right to Study Check

- 3.1 The University is required to ensure that all students have the right to study and that they hold the appropriate visa or immigration permissions. All students who require immigration permissions in order to study must attend a "Right to Study" check before beginning their programme of study. Students who do not attend a Right to Study check, who do not hold or cannot provide conclusive proof that they hold current valid immigration permissions appropriate for their programme of study will not be permitted to begin or continue their programme of study. Where appropriate, the University may proceed to consider withdrawal of a student's immigration sponsorship and/or registration on a programme of study or with the University.

4. Procedure

- 4.1 Where the University is considering taking action in relation to a student under the provisions of Regulation 5.2.1 and 5.2.2 the following procedure will apply.

- 4.2. The student will be notified in writing that there is reasonable suspicion that the student:

4.2.1 has not completed their MyRTS, or does not hold or cannot evidence that they hold current valid immigration permissions permitting them to enter the UK and is appropriate for their programme and mode of study; or

4.2.2 has failed to comply with or provide evidence of compliance with one or more of the conditions or requirements of their immigration permissions; or

4.2.3 has failed or is failing to comply with conditions imposed under this Code of Practice

and the student will be invited to submit written representations normally within 10 working days, except that:

- a) in cases when the Home Office has advised the University that the student does not have the right to study and that the University must not allow the student to begin or to continue studying; or
- b) order to comply with a statutory or Home Office requirement

the University may reduce the time limit for providing written representation; if so, the student will be notified why this was necessary.

- 4.3 On receipt of the student's representations or, if the student has not provided representations within the specified time limit, whichever is the sooner, the Academic Registrar, will decide the matter as set out below:

- 4.3.1 Where the University holds a Student Visa, the Academic Registrar, will decide whether:

- a) the University should continue to sponsor the student; or
- b) the University's continued sponsorship of the student is subject to the student's compliance with specific conditions; or
- c) the University should withdraw its sponsorship of the student.

If the Academic Registrar has decided withdrawal of the University's immigration sponsorship in accordance with paragraph 4.3.1(c) above, the Academic Registrar will then decide whether:

- d) the student's registration should continue; or
- e) the student's registration should continue subject to the student's compliance with specific conditions; or
- f) the student should be withdrawn from the programme and/or the University; or
- g) the student should be withdrawn from the University.

4.3.2 Where the University is not student's immigration sponsor, or the student would not normally be expected to require visa permissions to study in the UK, the Academic Registrar will decide whether:

- a) the student's Registration should continue; or
- b) the student's Registration should continue subject to the student's compliance with specific conditions; or
- c) the student should be withdrawn immediately from the programme; or
- d) the student should be withdrawn from the University.

4.4 The Academic Registrar may request further information before making a decision or may defer making a decision.

4.5 The student will be notified in writing of the Academic Registrar's decision normally within three (3) University working days. If the student is under the age of 18 the Academic Registrar may also inform the student's parent(s) or guardian(s) of the outcome.

4.6 The Academic Registrar will notify the Head of the student's Principal Academic Unit of the decision. Where the Academic Registrar decides that the University should withdraw its sponsorship of the student, the University will inform the Home Office of the decision.

5. Review

5.1 The student may request that the decision of the Academic Registrar be reviewed by the Pro-Vice-Chancellor (Education) under either or both of the following grounds:

5.1.1 that relevant new evidence has come to light which was not available for good reason at the time of the Academic Registrar consideration;

5.1.2 that a material procedural irregularity occurred in the application of this Code of Practice.

5.2 The request for review should be made in writing and addressed to The Academic Policy and Standards Team, Registry, to be received not later than 10 working days from the date of the letter notifying the student of the Academic Registrar's decision.

- 5.3 The Pro-Vice-Chancellor (Education) will receive such further information as is necessary. The decision of the Pro-Vice-Chancellor (Education) will be communicated to the student in writing normally within 10 working days of receipt of the request for review.
- 5.4 The decision of the Pro-Vice-Chancellor (Education) is final. There will be no further right to review or appeal within the University.

6. Future Immigration Sponsorship and Registration

The University reserves the right to decide at its sole discretion whether to assign a Confirmation of Acceptance for Studies (CAS), act as an immigration sponsor or admit to any programme any student or former student whose sponsorship or Registration has been withdrawn under this Code of Practice. In considering whether to act as a sponsor or make an offer of admission the University may take into account the previous conduct of the student or former student.

Appendix

Immigration Obligations

The University holds a licence as a Student Sponsor under the Home Office Immigration Rules and has a number of recording and reporting duties to meet in order to retain the licence.

1. Sponsor Obligations

1.1 Record Keeping

The University must keep (*please note this is taken from the Home Office Guidance found [here](#)*):

- (a) A copy of each sponsored migrant's current passport. We must copy all pages showing any personal identity details including biometric details, stamps, or immigration status document including their period of permission to stay in the UK. This must show the migrant's entitlement to study with a licensed sponsor in the UK if the applicant is a non-EEA national or an EEA national who does not have a chip checker passport

EEA nationals (who have a chip checker passport) applying under the Student or Child Student routes after the end of the transition period will receive a biometric immigration document in the form of an online immigration status rather than a vignette and a physical Biometric Residence Permit, the validity of the Student or Child Student permission will be confirmed on the digital status. They will be subject to the requirements of the Immigration (Biometric Registration) Regulations 2008. An EEA national can prove their status by accessing the following link <https://www.gov.uk/view-prove-immigration-status>. EEA nationals can obtain a share code which can be used to prove an individual's immigration status. Sponsors should record information received from the share code in order to meet the record-keeping requirement.

We must always check the date on which the migrant entered the UK, to ensure they entered during the validity of their Student or Child Student permission and therefore have the ability to study. However, if the migrant is an EU national, EEA national or a national of Australia, Canada, Japan, New Zealand, Singapore, South Korea or the United States of America, they may enter the UK through an automated e-Passport gate ('e-Gate') if they hold valid permission confirmed by digital status or a vignette or Biometric Residence Permit. In such cases, they will not have an entry stamp in their passport.

If the student does not have an entry stamp, we must still check the date of entry by asking to see other evidence such as, but not limited to, e-tickets or a paper or electronic boarding pass. We must then record that the date the student entered the UK, but do not have to retain evidence of the date of entry.

- (b) A copy of the migrant's biometric residence permit (BRP) or digital status. Where the Student or Child Student has digital status, we must keep an electronic copy of the status.
- (c) A record of the migrant's absence / attendance, this may be kept either electronically or manually.

- (d) A history of the migrant's contact details to include UK residential address, telephone number and mobile telephone number. This must be kept up to date with any changes to these details.
- (e) Where the student's course of study requires them to hold an Academic Technology Approval Scheme (ATAS) clearance certificate, we must keep a copy of the certificate or the electronic approval notice received by you, from the Foreign and Commonwealth Office. If the Student is exempt from providing an ATAS certificate due to their nationality, we do not need to request an ATAS certificate from the Student.
- (f) Copies or originals where possible of any evidence assessed by the University as part of the process of making an offer to the migrant; this could be copies of references, or examination certificates. Higher Education Providers with a track record of compliance must keep records of the documents used to obtain the offer for their students at degree level or above but these documents do not need to be submitted with the Student's visa application.

1.2 Reporting - the University must report

The University must report on all Student Visa holders even if they are:

- (a) on a course (including a pre-sessional course) at a partner institution or a branch named on their CAS; or
- (b) doing a work placement that is part of their course.

The University must retain information in its own records about any appeal which a student makes against refusal of leave decisions. If a student's appeal is successful and leave is granted, the University must report to the Home Office if their start date is delayed and provide a new enrolment date.

Reporting categories:

- (a) Student withdraws from the course before travel to the UK;
- (b) Student's start date is delayed before they enter the UK but after they have been granted entry clearance;
- (c) Student does not enrol within the enrolment period;
- (d) Student misses 10 consecutive expected contact points;
- (e) Student defers their studies after they have arrived in the UK and is no longer actively studying (this will include students who take a leave of absence, excluded students who are put on imposed leave of absence and students who transfer to external status);
- (f) The University is withdrawing a student from their course
- (g) If the University stops sponsoring a student because they:
- move to a different immigration category with a different sponsor;
 - move to an immigration category that does not need a sponsor; or
 - complete the course sooner than expected.
- (h) Significant change in a student's circumstances, e.g.:
- a change in where they study or do their work placement;
 - a change of course; or

- anything suggesting they are breaking conditions of their permission to stay in the UK.
- (i) If the University is endorsing a Tier 1 (Graduate Entrepreneur) and they miss a three month expected contact point without the University's permission.

If the University re-establishes contact with a student and wants to resume sponsorship the University must tell the Home Office if:

- (a) the student's permission to stay in the UK has expired; or
- (b) the student's leave was cancelled/curtailed while they were not studying with the University.

In both circumstances, the student will have to apply for new permission to stay before they can start studying again.

2. Reporting for Doctorate Extension Scheme (DES) students

If the University sponsors a student under Tier 4 (General) DES, it will continue to report as normal until the student has successfully completed their course.

The University must report:

- (a) when the student completes their PhD;
- (b) if the student finishes their course without successfully completing;
- (c) if the student misses a scheduled contact;
- (d) if the student is permanently leaving the UK;
- (e) if the University believes that the student is breaching conditions of their leave after the completion of their course;
- (f) if it stops sponsoring a DES student.

The University must withdraw sponsorship if:

- (a) the student finishes their course without successfully completing their PhD, or is awarded a lower qualification;
- (b) the University reports that the student has missed a scheduled contact;
- (c) the student notifies us that they are permanently leaving the UK; or
- (d) the University is aware that the student is breaching conditions of their leave.

3. Additional Duties

In addition to its duties as a Student Sponsor, the University is expected to contribute to supporting immigration matters. In particular, the University must take reasonable steps to ensure that every student who is subject to UK immigration control at the University has immigration permission to be in the UK that are valid and permit study. Failure to do this may lead to the revocation of the University's Student Sponsor licence.

4. Immigration Permissions

The University is obliged to check that students who are subject to UK immigration control have the right to undertake a period or course of study in the UK.

There are two groups under which study is normally permitted:

- (a) Non-student immigration categories under:
- Asylum/Humanitarian Protection;
 - Tier 1;
 - Tier 2 (worker);
 - Dependants of primary visa holders and EEA family/spousal;
 - General/Business (restricted under paragraph 43A).
- (b) Student permissions under:
- Student Visa Route;
 - Tier 5 (Government Approved Exchange);
 - Short Term Study Visa.