



Home Office

Border & Immigration Agency

PREVENTION OF ILLEGAL WORKING

IMMIGRATION, ASYLUM AND NATIONALITY ACT 2006

**COMPREHENSIVE GUIDANCE FOR EMPLOYERS ON PREVENTING
ILLEGAL WORKING**

FEBRUARY 2008

CONTENTS

INTRODUCTION	4
THE LAW FOR EMPLOYERS ON PREVENTING ILLEGAL WORKING	5
HOW TO CHECK THAT SOMEONE IS ENTITLED TO WORK IN THE UK.....	8
THE PENALTY FOR EMPLOYING AN ILLEGAL WORKER.....	11
HOW TO AVOID RACIAL DISCRIMINATION WHEN PREVENTING ILLEGAL WORKING	12
THE EMPLOYERS' HELPLINE.....	13
WHAT LEVEL OF CIVIL PENALTY MIGHT I HAVE TO PAY?.....	14
APPEALS AND OBJECTIONS TO THE CIVIL PENALTY	16
FURTHER INFORMATION	18
LIST A DOCUMENTS WHICH PROVIDE AN ONGOING EXCUSE	21
LIST B DOCUMENTS WHICH PROVIDE AN EXCUSE FOR UP TO 12 MONTHS	31
APPENDIX A SOME QUESTIONS YOU MIGHT HAVE	40
APPENDIX B EMPLOYING NATIONALS FROM THE EUROPEAN ECONOMIC AREA	61
APPENDIX C GUIDE TO UK GOVERNMENT STAMPS AND ENDORSEMENTS.....	67
APPENDIX D FRAMEWORK FOR ASSESSMENT OF LEVEL OF CIVIL PENALTY	74
APPENDIX E FLOWCHARTS FOR CARRYING OUT DOCUMENT CHECKS.....	75
TERMS AND ABBREVIATIONS	78

COMPREHENSIVE GUIDANCE FOR UNITED KINGDOM EMPLOYERS ON PREVENTING ILLEGAL MIGRANT WORKING IN THE UK

The aim of this guidance is to help United Kingdom employers understand the law on preventing illegal working from 29 February 2008. It includes details of the document checks that employers are advised to undertake and provides images of a selection of the documents that may be presented.

This booklet has been produced by the Border and Immigration Agency and contains comprehensive information and best practice advice for employers. It is intended to be a particularly useful reference tool for human resources staff who are likely to be involved in the recruitment and retention of staff.

The information contained in this document was correct at the time of publication, but may be subject to revision.

For current information, please visit
www.bia.homeoffice.gov.uk/employingmigrants

INTRODUCTION

Our 2007 Enforcement Strategy, *Enforcing the rules: A strategy to ensure and enforce compliance with our immigration laws*, sets out the damaging social and economic consequences illegal working¹ has for the United Kingdom.

There is evidence that some of those who are working illegally are paid less than the minimum wage, do not pay tax, and may be doing dangerous work that breaks health and safety regulations. Employers who employ illegal migrant workers may do so because they want to avoid providing minimum standards, such as the National Minimum Wage and paid holidays. This is harmful to the workers involved and enables unscrupulous employers to gain an unfair advantage over legitimate competitors.

We want to work together with employers to ensure that illegal workers cannot obtain work in the UK. We will also continue to take tough action against those employers who seek to profit from exploiting illegal labour.

¹ In this context illegal working refers to migrants who are in the United Kingdom illegally and working, or migrants who are here lawfully, but working in breach of their conditions of stay.

THE LAW FOR EMPLOYERS ON PREVENTING ILLEGAL WORKING

As an employer, you have a responsibility to prevent illegal migrant working in the UK.

As part of our ongoing strategy to improve the way we tackle illegal working, the Government changed the law on employing illegal workers in 2008. These legislative changes were discussed extensively with the Illegal Working Group,² and the Government also carried out a full public consultation exercise on its proposals from May to August 2007.

The new law on the prevention of illegal migrant working is set out in sections 15-25 of the Immigration, Asylum and Nationality Act 2006 (referred to in this guidance as the '2006 Act'). These provisions came into force on **29 February 2008**. They replace the previous offence under section 8 of the Asylum and Immigration Act 1996 (referred to in this guidance as the '1996 Act').³

The changes were made for three key reasons:

- to make it more difficult for people who overstay their permission to be in the UK and/or lose their entitlement to work, to remain in employment in breach of the UK's immigration laws;
- to make it easier for you to ensure that you employ people who are legally permitted to work for you; and
- to strengthen the Government's controls on tackling illegal working by making it easier for the Border and Immigration Agency to take action against employers who use illegal labour.

These changes do not make a major difference to the type of documents you are advised to check. They have been drawn up so that people who do have the right to work in this country, including those from minority ethnic communities, can demonstrate their entitlement quickly and easily.

The Government is working towards the development of secure identity cards for foreign nationals to help employers check identity and entitlement to work. We will simplify the list of specified documents employers can accept and progressively replace paper-based documents with secure cards as these are rolled out.

HOW DID THE LAW CHANGE FOR EMPLOYERS ON 29 FEBRUARY 2008?

From 29 February 2008, you may be liable to pay a civil penalty if you employ someone who is:

- subject to immigration control;
- aged over 16; and
- not entitled to undertake the work in question.

Civil penalties can be up to £10,000 per illegal worker. A notice of liability to pay a civil penalty of a specific amount can be served by Border and Immigration Agency officials on behalf of the Secretary of State.

Civil penalties are calculated on a sliding scale. The final amount that the employer is required to pay will be determined by officials on an individual basis, according to the circumstances of the case. A Code of practice setting out the factors under which the penalty will be determined has been produced (see page 18 for details of the civil penalties Code of practice).

Under the new law, you will have an excuse against liability to pay a civil penalty for employing an illegal migrant if you check and copy certain original documents **before** someone starts working for you. If the person has a time limit on their stay in the UK, you will also have to carry out repeat checks on their documents at least once a year to have the excuse.

² The Illegal Working Group is chaired by a senior Home Office minister. It comprises senior representatives from a range of business sectors, and also has members from the Trades Union Congress, the Confederation of British Industries, the Commission for Equality and Human Rights, and the Health and Safety Executive.

³ As amended by section 22 of the Immigration and Asylum Act 1999, section 147 of the Nationality, Immigration and Asylum Act 2002 and section 6 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004.

However, if you **know** that you are employing a person who is not permitted to work, then you **will not** have an excuse and you could be prosecuted for knowingly employing an illegal worker⁴, regardless of whether you have carried out any document checks. Conviction under this offence could lead to an unlimited fine and/or a prison sentence of up to two years.

Appendix A contains questions and answers about the law on preventing illegal working.

You may be aware that a number of countries have joined the European Union on or since 1 May 2004. The Government imposed a registration scheme on nationals from eight⁵ of these countries and a requirement for authorisation to work for another two.⁶ **Appendix B** gives you details about what you should do if you wish to employ a national from these countries.

Appendix C has details of UK Government stamps and endorsements which demonstrate a person's immigration status.

Appendix D contains a framework designed to assist the Border and Immigration Agency with the assessment of whether to issue a penalty notice to an employer, and if so, at what level. The framework provides a sliding scale with minimum and maximum penalties. The framework is provided for guidance purposes only, as the actual amount will be decided on a case by case basis.

Appendix E provides examples of some documents that employees may produce to you and the action that you should take when presented with those documents.

THE POINTS BASED SYSTEM

In 2008, a points-based system, similar to that operating in Australia, began to operate in the United Kingdom. This enables the United Kingdom to

control migration more effectively, tackle abuse and identify the most talented workers.

The key elements of the system include:

- consolidating more than 80 existing work and study application routes into five tiers; and
- awarding points to reflect criteria which are linked to success in the labour market, for example salary level and qualifications and also the level of need in any given sector, to allow the United Kingdom to respond flexibly to changes in the labour market.

The Points Based System will enable us to plug skill gaps quickly by attracting the right people into the labour market. The application process will be faster and simpler than before, leading to greater efficiency and better customer service and satisfaction.

Employers will be able to attract skilled migrants where there are skill gaps in the domestic labour force. They will be able to respond quickly and flexibly to meet changes in the labour market. Employers will be able to understand the conditions attached to a migrant's period of leave as their vignettes will clearly display their validity.

On 29 February 2008 new sponsor licensing arrangements were introduced for organisations wishing to sponsor migrants for visa applications under the new points based system. Under the new points based system, employers, and others who benefit from migration and wish to act as sponsors of skilled or temporary migrants, need a licence to do so. To earn and hold a licence they must satisfy the Border and Immigration Agency that they are trustworthy, and must agree to fulfil certain duties.

Since 29 February 2008 employers wishing to sponsor skilled workers under the points based system have been able to apply for a sponsor licence. Other prospective sponsors, including educational institutions, will be able to apply for a licence from the summer of 2008.

⁴ Under Section 21 of the 2006 Act.

⁵ These eight countries are: Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia.

⁶ The two countries are Romania and Bulgaria.

Sponsors will be expected to tell us if a sponsored migrant fails to turn up for their first day of work, or does not enrol on their course. They will similarly be expected to report any discontinuation of studies, or if the contract is terminated, the migrant is leaving their employment, or is changing educational institution.

There will be increased focus on compliance in the United Kingdom and more responsibilities for sponsors whose compliance will be checked through our sponsor management structure. Sponsor management teams will be regionally and sector-based and will provide help and guidance to sponsors in discharging their responsibilities. Where there are concerns, compliance officers will be directed to make robust checks. Breaches of the rules may lead to a sponsors' rating being downgraded from A to B (all sponsors will be given an A or B rating.) Serious breaches may lead to sponsors losing their licence and prevented from employing migrant workers from abroad.

SPONSORSHIP AND THE ILLEGAL WORKING PROVISIONS

Licensed sponsors, and organisations that are applying for licences, will be subject to inspection by the Border and Immigration Agency. If, as a result of these inspections, applicants are found to be employing illegal workers, they may be issued with a civil penalty, or prosecuted, in accordance with the provisions described in this booklet.

Where a licensed sponsor is issued with a civil penalty, one of two things will happen:

- If the penalty is set at the **maximum** level, the sponsor will lose its licence and will not be able to get a new one for at least six months;
- If the penalty is set at any other level, the sponsor will be downgraded to a B-rating and set an Action Plan. If it receives further civil penalties (below the maximum level) while it is B-rated, we may decide that it is not complying with its Action Plan, in which case it will be likely to lose its licence altogether.

Where a licensed sponsor is convicted of knowingly employing illegal migrant workers, it will be likely to lose its licence altogether.

FURTHER DETAILS

You can find further details of the Points Based System on the Border and Immigration Agency website at

www.bia.homeoffice.gov.uk/employingmigrants

For more details of the sponsor licensing system, please see our document “**Sponsorship under the Points-Based System: licensing guidance**” available on the Border and Immigration Agency website via:

www.bia.homeoffice.gov.uk/managingborders/managingmigration/apointsbasedsystem/

HOW TO CHECK THAT SOMEONE IS ENTITLED TO WORK IN THE UK

This section explains the checks you should carry out in order to establish an excuse against liability to pay a civil penalty for employing an illegal migrant worker.

You will only have the excuse if you check and copy the documents **before** the person starts working for you.

If the person has time-limited leave to be in the UK, you will only have the excuse if you carry out certain repeat checks at least once every 12 months.

It is important to note when reading this guidance that **you will not have an excuse if you knowingly employ an illegal migrant worker, regardless of any document checks you undertake before or during their employment.**

This guidance will help you recognise and understand what documents your prospective or existing employees must provide for you to inspect and copy if you wish to ensure that they can work for you legally. It explains how to satisfy yourself that any documents are genuine, belong to the holder and demonstrate an entitlement to work in the UK. It also explains how and when you should repeat these checks for people who have limits on their time in the UK.

DOCUMENTS WHICH SHOW A PERSON'S ENTITLEMENT TO WORK

The documents that establish someone's entitlement to work are split into two lists.

List A documents show that the holder is not subject to immigration control, or has no restrictions on their stay in the UK. If your prospective or existing employee produces a List A document (or one of the combinations of documents specified), they can work for you for an indefinite period. When you have carried out the appropriate checks on their List A documents you will have an excuse against liability to pay a civil penalty.

List B documents demonstrate that the person has been granted leave to enter or remain in the UK for a limited period of time. If an individual provides

documents from List B, you should carry out specified document checks before the employment of the individual begins and then carry out follow-up checks of the same kind at least once every 12 months. **You must carry out these repeat checks to have an excuse against liability to pay a civil penalty whenever List B documents are provided.** If, when rechecking the documents, an employee provides a document or documents from List A, no further checks are necessary for the duration of that employment. Please refer to 'carrying out repeat checks' below for more details on what repeat checks are required and when.

These new arrangements for establishing the excuse only apply to employees who started working for you on or after **29 February 2008**. If you employed illegal migrants between 27 January 1997 and 28 February 2008, you may be liable for prosecution under the 1996 Act. Please refer to page 18 for information about workers employed under previous legislation.

If you employ an illegal migrant, you will place your business at risk of losing any benefit from the time and money you have spent in training that person.

COMPLYING WITH THE DOCUMENT CHECKS

You should follow Steps 1 – 3 **for every individual** whom you intend to employ from 29 February 2008 onwards. By doing this, you will be sure that your recruitment practices will comply with the new law on employing migrant workers, and you will not be liable for payment of a civil penalty for employing a person illegally.

Please note, with regard to the references to the provision of a properly documented, permanent National Insurance number in Lists A and B, that **the provision of a National Insurance number in isolation is not sufficient for the purposes of having 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

Your prospective employee (or existing employee, if you are carrying out repeat checks) must provide to you:

EITHER

- one of the single documents, or two of the documents in the specified combinations given, from List A;

OR

- one of the single documents, or two of the documents in the specified combinations given, from List B.

You should only accept original documents.

Details of the documents included in List A and List B are at pages 21-39.

STEP 2

You must take all reasonable steps to check that the document is valid and satisfy yourself that your prospective employee or current employee is the person named in the document, and check that the documents allow them to do the work in question.

For each document presented, you should:

- check any photographs are consistent with the appearance of the employee (this means you must see them in person); **and**
- check any dates of birth listed are consistent across documents and that you are satisfied that these correspond with the appearance of the 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 you are offering; **and**
- satisfy yourself that the documents are valid and genuine, have not been tampered with and belong to the holder; **and**
- if your employee gives you two documents which have different names, ask them for a further document to explain the reason for this. The further document could be a marriage certificate, a divorce decree, a deed poll 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 scan.⁷ 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, his or her photograph, date of birth, signature, date of expiry or biometric details; **and**
- any page containing UK Government endorsements indicating that the holder has an entitlement to be in the UK and is entitled to undertake the work in question.

Other documents should be copied in their entirety.

You should then keep a record of every document you have copied.⁸ The copies of the documents should

⁷ Where an electronic copy is made of a document, it must be made using a non-rewritable format, such as CD-R.

⁸ It is not appropriate to retain a person's original documents, except for the purpose of copying them. The only exceptions to this are:

- when an individual provides part 2 of a P45 as part of a combination of documents; or
- when someone is employed for a day or less and it is not practicable to obtain a copy of the documents. The employer must also have facilities for keeping the documents safe. A job applicant's original documents must not be kept for longer than a day. If an employer deliberately appropriates a person's passport or other original documents belonging to them, or retain these without their consent, then they may be guilty of an offence under the Theft Act 1968, or since 7 June 2006, under section 25(5) of the Identity Cards Act 2006.

be kept securely for the duration of the person's employment and for a further two years after they stop working for you. By doing this, the Border and Immigration Agency will be able to check whether you have complied with the law or are liable to pay a civil penalty if they detect anyone working illegally for you.

WHAT TO DO IF THE PROSPECTIVE EMPLOYEE IS NOT ENTITLED TO WORK

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 demonstrate to you that he or she is 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 have the excuse. You should record the date on which the check was made.

If you retain an employee with a List B document or documents and have not made the required 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 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. In the absence of a specific condition in the employment contract stating that the employee is obliged to provide valid specified documents to you establishing that he or she is permitted to do the work you are offering, it may be possible for an employer to form grounds for dismissal.

You may also wish to seek legal advice and report the individual to the Border and Immigration Agency.

WHAT SHOULD I DO IF I COMPLETE A REPEAT CHECK AND FIND THAT AN EMPLOYEE IS NO LONGER ABLE TO WORK HERE?

It is ultimately up to each employer to make the decision on whether or not to employ someone, or to continue to employ them. If you have carried out repeat checks and establish that your existing employee is no longer permitted to work in the UK, then you will become liable for a civil penalty, and are committing a criminal offence of knowingly employing an illegal worker. Equally, an employee will be committing an offence by working illegally.

Current UK law provides that where continued employment would break the law, employers may be able to form grounds for dismissal.

You may also wish to seek legal advice and report the individual to the Border and Immigration Agency.

THE PENALTY FOR EMPLOYING AN ILLEGAL WORKER

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. **Appendix D** provides a framework designed to assist Border and Immigration Agency officials with their 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 illegal worker may be increased or reduced according to different criteria. For example, the penalty can be increased according to the number of times you are found with illegal migrants in your workforce and have failed to establish an excuse. A Code of practice has been produced to provide further information (see page 18 for details of the civil penalties Code of practice).

If you know that a person who is working for you is not permitted to do the job in question, then you will not have an excuse against liability to pay a civil penalty, regardless of whether you have carried out document checks, and could face a civil penalty or, in more serious cases, prosecution. This allows the Border and Immigration Agency to tackle the minority of employers who deliberately employ illegal workers and use false or forged documents to obtain a false excuse.

THE OFFENCE OF KNOWINGLY EMPLOYING AN ILLEGAL MIGRANT

Under section 21 of the 2006 Act, an employer may commit a criminal offence if he or she knowingly employs an illegal migrant. On summary conviction, the maximum penalty an employer may be given will be a fine of no more than the statutory maximum⁹ for each person employed illegally, and/or imprisonment for up to 6 months.¹⁰ 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.

The Border and Immigration Agency carries out regular operations to target illegal working all over the country and will investigate allegations by adopting an intelligence-led approach. The Agency adapts resources where appropriate to carry out specific operations that will yield the greatest results, with the aim of removing the most harmful people from the UK first. Any person found to be working illegally is liable to prosecution and/or removal from the UK.

REASONABLY APPARENT

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. The falsity would be considered to be 'reasonably apparent' if an individual who is untrained in the identification of false documents, examining it carefully, but briefly and without the use of technological aids, could reasonably be expected to realise that the document in question is not genuine. Equally, where a prospective employee presents a document and it is reasonably apparent that the person presenting the document is not the person referred to in that document, then you may also be subject to legal action, even if the document itself is genuine.

If the falsity is not reasonably apparent, or a valid document is presented by the named person, then you can expect not to be liable to pay a civil penalty. However, 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.

⁹ The current statutory maximum is £5,000.

¹⁰ 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

It is important that you remember that many people from minority ethnic groups who live in the UK are British citizens. The Government has issued a Code of practice to help employers comply with the law and undertake the checks without discriminating against individuals on the basis of their race. You can download a copy from the Border and Immigration Agency website:

www.bia.homeoffice.gov.uk/employingmigrants

If you do discriminate against someone on racial grounds and go against the Code of practice, then this may be used as evidence against you under race relations legislation before an employment tribunal. 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**.

Whilst some smaller organisations may wish to adapt the guidance to suit their particular circumstances, it should be noted that no allowances can be made for smaller companies when considering their liability under the law.

We recommend that smaller organisations ensure that their employment practices do not discriminate on grounds of race and that they follow the advice given in the Code of practice.

If you operate discriminatory recruitment processes, you could face prosecution under race relations legislation and an unlimited fine if you are found guilty. You will also place yourself at risk of liability for payment of a civil penalty for employing an illegal worker, as you may not have an excuse in respect of all of your employees.

ENSURING YOUR DOCUMENT CHECKS DO NOT DISCRIMINATE

The best way to make sure that you do not discriminate is to treat **all** job applicants in the same way at each stage of your recruitment process.

You should ask **all** prospective employees to present their documents **before** they begin working for you. You should not make presumptions about a person's right to work in the UK on the basis of their background, appearance or accent.

If you need further advice on preventing discrimination in your recruitment checks, you should consult your nearest office of the Equality and Human Rights Commission (EHRC), also known as the Commission for Equality and Human Rights,¹¹ for advice.

The EHRC published a Code of practice on racial equality in employment that came into force on 6 April 2006. Contact details for the EHRC are provided on page 20.

¹¹ The successor to the Commission for Racial Equality (CRE).

THE EMPLOYERS' HELPLINE

If you require any further information about what you have read in this guidance, you should call the:

Employers' Helpline on 0845 010 6677

The Helpline is open Monday to Friday, between 9am and 5pm, except on bank holidays. It offers the following dedicated service for employers:

- answers any general enquiries you may have on preventing illegal working;
- general advice about the Worker Registration Scheme for workers from the European Union countries;
- general advice about the authorisation scheme for Romanian and Bulgarian nationals;

The Employers' Helpline cannot provide you with employment advice: they can only provide general advice about the laws relating to the prevention of illegal working. If you have questions relating to employment law, you may wish to seek legal advice.

ALLEGATIONS

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

THE EMPLOYER CHECKING SERVICE

As an employer, you may be presented with documents that require verification by the Employer Checking Service to have the excuse. In some cases, employees' documents will be with the Border and Immigration Agency in connection with an outstanding application or appeal. You may contact the Employer Checking Service for information on certain documents issued by the Border and Immigration Agency, which are currently the Application Registration Card, or a Certificate of Application.

The service is delivered via a process where an employer is required to complete a form to enable the Border and Immigration Agency to verify any entitlement to work. Information on the range of checks available through the Employer Checking Service can be found on the Border and Immigration Agency website at www.bia.homeoffice.gov.uk/employingmigrants

For all checks through the Employer Checking Service, it is the employers' responsibility to inform the prospective employee that they may undertake a check on them with the Border and Immigration 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 submitted to officials upon request.

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

WHAT LEVEL OF CIVIL PENALTY MIGHT I HAVE TO PAY?

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 within a three year period. **Appendix D** provides a framework designed to assist the Border and Immigration Agency with the assessment on whether to issue a civil penalty to an employer, and if so, at what level. The framework will also be used by the Border and Immigration Agency when determining an objection to the payment of a civil penalty.

The level of penalty to be imposed per worker depends on a number of factors, for example, the penalty may be higher if you have employed illegal migrant workers and failed to check their entitlement to work more than once. Whether you have established a full or partial excuse against liability to pay a civil penalty may also affect the level of penalty payable.

THE NATURE OF CHECKS CONDUCTED

The system of civil penalties is designed to encourage employers to comply with their legal obligations, without criminalising those who are less than diligent in operating their recruitment and employment practices. Under the 2006 Act, an employer may have an excuse against liability for payment of a civil penalty by checking and copying original documents presented by a prospective or existing employee. Details of what documents are acceptable are provided on pages 21-39.

In all cases, you must undertake these steps **before** a person begins employment to have the excuse and, where a document or documents from List B are provided, you must also carry out a follow-up check **at least once every 12 months** after the initial check to have the excuse.

If you are presented with a false travel document or visa, you will only be subject to legal action if it is reasonably apparent that the document is false, or if you knew that the document, or documents, were false and/or did not rightfully belong to the holder.

FULL AND PARTIAL CHECKS

A **full check** shall be considered to have been carried out where you can provide copies of the specified documents, as described on pages 21-39, for all relevant employees and the official is satisfied that the specified steps were taken when checking these documents. If you have carried out a full check then you will have an excuse against liability and will not have to pay a civil penalty, even if illegal migrant workers are found to be working for you.

You will not have an excuse against liability to pay a civil penalty if you **knew** that the employee was not permitted to do the work in question, regardless of what document checks you have carried out, and may receive a penalty or be prosecuted for a criminal offence. The Border and Immigration Agency will pursue the prosecution of any employer where there is sufficient evidence available and where prosecution is in the public interest.

Where only a partial check has been carried out for migrant workers who are found to be working illegally, the employer may be subject to a civil penalty.

A **partial check** shall be considered to have been conducted where, for example, you have only checked and copied one of a specified combination of two original documents from List A or List B, or failed to conduct a follow-up check on a worker with time limited leave to be in the UK, after having conducted a full document check at the point of recruitment. If you have only carried out a partial check, you may be liable to pay a civil penalty if illegal migrant workers are found to be working for you.

If you cannot provide a record of having conducted the prescribed document checks prior to the employment commencing, or you have accepted a document which it is reasonably apparent does not belong to the holder, is false or shows that the person does not have a current entitlement to work for you, you shall be considered to have conducted no check for the purpose of imposing a penalty.

Where **no check** has been conducted, you may be liable to pay a civil penalty if illegal migrant workers are found to be working for you, and the penalty due for each worker will not be reduced on the basis of checks made.

In each case, it is for you to demonstrate that you have checked your employees' entitlement to work.

REPORTING SUSPECTED ILLEGAL WORKERS TO THE BORDER AND IMMIGRATION AGENCY

If you report any suspicions about your employees' entitlement to work for you to the Border and Immigration Agency, a sum may be deducted from the amount of penalty due for those workers. This information must have been reported to the Employers' Helpline on **0845 010 6677** **before** any immigration visit is made known to the employer by the Border and Immigration Agency. When reporting, you will be given a call reference and this must be referred to when applying a reduction in penalty.

CO-OPERATION WITH THE BORDER AND IMMIGRATION AGENCY IN CONDUCTING AN ILLEGAL WORKING OPERATION

The penalty due for each worker can also be reduced where you have co-operated with the Border and Immigration Agency in any investigation, or in any consequent operation to detect and detain illegal migrant workers within your workforce. This may include, for example, providing access to employment records and/or premises to Border and Immigration Agency officials on request.

The level of any reduction made will depend on whether you have been found to be employing illegal migrant workers within the previous three years. The sliding scale also allows for a warning letter to be issued instead of a civil penalty in cases where:

- It is the first occasion on which you are found with illegal migrant workers in your workforce; **and**
- You have conducted partial checks on the workers; **and**

- You have reported suspected illegal workers; **and**
- There is no evidence of deliberate wrong doing by you; **and**
- You have co-operated with the Border and Immigration Agency.

Where you have an excuse and did not knowingly employ an illegal worker, you will receive no penalty or warning in respect of that worker.

PREVIOUS OFFENCES

When considering whether a higher level of penalty should apply to an employer who has been visited and found to have employed illegal migrants before, previous penalties or warnings will not be considered if they were issued more than three years before the date of the new penalty. Where an employer is revisited, and has received a penalty or warning within three years of the current penalty, those penalties and warnings will be counted in calculating the level of the current penalty.

MULTIPLE PREMISES

A company with multiple premises where recruitment is devolved to each site will not be liable to a cumulative penalty if illegal workers are detected at different sites, unless this can be attributed to a general failure in the company's centrally set recruitment practices.

APPEALS AND OBJECTIONS TO THE CIVIL PENALTY

If you are found with illegal workers in your workforce, you may be served with a notification of potential liability for a civil penalty, but a decision on whether a penalty is appropriate and, if so, how much it should be, will not be taken immediately. The details of each case will be passed to the Illegal Working Civil Penalty Unit (IWCPU) for consideration and there are a number of factors that will need to be considered before the level of any penalty is decided. The IWCPU will subsequently notify you of any action to be taken.

If the IWCPU decides that there is no action to be taken, you will be sent written notification of this decision and no further action will be taken. The case will then be closed. However, if it is decided that you are liable to a penalty, you will be advised by the service of a **'Notice of Liability for a Civil Penalty,'** which will be your first formal notification that a penalty is to be levied. This notice will state:

- why you are liable;
- the amount payable;
- when it must be paid by;
- how the penalty must be paid;
- how you may object to the penalty; and
- how the penalty may be enforced.

If you receive a notice of liability, this will indicate that the IWCPU has decided that a civil penalty under section 15 of the 2006 Act should be pursued. The unit will have had an opportunity to examine the case in detail and will have taken account of all the apparent issues, how many previous illegal working visits had been made to that employer in the past three years, whether you had an excuse for the employees, or whether there were any exceptional circumstances to be considered.

OBJECTIONS

On receipt of the notice of liability, you will have **28 days from the specified date** to pay the penalty or

make an objection to the IWCPU at the following address:

5th Floor 4M Building
Manchester Airport
Manchester
M90 3RR

The objection must be in writing, give the reasons for the objection and be provided to the IWCPU within 28 days of the specified date.

A short extension may be approved for the submission of your objection, provided that you contact the IWCPU promptly and you can show reasonable cause for the delay. Any objections received after the 28 day period (without prior agreement by the IWCPU) **will not be considered.**

Your objection should give clear reasons why you consider that you are not liable to a penalty. You may, for example, disagree that the falsity of a document was reasonably apparent, that you had an excuse for that employee, or you can object on the grounds that the level of penalty is too high. Whatever your reasons, the IWCPU will be prepared to look at the case again in the light of what you have to say.

If you believe that the amount of a penalty issued is too high, you can raise this as an objection, or as part of an objection, to the IWCPU. The unit may consider any additional evidence provided of an employer's financial means, including evidence in respect of the effect of the civil penalty on the viability of the employer's business, in determining the objection.

Your objection should also indicate whether you have lodged an appeal. However, we expect that you will first exercise your right of objection and await the outcome before exercising your right to appeal.

APPEALS

If a penalty notice is issued to an employer, he or she can appeal to the courts on the grounds that:

- he or she is not liable to the imposition of the penalty; **or**

- he or she is excused payment, having complied with the required document checks; **or**
- the level of penalty is too high.

After a penalty notice has been issued, an employer can appeal to the courts within 28 days using these grounds. The Secretary of State may consider any factors presented, in addition to any evidence provided by the employer to support their claim, and may adjust or cancel the penalty accordingly.

FURTHER INFORMATION

Publications by the Home Office and the Border and Immigration Agency

- *Prevention of illegal working: Guidance for employers: Asylum and Immigration Act 1996, Section 8* – Home Office, 1996.
- *The Immigration and Asylum Act 1999 - Section 22 Code of Practice: For all employers on the avoidance of race discrimination in recruitment practice while seeking to prevent illegal working* – Home Office, 2001.
- *Prevention of illegal working: Proposed changes to document list under section 8 of the Asylum and Immigration Act 1996* – Home Office, 2003.
- *Breakdown summary and statistical analysis of responses to the consultation on proposed changes to document list under section 8 of the Asylum and Immigration Act 1996* – Home Office, 2004.
- *Changes to the law on preventing illegal working: short guidance for United Kingdom employers* – Home Office, 2004.
- *Comprehensive guidance for United Kingdom employers on changes to the law on preventing illegal working* – Home Office, 2004.
- *Illegal working taskforce: Regulatory Impact Assessment for Immigration, Asylum and Nationality Bill* – Home Office, 2005.
- *Prevention of illegal working. Immigration, Asylum and Nationality Act 2006: Consultation on the implementation of new powers to prevent illegal migrant working in the UK* – Border and Immigration Agency, 2007.
- *Shutting down illegal working in the UK. Illegal working action plan update and next steps of the consultation on the implementation of new powers to prevent illegal migrant working in the UK* – Border and Immigration Agency, 2007.
- *Prevention of illegal working. Immigration, Asylum and Nationality Act 2006: Civil Penalties for Employers Code of Practice* – Border and Immigration Agency, 2008.

- *Prevention of illegal working. Immigration, Asylum and Nationality Act 2006: Guidance for Employers on the avoidance of unlawful discrimination in employment practice while seeking to prevent illegal working. Code of Practice* – Border and Immigration Agency, 2008.
- *Prevention of illegal working. Immigration, Asylum and Nationality Act 2006: Summary guidance for employers* – Border and Immigration Agency, 2008.

Documents provided by the Home Office and the Border and Immigration Agency are available from the Border and Immigration Agency website at: **www.bia.homeoffice.gov.uk/employingmigrants**

If you have any questions about these guidance documents, you can telephone the Employers' Helpline on **0845 010 6677**.

IMMIGRATION ISSUES

For written advice concerning immigration issues you should contact:

The Border and Immigration Agency
Lunar House
40 Wellesley Road
Croydon, CR9 2BY

For immigration telephone enquiries please contact the Immigration Enquiry Bureau (IEB) on **0870 606 7766**. If callers who are hard of hearing have access to a Minicom you can contact them on **0800 389 8289**. Please note that there is no provision for verbal assistance on this line.

The IEB opening hours are Monday-Thursday 9am - 4.45pm and on Friday from 9am - 4.30pm. It is often easier to get through later in the day. E-mail enquiries should be directed to: **indpublicenquiries@ind.homeoffice.gsi.gov.uk**.

Please note that the IEB cannot answer questions on individual cases via e-mail for data protection reasons.

Application forms and further information on the worker registration and authorisation schemes for

EEA nationals can be obtained from:
www.bia.homeoffice.gov.uk/workingintheuk

For Worker Registration Scheme e-mail enquiries,
please contact: **WRS@bia.homeoffice.gsi.gov.uk**

(Individuals from the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovenia and Slovakia, may have to register under this scheme.)

The leaflet *'Employing a Bulgarian or Romanian National in the UK guidance'* provides further information to employers on obtaining authorisation for a Bulgarian or Romanian worker. Copies of leaflets and application forms can be ordered from the Border and Immigration Agency on: **0117 344 1471**. Please note that this number is **only** for ordering application forms and guidance notes.

Information on work permits can be obtained at:
www.bia.homeoffice.gov.uk/workingintheuk/workpermits/

Details on visa and entry clearance requirements for certain nationals are available at the UK Visas website: **www.ukvisas.gov.uk**

Her Majesty's Revenue and Customs (HMRC) has a dedicated website for employers, giving practical advice on a range of issues and areas of employment legislation available at: **www.businesslink.gov.uk**

You should remember that any EEA national you employ will be subject to the same UK tax and National Insurance legislation as any other employee. The HM Revenue and Customs booklet: *CWG2 Employer Further Guide to PAYE and NICs* will provide you with more details and you can order this by calling **08457 646 646**. If you are concerned about your tax or National Insurance position and need help putting your affairs in order, you should call the HM Revenue and Customs Tax and Benefits Confidential Helpline on **0845 608 6000**.

DETAILS ABOUT PASSPORTS AND IDENTITY DOCUMENTS

Information on national passports and identity cards from European Union countries, Iceland and Norway can be found on the Council of the European Union website via: **www.consilium.europa.eu/prado**

BIRTH AND ADOPTION CERTIFICATES

To complete the required specified combination of documents, if an individual does not have a copy of their full birth certificate, a replacement birth certificate may be obtained for a fee from the local registrar in the district where they were born, or alternatively from:

General Register Office (England and Wales)
Smedley Hydro
Trafalgar Road
Southport
PR8 2HH
www.gro.gov.uk

General Register Office (N. Ireland)
Oxford House
49 -55 Chichester Street
Belfast BT1 4HL
www.groni.gov.uk

General Register Office (Scotland)
New Register House
Edinburgh EH1 3YT
www.gro-scotland.gov.uk

If an adopted person does not have a copy of their full adoption certificate, they can obtain a copy from the same General Register Offices.

For any other information about obtaining birth, death or marriage certificates relating to events in England and Wales, you can contact the General Register Office (GRO) on 0845 603 7788 (8am to 8pm Monday to Friday. Saturday 9am to 4pm). Calls are charged at the cost of a local call. Please note your call may be recorded for training and monitoring purposes.

This telephone number is ‘Typetalk’ enabled. This means that people with hearing difficulties can communicate with the GRO via the National Telephone Relay Service who set up a link with the GRO and act as an intermediary on their behalf.

EHRC PUBLICATIONS AND CONTACT DETAILS

- *Racial Equality and the Smaller Business: A practical guide* (CD-Rom) – The Commission for Racial Equality, 2004.
- *The Statutory Code of Practice on Racial Equality in Employment* – The Commission for Racial Equality, 2006.

The Racial Equality and the Smaller Business: A practical guide CD-Rom is available in PDF, or RTF large print format from
www.equalityhumanrights.com/publicationsandresources

The Statutory Code of practice on Racial Equality in Employment was produced by the Commission for Racial Equality (CRE) in April 2006 and contains detailed and practical guidance to help employers to comply with the Race Relations Act 1976. An electronic copy of the document can be downloaded from the Equality and Human Rights Commission (EHRC) website at: **www.equalityhumanrights.com**

Please address any enquiries about the law on the prevention of illegal working to the Border and Immigration Agency through the contact details given, and not to the EHRC.

The EHRC can advise on matters relating to the law on discrimination, and the contact details for the national offices are listed as follows:

London

EHRC
3 More London
Riverside, Tooley Street
London SE1 2RG
Tel: 020 3117 0235
Fax: 01925 884275
Email: info@equalityhumanrights.com

Cardiff (temporary office)

EHRC
3rd Floor, Capital Tower
Greyfriars Road
Cardiff CF10 3AG
Tel: 02920 663710
Fax: 01925 886905

Glasgow (temporary office)

EHRC
St Stephens House
279 Bath Street
Glasgow G2 4JL
Tel: 0141 245 1855
Fax: 01925 884455

Manchester

EHRC
Arndale House
The Arndale Centre
Manchester M4 3AQ
Tel: 0161 829 8100
Fax: 01925 884000
Email: info@equalityhumanrights.com

The Equality Commission for Northern Ireland

Equality Commission for Northern Ireland
Equality House
7-9 Shaftesbury Square
Belfast, BT2 7DP
Tel: 028 90 500 600
Fax: 028 90 248687
Text phone: 028 90 500589
Email: information@equalityni.org

LIST A

DOCUMENTS WHICH SHOW AN ONGOING RIGHT TO WORK

SINGLE DOCUMENTS

Any of the documents, or combination of documents, described in **List A** demonstrate that the holder is entitled to work in the UK and will provide you with an excuse from liability to pay a civil penalty if you follow all of the steps set out on pages 8–10.

If your employee presents a document or specified combination of documents from List A, there is no need to ask for any other documents contained in List B.

You should only accept original documents.

You will not have an excuse against liability to pay a civil penalty if you know that the individual is not entitled to work for you.

The following documents are listed using the same numbers as those given in the legislation.

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.**

Only the following passports are acceptable:



A passport stating that the holder is a '*citizen of the United Kingdom and Colonies*' will only be acceptable if it includes the words: '*holder has the right of abode in the United Kingdom.*'

Page 48 has further details of certain other types of British passport that do not provide evidence of a person's entitlement to work as they do not confirm that the holder is a British citizen.

Certain Commonwealth citizens and citizens with dual nationality have the right of abode in the United Kingdom and do not have any immigration restrictions placed on the work they can do here.

You can check that someone has the right of abode by looking for this sticker in their national passport.

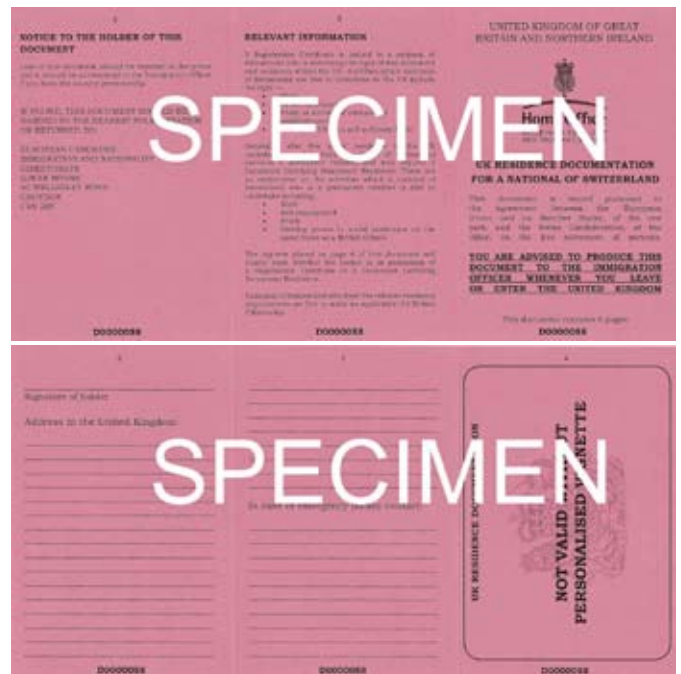
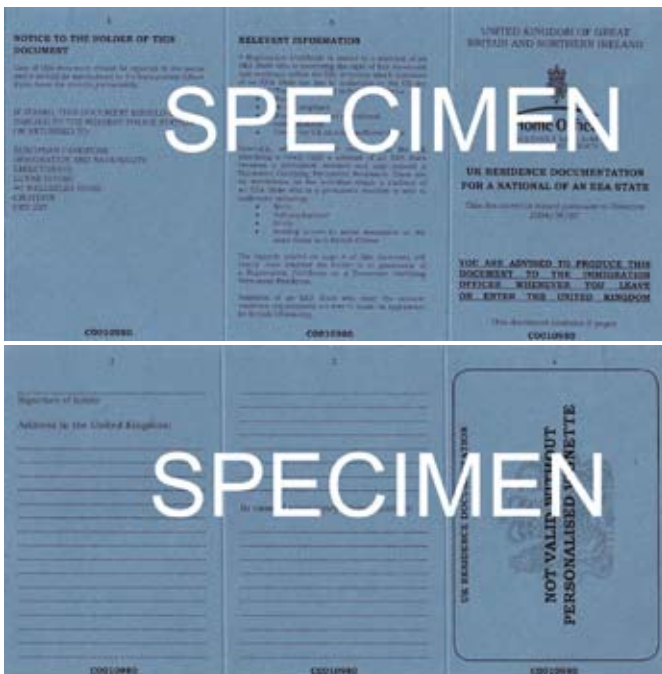
2. **A passport or national identity card showing that the holder, or a person named in the passport as the child of the holder, is a national of a European Economic Area country or Switzerland.**

All nationals from European Economic Area (EEA) countries and Switzerland are free to live and work in the UK. You will be able to find more details about employing these nationals, and a list of EEA countries, in Appendix B.



3. A residence permit, registration certificate or document certifying or indicating permanent residence issued by the Home Office or the Border and Immigration Agency to a national of a European Economic Area country or Switzerland.

For nationals from EEA countries, this document consists of a blue permit carrying a photograph and personal details of the holder. Nationals from EEA countries can obtain a residence permit from the Border and Immigration Agency, as shown here:



Swiss nationals receive a similar document in the form of a pink residence permit, as pictured above.

These documents have been replaced by new certificates, but either document is valid.

4. **A permanent residence card issued by the Home Office or the Border and Immigration Agency to the family member of a national of a European Economic Area country or Switzerland.**

When nationals from EEA countries and Switzerland reside in the UK, their immediate family members from outside the EEA or Switzerland may gain the same rights to enter or remain here and work here freely. However, the EEA national in question must be lawfully residing in the UK for their family member to have and maintain these rights.

Appendix C has full details of the various UK Government stamps and endorsements which demonstrate a person's immigration status.

5. **A Biometric Immigration Document issued by the Border and Immigration Agency to the holder which indicates 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.**

Images will be made available on the Border and Immigration Agency website when the Biometric Immigration Document is due to be issued.

6. **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.**

Appendix C has full details of the various UK Government stamps and endorsements which demonstrate a person's immigration status.

DOCUMENT COMBINATIONS

These documents will only give you an excuse against liability to pay a civil penalty if they are presented in the combinations specified.

FIRST COMBINATION

An official document issued by a previous employer or Government agency, e.g. HM Revenue and Customs (formerly the Inland Revenue), the Department for Work and Pensions, Jobcentre Plus, the Employment Service, the Training and Employment Agency (Northern Ireland) or the Northern Ireland Social Security Agency, which contains the permanent National Insurance number and name of the person.

A P45, P60, National Insurance number card, or a letter from a Government agency may be acceptable to demonstrate a person's permanent National Insurance number in order to have this part of your excuse.



Along with checking and copying a document giving the person's permanent National Insurance number and name, you must also check and copy ONE of the following documents listed in sections 7- 13:

7. **An Immigration Status Document issued by the Home Office or the Border and Immigration 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**

In December 2003, the Home Office began to phase in the issuing of the Immigration Status Document (ISD) to some new applicants granted Indefinite Leave to Enter or Remain in the United Kingdom.

A valid ISD contains a United Kingdom Residence Permit endorsement (see Appendix C for further information). The ISD also has a section providing further details of the holder's status and personal details. You should copy all of the separate parts of the ISD, which are pictured below.

Personal Details
Full Name SURNAME, FORENAME(S)
Nationality NATIONALITY
Date of Birth DATE OF BIRTH
Place of Birth PLACE OF BIRTH
Gender MALE/FEMALE
Case ID CID CASE ID



**IMMIGRATION
STATUS
DOCUMENT**

Refugee Status

The period for which leave to enter or remain in the United Kingdom has been granted is indicated in the endorsement.



OR

8. A full birth certificate issued in the United Kingdom which includes the name(s) of at least one of the holder's parents

You should accept only the original of a full UK birth certificate, which must include the names of the holder and at least one of their parents.

OR

9. A full adoption certificate issued in the United Kingdom which includes the name(s) of at least one of the holder's adoptive parents

You should accept only the original of a full UK adoption certificate, which must include the names of the holder and at least one of the adoptive parents.

In some cases, a full birth certificate will only provide details of one of the holder's parents, and this will also be acceptable as part of your excuse. Short birth certificates which do not have details of either of the holder's parents will not establish this part of your excuse.

10. A birth certificate issued in the Channel Islands, the Isle of Man or Ireland

Delaware Birth Certificate

This is a certified copy of the original birth record registered in the State and County Registrar's Office on 10/10/2010.

Date of Birth: 10/10/2010
Place of Birth: Delaware

Child's Name	Sex	Birth Date	Birth Time	Birth Place	Birth Order	Parent's Name	Parent's Birth Date	Parent's Birth Place	Parent's Birth Order	Parent's Name	Parent's Birth Date	Parent's Birth Place	Parent's Birth Order
John Doe	Male	10/10/2010	12:00 PM	Delaware	1	John Doe	10/10/1980	Delaware	1	John Doe	10/10/1980	Delaware	1

Signature of Registrar: _____ Date: 10/10/2010

Birth Certificate

This is a certified copy of the original birth record registered in the State and County Registrar's Office on 10/10/2010.

Date of Birth: 10/10/2010
Place of Birth: Delaware

Child's Name	Sex	Birth Date	Birth Time	Birth Place	Birth Order	Parent's Name	Parent's Birth Date	Parent's Birth Place	Parent's Birth Order	Parent's Name	Parent's Birth Date	Parent's Birth Place	Parent's Birth Order
John Doe	Male	10/10/2010	12:00 PM	Delaware	1	John Doe	10/10/1980	Delaware	1	John Doe	10/10/1980	Delaware	1

Signature of Registrar: _____ Date: 10/10/2010

A Certificate of Birth is a record of the birth of a child in the State of Delaware.

Date of Birth: 10/10/2010
Place of Birth: Delaware

Child's Name	Sex	Birth Date	Birth Time	Birth Place	Birth Order	Parent's Name	Parent's Birth Date	Parent's Birth Place	Parent's Birth Order	Parent's Name	Parent's Birth Date	Parent's Birth Place	Parent's Birth Order
John Doe	Male	10/10/2010	12:00 PM	Delaware	1	John Doe	10/10/1980	Delaware	1	John Doe	10/10/1980	Delaware	1

Signature of Registrar: _____ Date: 10/10/2010

A Certificate of Birth is a record of the birth of a child in the State of Delaware.

Date of Birth: 10/10/2010
Place of Birth: Delaware

Child's Name	Sex	Birth Date	Birth Time	Birth Place	Birth Order	Parent's Name	Parent's Birth Date	Parent's Birth Place	Parent's Birth Order	Parent's Name	Parent's Birth Date	Parent's Birth Place	Parent's Birth Order
John Doe	Male	10/10/2010	12:00 PM	Delaware	1	John Doe	10/10/1980	Delaware	1	John Doe	10/10/1980	Delaware	1

Signature of Registrar: _____ Date: 10/10/2010

[illegible][illegible]

28

OR

11. An adoption certificate issued in the Channel Islands, the Isle of Man or Ireland



Nationals from the Channel Islands, the Isle of Man and Ireland (also known as the Common Travel Area) have no immigration restrictions placed on the type of employment they can take here.

OR

12. A certificate of registration or naturalisation as a British citizen

You should check that the A4 certificates describe the holder as a British citizen as indicated below.



These documents were replaced by new certificates of registration and naturalisation in February 2004 and are shown below.



OR

13. A letter issued by the Home Office or the Border and Immigration Agency to the holder which indicates that the person named in it is allowed to stay indefinitely in the United Kingdom.

Until March 2004, individuals granted indefinite leave to enter or remain were usually issued with a Home Office status letter, pictured below.



These letters clearly state that the holder is able to take up employment.

LIST B

DOCUMENTS WHICH SHOW A RIGHT TO WORK FOR UP TO 12 MONTHS

SINGLE DOCUMENTS

Any of the documents, or combination of documents, in **List B**, can demonstrate that a person is entitled to work in the UK for a limited period. They will provide you with an excuse against liability to pay a civil penalty for up to 12 months from the date on which you carry out the checks, if you follow all of the steps set out on pages 8–10.

If your employee presents a document or specified combination of documents from List B, there is no need to ask for any documents contained in List A.

You should only accept original documents.

You will not have an excuse against liability to pay a civil penalty if you know that the individual is not entitled to do the work for you.

The following documents are listed using the same numbers as those given in the legislation.

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.**

Those nationals from outside the European Economic Area (the EEA) who are subject to immigration control and who have been given current leave to work here will be able to demonstrate this by producing a UK Government stamp or endorsement in their national passport or travel document. When the Government grants a person limited leave to enter or remain it may place restrictions on the length or type of work a person can do here according to their immigration status. If you have had to apply for a work permit from Work Permits UK to employ someone, then you should refer to pages 33–34 for details of how to establish an excuse.

2. **A Biometric Immigration Document issued by the Border and Immigration 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.**

Images will be made available on the Border and Immigration Agency website when the Biometric Immigration Document is due to be issued.

- [illegible]



DOCUMENT COMBINATIONS

These documents will only give you an excuse against liability to pay a civil penalty if they are presented in the combinations specified.

FIRST COMBINATION

3. A work permit or other approval to take employment issued by the Home Office or the Border and Immigration Agency

If you are planning to employ someone on a work permit, you may be involved in making an application for that person and will have received direct notification from the Border and Immigration Agency of the success of that application. You may also use the services of a representative to obtain a permit. In these cases, you should ensure that your representative provides you with the original permit or approval from the Border and Immigration Agency.

If you have made an application before your employee arrives in the UK, then the Border and Immigration Agency will issue you directly with a **work permit** (shown below) if you have been successful.

Home Office
Mick Test Ltd
Personnel,
Moorfoot,
Sheffield,
S1 4PQ

Work Permits (UK)
serving business needs
TELEPHONE 01462 0000
FAX 01462 025535/001

WORK PERMIT
IMMIGRATION ACT 1971
PERMIT NUMBER: 863091
WORK PERMITS (UK)
IMMIGRATION ACT 1971
HOME OFFICE
LEVEL 5, MOORFOOT,
SHEFFIELD, S1 4PQ

WORKER REFERENCE NO. 8025535
DATE OF ISSUE 1 May 2003
PERIOD COVERED BY PERMIT 24 months from the date of leave to enter

PARTICULARS OF PERMIT HOLDER
SURNAME: Ample
OTHER NAMES: Ernest Xavier
DATE OF BIRTH: 30/05/1979
SEX: Male
PASSPORT NUMBER: XXXXXXXXXXXXXXXX
ISSUING GOVERNMENT: CANADA

PARTICULARS OF EMPLOYMENT
EMPLOYER'S NAME: Mick Test Ltd
OCCUPATION: Sales Advocate
SALARY/BENEFIT: £25000
PHONE NUMBER: 0114 2594223

OFFICIAL STAMP
863091

PLEASE READ CONDITIONS PRINTED ON THE BACK

WP1 (UK)
Crown Copyright: February 2003

If you have made an application while the employee is in the UK, then the Border and Immigration Agency may notify you with a **letter of permission**. This will be in the form of the letter shown here:

Home Office

Michael Sessions
The Management
Testing Test Ltd
Personnel
Moorfoot
Sheffield
S1 4PQ

Work Permits (UK)
serving business needs
Work Permits (UK)
Integrated Customer Directorate, North
Home Office
Level 5, Moorfoot
Sheffield S1 4PQ
www.workpermits.gov.uk

Telephone: 0114 259 0000
Facsimile: 0114 259 0000

Our reference: TAO1/B025535
Your reference:
01/05/2003

CANCELLED

Dear

IMMIGRATION ACT 1971 - THE WORK PERMIT ARRANGEMENTS

APPLICATION BY: Testing Test Ltd

Thank you for your application to employ Ernest Xavier Ample who is currently in the United Kingdom.

We have considered the application against the work permit criteria and are able to approve this employment for for 24 months .

The Work Permits (UK) In Country Decision Team 2 will now consider whether Ernest Xavier Ample's leave to remain can be extended for the purpose of work permit employment in the UK and notify you of the decision in writing.

Ernest Xavier Ample should not commence employment until you have received notification that leave to remain has been granted for this purpose unless:

(i) at the time that the work permit application was submitted Mr Ample had leave to enter or remain in an immigration category that permitted him to take full-time employment in the United Kingdom; and

(ii) the application was submitted prior to the expiry of any previous leave to remain here.

If Mr Ample has an outstanding application for asylum we will not normally consider granting leave to remain for the purpose of work permit employment until a decision on their asylum claim has been made.

CANCELLED

INVESTOR IN PEOPLE

Along with the actual permission from the Border and Immigration Agency for the person to take the employment in question, you must also ensure that the work permit applicant has been given leave to enter or remain in the UK. This will be in the form of:

- i. 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

Most work permit applicants will have been granted leave in their passports stating that they are able to 'work as authorised by the Secretary of State'.

Full details of the endorsements or ink stamps can be found in Appendix C.

- ii. a letter issued by the Home Office or the Border and Immigration Agency to the holder or the employer or prospective employer confirming the same

Personal Details	
Full Name	SURNAME, FORENAME(S)
Nationality	NATIONALITY
Date of Birth	DATE OF BIRTH
Place of Birth	PLACE OF BIRTH
Gender	MALE/FEMALE
Case ID	CID CASE ID



SECOND COMBINATION

The following documents (Certificate of Application and Application Registration Card) will only give you an excuse against liability to pay a civil penalty if they have been checked by the Border and Immigration Agency Employer Checking Service. Details of the Employer Checking Service are available on page 13 and on the Border and Immigration Agency website at: **www.bia.homeoffice.gov.uk/employingmigrants**

4. A Certificate of Application issued by the Home Office or the Border and Immigration 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

Family members of nationals from EEA countries and Switzerland may apply for residence documents, such as a residence card, which demonstrate entitlement to work in the UK. Under European legislation, many are also entitled to engage in employment whilst these applications are under consideration and before residence documents have been issued by the Border and Immigration Agency. The Border and Immigration Agency will provide such applicants with an initial letter of acknowledgment.

Upon positive verification of the letter of acknowledgement, the Border and Immigration Agency will provide a new document to the individual which will clearly state that the person named has an entitlement to work in the UK.

OR

6. An Application Registration Card issued by the Home Office or the Border and Immigration Agency stating that the holder is permitted to take employment

Only a small number of asylum seekers are permitted to work here while they await a decision on their claim. Since May 2004 you have only been able to establish that an asylum seeker has permission to work by checking a Home Office-issued Application Registration Card (ARC). If the holder is permitted to work, it will state ‘employment permitted’ or on both sides of their card as indicated below.



If you are presented with an ARC which states ‘employment prohibited’ on either side, as shown here, then you may be liable for payment of a civil penalty for employing an illegal migrant worker, or commit a criminal offence of knowingly employing an illegal migrant worker, unless the person can otherwise demonstrate their entitlement to work in the UK.

There is a new generation of ARC, which will be issued shortly. The “Employment Permitted” wording printed on the ARC will be replaced with ‘Allowed to Work’ and the ‘Employment Prohibited’ wording printed on the card will be replaced with ‘Forbidden from Taking Employment.’

You should not accept a Standard Acknowledgement Letter (SAL) or Immigration Service Letter (IS96W) as evidence that an asylum seeker has permission to work. If an asylum seeker presents these documents to you, refer them to the Home Office on **0151 237 6375** for further advice on how they can obtain an ARC.

THIRD COMBINATION

A document issued by a previous employer or Government agency, e.g. Inland Revenue (now HM Revenue and Customs), the Department for Work and Pensions, Jobcentre Plus, the Employment Service, the Training and Employment Agency (Northern Ireland) or the Northern Ireland Social Security Agency, which contains the National Insurance number and name of the holder.

A P45, P60, National Insurance number card, or a letter from a Government agency may be acceptable evidence of a person's permanent National Insurance number in order to have this part of your excuse against a liability to pay a civil penalty.

This is a P60 End of Year Certificate for the tax year 2003-04. It is a form used by employers to report an employee's earnings and tax payments to HM Revenue and Customs. The form includes sections for personal details, employment details, and tax calculations. A large red 'SPECIMEN' watermark is overlaid diagonally across the form.

This is a P45 form, which is used by employers to report an employee's earnings and tax payments for the current tax year. It is a form used by employers to report an employee's earnings and tax payments to HM Revenue and Customs. The form includes sections for personal details, employment details, and tax calculations. A large red 'SPECIMEN' watermark is overlaid diagonally across the form.

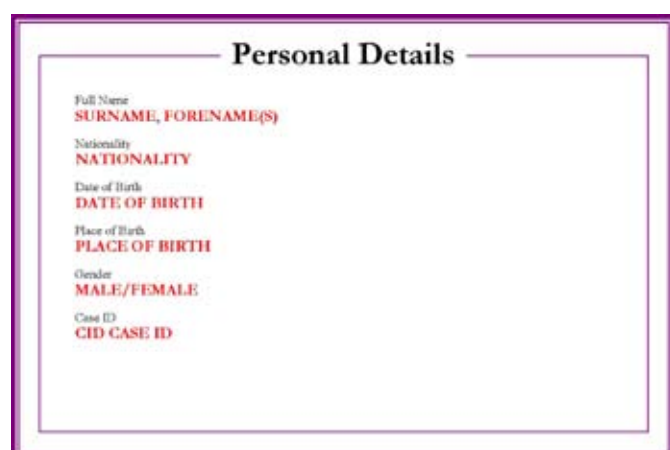
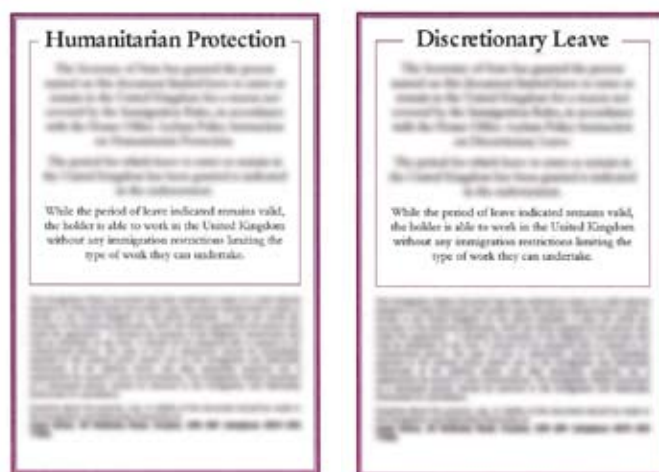


Along with checking and copying a document giving the person's National Insurance number, you must also check and copy ONLY ONE of the following documents listed in sections 7 - 8:

7. **An Immigration Status Document issued by the Home Office or the Border and Immigration 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.**

From March 2004, the Home Office issued an Immigration Status Document (ISD) to some applicants given limited leave to enter or remain in the United Kingdom.

The ISD contains a United Kingdom Residence Permit endorsement which clearly states what leave the holder has. The ISD also states whether the individual is free to work in the UK and whether the entitlement to work is subject to any conditions. You should copy and retain the copy of all of the parts, as indicated on page 26.



The Residence Permit clearly shows that the individual has Limited Leave to Remain.

OR

8. A letter issued by the Home Office or the Border and Immigration 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.

All of the letters pictured indicate that an applicant has been granted a form of leave by the Home Office and that they have permission to stay in the UK for a limited period of time. Immigration restrictions may however have been placed on the type of work they can do here, which you should check carefully.



In order to have this part of your excuse, the letter must grant the holder leave to enter or remain in the UK. You should also check that any stamps on this letter carefully to see if the holder is permitted to take the type of work that you are offering. Appendix C has further examples of the types of endorsements and ink stamps and what employment conditions have been imposed.

APPENDIX A

SOME QUESTIONS YOU MIGHT HAVE

INDEX

ESTABLISHING AN EXCUSE AGAINST LIABILITY FOR PAYMENT OF A CIVIL PENALTY

- Q1** Why should I carry out document checks?
- Q2** Once I have initially checked a person's documents, is there anything else I have to do during the course of the person's employment?
- Q3** How may a British citizen show their eligibility to work in the UK?
- Q4** What if a prospective employee cannot provide evidence of their entitlement to work?
- Q5** What if a prospective employee produces two documents, but not from the specified combinations included in List A or List B?
- Q6** What should I do if I have concerns about the documents presented to me by an employee?
- Q7** Should I keep original documents?
- Q8** How long do I need to keep the copies of any of the documents I have recorded?
- Q9** What if my copies of the documents are lost or accidentally destroyed?
- Q10** Why does the civil penalty and the knowing offence only apply to employees over 16?
- Q11** Will I have an excuse against liability to pay a civil penalty if I make a copy of a right of abode certificate from an expired passport?

MAIN GROUPS YOU CAN EMPLOY IN THE UK WITHOUT COMMITTING AN OFFENCE

- Q12** Do I need an excuse under section 15 when employing those workers who are exempt from immigration control?
- Q13** Which groups in the UK are not subject to immigration control?
- Q14** Can a British Dependent Territories Citizen who has a connection with Gibraltar legally work in the UK?

DOCUMENTS THAT DO NOT SHOW A PERSON IS ENTITLED TO WORK IN THE UK

- Q15** Many British citizens do not have a UK passport or a full birth certificate, so why is the short birth certificate not acceptable as a document under section 15?
- Q16** Why can't I depend on a National Insurance number as a single document?
- Q17** What if I check other documents which establish evidence of someone's identity?
- Q18** Why isn't a British visitor's passport acceptable?
- Q19** Why aren't driving licences issued by the DVLA acceptable?
- Q20** Can an adopted person, who is a British citizen and who does not have a full birth certificate, prove their eligibility to work in the UK with their adoption certificate?

DEFINITION OF AN EMPLOYER

- Q21** What is the definition of 'employer' for the purposes of section 15?
- Q22** How can I tell if my prospective worker will be classed as someone who is 'self-employed' or 'my employee' for section 15 purposes?
- Q23** As a parent, am I responsible for checking whether my nanny or childminder is entitled to work in the UK?
- Q24** Am I defined as the 'employer' if I use an employment agency to find my staff?
- Q25** I am running an employment agency. Do I have to carry out the checks?
- Q26** Who in the organisation is held liable for employing someone illegally?
- Q27** What if I acquire staff as the result of a TUPE transfer?

- Q28** I am an employer based in the UK and I wish to employ a non-EEA national outside the UK. Would I be required to check my employees' entitlement to work?
- Q29** My business employs workers on a casual basis through the internet. Managers do not meet with employees and are therefore unable to verify the identity or entitlement to work of their employees. What steps can I take to ensure that I am not liable to pay a civil penalty?

NATIONAL INSURANCE (NI) NUMBERS

- Q30** If a new employee only possesses a document with details of their NI number, does this establish an excuse?
- Q31** Who issues permanent NI numbers?
- Q32** Can I accept any document which contains a NI number?
- Q33** What if a job applicant produces one of the documents from a required combination, but does not have a document containing a NI number? Should I employ that person and obtain a NI number for them after they start working for me?
- Q34** What if a UK resident who is under 20 applies for a job with me and claims they have not been issued with a NI number, but does have a full UK birth certificate?
- Q35** Do workers from EEA member states need a NI number to prove that they have permission to work in the UK?

EMPLOYING ASYLUM SEEKERS

- Q36** Can I employ asylum seekers?
- Q37** How will I know if an asylum seeker is able to work?
- Q38** What if an individual presents me with a Standard Acknowledgement Letter (SAL), or IS96W letter, which states that they are entitled to work?
- Q39** I am already employing an asylum seeker, who I employed on the basis of seeing their SAL or IS96W. Should I ask for an Application Registration Card (ARC), or conduct ongoing checks?
- Q40** What happens if an asylum seeker is given leave to enter or remain and how can they prove their entitlement to work in the UK?
- Q41** Are failed asylum seekers allowed to work pending other applications or removal from the UK?

EMPLOYING EUROPEAN ECONOMIC AREA WORKERS

- Q42** Do A8 nationals who are agency and/or temporary workers need to register on the Worker Registration Scheme (WRS)?
- Q43** Can I accept an identity card from any EEA member state in order to have an excuse against liability to pay a civil penalty?
- Q44** Can I have an excuse against liability to pay a civil penalty by accepting an EEA/UK/Swiss passport which has expired?
- Q45** Is the UKRP the same as the Registration Certificate issued to EEA nationals?
- Q46** What is a residence card?
- Q47** Can a non-EEA national who was formerly a family member of an EEA national maintain their entitlement to work in the UK?
- Q48** What is a Certificate of Application?

EMPLOYING STUDENTS

- Q49** Are non-European Economic Area students allowed to work in the UK?
- Q50** Students from outside the EEA can work for 20 hours per week during term time. How do you define term-time?
- Q51** How does the 20-hour rule affect non-EEA postgraduate students?
- Q52** What about work placements for non-EEA students as part of their course?
- Q53** Can a non-EEA student with valid leave to enter or remain in the UK defer his/her studies?

VOLUNTARY ACTIVITY

- Q54** Can asylum seekers volunteer their services?
- Q55** Can I be liable for payment of a civil penalty if I am found to be providing voluntary work to someone without permission to work in the UK?
- Q56** What is the difference between 'volunteering' and 'unpaid work'? For example, if a posting entitles a participant to observe what happens in a clinical setting in the UK, does this contravene the 'no work' endorsement stamp in their passport?
- Q57** Are failed asylum seekers allowed to volunteer pending removal or other applications?
- Q58** Can anyone at the end of the immigration application process volunteer?

FURTHER QUESTIONS

- Q59** I am currently employing someone under the Working Holiday Maker scheme. How can I apply for permission to employ them after their visa expires?
- Q60** Isn't the Border and Immigration Agency discriminating against those British citizens who have, or are in the process of gender transitioning? The introduction of the requirement to show a combination of the National Insurance number and a birth certificate may cause problems for a person in this situation.

THE POINTS-BASED SYSTEM

- Q61** When did the Points-Based System open?
- Q62** What is sponsorship under the Points-Based System?

ESTABLISHING AN EXCUSE AGAINST LIABILITY FOR PAYMENT OF A CIVIL PENALTY

Q1 Why should I carry out document checks?

Although employers are not legally required to conduct document checks, we recommend that they are conducted on all prospective employees, as this establishes an excuse against liability to pay a civil penalty, provides evidence of an open and transparent recruitment process and will ensure that your recruitment practices do not discriminate against individuals on racial grounds.

The Government has made information available on how to avoid racial discrimination, in addition to a Code of practice for employers, with the aim of providing employers with guidance on the best practice. The Code does not create any new legal obligations for employers, or make an employer liable to any proceedings, but it can be admissible as evidence in any proceedings under the Race Relations Act 1976 or the Race Relations (Northern Ireland) 1997 Order, brought before an Employment Tribunal (an Industrial Tribunal in Northern Ireland).

If you operate discriminatory recruitment processes you could face prosecution under the 1976 Act or the 1997 Order, and an unlimited fine if you are found guilty of breaking this law.

Q2 Once I have initially checked a person's documents, is there anything else I have to do during the course of the person's employment?

A. You can have an excuse against liability to pay a civil penalty by following steps 1 – 3 detailed on pages 8-10. If the prospective employee provides the specified documents from List A, and providing that you are satisfied they are entitled to take the job you are offering, no further document checks need to be made during the course of that person's employment with you.

If the prospective employee provides the specified documents from List B, and providing that you are satisfied they are entitled to take

the job you are offering, then you may have the excuse. To have the excuse, you will need to carry out repeat checks, following steps 1-3, at least once every 12 months, to ensure the employee can still work legally in the UK. To have the excuse you should continue to carry out these checks until the employee produces specified documents from List A, or stops working for you.

You will not at any point have an excuse against liability to pay a civil penalty if you employ a person who you know is not entitled to work for you, regardless of what document checks you carry out.

Q3 How may a British citizen show their eligibility to work in the UK?

A. A British citizen may demonstrate their eligibility to work by providing **either** their UK passport as a single document, or a combination of the following documents from List A:

- a document issued by a Government Agency or previous employer containing their permanent National Insurance number and name, such as a P45, P60 or National Insurance number card **and**
- a full UK birth certificate; **or**
- a full UK adoption certificate; **or**
- a certificate of registration as a British citizen; **or**
- a certificate of naturalisation as a British citizen.

Q4 What if a prospective employee cannot provide evidence of their entitlement to work?

A. It is the prospective employee's responsibility to demonstrate that they are permitted to do the job you are offering. You can withdraw your offer of employment to a job applicant if they

cannot demonstrate their entitlement to work legally and you need to fill the post urgently.

If you do not need to fill your post immediately and the prospective employee does not have any of the documents or specific combinations of documents included in **List A** or **List B**, then you may consider keeping the post open and allow them time to produce the specified document, or documents, from these lists.

Q5 What if a prospective employee produces two documents, but not from the specified combinations included in List A or List B?

- A. You will only have an excuse against liability to payment of a civil penalty if you are presented with one of the single documents or specified combinations of documents set out in List A or B, but not if the documents are presented in any other combination. For example, if you check an Immigration Status Document and a certificate of naturalisation, this would not give you an excuse against liability to pay a civil penalty, as this is not a specified combination of documents.

Q6 What should I do if I have concerns about the documents presented to me by an employee?

- A. If you have carried out Steps 1 – 3, as detailed on pages 8-10, and are not satisfied that the prospective employee is the rightful holder of the documents they have produced to you, then you should not employ that person.

If you have any concerns about the validity of the documents presented to you, you should contact the Immigration Enquiry Bureau on **0845 606 7766** for further advice. They will treat any information you provide in confidence, however information may be disclosed within the Border and Immigration Agency and to other Government departments, agencies and local authorities.

Q7 Should I keep original documents?

- A. It is not appropriate to keep a person's original documents, except for the purpose of copying them. They must be returned as quickly as possible. The only exceptions to this are:
- when an individual gives you part 2 of a P45, as part of a combination of specific documents in **List A** or **List B**; or
 - when you employ someone for a day or less and it is not practicable to obtain a copy of the documents. **If you decide to do this, you must also have facilities for keeping the documents safe.**

You should not keep a job applicant's original documents for longer than a day. If you deliberately take a person's passport or other original documents belonging to them, or retain these without their consent, then you may be guilty of an offence under the Theft Act 1968, or under section 25(5) of the Identity Cards Act 2006.

Q8 How long do I need to keep the copies of any of the documents I have recorded?

- A. You should keep any copies you have made securely for the duration of the individual's employment and for a further two years after they leave your employment. This allows the Border and Immigration Agency to check whether you are liable to pay a civil penalty if they detect anyone working illegally for you.

Part 2 of the P45 must also be kept for at least three years after the end of the current tax year in order to comply with HM Revenue and Customs regulations.

If you accept original documents from an employee because the employment is of a day or less, and return the documents at the end of that day, you do not need to be concerned about the two-year period mentioned above.

Q9 What if my copies of the documents are lost or accidentally destroyed?

- A. You can have an excuse against liability to pay a civil penalty by copying, or otherwise recording any specified documents produced to you. It is easier to demonstrate that you did this if you can show that you have a consistent practice of copying documents for each employee.

Q10 Why does the civil penalty and the knowing offence only apply to employees over 16?

- A. UK legislation on the prevention of illegal migrant working, including the provisions of sections 15 and 21 of the Immigration, Asylum and Nationality Act 2006, only applies to those who are aged 16 and over because there is separate legislation governing the employment of children.

Q11 Will I have an excuse against liability to pay a civil penalty if I make a copy of a right of abode certificate from an expired passport?

- A. A non-European Economic Area national passport endorsed to show that the holder has indefinite leave to enter or remain is evidence of a person's entitlement to work only if the passport is valid. Checking the passport of a prospective employee will not provide an excuse against liability to pay a civil penalty if the passport has expired.

However, there may be occasions when a prospective employee presents a passport containing the following ink stamp, which was formerly used by Immigration Officers to transfer a person's conditions from an old passport into a new passport. If someone presents this ink stamp to you in their passport, they should also present their previous passport, which you should also copy, containing their previous leave, to demonstrate that they are permitted to take the job you are offering.

	Code
The holder has leave to enter/remain that was granted on	
.....	
by and expires on	

MAIN GROUPS YOU CAN EMPLOY IN THE UK WITHOUT COMMITTING AN OFFENCE

Q12 Do I need an excuse under section 15 when employing those workers who are exempt from immigration control?

- A. As an employer, you place yourself at risk of liability to a civil penalty if you employ a person aged 16 or over who is subject to immigration control and who is not permitted to undertake the work in question.

The law states that the offence of employing an illegal migrant worker only applies where a person employs an individual who is "subject to immigration control." However you should establish that a prospective employee, who claims to be exempt, is actually exempt. It will also protect you where you accept in good faith a fraudulent document indicating an exempt status where the fraud is not reasonably apparent.

If the person is genuinely exempt, then the employer would not be liable to payment of a civil penalty. However, we recommend that the checks are conducted on all prospective employees, as this will provide an excuse from liability to pay a civil penalty, provide evidence of an open and transparent recruitment process and will ensure that your recruitment practices do not discriminate against individuals on racial grounds.

Q13 Which groups in the UK are not subject to immigration control?

- A. The main groups who are not subject to immigration control in the UK, and who you can employ without restriction are:
- British citizens; **and**
 - Commonwealth citizens with the right of abode; **and**
 - Nationals from the Common Travel Area (CTA); **and**
 - Nationals from European Economic Area (EEA)/European Union (EU) countries and Switzerland; **and**
 - Family members of adult nationals from EEA/EU countries and Switzerland, providing the EEA/EU national is lawfully residing in the UK.

You should not employ any individual solely on the basis of their claim to belong to one of these groups – this will place you at risk of employing someone illegally if their claims are false. You should establish an excuse for all of your prospective employees by following steps 1 – 3, as detailed on pages 8-10.

Q14 Can a British Dependent Territories Citizen who has a connection with Gibraltar legally work in the UK?

- A. A passport which states that the holder is a British Dependent Territories citizen, who has a connection with Gibraltar, is not acceptable as evidence that the person is entitled to work in the UK, unless it also contains a valid endorsement to show that the individual is a British citizen. This could be a right of abode certificate, or the person can provide a document, or documents that otherwise establishes their exemption from immigration controls. This will mean that the holder will not have any conditions placed upon them whilst living and working in the UK. If a document

contains such an endorsement, then it may be accepted as a single document and an employer may have an ongoing excuse by copying it.

DOCUMENTS THAT DO NOT SHOW A PERSON IS ENTITLED TO WORK IN THE UK

Q15 Many British citizens do not have a UK passport or a full birth certificate, so why is the short birth certificate not acceptable as a document under section 15?

- A. The short birth certificate is a document that has proved vulnerable to forgery. A person could enter fictitious details about their parents, or a person could attempt to work here illegally by making a false statement about themselves. These types of false representation can be prevented by the requirement for a full birth certificate and would ultimately be prevented by the introduction of an identity card with biometric information.

In addition, a full birth certificate also gives valuable background information which is absent from the short birth certificate. Not only does it provide the names of the parents, but also where they were born, their occupation at the time of the birth, their address at the time of the birth and the place where the child was born. All this information may be used to verify personal details if necessary.

Q16 Why can't I depend on a National Insurance number as a single document?

- A. The purpose of the National Insurance (NI) number is primarily to monitor an individual's National Insurance contributions and credited contributions. The NI number is also used as a reference number for individuals within the social security system; it was neither intended, nor designed to be a tool for identifying or determining an individual's immigration status.

Not all NI number holders will be entitled to work in the United Kingdom. Therefore, the provision of a NI number in isolation is not

sufficient to establish the individual's right to work in the UK. Employers must check documents showing the NI number, which will only allow you to have an excuse against liability to pay a civil penalty if they are produced as part of one of the combinations specified in List A or B.

Q17 What if I check other documents which establish evidence of someone's identity?

- A. Only checking the documents specified in **List A** or **List B** allow you to establish and retain an excuse against liability to pay a civil penalty. The following documents will not allow you to have an excuse against liability:
- a Home Office Standard Acknowledgement Letter or Immigration Service Letter (IS96W) which states that an asylum seeker can work in the UK;
 - 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 permanent National Insurance (NI) number when presented in isolation;
 - a card or certificate issued by the Inland Revenue under the Construction Industry Scheme;
 - a full or provisional driving licence issued by the Driver and Vehicle Licensing Agency;
 - a temporary NI number beginning with **TN**, or any number which ends with the letters from **E to Z** inclusive;
 - a licence provided by the Security Industry Authority;
 - a document check by the Criminal Records Bureau;

- a bill issued by a financial institution, or a utility company.

You may also see some passports which contain the word 'British' but which are not acceptable (unless it contains a certificate of entitlement or a relevant endorsement). These are:

- a British Visitor's Passport; **or**
- a passport that describes the holder as:
 - a British National (Overseas);
 - a British Dependent Territories Citizen;
 - a British Overseas Territories citizen;
 - a British Overseas citizen;
 - a British subject; or
 - a British protected person.

Q18 Why isn't a British visitor's passport acceptable?

- A. The legislation states that the passport must describe the holder as a 'British citizen, or a citizen of the United Kingdom and Colonies having the right of abode in the United Kingdom.'

The visitors' passport only contains the following words: 'British Subject. Citizen of the United Kingdom and Colonies.' This does not confer the same rights and privileges on the holder as a full British passport, nor does it conform to the legislation, therefore, it cannot when checked establish an excuse for the employer under section 15.

Q19 Why aren't driving licences issued by the DVLA acceptable?

- A. It is important that employers can rely on the documents specified in List A or List B to establish a person's identity, nationality and entitlement to work and that those who are enjoying the right to work in this country can demonstrate it without undue difficulty. That is why the list of specified documents includes the UK passport, a secure form of photographic

identification confirming possession of British citizenship and excludes other documents like utility bills, paper driving licences, or council tax bills, which achieve none of these objectives. Although the photo card driving licence contains a digital image and states the country of birth, it does not categorically establish the holder's nationality, or their entitlement to work in the UK. Whilst the Driver and Vehicle Licensing Agency might undertake necessary document checks to confirm an applicant's identity, this is because they are responsible for issuing documents that verify an individual's entitlement to drive a vehicle, and not establishing whether or not they have an entitlement to work in the UK.

Q20 Can an adopted person, who is a British citizen and who does not have a full birth certificate, prove their eligibility to work in the UK with their adoption certificate?

- A. Yes, when the full adoption certificate, which includes the names of one of the adopted parents, is produced in combination with an official document showing their properly documented, permanent National Insurance number. Under section 15, full adoption certificates may be produced in place of full birth certificates.

In addition, a British citizen who has been adopted, but who does not have a copy of their full birth certificate, may still be able to obtain a UK passport. This will provide an excuse when checked as a single document from **List A**.

DEFINITION OF AN EMPLOYER

Q21 What is the definition of 'employer' for the purposes of sections 15 and 21 of the 2006 Act?

- A. An 'employer' is defined as a person who employs an individual under a contract of employment. This may be a contract of service or apprenticeship, whether express or implied. If the contract is expressed, this can be either

orally or in writing. In most cases, it should be clear when you are entering into such a contract of service with an employee, and that you need to carry out the appropriate checks to have an excuse.

Q22 How can I tell if my prospective worker will be classed as someone who is 'self-employed' or 'my employee' for section 15 purposes?

- A. In some cases it may not be easy to decide whether someone who will undertake work for you will be your employee or will be self-employed. The exact nature of the relationship is not determined by whether the worker is designated as an 'employee' or 'self-employed'. Rather, whether a person is truly your employee or self-employed will depend on all the facts and circumstances of the case.

The criteria below should provide you with a guide as to your worker's status, although it is only a brief guide and does not cover every situation. For each relationship the whole picture needs to be assessed in light of the facts.

If you can answer yes to the following questions, then that would suggest that the worker is, or will be, your **employee**:

- Will you require the personal service of the worker?
- Will you be able to control when and how the work is done, what tasks have to be done and where the services are performed?
- Will you supply the tools or other equipment needed to do the work?
- Will the employee be paid by the hour, week or month and receive overtime pay?

If, on the other hand, you can answer yes to the following questions; that would suggest that your worker is **self-employed**:

- Will the worker have the right to provide a substitute, or engage their own helpers?
- Will the worker decide whether or not to accept individual tasks and how to carry them out?
- Will the worker make their own arrangements for holidays or sickness absences?
- Will the worker be free to do the same type of work for more than one employer at the same time?
- Will the worker provide the main items of equipment needed to do the job in question?
- Will the worker have a real risk of financial loss?

Where there is any doubt, the Border and Immigration Agency recommends that you check the person's entitlement to work, rather than risking liability to pay a civil penalty if you are found to be employing an illegal migrant worker.

Q23 As a parent, am I responsible for checking whether my nanny or childminder is entitled to work in the UK?

- A. Nannies cannot usually be classed as self-employed, as the nature of their work does not meet the HM Revenue and Customs criteria for self-employed status, so you, as their employer, are responsible for checking their entitlement to work before you employ them.

Employing a child carer, such as an approved nanny, is different from engaging the services of a childminder, who is usually self-employed. A childminder is responsible for setting their own hours of work, their own fees and conditions, whereas you are responsible for setting your approved nanny's hours, wages and conditions. In cases where a child carer is genuinely self-employed, you will not be their employer for the purposes of section 15.

Q24 Am I defined as the 'employer' if I use an employment agency to find my staff?

- A. This will depend on the nature of the relationship between you and your worker. If you use an employment agency to find new staff for you, but you then employ those staff under a contract of service with you, then you will 'employ' those people for the purposes of this legislation and are responsible for checking their entitlement to work.

If you obtain workers from an employment agency and it is apparent from all of the facts and circumstances that the nature of the relationship is such that they are not your employees, then you will not 'employ' them for the purposes of this legislation and do not need to check their entitlement to work.

You may lose the service of any of your workers if they are found to be working illegally in the United Kingdom.

Q25 I am running an employment agency. Do I have to carry out the checks?

- A. Again, this will depend on the nature of the relationship between you and your worker. If you supply temporary workers to your clients for temporary assignments, you will probably be the employer for the purposes of section 15.

If you introduce workers to client employers for direct employment by those hirers (i.e. "permanent recruitment") you will not be the employer for the purposes of section 15, as these will be the responsibility of the client employer. However, you will still need to check the identity of the worker (and that they have the experience, training, qualifications and any authorisation necessary to carry out the work) for the purposes of employment agency legislation.

More information on employment agency legislation is available from the Department for Business, Enterprise and Regulatory Reform at: www.berr.gov.uk/employment/employment-agencies/index.html

Q26 Who in the organisation is held liable for employing someone illegally?

- A. The ‘employer’ may be subject to a civil penalty and it will depend on the circumstances of each case who that might be. It may, for example, be a named individual, a company, or each partner in a partnership. If it is a corporate body, then that body itself may be liable.

If the employer is a company, any director, manager, secretary or other similar officer, or any person who was purporting to act in such a capacity may also be liable to pay a civil penalty, or be guilty of a criminal offence, if it was committed with their consent or connivance, or as a result of their negligence.

In the case of the offence of knowingly employing a migrant worker (under section 21 of the 2006 Act), each partner in a partnership will be considered guilty of the offence and will be proceeded against accordingly. The position is different for a limited partner in a limited partnership who will only be liable in those circumstances where a director, manager, secretary or other similar officer or any person purporting to act in such a capacity of a company would be liable.

Q27 What if I acquire staff as the result of a TUPE transfer?

- A. Employers who acquire staff as a result of a Transfer of Undertakings (Protection of Employment) Regulations transfer are provided with a grace period of 28 days in which to undertake the appropriate document checks and establish an excuse, following the date of transfer.

Q28 I am an employer based in the UK and I wish to employ a non-EEA national outside the UK. Would I be required to check my employees’ entitlement to work?

- A. As an employer, you place yourself at risk of liability to pay a civil penalty by employing

a person aged 16 or over who is subject to immigration control and who is not permitted to undertake the work for you.

The law states that the offence of employing an illegal migrant worker only applies where a person employs an individual who is “subject to immigration control.” Therefore, if your company has a base in the UK and your employee will be required to undertake some of his duties in person in the UK, you should ensure your employees are entitled to work in the UK if you wish to have an excuse against liability to pay a civil penalty. Even if the employee spends much of his time abroad; the employee may still be classed as part of the UK workforce.

Q29 My business employs workers on a casual basis through the internet. Managers do not meet with employees and are therefore unable to verify the identity or entitlement to work of their employees. What steps can I take to ensure that I am not liable to pay a civil penalty?

- A. If the company is classed as an ‘employer,’ then they will be responsible for checking their employees’ entitlement to work. However, if the company are contracting out specific jobs or services for individuals, for example, website designers, then the workers may not fall into the category of ‘employees’ and the company may not be responsible for checking their entitlement to work. See Q21 and Q22 for further details.

There are cases where the law is unclear and for further clarification, the Department for Business, Enterprise and Regulatory Reform and HM Revenue and Customs provide further information on how to define who is an ‘employer’ and who is an ‘employee’.

There are no specific exceptions under section 15 for dealing with recruiting people through the internet. If an employer has employees who are subject to UK law and has established that they may be liable under the provisions of

section 15, then they should consider changing their recruitment practices in order to establish an excuse against liability to pay a civil penalty.

In order to have an excuse against liability to pay a civil penalty, it is up to the employer to satisfy himself or herself that the person that they are employing is permitted to work for them. This may be established by following steps 1 – 3, as detailed on pages 8-10, and will necessitate meeting with the prospective employee to verify that the person is the rightful holder of the documents provided. The excuse should be established before employment is offered.

NATIONAL INSURANCE (NI) NUMBERS

Q30 Will I have an excuse if I check only a document with NI number details?

- A. No. A document containing details of a person's NI number does not show a person is entitled to work. If it is presented to you on its own by a prospective employee, it will not provide an excuse against liability to pay a civil penalty.

You will only have an excuse if you check an appropriate document containing a person's permanent NI number and name is presented to you as part of one of the combinations specified in List A or List B.

The core purpose of the NI number is to link an individual to their National Insurance contribution record. While the overwhelming majority of people who have a NI number can work in the UK, possession of a number does not always establish that the individual is permitted to undertake all forms of employment in the United Kingdom.

Q31 Who issues permanent NI numbers?

- A. The Department for Work and Pensions is responsible for issuing permanent NI numbers. If you require a NI number you can apply for one by telephoning **0845 600 0643** between

8am and 6pm Monday to Friday. If you are hard of hearing, or have speech difficulties, call text phone on **0845 600 0644**.

Q32 Can I accept any document which contains a NI number?

- A. No. The following **will not** demonstrate that a person has a permanent NI number:
- a card or certificate issued by the Inland Revenue under the Construction Industry Scheme (a CIS card); **or**
 - a document with an invalid NI number. This would include any temporary number beginning with TN, or any number ending in a letter from E to Z inclusive.

Q33 What if a job applicant produces one of the documents from a required combination, but does not have a document containing a NI number? Should I employ that person and obtain a NI number for them after they start working for me?

- A. A person can start work without a NI number. However, the overwhelming number of job applicants who do not possess national passports, but who are able to work here, will already have been issued with a NI number by the Department for Work and Pensions' Jobcentre Plus. You will need to have checked and copied a person's NI number, along with one of the other specified documents before employing them to have an excuse against liability to pay a civil penalty.

A person can apply for a NI number by telephoning **0845 600 0643** between 8am and 6pm Monday to Friday. If you are hard of hearing, or have speech difficulties, call text phone on **0845 600 0644**. Further information about NI numbers and the application process can be found on the NI number section of the DWP website, via **www.dwp.gov.uk**

Q34 What if a UK resident who is under 20 applies for a job with me and claims they have not been issued with a NI number, but does have a full UK birth certificate?

- A. Nearly all residents in the UK are automatically given a NI number as they approach age 16. On, or after reaching the age of 15, a young person will receive a small plastic card notifying them of their NI number.

A small number of young people may, however, miss the automatic registration process. Providing they are over the age of 15 years and 9 months and under 20 years of age, you should advise them to contact the Juvenile Registration Helpline on **0845 915 7006** which will ensure that they are registered and issued with a number quickly, providing they are entitled to one. You may wish to consider keeping a job offer open until that person can demonstrate that they have been issued with a number.

If an applicant is 20 years or over and does not have a NI number, then they will need to apply as an adult. They can do this by telephoning **0845 600 0643** between 8am and 6pm Monday to Friday. If they are hard of hearing, or have speech difficulties, they should call text phone on **0845 600 0644**.

Q35 Do workers from EEA member states need a NI number to prove that they have permission to work in the UK?

- A. If a national of an EEA country or Switzerland provides a national passport or national identity card to an employer, then they will not be required to provide evidence of a valid NI number to show their entitlement to work. Nationals from all of these countries are exempt from immigration control and are not subject to sections 15 or 21.

However, some EU nationals are subject to restrictions. Workers from the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia or Slovenia have been free to work in

the United Kingdom since 1 May 2004, but the worker may also be required to register under the Worker Registration Scheme (WRS). Further details are contained in Appendix B at page 64.

Equally, a section 15 excuse can be obtained for a Romanian or Bulgarian national by checking and copying their national passport or national identity card. Nationals from these countries are free to come to the UK, but unless exempt, are subject to worker authorisation. Further details are contained in Appendix B at page 64.

EMPLOYING ASYLUM SEEKERS

Q36 Can I employ asylum seekers?

- A. On 23 July 2002, the Government ended the employment concession for asylum seekers. Before this date, asylum seekers could apply for permission to work in the UK if they had not received an initial decision within six months of applying for asylum. Once granted a form of leave, there were no restrictions placed on the type of work they could undertake.

As a result of the ending of the concession, any asylum seeker who made an initial asylum application after 23 January 2002 is not able to undertake any form of paid or unpaid employment, unless they have been granted the concession by the Home Office in exceptional circumstances. Each case is considered on its individual merits and it would be difficult to give a definitive list of circumstances where permission to work would be granted. However, it would be appropriate to grant an asylum seeker permission to work if their claim remains outstanding for longer than 12 months without a decision being made on it and where no delay is attributed to the asylum seeker.

Any asylum seeker who was granted the concession before 23 July 2002 will be able to work until they have received a final decision in the case where no leave is granted and all appeal rights have been exhausted. If they granted leave to enter or remain in the UK, they will no longer

be an asylum seeker, and will be provided with new documents by the Border and Immigration Agency to demonstrate their entitlement to work.

Since the Government has abolished the concession, a decreasing number of asylum seekers are permitted to work in the UK.

Q37 How will I know if an asylum seeker is able to work?

- A. Since 1 May 2004, any asylum seeker who is able to work must demonstrate this through their Application Registration Card (ARC). This will state on the front and back 'Employment Permitted' if they are able to work. A new type of ARC, with the words 'Allowed to Work' will be issued soon. Both versions will be in circulation for some time. To have an excuse against liability to payment of a civil penalty you must verify an 'Employment Permitted' ARC with the Employer Checking Service.

Q38 What if an individual presents me with a Standard Acknowledgement Letter (SAL), or IS96W letter, which states that they are entitled to work?

- A. You **should not** employ anyone on the basis of checking either of these documents, as they **will not** demonstrate the person is entitled to work and will not give you an excuse against liability to pay a civil penalty. Any asylum seeker who is able to work will need to produce their "Employment Permitted" Application Registration Card (ARC) to demonstrate this.

If a job applicant is an asylum seeker who can work, but does not have an ARC, you should advise them to call the Border and Immigration Agency on **0151 237 6375** for further information about how to obtain one.

Q39 I am already employing an asylum seeker, who I employed on the basis of seeing their SAL or IS96W. Should I ask for an Application Registration Card (ARC), or conduct ongoing checks?

- A. No. If your existing employee produced a Standard Acknowledgement Letter (SAL) which was stated that the holder had permission to work, or an IS96W letter prior to employment which commenced before 1 May 2004 and you established a defence for that person under section 8 of the 1996 Act, then you will not need to ask them for an ARC during the course of that employment. You will still have a defence under section 8.

Q40 What happens if an asylum seeker is given leave to enter or remain and how can they prove their entitlement to work in the UK?

- A. Asylum seekers who are successful in their asylum claim are awarded Refugee Status. Exceptional leave to enter, or remain in the UK is a category of leave previously granted to asylum seekers on compassionate or humanitarian grounds. On 1 April 2003, Exceptional Leave was replaced by two different forms of status, Humanitarian Protection and Discretionary Leave. These various categories of leave may be granted for a limited period of time or indefinitely. Individuals granted such leave may stay and work here as long as this leave remains valid.

Asylum seekers who have been granted limited leave to enter or remain in the UK may be able to demonstrate their eligibility to work by showing a single document, or a combination of the following documents from **List B**:

These can be:

- 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.
- A Biometric Immigration Document issued by the Border and Immigration 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.

- An Immigration Status Document issued by the Home Office or the Border and Immigration 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 permanent National Insurance (NI) number and their name issued by a Government agency or a previous employer.
- A letter issued by the Home Office or the Border and Immigration 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 permanent NI number and their name issued by a Government agency or a previous employer.

Asylum seekers who have been granted indefinite leave to enter or remain in the UK (which means that they have no time limit on their stay in the UK) may be able to produce documents from List A. Once they can produce a List A document, an employer who checks this document will have an excuse for the remainder of that person's employment. These can be:

- A Biometric Immigration Document issued by the Border and Immigration Agency to the holder which indicates 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.
- A passport or other travel document endorsed to show that the holder is allowed to stay indefinitely in the United Kingdom, has the right of abode, or has no time limit on their stay in the United Kingdom.
- An Immigration Status Document issued by the Home Office or the Border and

Immigration 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 permanent NI number and their name issued by a Government agency or a previous employer.

- A letter issued by the Home Office or the Border and Immigration 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 permanent NI number and their name issued by a Government agency or a previous employer.

There may be asylum seekers who have been awarded leave to enter or remain in the UK, but require a NI number to complete their combination of documents to demonstrate their eligibility to work in the UK. However, the Government has introduced a scheme which gives asylum applicants the opportunity to complete the NI number application form at their asylum interview.

If the applicant is subsequently granted leave to enter or remain, they will automatically be allocated a NI number by the Department for Work and Pensions. This negates the need for applicants granted leave to subsequently complete a separate Evidence of Identity Interview and ensures that they receive documentation confirming their status and NI number simultaneously.

If the individual does not complete the application form at their asylum interview for any reason, they can apply for one at their nearest Jobcentre Plus, via: **www.jobcentreplus.gov.uk** following their grant of status.

Q41 Are failed asylum seekers allowed to work pending other applications or removal from the UK?

- A. It is not the Border and Immigration Agency's policy to allow failed asylum seekers to work. Failed asylum seekers are not entitled to work in the UK once their appeal rights are exhausted unless they have been granted leave to remain in the UK in a capacity that permits them to undertake the work in the UK. If an asylum seeker had obtained permission to work through the employment concession and then he or she exhausted their appeal rights, but continued to work, then they would not be working legally in the UK unless they otherwise have been granted leave that permits them to undertake the work in the UK. Even if an individual continued to hold an ARC that was endorsed with 'employment permitted' this would not render any employment that he or she undertook in the UK as legal.

The "Work Permitted" ARC must be verified by the Border and Immigration Agency Employer Checking Service to ensure that the asylum seeker has an outstanding claim and is entitled to work for an employer to have an excuse. The follow up checks must be repeated within a 12 month period in order for the excuse to be retained. Details of the Employer Checking Service are on page 13 or through the Border and Immigration Agency website via:
www.bia.homeoffice.gov.uk/employers/employersupport

EMPLOYING EUROPEAN ECONOMIC AREA WORKERS

Q42 Do A8 nationals who are agency and/or temporary workers need to register on the Worker Registration Scheme (WRS)?

- A. A8 workers who are employed on a short-term or temporary basis by agencies or labour providers should, unless they are exempt,

register with the Border and Immigration Agency within one month of starting work for the agency. They should register as soon as they start work and, for the purposes of registration, the agency or labour provider will be the employer if it pays the worker's wages.

Further details and guidance for labour providers and temporary workers are available from the Border and Immigration Agency website and information on the WRS can also be downloaded.

Q43 Can I accept an identity card from any EEA member state in order to have an excuse against liability to pay a civil penalty?

- A. If your prospective employee presents you with an identity card, you must check that this describes the holder as a national or citizen of the relevant EEA country. Some EEA countries issue identity cards to individuals who are resident in their country, but who are not nationals. These individuals will usually have cards which make it clear that they are not nationals of the EEA country concerned, and these will not demonstrate a person's entitlement to work, or give you an excuse against liability to pay a civil penalty.

If you have any doubts about whether an identity card allows the holder to work or rightfully belongs to your prospective employee, you should ask that person to produce their national passport. If you still have doubts about whether that person is permitted to work in the UK, having carried out all the steps on pages 8-10, then you are entitled to refuse employment to that person until they can appropriately demonstrate their entitlement.

Further information about documents from EU countries, Iceland and Norway are available from the Council of the European Union website via:
www.consilium.europa.eu/prado/

Q44 Can I have an excuse against liability to pay a civil penalty by accepting an EEA/UK/Swiss passport which has expired?

- A. The Border and Immigration Agency's guidance is that EEA documents, such as passports, produced to employers should be current (as opposed to being expired). However, if the holder is unable to produce a current EEA document then you can accept an out-of-date UK British passport, or out-of-date EEA/Swiss passport, provided you, have carried out the reasonable checks set out on pages 8-10 and are satisfied that the offered original document is valid, genuine and rightfully belongs to the applicant. The employer should take particular care with regard to the document's photograph (which may be rather old) when comparing it with the visible appearance of the prospective employee.

Q45 Is the UKRP the same as the Registration Certificate issued to EEA nationals?

- A. No. The two documents are different. A UK Residence Permit is an endorsement in the form of a vignette, visa, or sticker, usually placed in a passport issued to non-EEA nationals who have been granted leave to enter or remain in the UK for longer than six months under the Immigration Rules. An EEA Registration Certificate is a free standing document issued only to EEA and Swiss nationals by the Border and Immigration Agency to confirm their residence in the United Kingdom under European law.

Q46 What is a residence card?

- A. Residence cards are issued to family members of EEA nationals who are not themselves EEA nationals. They confirm the holder's rights of residence under European law on the basis of their relationship with the EEA national. The holder of such a residence card can work in the UK without restriction. Residence cards take the form of a vignette endorsement placed in the non-EEA national's passport or on an Immigration Status Document where one is not available. The residence card is issued with a validity of 5 years.

Q47 Can a non-EEA national who was formerly a family member of an EEA national maintain their entitlement to work in the UK?

- A. When a non-EEA national ceases to be the family member of an EEA national, for example, due to the grant of a divorce absolute, they would generally cease to have a right of residence in the UK under EU law. As a non-EEA national family member gains their right of residence and access to the labour market through residing with their EEA family member in the UK, then when this relationship ceases, they would no longer have a right to work in the UK unless they have a work entitlement in their own right such as when they have retained a right of residence under European law. This could be based on circumstances such as where the non-EEA national was the principal carer of any children from the relationship. Such a non-EEA national would have a continued right of residence on this basis.

Q48 What is a Certificate of Application?

- A. Family members of nationals from EEA countries and Switzerland may apply for residence documents, such as a residence card, which may demonstrate their entitlement to work in the UK. However, under European legislation, many are also entitled to engage in employment whilst these applications are under consideration, and before residence documents have been issued by the Border and Immigration Agency. The Border and Immigration Agency will provide such applicants with a letter of acknowledgment, which is the Certificate of Application.

To verify the entitlement of the holder to work in the UK and to have an excuse, you should contact the Employer Checking Service in respect of any prospective employee who produces a Certificate of Application to demonstrate an entitlement to work for you. The Certificate of Application will only establish an excuse when checked if it has been

verified by the Employer Checking Service as permitting work in the UK and is less than six months old. As it is a List B document, you must repeat this check within 12 months to have the excuse. Details of the Employer Checking Service are on page 13 or through the Border and Immigration Agency website at: www.bia.homeoffice.gov.uk/employingmigrants

EMPLOYING STUDENTS

Q49 Are non-European Economic Area students allowed to work in the UK?

- A. Students from outside the EEA who are over the age of 16 are permitted to take some employment in the UK, providing their conditions of entry to the UK allow this. Those studying here who have entered the UK as ‘student visitors’ are not allowed to work.

There are strict conditions on the type of work they can take while they are studying in the UK. You can employ a student:

- for up to **20 hours per week only** during term time. (The only exception to this is where a student may have been placed with you to meet the definition of their sandwich course or internship); **or**
- full-time only outside of their term time; **and**
- they must still have valid leave.

A student from outside of the EEA **must not:**

- engage in business; **or**
- engage in self-employment; **or**
- provide services as a professional sportsperson or entertainer; **or**
- pursue a career by filling a permanent full-time vacancy.

The Government recognises that on some occasions it may be difficult for employers to verify an applicant’s student status or otherwise. You should remember that the onus remains on the student, as it does for all of your prospective employees, to demonstrate that they are able to work for you legally.

You are entitled to request extra documents to reassure yourself that the person in front of you is a student. This could include an authorised letter from their place of study confirming their status.

Q50 Students from outside the EEA can work for 20 hours per week during term time. How do you define term-time?

- A. Students should be able to provide evidence of the term dates for their course if required. However, there may be periods of time where a student is not expected to attend classes, but when they should be spending their time studying, writing a dissertation, or preparing for exams as part of their course. They should not be working full-time during this period.

Q51 How does the 20-hour rule affect non-EEA postgraduate students?

- A. Postgraduates do not follow the normal pattern of students, and it is accepted that their course may involve research work as part of their course requirements. However, researchers who are specifically **employed** by an institute will require a work permit, whereas junior Research Fellows in receipt of scholarships are essentially treated as students and are subject to restrictions on the hours that they can work.

Q52 What about work placements for non-EEA students as part of their course?

- A. There are sandwich courses for degree level students, which are courses that include a clearly defined work placement and are approved by the academic institution providing the course. Students subject to conditions restricting

employment will be allowed to follow a sandwich course provided that:

- the course leads to a degree or to a qualification awarded by a nationally recognised examining body; **and**
- the work placement does not extend beyond the end of their course.

There may also be opportunities for an internship - a short period of paid work, which an employer may offer a job applicant. The internship may be offered to a student on a first or higher degree course in the UK, even if the prospective permanent employment is outside the UK. A student who is subject to conditions restricting employment will be allowed to undertake an internship provided that they satisfy all of the following conditions:

- the student has not previously undertaken an internship with the employer;
- the internship is for no longer than three months;
- it is an established part of the employer's recruitment procedure;
- it offers pay and conditions comparable to those for a 'resident worker' doing the same work; **and**
- it is completed within their current period of leave as a student.

Q53 Can a non-EEA student with valid leave to enter or remain in the UK defer his/her studies?

- A. Students who have enrolled on a course may sometimes defer the start, or a subsequent part of a course. This may happen for a variety of reasons outside the control of the student, for example, compelling personal circumstances (e.g. an illness or an accident), or as a result of a decision made by the institution which they

are attending. In all cases, you should retain documentary evidence of the circumstances, and the application should also be supported by the institution.

If an individual has been granted leave to remain as a student, then they must apply to have their leave varied if they are to remain in the UK for a different purpose.

VOLUNTARY ACTIVITY

Q54 Can asylum seekers volunteer their services?

- A. Asylum seekers are allowed to volunteer, as long as they are carrying out the work on behalf of a registered charity, voluntary organisation or body that raises funds for either. Any voluntary activity undertaken should not amount to either employment, or job substitution.

Q55 Can I be liable for payment of a civil penalty if I am found to be providing voluntary work to someone without permission to work in the UK?

- A. As an employer, you place yourself at risk of incurring a civil penalty if you employ a person aged 16 or over who is subject to immigration control and who has no permission to work in the UK, or who works for you in breach of their conditions of stay in the UK.

The Immigration Rules prevent certain categories of entrant from engaging in voluntary work or voluntary activity, such as visitors and au pairs. However, the legal distinction between an employee and a volunteer can be quite complex and there are huge differences between the types of voluntary work or voluntary activity that people can be engaged in. The Border and Immigration Agency would not wish to give advice which might lay voluntary organisations open to prosecution for employing people illegally. Therefore, the Border and Immigration Agency strongly recommends that organisations seek independent legal advice for their specific volunteering activity.

Q56 What is the difference between ‘volunteering’ and ‘unpaid work’? For example, if a posting entitles a participant to observe what happens in a clinical setting in the UK, does this contravene the ‘no work’ endorsement stamp in their passport?

- A. Voluntary activity should not amount to either employment, or job substitution. There is a fundamental difference in the nature of the activity itself and the specific exclusion of work (whether it is paid or unpaid) as defined in the individual passport, should not include voluntary activity where it is clearly undertaken as such. Our guidelines for volunteers are:
- there should be no payment, other than reasonable travel and meals expenditure actually incurred (not an allowance for the same);
 - there should be no contractual obligations on the volunteer;
 - the volunteer is providing a service for a registered voluntary or charitable organisation (or organisation that raises funds for either);
 - the service is not a substitute for employment (i.e. fulfilling a role that a salaried worker would normally fulfil).

Q57 Are failed asylum seekers allowed to volunteer pending removal or other applications?

- A. The Border and Immigration Agency encourages volunteering for those asylum seekers who are legally residing in the UK, as this can provide asylum seekers with a purposeful activity and an opportunity to participate in the community whilst awaiting the outcome of their asylum claim. However, on the grounds that a failed asylum seeker should not be in the United Kingdom at all, he or she should not be volunteering following a final decision on their claim, or if they have exhausted all their appeal rights. Although there

is no specific legal power to prevent a failed asylum seeker from volunteering, the normal course of action should be for the Border and Immigration Agency to issue removal directions and to discourage further voluntary activity.

Q58 Can anyone at the end of the immigration application process volunteer?

- A. It is accepted that foreign nationals who are in the UK may wish to volunteer during their time here, but may have restrictions on their entitlements/immigration status. We distinguish between unpaid work and volunteering and we maintain that there is a fundamental difference in the nature of the activity itself, although this exclusion should not include voluntary activity where it is **clearly** undertaken as such. However, those individuals who no longer have leave to remain in the UK, for example, those who have overstayed their granted leave or exhausted their appeal rights, should not still be in the country or volunteering.

FURTHER QUESTIONS

Q59 I am currently employing someone under the Working Holiday Maker scheme. How can I apply for permission to employ them after their visa expires?

- A. One of the conditions of the application for Working Holidaymaker scheme is that the individual must plan to leave the UK at the end of his or her stay. There is no provision for an extension of stay as a Working Holidaymaker to be granted beyond the validity of the visa on which they entered the United Kingdom. However, the individual may be eligible to switch into work permit employment (after 12 months) in the UK, but this would only be if his occupation is on the list of designated shortage occupations. Working Holidaymakers may currently also switch into Innovators and the Highly Skilled Migrant Programme (HSMP) at any time during their stay in the UK. In all cases, the application for the new visa should be made before the old visa expires.

Q60 Isn't the Border and Immigration Agency discriminating against those British citizens who have, or are in the process of gender transitioning? The introduction of the requirement to show a combination of the National Insurance number and a birth certificate may cause problems for a person in this situation.

- A. The Border and Immigration Agency accepts that the presentation of a National Insurance number and a second document, such as a birth certificate, may present problems for an individual who is undergoing, or who has completed the process of gender transitioning. However, it is possible for a UK national to obtain a UK passport with their new identity, and when checked this single document will provide your excuse.

To apply for the passport, the individual would need to send their birth certificate and a Change of Name Deed or Statutory Declaration regarding their change of name to the Identity and Passport Service. Where the individual is in the process of gender transitioning, they would also need a letter from their doctor/consultant confirming they had lived in their chosen gender and that the change is likely to be permanent. Where the operation has already taken place, written confirmation would be required that the person has had the operation and that the change is permanent.

All cases would then be considered individually. Where the application is successful, the passport would then be issued for their new identity.

THE POINTS BASED SYSTEM

Q61 When did the Points-Based System open?

- A. The Points-Based System (PBS) began to roll out on 29 February 2008. From that date, migrants who were already in the UK were able to apply under the Highly Skilled Tier of the PBS, which does not require a sponsor.

Also from 29 February, organisations were able to apply for a Sponsor Licence to engage **Skilled Workers** and **Intra-Company Transferees** under Tier 2 of the PBS.

Prospective sponsors wishing to engage migrants in other parts of the PBS (including students) will be able to apply for a licence at a later date, which we will announce in due course.

Tier 2 itself will open in Autumn 2008, which is when sponsors will first be able to use their sponsor licences to bring workers to the UK.

Q62 What is sponsorship under the Points-Based System?

- A. The Government began introducing an Australian-Style Points-Based System (PBS) to control migration by people wishing to work or study here on 29 February 2008.

Crucial to the new system is sponsorship. Other than in the highly-skilled Tier of PBS, known as Tier 1, all migrants wishing to come here under PBS need a sponsor, i.e. a reputable employer or college in the UK which wishes to take them on.

In order to become a sponsor, the employer or college needs a licence from the Border and Immigration Agency. In order to get one, it needs to show, among other things, that it is a trustworthy organisation and that it is willing and able to perform the duties that will be required of it if it is given a licence. These duties include informing us if migrants do not turn up for their job or course, or if they break their immigration conditions or go missing. All sponsors are rated "A" or "B," depending on their track-record in employing or teaching migrants. B-rated sponsors have to comply with a time-limited action plan, which will set out the steps they must take in order to gain an A-rating. If they do not comply with it, they will be likely to lose their licence altogether.

APPENDIX B

EMPLOYING NATIONALS FROM THE EUROPEAN ECONOMIC AREA

Nationals from European Economic Area (EEA) countries and Switzerland can enter the UK without any restrictions. You should not, however, employ any individual on the basis of his or her claim to be a national from an EEA country. You should also be aware that not all EEA nationals can work in the UK without restrictions. These are dealt with in more detail below.

You should require nationals from all EEA countries and Switzerland to produce an official document showing their nationality and check this document to have the excuse. This will usually be either a national passport or national identity card. Some nationals from EEA countries and Switzerland may also be able to produce a residence permit issued by the Border and Immigration Agency which confirms their right to reside and work here. All of these documents are included in **List A** and will provide you with an excuse against liability for a civil penalty if checked and copied.

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 *	UK*

Nationals from these EEA countries can enter and work freely in the UK without restriction. Their immediate family members are also able to work freely in the UK while their adult EEA family member is legally residing and working here. However, you should still check their documents to demonstrate this entitlement. Those countries marked with a star are also members of the European Union.

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 seek work here. In 2004, the Government established a Worker Registration Scheme 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

Workers from these countries are often referred to as 'Accession State workers.' These countries are referred to as 'A8 countries' throughout the remainder of this guidance and workers from these countries are referred to as 'A8 workers'.

Although employers are not legally required to conduct these checks, we recommend that you make sure that a person from one of the A8 countries who starts working for you registers with the Border and Immigration Agency within one month of starting work, unless they are exempt from the requirement to do so.

The Border and Immigration Agency will issue the following documents to show that the person has been registered on the WRS.



WHO IS EXEMPT FROM REGISTERING ON THE WORKER REGISTRATION SCHEME (WRS)?

Some A8 workers will be exempt from the requirement to register. You should ask these workers to provide you with documentary evidence of their exemption.

Checking and recording one of the documents listed below will not only provide a defence from conviction for employing an unregistered A8 worker under *The Accession (Immigration and Worker Registration) Regulations 2004*, but it will also provide an ongoing excuse for your worker under section 15.

You should check for one of the following documents:

- a Registration Certificate issued by the Home Office confirming the holder is an EEA or Swiss national; **or**
- a national passport or travel document containing an endorsement which states that the holder is also a dual national of the UK, Switzerland or one of the EEA countries (other than the relevant accession states); **or**
- a national passport or travel document containing a valid endorsement which states that the holder is a family member of an EEA or Swiss national (unless the family member is also an accession worker subject to worker registration); **or**
- a national passport or travel document containing a valid endorsement which shows that the holder has indefinite or limited leave to enter or remain in the UK, with no immigration restrictions on employment.

You should check, copy and retain a copy of one of these documents if your worker is exempt from the registration scheme to have an excuse under section 15.

The following categories are also exempted from registering:

- A8 nationals here on a self-employed basis (for the purpose of the Worker Registration Scheme, you will employ an A8 worker if you directly pay their wages); **and**
- A8 nationals who have been employed legally without interruption in the UK for 12 months. Any periods of unemployment within those 12 months do not exceed 30 days in total.

Those who have worked legally in the UK for more than 12 months can demonstrate this by showing official documents such as their work permit, or previous registration certificates. These can be copied as evidence of the prospective employee's exemption.

WHAT ABOUT AGENCY AND TEMPORARY WORKERS?

A8 workers who are employed on a short-term or temporary basis by agencies or labour providers should also, unless they are exempt, register with the Home Office within one month of starting work for the agency. They should register within one month starting work and, for the purposes of registration, the agency or labour provider will be the employer if it pays the worker's wages.

Further details and guidance for labour providers and temporary workers is available from:

www.bia.homeoffice.gov.uk/workingintheuk

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 will be referred to as 'A2 countries' throughout the remainder of this guidance and workers from these countries will be referred to as 'A2 workers'.

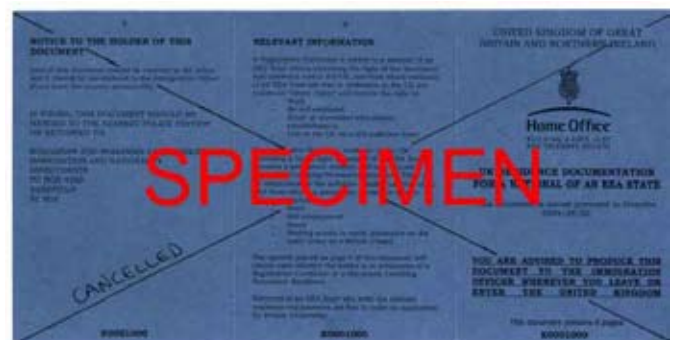
A2 workers are free to come to the UK, but unless exempt, they will be subject to worker authorisation. This means that they are only able to work in the UK if they hold a valid accession worker authorisation document or if they are exempt from authorisation.

WHO IS EXEMPT FROM THE A2 AUTHORISATION REQUIREMENTS?

Some A2 workers are exempt from the requirement to obtain a work authorisation document. These people may have leave to remain that was obtained before 1 January 2007 and that gives them permission to undertake the work in question. They will be able to obtain a registration certificate confirming their status after 1 January 2007, if required.

There will be others who have arrived, or applied for work, after 1 January 2007 who automatically have entitlement to work in the UK and are exempt from authorisation. You should require these workers to provide you with documentary evidence of their exemption. By checking and recording one of the documents or endorsements listed below, you will not only establish a defence from conviction for employing an unauthorised A2 worker, but it will also provide an excuse in relation to that worker under section 15:

- those with permission to work by means of a work permit or leave to remain giving permission to work in the United Kingdom before the date of Accession; **or**
- a national passport or travel document containing a valid endorsement which states that the holder is a family member of an EEA or Swiss national; **or**
- those who are highly skilled and are in possession of a registration certificate confirming that they have unrestricted access to the labour market. Those falling into this category will be those who meet the existing criteria for admission under the Highly Skilled Migrants Programme, the International Graduate Scheme (this replaced the Science and Engineering Graduates Scheme from 7 May 2007) and the Scottish Graduates Scheme; **or**
- students that intend to work less than 20 hours a week during term-time and are in possession of a yellow registration certificate confirming that he or she has this restricted permission to take employment; **or**



- any Bulgarian or Romanian national who has been given permission to work, and has worked under that permission legally on a continuous basis of twelve months, obtains full movement rights as a worker under EU law. They are then exempt from a requirement to obtain a worker authorisation document; **or**
- a national passport or travel document containing an endorsement which states that the holder is also a dual national of the UK, Switzerland or one of the EEA countries other than Bulgaria or Romania; **or**

- a national passport or travel document containing a valid endorsement which shows that the holder has Indefinite or Exceptional Leave to Enter or Remain in the UK, or has been granted Limited Leave to Enter or Remain with no immigration restrictions on employment; **or**
- a national passport or travel document containing a valid endorsement which shows that the holder has Leave to Enter or Remain in the UK, or has been granted Limited Leave to Enter or Remain with specified restrictions on employment which are being observed; **or**
- A2 nationals who are highly skilled and hold a valid registration certificate that includes a statement that he or she has unconditional access to the UK labour market; **or**
- A2 nationals on the Seasonal Agricultural Workers Scheme (SAWS) will be issued with a SAWS card; **or**

- A2 nationals here on a self-employed basis (for the purpose of authorising workers, you will employ an A2 worker if you directly pay their wages); **or**
- A2 nationals posted here on a temporary basis, but only when working for the company that they are posted to; **or**

- A2 nationals who have been employed without interruption in the UK legally for 12 months before 31 December 2006 and had been working without interruption throughout the period of 12 months leading up to that date (this includes any periods of unemployment within those 12 months that do not exceed 30 days in total); **or**
- A2 nationals who are employed without interruption in the UK legally for 12 months on, or after 31 December 2006, will be exempt at the end of that period (this includes any periods of unemployment within those 12 months that do not exceed 30 days in total).

Those who have worked legally in the UK for more than 12 months can demonstrate this by presenting official documents such as their work permit, or previous authorisation certificates. These can be copied as evidence of the prospective employee's exemption.

WHAT SHOULD I DO IF I WANT TO EMPLOY AN A8 OR A2 WORKER?

When you take on a **new worker** from one of the ten countries above, you should:

1. ESTABLISH AN EXCUSE

Check that the worker is a national from one of these ten countries, so you do not risk liability to pay a civil penalty under section 15 of the 2006 Act. You can do this by them producing their EEA national passport or national identity card and then follow the steps on pages 8-10.

2. ENSURE THAT YOUR PROSPECTIVE A2 EMPLOYEE IS AUTHORISED

An A2 worker will require authorisation **before** they begin working for you, unless they are exempt. A worker authorisation document for an A2 worker provides you with evidence of authorisation from the Border and Immigration Agency that the holder is entitled to work in the UK and whether they are subject to any work conditions. The authorisation will be in the form of a card or a certificate, which will set

out any conditions on their employment. Where the A2 worker is not subject to the worker authorisation, they may be issued with a registration certificate that states they have unconditional access to the UK labour market, or may be able to demonstrate their exempt status by other means.

To establish a defence against prosecution under the Accession (Immigration and Worker Authorisation) Regulations 2006, you should take a copy of the relevant worker authorisation document **before** the A2 worker starts working for you. You should otherwise take copies of documents that establish that the person is exempt from authorisation.

3. ADVISE YOUR A8 EMPLOYEE TO REGISTER AND RETAIN YOUR COPY OF THE APPLICATION FORM AND REGISTRATION CERTIFICATE

Unlike an A2 worker, an A8 worker may start work for you without registering first, but your A8 employee should apply to register with the Border and Immigration Agency within one month of starting their employment. To do this, you will need to provide evidence of their employment (a contract or letter). You should then take a copy of the completed application form before your worker sends this to the Border and Immigration Agency. You should keep this copy until you receive notification from the Border and Immigration Agency that your worker has been registered. Once the worker has successfully registered, the Border and Immigration Agency will send you a copy of the registration certificate confirming this. You should retain the copy sent to you.

WHAT HAPPENS IF I EMPLOY AN UNAUTHORISED OR UNREGISTERED EEA WORKER?

An employer who employs any non-exempt A2 workers without authorisation may be liable to prosecution under *The Accession (Immigration and Worker Authorisation) Regulations 2006*. On conviction, the employer may be liable for a fine of up to £5,000. If the fine is not paid, the Border and Immigration Agency may pursue any unpaid fines through the courts.

If you continue to employ a non-exempt unregistered national from one of the A8 countries for more than one month without retaining a copy of their application form or their certificate of registration, you may commit a criminal offence under *The Accession (Immigration and Worker Registration) Regulations 2004*. The maximum penalty on conviction is £5,000. Similarly, if the Border and Immigration Agency notifies you that your employee's application has been refused and you continue to employ that person, you may also commit an offence.

APPENDIX C

GUIDE TO UK GOVERNMENT IMMIGRATION STAMPS AND ENDORSEMENTS

This appendix provides you with comprehensive details of the immigration stamps and endorsements that the UK Government places in a person's passport or travel document when they are from outside the European Economic Area (EEA). It will help you to understand what you need to check to ensure that the person in question is permitted to do the type of work you are offering.

If you need further assistance when presented with any of the immigration stamps or endorsements, then you should call the Employers' Helpline for further advice on **0845 010 6677**. An operator will provide you with advice about whether a stamp or endorsement permits the holder to take the employment you are offering. You should also consult the following website for further updates: **www.bia.homeoffice.gov.uk/employingmigrants**

Immigration Officers working at ports of entry continue to use a variety of wet ink endorsements, examples of which are provided in this section.

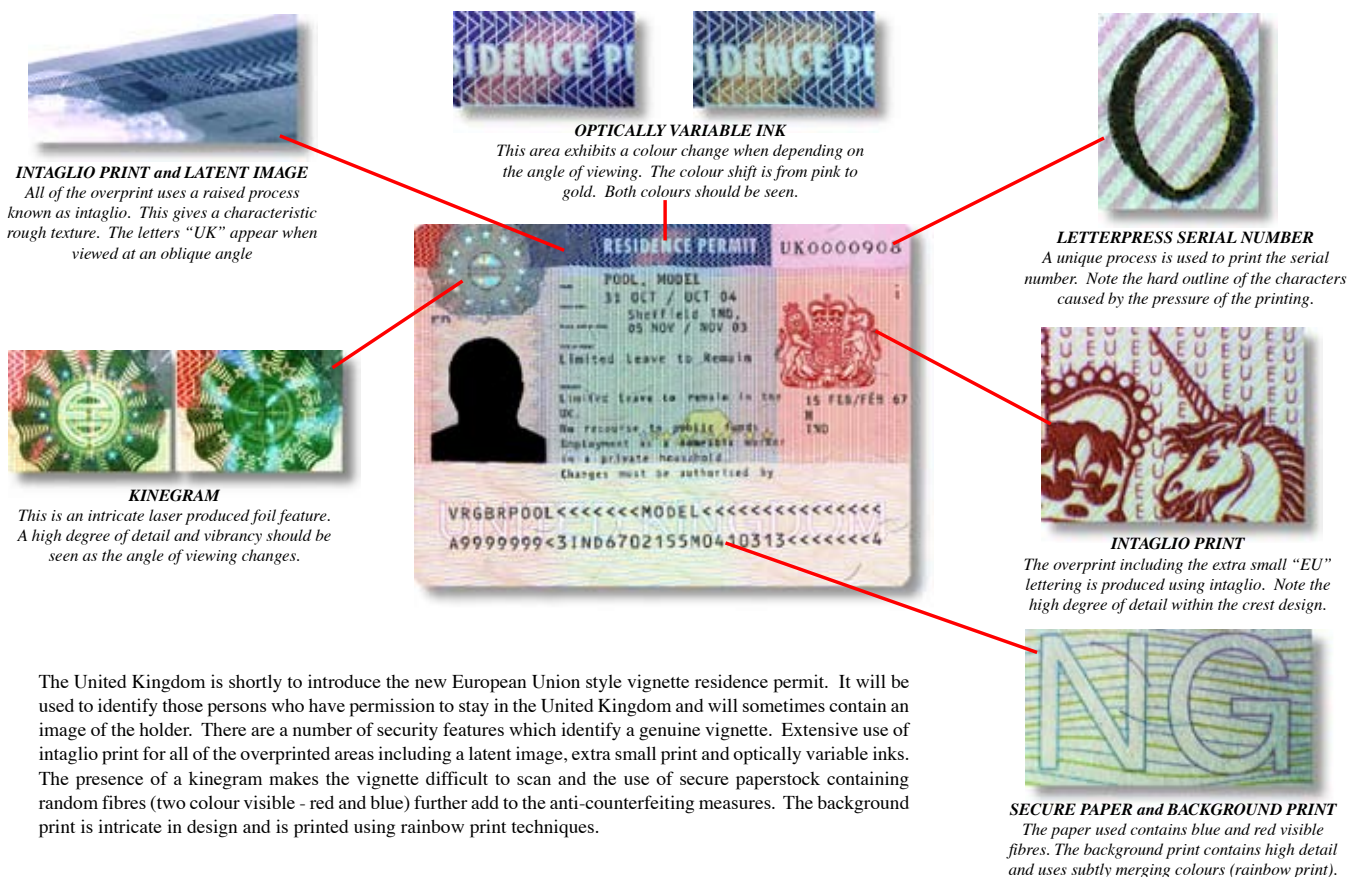
UNITED KINGDOM RESIDENCE PERMIT

The United Kingdom Residence Permit (UKRP) is a form of endorsement introduced by the Home Office in 2003. It is used to endorse passports and other travel documents belonging to nationals from outside the EEA, and is also placed on Home Office Immigration Status Documents to show that a person has been granted leave to enter or remain in the United Kingdom. The UKRP has now replaced all of the Home Office ink stamps which are shown later in this section and which state 'Leave to Remain', but you may still be presented with older documents with valid ink stamps.

The UKRP is issued to those nationals who intend to stay here for longer than six months. It is not issued to any non-EEA nationals who are required to obtain a visa or entry clearance (see page 75) to enter the United Kingdom before they travel here.

The UKRP contains a number of security features which are highlighted overleaf to help you recognise and identify what they look like.

United Kingdom Residence Permit - Security Features



The United Kingdom is shortly to introduce the new European Union style vignette residence permit. It will be used to identify those persons who have permission to stay in the United Kingdom and will sometimes contain an image of the holder. There are a number of security features which identify a genuine vignette. Extensive use of intaglio print for all of the overprinted areas including a latent image, extra small print and optically variable inks. The presence of a kinegram makes the vignette difficult to scan and the use of secure paperstock containing random fibres (two colour visible - red and blue) further add to the anti-counterfeiting measures. The background print is intricate in design and is printed using rainbow print techniques.

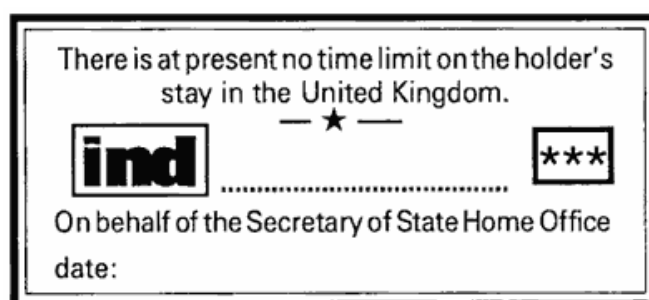
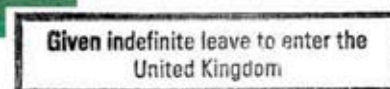
INDEFINITE LEAVE TO ENTER OR REMAIN, EXEMPTION FROM IMMIGRATION CONTROL, OR NO TIME LIMIT ON A PERSON'S STAY IN THE UNITED KINGDOM

Any individual who is granted indefinite leave to enter or remain in the UK, who is exempted from immigration control, or who has no time limit on their stay here may stay and work in the UK as long as they like. There are no immigration restrictions placed on the type of job you may offer them.

The Home Office began endorsing passports, or Immigration Status Documents with the UKRP from December 2003 to demonstrate that the holder has indefinite leave to enter or remain here (see below).



You may also see the following endorsements which demonstrate that a person has this status. These endorsements are being phased out, but when checked will still provide you with an excuse if they are presented to you in a valid passport by the holder.



The holders of travel documents who have been granted indefinite leave to enter or remain here may have a printed endorsement in their travel document stating: *'There is no time limit on the holder's stay in the United Kingdom.'*

Those asylum seekers who have been awarded refugee status or leave to stay here under a form of temporary protection, will not usually possess a national passport endorsed with leave to enter or remain in the UK.

In certain circumstances, they are able to apply to the Home Office for a travel document. Examples of the three Home Office travel documents are pictured below.



EXCEPTIONAL LEAVE TO ENTER OR REMAIN, DISCRETIONARY LEAVE OR HUMANITARIAN PROTECTION

A person who has been granted Exceptional Leave, Discretionary Leave or Humanitarian Protection by the Home Office may have limited leave to enter or remain here. You will be able to employ a person with limited leave if the date shown on their endorsement or stamp has not time expired. You should still undertake the appropriate document checks to have the excuse.

There are no restrictions placed on the type of work you may offer them.

Leave to remain in the United Kingdom is hereby given		
Until.....		
..... on behalf of the Secretary of State Home Office		
Date.....		

Leave to enter the United Kingdom is hereby given for/until

Leave to enter for/until
No recourse to public funds

<p>Leave to remain in the United Kingdom, on condition that the holder maintains and accommodates himself and any dependants without recourse to public funds is hereby given</p> <p>until</p> <p>.....</p> <p>on behalf of the Secretary of State Home Office</p> <p>Date</p>	



Those individuals who do not possess a national passport but have Home Office-issued travel documents and who have been granted this status will have printed wording in their travel document which states: *'Holder's leave to remain in the United Kingdom was varied by the Home Office.'*

LIMITED LEAVE TO REMAIN GRANTED WITH NO IMMIGRATION RESTRICTIONS ON EMPLOYMENT

Certain qualified people and their dependants who meet the requirements of the UK immigration rules are granted leave to enter or remain here for a limited period of time without being subject to employment conditions.

You will be able to employ anyone with this status if the date shown on their passport endorsement or stamp has not time expired. There are no immigration restrictions placed on the type of work you may offer them. You should still undertake the appropriate document checks to have the excuse.

LEAVE GRANTED TO WORK PERMIT HOLDERS AND STUDENTS

If a person has been granted leave to enter or remain here as either a student or work permit holder, then you can employ them if the date shown on their passport stamp or endorsement has not time expired. They are only permitted to undertake certain types of employment in line with Immigration Rules and you may become liable to a civil penalty or commit an offence of knowingly employing an illegal migrant worker if they work for you in breach of their conditions. You should still undertake the appropriate document checks to have the excuse.



You should follow the guidelines on pages 58-59 to ensure you employ students legally. You will not be able to rely upon checking a passport endorsement alone to have an excuse for work permit holders. You are also required to copy the work permit or letter of permission issued by Work Permits UK.

LIMITED LEAVE GRANTED WITH SPECIFIC TYPES OF EMPLOYMENT

Certain workers who meet the requirements of the Immigration Rules and have been granted limited leave to enter or remain in the UK may only be able to undertake specific forms of employment during their stay here.

You can employ people in these categories only:

- while the date shown on their passport endorsement or stamp has not time expired; **and**
- according to the specific types of employment they may carry out here.

If a person is here with limitations on their stay, then the stamp or endorsement in their passport will indicate the specific employment the holder is limited to taking while in the UK.

You may become liable to a civil penalty or commit an offence of knowingly employing an illegal migrant worker if they work for you in breach of their conditions. You should still undertake the appropriate document checks to have the excuse.

<p>Leave to enter for/until</p> <p>to work as/with</p> <p>Changes must be authorised No recourse to public funds</p>	<p>Leave to remain in the United Kingdom, on condition that the holder maintains and accommodates himself and any dependants without recourse to public funds is hereby given</p> <p>until</p> <p>on behalf of the Secretary of State Home Office</p> <p>Date</p>
--	---

CHANGE OF CONDITIONS

You may also be presented with the following ink stamp, which was formerly used by Immigration Officers to transfer a person's conditions from an old passport into a new passport.

	Code
The holder has leave to enter/remain that was granted on by and expires on	

If someone presents this ink stamp to you in their passport, you should require them to produce their previous passport containing their previous leave so you can be sure that they are permitted to take the employment you are offering. You may become liable to a civil penalty or commit an offence of knowingly employing an illegal migrant worker if they work for you in breach of their conditions. You should still undertake the appropriate document checks to have the excuse.

VISAS/ENTRY CLEARANCE CERTIFICATES

Nationals from certain countries are required to obtain a visa or entry clearance certificate from UK embassies before they travel to the UK. A list of the countries can be found on the UK Visas website at: **www.ukvisas.gov.uk**



If a person has been issued with a valid visa or entry clearance and it has not expired, then they will not need a UKRP or any of the previously indicated ink stamps to demonstrate to you whether they can work here.

STAMPS AND ENDORSEMENTS WHICH PROHIBIT WORKING IN THE UK

Any non-EEA national who has the following endorsements in their passport is **not able to work in the UK**. You may be liable to payment of a civil penalty and may commit an offence under section 21 if you employ a person on the basis of **any** of the pictured stamps in their passports.

Leave to enter the United Kingdom on condition that the holder maintains and accommodates himself and any dependants without recourse to public funds and does not enter or change employment paid or unpaid without the consent of the Secretary of State for Employment, and does not engage in business or profession without the consent of the Secretary of State for the Home Department is hereby given for/until

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The holder is required to register at once with the police.

Leave to remain in the United Kingdom, on condition that the holder maintains and accommodates himself and any dependants without recourse to public funds, does not engage in employment paid or unpaid and does not engage in any business or profession, is hereby given	
until	
..... on behalf of the Secretary of State Home Office	
Date	

LEAVE TO ENTER FOR SIX MONTHS:
EMPLOYMENT AND RECOURSE TO
PUBLIC FUNDS PROHIBITED

IMMIGRATION OFFICER		
★	(★)	★
11 JAN 1997		
CHIEF INSPECTOR		

LEAVE TO ENTER FOR SIX MONTHS:
EMPLOYMENT AND RECOURSE TO
PUBLIC FUNDS PROHIBITED

IMMIGRATION OFFICER		
★	(****)	★
20 SEP 1996		
HEATHROW (★)		

Leave to enter for/until
.....
No recourse to public funds



APPENDIX D

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 co-operation		
			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 co-operation		
			Suggested minimum penalty of £5,000 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 co-operation		
			No penalty and a warning letter may be issued			
					Suggested minimum penalty of £2,500 per worker	

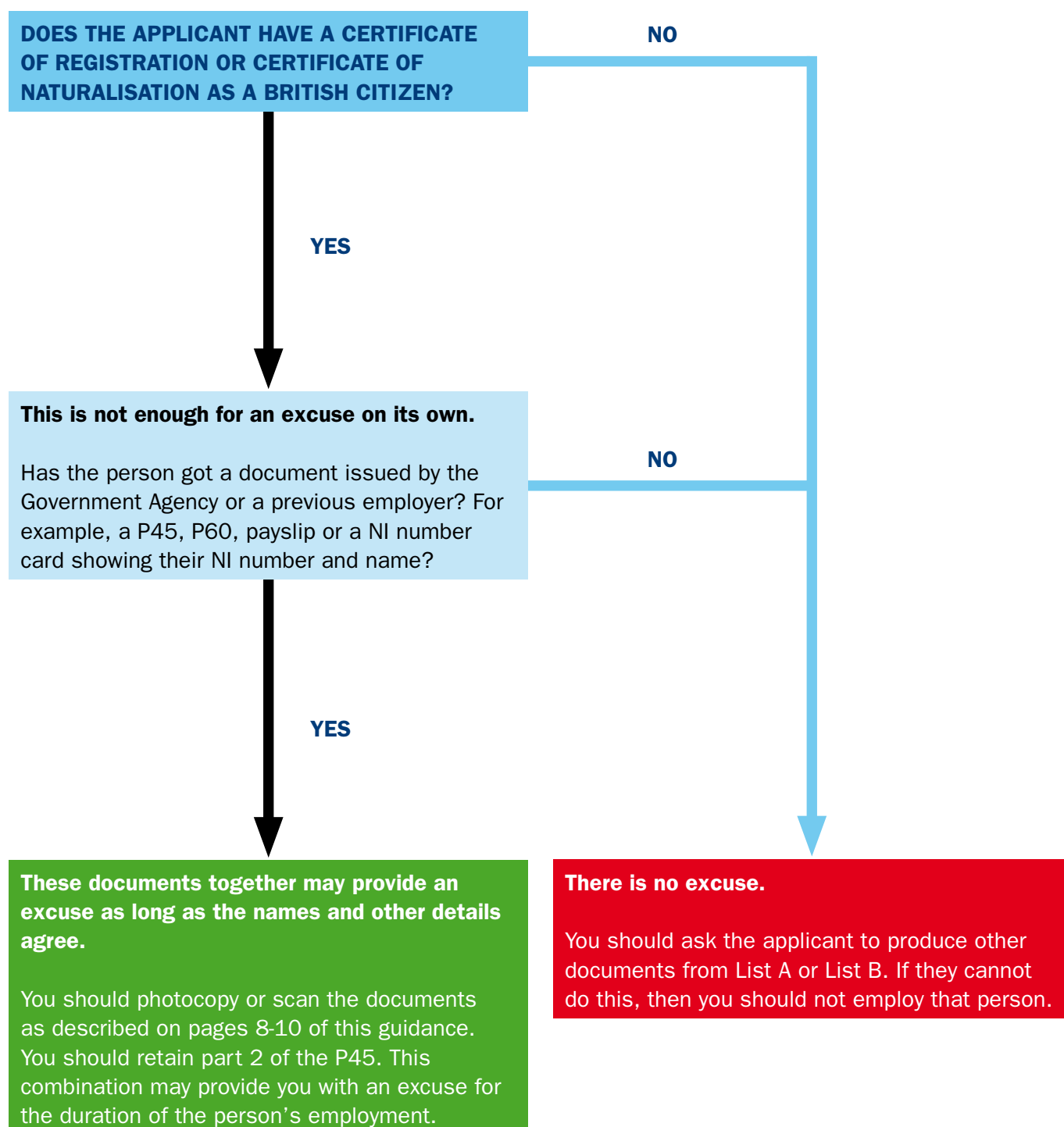
APPENDIX E

FLOWCHARTS FOR CARRYING OUT DOCUMENT CHECKS

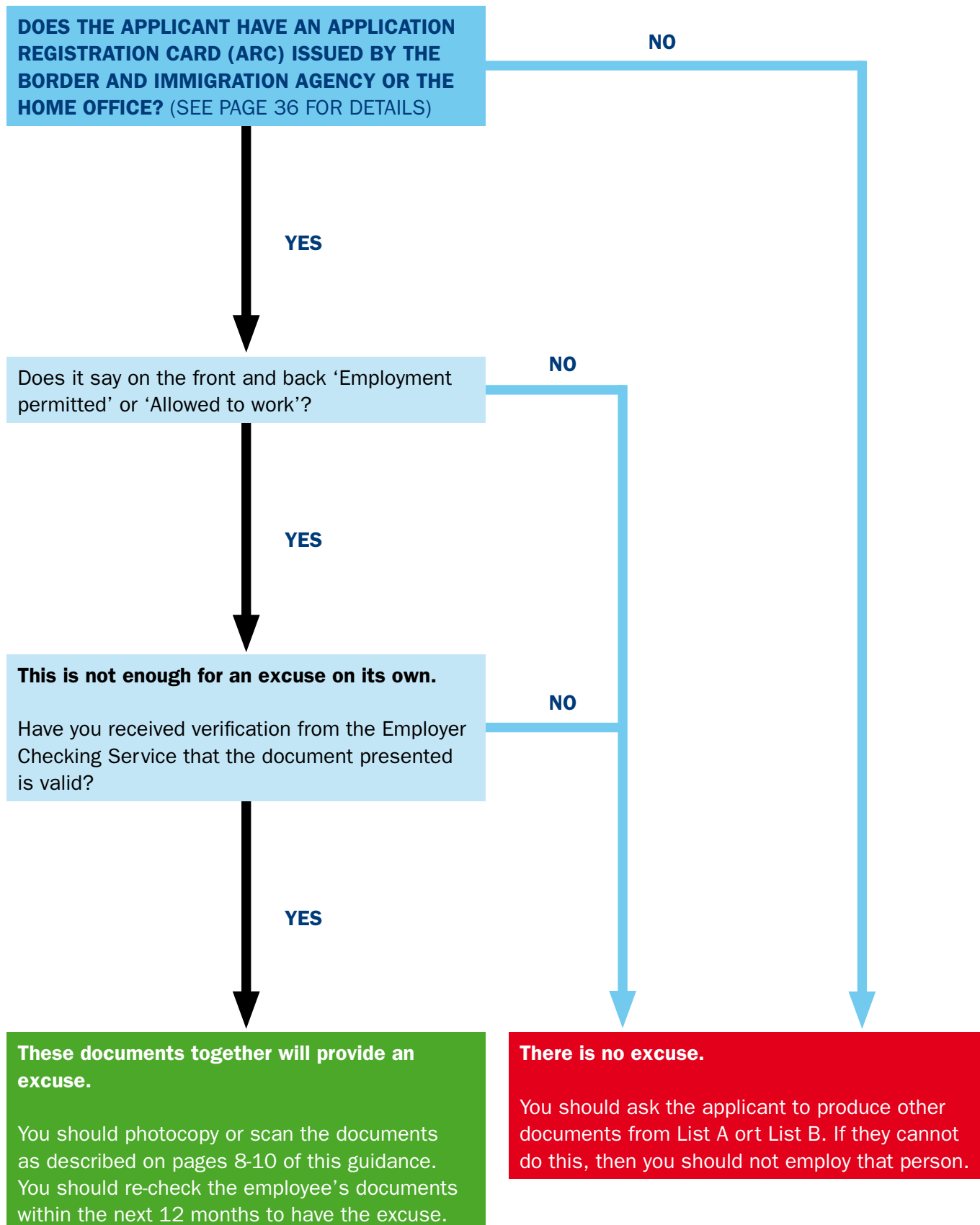
This appendix aims to provide you with some examples of documents that prospective employees may produce to you and describes the action you should take when presented with certain documents from List A and List B. The examples are not exhaustive.

Remember that you must see original documents and follow the specified steps set out on pages 8-10 to have the excuse.

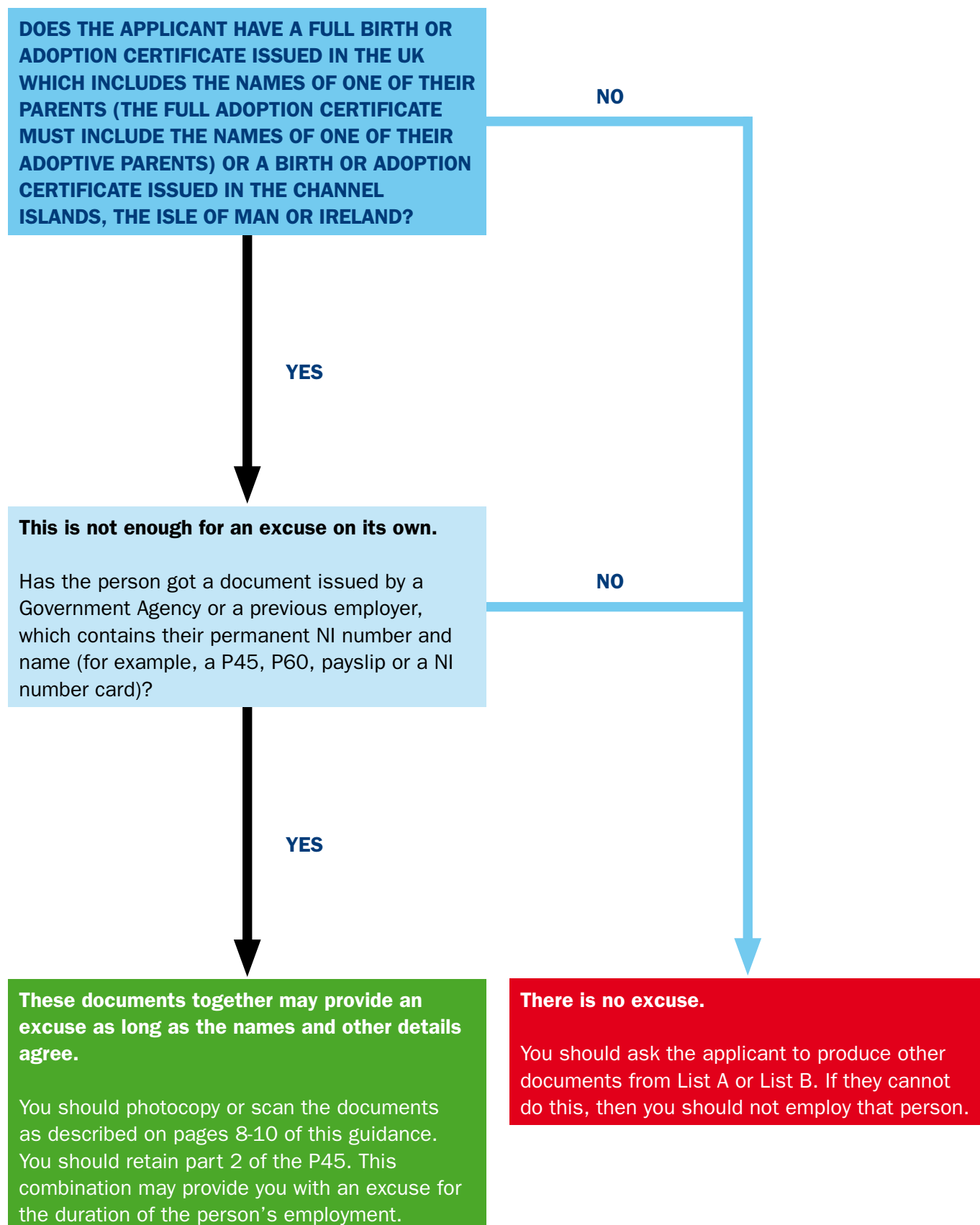
FLOWCHART FOR EMPLOYERS: REGISTRATION CERTIFICATE COMBINATION



FLOWCHART FOR EMPLOYERS: APPLICATION REGISTRATION CARD COMBINATION



FLOWCHART FOR EMPLOYERS: BIRTH OR ADOPTION CERTIFICATE COMBINATION



TERMS AND ABBREVIATIONS

A2 COUNTRIES

Romania and Bulgaria joined the European Union on 1 January 2007.

A8 COUNTRIES

Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia. These countries joined the European Union and EEA on 1 May 2004.

A2 WORKERS

Workers from the A2 countries who may be required to obtain authorisation from the Border and Immigration Agency before they begin working in the UK, from 1 January 2007.

A8 WORKERS

Workers from the A8 countries who may be required to register with the Home Office if they begin working in the UK from 1 May 2004.

ASYLUM SEEKER

An individual with an outstanding claim for asylum under the 1951 United Nations Convention relating to the Status of Refugees.

APPLICATION REGISTRATION CARD (ARC)

The Application Registration Card is currently issued by the Home Office to all new asylum seekers. It is a secure document which confirms evidence of the holder's identity.

THE BORDER AND IMMIGRATION AGENCY

The Border and Immigration Agency is part of the Home Office. It administers immigration controls, including work permit arrangements on behalf of the UK Government and also operates the Worker Registration Scheme for A8 nationals and authorisation process for A2 nationals.

DEFENCE

Section 8 provided a statutory defence from conviction for employing an illegal migrant worker, for those employees taken on between 27 January 1997 and 28 February 2008.

EXCUSE

Section 15 provides a statutory excuse from payment of a civil penalty for employing an illegal migrant worker, for those employees whose employment commenced on or after 29 February 2008.

EUROPEAN ECONOMIC AREA (EEA)

The EEA countries are the EU countries listed below, plus Iceland, Norway and Liechtenstein. Switzerland is not a member of the EEA, but since June 2002, Swiss nationals and their families benefit from similar rights to EEA nationals on freedom of movement and work.

EUROPEAN UNION (EU)

The EU countries are Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, France, Finland, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the United Kingdom.

INDEFINITE LEAVE TO ENTER/REMAIN

This is the immigration status granted by the Home Office to those foreign nationals who qualify for settlement or permanent residence in the United Kingdom. A person granted this status has no immigration restrictions placed on the work they may carry out in the UK, and no time limit on their stay.

IMMIGRATION AND NATIONALITY DIRECTORATE (IND)

A former directorate within the Home Office which had responsibility for immigration and asylum issues. This has now been replaced by the Border and Immigration Agency.

IMMIGRATION OFFICER

A civil servant with responsibility for enforcement of immigration controls, including the operation of border controls at ports in the UK.

IMMIGRATION STATUS DOCUMENT

A document which carries a UKRP endorsement where this cannot be placed in a national passport.

LEAVE

When a non-EEA national is permitted to stay in the UK, they are granted leave by the UK Government.

LEAVE TO ENTER

When the Home Office grants permission for a non-EEA national to enter the UK, this is referred to as 'leave to enter'.

LEAVE TO REMAIN

When leave is granted by the Home Office to a non-EEA national after that person has entered the UK, this is referred to as 'leave to remain'.

LIMITED LEAVE TO ENTER/REMAIN

A form of leave granted to non-EEA nationals which permits them a limited period of stay in the UK. Some nationals will be able to take employment as part of their limited leave, although immigration restrictions may be imposed on the types of work they can do during their stay here. Where the leave has not expired, this is sometimes referred to as 'current' or 'subsisting' leave.

NATIONAL INSURANCE (NI) NUMBER

A National Insurance number is a personal number issued to monitor an individual's National Insurance contributions and credited contributions. It is also used as a reference number for individuals within the social security system.

REFUGEE STATUS

Granted to those asylum seekers who are recognised by the Home Office in accordance with the criteria set out in the 1951 United Nations Convention relating to the Status of Refugees.

STANDARD ACKNOWLEDGEMENT LETTER (SAL)

A document issued by the Home Office to asylum seekers upon application for asylum. The SAL document is currently being replaced by the Application Registration Card.

UNITED KINGDOM RESIDENCE PERMIT (UKRP)

The United Kingdom Residence Permit (UKRP) is an endorsement which authorises an individual to stay in the UK. It is attached either to an individual's passport or to their Immigration Status Document.

WORKER REGISTRATION SCHEME

This is the scheme established by the Home Office to monitor the participation of A8 workers in the UK labour market.

WORK PERMITS

Work permit arrangements allow employers based in the UK to employ people from countries outside the EEA.