



# Employment Briefing

Construction Confederation

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## Changes to the law on preventing illegal working

**From 1 May onwards employers must make new checks on all new employees before giving them a job. Section 8 of the Asylum and Immigration Act 1996 has been changed in order to make it harder for people who do not have permission to work in the UK to obtain work using false or forged documents:**

■ It is a criminal offence to employ someone, aged 16 or over, who has no right to work in the United Kingdom, or no right to do the work you are offering.

■ It gives employers a statutory defence against conviction for employing an illegal worker if certain original documents belonging to the employee have been checked and a copy kept by the employer.

■ Existing law obliges employers to ensure that their recruitment practices do not discriminate against individuals on racial grounds.

Under the changes, employers will be able to establish the defence for potential employees by checking and copying **one of the original documents included in List 1** (see over).

Employers will also be able to establish the defence for potential employees by checking and copying **a combination of two original documents specified in List 2** (see over).

Employers should follow Steps 1-3 set out below **for every new potential employee** being considered for employment from 1 May 2004 onwards. By doing this, employers will ensure that recruitment practices comply with the new requirements for establishing the defence, and employers will not be convicted of employing a person illegally.

Employers must also make sure that Steps 1-3 are carried out **before a person begins working for you**. If employers take on an employee and do not have the documentation for that person, then there is a risk of committing a criminal offence under section 8 if that employee is found to be working illegally.

### Step 1

Employers should ask all potential employees to provide:

- **one** of the **original** documents included in **List 1**; OR
- **two** of the **original** documents in the combinations given in **List 2**

### Step 2

Employers are required to satisfy themselves that the potential employee is the rightful holder of any of the documents they

present.

Employers must carry out the following **reasonable steps** when checking all of the documents presented by the potential employee:

- check any photographs, where available, to ensure that they are consistent with the appearance of the potential employee;
- check the dates of birth listed to ensure they are consistent with the appearance of the potential employee;
- check that the expiry dates have not been passed;
- check any United Kingdom Government stamps or endorsements to see if the potential employee is able to do the type of work offered;
- if the potential employee provides two documents from **List 2** which have different names, employers should ask for a further document to explain the reason for this. The further document could be a marriage certificate, divorce document, deed poll, adoption certificate or statutory declaration.

### Step 3

Finally, make a photocopy or a scan (using **only** the Write Once Read Many/WORM software package) of the following parts of documents shown:

- the front cover and all of the pages which give the potential employee's personal details. In particular, employers should copy the page with the photograph and the page which shows his or her signature; AND
- any page containing a United Kingdom Government stamp or endorsement which allows the potential employee to do the type of work offered.

Employers should then keep a record of every document copied. By doing this, the Immigration Service will be able to examine employers right of the defence if they detect anyone working illegally.

The maximum penalty which a court can impose on an employer is currently £5,000 if convicted of a section 8 offence. Employers can be fined this amount for each person found to have been employed illegally.

***When applying these new document checks it is important to avoid any discriminatory practices. The best way to make sure that there is no discrimination in recruitment practices is to treat all job applicants in the same way.***

## Nationals from European Economic Area countries

Nationals from European Economic Area (EEA) countries can enter and work in the United Kingdom without any restrictions just like British citizens. The same is also the case for their immediate family members.

Employers should ask nationals from all EEA countries to produce a document showing their nationality. This will usually be either a national passport or national identity card. Some nationals from EEA countries may also produce a residence permit issued by the Home Office which confirms their right to reside and work here. All of these documents are included in **List 1** and will provide employers with the defence if checked and copied. The following countries are part of the EEA;

Austria	France	Latvia	Poland
Belgium	Germany	Liechtenstein	Portugal
Cyprus	Greece	Lithuania	Slovakia
Czech Republic	Hungary	Luxembourg	Slovenia
Denmark	Iceland	Malta	Spain
Estonia	Ireland	Netherlands	Sweden
Finland	Italy	Norway	United Kingdom

From 1 June 2002, national from **Switzerland** have also had the same free movement and employment rights as existing EEA nationals.

The Government has set-up a new Workers Registration Scheme to monitor the participation in the UK labour market of workers from the 8 countries above whose names are shaded.

Employers will need to make sure that a person from one of these 8 countries who starts work after 1 May 2004 has registered with Home Office. There is a £50 registration fee and the worker must register within 30 days of commencing employment.

Under the new regulations, employers must keep a copy of this certificate of registration or employers may be subject to criminal conviction and fine of up to £5,000.

## LIST 1

### *Documents which provide the defence if produced alone.*

Any **one** of the documents included below in **List 1** will provide employers with the defence if they are checked and copied:

- A passport showing that the holder is a British citizen, or has a right of abode in the United Kingdom.
- A document showing that the holder is a national of a European Economic Area country or Switzerland. This must be a national passport or national identity card.
- A residence permit issued by the Home Office to a national from a European Economic Area country or Switzerland.
- A passport or other document issued by the Home Office which has an endorsement stating that the holder has a current right of residence in the United Kingdom as the family of a national from a European Economic Area country or Switzerland who is resident in the United Kingdom.
- A passport or other travel document endorsed to show that the holder can stay indefinitely in the United Kingdom, or has no time limit on their stay.
- A passport or other travel document endorsed to show that the holder can stay in the United Kingdom; and that this endorsement allows the holder to do the type of work offered by an employer if they do not have a work permit.
- An application Registration Card issued by the Home Office to an asylum seeker stating that the holder is permitted to take employment.

*Once employers have checked one these documents from the potential employee, there is no need to ask for any further documents contained in List 2.*

## LIST 2

### *Documents which provide the defence if produced in combination.*

**List 2** covers the combination of documents which will provide employers with the defence. Once this is done, employers do not need to ask for any further documents contained in **List 1**.

Employers **will not** have the defence if one document from the first combination and one from the second combination is seen.

### First Combination

**A.** A document giving the person's permanent National Insurance Number and name. This could be a: P45, P60, National Insurance card, or a letter from a Government agency.

**Along with checking and copying a document giving the person's National Insurance Number, employers must also check and copy only one of the following documents listed, B-H:**

**B.** a full birth certificate issued in the United Kingdom, which includes the names of the holder's parents: OR

**C.** a full birth certificate issued in the Channel Islands, the Isle of Man or Ireland: OR

**D.** a certificate of registration or naturalisation stating that holder is a British citizen; OR

**E.** a letter issued by the Home Office to the holder which indicates that the person named in it can stay indefinitely in the United Kingdom, or has no time limit on their stay; OR

**F.** an Immigration Status Document issued by the Home Office to the holder with an endorsement indicating that the person named in it can stay indefinitely in the United Kingdom, or has no time limit on their stay; OR

**G.** a letter issued by the Home Office to the holder which indicates that the person named in it can stay in the United Kingdom, and this allows them to do the type of work offered; OR

**H.** an Immigration Status Document issued by the Home Office to the holder with an endorsement indicating that the person named in it can stay in the United Kingdom, and this allows them to do the type of work offered.

### Second Combination

**I.** a work permit or other approval to take employment that has been issued by Work Permits UK.

**Along with a document issued by Work Permits UK, you should also check and copy one of the following documents listed J-K:**

**J.** a passport or other travel document endorsed to show that the holder is able to stay in the United Kingdom and can take the work permit employment in question; OR

**K.** a letter issued by the Home Office to the holder confirming that the person named in it is able to stay in the United Kingdom and can take the work permit employment in question.

■ **The Home Office has set-up an employer's help-line for further advice on: 0845 010 6677** ■

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