



**SECURING
OUR BORDER
CONTROLLING
MIGRATION**

PREVENTION OF ILLEGAL WORKING

Immigration, Asylum and
Nationality Act 2006

Summary Guidance for Employers

December 2010

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SUMMARY GUIDANCE FOR UNITED KINGDOM EMPLOYERS ON PREVENTING ILLEGAL WORKING

This guidance is a summary of the law on illegal working and your obligations as an employer. It includes details of the document checks that you are advised to undertake.

You should read this in conjunction with the latest detailed guidance on preventing illegal working ‘Comprehensive Guidance for Employers on Preventing Illegal Working’ which is available on the UK Border Agency website:
[www.ukba.homeoffice.gov.uk/
employers/preventingillegalworking/](http://www.ukba.homeoffice.gov.uk/employers/preventingillegalworking/)

The information contained in this document was correct at the time of publication, but may be subject to revision. Detailed guidance, codes of practice and other sources of support for employers wishing to employ migrant workers in the UK can be found at: [www.ukba.homeoffice.gov.
uk/employers/](http://www.ukba.homeoffice.gov.uk/employers/)

INTRODUCTION

Illegal working has damaging social and economic consequences for the United Kingdom. The UK Border Agency works together with employers to ensure that illegal workers cannot obtain work in the UK. However, where employers are found to be making use of illegal labour, the UK Border Agency takes tough action - an employer can be fined up to £10,000 per illegal migrant worker.

Whether a person can work in the UK, the type of work they are able to do and for how long will depend on their immigration status. The Government has placed working restrictions on nationals from certain countries. As an employer, it is in your interest to be aware of any conditions that may affect your lawful employment of a migrant worker.

The law is in place for three key reasons:

- to make it difficult for people who overstay their permission to be in the UK and/or their entitlement to work to remain in employment in breach of the UK's immigration laws;
- to help employers to ensure they employ people who are legally permitted to work in the UK; and
- to assist the Government to tackle illegal working by helping the UK Border Agency take appropriate action against employers who use illegal labour.

This guidance will help you understand which documents you must ask your prospective employees to produce to ensure that they can work for you lawfully and so that you can establish a **statutory excuse** (“the excuse”) against payment of a civil penalty if your employee is found to be undertaking work which they are not permitted to do. It explains what steps you should take to satisfy yourself that any documents produced by a prospective employee demonstrate an entitlement to work in the UK. It also explains when you should repeat these checks on those who have limits on their time in the UK if you wish to retain your excuse from payment of a civil penalty.

On **29 February 2008**, the Government introduced changes which you, as a UK employer, need to be aware of in order to avoid liability for payment of a civil penalty for employing illegal migrants. As an employer you may be presented with a document, or documents, from one of two lists. Documents provided from **List A** establish that the person has an ongoing entitlement to work in the UK; documents from **List B** indicate that the applicant or

employee has restrictions on their entitlement to be in the UK.

The UK Border Agency is committed to simplifying right to work checks for employers and the list of specified documents that employers can accept. The UK Border Agency started issuing Biometric Residence Permits (BRPs)¹ to non-EEA nationals in November 2008 which help employers check identity and entitlement to work. The BRP reflects a uniform format being introduced across the EU for residence permits allowing a non-EEA national to stay in a member state for more than 6 months. The UK Border Agency will progressively replace paper-based documents/endorsements with BRPs which are the size and shape of driving licence photocard. Further information on Biometric Residence Permits can be found on the UK Border Agency website at www.ukba.homeoffice.gov.uk/employers/preventingillegalworking

You may be aware that a number of countries have joined the European Union since 1 May 2004. The Government imposed a registration scheme², on nationals from eight of

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- 1 Biometric Residence Permits are a form of residents permit, and replace the vignettes (or stickers) previously placed in passports. This only applies to foreign nationals of countries outside the European Economic Area who are granted leave to remain in the United Kingdom.
 - 2 Under EU law the Worker Registration Scheme cannot continue beyond the end of April 2011.

these European Union countries (Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia) and a requirement for authorisation to work for another two (Romania and Bulgaria). This allows the Government to monitor and, in some cases, restrict the participation of workers from these EU countries in our labour market. Under EU Law the scheme must end before the end of April 2011. This guidance gives you details about what you should do if you wish to employ nationals from any of these countries.

THE LEGISLATION

As an employer, you are prohibited from employing anyone who is not permitted to undertake the work in question. Sections 15–25 of the Immigration, Asylum and Nationality Act 2006 (the ‘2006 Act’) set out the law on the prevention of illegal migrant working. These provisions came into force on 29 February 2008. They replaced the previous offence under section 8 of the Asylum and Immigration Act 1996 (the ‘1996 Act’).

An employer who employs someone subject to immigration control who is aged over 16 and who is not entitled to undertake the work in question will be liable to pay a civil penalty of up to £10,000 per illegal worker. Section 15 of the 2006 Act provides that a notice of liability to pay a civil penalty of a specific amount can be served by the UK Border Agency on behalf of the Secretary of State.

The penalty will be calculated on a sliding scale, but the final amount that the employer is required to pay will be determined according to the circumstances of the case.

Section 15 of the 2006 Act also enables an employer to establish an excuse against liability for payment of a civil penalty for employing an illegal migrant. An employer can establish the excuse by checking, copying and retaining certain original documents **before** an individual commences employment. If your potential employee provides a document, or documents, from **List A**, this will establish an excuse for the duration of their employment. A document or documents from **List B** will indicate that they only have limited permission to be in the UK. Therefore you should repeat the checks on that employee at least once every twelve months until they provide a specified document, or documents from List A

which indicate that they can remain permanently in the UK.

If you **know at any time during the period of the employment** that you are employing a person who is not permitted to work, then you **will not** be entitled to the excuse. In addition, you could be prosecuted under section 21 of the 2006 Act which states that an employer may commit a criminal offence if they knowingly employ an illegal migrant. On summary conviction, an employer may face a fine of no more than the statutory maximum³ for each person employed illegally, and/or imprisonment for up to 6 months⁴. Following conviction on indictment, there is no upper limit to the level of fine that can be imposed, and the employer may also be subject to imprisonment for up to two years.

Any person found to be working illegally is liable to prosecution and/or removal from the UK.

WHAT ABOUT THOSE EMPLOYEES I TOOK ON BEFORE 29 FEBRUARY 2008?

The current arrangements under the 2006 Act for establishing the excuse only apply to those employees who started working for you **on or after 29 February 2008**.

You will still be liable for prosecution under the 1996 Act where you employed illegal migrants **between 27 January 1997 and 28 February 2008** and did not establish the statutory defence at the point of recruitment.

Equally, if you established a statutory defence under section 8 of the 1996 Act for employees taken on before 29 February 2008, this will be retained for the duration of that person's employment.

3 The current statutory maximum is £5,000.

4 This will increase to 12 months in England and Wales with the commencement of the relevant provisions of the Criminal Justice Act 2003 (remaining at 6 months in Scotland and Northern Ireland).

HOW TO AVOID RACIAL DISCRIMINATION WHEN PREVENTING ILLEGAL WORKING

The population of the UK is ethnically diverse, many people from ethnic minorities in this country are British citizens, and many non-British citizens from black and minority ethnic communities are entitled to work here. Therefore, you should not assume that someone from an ethnic minority is an immigrant, or that someone born abroad is not entitled to work in the UK.

Equally, you should not employ anyone on the basis of their claim to be British, or if you think they appear to be British. The best way to make sure that you do not discriminate in your recruitment practices is to treat all job applicants in the **same way**.

The Government has issued a code of practice to help employers comply with the law without discriminating against individuals on the basis of their race. You can download a copy from the UK Border Agency website:

www.ukba.homeoffice.gov.uk/employers/preventingillegalworking/

If you do discriminate against someone on racial grounds and do not follow the code of practice, this may be used as evidence against you under race relations legislation before an employment tribunal.

If you operate discriminatory recruitment processes, you could face prosecution under race relations legislation and an unlimited fine if you are found guilty.

HOW TO ESTABLISH THE EXCUSE AGAINST PAYMENT OF A CIVIL PENALTY

Under the 2006 Act, you will be able to establish the statutory excuse for your prospective employees by checking and copying one, or a specified combination, of original documents. In all cases, the document checks must be undertaken **before** the employment begins for the excuse to be available. Where you can demonstrate that you have complied with these requirements, you will be able to establish the excuse and will not have to pay a civil penalty, even if it transpires that the employee was working illegally. However, the excuse will not be available if you **knowingly** employ an illegal migrant worker.

To comply with the requirements of the 2006 Act, employers have to satisfy themselves of the entitlement of prospective employees to work in the UK to ensure they are not employing an illegal migrant worker. We recommend that you undertake checks on all prospective employees as this

will enable you to: establish a statutory excuse against payment of a civil penalty for employing an illegal migrant worker; show that your recruitment process is open and transparent; and ensure your recruitment practices do not discriminate against individuals on racial grounds.

WHAT IS THE DIFFERENCE BETWEEN LIST A AND LIST B?

List A documents demonstrate an ongoing right to work and List B documents demonstrate a right to work for a limited period. If an individual is not subject to immigration control or has no restrictions on their stay in the UK, they should be able to produce a document, or a specified combination of documents, from List A on pages 24-26. The checks must be made **before** they are employed and the excuse will then be established for the duration of the individual's employment.

Where the leave to enter or remain in the UK granted to an individual is time-limited, the document or combination of documents which they should be able to produce are specified in **List B** on pages 27-29. If a prospective employee provides a document or documents from List B, you should carry out specified document checks **before** the employment of the individual begins and carry out follow-up checks of the same kind at least once every 12 months. **These repeat checks are required to retain the excuse.** If you do not carry out the follow-up checks, you may be liable to a civil penalty if the employee is found to be a migrant worker working illegally.

SPECIFIED STEPS

You are advised to follow Steps 1 – 3 set out in this guidance **for every new prospective employee** who you intend to employ.

Please note, **the provision of a National Insurance number in isolation is not sufficient for the purposes of establishing an excuse.** The National Insurance number can only be used for this purpose when presented in combination with one of the appropriate documents, as specified in Lists A and B.

Step 1

A prospective employee must provide:

- **One** of the original documents alone, or **two** of the original documents in the **specified combinations given in List A** on pages 24-26; **OR List B** on pages 27-29.

Step 2

To have the excuse, you are required to check the validity⁵ of the document and be satisfied that the prospective, or existing employee, is the person named in the documents presented. These documents should also allow them to do the work in question.

⁵ For the definition of 'validity' see pages 23 and 26

In order to have the excuse, you must carry out the following checks on all of the documents presented by the prospective or current employee:

- check any photographs, where available, contained in the documentation are consistent with the appearance of the holder; **and**
- check the dates of birth listed, where available, to ensure that these are consistent across documents and that you are satisfied that these correspond with the appearance of your prospective or current employee; **and**
- check that the expiry dates of any limited leave to enter or remain in the UK have not passed; **and**
- check any UK Government endorsements (stamps, visas, etc) to see if your prospective or current employee is able to do the type of work on offer ; **and**
- satisfy yourself that the documents are genuine and have not been tampered with and belong to the holder; **and**

- if your prospective or current employee produces two documents which have different names, ask for a further document to explain the reason for this. The further document could, for example, be a marriage certificate, a divorce decree absolute, a deed poll document or statutory declaration.

Step 3

You must make a copy of the relevant page or pages of the document, in a format which cannot be subsequently altered, for example, a photocopy or scan⁶. In the case of a passport or other travel document, the following parts must be photocopied or scanned:

- the document's front cover and any page containing the holder's personal details. In particular, you should copy any page that provides details of nationality, their photograph, date of birth, signature, date of expiry or biometric details; **and**
- any page containing UK Government endorsements, noting the date of expiry and any relevant UK immigration

⁶ Where an electronic copy is made of a document, it must be made using Write Once Read Many /WORM media, for example, on a non-rewritable disk, such as CD-R.

endorsement which allows your prospective or current employee to do the type of work you are offering.

Other documents should be copied in their entirety; this includes copying both sides of a Biometric Residence Permit (BRP).

You should then keep a record of every document you have copied. The copies of the documents should be kept securely for the duration of the individual's employment and for a further two years after their employment has ceased. By doing this, the UK Border Agency will be able to establish your right to the excuse if they detect anyone working illegally for you.

On each occasion that a follow-up document check is undertaken, you should repeat the specified steps given above within the given time period and record the date of each subsequent check that has been carried out. **If you retain an employee with a List B document or documents and have not made the required follow-up checks, then you may be liable for payment of a civil penalty if that person is found to be working illegally in the UK.**

WHAT IF I ACQUIRE STAFF AS THE RESULT OF A TUPE TRANSFER?

Employers who acquire staff as a result of a Transfer of Undertakings (Protection of Employment) transfer are provided with a grace period of 28 days to undertake the appropriate document checks following the date of transfer.

WHERE CAN I FIND OUT MORE ABOUT PREVENTING ILLEGAL WORKING?

The UK Border Agency has produced more detailed guidance (Comprehensive Guidance for Employers on Preventing Illegal Working) which contains images of the documents included in **List A** and **List B** of this publication and also provides employers with a guide to UK Government endorsements. The guidance is available electronically from the UK Border Agency website: www.ukba.homeoffice.gov.uk/employers/preventingillegalworking/

AM I EXPECTED TO BE AN EXPERT ON FORGED DOCUMENTS?

No. As an employer, if you are presented with a false travel document or visa, you will only be required to pay a civil penalty if the falsity is reasonably apparent. i.e. you could not have been reasonably expected to realise that the document in question is not genuine.

You will not have an excuse against liability if you knew that the document, or documents, were false or did not rightfully belong to the holder.

CAN I HAVE THE EXCUSE IN ALL CIRCUMSTANCES?

No. If you **know** that a person who is working for you is not permitted to do the job in question, then you will lose your right to the excuse and could face prosecution under section 21 of the 2006 Act. This allows the UK Border Agency to tackle employers who deliberately employ illegal workers and/or use false or forged documents to obtain a false excuse.

WHAT SHOULD I DO IF A PERSON IS NOT ABLE TO WORK IN THE UK?

If you have carried out these checks and establish that your prospective employee is not permitted to work, then you are entitled to refuse employment to that person. It is up to your prospective employee to show you that they are permitted to do the work you are offering.

CARRYING OUT REPEAT CHECKS

If the employee presents a document from List B, you must carry out follow-up checks by repeating steps 1 to 3 at least once every 12 months, to retain the excuse. You should record the date on which the check was made.

If you retain an employee with a List B document or combination of documents, and have not made the follow-up checks required in order to have the excuse, then you may be liable for payment of a civil penalty if that person is found to be working illegally in the UK after the excuse time has expired.

WHAT SHOULD I DO IF AN EMPLOYEE REFUSES TO PRODUCE DOCUMENTS TO ESTABLISH THEIR ONGOING ENTITLEMENT TO WORK IN THE UK?

Each case will be dependent upon the terms of the employment contract. You may wish to seek legal advice or report the individual to the UK Border Agency by calling the Sponsorship and Employers' Helpline on 0300 123 4699 who will signpost you to your local immigration team, or by sending an e-mail to: UKBApublicenquiries@ukba.gsi.gov.uk

THE EMPLOYER CHECKING SERVICE

The UK Border Agency Employer Checking Service exists to verify an individual's right to work in the UK where:

- the individual has an outstanding application or appeal with the UK Border Agency; or
- the individual has presented an Application Registration Card (ARC) which states that the holder is entitled to work*; or
- the individual has presented a Certificate of Application issued to or for a family member of an EEA or Swiss national which states that the holder is entitled to work*.

*** In these cases the employer *must* verify the individual's right to work with the Employer Checking Service in order to obtain the statutory excuse against payment of a civil penalty.**

To request a check you must complete a form which can be found at: www.ukba.homeoffice.gov.uk/sitecontent/applicationforms/ecs/requestform. Once completed, the form is to be e-mailed to: Employerchecking@ukba.gsi.gov.uk. If you are not able to e-mail the form, the Sponsorship and Employers' Helpline will advise you what action to take on 0300 123 4699.

It is the employer's responsibility to inform the prospective employee or existing employee that they may undertake a check on them with the UK Border Agency. To have an excuse against payment of a civil penalty, the records and documents relating to the check should be retained for examination and be submitted to UK Border Agency officers upon request.

If you have questions relating to employment law, you may wish to seek legal advice.

WHAT LEVEL OF CIVIL PENALTY MIGHT I BE LIABLE TO IF I EMPLOY SOMEONE ILLEGALLY?

There is a sliding scale of penalties, which are principally determined by the number of times an employer has been found to be employing illegal migrants. Table 1 is a framework designed to assist the UK Border Agency with the assessment of whether to issue a civil penalty to an employer, and if so, at what level. The level of penalty to be imposed per worker may be increased or reduced according to different criteria. For example, the penalty can be increased according to the number of times an employer is found with illegal migrants in their workforce and to have failed to establish a statutory excuse.

On receipt of a civil penalty you have 28 days from the date specified in the notice to pay the penalty or to object. Under section 16(4) of the 2006 Act the Secretary of State, when considering an objection may decide to cancel, reduce, increase or to take no further action on the penalty.

You can also appeal to the court directly within 28 days from the date specified in the notice. However you may choose to lodge an objection with the UK Border Agency first as described above.

If you are issued with a civil penalty and require information about the objection and/or appeal process please consult the Comprehensive Guidance for Employers on Preventing Illegal Working www.ukba.homeoffice.gov.uk/employers/preventingillegalworking/

Table 1: Framework for Assessment of Level of Civil Penalty

		NATURE OF CHECKS COMPLETED				
		FULL	PARTIAL		NO	
OCCASION ON WHICH WARNING/PENALTY ISSUED	3rd +	No penalty	Maximum penalty of £10,000 per worker		Maximum penalty of £10,000 per worker	
			Reduced by up to £1,250 per worker reported	Reduced by up to £1,250 per worker, with cooperation		
			Suggested minimum penalty of £7,500 per worker			
	2nd	No penalty	Suggested maximum penalty of £7,500 per worker		Maximum penalty of £10,000 per worker	
			Reduced by up to £1,250 per worker reported	Reduced by up to £1,250 per worker, with cooperation	Reduced by up to £1,250 per worker reported	Reduced by up to £1,250 per worker, with cooperation
			Suggested minimum penalty of £5,000 per worker		Suggested minimum penalty of £7,500 per worker	
	1st	No penalty	Suggested maximum penalty of £5,000 per worker		Suggested maximum penalty of £7,500 per worker	
			Reduced by up to £2,500 per worker reported	Reduced by up to £2,500 per worker, with cooperation	Reduced by up to £2,500 per worker reported	Reduced by up to £2,500 per worker, with cooperation
			No penalty and a warning letter may be issued		Suggested minimum penalty of £2,500 per worker	

EMPLOYING ASYLUM SEEKERS AND REFUGEES

There is a difference between the entitlement to work in the UK of asylum seekers, and those who have been granted refugee status or humanitarian protection.

ASYLUM SEEKERS

The term asylum seeker is used to describe those who have made an application to be recognised as a refugee under the Geneva Convention on the basis that it would be contrary to the UK's obligations to remove them from the UK, or those who have otherwise made an application for international protection. An asylum seeker cannot be removed from the United Kingdom until their asylum application has been considered and, if the application is rejected, all appeal rights have been exhausted.

Asylum seekers do not usually have the right to work and may only be lawfully employed if the UK Border Agency has lifted restrictions on their taking employment.

REFUGEE STATUS AND HUMANITARIAN PROTECTION

An asylum seeker whose claim is successful is granted refugee status. Refugees are foreign nationals who the UK Border Agency has permitted to remain in the UK because they have demonstrated a well-founded fear of persecution for one of the reasons listed in the 1951 Geneva Convention. Where a person does not qualify for protection under the 1951 Geneva Convention but there are substantial grounds for believing that there is a real risk that if they were removed to their country of origin they would face serious harm, humanitarian protection is granted instead.

Refugees and those who have been recognised as requiring humanitarian protection will have no restrictions on the type of work they can do in the UK, as long as they continue to hold this qualifying status.

These individuals do not have to meet the tests of the points-based system⁷, and as an employer you do not need to be a sponsor under this scheme to employ a beneficiary of one of these statuses.

You are advised to read Appendix B of the *Comprehensive Guidance on the UK Border Agency website: www.ukba.gov.uk/preventingillegalworking, which explains the restrictions and how you can check the right to work of asylum seekers and refugees.*

7 The points-based-system (PBS) was introduced in 2008 based on the Australian style of immigration system. For more information on the points-based-system refer to: www.ukba.homeoffice.gov.uk/employers/points

EMPLOYING NATIONALS FROM THE EUROPEAN ECONOMIC AREA (EEA)

Nationals from European Economic Area (EEA) countries and Switzerland (EEA nationals) can enter the UK without any restrictions. You should not, however, employ any individual purely on the basis of their claim to be an EEA national. You should also be aware that not all EEA nationals can work in the UK without restrictions.

WHICH EEA NATIONALS CAN WORK IN THE UK WITHOUT RESTRICTION?

Austria	Italy
Belgium	Liechtenstein
Cyprus	Luxembourg
Denmark	Malta
Finland	Netherlands
France	Norway
Germany	Portugal
Greece	Spain
Iceland	Sweden
Ireland	

Nationals from these EEA countries can enter and work freely in the UK without restriction. Whilst they are residing lawfully, their immediate family members are also able to reside and work freely in the UK. However, you should still check their documents to demonstrate this entitlement.

Since 1 June 2002, nationals from Switzerland and their family members have also had the same free movement and employment rights as EEA nationals.

WHAT ABOUT ACCESSION STATE WORKERS?

On 1 May 2004, ten new countries joined the European Union and became part of the EEA. Nationals from these countries are also free to come to the UK to live and work here. In 2004, the Government established a Worker Registration

Scheme (WRS) to monitor the participation of workers from eight of these countries in the UK labour market, as follows:

Czech Republic	Lithuania
Estonia	Poland
Hungary	Slovakia
Latvia	Slovenia

These countries are referred to as 'A8 countries', workers from these countries are referred to as 'A8 workers'. Unless exempt, A8 workers must register on the WRS within one month of commencing employment. Under EU Law the scheme must end before the end of April 2011.

NEWER MEMBERS OF THE EUROPEAN UNION AND THE EEA

On 1 January 2007, Bulgaria and Romania joined the European Union, and also became part of the EEA. These countries are referred to as 'A2 countries' and workers from these countries are referred to as 'A2 workers'. A2 workers are free to come to the UK but unless exempt, they will be subject to worker authorisation. This means that they are only able to work in the UK if they hold a valid accession worker authorisation document or if they are exempt from authorisation.

You should refer to Appendix C of the Comprehensive Guidance on the UK Border Agency website: www.ukba.gov.uk/preventingillegalworking, which explains more about employing A8 and A2 nationals.

The UK Border Agency website lists the exemptions to the Worker Registration Scheme: www.ukba.homeoffice.gov.uk/workingintheuk/eea/wrs/whomustregister/, and the Worker Authorisation Scheme: www.ukba.homeoffice.gov.uk/workingintheuk/eea/bulgariaromania/liveworkuk/

EMPLOYING STUDENTS

Students from outside the European Economic Area (EEA) are permitted to take limited employment in the UK, providing their conditions of entry to the UK allow this.

There are strict conditions on the type of work students can undertake while they are studying in the UK and the periods for which they can be employed.

Those studying here who have entered the UK as ‘student visitors’ are not allowed to work.

You should refer to Appendix D of the *Comprehensive Guidance* on the UK Border Agency website: www.ukba.gov.uk/preventingillegalworking for more information on employing students.

FURTHER INFORMATION

Advice for employers about complying with the law on preventing illegal migrant working is available from the:

Sponsorship and Employers' Helpline on 0300 123 4699

The helpline is open Monday to Friday, between 9am and 5pm, except on Bank Holidays. Calls to the helpline may be recorded and used for training purposes.

You may also report any suspicions about your employees' entitlement to work in the UK or to undertake the work in question to the Sponsorship and Employers' Helpline. If this information is reported to the Helpline before any immigration visit is made by the UK Border Agency, a sum may be deducted from the amount of penalty due for each illegal migrant worker encountered on an immigration visit. When reporting you will be given a call reference,

this must be referred to in future correspondence with the UK Border Agency with regards to a penalty.

FURTHER SOURCES OF INFORMATION

The UK Border Agency Comprehensive Guidance for Employers on Preventing Illegal Working, November 2010 contains practical information to help employers to comply with the law. The document is available to download from the UK Border Agency website at: www.ukba.homeoffice.gov.uk/employers/preventingillegalworking/

Both the 'Civil Penalties Code of Practice' and the 'Code of practice for employers on the avoidance of unlawful discrimination in recruitment practices whilst seeking to prevent illegal migrant working' are also available from the UK Border

Agency website at the address above.

An online step-by-step guide to employing migrant workers is available on the Business Link website, which can be accessed via the UK Border Agency website address above or at:

www.businesslink.gov.uk/emw.

This website contains detailed information on current legal requirements for employers.

Further information regarding schemes for nationals from the European Economic Area is available from: www.ukba.homeoffice.gov.uk/workingintheuk/eea

For advice concerning immigration issues you should contact the:

Immigration Enquiry Bureau

(IEB) on 0870 606 7766 for questions about immigration issues.

The opening hours are Monday to Thursday, between 9am and 4.45pm, and on Friday from 9am until 4.30pm. For e-mail enquiries

please e-mail: ukbapublicenquiries@ind.homeoffice.gsi.gov.uk

For further up-to-date details on who to contact in respect of immigration issues and information about suspected illegal working, please check the UK Border Agency website at: www.ukba.homeoffice.gov.uk

LIST A

DOCUMENTS WHICH PROVIDE AN ONGOING EXCUSE

Validity of Documents

The UK Border Agency recommends that employers check the in-date passports/travel documents of their prospective employees. However, if the prospective employee does not have an in-date passport/travel document showing their permission to remain in the United Kingdom⁸, you can accept evidence of permission to remain in the UK – and therefore right to work - in an expired passport or travel document. It is crucial that you check that the stamp or endorsement in the passport/travel document continues to allow the person to work by virtue of status (ie the person's stay is indefinite) or date (the end of the person's permitted stay has not expired).

Employers are advised to see any prospective employee's current passport/travel document. If you have to rely solely on an expired passport/travel document containing evidence of the prospective employee's permission to remain in the UK, you must take particular care when examining photographs and comparing these with the current appearance of the prospective employee. Also, you should have regard to the date of birth on the expired document and satisfy yourself that this is consistent with the current appearance of the prospective employee.

NB: With regards to the validation of a Certificate of Entitlement to the Right of Abode – this **MUST** be endorsed in a valid passport. See List A in the Comprehensive Guidance for more information.

⁸ Policy change in relation to Indefinite Leave to Remain (ILR) effective from 4 August 2010 and in relation to Limited Leave to Remain, policy change effective from 1 November 2010

Images of some of these documents are included in the *Comprehensive Guidance* available on the UK Border Agency website: www.ukba.gov.uk/employers/preventingillegalworking

1. A passport showing that the holder, or a person named in the passport as the child of the holder, is a British citizen or a citizen of the United Kingdom and Colonies having the right of abode in the United Kingdom.
2. A passport or national identity card showing that the holder, or a person named in the passport as the child of the holder, is a national of the European Economic Area or Switzerland.
3. A residence permit, registration certificate or document certifying or indicating permanent residence issued by the Home Office, the Border and Immigration Agency or the UK Border Agency to a national of a European Economic Area country or Switzerland.
4. A permanent residence card issued by the Home Office, the Border and Immigration Agency or the UK Border Agency to the family member of a national of a European Economic Area country or Switzerland.
5. A passport or other travel document endorsed to show that the holder is exempt from immigration control, is allowed to stay indefinitely in the United Kingdom, has the right of abode in the United Kingdom, or has no time limit on their stay in the United Kingdom.
6. An Immigration Status Document issued by the Home Office, the Border and Immigration Agency or the UK Border Agency to the holder with an endorsement indicating that the person named in it is allowed to stay indefinitely in the United Kingdom or has no time limit on their stay in the United Kingdom, **when produced in combination with** an official document giving the person's National Insurance Number and their name issued by a Government agency or a previous employer.

7. A full birth certificate issued in the United Kingdom which includes the name(s) of at least one of the holder's parents, **when produced in combination with** an official document giving the person's National Insurance Number and their name issued by a Government agency or a previous employer.
8. A full adoption certificate issued in the United Kingdom which includes the name(s) of at least one of the holder's adoptive parents **when produced in combination with** an official document giving the person's National Insurance Number and their name issued by a Government agency or a previous employer.
9. A birth certificate issued in the Channel Islands, the Isle of Man or Ireland, **when produced in combination with** an official document giving the person's National Insurance Number and their name issued by a Government agency or a previous employer.
10. An adoption certificate issued in the Channel Islands, the Isle of Man or Ireland, **when produced in combination with** an official document giving the person's National Insurance Number and their name issued by a Government agency or a previous employer.
11. A certificate of registration or naturalisation as a British citizen, **when produced in combination with** an official document giving the person's National Insurance Number and their name issued by a Government agency or a previous employer.
12. A letter issued by the Home Office, the Border and Immigration Agency or the UK Border Agency to the holder which indicates that the person named in it is allowed to stay indefinitely in the United Kingdom **when produced in combination with** an official document giving the person's National Insurance Number and their name issued by a Government agency or a previous employer.

LIST B

DOCUMENTS WHICH PROVIDE AN EXCUSE FOR UP TO 12 MONTHS

Validity of Documents

The UK Border Agency recommends that employers check the in-date passports/travel documents of their prospective employees. However, if the prospective employee does not have an in-date passport/travel document showing their permission to remain in the United Kingdom⁹, you can accept evidence of permission to remain in the UK – and therefore right to work - in an expired passport or travel document. It is crucial that you check that the stamp or endorsement in the passport/travel document continues to allow the person to work by virtue of status (ie the person's stay is indefinite) or date (the end of the person's permitted stay has not expired).

Employers are advised to see any prospective employee's current passport/travel document. If you have to rely solely on an expired passport/travel document containing evidence of the prospective employee's permission to remain in the UK, you must take particular care when examining photographs and comparing these with the current appearance of the prospective employee. Also, you should have regard to the date of birth on the expired document and satisfy yourself that this is consistent with the current appearance of the prospective employee.

NB: With regards to the validation of a Certificate of Entitlement to the Right of Abode – this MUST be endorsed in a valid passport. See List A in the Comprehensive Guidance for more information.

⁹ Policy change in relation to Indefinite Leave to Remain (ILR) effective from 4 August 2010 and in relation to Limited Leave to Remain, policy change effective from 1 November 2010

Images of some of these documents are included in the *Comprehensive Guidance* available on the UK Border Agency website: www.ukba.gov.uk/employers/preventingillegalworking

1. A passport or travel document endorsed to show that the holder is allowed to stay in the United Kingdom and is allowed to do the type of work in question, provided that it does not require the issue of a work permit.
2. A Biometric Immigration Document issued by the UK Border Agency to the holder which indicates that the person named in it can stay in the United Kingdom and is allowed to do the work in question.
3. A work permit or other approval to take employment issued by the Home Office, the Border and Immigration Agency or the UK Border Agency **when produced in combination with** either a passport or another travel document endorsed to show the holder is allowed to stay in the United Kingdom and is allowed to do the work in question, **or** a letter issued by the Home Office, Border and Immigration Agency or UK Border Agency to the holder or the employer or prospective employer confirming the same.
4. A certificate of application issued by the Home Office, the Border and Immigration Agency or the UK Border Agency to or for a family member of a national of a European Economic Area country or Switzerland stating that the holder is permitted to take employment which is less than 6 months old **when produced in combination with** evidence of verification by the UK Border Agency Employer Checking Service.
5. A residence card or document issued by the Home Office, the Border and Immigration Agency or the UK Border Agency to a family member of a national of a European Economic Area country or Switzerland.
6. An Application Registration Card issued by the Home Office, the Border and Immigration Agency or the UK Border Agency stating that the holder is permitted to take employment, **when produced in combination with** evidence of verification by the UK Border Agency Employer Checking Service.
7. An Immigration Status Document issued by the Home Office, the Border and Immigration Agency or the UK Border Agency to the holder with an endorsement indicating that the person named

in it can stay in the United Kingdom, and is allowed to do the type of work in question, **when produced in combination with** an official document giving the person's National Insurance Number and their name issued by a Government agency or a previous employer.

8. A letter issued by the Home Office, Border and Immigration Agency or UK Border Agency to the holder or the employer or prospective employer, which indicates that the person named in it can stay in the United Kingdom and is allowed to do the work in question **when produced in combination with** an official document giving the person's National Insurance Number and their name issued by a Government agency or a previous employer.

DOCUMENTS THAT DO NOT PROVIDE YOU WITH AN EXCUSE

The following documents will not provide a statutory excuse under section 15 of the 2006 Act:

- a Home Office Standard Acknowledgement Letter or Immigration Service Letter (IS96W) which states that an asylum seeker can work in the UK. If you are presented with these documents then you should advise the applicant to call the UK Border Agency on 0151 237 6375 for information about how they can apply for an Application Registration Card;
- a National Insurance number when presented in isolation;
- a driving licence issued by the Driver and Vehicle Licensing Agency;
- a bill issued by a financial institution or a utility company;
- a passport describing the holder as a British Dependent Territories Citizen which states that the holder has a connection with Gibraltar;
- a short (abbreviated) birth certificate issued in the UK which does not have details of at least one of the holder's parents;
- a licence provided by the Security Industry Authority;
- a document check by the Criminal Records Bureau;
- a card or certificate issued by the Inland Revenue under the Construction Industry Scheme.

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