



Guidance on Engaging External Examiners

1. Introduction

1.1 This guidance has been produced following detailed consultation with both the UK Borders Agency (UKBA) and Universities UK (UUK). In the light of the most recent advice circulated by UKBA and following legal advice from immigration lawyers, sought in recognition of the need to better accommodate our business needs, this University guidance has been reviewed and will be subject to further revision.

2. UKBA Guidance on Eligibility to Work in the UK

2.1 Our obligations as an employer, under our Sponsorship Licence, require that all people regardless of nationality or immigration status who are employed by the University even for a limited period, and whose main employment may be with another employer, must have their documents viewed, checked and copies kept to demonstrate that they have the right to work in the UK. Carrying out such checks gives the University a statutory defence if it is later discovered that the person does not have the right to work in the UK. Thus, in order to safeguard the University from possible future civil penalties for employing illegal workers, we must undertake document checks on **all** people we employ. Failure to comply with these requirements will put us at risk of civil penalties which may include significant fines and most importantly, the potential loss of our sponsorship licence which would prevent all areas of the University from employing migrant workers. This would have a considerable detrimental impact on the University's ability to sustain its position as a world leader.

3. Engaging an External Examiner to Undertake Work Within the UK

3.1 UK and EEA Nationals

3.1.1 UK and EEA nationals are free to work without any restrictions. The External Examiner's right to work (including where they are of UK or EEA nationality) has to be established before payment can be made.

3.1.2 The relevant proof of right to work documentation is one document from List 1:

- A current passport showing the holder (a) a British citizen, (b) a citizen of the UK and colonies having the right of abode in the UK, or (c) a national of a European Economic Area country or Switzerland [a national identity card may be used instead of a passport].
- A residence permit registration certificate or document certifying or indicating permanent residence, issued by the Home Office or Border Agency to a national of an EEA country or Switzerland or a family member of that national.
- A passport or other travel document 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.

3.1.3 If the candidate cannot provide us with one of the above documents, they can prove their eligibility by providing one of the following combinations of documents

- an official document issued by a previous employer or Government agency which contains the permanent National Insurance number and name of the person, e.g. P45, P60, NI card, letter from a Govt agency, etc.

plus one of

- an immigration status document issued by the Home Office or the Border Agency to the holder with an endorsement indicating that the person named is allowed to stay indefinitely in the UK or has no time limit on their stay in the UK, **OR**
- A full birth certificate issued in the UK, Channel islands, the Isle of Man or Ireland which includes the name(s) of at least one of the holder's parents, or
 - a. A full adoption certificate issued in the UK, Channel Islands , the Isle of Man or Ireland which includes the Name(s) of at least one of the holder's adoptive parents, or
 - b. A certificate of registration or naturalization as a British citizen, or

- c. A letter issued by the Home Office or Border Agency to the holder which indicates that the person named in it is allowed to stay indefinitely in the UK.

Further information can be found on the University of Edinburgh's Human Resources website at:

<http://www.ed.ac.uk/schools-departments/human-resources/recruitment/good-practice> section 5.10.

3.1.4 In the event that we engage an external examiner, who is a UK or EEA national, to undertake work in the UK but without travelling to Edinburgh to undertake the work, we are still required to see the original documentation and retain a copy. The External Examiner must be seen, in person, along with their original documents. As an alternative to the External Examiner travelling to Edinburgh, a member of staff from the University of Edinburgh who is visiting the External Examiner at his/her place of work or meeting him/her at a conference may arrange to meet with, have sight of, obtain and verify a copy of the original documentation.

3.2 Non-EEA Nationals working in the UK and holding Work Permits/Certificates of Sponsorship with other Academic Institutions

3.2.1 If the External Examiner has a Work Permit or Certificate of Sponsorship with another Academic Institution then they can undertake External Examining/work at Edinburgh under the current 'Supplementary Employment' rules in the Tier 2 guidance. The Supplementary Employment Rules state that Tier 2 and Tier 5 migrants are allowed to undertake other work which is supplementary to that for which his/her Certificate of Sponsorship was assigned. This supplementary employment does not have to meet the resident labour market test. Supplementary employment must:

- be in the same profession and at the same professional level as the work for which the Certificate of Sponsorship was assigned;
- be no more than 20 hours a week; and
- be outside of normal working hours for which his/her Certificate of Sponsorship was assigned.

3.2.2 Migrants do not need to advise UKBA of any supplementary employment they undertake, as long as it meets the above stated criteria.

3.2.3 To allow an External Examiner to undertake work at the University of Edinburgh as 'Supplementary Employment', a member of University of Edinburgh

staff must meet with the External Examiner in person, have sight of and take verified copies of the individual's current passport including leave to remain stamp, visa or biometric card, together with a work permit or confirmation of Certificate of Sponsorship. In addition, the External Examiner must also be asked to provide proof of their employment status (in order to check that they meet the criteria for supplementary employment as stated in paragraph 3.2.1). This could be a copy of their offer letter or contract from the Academic Institution that is their main employer.

3.3. Non-EEA nationals who do not currently hold a Work Permit/Certificate of Sponsorship with another Academic Institution

3.3.1 UKBA recognise that it may be necessary for a sponsor to recruit a migrant from outside the resident work force to fill a particular vacancy that cannot be filled by a settled worker and that is not on the list of shortage occupations. However, this is only allowed if the sponsor has completed the Resident Labour Market Test.

3.3.2 The Resident Labour Market Test is the process an employer must follow before employing a person who is not a settled worker (individual with the right to work in the UK) by demonstrating that no settled worker could be found to fill the job.

3.3.3 The rules of the Resident Labour Market Test are:

- The job vacancy must be advertised to settled workers according to the code of practice specific to the sector and job.
- The vacancy must be advertised for a period of 4 weeks.
- The period of advertising starts from the date the advertisement first appears.

3.3.4 The above process **must** be followed before a non UK/EEA worker or a person without the right to work in the UK can be employed as an External Examiner. Failure to follow these guidelines would mean that we are not complying with UKBA Immigration guidance and may not have a defence against civil penalties for the employment of illegal workers.

4. Engaging an External Examiner to undertake work outside the UK

4.1 External Examiners who will be undertaking work outside the UK/EEA e.g. in their home country, do not need to prove their right to work as they will not be entering the UK.

5. Paying an External Examiner

5.1 External Examiners should not be paid until proof of their right to work is established and verified. Original copies of relevant documentation will need to be seen, copied and, verified. A copy should be retained locally and a copy sent to the College/Support Group HR team with the relevant payroll form. Once this has been done, payment can be made.

5.2 External Examiners who are currently under contract and have not had their documentation checked, should be requested to provide documentation as soon as possible. We are required to see and copy original documentation and this will avoid any potential breach of the UKBA guidance and enable us to continue to have a defence against a civil penalty.

5.3 Individuals cannot be engaged or paid as External Examiners if they enter the UK via the Business Visitor or Visiting Academic route. UKBA does not permit payment for any work undertaken as an external examiner via this route and UKBA will treat this as a breach of the immigration regulations. A breach of the regulations may have implications for the individual concerned as well as the University.

6. Engaging an External Examiner (unpaid)

6.1 An External Examiner who is engaged and undertakes unpaid work will still be in breach of the regulations. The fact that the examiner has undertaken work, without the relevant right to work checks being undertaken, whether paid or unpaid, means we may not have a defence against civil penalties for the employment of illegal workers.

This guidance is subject to any changes that may be made within the guidelines of UKBA Immigration Policy.

If you have any queries regarding engaging External Examiners you should contact your local HR team for guidance.

7. History & Review

This revised guidance takes effect from July 2010. It is subject to ongoing review and is expected to be revised or expanded in response to queries and feedback, from both colleagues and immigration lawyers.

8. Alternative Format

If you require this document in an alternative format please contact CorporateHR@ed.ac.uk or telephone 0131 650 8127.

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