



Home Office

**UK Border  
Agency**

# **PREVENTION OF ILLEGAL WORKING**

Immigration, Asylum and  
Nationality Act 2006

**Summary Guidance for Employers**

2nd edition, April 2009



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## **SUMMARY GUIDANCE FOR UNITED KINGDOM EMPLOYERS ON PREVENTING ILLEGAL WORKING**

This guidance is a summary of the law. Its aim 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.

Comprehensive guidance for United Kingdom employers on preventing illegal working is also available on the UK Border Agency website at

**[www.ukba.homeoffice.gov.  
uk/sitecontent/documents/  
employersandsponsors/  
preventingillegalworking/](http://www.ukba.homeoffice.gov.uk/sitecontent/documents/employersandsponsors/preventingillegalworking/)**

The information contained in this document was correct at the time of publication, but may be subject to revision. Detailed guidance, codes of practice and other sources of support for employers wishing to employ migrant workers in the UK can be found at

**[www.ukba.homeoffice.gov.uk/  
employers/](http://www.ukba.homeoffice.gov.uk/employers/)**

# INTRODUCTION

Unless a prospective employee is a British citizen, or a national of the European Economic Area (EEA) or Switzerland, they will likely need permission to work in the UK. Whether a person can work in the UK, the type of work they are able to do and for how long will depend on their immigration status. The Government has placed working restrictions on nationals from certain countries. As an employer, it is in your interest to be aware of any conditions that may apply to your employment of a migrant worker. Information about how to sponsor a migrant worker and the different restrictions that exist including the Worker Registration Scheme and the worker authorisation requirement can be found at [www.ukba.homeoffice.gov.uk/workingintheuk/](http://www.ukba.homeoffice.gov.uk/workingintheuk/)

This guidance will help you understand what documents you must ask your prospective employees

to produce if you wish to ensure that they can work for you legally after **29 February 2008** and so that you can establish a **statutory excuse** ('the excuse') against payment of a civil penalty. It explains what steps you should take to satisfy yourself that any documents produced by a prospective employee demonstrate an entitlement to work in the UK. It also explains how employers should repeat these checks on those who have limits on their time in the UK, if they wish to retain their excuse from payment of a civil penalty.

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

has an ongoing entitlement to work in the UK, documents from **List B** indicate that the applicant or employee has restrictions on their entitlement to be in the UK.

The changes were made for three key reasons:

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

These changes do not make a major difference to the type of documents employers might have checked under the previous law. They have been drawn up so that people who do have the right to work in this country can prove this 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 are

phasing in identity cards for all foreign nationals from outside the European Economic Area (EEA) and Switzerland over the next three years. On 25 November 2008, we started to issue compulsory identity cards to certain categories of foreign nationals who successfully applied for further permission to stay in the United Kingdom. Foreign nationals issued with an identity card will be required to show it to employers prior to commencing employment and for any follow up checks required to be carried out at least once every twelve months by the employer. Further information on the introduction of identity cards for foreign nationals, including which categories of foreign nationals will receive the card and when, can be found on the UK Border Agency website at [www.ukba.homeoffice.gov.uk/managingborders/idcardsforforeignnationals/](http://www.ukba.homeoffice.gov.uk/managingborders/idcardsforforeignnationals/)

You may be aware that a number of countries have joined the European Union since 1 May 2004. The Government imposed a registration scheme on nationals from eight<sup>1</sup> of these European Union countries and a requirement for authorisation to work for another two<sup>2</sup>. This will allow the Government to monitor

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

2 The two countries are Romania and Bulgaria.

and in some cases, to restrict the participation of workers from these new EU countries in our labour market. This guidance gives you details about what you should do if you employ nationals from any of these countries.

Copies of this guidance can be downloaded from

**[www.ukba.homeoffice.gov.uk/sitecontent/documents/employersandsponsors/preventingillegalworking/](http://www.ukba.homeoffice.gov.uk/sitecontent/documents/employersandsponsors/preventingillegalworking/)**

# THE LAW FOR EMPLOYERS ON PREVENTING ILLEGAL WORKING

As an employer, you have a responsibility to prevent illegal migrant working in the UK. Sections 15–25 of the Immigration, Asylum and Nationality Act 2006 (the ‘2006 Act’) set out the law on the prevention of illegal migrant working. These provisions came into force on 29 February 2008. They replace the previous offence under section 8 of the Asylum and Immigration Act 1996 (the ‘1996 Act’).

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

- An employer who employs someone subject to immigration control aged over 16 who is not entitled to undertake the work in question will be liable to pay a civil penalty of up to £10,000 per illegal worker. Section 15 of the 2006 Act provides that a notice of liability to pay a civil penalty of a specific amount can be served by UK Border Agency officials on behalf of the Secretary of State. The penalty will be calculated on a sliding scale, but the final amount that the employer is required to pay will be determined on an individual basis, according to the circumstances of the case. A code of practice has been produced and details are provided in the further information section of this document.
- Section 15 of the 2006 Act may also enable an employer to establish an excuse against liability for payment of a civil penalty for employing an illegal migrant. An employer can establish the excuse by checking and copying certain original documents **before** an employee starts working for you. If your potential employee provides a document, or documents, from **List A**, this will establish an excuse for the

duration of their employment. A document or documents from **List B** will indicate that they only have limited leave to be in the UK, so the checks should be repeated on that employee at least once every twelve months, until they provide specified document, or documents, indicating that they can remain permanently in the UK from **List A**, or they leave your employment.

- If you **know** that you are employing a person who is not permitted to work, then you **will not** be entitled to the excuse. In addition, you could be prosecuted under section 21 of the 2006 Act for the offence of knowingly employing an illegal worker. Conviction under this offence will carry the potential of an unlimited fine and/or prison sentence of up to two years.

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

The new arrangements for having the excuse only apply to those employees who started working for you on or after **29 February 2008**. You will still be liable for prosecution under the 1996 Act where you employed illegal migrants between 27 January 1997 and 28 February 2008 and did not establish the statutory defence at the point of recruitment. Equally, if you established a statutory defence under section 8 of the 1996 Act for employees taken on before 29 February 2008, this will be retained for the duration of that person's employment.

# HOW TO AVOID RACIAL DISCRIMINATION WHEN PREVENTING ILLEGAL WORKING

It is important for employers to remember when applying these document checks that the population of the UK is ethnically diverse. Many people from ethnic minorities in this country are British citizens, and many non-British citizens from black and minority ethnic communities are entitled to work here. Therefore, it must not be assumed that someone from an ethnic minority is an immigrant, or that someone born abroad is not entitled to work in the UK. The Government has issued a code of practice to help employers comply with the law without discriminating against individuals on the basis of their race. You can download a copy from the UK Border Agency website:

[www.ukba.homeoffice.gov.uk/employers/preventingillegalworking/](http://www.ukba.homeoffice.gov.uk/employers/preventingillegalworking/)

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**.

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

# HOW TO ESTABLISH THE EXCUSE AGAINST PAYMENT OF A CIVIL PENALTY

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

*To comply with the requirements of the 2006 Act, employers would have to satisfy themselves of the entitlement of prospective employees to work in the UK to ensure they are not employing an illegal migrant worker. In most cases, the way an employer can do this is by conducting these checks. We recommend that employers undertake checks on all prospective employees as this will enable employers to establish a statutory excuse against payment of a civil penalty for employing an illegal migrant worker; shows their recruitment process is open and transparent, and ensures their recruitment practices do not discriminate against individuals on racial grounds.*

## WHAT IS THE DIFFERENCE BETWEEN LIST A AND LIST B?

List A documents show an ongoing right to work and List B documents show a right to work for up to twelve months. If an individual is not subject to immigration control, or has no restrictions on their stay in the UK, they should be able to produce a document, or a specified combination of documents, from **List A** on pages 23–24. The checks must be made **before** they are employed and the excuse will then be established for the duration of the individual's employment.

Where the leave to enter or remain in the UK granted to an individual is time-limited, the document or documents provided will be specified in **List B** on pages 25–26. If a prospective employee provides a document or documents from List B, you should carry out specified document checks **before** the employment of the individual begins and carry out follow-up checks of the same kind at least once every 12 months. **These repeat checks are required to retain the excuse.** If an employer does not carry out the follow-up checks, they may be subject to a civil penalty if the employee is found to be a migrant worker working illegally.

## SPECIFIED STEPS

Employers are advised to follow Steps 1 – 3 set out in this guidance **for every new prospective employee** who they intend to employ from 29 February 2008 onwards. By doing this, an employer will be sure that their recruitment practices will comply with the new requirements for having the excuse, and 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 establishing an excuse.** The National Insurance number can only be used for this purpose when presented in combination with one of the appropriate documents, as specified in Lists A and B.

For the purposes of the law, the specified steps to be taken by an employer when checking a document, or documents, listed in **List A** or **List B** are:

## Step 1

A prospective employee must provide:

- **one** of the original documents alone, or **two** of the original documents in the **specified combinations given in List A** on pages 23–24; **OR**
- one of the original documents alone, or **two** of the original documents in the **specified combinations given in List B** on pages 25–26.

## Step 2

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

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

- check any photographs, where available, contained in the documentation are consistent with the appearance of the holder when carrying out checks on your prospective or current employee; and

- check the dates of birth listed, where available, to ensure that these are consistent across documents and that you are satisfied that these correspond with the appearance of your prospective or current employee; and
- check that the expiry dates of any limited leave to enter or remain in the UK have not passed; and
- check any UK Government endorsements (stamps, visas, etc.) to see if your prospective or current employee is able to do the type of work on offer ; and
- satisfy yourself that the documents are genuine and have not been tampered with and belong to the holder; and
- if your prospective or current employee produces two documents which have different names, ask for a further document to explain the reason for this. The further document could, for example, be a marriage certificate, a divorce decree, a deed poll document or statutory declaration.

## Step 3

An employer would need to make a copy of the relevant page or pages of the document, in a format which can not be subsequently altered, for

example, a photocopy or scan<sup>1</sup>. In the case of a passport or other travel document, the following parts must be photocopied or scanned:

- for passports and travel documents, a copy should be taken of 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, noting the date of expiry and any relevant UK immigration endorsement which allows your prospective or current employee to do the type of work you are offering.

Other documents should be copied in their entirety.

You should then keep a record of every document you have copied. The copies of the documents should be kept securely for the duration of the individual's employment and for a further two years after their employment has ceased. By doing

this, the UK Border Agency will be able to examine your right to the excuse if they detect anyone working illegally for you.

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

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

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

## **WHERE CAN I FIND OUT MORE DETAIL ABOUT THESE CHANGES?**

The UK Border Agency has produced comprehensive guidance to explain these changes. This guidance on preventing illegal working contains images of the documents included in List A and List B of this publication and also provides employers with a guide to UK Government endorsements. The guidance is available electronically from the UK Border Agency website, [www.ukba.homeoffice.gov.uk/employers/preventingillegalworking/](http://www.ukba.homeoffice.gov.uk/employers/preventingillegalworking/)

## **AM I EXPECTED TO BE AN EXPERT ON FORGED DOCUMENTS?**

No. As an employer, if you are presented with a false travel document or visa, you will only be required to pay a civil penalty if the falsity is reasonably apparent. By this, we mean that we would expect an employer to carry out simple but careful visual checks, without training or technological aids, on the documents presented to be satisfied that the documents are genuine and relate to the person presenting them.

If the falsity is not reasonably apparent, or a valid document is presented by the named person, then the employer can not expect to be subject to the payment of a civil penalty.

## **CAN I HAVE THE EXCUSE IN ALL CIRCUMSTANCES?**

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

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

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

If an employer is not able to conduct the repeat checks that are required to retain the statutory excuse, they may be liable to a civil penalty if the employee is found to be working illegally. An employer in this position may wish to seek legal advice and report the individual to the UK Border Agency.

**If you do 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.**

# THE OFFENCE OF KNOWINGLY EMPLOYING AN ILLEGAL MIGRANT WORKER

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 maximum<sup>1</sup> for each person employed illegally, and/or imprisonment for up to 6 months<sup>2</sup>. Following conviction on indictment, there is no upper limit to the level of fine that can be imposed, and the employer may also be subject to imprisonment for up to two years.

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

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1 The current statutory maximum is £5,000.

2 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).

# THE EMPLOYER CHECKING SERVICE

As an employer, you may be presented with documents that require verification by the Employer Checking Service to establish the excuse. In some cases, employees' documents will be with the UK Border Agency in connection with an outstanding application or appeal. You may contact the Employer Checking Service for information on documents issued by the UK Border Agency, which are 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 UK Border Agency to verify any entitlement to work. 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 UK Border Agency. To have an

excuse against payment of a civil penalty, the records and documents relating to the check should be retained for examination and submitted to officials upon request.

Contact details are provided in the section entitled 'Further information.' Further information on the Employer Checking Service can also be found on the UK Border Agency website.

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

There is a sliding scale of penalties, which are principally determined by the number of times an employer has been found to be employing illegal migrants. Table 1 is a framework designed to assist the UK Border Agency with the assessment on whether to issue a civil penalty to an employer, and if so, at what level.

The level of penalty to be imposed per worker may be increased or reduced according to different criteria. For example, the penalty can be increased according to the number of times an employer is found with illegal migrants in their workforce and have failed to have a statutory excuse. A code of practice has been produced, and further details are provided in the further information section of this document.

# FRAMEWORK FOR ASSESSMENT OF LEVEL OF CIVIL PENALTY

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

# 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, as not all EEA nationals can work in the UK without restrictions. These are dealt with in more detail below.

You should ask nationals from all EEA countries and Switzerland to produce an official document showing their nationality. 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 UK Border Agency which confirms their right to reside and work here. All of these documents are included in List A and may provide you with the excuse against a civil penalty if checked and copied.

## WHICH EEA NATIONALS CAN WORK IN THE UK WITHOUT RESTRICTION?

Austria \*  
Belgium \*  
Cyprus\*  
Denmark \*  
Finland \*  
France \*  
Germany \*  
Greece \*  
Iceland  
Ireland \*  
Italy \*  
Liechtenstein  
Luxembourg \*  
Malta\*  
Netherlands \*  
Norway  
Portugal\*  
Spain \*  
Sweden \*  
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  
Estonia  
Hungary  
Latvia  
Lithuania  
Poland  
Slovakia  
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 UK Border Agency within one month of starting work, unless they are exempt from the requirement to do so.

Exemptions from the scheme are set out on the UK Border Agency website at

[www.ukba.homeoffice.gov.uk/workingintheuk/eea/wrs/whomustregister/](http://www.ukba.homeoffice.gov.uk/workingintheuk/eea/wrs/whomustregister/)

## **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.

Exemptions from the scheme are set out on the UK Border Agency website at [www.ukba.homeoffice.gov.uk/workingintheuk/eea/bulgariaromania/liveworkuk/](http://www.ukba.homeoffice.gov.uk/workingintheuk/eea/bulgariaromania/liveworkuk/)

## **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**

You should 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 asking them to produce their EEA national passport or national identity card and then follow the steps on pages 9-11.

### **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 UK Border 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 may start work for you without registering first, but your A8 employee should apply to register with the UK Border 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 UK Border Agency. You should keep this copy until you receive notification from the UK Border Agency that your worker has been registered. Once the worker has successfully registered, the UK Border 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 UK Border 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 UK Border Agency notifies you that your employee's application has been refused and you continue to employ that person, you may also commit an offence.

## **NATIONAL INSURANCE AND TAX ARRANGEMENTS FOR EEA NATIONALS**

You should remember that as well as the registration and authorisation schemes described in this guidance, 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**.

# FURTHER INFORMATION

Advice for employers about complying with the law on preventing illegal migrant working is available from the Sponsorship and Employers' Helpline on **0300 123 4699**. The Helpline is open Monday to Friday, between 9am and 5pm, except on bank holidays. Calls to the Helpline may be recorded and used for training purposes.

## 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 Sponsorship and Employers' Helpline. If this information is reported to the Helpline before any immigration visit is made by the UK Border Agency, a sum may be deducted from the amount of penalty due for each worker. When reporting, you will be given a call reference and this must be referred to when applying for a reduction in penalty. Both the civil penalties code of

practice and the code of practice for employers on the avoidance of unlawful discrimination in recruitment practices whilst seeking to prevent illegal migrant working are currently available from the UK Border Agency website at the address given below.

The UK Border Agency *Comprehensive guidance for employers* on the prevention of illegal migrant working contains practical information to help employers to comply with the law. The comprehensive guidance is available to download from the UK Border Agency website at: [www.ukba.homeoffice.gov.uk/employers/preventingillegalworking/](http://www.ukba.homeoffice.gov.uk/employers/preventingillegalworking/)

An online step-by-step guide to employing migrant workers is available on the Business Link and associated regional websites, which can be accessed via the UK Border

Agency website address above or at: [www.businesslink.gov.uk/emw](http://www.businesslink.gov.uk/emw). This website contains detailed information on current legal requirements for employers.

Further information regarding schemes for nationals from the new European Union countries is available from: [www.ukba.homeoffice.gov.uk/workingintheuk](http://www.ukba.homeoffice.gov.uk/workingintheuk)

For advice concerning immigration issues you should contact:

UK Border Agency  
Lunar House,  
40 Wellesley Road,  
Croydon, CR9 2BY

The Immigration Enquiry Bureau (IEB) can be contacted on **0870 606 7766** for questions about immigration issues. The opening hours are Monday to Thursday, between 9am and 4.45pm, and on Friday from 9am until 4.30pm. For e-mail enquiries, please e-mail: [ukbapublicenquiries@ind.homeoffice.gsi.gov.uk](mailto:ukbapublicenquiries@ind.homeoffice.gsi.gov.uk)

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

# LIST A

## DOCUMENTS WHICH PROVIDE AN ONGOING EXCUSE

1. A passport showing that the holder, or a person named in the passport as the child of the holder, is a British citizen or a citizen of the United Kingdom and Colonies having the right of abode in the United Kingdom.
2. A passport or national identity card showing that the holder, or a person named in the passport as the child of the holder, is a national of the European Economic Area or Switzerland.
3. A residence permit, registration certificate or document certifying or indicating permanent residence issued by the Home Office, Border and Immigration Agency or UK Border Agency to a national of a European Economic Area country or Switzerland.
4. A permanent residence card issued by the Home Office, Border and Immigration Agency or UK Border Agency to the family member of a national of a European Economic Area country or Switzerland.
5. A Biometric Immigration Document issued by the UK Border 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.
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.
7. An Immigration Status Document issued by the Home

- Office, Border and Immigration Agency or UK Border Agency to the holder with an endorsement indicating that the person named in it is allowed to stay indefinitely in the United Kingdom or has no time limit on their stay in the United Kingdom, **when produced in combination with** an official document giving the person's permanent National Insurance Number and their name issued by a Government agency or a previous employer.
8. A full birth certificate issued in the United Kingdom which includes the name(s) of at least one of the holder's parents, **when produced in combination with** an official document giving the person's permanent National Insurance Number and their name issued by a Government agency or a previous employer.
  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 **when produced in combination with** an official document giving the person's permanent National Insurance Number and their name issued by a Government agency or a previous employer.
  10. A birth certificate issued in the Channel Islands, the Isle of Man or Ireland, **when produced in combination with** an official document giving the person's permanent National Insurance Number and their name issued by a Government agency or a previous employer.
  11. An adoption certificate issued in the Channel Islands, the Isle of Man or Ireland, **when produced in combination with** an official document giving the person's permanent National Insurance Number and their name issued by a Government agency or a previous employer.
  12. A certificate of registration or naturalisation as a British citizen, **when produced in combination with** an official document giving the person's permanent National Insurance Number and their name issued by a Government agency or a previous employer.
  13. A letter issued by the Home Office, Border and Immigration Agency or UK Border Agency to the holder which indicates that the person named in it is allowed to stay indefinitely in the United Kingdom **when produced in combination with** an official document giving the person's permanent National Insurance Number and their name issued by a Government agency or a previous employer.

# LIST B

## DOCUMENTS WHICH PROVIDE AN EXCUSE FOR UP TO 12 MONTHS

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.

to do the work in question, or a letter issued by the Home Office, Border and Immigration Agency or UK Border Agency to the holder or the employer or prospective employer confirming the same.
2. A Biometric Immigration Document issued by the UK Border Agency to the holder which indicates that the person named in it can stay in the United Kingdom and is allowed to do the work in question.
3. A work permit or other approval to take employment issued by the Home Office, Border and Immigration Agency or UK Border Agency **when produced in combination with** either a passport or another travel document endorsed to show the holder is allowed to stay in the United Kingdom and is allowed
4. A certificate of application issued by the Home Office, Border and Immigration Agency or UK Border Agency to or for a family member of a national of a European Economic Area country or Switzerland stating that the holder is permitted to take employment which is less than 6 months old **when produced in combination with** evidence of verification by the UK Border Agency Employer Checking Service.
5. A residence card or document issued by the Home Office, Border and Immigration Agency

or UK Border Agency to a family member of a national of a European Economic Area country or Switzerland.

6. An Application Registration Card issued by the Home Office, Border and Immigration Agency or UK Border Agency stating that the holder is permitted to take employment, **when produced in combination with** evidence of verification by the UK Border Agency Employer Checking Service.

7. An Immigration Status Document issued by the Home Office, Border and Immigration Agency or UK Border Agency to the holder with an endorsement indicating that the person named in it can stay in the United Kingdom, and is allowed to do the type of work in question, **when produced in combination with** an official document giving the person's permanent National Insurance Number and their name issued by a Government agency or a previous employer.

8. A letter issued by the Home Office, Border and Immigration Agency or UK Border Agency to the holder or the employer or prospective employer, which indicates that the person named in it can stay in the United Kingdom and is allowed to do the work

in question **when produced in combination with** an official document giving the person's permanent National Insurance Number and their name issued by a Government agency or a previous employer.

# DOCUMENTS THAT DO NOT PROVIDE YOU WITH AN EXCUSE

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

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







