



## **Working in the UK – Consequences of Breach of Conditions**

Universities function within a global market and have a high percentage of international staff on their payroll. Many of these are European nationals who do not currently require a visa to work in the United Kingdom. Nationals from all other countries require a visa which allows them to work and undertake the type of work they are permitted to take in the United Kingdom for the duration of their stay.

The purpose of this briefing note is to highlight the importance of ensuring that international members of staff secure the correct visa permission for the type of work they wish to undertake and to highlight the potential consequences of an inadvertent breach of work conditions.

The circumstance of an inadvertent breach can most readily arise in the context of an academic visit visa. The academic visitor route is an effective route for academic members of staff who wish to come to the UK to work within a UK university to take part in a formal exchange arrangement, carry out research for their own purposes or, if they are an eminent senior doctor or dentist, take part in research or clinical practice. The academic visitor route is intended for academics who will remain in employment overseas and who are only carrying out activities which are incidental to their job overseas, for example they may be providing advice on an international project or sharing knowledge on research that they are working on overseas.

If an academic proposes to undertake research for anything other than their own purposes in the United Kingdom, so for example if they propose to undertake research on behalf of their institution, then an academic visit visa is not a suitable visa category for them. Undertaking research for their own institution would constitute a breach of conditions. Equally any work in the United Kingdom which falls outside that which is permitted under the academic visitor route would constitute a breach of conditions. In these circumstances it will usually be more appropriate to consider Tier 5 as an alternative route to undertake short term research, project

work or to engage in employment in the United Kingdom.

If an academic is proposing to join a UK based university on a long term basis then they should consider the viability of Tier 2 as a route to do this. More detailed information can be provided on the academic visitor route, Tier 5 and Tier 2 should you require this. We will now focus on the potential consequences of a breach of work conditions and the importance of ensuring that an appropriate visa category is used which will enable an academic to undertake the research or work that they propose to undertake in the United Kingdom.

## **Refusal of Entry**

On entry to the United Kingdom a visa holder may be interviewed by an Immigration Officer. If the Immigration Officer is not satisfied that the work which is proposed to be undertaken, falls within the conditions of the visa which has been obtained, then leave to enter will be refused and the academic would not be permitted to enter the United Kingdom. Any refusal can have far-reaching consequences on the prospects of any future visa application, even where a future application satisfies the requirements of the Immigration Rules.

## **Curtailment and Administrative Removal**

Further to Part 9 of the Immigration Rules, a breach of conditions such as undertaking work which is not permitted within a visa category may lead to the curtailment of leave to remain. This would result in the academic having no leave to remain in the United Kingdom. Not only would this create practical difficulties in completing the piece of work for which the academic had entered the United Kingdom but it would also create a risk of reputational damage to the University and the potential loss of any investment which had been made to enable the academic to join the university for the period of their research work. For the academic, curtailment of leave to remain would have a long lasting adverse impact on the prospects of them being able to secure visa clearance in the future.

Further to section 10 of the Immigration and Asylum Act 1999 (as amended by the Immigration Act 2014) those found to be breaching a restriction or condition of their visa will be liable to administrative removal from the UK. Those liable to be removed from the United Kingdom may be detained in an immigration detention centre pending removal.

## **Civil Penalty**

The University has a responsibility to ensure that all those who work for them have a right to work in the United Kingdom and a right to undertake the work in question.

The civil penalty regime provides for penalties of up to £20,000 to be issued where a person is employed by an organisation and they do not have leave to enter or remain in the United Kingdom or that leave to enter or remain is invalid or they are subject to a condition preventing them from accepting the employment in question. Where an academic is permitted to undertake research work for their own purposes but not on behalf of an institution and where they undertake such research, they will be working in breach of their conditions which would expose the University to liability for a civil penalty. Not only does a civil penalty have financial consequences for the University it also has the potential to create reputational damage. A list of outstanding civil penalties is published by the Home Office.

Even more significantly the issuance of a civil penalty can place any immigration licences held by the University in jeopardy. Most universities currently hold Tier 2 and Tier 5 licences which enable them to recruit and employ overseas nationals. If they were to lose this licence they would be unable to recruit any overseas nationals who are resident in a country outside the European Union. Beyond 2020 this is also likely to include all European Union citizens.

The issuance of a civil penalty would also place the University's Tier 4 licence in jeopardy. All overseas national students from outside the European Union require a Tier 4 visa. The loss of a Tier 4 licence would result in the University being unable to offer university places to any student from outside the European Union.

## **Breach of sponsor duties**

Employing an academic in breach of conditions of their visa amounts to a breach of sponsor duties. Doing so not only places the university's Tier 2, Tier 5 and Tier 4 sponsor licences at

risk of a potential civil penalty, it also places the licences at risk as work in breach of conditions amounts to a breach of sponsor duties. The Home Office takes breach of sponsor duties seriously and may look to suspend a licence with a view to revoking the licence if they were concerned that there had been a series or serious breach of sponsor duties.

## **Criminal Sanctions**

There are criminal sanctions which can be imposed but these would only come into play where an institution is found to be deliberately evading immigration control through the use of an illegal working situation. This is not likely to be a risk faced by a university.

Overall we wish to emphasise the importance of identifying the correct visa category for all the work which is proposed to be undertaken by an academic during their stay in the United Kingdom. It is also vital that the overseas national academic is aware of the conditions of their stay and of any limits on the type and nature of work that they are permitted to undertake.

If you require any further information about the matters raised in this briefing note you should not hesitate to contact Emma Brooksbank of our office.