

**UNIVERSITY OF BIRMINGHAM**

**CODE OF PRACTICE ON STUDENT IMMIGRATION DUTIES**

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## Appendix – Immigration Obligations

**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 regarding right to study and academic engagement. It provides information about student responsibilities in maintaining immigration permissions and academic engagement.
- 1.2 The Code of Practice sets out the procedures taken to address possible non-compliance.
- 1.3 This Code of Practice applies to all registered international students (including students in Thesis Awaited status and students returning from a Leave of Absence) who are subject to UK immigration control.
- 1.4 This Code of Practice applies to student engagement requirements which is also dealt with in the Code of Practice on Student Academic Engagement.
- 1.5 References to the Academic Registrar or the Pro-Vice-Chancellor (Education) include their nominee.

**2. Responsibilities and Duties**

- 2.1 The University is a Home Office Student Sponsor. The Appendix of this Code of Practice 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 always 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 s5.2.1 and s5.2.2** in respect of immigration 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 responsible for ensuring that they comply with the requirements set out in **Regulation 5 s5.2.1 and s5.2.2** in respect of personal details. It is a requirement and condition of study that students who require a visa to study in the UK must as soon as possible provide the University with their UK University address and contact details and must always ensure that these details are kept up to date.
- 2.4 Students are responsible for ensuring that they comply with the requirements set out in the Code of Practice on Student Academic Engagement in respect of their academic engagement and Home Office engagement requirements. It is a requirement and condition of study that students holding a Student Visa attend their studies, in person and normally on campus and where they do not meet the University Policy, their immigration sponsorship will be withdrawn by the University.

### 3. Right to Study Check

- 3.1 The University is required to ensure that all students, irrespective of their fee status, or the type of visa they hold, have the right to study in the UK and that international students hold the appropriate visa or immigration permissions permitting study.
- 3.2 All students who require immigration permissions to study must use MyRTS to upload their immigration documents as quickly as possible on arrival in the UK to start their studies. Students who do not upload documents for a Right to Study check, or 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.
- 3.3 Where appropriate, the University may proceed to consider suspending a non-student route visa holder or, for students with a student route visa, withdrawal of a student's immigration sponsorship and/or registration on a programme of study or with the University.

### 4. Procedure

The University will carry out a check of its international student's immigration documents and where information is missing, will send emails to the student asking for the missing information. The following outlines the steps that will be taken when their matter is escalated to the University Academic Registrar or the Pro-Vice-Chancellor (Education).

- 4.1 Where the University is considering acting in relation to a student under the provisions **of Regulation 5, s5.2.1 and s5.2.2** 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 provided satisfactory documentation to prove their Right to Study; and / or
    - 4.2.2 has not completed their MyRTS, or does not hold or cannot evidence that they hold current valid immigration permissions permitting them to enter / remain in the UK and that is appropriate for their programme and mode of study; or
    - 4.2.3 has failed to comply with or provide evidence of compliance with one or more of the conditions or requirements of their immigration permissions; or
    - 4.2.4 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:
      - 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) 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 student is a student visa holder, the Academic Registrar, will decide whether:

- a) the University should continue immigration sponsorship of the student; or
- b) the University's continued immigration 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 to withdraw 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, 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 deciding 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. If the University is taking action against a non-sponsored student who is holding a different type of visa, the University will notify the Home Office in accordance with their requirements.

## 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. Withdrawing Immigration Sponsorship**

The University reserves the right to withdraw immigration sponsorship immediately, without appeal, where it believes that there is a reasonable need to do so e.g. to protect the Home Office Student Sponsor Licence and/or the immigration position of the student.

## **7. Future Immigration Sponsorship and Registration of students whose immigration sponsorship has previously been withdrawn**

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 consider 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](#)*):

**Part 5: for each migrant enrolled under the Student route or Child Student route (including migrants previously enrolled on Tier 4)**

- a. Copy of each sponsored migrant's current passport. The University 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 has been issued a vignette for travel.

EEA nationals (who have a biometric passport) applying from overseas under the Student or Child Student routes using the ID Check app will receive an eVisa (a digital version of their immigration status information) rather than a vignette and a physical biometric residence permit (BRP). The validity of the Student or Child Student permission will be confirmed on the eVisa. They will be subject to the requirements of the Immigration (Biometric Registration) Regulations 2008.

All applications for permission to stay made from 09:00 14 December 2021 on the Student route using the ID Check app will result in an eVisa if granted. Visa nationals using the ID Check app for such applications will also receive a BRP. Non-visa nationals using the ID Check app will only receive digital status. Applicants who are unable to use the ID Check app will receive a BRP only.

Note: the Home Office is phasing out biometric residence permits and they will no longer be issued after 31 October 2024. If the Student is issued with a biometric residence permit before that date, it will not be valid beyond 31 December 2024, even if they have been granted longer than this. The Student will need to create a UKVI account to access their eVisa and view their immigration status. For further information, see Get access to your eVisa on GOV.UK.

Those with an eVisa can prove their status by accessing the following link <https://www.gov.uk/view-prove-immigration-status>. Students with this status can obtain a share code which can be used to prove an individual's immigration status.

The University 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 can study. If a student enters the UK before the start date stated on their Student or Child Student permission, they will not have entered on the basis of their Student or Child Student permission and will not be able to commence their studies. They will need to leave the common travel area and re-enter on or after the start date on their Student or Child Student permission to activate their Student or Child Student permission.

If the migrant is an EU national, EEA national or a national of Australia, Canada, Japan, New Zealand, Singapore, South Korea, Switzerland 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 BRP. In such cases, they will not have an entry stamp in their passport which states the entry date.

If the student does not have an entry stamp, the University 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. The University must then record that the date the student entered the UK, but do not have to retain evidence of the date of entry.

- b. Copy of the migrant's BRP or eVisa. Where a Student or Child Student has an eVisa, the University must keep an electronic copy of this using the view and prove service. If the migrant has both an eVisa and a BRP, the University can choose which to keep a copy of in order to meet record keeping duties.

Sponsors may consider it best practice to check the full decision notice for details such as work rights for sponsored students who hold an eVisa, but doing so is not a requirement under record keeping duties.

- c. 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, the University must keep a copy of the certificate or the electronic approval notice received by the University, from the Foreign and Commonwealth Office. If the Student is exempt from providing an ATAS certificate due to their nationality, the University do not need to request an ATAS certificate from the Student.
- f. If you are a Higher Education Provider (HEP) endorsing a migrant under the Tier 1 Start-up route, the University must keep evidence of the selection process that resulted in that endorsement.
- g. For migrants in the Child Student category who are going to be cared for in the UK in a private foster care arrangement during their stay, the University must, as soon as the University become aware of the migrant's arrival, provide details of the name of the foster carer and of the address where the foster carer and the migrant will be living, to the local authority in whose area the child will be living. In addition, where a Child Student is already in the UK and a private foster care arrangement subsequently commences, the University must provide details of the name of the foster carer and the address where the foster carer and the Child Student will be living, to the local authority in whose area the child will be living as soon as you become aware of the change in their care arrangements. This is to ensure that the local authority is made aware of the arrangement as soon as possible. The University must keep a record of the notification to the local authority.

h. 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 Duties

The University must use the Home Office Sponsor Management System (SMS) to 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) [N/A]
- (e) Student misses expected engagement points.
- (f) 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).
- (g) The University is withdrawing a student from their course
- (h) If the University stops sponsoring a student because they:
  - commence a study abroad and do not plan to return to the UK or the University is not sponsoring them when they are outside the UK.
  - 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.
- (i) 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.
- (j) The University suspects they are not a genuine student.
- (k) [missing in Home Office Document]
- (h)(sic) Graduate Route duties.