

# IMMIGRATION LAW COMPLIANCE POLICY



This document sets out the University's policy governing compliance with immigration law.

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<b>Executive Sponsor</b>	Chief Operating Officer
<b>Officer Responsible for Policy/ Procedures</b>	General Counsel
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## INTRODUCTION AND CONTEXT

Under the Immigration, Asylum and Nationality Act (2006) employers have a responsibility to prevent illegal immigrants working or studying in their organisations. The UK Government operates a Points-Based System which sets out the rules for individuals seeking to work and study in the UK. The Immigration Rules and accompanying guidance documents published by the Government are an integral part of the Points-Based System. They help identify which jobs are skilled to the necessary level, minimum rates of pay and English language competence. They also identify how an organisation is able to sponsor a migrant to study in the UK. Immigration policy and processes in the UK are managed by UK Visas and Immigration, a department of the Home Office.

Aston University is licenced by the Home Office to sponsor both skilled workers and students. Failure to comply with UKVI's policies and the relevant legislation may lead to the loss or suspension of the University's sponsor licences. Immigration compliance is therefore of critical importance to the University.

# 1. SCOPE OF THE POLICY

## 1.1 Purpose of the Policy

The purpose of this Policy is to ensure the correct and lawful sponsorship of skilled workers and students that require specific immigration permission to come to the UK for either of those purposes. The associated Procedures and guidance documents of the University are to be used in conjunction with the Policy, which provides the overall position of the University in relation to its immigration compliance.

This Policy also provides guidance on how the University will retain information and provide it to the Home Office where relevant, to ensure that it serves to protect immigration control and the continued ability for its sponsored workers and students to remain in the UK.

## 1.2 What is covered by the Policy

This Policy sets out:

- the rules by which the University must abide to sponsor migrant workers and students;
- the processes by which such sponsorship is to be effected;
- certain information in relation to the sponsored worker or student; and
- the penalties for non-compliance or breach of the University's obligations as a sponsor.

## 1.3 Who is covered by the Policy

The sponsored workers and migrants of the University.

All staff engaged in the sponsorship process for either workers or students. This policy does not form part of any contract of employment and may be amended at any time.

## 1.4 Breach of this Policy

Any breach of this Policy and its associated procedures or guidance by staff will be investigated in accordance with the University's disciplinary procedure. A serious breach may amount to gross misconduct, and could therefore result in summary dismissal.

Any breach of this Policy and its associated procedures and guidance by non-staff will be investigated and steps taken in accordance with the law and any relevant contract.

## 1.5 Policy Ownership

The Executive has approved this Policy, the Chief Operating Officer is the Executive sponsor and the General Counsel is the officer responsible for the Policy. Any questions about the operation of this Policy or any concerns that the Policy has not been followed should be referred in the first instance to the General Counsel.

The Associate Director - HR is the University's Authorising Officer for skilled workers and the Deputy Vice-Chancellor Engagement is the Authorising Officer for students and ultimate responsibility for compliance with the Immigration, Asylum and Nationality Act (2006) rests with them.

## 2. THE POLICY STATEMENT

### 2.1 Guiding Principles

The guiding principles of this Policy are those expected by the Home Office of any Sponsor of migrants. Accordingly, the University will:

- ensure that it continues to meet its sponsorship obligations
- put in place and keep updated necessary systems and procedures to meet those sponsorship obligations
- comply with all obligations to prevent illegal working
- continually be able to satisfy the Home Office that it does not present any threat to immigration control.

### 2.2 The Procedures

The following procedures implement this Policy:

Skilled workers	Recruitment & Selection Policy and Procedure (employees)
	Process for Engagement of Casual Workers and associated guidance (workers)
Students	Biometric Residence Permits Procedures
	Creating a CAS Procedure
	HEI Apply Procedures
	MAP Pre-CAS How to Guide
	Processing VCR on SMS
	SAB Records Procedures
	Start Up Procedures
	Student Engagement Process
	Visitors Procedures

## 3. DEFINITIONS

The terms set out in this section 3 apply to this Policy.

**CAS** is a Confirmation of Acceptance for Studies.

**COS** is a Certificate of Sponsorship.

**immigration skills charge** or **ISC** is the charge is paid by the University when assigning a CoS to a potential sponsored skilled worker.

**settled worker** can be one of the following, amongst others:

- a British citizen;
- an Irish citizen;

- a European Economic Area (EEA) national who arrives in the UK before 11 pm on 31 December 2020 (and their eligible family members), provided they apply for status under the EU Settlement Scheme by 30 June 2021 and that application is granted;
- a person with leave to remain (settled or pre-settled status) under Appendix EU (the EU Settlement Scheme); or
- anyone who has indefinite leave to enter or remain (settlement) in the UK.

**skilled worker** is defined by the UK Government's Immigration Rules.

**the Rules** are the Immigration Rules and accompanying guidance documents published by the UK Government.

**UKVI** is UK Visas and Immigration (a department of the Home Office).

## 4. SPONSORSHIP UNDER THE WORKER IMMIGRATION ROUTE (FORMERLY THE TIER 2 ROUTE)

As an employer, the University has to sponsor any worker that it wishes to employ if they are not a settled worker or do not otherwise have the appropriate immigration permission to work in the UK.

### 4.1 Sponsoring a skilled worker

The University must assign a valid CoS to any identified migrant worker so that they can subsequently make a successful visa application. In most cases, the University will have to pay a fee to assign a CoS and (in the case of skilled workers and intra-company workers), pay the immigration skills charge.

Before assigning a CoS, the University must:

- check the intended role is eligible for sponsorship;
- ensure that the worker will be paid appropriately in relation to the Rules;
- check that the worker themselves is eligible
- meet any other requirements as specified by the Home Office and as relevant to the role in question.

### 4.2 Immigration skills charge

This charge is paid by the University when assigning a CoS to a potential sponsored skilled worker. PhD level roles such as academic and researcher roles (on SOC codes 2119 and 2311) are exempt, as are individuals who switch into Skilled Worker employment from a UK study visa.

### 4.3 Financial requirements for visa applicant

Sponsored workers are not permitted to claim public funds (benefits and other assistance from the state). The University must therefore satisfy the Home Office that any worker it intends to sponsor has enough money to support themselves, and any family members (dependants) in the UK, until they start to receive an income from the University.

The University certifies a worker's maintenance meaning that it will, if necessary, maintain and accommodate the worker up to the end of their first month of employment in the UK.

#### **4.4 General conditions**

All migrant workers will be subject to the following conditions:

- no access to public funds
- registration with the police if they are a relevant national
- restrictions on the employment they can take.

If the worker breaches his or her conditions of stay, the Home Office may take action against the University and/or the migrant worker, including:

- curtailing the migrant worker's leave;
- removing the migrant worker from the UK;
- downgrading, suspending or revoking the University's sponsor licence; or
- in serious cases, referring the University or the migrant worker to the police or other relevant authorities.

It is therefore of utmost importance that the terms of this Policy and accompanying documents are adhered to and implemented.

## **5. RIGHT TO WORK**

All employers in the UK have a responsibility to prevent illegal working. This is done by conducting right to work checks in accordance with the relevant Home Office guidance, to make sure the individual has a right to do the work for which they are due to be engaged or employed. Checks on right to work must be carried out for every person the University intends to employ – including any sponsored skilled workers - before they begin any work.

If right to work checks are conducted as set out in the Home Office guidance, the University will be protected from any later finding that it has employed someone who is prevented from carrying out the work in question by reason of their immigration status. It is therefore imperative that checks are undertaken correctly and in advance of any work starting.

Where an individual's appointment ends without extension and they are processed as a leaver and notified as such to HMRC, a fresh right to work check must be carried out before re-hiring any individual. The University trains members of staff to undertake right to work checks and only permits checks to be undertaken by those who have been trained to do so.

## **6. SPONSORSHIP UNDER THE STUDENT ROUTE (FORMERLY THE TIER 4 ROUTE)**

### **6.1 Issuing a CAS**

A CAS can only be issued once the offer is unconditional, the English Language ability has been assessed and the Pre-CAS Questionnaire has been approved.

### **6.2 Academic progression**

The academic progression rule is in place to ensure that students are progressing academically if they wish to study a further course in the UK and are not merely seeking to extend their stay in the UK.

To meet the academic progression requirement, the student's new course must normally be above the level of the previous course for which they were granted permission under the student route. In certain circumstances a student may be able to continue to study at the

same level but, if the student's new course is at a lower level than the previous course, it will not represent academic progression and any application to extend their leave will be refused.

For applicants who have studied a Foundation, Masters or PhD and have not completed their studies but are successful to date and are looking to study again at the same level; the University assesses academic progression on a case by case basis.

### **6.3 Refusing or withdrawing a CAS**

The University reserves the right to refuse to issue a CAS, or withdraw a CAS before and application has been made or once it has been issued if, for example:

- the applicant will not be able to complete their studies at the University due to nearing the limit or reaching the limit of study years outlined by the Home Office;
- after completing the Pre-CAS questionnaire, the student states they do not have the funds available to make a valid visa application;
- it becomes apparent that one or more of the mandatory documents required for a valid visa application is not available prior to submitting that application;
- the applicant does not enrol;
- it becomes apparent that information has been withheld during the application process, and a valid visa application is no longer possible;
- the applicant does not accept their offer onto the programme or defers their place to a different academic year;
- the student has overstayed their visa for more than 14 days;
- the student has overstayed their visa for less than 14 days, and is unable to demonstrate that they can make a valid visa application;
- a joint CAS covering a pre-sessional and main course has been issued and the student has failed their pre-sessional course, where it was a condition for them to pass in order to progress on to the main course;
- there is reason to believe the applicant is not a genuine student. In these instances, we may request further information before a decision can be made, including full Home Office immigration history checks or full checking of a visa application and documentation prior to issuing a CAS.

CAS withdrawals should be referred to the Visa Compliance Team, and final decisions are to be made by the Head of International Student Services.

### **6.4 English language**

The English language requirement is set and agreed by the University Learning and Teaching Committee for all programmes as part of the course set up.

The University can only accept one of the Home Office approved Secure English Language Tests (SELT) for acceptance onto a programme that is lower than the Regulated Qualification Framework (RQF) level 6. This is the UKVI Approved IELTS test that displays the UKVI Unique Reference Number (URN). Additionally, applicants can provide us their unique SELT reference number from their Integrated Skills in English test or Graded Examinations in Spoken English test; conducted by Trinity College London.

A UKVI IELTS certificate must be valid and dated within 2 years of the date we issue a CAS for a student (for below degree level courses). For courses at RQF level 6 or higher, the University may use its own judgement and assessment of English Language ability, based on the list of approved qualifications compiled by the experts in the International Office and the local knowledge they have gained from the British Council in the relevant country.

## **6.5 Engagement monitoring**

The University maintains a scheme that monitors the engagement of all sponsored Students and will follow up with students who have not registered an appropriate engagement activity for a period of weeks.

# **7. ACADEMIC TECHNOLOGY APPROVAL SCHEME (ATAS)**

## **7.1 Students**

ATAS is operated by the Foreign, Commonwealth & Development Office (FCDO) and runs in parallel to export controls and immigration legislation and must also be adhered to by the University. ATAS places obligations on certain international students who are studying at postgraduate level in certain sensitive subjects to be authorised to do so. Students who are nationals of the following countries do not require an ATAS certificate - EU countries, the European Economic Area (EEA), Australia, Canada, Japan, New Zealand, Singapore, South Korea, Switzerland or the United States of America.

## **7.2 Researchers**

In January 2021, HM Government announced from 21 May 2021, researchers will also be required to hold an ATAS certificate before applying for a visa to conduct activities on UK soil that could result in the intangible transfer of technology (ITT) to WMD and advanced conventional weapons technology programmes of concern. The purpose of the expansion is to introduce relevant vetting to ensure that higher education providers do not inadvertently support foreign military programmes of concern. All subject areas requiring ATAS for students will now also be required for researchers

HM Government defines a researcher as an individual conducting investigation into a problem or situation, where the intention is to identify facts and/or opinions that will assist in solving the problem or dealing with the situation. A researcher may be working independently or as part of team.

All visiting researchers will need to apply under ATAS before they begin any research subject to ATAS. They will not need to do so before making a visa application but must have a valid certificate before beginning their research in the UK.

The extended regime will apply to any individual entering the UK to undertake research in one of the listed areas and will include (but not be limited to) post-doctoral researchers, visiting researchers and academic staff. ATAS certificates will be required for the following routes if the individual will be undertaking research at PhD level or above in an area which currently require ATAS as postgraduate level:

- Skilled worker
- Government authorised exchange worker
- International agreement worker
- Intra-company transfer

# **8. REPORTING DUTIES AND MONITORING**

## **8.1 Skilled workers**

The University's responsibilities for monitoring and reporting skilled workers are contained within the Home Office's Workers and Temporary Workers Guidance for Sponsors. In addition to a general responsibility to report any workers who the University believes to be



engaging in criminal or terrorist activity, there are more specific changes about sponsored workers which must be notified.

These duties include reporting via the Home Office's Sponsorship Management System, within 10 working days, if the sponsored migrant:

- does not turn up for their first day of work
- is absent from work for more than 10 consecutive working days without permission (with the report being made within 10 days of the 10th day of absence)
- has significant changes to their work or salary
- ends sponsorship for any other reason

## 8.2 Students

The University complies with the UKVI Student Sponsor Guidance and must report certain information or events to the Home Office using the Sponsor Management System within particular time limits. In addition, the University must report to the UKVI if and when any of the instances detailed in the UKVI Student Sponsor Guidance occur, examples of which are outlined below:

- A student who fails to enrol
- A student whose visa was refused
- A student whose attendance falls below the required threshold of 80% or students who miss 10 consecutive contacts (whichever is lower)
- There is a significant change in a student's circumstances including a change of course or a change in where they undertake a work placement
- Anything that suggest that a student has been granted leave with the incorrect conditions of stay
- Anything that suggests that a student is breaking the conditions of their permission to stay in the UK such as working in breach of their conditions
- Any reason to suspect that a student is not a genuine student.

Furthermore, in any of these circumstances, the University must also provide details of any third party, in the UK or another country, which has helped in the recruitment of the student.

The University does not facilitate any breach of student visa permissions includes permitting and/or engaging a student to undertake work for more hours than their visa permits. This is an area of particular risk to higher education providers and the University is no exception. Therefore, we require our community to be highly vigilant in relation to any such breaches.

## 9. RECORD KEEPING

The University maintains all records as specified in Appendix D of the Sponsorship: Guidance for Employers and Educators document for all migrant workers and students.

## 10. CO-OPERATING WITH THE HOME OFFICE

To facilitate and assist the Home Office with maintenance of the immigration system, the University will:

- allow Home Office staff access to any of its premises on demand. Visits may be either prearranged or unannounced;
- adhere to any action plan set by the Home Office; and
- seek to minimise the risk of a breach of immigration control by complying with any Home Office or other governmental guidance.

# 11. IMMIGRATION LAW BREACHES

## 11.1 Skilled workers

If the University is found to be in breach of its obligations as a Sponsor of Skilled Workers, it could be liable for:

- downgrading or revocation of the Sponsor licence by the Home Office; and
- under the legislation in relation to the prevention of illegal working, may face civil penalties of up to £20,000 per illegal employee; and
- may be prosecuted for the criminal offence of knowingly employing an illegal worker which may result in an unlimited fine and or up to two years' imprisonment for the responsible officer.

## 11.2 Students

If the University is found to be in breach of its obligations as a Sponsor of Students, it could be liable for:

- downgrading or revocation of the Sponsor licence by the Home Office; and
- a £10,000 fine.



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