



Changes to the law on preventing illegal working: short guidance for United Kingdom employers

Amendments to document checks under
section 8 of the Asylum and Immigration Act 1996
coming into force on 1 May 2004

Is this leaflet for me?

Are you an employer?

Do you want to ensure you comply with the law and that your staff can work legally in the United Kingdom?

If 'YES' then read on...

This guidance is only a summary of the law. Its aim is to help United Kingdom employers understand the changes the Government will make on 1 May 2004 to the law on preventing illegal working. It also explains what employers should do when employing nationals from new European Union Member States after 1 May 2004.

Introduction

Section 8 of the Asylum and Immigration Act 1996 requires all employers in the United Kingdom to make basic document checks on every person they intend to employ. By making these checks, employers can be sure they will not break the law by employing illegal workers.

On **1 May 2004**, the Government will introduce changes to the types of document which you, as a United Kingdom employer, will need to check under section 8 to avoid employing illegal workers. These changes are being made for three key reasons:

- to make it harder for people who do not have permission to work in the United Kingdom to obtain work by using forged or false documents;
- to make it easier for you to ensure that you employ people who are legally permitted to work in the United Kingdom;
- to strengthen the Government's controls on tackling illegal working by making it easier for the United Kingdom Immigration Service to take action against employers who deliberately use illegal labour.

These changes will not make a major difference to the type of checks you are already required to carry out to meet your responsibilities under the law. They have been drawn up so that people who do have the right to work in this country, including those who live in our minority ethnic communities, can prove this swiftly and easily.

It is important that you read this guidance if you employ staff in the United Kingdom. It will help you understand what documents you must ask your potential employees to produce from 1 May 2004, so that you can establish whether they can work for you legally. It also explains what steps you must take under the law to satisfy yourself that any documents produced by your potential employee actually belong to that person.

Changes to the law on preventing illegal working

You may be aware that a number of new countries will be joining the European Union on 1 May 2004. From this date, all citizens from these countries will be free to work legally in the United Kingdom and contribute to our economy by helping to fill labour shortages.

The Government has decided that nationals from eight¹ of these new European Union countries will be required to register with the Home Office if they start working in the United Kingdom after 1 May 2004. This will allow the Government to monitor the participation of workers from these eight countries in our labour market. This guidance gives you details about what you should do if you employ nationals from any of these countries.

If you have any questions about this guidance, or would like to obtain further copies, you can phone the Employers' Helpline on **0845 010 6677**. Further details of this service are listed on pages 13–14.

Copies of this guidance will also be available from:

www.ind.homeoffice.gov.uk

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

The law for employers on preventing illegal working

Section 8 of the Asylum and Immigration Act 1996 sets out the law on the prevention of illegal working.

- It makes it a criminal offence for you 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. You get this by checking and copying certain original documents belonging to your employee.
- It obliges you to ensure that your recruitment practices do not discriminate against individuals on racial grounds.

How will the law be changing for employers on 1 May 2004?

The main changes will be to the type of documents you will be required to check and copy to obtain the **statutory defence** under section 8. The remainder of this guidance will refer to the 'statutory defence' as 'the defence'.

Under the changes, you will be able to establish the defence for your potential employees by checking and copying **one of the original documents** included in **List 1** on page 15.

You will also be able to establish the defence for your potential employees by checking and copying a **combination of two original documents** specified in **List 2** on pages 16–17.

How to comply with the changes to establish the defence

You should follow Steps 1–3 set out in this guidance **for every new potential employee** who you may be considering employing from 1 May 2004 onwards. By doing this you will be sure that your recruitment practices comply with the new requirements for establishing the defence, and you will not be convicted of employing a person illegally.

You must also make sure that you carry out Steps 1–3 **before a person begins working for you**. If you take on an employee and do not have the defence for that person, then you will be at risk of committing a criminal offence under section 8 if that employee is found to be working illegally for you.

Step 1

You should ask all of your potential employees to provide:

- **one** of the **original** documents included in **List 1** on page 15; OR
- **two** of the **original** documents in the combinations given in **List 2** on pages 16–17.

There is no need to ask your potential employee to produce documents from both **List 1** and **List 2**.

Step 2

Under the new changes to the law, you are required to satisfy yourself that your potential employee is the rightful holder of any of the documents they present to you. These documents should also allow them to do the type of work you are offering.

You must carry out the following **reasonable steps** when checking all of the documents presented to you by your potential employee:

- check any photographs, where available, to ensure that you are satisfied they are consistent with the appearance of your potential employee;
- check the dates of birth listed so that you are satisfied these are consistent with the appearance of your potential employee;
- check that the expiry dates have not been passed;
- check any United Kingdom Government stamps or endorsements to see if your potential employee is able to do the type of work you are offering;
- if your potential employee gives you two documents from **List 2** which have different names, you should ask them 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 all documents shown to you:

- the front cover and all of the pages which give your potential employee's personal details. In particular, you 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 your potential employee to do the type of work you are offering.

You should then keep a record of every document you have copied. By doing this the Immigration Service will be able to examine your right to the defence if they detect anyone working illegally for you.

What should I do if a person is not able to work here?

If you have carried out these checks and established that your potential employee is not permitted to work, then you are entitled to refuse employment to that person. You may also want to call the Employers' Helpline on **0845 010 6677** for further advice.

Remember! It is up to your potential employee to show you that he or she is permitted to do the work you are offering.

Can I have the defence in all circumstances?

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 defence and could face conviction under section 8. This exception allows the Immigration Service to tackle the minority of employers who deliberately employ illegal workers and use forged documents to obtain a false defence.

Where can I find out more detail about these changes?

The Home Office is also producing a more detailed guidance booklet to explain these changes entitled: *Comprehensive guidance for United Kingdom employers on changes to the law on preventing illegal working*. It will contain images of the documents included in **List 1** and **List 2** of this booklet, and also provide employers with a full guide to United Kingdom Government stamps and endorsements. A copy of this more detailed guidance will be available from 19 April 2004 at:

www.ind.homeoffice.gov.uk

You will also be able to order hard copies of this detailed guidance, free of charge, from 30 April 2004 by calling the Employers' Helpline on **0845 010 6677**.

Will I still have the defence for employees who I took on before 1 May 2004?

The new arrangements for establishing the defence will only apply to those employees who are due to start working for you after 30 April 2004. You will be able to find details of the current arrangements for establishing the defence on the following Home Office web page until 30 April 2004:

www.ind.homeoffice.gov.uk/default.asp?pageid=48

Alternatively, you can call the Employers' Helpline for further advice on 0845 010 6677.

Will I still have the defence if I see a National Insurance Number on its own?

When the new changes come into force on 1 May 2004, you will not be able to establish the defence and satisfy yourself of a person's right to work by simply checking their National Insurance Number. You should consult **List 2** on pages 16–17 for further details of what other documents you are required to check alongside a National Insurance Number to gain the defence.

When checking for evidence of a person's National Insurance Number, it is important that you only accept a permanent number. The following will not provide you with evidence under section 8 that a person has a permanent number:

- a card or certificate issued by the Inland Revenue under the Construction Industry Scheme;
- a document with an invalid National Insurance Number. This would include any temporary number beginning with **TN**, or any number ending in a letter from **E to Z** inclusive.

What is the penalty if I employ someone illegally?

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

The Immigration Service will also seek to remove any person found to be working illegally in the United Kingdom.

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

Am I expected to be an expert on immigration status?

We don't expect you to act as an Immigration Officer. Responsibility for immigration control is firmly with the Immigration Service. If you are worried that a document you have been shown is a forgery or does not relate to the holder, you can contact the Employers' Helpline for further advice on **0845 010 6677**.

How to avoid racial discrimination when preventing illegal working

It is important that you remember when applying these new document checks that the majority of people from minority ethnic groups who live in the United Kingdom are British citizens.

The Government issued a code of practice in 1999 to help employers follow section 8 without discriminating against individuals on the basis of their race. A revised code of practice will be issued later this year but you can obtain a copy of the current version by calling the Employers' Helpline on **0845 010 6677**.

Alternatively, you can download a copy from:

www.ind.homeoffice.gov.uk

If you do discriminate against someone on racial grounds and go against this code of practice, then this can be used as evidence against you under the Race Relations Act 1976 before an employment tribunal.

You should not employ anyone on the basis of their claim to be British or whether 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**.

Here are some specific examples of discriminatory practices that you must avoid when making checks under section 8.

Example 1: The employer asks a black job applicant to produce documents from either **List 1** or **List 2** to satisfy themselves that the person can work legally, but fails to do this for a white applicant.

Example 2: The employer asks a job applicant from abroad who has a National Insurance Number to produce an extra document from **List 2**, but does not ask the same of someone who they **think** is British and only has a National Insurance Number.

Example 3: The employer uses the new changes to the defence on 1 May 2004 to ask **only** existing employees from minority ethnic groups whether they are permitted to work in the United Kingdom.

Example 4: An employer only applies the reasonable steps described in Step 2 (see pages 4–5) to job applicants from minority ethnic groups. Or, the employer applies these in a way that disadvantages job applicants from minority ethnic groups, by making assumptions about their right to work based on their appearance or accent.

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

Employing nationals from the European Economic Area

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.

You should not, however, employ any individual on the basis of his or her claim to be a national from an EEA country, as you will put yourself at risk of employing someone illegally if this claim is false.

You 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 you with the defence if checked and copied.

Which countries are part of the EEA?

The following countries are part of the EEA:

Austria*	Greece*	Netherlands*
Belgium*	Iceland	Norway
Denmark*	Ireland*	Portugal*
Finland*	Italy*	Spain*
France*	Liechtenstein	Sweden*
Germany*	Luxembourg*	United Kingdom*

* Those countries marked with stars are also members of the European Union.

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

What about the countries due to join the European Union?

On 1 May 2004 a further ten countries will join the European Union and also become part of the EEA. The countries who will join are:

Cyprus	LATVIA	SLOVAKIA
CZECH REPUBLIC	LITHUANIA	SLOVENIA
ESTONIA	Malta	
HUNGARY	POLAND	

Nationals from all ten of these countries will be free to come and work in the United Kingdom from 1 May 2004.

The Government is setting up a new Workers Registration Scheme to monitor the participation in the UK labour market of workers from the eight countries who are marked in the list above in bold capital letters.

You will need to make sure that a person from one of these eight countries who starts work for you after 1 May registers with the Home Office, unless they are exempt from the requirement to do so. Exemptions from the scheme will be set out in our longer guidance (see page 6). If you have already been employing a national from one of these countries legally prior to 1 May, they will not be required to register.

Nationals from Cyprus or Malta will not be required to register.

What should I do if I want to employ a worker from one of these eight countries after 1 May?

When you take on a **new worker** from one of the eight new countries in bold capitals above, you should:

1. Carry out an initial section 8 check

You must check that the worker is a national from one of these eight countries so you do not commit an offence under section 8. You can do this

by asking them to produce a national passport or national identity card and then follow the steps on pages 4–5.

2. Advise your worker to register

As soon as your worker begins working for you, they must apply to register immediately with the Home Office. To do this, you will need to provide them with 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 Home Office. You should keep this until you receive notification from the Home Office that your worker has been registered.

3. Retain your copy of the registration certificate

Once the worker has been successfully registered, the Home Office 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 unregistered worker?

If you continue to employ an unregistered national from one of these eight countries for more than 30 days without retaining a copy of their application form or their certificate of registration, you may commit a criminal offence under new regulations. This will not apply if the worker in question is exempt from the registration requirement. The maximum penalty on conviction will be £5,000. Similarly, if the Home Office 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 taxation arrangements for European Union nationals

You should remember that as well as the new registration scheme described in this guidance, any European Union national you employ will be subject to the same United Kingdom tax and National Insurance legislation as any other

employee. The Inland Revenue booklet: *CWG2 Employer's Further Guide to PAYE and NICs* will provide you with more details and you can order this by calling **08457 646 646**.

If you or any of your employees are concerned about your tax or National Insurance position before 1 May 2004 and need help putting your affairs in order, you should call the Inland Revenue Tax and Benefits Confidential Helpline on **0845 608 6000**.

Further information

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

Employers' Helpline on **0845 010 6677**

It offers the following dedicated service for employers:

- answers any general enquiries you may have on preventing illegal working;
- from 30 April 2004 will provide you with copies of the booklet: *Comprehensive guidance for United Kingdom employers on changes to the law on preventing illegal working*;
- will provide you with general advice about the new Workers Registration Scheme for workers from the new European Union countries;
- will be your first point of contact if you have concerns about false or forged documents, or if you wish to report allegations of illegal working;
- can provide your human resource units with a presentation on preventing illegal working, subject to limited availability.

The helpline cannot advise you on whether an individual is able to work, as the Home Office cannot disclose confidential personal data to third parties without that person's written consent.

Changes to the law on preventing illegal working

The helpline is open from:

5.45am to 9pm Monday to Friday;

8am to 4pm on Saturdays, Sundays and Bank Holidays (except Christmas Day).

Calls to the Employers' Helpline are recorded and may be used for training purposes.

If you have access to the Internet, you can also check the Home Office website for updates on the prevention of illegal working at:

www.ind.homeoffice.gov.uk

Further information on the Workers Registration Scheme for nationals from the new European Union countries is available from:

www.workingintheuk.gov.uk

LIST 1

Documents which provide the defence if produced alone

Any **one** of the documents included below in **List 1** will provide you with the defence if you check and copy them, and follow all of the steps on pages 4–5.

- 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 (listed on pages 10–11) 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 member 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 you are offering 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 you have checked one of these documents from your 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 combinations of documents which will provide you with the defence if you follow all of the steps on pages 4–5. Once you have done this, you do not need to ask for any further documents contained in **List 1**.

You **will not** have the defence if you see one document from the first combination and one from the second combination.

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, you must also check and copy only one of the following documents listed in sections B–H:

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

C a birth certificate issued in the Channel Islands, the Isle of Man or Ireland; OR

D a certificate of registration or naturalisation stating that the 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 you are offering; 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 you are offering.

Second combination

A 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 at B–C:

B 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

C 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.

None of the document descriptions contained in **List 1** and **List 2** reflect the precise wording contained in the law. If you would like to obtain a full legal description of the changes, this will be available in the booklet the Home Office will be producing alongside this guidance (see page 6 for details).

Documents that will no longer provide you with any part of your defence

There may be some documents that you routinely check at present to establish the defence which will be **removed entirely** from both **List 1** and **List 2** when the changes come into force. You should no longer check for the following documents from 1 May 2004:

- a Home Office Standard Acknowledgement Letter or Immigration Service Letter (IS96W) which states that an asylum seeker can work in the United Kingdom. If you are presented with these documents then you should advise the applicant to call the Home Office on **0151 237 6375** for information about how they can apply for an Application Registration Card;
- a letter issued by the Home Office stating that the holder is a British citizen;
- a passport describing the holder as a British Dependent Territories Citizen which states that the holder has a connection with Gibraltar;
- a short birth certificate issued in the United Kingdom which does not have details of one of the holder's parents;
- a card or certificate issued by the Inland Revenue under the Construction Industry Scheme.

The following documents **have never been acceptable** as proof of a person's right to work in the United Kingdom, and should **not** form any part of your checks under section 8:

- a temporary National Insurance Number beginning with **TN**, or any number which ends with the letters from **E to Z** inclusive;
- a driving licence issued by the Driver and Vehicle Licensing Agency;
- a bill issued by a financial institution or a utility company.