



Home Office

Full guide for employers on preventing illegal working in the UK

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Who should read this guide?

This guide is about preventing illegal working in the UK. It is aimed at employers and Human Resources (HR) staff involved in recruiting and employing people. It contains important information and advice. It explains:

- the law on illegal working;
- your role and duty as an employer;
- the document checks you should carry out;
- images of the various documents you could be given;
- the various types of immigration statuses held by people; and
- the consequences if you do not carry out document checks and we find you employing an illegal worker.

When we refer to 'we' or 'us' in this guide we mean the Home Office. When we refer to 'you' or 'your' this means the employer.

You can find more information, together with important updates on preventing illegal working, on our website: www.ukba.homeoffice.gov.uk/business-sponsors/preventing-illegal-working/

Changes to preventing illegal working guidance

We will update this guidance from time to time, so you should check our website regularly for the most up-to-date version. We will use this page to tell you what parts of the guidance have changed.

Where possible, we will consult you through our established partner groups before we make any major changes. But sometimes we may need to make minor changes or to amend the guidance at short notice to deal with unexpected changes. We may not be able to consult you in those cases.

The changes made to this version are:

- The restrictions on Bulgarian and Romanian nationals ending on 31 December 2013;
- Restrictions on Croatian nationals which came into force on 1 July 2013;
- Information on our Fast Payment Option for paying a civil penalty;
- An additional circumstance in which your sponsor licence can be revoked if you receive a civil penalty.

Complaints

If you are unhappy about any aspect of our service you can use our complaints procedure. More information about this is on our website at:

www.ukba.homeoffice.gov.uk/aboutus/contact/makingacomplaint/

Introduction

Illegal working has harmful social and economic effects on the UK; it undercuts British businesses and their workers that stay within the law and exploits migrant workers. As long as there are opportunities for illegal working the UK will be an attractive place for illegal migrants. That is why we need to put a stop to employers breaking the law by taking tough action against those who do so.

There is evidence that some workers employed 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 use illegal 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 dishonest employers to gain an unfair advantage over competitors who operate within the law.

We work closely with employers to raise awareness of their responsibilities in tackling illegal working to ensure that people with no right to work in the UK cannot obtain work here. We take robust action to deal with those who attempt to work in the UK unlawfully and we take tough action against employers who use illegal workers.

We carry out regular, intelligence-led operations (often in partnership with other agencies and partners such as Trading Standards, Health and Safety Executive and HM Revenue and Customs) to target illegal working. Any person found working illegally is liable to prosecution and, or removal from the UK.

You are breaking the law if you employ a person who does not have the right to work in the UK. You can be fined up to £10,000 for each illegal worker or face criminal prosecution.

1: The law and your duty as an employer

The law on preventing illegal working is set out in sections 15 to 25 of the Immigration, Asylum and Nationality Act 2006 (known as the 2006 Act). These rules came into force on 29 February 2008. They replaced the previous rules under section 8 of the Asylum and Immigration Act 1996 (known as the 1996 Act).

These rules are in place to:

- make it harder for people with no right to work in the UK to unlawfully gain or keep employment;
- make it easier for you to ensure that you only employ people who are legally allowed to work for you; and
- strengthen the Government's controls on tackling illegal working by making it easier for us to take action against employers who use illegal workers.

Your duty under the 2006 Act

Under the 2006 Act you have a duty to prevent illegal working by carrying out document checks to confirm if a person has the right to work in the UK.

You should check and keep copies of original, acceptable documents before someone starts working for you. If a person has a time limit on their stay then you should carry out repeat checks at least once every 12 months. If a person has a restriction on the type of work they can do and, or, the amount of hours they can work, then you must not employ them in breach of these restrictions.

You should also verify that a person has the right to work when certain documents or scenarios are presented to you. You can find out more about carrying out document checks in the section 'Right to work document checks'.

This duty applies to anyone who starts working for you on or after 29 February 2008.

The previous rules under the 1996 Act continue to apply to staff that started working for you between 27 January 1997 and 28 February 2008. You can find out more about the previous rules under section 8 of the 1996 Act on our website:

www.ukba.homeoffice.gov.uk/business-sponsors/preventing-illegal-working/

Penalties if you fail to carry out your duty

If you do not carry out these checks you may be required to pay a fine, known as a civil penalty, under section 15 of the 2006 Act if you employ an illegal worker.

An illegal worker is defined as someone who is:

- subject to immigration control; and
- aged over 16; and
- not allowed to carry out the work in question because either they have not been granted leave to enter or remain in the UK or because their leave to enter or remain in the UK:
 - is invalid,
 - has ceased to have effect (meaning it no longer applies) whether by reason of curtailment, revocation, cancellation, passage of time or otherwise, or
 - is subject to a condition preventing them from accepting the employment.

A civil penalty up to a maximum amount of £10,000 for each illegal worker can be imposed on you. We can serve you with a Notice of Liability to pay a penalty for a specific amount on behalf of the Secretary of State.

The amount that you are required to pay will be calculated on an individual basis taking into consideration the circumstances of your case. Our 'Civil Penalties for Employers: Code of Practice' booklet sets out what factors we will consider when calculating the amount of your penalty. You can find out more about the factors we consider in the section on 'Civil penalties.' Our Code of Practice booklet can be found on our website at: www.ukba.homeoffice.gov.uk/sitecontent/documents/employersandsponsors/preventingillegalworking/

Statutory excuse against payment of a civil penalty

If you correctly carry out the document checks required of you, you will have a legal excuse (known as a statutory excuse) against payment of a civil penalty if we find you employing an illegal worker.

However, if you **know** that you are employing a person who is not allowed to work, then you **will not** have an excuse against payment of a civil penalty, **regardless of whether you have carried out any document checks.**

You will commit a criminal offence under section 21 of the 2006 Act if you knowingly employ an illegal worker and you may face up to 2 years' imprisonment and/or an unlimited fine if the case is dealt with at Crown Court.

You can find out more about document checks in the next section 'Right to work document checks'.

Simplifying employer checks

We are committed to making the checks you should do and the types of documents you can accept simpler. We started issuing Biometric Residence Permits (BRPs) to non-European Economic Area (EEA) nationals in November 2008 to help you check identity, immigration status and right to work. In February 2012, we completed the in-country roll out of BRPs and have now issued over 1.2 million BRPs. There will be a further significant increase in the number of BRPs in circulation when we begin to issue BRPs overseas in 2014. The BRP is a standard format being introduced across Europe for residence permits allowing a non-EEA national to stay in a member state for more than 6 months. Over time we are replacing paper based documents with BRPs. You can find a picture of a BRP, which is the size and shape of a driving licence photo card, in the section on 'Acceptable documents for proving right to work'.

You can find out more about BRPs and download guidance for checking the security features on them from on our website:

www.ukba.homeoffice.gov.uk/business-sponsors/preventing-illegal-working/checking-brp/

2: Right to work document checks

This section explains the document checks you should carry out to find out if a person has both the right to work in the UK and the right to carry out the type of working you are offering. This is a straightforward **3 step process** that should form part of your recruitment and employment practices. This section also explains how to examine the documents, and how, and when, you should repeat these checks for people who have time limits on their right to work.

By carrying out these checks you will ensure that you only employ people who are legally allowed to work for you, and you will also have an excuse against payment of a civil penalty if we find you are employing an illegal worker.

To make sure you have an excuse there are four key things to remember:

- You will only have an excuse if you **correctly** carry out checks on **acceptable** documents **before** a person starts working for you by following the **3 step process**.
- If a person has a time limit on their right to work, you will only keep your excuse if you carry out repeat document checks **at least once every 12 months**.
- If a person has a restriction on the type of work they can do and, or, the amount of hours they can work, then you should make sure that you do not employ them in breach of these work conditions.
- You will not have an excuse if you knowingly employ an illegal worker, regardless of any document checks you carry out before or during a person's employment.

Documents showing a right to work

The documents that are acceptable for proving someone has the right to work in the UK 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**, so they have an **ongoing** right to work in the UK. If you correctly carry out checks when List A documents are given to you, then you will have an excuse against payment of a fine for the duration of that person's employment with you.

List B documents show that the holder **has been granted leave to enter or remain in the UK for a limited period of time and, or, has restrictions on their right to work**. If you correctly carry out checks when List B documents are given to you, then you will have an excuse against payment of a fine for **up to 12 months** from the date of the check.

To keep your excuse you must then carry out repeat document checks **at least once every 12 months** to check if the person continues to have the right to work for you. You will keep your excuse for up to a further 12 months from the date on which you carried out the repeat check.

Where a person's leave to remain and right to work in the UK is due to expire **within** 12 months of the date of your last repeat check then we recommend that you carry out a repeat check at the point of expiry to check if a person continues to have the right to work for you lawfully.

If, when you recheck an employee's documents, they provide you with documents from List A, no further checks are necessary and you will keep your excuse for the remaining duration of the person's employment with you.

If at the time of the checks, a person has an outstanding application with us or appeal to extend their leave in the UK, then you should contact our Employer Checking Service. The Service will confirm that the person has, or continues to have, the right to work here. This confirmation is required should you wish to get, and then keep an excuse against payment of a civil penalty. You can find out more about this in the section on 'Verifying right to work in the UK'.

You should note that the requirement for a properly documented National Insurance number **will only provide an excuse** when given to you in combination with one of the acceptable documents, as specified in Lists A and B.

You should not accept a National Insurance number on its own in any format as this does not provide acceptable evidence of right to work in the UK.

The 3 step process

You should correctly follow Steps 1 to 3 below for every person you are looking to employ and every existing employee who has a time limit on their right to work.

By doing this, you will make sure that you only employ people who are allowed to work and you will also get, and then keep, an excuse against payment of a civil penalty if you are found employing an illegal worker.

Step 1

You must ask for and be given an acceptable document or combination of documents.

You must only accept original documents.

Details of the acceptable documents included in List A and List B are provided later in the guide in the section on 'Acceptable documents for proving right to work'.

Step 2

You must take all reasonable steps to check that the document is genuine and to satisfy yourself that the holder is the person named in the document. You should also check that the document allows them to do the work in question.

For each document given to you, you must:

- check any photographs are consistent with the appearance of the person; **and**
- check any dates of birth listed are consistent across documents and that you are satisfied that these match up with the appearance of the person; **and**
- check that the expiry dates of any limited leave to enter or remain in the UK have not passed; **and**
- check any UK immigration endorsements (Biometric Residence Permits, stamps, stickers, visas) to see if the person is able to do, or can continue to do, the type of work you are offering; **and**

- satisfy yourself that the documents are genuine, have not been tampered with and belong to the holder; **and**
- if you are given two documents which have different names, ask them for a further document to explain the reason for this. The further document could, for example, be a marriage certificate or a divorce decree absolute, a deed poll or statutory declaration.

Step 3

You must take and retain a copy of the document, in a format which cannot later be altered

A copy can be, for example, a photocopy or scan. However, where an electronic copy is made of a document, it **must** be made using a non-rewritable format, such as CD-R.

You must take a copy of the relevant page or pages of the document. In the case of a passport or other travel document, the following parts must be photocopied or scanned:

- the document's front cover and any page containing the holder's personal details. In particular, you should copy any page that provides details of nationality, their photograph, date of birth, signature, date of expiry or biometric details; **and**
- any page containing UK immigration endorsements showing that the holder has permission to be in the UK and has the right to carry out the work in question.

You must copy other documents in full; this includes both sides of a Biometric Residence Permit.

We recommend that you write on the copy of the document the date on which you took the copy.

You must then keep a record of every document you have copied. We recommend that you keep copies of the documents securely for the duration of the person's employment and for a further two years after they stop working for you. By doing this, we will be able to check whether you have complied with the law or if you are required to pay a civil penalty if we find anyone working illegally for you.

We recommend that you use our 'Employers Right to Work Checklist' at Annex B to help you make sure that you have correctly carried out all the steps required of you in your duty to prevent illegal working and to get and then keep a statutory excuse.

You will not have a statutory excuse if:

- you cannot provide a record of having conducted the document checks before recruitment; or
- you have accepted a document which clearly does not belong to the holder; or
- you have conducted a check and it is reasonably apparent that the document is false; or
- you have accepted a document which clearly shows that the person does not have permission to work in the UK and, or carry out the type of work you are offering.

When given false documents

If you are given a false document, you will only be required to pay a civil penalty if it is reasonably apparent that it is false. We consider the falseness 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 person presents a document and it is reasonably apparent that the person presenting the document is not the person referred to in that document, even if the document itself is genuine they you may be liable to prosecution for knowingly employing an illegal worker.

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

You may want to consider using a document scanner to help you check the authenticity of documents presented to you. Guidance about document scanners can be downloaded from www.gov.uk/government/publications/document-scanners.

If someone gives you a false document or a genuine document that does not belong to them, then you should report the individual to us by either calling our Sponsorship and Employers' Helpline on 0300 123 4699 , by emailing us at: UKBApublicenquiries@ukba.gsi.gov.uk or through our 'Reporting a Crime' page on our website: www.ukba.homeoffice.gov.uk/aboutus/contact/report-crime/. You can also call Crime stoppers on 0800 555 111.

When a person does not have the right to work in the UK

If you have carried out these document checks and found that the person you are looking to employ is not allowed to work, then you should refuse employment to them. It is up to the person seeking employment to prove to you that they have the right to do the work you are offering.

When an employee refuses to produce documents proving their right to work

Each case will be dependent upon the terms of the employment contract. You may wish to seek independent legal advice. You may also report the individual to us by either calling our Sponsorship and Employers' Helpline on 0300 123 4699 or by emailing us at: UKBApublicenquiries@ukba.gsi.gov.uk. You can also call Crime stoppers on 0800 555 111.

When an existing employee no longer has the right to work

If you have carried out repeat checks and found that your existing employee is no longer allowed to work in the UK or to carry out the work in question then you will no longer have an excuse against payment of a civil penalty. If you continue to employ a person who no longer has the right to work for you then you will be committing the criminal offence of knowingly employing an illegal worker.

If you are considering the potential dismissal of an employee, you may wish to seek independent legal advice. You may also report the individual to us by either calling our Sponsorship and Employers' Helpline on 0300 123 4699 or by sending us an email at: UKBApublicenquiries@ukba.gsi.gov.uk. You can also call Crime stoppers on 0800 555 111.

Verifying right to work in the UK

When you are carrying out the document checks there are certain circumstances when we require you to seek confirmation that a person has the right to work in the UK to get, and then keep, an excuse against payment of a civil penalty.

The role of our Employer Checking Service is to verify a person's right to work in the UK where an individual has:

- an outstanding application or appeal with us which was made at the correct time;
- presented an Application Registration Card (ARC) which states that the holder is allowed to work; or
- presented a Certificate of Application issued to or for a family member of an EEA or Swiss national which states that the holder is allowed to work.

In all these cases you must receive positive confirmation of a person's right to work from our Employer Checking Service before you employ them.

You must keep copies of the documents relating to the check and the confirmation of right to work letter you receive from us to get and then keep an excuse for up to 12 months from the date of your confirmation letter.

We may require these documents for examination and they must be produced upon our request.

You must also carry out repeat confirmation checks using our checking service at least once every 12 months where the above circumstances continue to apply. You must receive positive confirmation of the person's continued right to work to keep your excuse. This will be for up to a further 12 months from the date of your confirmation letter. You are not required to use the Employer Checking Service if the worker's outstanding application has been concluded in the meantime and is subsequently in a position to present documents to you directly.

Where a person's leave to remain and right to work in the UK expires within 12 months of the date of your last repeat check, then we recommend that you carry out a repeat confirmation check at the point of expiry to check if a person continues to have the right to work for you lawfully.

You are only required to use the Employer Checking Service in the three circumstances above and where someone starts working for you on or after 29 February 2008.

To request confirmation of a person's right to work you should complete a request form which can be found on our website at: www.ukba.homeoffice.gov.uk/sitecontent/applicationforms/ecs/requestform Once you have completed the form, making sure you have provided all of the information required, you should email it to us at: Employerchecking@ukba.gsi.gov.uk. If you are not able to email us your form please call our Sponsorship and Employers' Helpline on 0300 123 4699 and they will advise you on what action to take.

Once our checking service has processed your request you will receive written notification of the outcome. You can expect a reply within 5 working days. It is your responsibility to inform the person you are looking to employ or your existing employee that you may carry out a check on them with us. If you have questions relating to employment law, you may wish to seek independent legal advice.

Avoiding racial discrimination

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 people you are looking to employ to present their documents **before** they start working for you. You should not make assumptions about a person's right to work in the UK on the basis of their background, appearance or accent.

We have published a Code of Practice to help you comply with the law on illegal working by carrying out document checks without discriminating against individuals. You can download the Code of Practice from our website at: www.ukba.homeoffice.gov.uk/sitecontent/documents/employersandsponsors/preventingillegalworking/

If you breach this Code of Practice it may be used as evidence against you under equalities legislation before an employment tribunal. You will also place yourself at risk of payment of a civil penalty for employing an illegal worker, as your assumptions may have resulted in the employment of an illegal worker for whom you would not have a statutory excuse

If you need further advice on preventing discrimination in your recruitment checks, you should consult the Equality and Human Rights Commission (EHRC).

3: Acceptable documents for proving right to work

Validity of passports and travel documents

You should, where possible, check current passports or travel documents which have not expired. However, if a person does not have one then you can accept evidence of their right to remain and work in the UK in an expired document. It is crucial that you check that the stamp or endorsement continues to allow the person to work by virtue of their status (i.e. their stay is indefinite) or the date of the end of their permitted stay has not expired.

If you have to rely solely on an expired passport or travel document to show you that a person has the right to remain and work in the UK, then you must take particular care when examining photographs and comparing these with the current appearance of the person presenting them. Also, you should note the date of birth on the expired document and satisfy yourself that this is consistent with the current appearance of the holder.

You should note however that there are two instances when this does not apply. A Certificate of Entitlement to the Right of Abode must be endorsed in a valid passport and a Biometric Residence Permit must not have expired to be considered acceptable evidence of right to work.

List A: Documents which show an ongoing right to work

Any of the documents, or combination of documents, described in List A below show that the holder has an ongoing right to work in the UK. They will provide you with an excuse for the duration of that person’s employment with you if you correctly follow the **3 step process** set out in the section on ‘Right to work document checks’.

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 UK and Colonies having the right of abode in the UK.

A person with the right of abode in the UK has the right to live and work here without restriction. You should note that a passport describing the holder as a British Dependent Territories Citizen which states that the holder has a connection with Gibraltar is not acceptable as evidence of a person’s right to work as they do not confirm that the holder is a British citizen. 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.’

Only the following passports are acceptable as proof of this:



2

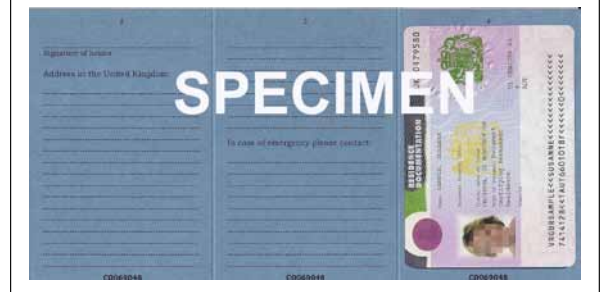
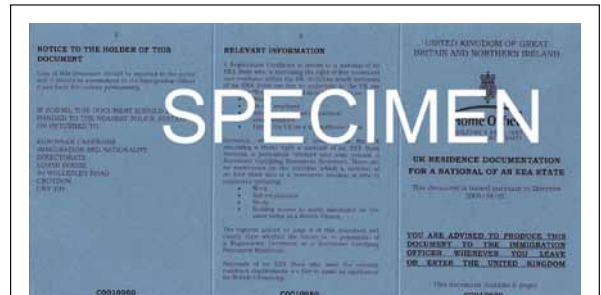
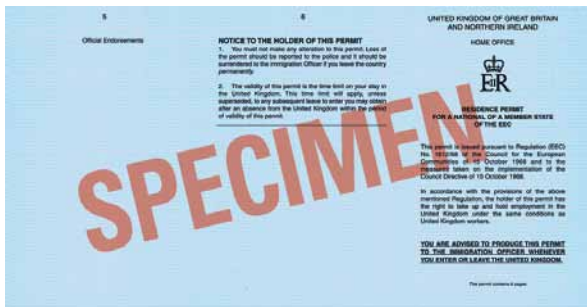
A passport or national identity card showing that the holder, or a person named in the passport as the child of the holder, is a national of an EEA country or Switzerland.

The majority of nationals from EEA countries and Switzerland are free to live and work in the UK. However, special controls on access to the UK labour market apply to those from Romania and Bulgaria (up until 31 December 2013) and Croatian nationals (from 1 July 2013). You can find more information in the section on 'Employing workers from the European Economic Area'.

3

A residence permit, registration certificate or document certifying or indicating permanent residence issued by the Home Office to a national of an EEA 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 us. Swiss nationals receive a similar document in the form of a pink residence permit. Examples of these are shown below.



4 A permanent residence card or document issued by the Home Office to the family member of a national of an EEA 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, 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.

5 A Biometric Residence Permit issued by the Home Office to the holder which indicates that the person named in it is allowed to stay indefinitely in the UK, or has no time limit on their stay in the UK.

You must not accept an expired Biometric Residence Permit as evidence of right to work. These documents have a maximum validity of 10 years for over 16 year olds, and 5 years for under 16's. You can find out more in the section 'UK immigration documents, stamps and endorsements.'

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 UK, has the right of abode in the UK, or has no time limit on their stay in the UK.

You can find out more about the stamps and endorsements which show a person's immigration status in the section 'UK immigration documents, stamps and endorsements'.

7

An Immigration Status Document issued by the Home Office, to the holder endorsed to indicate that the person named in it is allowed to stay indefinitely in the UK or has no time limit on their stay in the UK together with an official document issued by a previous employer or Government agency with the person's name and National Insurance number.

A valid Immigration Status Document contains a UK Residence Permit endorsement (see the section on 'UK immigration documents, stamps and endorsements'). It also has a section providing further details of the holder's status and personal details. You should note that these have been replaced by Biometric Residence Permits since 2012 and they will be issued within the UK to anyone from outside the EEA granted leave for more than six months. There will however still be Immigration Status Documents in circulation.

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


Refugee Status

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



Home Office
Immigration and Nationality Directorate

IMMIGRATION
STATUS
DOCUMENT



Refugee Status

The person named on this document has been recognised by the Secretary of State as a refugee as defined by the 1951 Geneva Convention relating to the Status of Refugees and its Protocol.

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

While the period of leave indicated remains valid, the holder is able to work in the United Kingdom without any immigration restrictions limiting the type of work they can undertake.

This Immigration Status Document has been endorsed in place of a valid national passport or travel document and entitles upon the person named leave to enter or remain in the United Kingdom for the period indicated. It does not certify the accuracy of the personal particulars, which are those supplied by the person who made the application. It remains the property of Her Majesty's Government and may be withdrawn at any time. It should not be transferred, sold or passed to an unauthorised person. Any case of loss or destruction should be immediately reported to the nearest police station and to the Immigration and Nationality Directorate at the address below, only after exhaustive enquiries are a replacement be issued in such circumstances. The Immigration Status Document of a deceased person should be returned to the Immigration and Nationality Directorate for cancellation.

Exemptions above the purpose, use, or validity of this document should be made to the Immigration and Nationality Directorate at:
Local Office, 40 Wellesley Road, Croydon, CR9 2BY (telephone 0870 484 7744)

ACD 2151

A full birth or adoption certificate issued in the UK which includes the name(s) of at least one of the holder's parents together with an official document issued by a previous employer or Government agency with the person's name and National Insurance number.

You must only accept the original of a full UK birth or adoption certificate, which must include the names of the holder and at least one of their 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 give you this part of your excuse.

CERTIFIED COPY OF AN ENTRY DAF 187323
 Particulars to the Births and Deaths Registration Act 1953

BIRTH

1. Name and status of child: CHILD

2. Name and surname: FATHER

3. Name and surname: MOTHER

10. Date of registration: 10. a Signature of registrar

CERTIFIED COPY OF AN ENTRY CL 524259
 Particulars to the Births and Deaths Registration Act 1953

Registration District

Name to the full extent of		In the	
(1)	(2)	(3)	(4)
No. of entry	Date and country of birth of child (year four-figure)	Name and surname of child	Sex of child
		Name and surname, address and occupation of father or adopter	Date of adoption order and description of court by which made
			Date of entry
			Signature of officer required by Registrar General to attest the entry

CERTIFIED COPY OF AN ENTRY GHX 292105
 Application No. ACR 34-512

Adopted Children Register

1. No. of entry: 4105

2. Date: Twenty-fourth July 1961

3. Name and surname of child: Michael Peter ROBERTS

4. Sex of child: Male

5. Name and surname: Peter Robert ROBERTS

6. Date of adoption order: Eighth August 1962

7. Date of entry: Ninth November 1962

8. Signature of officer designated by Registrar General to attest the entry: C.A. Davis

CERTIFIED COPY OF AN ENTRY IN THE RECORDS OF THE GENERAL REGISTER OFFICE QAA 051906
 Given at the GENERAL REGISTER OFFICE

SPECIMEN

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
No. of entry	Date and country of birth of child (year four-figure)	Name and surname of child	Sex of child	Name and surname, address and occupation of father or adopter	Date of adoption order and description of court by which made	Date of entry	Signature of officer required by Registrar General to attest the entry
2912	Twenty-fourth July 1961	Michael Peter ROBERTS	Male	Peter Robert ROBERTS, 305, Rutland Road, Chalfont, Lancashire, Civil Service and Joan Dore ROBERTS, his wife.	Eighth August 1962, Suffolk Assize Court	Ninth November 1962	C.A. Davis

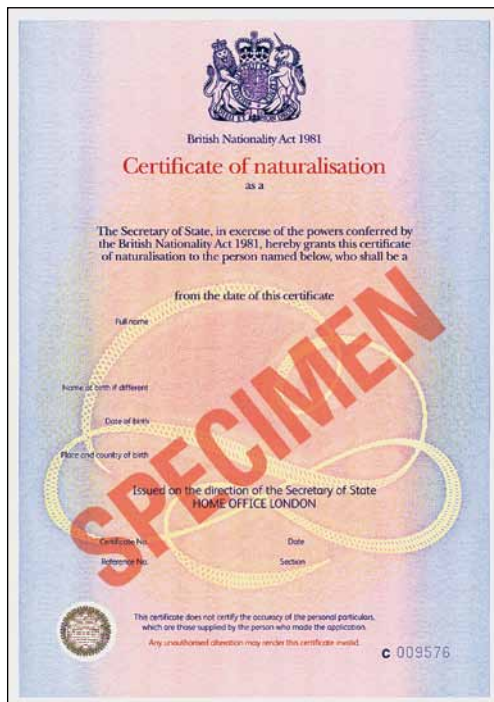
9

A birth or adoption certificate issued in the Channel islands, the Isle of Man or Ireland together with an official document issued by a previous employer or Government agency with the person’s name and National Insurance number.

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 in the UK.


A certificate of registration or naturalisation as a British citizen together with an official document issued by a previous employer or Government agency with the person’s name and National Insurance number.

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



A letter issued by the Home Office to the holder which indicates that the person named in it is allowed to stay indefinitely in the UK together with an official document issued by a previous employer or Government agency with the person's name and National Insurance number.

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


Home Office
Error! AutoText entry not defined.
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Error! AutoText entry not defined.
Telephone Error! AutoText entry not defined. Fax: Error! AutoText entry not defined.

FORENAMES SURNAME Our Ref Our Ref
Date of Birth: DATE Your Ref Your Ref
Nationality: NATIONALITY Date Date
Dependants

Dear

GRANT OF ASYLUM

You have been recognised as a refugee as defined by the 1951 Geneva Convention relating to the Status of Refugees and its Protocol and have been granted asylum in accordance with the Immigration Rules. You have been granted indefinite leave to enter/remain in the United Kingdom and this means that you are free to stay in this country permanently.

ENTITLEMENTS
You are free to take a job and do not need the permission of any Government Department before doing so. You are free to use the National Health Service and the social services, and other services provided by local authorities as you need them.

POLICE REGISTRATION
You no longer need to report changes of address or other details to the police. Please find enclosed your police registration certificate stamped to show that you no longer need to register.

TRAVEL ABROAD
You may travel out of the Common Travel Area any number of times during the validity of the leave you have been granted. The Common Travel Area comprises the United Kingdom, the Channel Islands, the Isle of Man and the Republic of Ireland. On your return, you will be re-admitted to the United Kingdom without having to obtain fresh leave to enter unless:

- you have been absent from the United Kingdom for a continuous period of more than two years, or
- you are seeking admission in a different capacity from the one in which this leave has been granted.

1 of 2

BUILDING A SAFE, JUST AND TOLERANT SOCIETY


Home Office
Error! AutoText entry not defined.
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Error! AutoText entry not defined.
Telephone Error! AutoText entry not defined. Fax: Error! AutoText entry not defined.

Address Our Ref Our Ref
 Your Ref Your Ref
 Date Date

Dear

I am writing to say that there are no longer any restrictions on the period for which you may remain in the United Kingdom.

You no longer need to report changes of address or other particulars to the police. Your police registration certificate, which is enclosed, has been stamped to show this.

You can now remain indefinitely in the United Kingdom.

You do not need permission from a Government Department to take or change employment and you may engage in business or a profession as long as you comply with any general regulations for the business or professional activity.

If you are thinking of going to live or work in the Isle of Man or one of the Channel Islands, you should first consult the immigration authorities of the Island concerned.

If you leave the United Kingdom, you will normally be re-admitted for settlement as a returning resident provided that:

- you did not receive assistance from public funds towards the cost of leaving this country;
- you had indefinite leave to enter or remain here when you last left;
- you have not been away for longer than 2 years; and
- you are returning for the purpose of settlement.


In order to be considered as settled here you will have to be able to show that you are habitually and normally resident in this country, and that any absences have been of a temporary or occasional nature.

You will not be re-admitted as a returning resident if you are resident overseas and only return here for short periods.

If your absence from the United Kingdom is for longer than 2 years but you can still demonstrate that you had indefinite leave to enter or remain here when you last left, and

1 of 2

BUILDING A SAFE, JUST AND TOLERANT SOCIETY


Home Office
Error! AutoText entry not defined.
Error! AutoText entry not defined.
Error! AutoText entry not defined.
Telephone Error! AutoText entry not defined. Fax: Error! AutoText entry not defined.

FORENAMES SURNAME Our Ref Our Ref
Date of Birth: DATE Your Ref Your Ref
Nationality: NATIONALITY Date Date
Dependants

Dear

You have been granted indefinite leave to enter/remain. This is exceptional leave, granted outside the Immigration Rules.

You no longer need to report changes of address or other particulars to the police. Your police registration certificate, which is enclosed, has been stamped to show this.

You can now remain indefinitely in the United Kingdom.

You do not need permission from a Government Department to take or change employment and you may engage in business or a profession as long as you comply with any general regulations for the business or professional activity.

If you need financial help you can make a claim for social security benefits (including income-based Job Seeker's Allowance). However, as you have not been granted refugee status, you are not eligible for a back payment of social security benefits, covering the period during which your claim for asylum was being considered.

If you are thinking of going to live or work in the Isle of Man or one of the Channel Islands, you should first consult the immigration authorities of the Island concerned.

If you leave the United Kingdom, you will normally be re-admitted for settlement as a returning resident provided that:

- you did not receive assistance from public funds towards the cost of leaving this country;
- you had indefinite leave to enter or remain here when you last left;
- you have not been away for longer than 2 years; and
- you are returning for the purpose of settlement.

1 of 2

BUILDING A SAFE, JUST AND TOLERANT SOCIETY

List B – Documents which show a right to work for up to 12 months

Any of the documents or combination of documents in List B below show that a person is allowed to work in the UK for a limited period of time. They will provide you with an excuse for up to 12 months from the date on which you carry out the checks, if you correctly follow the **3 step process** as set out in the section 'Right to work document checks'.

1 A passport or travel document endorsed to show that the holder is allowed to stay in the UK and is allowed to do the type of work you are offering.

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 prove this by producing a UK Government stamp or endorsement in their national passport or travel document. When we grant a person limited leave to enter or remain we may place restrictions on the type of work a person can do here, and, or the hours they can work for, depending to their immigration status. You can find out more in the section on 'UK immigration documents, stamps and endorsements'.

2 A Biometric Residence Permit issued by the Home Office to the holder which indicates that the person named in it can stay in the UK and is allowed to do the type of work you are offering.

BRPs issued to those with Limited Leave to Remain clearly show whether there are any work conditions or restrictions. You can find out more in the section 'UK immigration documents, stamps and endorsements'.

3

A residence card or document issued by the Home Office to a family member of a national of a EEA country or Switzerland.

Example images are shown below.



4

A work permit or other approval to take employment issued by the Home Office together with either a passport or other travel document endorsed to show the holder is allowed to stay in the UK and is allowed to do the work you are offering or a letter issued by the Home Office to the holder or to you confirming the same.

If you made an application for a work permit before your employee arrived in the UK, then the Home Office will have issued you directly with a work permit. If you made an application while your employee was in the UK, then the Home Office will have notified you with a letter of permission. If you are a licensed sponsor under our points based system (which we call PBS), you will have a record for the migrant worker on the sponsorship management system which shows the Certificate of Sponsorship number. Most work permit or PBS applicants will have been granted permission to remain in their passports stating that they are able to 'work as authorised by the Secretary of State'. A small number of work permit holders or PBS applicants may not have a national travel document and instead will be issued with an Immigration Status Document endorsed with a United Kingdom Residence Permit Further details on documents, endorsements and ink stamps can be found in the section 'UK Government immigration documents, stamps and endorsements'.



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

Endorsement form for an Immigration Status Document, stating that the period for which leave to enter or remain in the United Kingdom has been granted is indicated in the endorsement.

A Certificate of Application which is less than 6 months old issued by the Home Office to or for a family member of a national of a EEA country or Switzerland stating that the holder is allowed to take employment together with a positive verification letter from the Home Office's Employer Checking Service.

Family members of nationals from EEA countries and Switzerland may apply for residence documents, such as a residence card, which show right to work in the UK. Under European law, many are also allowed to work whilst these applications are under consideration and before residence documents have been issued by us. We will provide such applicants with an initial letter of acknowledgment. A Certificate of Application will only give you an excuse if you carry out a check with our Employer Checking Service and receive positive confirmation of the person's right to work in response. Further information can be found in the section on 'Verifying right to work in the UK'. Example images are below.

**Home Office
UK Border
Agency**

UK Border Agency
PO Box 306
Liverpool
L3 9QV
Tel
Fax
Email ukba@ukba.gov.uk
Web www.ukba.homeoffice.gov.uk

Address

Our Ref
Case ID
Your Ref
Date

Dear **Solution**

Re:

CERTIFICATE OF APPLICATION
(for family members of EEA nationals who are not themselves EEA nationals)

Thank you for **your/your client's** application of ******** for a Residence Card or Permanent Residence Card. Until such time as **your/your client's** application has been decided by the UK Border Agency, **you/your client** will be treated for immigration purposes as a family member of a legally resident EEA national and, as such, **you/your client** are free to live and work in the United Kingdom.

We advise you not to make any non-urgent travel plans until we have decided your application and returned your passport(s) or travel document(s).

For up-to-date turnaround times on particular types of application please visit our website: www.ukba.homeoffice.gov.uk.

We would request that you do not telephone or make written enquiries about the progress of the application before you hear from us unless a passport or other document is needed urgently, as this diverts resources from making decisions.

Note for employers

Until 28 February 2008, this document may form part of a statutory defence against conviction under section 8 of the Working Time and Immigration Act 1996 for employing an illegal migrant worker. This will only be acceptable when the document is presented in combination with the holder's appropriately documented permanent National Insurance Number, provided that both original documents are presented by the holder to the employer, and that the employer checks, copies, and retains the copy of the documents. To establish the statutory defence, the checks must be completed **before** employment begins.

From 29 February 2008 this document may form part of a statutory excuse against liability to pay a civil penalty under section 15 of the Immigration, Asylum and Nationality Act 2006 for employing an illegal migrant worker. This will only be acceptable if presented as evidence of an entitlement to work within six months of the date of the letter and if evidence is provided that you have verified the letter with the UK Border Agency - Employer Checking Service (details below). The original document must be presented by the holder. The employer must check, copy, and retain the copy of the document.

Employers and prospective employers should note that applications for a Residence Card or Permanent Residence Card should be resolved within six months from the date of application. Thereafter, the UK

ECC.3101 1 of 2

**Home Office
Border &
Immigration Agency**

Employer Checking Service
PO Box 3468
Sheffield
S3 8WA
Telephone: 0845 010 6677

[Contact Name]
[Company Name]
[Street]
[Town]
[Postcode]

Date: [00 Month 0000]
Verification Reference Number: [000000]

Dear [Contact Name],

I am writing to advise you to you **SPECIMEN** to you **SPECIMEN** of [Employer Name] of:

Name: [Employer Name]

This individual has presented themselves as being able to work in the UK on the basis of a Certificate of Application that has been issued within the last six months.

I have checked our records and can confirm that this is the case.

Therefore I can confirm that this individual is currently entitled to work in the United Kingdom on the basis of an outstanding application for a residence card as the family member of a European national.

An updated Certificate of Application has been issued to the prospective employee applicant by separate post.

Retaining this letter in combination with a copy of the Certificate of Application will provide a statutory excuse against liability for payment of a civil penalty for employing an illegal migrant worker.

As the individual does not have an entitlement to remain indefinitely in the United Kingdom, to retain the statutory excuse you must repeat the appropriate document checks within twelve months of the date of the previous check.

The information provided in this letter is for your records only.

Yours sincerely,

[Advisor Name]
Employers Checking Service

6

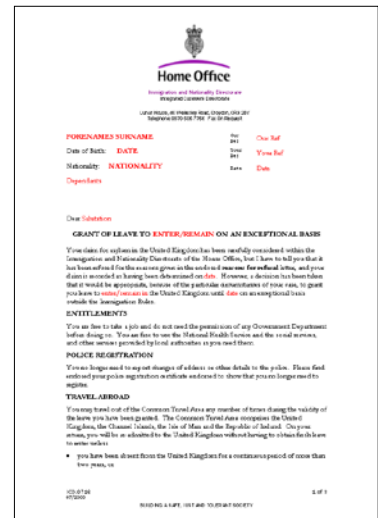
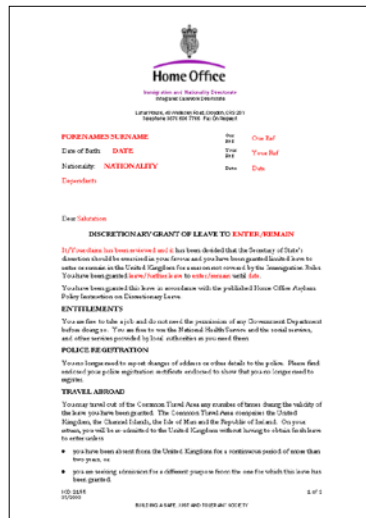
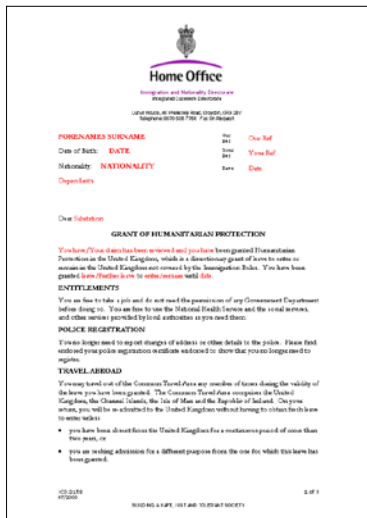
An Application Registration Card (ARC) issued by the Home Office stating that the holder is 'Allowed to Work' or 'Employment Permitted' together with a positive verification letter from the Home Office's Employer Checking Service.

You should be aware that some asylum seekers or failed asylum seekers may have restrictions on the type of work they can carry out and, or the amount of hours they can work. If an asylum seeker gives you an ARC stating that work is restricted then you should make sure that you do not employ them in breach of these restrictions as you may be liable for a civil penalty. You can find out more in the section on 'Employing asylum seekers, refugees and those granted humanitarian protection'. An ARC will only give you an excuse if you carry out a check with our Employer Checking Service and receive positive confirmation of the person's right to work in response. Further information can be found in the section on 'Verifying right to work in the UK'. Example images are below.



A letter issued by the Home Office to the holder or to the employer or prospective employer, which indicates that the person named in it can stay in the UK and is allowed to do the type of work you are offering together with an official document issued by a previous employer or Government agency with the person's name and National Insurance number.

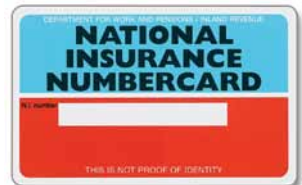
All of the letters pictured below indicate that an applicant has been granted a form of leave by us and that they have permission to stay in the UK for a limited period of time. Immigration restrictions may however have been placed on the type of work they can do here, which you should check carefully. If a person has restrictions then you should make sure that you do not employ them in breach of these restrictions as you may be liable for a civil penalty. You can find out more about the stamps and endorsements which show a person's immigration status in the section on 'UK immigration documents, stamps and endorsements'.



Official documents issued by a previous employer or Government agency

A P45, P60, National Insurance number card, or a letter from a Government agency are acceptable to demonstrate a person's National Insurance number. A Government agency can include for example HM Revenue and Customs (formerly the Inland Revenue), the Department for Work and Pensions, Jobcentre Plus, the Training and Employment Agency (Northern Ireland) or the Northern Ireland Social Security Agency.

From July 2011 HM Revenue & Customs stopped issuing National Insurance number cards to adults (mainly foreign nationals), this has been replaced with a letter that will be issued by the Department for Work and Pensions. From October 2011 HM Revenue & Customs stopped issuing National Insurance number cards to Juveniles (young people) and now issue a letter. However, there will still be National Insurance cards in circulation for those individuals who received cards prior to July/October 2011.



You should note that the requirement for a properly documented National Insurance number **will only provide an excuse** when given to you in combination with one of the acceptable documents, as specified in Lists A and B.

You should not accept a National Insurance number on its own in any format as this does not provide acceptable evidence of right to work in the UK.

4: UK immigration documents, stamps and endorsements

This section explains and provides images of the immigration stamps and endorsements that we place in a person's passport or travel document when they are from outside the European Economic Area (EEA). We are taking steps to streamline documents by increasingly issuing Biometric Residence Permits to all non-EEA nationals in the UK for more than six months. Since the end of 2012 we have stopped issuing other formats of document to people granted more than six months leave in the UK. However, as there will continue to be older formats of documents issued prior to this in circulation, the information in this section will help you to understand what you need to check to ensure that the person in question is allowed to do the type of work you are offering.

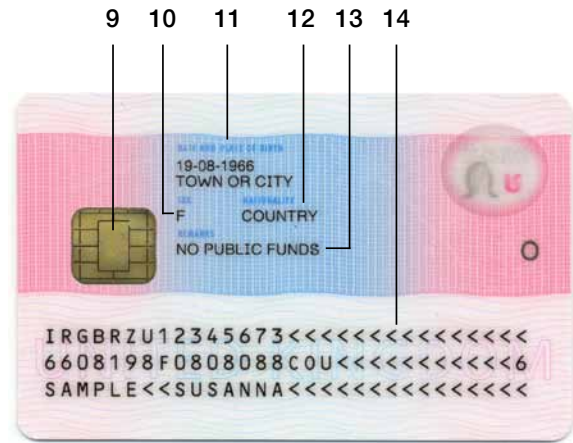
If you need further help when given any of the immigration stamps or endorsements, then you should call our Sponsorship and Employers' Helpline for further advice on **0300 123 4699**. An operator will provide you with advice about whether a stamp or endorsement allows the holder to take the employment you are offering. You should also regularly check our website for further updates: www.ukba.homeoffice.gov.uk/business-sponsors/preventing-illegal-working/

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

Biometric Residence Permit

The Biometric Residence Permit (BRP) holds a migrant’s biographic details (name, date and place of birth) and biometric information (facial image and fingerprints), and shows their immigration status, the date of expiry of leave and entitlements and restrictions while they remain in the UK.

The card’s design is set by European Union (EU) regulation. It is a standard credit card size (86mm x 54mm) and will look similar to identity cards issued by other EU countries. The card is made from polycarbonate plastic and contains a chip to make it more secure against forgery and abuse.



- 1. Holder’s digital image
- 2. Holder’s name
- 3. Valid until – the date the card expires. This date is at the end of the time the holder is allowed to stay; or five or 10 years if the holder has been given permission to settle in the United Kingdom (known as indefinite leave to remain)
- 4. Place and date of issue – this is the UK followed by the date the card was issued
- 5. Type of permit – this is the immigration category the holder is in (for example, STUDENT)
- 6. Remarks – these are the immigration entitlements for the length of the holder’s stay, and may continue on the back of the card
- 7. ZU1234567 – unique card number
- 8. Holder’s signature
- 9. Biometric chip
- 10. Holder’s gender
- 11. Holder’s date and place of birth
- 12. Holder’s nationality
- 13. Remarks – this is a continuation of immigration entitlements for the length of time of the holder’s stay (see 6 above)
- 14. Machine readable zone (MRZ) – this area allows information printed on the card to be read quickly by machine

You can find out more about Biometric Residence Permits on our website at: www.ukba.homeoffice.gov.uk/business-sponsors/preventing-illegal-working/checking-brp/

UK Residence Permit

The UK Residence Permit (which we call UKRP) is a form of endorsement which was introduced 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 UK. The UKRP has now replaced most of our ink stamps which are shown later in this section and which state 'Leave to Remain', but you may still be given older documents with valid ink stamps.

The UKRP is issued to those nationals who intend to stay here for longer than six months (and is in turn being replaced by BRPs). It is not issued to any non EEA nationals who are required to obtain a visa or entry clearance to enter the UK before they travel here.

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

United Kingdom Residence Permit – Security Features



INTAGLIO PRINT and LATENT IMAGE All of the overprint uses a raised process known as intaglio. This gives a characteristic rough texture. The letters "UK" appear when viewed at an oblique angle.



OPTICALLY VARIABLE INK This area exhibits a colour change when depending on the angle of viewing. The colour shift is from pink to gold. Both colours should be seen.



LETTERPRESS SERIAL NUMBER A unique process is used to print the serial number. Note the hard outline of the characters caused by the pressure of the printing.



KINEGRAM This is an intricate laser produced foil feature. A high degree of detail and vibrancy should be seen as the angle of viewing changes.



INTAGLIO PRINT The overprint including the extra small "EU" lettering is produced using intaglio. Note the high degree of detail within the crest design.



SECURE PAPER and BACKGROUND PRINT The paper used contains blue and red visible fibres. The background print contains high detail and uses subtly merging colours (rainbow print).

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.

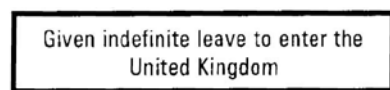
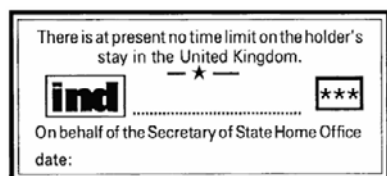
Indefinite leave to enter or remain, or no time limit on a person's stay in the UK

Any individual who is granted indefinite leave to enter or remain in the UK, 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 work they can do.

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



You may also see the following endorsements which show that a person has this status. These endorsements are being phased out, but when checked will still give you an excuse if they are given to you in a 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.'

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.

Limited leave to remain granted with no restrictions on employment

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

You will be able to employ anyone with this status if the date shown on their passport endorsement or stamp has not expired. There are no immigration restrictions placed on the type of work they can do. You should still carry out the appropriate document checks to have the excuse.



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

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	
until	
..... on behalf of the Secretary of State Home Office	
Date	

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 Tier 4 migrant), as a work permit holder (or Tier 2 migrant), then you can employ them if the date shown on their passport stamp, endorsement or BRP has not expired. They are only allowed to carry out certain types of work and, or for a limited number of hours under the Immigration Rules. You should note that you may be required to pay a civil penalty, or you may commit the criminal offence of knowingly employing an illegal migrant worker, if they work for you in breach of their conditions. You should still carry out the appropriate document checks to have the excuse.



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	
until.....	
The holder is not to engage in employment paid or unpaid other than with.....	
.....	
and is not to engage in any business or profession without the consent of the Secretary of State for the Home Department	
..... on behalf of the Secretary of State Home Office	

Leave to enter for/until
.....
No recourse to public funds
Work (and any changes) must be authorised

You should follow the steps in the section on ‘Right to work document checks’ 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 or the UK Border Agency and evidence of the employee’s National Insurance number.

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 carry out specific types of work during their stay here.

You can employ people in these categories only:

- while the date shown on their passport endorsement or stamp, or their BRP has not time expired; **and**
- in line with the specific types of work they may carry out here.

If a person is here with restrictions on their stay, then the stamp or endorsement in their passport, or their BRP will state the specific work the holder is limited to taking while in the UK.

You may be required to pay a civil penalty, or commit the criminal offence of knowingly employing an illegal migrant worker if they work for you in breach of their conditions.



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	
until	
..... on behalf of the Secretary of State Home Office	
Date	

Leave to enter for/until
.....
to work as/with
.....
Changes must be authorised No recourse to public funds

Stamps and endorsements which forbid working in the UK

Any non EEA national who has the following endorsements in their passport is **not allowed to work in the UK**. You may be required to pay a civil penalty and may commit the criminal offence of knowingly employing an illegal worker under section 21 of the 2006 Act if you employ a person on the basis of **any** of the pictured stamps in their passports.

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/until No work or recourse to public funds

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

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



5: Sponsoring workers from outside the European Economic Area

If you want to employ workers from outside the European Economic Area (EEA) you must be their **sponsor** during their stay in the UK. Before you can sponsor a migrant, you must obtain a sponsor licence.

Sponsorship is a flexible system that adapts to the changing economic circumstances of the UK. If you are looking to sponsor non-EEA workers, you are required to take responsibility for them and ensure that they have the intention and ability to meet the conditions of their visa. As a sponsor you will have a number of reporting duties; you must tell us if a sponsored worker fails to turn up for their first day of work. You are also expected to report if the person's employment is ended early, for example if they resign or are dismissed.

We have a regional network of compliance officers who are responsible for ensuring that you comply with your sponsor duties and who may conduct visits at any time. Our officers are also able to advise you on all aspects of sponsorship. Failure to comply with your sponsor duties may lead to action being taken against you which could result in the revocation of your sponsor licence.

We have several routes (known as tiers) under which a person can apply to work in the UK and we award points to ensure that only those with the attributes required by the UK are able to come here. You can find out more about how you can sponsor workers on our website: www.ukba.homeoffice.gov.uk/business-sponsors/points/

Impact of a civil penalty when applying for a sponsor licence

If you are considering applying for a licence to sponsor workers you should be aware of the following:

We may refuse your application if you or a relevant person (any owner, director, authorising officer, key contact, level 1 user, or anyone involved in your day-to-day running of the business) have, within the previous 12 months, been issued with a civil penalty for employing one or more illegal workers and liability still stands once your objection and appeal rights have been exhausted.

If the fine for at least one of those workers was set at the maximum amount of £10,000, or if the fine was for a repeat breach and set below the maximum amount we will refuse your application if:

- you paid the fine within the given time limit and applied within six months of the date the fine became payable; or
- you paid the fine after the given time limit and applied within 12 months of the date the fine became payable.

If the fine was for a first breach and set below the maximum amount, we will refuse your application if you paid the fine after the given time limit and applied within six months of the date the fine became payable.

We will refuse your application if you, or a relevant person, have not paid an outstanding illegal working civil penalty issued since the start of the regime in February 2008 where liability still stands once your objection and appeal rights have been exhausted.

Impact of a civil penalty on a licensed sponsor

If you are a licensed sponsor of workers you should be aware of the following:

We will revoke your licence immediately if:

- You or a relevant person (any owner, director, authorising officer, key contact, level 1 user, or anyone involved in your day-to-day running of the business) are issued with a civil penalty for employing one or more illegal workers, and the fine for at least one of those workers stands at the maximum £10,000 once your objection and appeal rights have been exhausted.
- You or a relevant person are issued with a civil penalty as above for a first breach, where the fine is below the maximum amount, and you have failed to pay the fine in full or set up a payment instalment plan with us by the 29th day following notification of liability after an initial, objection or appeal determination.
- You, or a relevant person, are issued with a civil penalty for a repeat breach within the period that your sponsor licence is valid and you are still liable once your objection and appeal rights have been exhausted.
- You or a relevant person goes on to breach the conditions of your civil penalty payment instalment plan.

You can find out more about sponsoring workers on our website:

www.ukba.homeoffice.gov.uk/business-sponsors/points/

6: Employing asylum seekers, refugees and those granted humanitarian protection

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

Asylum seekers

Asylum seekers are those who have made an application for international protection on the basis that it would be contrary to our obligations under the Refugee Convention or the European Convention of Human Rights (ECHR) to remove them from the UK.

Asylum seekers do not normally have the right to work here and may only be lawfully employed if we have lifted restrictions on them taking employment.

They must apply to the Home Office for permission to work unless they already have the right to work from any previous leave to remain in the UK that they had before claiming asylum. If this is the case it will be clearly shown in their passport or valid Biometric Residence Permit.

If an asylum seeker is allowed to work they will hold a Home Office issued Application Registration Card (ARC) stating one of the following:

- Allowed to Work
- Employment Permitted
- Work Restricted – SOL (which stands for Shortage Occupation List)
- Work Restricted – Student
- Work Restricted – Other

You should note that checking and taking copies of an ARC stating that work is allowed will only give you an excuse if you have received positive confirmation of the person's right to work from our Employer Checking Service. You can find out more information about this in the section on 'Verifying right to work in the UK'.

Any permission to work will come to an end:

- for asylum seekers: once the asylum application has been finally determined (that is, once appeal rights are exhausted),
- for failed asylum seekers: once a negative decision has been taken on a further submission or, in the event that appeal rights are granted, those appeals are exhausted.

If you are given an ARC which states:

- Employment Prohibited
- Forbidden From Taking Employment

on either side, as shown in the section on 'UK immigration documents, stamps and endorsements', then you may be required to pay a civil penalty, or you may commit the criminal

offence of knowingly employing an illegal migrant worker, unless the person can otherwise show that they are allowed to work in the UK.

You should not accept a Standard Acknowledgement Letter (SAL) or Immigration Service Letter (IS96W) as evidence that an asylum seeker is allowed to work. If an asylum seeker presents these documents to you, you should refer them to us on 0151 213 2174 for further advice on how they can obtain an ARC.

Restrictions on asylum seekers working

Some asylum seekers have restrictions on the kind of work they can do. If an asylum seeker gives you an ARC stating that work is restricted then you should make sure that you do not employ them in breach of these restrictions as you may be liable for a civil penalty.

Since 9 September 2010 asylum seekers who have not received an initial decision on their claim within 12 months, and failed asylum seekers who have made further submissions on asylum grounds, but have not received a decision after 12 months, can apply for the right to work. They will not be allowed to work if the delay was their fault.

These rules apply to:

- all applications for right to work by failed asylum seekers that remained outstanding as at 9 September 2010; and
- all applications for right to work made by asylum seekers or failed asylum seekers on or after 9 September 2010.

These rules do not apply to applications for right to work made by asylum seekers before 9 September 2010 that have not been decided as at 9 September 2010. These rules limit the types of jobs that those asylum seekers and failed asylum seekers who are allowed to work can do. They are only allowed to do jobs included on the list of shortage occupations published by us, and in effect at the time the job offer is accepted.

You can view our shortage occupation list as a pdf on our website:

www.ukba.homeoffice.gov.uk/sitecontent/newsarticles/2011/november/18-short-occup

These individuals do not have to meet the other tests of the points based system and you do not need to be a sponsor to employ an asylum seeker or failed asylum seeker who is allowed to work.

Our Employer Checking Service confirms whether an asylum seeker or failed asylum seeker has the right to work and is allowed to do the job you are offering. The individual themselves will be aware of any restrictions they may be subject to when applying for employment.

Those granted permission to work before 9 September 2010 and those who were already allowed to work at the point at which they claimed asylum will not be restricted to jobs on our shortage occupation list. Our Employer Checking Service will confirm the type of permission the individual has.

Refugee status and humanitarian protection

An asylum seeker whose claim is successful is granted refugee status. Refugees are foreign nationals or stateless people who we have allowed to remain in the UK because they have demonstrated a well founded fear of persecution for one of the reasons listed in the 1951 Geneva Convention.

Humanitarian protection may be granted to those who do not qualify for protection under the 1951 Geneva Convention if there is a real risk that if they were removed to their country of origin they would face serious harm.

Refugees and those with humanitarian protection have no restrictions on the type of work they can do, as long as they continue to hold this qualifying status.

These individuals do not have to meet the tests of the points based system, and you do not need to be a sponsor under this scheme to employ someone of one of these statuses.

We are committed to the integration of refugees and those with humanitarian protection.

Settlement within the UK

Since August 2005 we have given people granted refugee status or humanitarian protection, five years limited leave to enter or remain in the UK. After those five years they can apply to us if they wish to extend their leave, and they may be granted indefinite leave to remain here, which is also known as settlement.

They can apply to us for settlement a month before their five years limited leave expires. It is the individual's responsibility to ensure that their application reaches us before their leave expires (which is before the expiry date indicated on their status document). To apply for settlement, the person should submit a 'SET (Protection Route)' application form, which can be found on our website: www.ukba.homeoffice.gov.uk/settlement/applicationtypes/completing_set_protection_route/

If a person applies to us for settlement, they will surrender their original status document, although they are encouraged to keep a photocopy of the original. We will provide them with an acknowledgement letter to confirm receipt of their application.

As the individual will no longer have their original status document available for you to check their right to work, you are required to get positive confirmation of their right to work from us using our Employer Checking Service. A positive confirmation of the person's right to work is required to get a statutory excuse against payment of a civil penalty. You can find out more about this in the section on 'Verifying right to work in the UK.' Further assistance for applicants is available from our Croydon Contact Centre on 0870 606 7766.

Volunteering

Volunteering may be undertaken by asylum seekers, as long as they are carrying out the work on behalf of a registered charity, voluntary organisation or body that raises funds for either, or public sector organisation.

However, we do not support volunteering activities by anyone whose asylum application has been refused and their appeal rights exhausted. As they no longer have a basis to remain in the UK they should leave voluntarily.

More information on our policy on asylum seekers volunteering and undertaking voluntary work can be found in the 'Asylum Permission to Work Policy Instruction' on our website: www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumpolicyinstructions/

7: Employing workers from the European Economic Area

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

You should require EEA nationals to produce an official document showing their nationality. This will usually be either a national passport or national identity card. Some EEA nationals may also have been issued with a registration certificate. This is a document issued by us to confirm that they are living here lawfully, either by exercising their Treaty rights or residing as the family member of another EEA national who is exercising Treaty rights. An EEA national can exercise a Treaty right as a worker, jobseeker, self-employed person, self-sufficient person, or as a student.

Some EEA nationals may also be able to produce a document certifying that they have a right of permanent residence in the UK. All of these documents are included in **List A** and will provide you with an excuse if checked and copied **before** the person starts working for you.

EEA nationals who can work without restriction

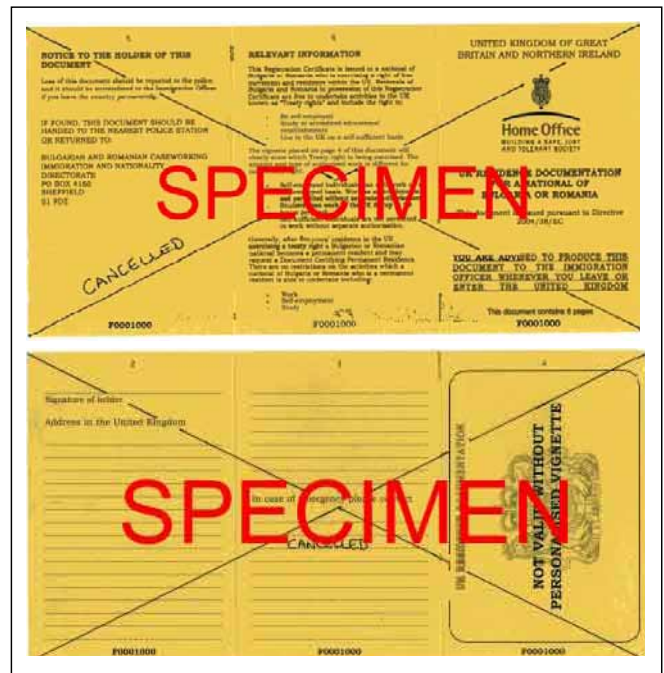
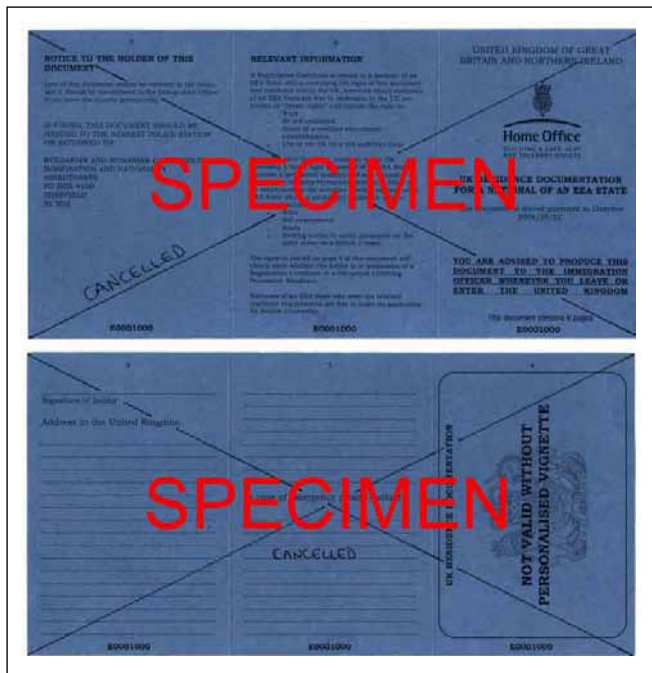
- Austria
- Belgium
- Cyprus
- Czech Republic
- Denmark
- Estonia
- Finland
- France
- Germany
- Greece
- Hungary
- Iceland
- Ireland
- Italy
- Latvia
- Liechtenstein
- Lithuania
- Luxembourg
- Malta
- Netherlands
- Norway
- Poland
- Portugal
- Slovakia
- Slovenia
- Spain
- Sweden

Nationals from these EEA countries can enter and work freely in the UK without restriction. Whilst they are residing lawfully, their immediate family members (whether or not they are EEA nationals) are also able to live and work freely in the UK. However, you should still check their documents to prove this right to work. Since 1 June 2002, nationals from Switzerland and their family members have also had the same free movement and employment rights as EEA nationals.

Bulgarian and Romanian nationals

Bulgaria and Romania joined the European Union on 1 January 2007. Bulgarian and Romanian workers are free to come to the UK but unless exempt, they are 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.

The restrictions on Bulgarian and Romanian workers end on 31 December 2013, so for workers employed on or after 1 January 2014 these restrictions will not apply.



If you employ a non-exempt Bulgarian or Romanian worker without authorisation you may be liable to prosecution under the Accession (Immigration and Worker Authorisation) Regulations 2006.

Croatian nationals

Since 1 July 2013, as European Economic Area (EEA) nationals, Croatians have been able to move and reside freely in any European Union (EU) Member State. However, the UK has applied transitional restrictions on their access to the labour market under the Accession of Croatia (Immigration and Worker Authorisation) Regulations 2013. Under these Regulations, a Croatian national who wishes to work in the UK and who is subject to the worker authorisation requirement will need to obtain an accession worker authorisation document (permission to work) before starting any employment.

This means that since 1 July 2013 a Croatian national can only work in the UK if they hold a valid accession worker authorisation document or if they are exempt from work authorisation. Under the 2013 Regulations you have a duty to carry out document checks to confirm if a Croatian national is either exempt from work authorisation or holds a valid worker authorisation document for the work in question. You should check, validate and keep dated copies of original acceptable documents before they start working for you.

If you do not carry out these checks you may be required to pay a fine, known as a civil penalty, under regulation 11(2) of the 2013 Accession Regulations, if you employ a Croatian national illegally.

You can find out more information on your duty under the Accession of Croatia Regulations 2013 in our employer guidance and code of practice booklets on our website: www.ukba.homeoffice.gov.uk/sitecontent/documents/employersandsponsors/preventingillegalworking/

8: Employing students

Students from outside the European Economic Area (EEA) are allowed to take limited employment in the UK, providing their conditions of entry to the UK allow this. The limits on a student's working hours depend on when they applied for permission to come to, or stay in the UK, the type of course they study and the type of educational provider they are studying with.

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 students can carry out and the hours they can work while they are studying in the UK.

If you are found employing a student in breach of their work restrictions then you may be liable to payment of a civil penalty.

Work restrictions

You can employ students granted leave under the Immigration Rules in place prior to the introduction of Tier 4 of the points based system, which came into force on the 31 March 2009:

- **for up to 20 hours per week only** during term time; or
- full time only outside of their term time i.e. during vacations and following completion of their course; **and**
- they must still have valid leave.

You can employ students granted leave under the Immigration Rules in force from 31 March 2009 under Tier 4 of the points based system, as follows:

- If the student applied for permission to come or stay in the UK before 4 July 2011 and they are studying:
 - a foundation degree course or degree level courses at QCF or NQF level 6 (and equivalents) or above, they can work 20 hours a week during term time and full time during vacations;
 - below QCF or NQF level 6 (and equivalents), (except students on foundation degree courses), they can work 10 hours a week during term time and full time during vacations.
- If the student applied for permission to come or stay in the UK after 4 July 2011 they can work 20 hours a week during term time and full-time during vacations and following completion of their course if:
 - they are studying at degree level (QCF or NQF level 6 (and equivalents)) or above and with a recognised body or a body that receives public funding as a higher education institution; or
 - they are on a short-term study-abroad programme in the UK whilst enrolled with an overseas higher education institution.

- If the student applied for permission to come or stay in the UK after 4 July 2011 they can work 10 hours a week during term time and full-time during vacations and following completion of their course if:
 - they are studying at below degree level (QCF or NQF level 6 (and equivalents)) and with a recognised body or a body that receives public funding as a higher education institution; or
 - they are studying at a minimum QCF or NQF level 3 (and equivalents) with a publicly funded further education college and where the publicly funded further education college is a highly trusted sponsor. If the publicly funded further education college is not a highly trusted sponsor the minimum level the student can study at is QCF or NQF level 4.

You cannot employ a student if they do not fit into any of the above categories.

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

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

Where a student applies for an extension to their stay from within the UK **before** their existing permission to stay has expired, but their permission runs out before a decision has been made on their application, then you can continue to employ them, subject to the above conditions, while they are awaiting a decision.

You can find more information on the right to work in the UK of students from out the EEA, including information on work placements/sandwich courses on our website:

- the rules for students who applied for leave before 31 March 2009 can be found at: www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/IDIs/idischapter3/section3/section3.pdf?view=Binary
- the rules for students who have applied to study in the UK under the points based system on or after 31 March 2009 can be found at: www.ukba.homeoffice.gov.uk/visas-immigration/studying/adult-students/conditions/

9: Employing members of the armed forces

Armed Forces personnel may currently apply for settlement where they have:

- completed 4 years continuous service in HM Armed Forces;
- have been discharged from their duties; and
- meet all the other statutory requirements of the relevant Immigration Rules.

While they may apply for settlement up to 10 weeks prior to their discharge, settlement cannot be granted until they have officially completed service in HM Armed Forces. This is because while they remain in HM Forces they are exempt from Immigration control under section 8(4)(a) of the Immigration Act 1971 and so can not technically be granted settlement under that Act.

Settlement within the UK

Where a member of the Armed Forces applies for settlement before their discharge, they will receive an Indicative Letter from us outlining that a decision to grant them settlement in principle has been made based on the information currently held.

You should be aware that this Indicative Letter does not give the holder permission to work. Instead it demonstrates that the individual named is complying with our rules and should not be excluded from consideration for future employment on the grounds of their immigration status. We cannot guarantee that settlement will ultimately be granted but the grant of settlement is highly likely barring any late change in the circumstances of the applicant. You can be confident that in the vast majority of cases this will then enable early confirmation and commencement of employment once the applicant has been discharged from HM Forces.

If you are given an Indicative Letter we recommend that you delay the actual employment until acceptable documents showing right to work have been provided.

Indicative letter to send to applicant whose application has been considered and where an *in principle* decision has been made to grant settlement, subject to any other factors coming to light. This letter is not to be used where, on the evidence available, there is reason to believe that a grant of settlement is unlikely to be appropriate.

To whom it may concern

Name: **XXXXX XXXXX**
DOB: **dd/mm/yy**
Nationality: **Nationality**
Service no: **No.**
Unit: **Unit Name**
Address: **Full Address**

This letter confirms that the above named is currently serving with [insert Unit Name] and has applied for indefinite leave to remain in the UK in anticipation of [his/her] discharge from HM armed forces on [date of discharge].

As a serving member of HM armed forces (HMAF), [insert name] is exempt from immigration control under section 8(4)(a) of the Immigration Act 1971. As a matter of law it is not possible to grant a person indefinite leave to remain in the UK whilst they are exempt from immigration control under Section 8(4)(a) of the Immigration Act 1971. Therefore, settlement can not be granted until the exemption from immigration control has ceased following [insert name]'s discharge from HMAF.

Despite this limitation, [insert name]'s application for indefinite leave to remain was submitted on [add in date] and has been provisionally considered and assessed by UK Border Agency on the information provided. This includes UKBA having conducted relevant checks as required by law and policy. I can therefore confirm that it is UK Border Agency's intention to grant [insert name] indefinite leave to remain on [insert date of discharge] or as soon as possible thereafter bar any unanticipated intervening factors.

Whilst not providing a guarantee, this letter therefore serves to indicate that settlement is likely to be granted and that relevant arrangements for his employment, access to housing, healthcare and benefits may therefore be pursued on the reasonable expectation that settlement will be granted.

Specific Information for Employers

This letter does not confer permission to work but it should demonstrate that the individual named is complying with UK Border Agency and should not be excluded from consideration for future employment on the grounds of [his/her] immigration status. Employers must ensure, however, that no employment should commence until [insert name] has demonstrated [he/she] has been granted permission to work in the UK by providing the relevant documentation. Employers may seek further advice by contacting the UK Border Agency's Employer's Helpline on 0300 123 4699 (UK Number).

10: Civil penalty process

Our system of civil penalties is designed to encourage you to comply with your duty to prevent illegal working without us unfairly criminalising you if you have not acted with due care and diligence in operating your recruitment and employment practices.

Liability for a civil penalty

If you are found to have employed an illegal worker you may be served with a **Notice of Potential Liability** for a civil penalty. The decision on whether a penalty is appropriate and, if so, how much it will be, will not be made immediately. The details of your case will be passed to our Civil Penalty Compliance Team for consideration of liability and, where liability is found, consideration of a number of factors to decide the penalty amount. The team will then notify you of any action to be taken against you.

If the team decides that there is no action to be taken, you will be sent written notification of this decision. Your case will then be closed. However, if it is decided that you are liable for a penalty, you will be advised of this by the service of a **Notice of Liability** for a civil penalty which will be your first formal notification that a penalty has been imposed on you.

This notice will state:

- a. why you are liable;
- b. the amount payable;
- c. when it must be paid by;
- d. how the penalty must be paid;
- e. how you may object to or appeal against the penalty; and
- f. how the penalty may be enforced.

Fast payment option

We have a Fast Payment Option which gives you the opportunity to pay a 20% lower amount for your civil penalty as long as the qualifying criteria are met and payment is made in full and received by us within 21 days of the given date on your penalty notice.

The option will only be available if:

- you have not been previously served with a penalty or warning letter within the last three years; and
- you have co-operated with Home Office officials when carrying out their checks into your compliance with your employer illegal working duties; and
- you were found liable for employing no more than two illegal workers.

You should note that when we refer to previous penalties this means those issued in respect of both Croatian nationals under the 2013 Accession Regulations and non-EEA nationals under the 2006 Act. When we refer to warning letters this means those issued in respect of the employment of illegal migrant workers.

If you object to the penalty, you will lose this option unless the penalty is then reduced at the objection stage.

Information sharing

When the Home Office issues a civil penalty, information may be shared with other government departments such as HM Revenue and Customs and the Department for Work and Pensions. Employers who are also themselves subject to immigration control should be aware that any civil penalty will be recorded on Home Office systems.

If you do not pay your civil penalty by the due date, debt recovery action will be taken.

Objecting or appealing against a civil penalty

Objecting

On receipt of the penalty, you will have **28 days from the date specified in the notice** to pay the penalty or to object. An objection must be made in writing and submitted on a IWCP-4 pro forma ensuring all mandatory fields are completed with the information required, and providing your reasons for the objection.

You can download the IWCP-4 pro forma from our website using the following link:
www.ukba.homeoffice.gov.uk/sitecontent/applicationforms/sponsors/illegalworking

You can submit your completed IWCP-4 pro forma to the team by post to the following address:

Civil Penalty Compliance Team
PO Box 99
Manchester
M90 3WW

Or by e-mail to:

CPCTEnquiries@homeoffice.gsi.gov.uk

Or by fax to:

0870 336 9287

Reasons for objecting

Your objection must set out your grounds in full for objecting to the penalty. You may object on the grounds that:

- you are not liable to pay the penalty; **or**
- you have a statutory excuse; **or**
- the level of penalty is too high.

The team will review the evidence again in light of your objection and may consider any additional evidence provided of financial means, including evidence of the impact of the civil penalty on the viability of your business.

You may request permission to pay your penalty by instalments. In order to be granted permission, you must provide full details of your ability to pay the penalty over the duration of the instalment plan/your inability to pay the penalty in full.

You should also indicate in your objection whether you have also lodged an appeal. You may wish to first exercise your right of objection and await the outcome before exercising your right to appeal.

Under section 16(4) of the 2006 Act the Secretary of State, when considering an objection, may decide to cancel, reduce, increase, or to take no further action on the penalty.

Appealing

When a penalty is issued, you can appeal to the courts on the grounds that:

- you are not liable to pay the penalty; **or**
- you have a statutory excuse; **or**
- the level of penalty is too high.

On receipt of the penalty, you have **28 days from the specified date** to appeal to the court. If you choose to lodge an objection to the penalty first, you will have **28 days from the date specified** in the notice of determination of the objection to appeal to the court.

If you choose to appeal against the imposition of a civil penalty the court may allow the appeal and cancel the penalty; or allow the appeal and reduce the penalty; or dismiss the appeal.

If you are unsuccessful at the appeal you may also be liable for our costs in preparing for and attending the hearing.

Factors considered when calculating a penalty amount

When you are required to pay a civil penalty, we calculate the penalty amount using a sliding scale up to a maximum of £10,000 for each illegal worker you have employed. We consider a variety of factors when calculating your penalty amount including:

Have you reported suspected illegal workers to us?

If you report to us any suspicions about your employees' right to work for you a sum may be deducted from the amount of penalty due for those workers. You must have reported your suspicions to our Sponsorship and Employers' Helpline on 0300 123 4699 **before** any visit by us is made known to you. When reporting your suspicions, you will be given a unique reference number and this must be referred to in any future correspondence you have with us.

Have you cooperated with us?

The penalty amount due for each worker can be reduced where you have cooperated with us when carrying out checks into your compliance with your employer illegal working duties. This may include providing our officials with access to your premises and employment records when requested. It could also assist your case if you respond in full and within the timescale set to any requests for further information from the Civil Penalty Compliance Team.

Have you had any previous penalties or warnings?

When we consider whether a higher amount of penalty should apply to you if you have been visited and found employing 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 you have received a penalty or warning within three years of the current penalty, those penalties and warnings will be counted in calculating the amount of your current penalty.

You should note that when we refer to previous penalties this means those issued in respect of both Croatian nationals under the 2013 Accession Regulations and non-EEA nationals under the 2006 Act.

If you are repeatedly found using illegal workers or you are caught employing multiple illegal workers you may be liable for criminal prosecution.

Do you have multiple premises?

You will be required to pay an increased penalty amount if illegal workers are detected at different sites, and this is due to a general failure in your company's centrally set recruitment practices. However, if you are a company with multiple premises where recruitment is devolved to each site, you will not be liable to an increased penalty.

11: Employer support

If you require any further information about what you have read in this guide, you should call our **Sponsorship and Employers' Helpline** on **0300 123 4699**. The dedicated service provides information for sponsors on the points-based system and for employers on preventing illegal working. The helpline is open 9am to 5pm Monday to Thursday and 9am to 4.30pm Friday, except on Bank Holidays. Calls to the helpline may be recorded and used for training purposes.

The Sponsorship and Employers' Helpline cannot provide you with employment advice. If you have questions relating to employment law you may wish to seek independent legal advice.

You can find out more about the helpline on our website at:

www.ukba.homeoffice.gov.uk/business-sponsors/preventing-illegal-working/support/

Illegal working allegations

You can also report any suspicions you may have about your employees' right to work in the UK or to carry out the work in question, by phoning our Sponsorship and Employers' Helpline. If your information is reported to our helpline before an illegal working immigration visit is made by our enforcement teams, any civil penalty amount that you may be liable for could be reduced. When reporting your suspicions you will be given a call reference and this must be referred to in any further correspondence you have with us.

You can also call Crime stoppers on 0800 555 111.

Further sources of information

Immigration issues

For advice concerning immigration issues you should contact our **Croydon Contact Centre** on **0870 606 7766**. The opening hours are Monday to Thursday, between 9am and 4.45pm, and on Friday from 9am until 4.30pm.

Email enquiries should be directed to: UKBApublicenquiries@ukba.gsi.gov.uk

You should note that the contact centre cannot answer questions on individual cases by email for data protection reasons.

Passports and identity documents

You can find information on national passports and identity cards from European Union countries, Iceland and Norway on the Council of the European Union website:

www.consilium.europa.eu/prado

Birth and adoption certificates

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.

Alternatively individuals can order full birth or adoption certificates online through the General Register Office in England and Wales, the General Register for Scotland, or the General Register Office Northern Ireland websites.

Some questions you may have

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Getting an excuse against liability to pay 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 they are allowed to work in the UK?
- Q4 What if a person I am looking to employ cannot provide evidence of their right to work?
- Q5 What if a person I am looking to employ 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 given to me?
- 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 How can I balance the need for data privacy and the need to satisfy the statutory excuse criteria?
- Q11 Why does the civil penalty and the knowing criminal offence only apply to employees over 16?
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- Q13 Do I need an excuse under section 15 if employing a worker who is exempt from immigration control?
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- Q16 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?
- Q17 Why can't I depend on a National Insurance number as a single document?
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- Q21 Can an adopted person, who is a British citizen and who does not have a full birth certificate, prove their right to work in the UK with their adoption certificate?

Definition of an employer

- Q22 What is the definition of 'employer' for the purposes of section 15 and 21 of the 2006 Act?
- Q23 How can I tell if a person I am looking to employ will be classed as someone who is 'self-employed' or 'my employee' for section 15 purposes?
- Q24 As a parent, am I responsible for checking whether my nanny or childminder is allowed to work in the UK?
- Q25 Am I defined as the 'employer' if I use an employment agency to find my staff?
- Q26 I am running an employment agency. Do I have to carry out the checks?
- Q27 Who in the organisation is held liable for employing someone illegally?
- Q28 What if I acquire staff as the result of a TUPE transfer?
- Q29 I am an employer based in the UK and I wish to employ a non-EEA national based outside the UK. Would I be required to check my employees' right to work?
- Q30 My business employs workers on a casual basis through the internet. Managers do not meet with employees and are therefore unable to confirm the identity or right 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

- Q31 Can I accept any document which contains a NI number?
- Q32 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?
- Q33 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?
- Q34 Do workers from EEA member states need a NI number to prove that they have the right to work in the UK?

Employing asylum seekers

- Q35 Can I employ asylum seekers?
- Q36 How will I know if an asylum seeker or failed asylum seeker is able to work?
- Q37 What if an individual presents me with a Standard Acknowledgement Letter (SAL), or IS96W letter, which states that they are allowed to work?
- Q38 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?

Employing workers from the European Economic Area

- Q39 Can I accept an identity card from any EEA member state in order to have an excuse against liability to pay a civil penalty?
- Q40 Is the UKRP the same as the Registration Certificate issued to EEA nationals?
- Q41 What is a residence card?
- Q42 Can a non-EEA national who was formerly a family member of an EEA national maintain their right to work in the UK?
- Q43 What is a Certificate of Application?

Employing students

- Q44 Are non-European Economic Area students allowed to work in the UK?
- Q45 Students from outside the EEA can work for 20 hours per week or 10 hours per week depending on when their leave was granted or on their course during term time. How do you define term-time?
- Q46 How does the 20-hour rule affect non-EEA postgraduate students?
- Q47 What about work placements?
- Q48 Can a non-EEA student with valid leave to enter or remain in the UK defer (postpone) their studies?
- Q49 What are the rules for student nurses?

Further questions

- Q50 Can I be liable for payment of a civil penalty if I am found to be providing voluntary work to someone without the right to work in the UK?
- Q51 How can I get a statutory excuse if a person I am looking to employ or existing employee, has applied for further leave to remain in the UK, but their documents are with the Home Office?
- Q52 Does the requirement to show a combination of National Insurance number and a birth certificate discriminate against British citizens who have been or are in the process of gender transitioning? The requirement may cause problems for a person in this situation.

Getting an excuse against liability to pay a civil penalty

Q1 Why should I carry out document checks?

- A. We recommend that right to work document checks are carried out on all people you are looking to employ, as this enables you to ensure that you only employ people who are legally allowed to work for you and will give you an excuse against payment of a civil penalty. It also provides evidence of an open and transparent recruitment process, and will ensure that your recruitment practices do not discriminate against individuals on racial grounds.

We have made information available on how to avoid racial discrimination, in addition to a Code of Practice for employers which provides you with guidance on best practice. The Code of Practice does not create any new legal obligations for you or make you liable to any proceedings, but any breach of the Code can be admissible as evidence in any proceedings in a court or tribunal.

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 these laws.

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?

You can get an excuse against payment of a civil penalty by correctly following steps 1–3 detailed in the section 'The 3 step process'.

If a person you are looking to employ provides a specified document or combination of documents from List A then no further document checks need to be made during the course of that person's employment with you.

If a person you are looking to employ provides a specified document or combination of documents from List B, then to keep your excuse you will need to carry out repeat checks at least once every 12 months to ensure your employee still has the right to work in the UK. You should continue to carry out these repeat checks at least once every 12 months until the employee either produces a specified document from List A, or stops working for you.

Where a person's leave to remain and right to work in the UK expires **within** 12 months of the date of your last repeat check, then we recommend that you carry out a repeat check at the point of expiry to check if a person continues to have the right to work for you lawfully.

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

Q3 How may a British citizen show they are allowed to work in the UK?

- A. A British citizen may demonstrate their right 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 National Insurance number and name, such as a P45, P60, National Insurance number card or official letter 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 person I am looking to employ cannot provide evidence of their right to work?

- A. It is the person you are looking to employ's responsibility to prove that they are allowed to do the job you are offering. You can withdraw your offer of employment to a job applicant if they cannot prove their right to work in the UK and you need to fill the post urgently.

If you do not need to fill your post immediately and the person you are looking to employ 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 allowing them time to produce the specified document, or documents, from these lists.

You can find out more information on carrying out document checks and in particular on how to avoid unlawful discrimination in our Avoiding Unlawful Discrimination Code of Practice which can be viewed on our website: www.ukba.homeoffice.gov.uk/sitecontent/documents/employersandsponsors/preventingillegalworking/

Q5 What if person I am looking to employ 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 pay a civil penalty if you are presented with one of the single acceptable documents or the specified combinations of acceptable documents set out in List A or B. We recommend that you do not employ a person who cannot prove they have the right to work in the UK as you may be liable to payment of a civil penalty if they are found working for you illegally.

Q6 What should I do if I have concerns about the documents given to me?

- A. If you have correctly followed the steps detailed in the section 'The 3 step process', and you are not satisfied that the person is the rightful holder of the documents they have produced or that the documents are genuine, then you may wish to request other documentation from them in order to confirm that they can be lawfully employed.

If you have any concerns about the validity of the documents presented to you, you should contact Croydon Contact Centre on **0870 606 7766** for further advice. They will treat any information you provide in confidence, however information may be disclosed within the Home Office and to other Government departments, agencies and local authorities.

Q7 Should I keep original documents?

A. It is not appropriate for you 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.

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

A. You are required to keep any copies you have made for the duration of the individual's employment and for a further two years after they leave your employment. This allows us to determine whether you are liable to pay a civil penalty if we find that a person is (or has been) employed by you who does not have the right to work in the UK. We recommend that you keep these securely in line with data protection requirements.

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

A. You can only get an excuse against payment of a civil penalty by copying the specified documents produced to you and keeping those copies.

It is easier to demonstrate that you have done so if you can show that you have a consistent practice of copying documents for each employee. Should you be found to have employed an illegal worker, but your copies of the specified documents have been lost or accidentally destroyed, then our Civil Penalty Compliance Team will take into account past practice when considering your case.

Q10 How can I balance the need for data privacy and the need to satisfy the statutory excuse criteria?

A. Under the Data Protection Act 1998, there are legal requirements for data to be stored for no longer than necessary and our guidance to you is consistent with the law in this area. The current law (under section 6 (b) of The Immigration (Restrictions on Employment) Order 2007) and our policy guidance on how to get and keep a statutory excuse against payment of a civil penalty, clearly states that you should keep any copies that they have made securely for the duration of the individual's employment and for a further two years after they leave your employment.

Q11 Why does the civil penalty and the criminal offence only apply to employees over 16?

A. UK law on the prevention of illegal working, including the rules of sections 15 and 21 of the 2006 Act, only applies to those who are aged 16 and over because there are separate rules on the employment of children.

Q12 Will I have an excuse against liability to pay a civil penalty if I take a copy of a Right of Abode Certificate from an expired passport?

- A. A non-EEA national passport endorsed to show that the holder has Right of Abode is evidence of a person's right to work **only if the passport is valid**. Checking the passport of a person you are looking to employ will not provide you with an excuse if the passport has expired.

Immigration control

Q13 Do I need an excuse under section 15 if employing a worker who is exempt from immigration control?

- A. The illegal working rules only apply where you employ an individual who is subject to immigration control. However, we recommend that you always take steps to ensure that a person you are looking to employ, who claims to be exempt from immigration control, is actually exempt to ensure you do not breach section 15 unintentionally or, if you do, that you are able to ensure you have an excuse from payment of a civil penalty.

Carrying out document checks on all individuals will also provide evidence of an open and transparent recruitment process and will ensure that your recruitment practices do not discriminate against individuals on racial grounds.

Q14 Which groups in the UK are not subject to immigration control?

- A. Those who are not subject to immigration control in the UK, and whom 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 (except for Romanian and Bulgarian nationals up until 31 December 2013 and Croatian nationals (from 1 July 2013 – 30 June 2017)); **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 person on the basis of their claim to belong to one of these groups of people, this will place you at risk of employing someone illegally if their claims are false. You should get an excuse for all of the persons you are looking to employ by correctly following the steps explained in the section 'The 3 step process'.

Q15 Can a British Dependent Territories Citizen who has a connection with Gibraltar legally work in the UK?

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 allowed 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 confirms 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 you may get an excuse by correctly carrying out the document checks as described in the section 'The 3 step process'.

Documents that do not show a person is allowed to work in the UK

Q16 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. An individual could enter fictitious details about their parents or 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.

In addition, a full birth certificate also gives useful background information which is absent from the short birth certificate, for example it provides: the names of the individual's parents, where they were born, their occupation and address at the time of the individual's birth, and the place where the individual was born. This information may be used to confirm personal details if necessary.

Q17 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 allowed to work in the UK. **A NI number alone in any format is not acceptable evidence of a person's right to work in the UK and will not give you an excuse against payment of a civil penalty.** You must check acceptable documents showing the NI number and name of the holder **together with** one of the combinations specified in List A or B.

Q18 What if I check other documents which provide evidence of someone's identity?

A. Only checking the acceptable documents specified in **List A** or **List B** will allow you to get and then keep an excuse against payment of a civil penalty. The following documents are not acceptable in proving right to work in the UK and will not give you to have an excuse against a civil penalty:

- 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 National Insurance (NI) number when presented in any format in isolation;

- a card or certificate issued by HM Revenue and Customs (HMRC) under the Construction Industry Scheme;
- a full or provisional driving licence issued by the Driver and Vehicle Licensing Agency (DVLA);
- a 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 will not give you an excuse against liability for a civil penalty (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.

Q19 Why isn't a British visitor's passport acceptable?

- A. The rules state 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.'

A British visitor's passport only contains the following words: 'British Subject. Citizen of the United Kingdom and Colonies.' This does not give the same rights and privileges on the holder as a full British passport, nor does it meet the requirements of the rules. It does **not** give you an excuse against payment of a civil penalty under section 15 as it is not acceptable proof of right to work in the UK.

Q20 Why aren't driving licences issued by the DVLA acceptable?

Although the photo card driving licence contains a digital image and states the country of birth, it does not definitely confirm the holder's nationality, or their right to work in the UK. Whilst the Driver and Vehicle Licensing Agency might carry out necessary document checks to confirm an applicant's identity, this is because they are responsible for issuing documents that confirm an individual is allowed to drive a vehicle, rather than confirming whether or not they have a right to work in the UK.

Q21 Can an adopted person, who is a British citizen and who does not have a full birth certificate, prove their right 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 given to you in combination with an acceptable, official document showing their properly documented, National Insurance number.

Definition of an employer

Q22 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.

Q23 How can I tell if a person I am looking to employ 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 for you to decide whether someone who will work for you will be your employee or will be self-employed.

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, we recommend that you check the person's right to work, rather than risking payment of a civil penalty if you are found to be employing an illegal worker.

Q24 As a parent, am I responsible for checking whether my nanny or childminder is allowed 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 right 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 of the 2006 Act.

Q25 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 these rules and you are responsible for checking their right 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 these rules and you do not need to check their right to work.

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

Q26 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 of the 2006 Act.

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. 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.

You can find out more information on employment agency legislation from the Department for Business, Innovation and Skills at: www.bis.gov.uk/policies/employment-matters

Q27 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, company secretary or other similar officer, or any person who was claiming 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, company secretary or other similar officer or any person claiming to act in such a capacity of a company would be liable.

Q28 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 carry out the appropriate document checks and get an excuse, following the date of transfer.

Q29 I am an employer based in the UK and I wish to employ a non-EEA national based outside the UK. Would I be required to check my employees' right to work?

- A. As an employer, you place yourself at risk of payment of a civil penalty by employing a person aged 16 or over who is subject to immigration control and who is not allowed to carry out the work for you.

The law states that the offence of employing an illegal 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 carry out some of their duties in person in the UK, you should ensure your employees are allowed to work in the UK if you wish to have an excuse against payment of a civil penalty. Even if the employee spends much of their time abroad; the employee may still be classed as part of the UK workforce.

Q30 My business employs workers on a casual basis through the internet. Managers do not meet with employees and are therefore unable to confirm the identity or right 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' right 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 right to work.

There are cases where the law is unclear and for further clarification, the Department for Business, Innovation and Skills and HM Revenue and Customs provide further information on how to define who is an 'employer' and who is an 'employee'.

In order to have an excuse against payment of a civil penalty, the employer must satisfy themselves that the person that they are employing is allowed to work for them. This should be done by correctly following the steps explained in the section 'The 3 step process', and will involve meeting with the person you are looking to employ to confirm that the person is the rightful holder of the documents provided. The checks should be carried out before employment is offered.

National Insurance (NI) numbers

Q31 Can I accept any document which contains a NI number?

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

Q32 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, most 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 payment of a civil penalty.

A person can apply for a NI number by telephoning Jobcentre Plus on **0845 600 0643** between 8am and 6pm Monday to Friday. For people who are hard of hearing, or who have speech difficulties, text phone can be dialled on **0845 600 0644**. You can find further information about NI numbers and the application process on the Directgov website at: www.direct.gov.uk/en/MoneyTaxAndBenefits/Taxes/BeginnersGuideToTax/NationalInsurance/IntroductiontoNationalInsurance/DG_190057

Q33 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 the age of 16. On, or after reaching the age of 15, a young person should receive notification 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**.

Q34 Do workers from EEA member states need a NI number to prove that they have the right to work in the UK?

- A. If a national of an EEA country or Switzerland provides a national passport or national identity card to you, then they will not be required to provide evidence of a valid NI number to show their right to work. Nationals from all of these countries are not subject to sections 15 or 21 of the 2006 Act.

However, some EU nationals are subject to restrictions. Workers from Bulgaria and Romania are free to come to the UK but are subject to worker authorisation unless they are exempt up until 31 December 2013. You can find out more information in the section on 'Employing workers from the European Economic Area'.

Employing asylum seekers

Q35 Can I employ asylum seekers?

A. Asylum seekers may request permission to work from the Secretary of State if:

- An application has been made for asylum;
- No decision at first instance has been made within one year of the date on which the application for asylum was recorded;
- The delay in determining the asylum application cannot be attributed to the asylum seeker.

If an asylum seeker is granted permission to work they will be issued with an Application Registration Card (ARC) that states:

- Allowed to Work
- Employment Permitted
- Work Restricted – SOL (which means Shortage Occupation List)
- Work Restricted – Student
- Work Restricted – Other

Permission to work does not include permission to become self-employed or to engage in a business or professional activity. Any permission to work will come to an end for asylum seekers once the asylum application has been finally determined (that is, once appeal rights are exhausted),

Paragraph 360 C of the Immigration Rules allows **failed** asylum seekers who have exhausted their appeal rights to request permission to work from the Secretary of State if:

- They have made further submissions asserting that they have a fresh claim for asylum;
- No decision has been made on those further submissions within one year of the date on which they were presented;
- The delay in making a decision on the further submissions cannot be attributed to the individual.

If a failed asylum seeker is granted permission to work they will be issued with an Application Registration Card (ARC) that states:

- Allowed to Work
- Employment Permitted
- Work Restricted – SOL (which means Shortage Occupation List)
- Work Restricted – Student
- Work Restricted – Other

Permission to work under paragraph 360 C does not include permission to become self-employed or to engage in setting up a business. Any permission to work will come to an end for failed asylum seekers once a negative decision has been taken on a further submission or, in the event that appeal rights are granted, those appeals are exhausted.

From 9 September 2010, any asylum seeker or failed asylum seeker who applies for permission to work because they have been waiting for 12 months or more for a decision on their initial application or further submission will only be able to carry out a job on the Shortage Occupation List which can be viewed or downloaded from our website: www.ukba.homeoffice.gov.uk/business-sponsors/points/sponsoringmigrants/employingmigrants/shortageoccupationlist/

Those granted permission to work before 9 September 2010 and those that were already allowed to work at the point at which they claimed asylum will not be restricted to jobs on the Shortage Occupation List.

Q36 How will I know if an asylum seeker or failed asylum seeker is able to work?

Any asylum seeker or failed asylum seeker who is allowed to work must demonstrate this through their Application Registration Card (ARC). If they have the right to work the ARC will state:

- Allowed to Work
- Employment Permitted
- Work Restricted – SOL (which means Shortage occupation List)
- Work Restricted – Student
- Work Restricted – Other

To get an excuse against payment of a civil penalty you must receive positive confirmation of the holder's right to work from our Employer Checking Service. You can find out more about this in the section on 'Verifying right to work in the UK.'

Some asylum seekers have restrictions on the kind of work they can do. If an asylum seeker gives you an ARC stating that work is restricted then you should make sure that you do not employ them in breach of these restrictions as you may be liable to payment of a civil penalty.

If person you are looking to employ gives you a letter alongside their ARC that states that they only have permission to work in a job on the 'Shortage Occupation List', you must satisfy yourself that the job which you may offer to the applicant is on this list. Our Employer Checking Service will be able to confirm this when you submit your confirmation request. You can view or download the list from our website at: www.ukba.homeoffice.gov.uk/sitecontent/newsarticles/2011/november/18-short-occup

Q37 What if an individual presents me with a Standard Acknowledgement Letter (SAL), or IS96W letter, which states that they are allowed 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 allowed to work and will not give you an excuse against liability to pay a civil penalty. Any asylum seeker who is allowed to work will need to produce their Application Registration Card (ARC) to show this which clearly states:

- Allowed to Work
- Employment Permitted
- Work Restricted – SOL (which means Shortage Occupation List)
- Work Restricted – Student
- Work Restricted – Other

If a job applicant is an asylum seeker who can work, but does not have an ARC, you should advise them to call us on 0151 213 2174 for further information about how to obtain one.

Q38 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) or an IS96W letter which stated that the holder had the right to work, prior to employment commencing 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.

Employing workers from the European Economic Area

Q39 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 show a person's right to work, or give you an excuse against payment of a civil penalty.

If you have any doubts about whether an identity card allows the holder to work or rightfully belongs to them, you should ask that person to produce their national passport. If you still have doubts about whether that person is allowed to work in the UK, having correctly carried out all the steps on in the section on 'How to carry out document checks', then you are allowed to refuse employment to that person until they can appropriately prove their right to work.

You can find further information about documents from EU countries, Iceland and Norway from the Council of the European Union website: www.consilium.europa.eu/prado/

Q40 Is the UK Residence Permit 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 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 us to confirm their residence in the UK under European law.

Q41 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 an endorsement placed in the non-EEA national's passport or on an Immigration Status Document where a passport is not available. The residence card is issued with a validity of 5 years.

Q42 Can a non-EEA national who was formerly a family member of an EEA national maintain their right to work in the UK?

- A. When a non-EEA national is no longer the family member of an EEA national, for example, due to the grant of a decree absolute on divorce, they would generally stop having 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 ends, they would no longer have a right to work in the UK unless they have a work right in their own right such as when they have kept a right of residence under European law. This could be based on circumstances such as where the non-EEA national was the main carer of any children from the relationship. Such a non-EEA national would have a continued right of residence on this basis.

Q43 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 right to work in the UK. However, under European law, many are also allowed to be employed whilst these applications are under consideration, and before residence documents have been issued by us. We will provide such applicants with a letter of acknowledgment, which is the Certificate of Application.

To verify the right of the holder to work in the UK and to get an excuse, you should contact our Employer Checking Service when a prospective employee who produces a Certificate of Application. The Certificate of Application will only give you an excuse if it is less than six months old and if you request and then receive positive confirmation of the individual's right to work from our Employer Checking Service. As this document is a List B document, you must repeat this check and receive positive confirmation of the individual's continued right to work, within 12 months to keep your excuse. You can find out more about this in the section on 'Verifying right to work in the UK'.

Employing students

Q44 Are non-European Economic Area students allowed to work in the UK?

- A. Students from outside the EEA are allowed 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 work students can carry out while they are studying in the UK. These will vary depending on whether the student was granted leave under our points based system (Tier 4) which came into force from 31 March 2009, or the rules in place before Tier 4. To find out which conditions apply, you will need to ask your prospective employee when they applied for leave to study in the UK. You can find out more about these conditions in the section on 'Employing students'.

We recognise that on some occasions it may be difficult for you to confirm an applicant's student status or otherwise. You should remember that responsibility lies with the student, as it does for all of your prospective employees, to demonstrate that they are able to work for you legally.

You are allowed 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.

Q45 Students from outside the EEA can work for 20 hours per week or 10 hours per week during term time depending on when their leave was granted or on their course of study and/or on the type of educational provider they are studying with. Students can only work full time outside of their 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.

Q46 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 sponsorship, whereas Junior Research Fellows in receipt of scholarships are treated as students and are subject to restrictions on the hours that they can work.

Q47 What about work placements?

A. Tier 4 students will be allowed to do a work placement as part of their course of study, as long as the work placement is an assessed part of the course and they are:

- a Tier 4 (General) student studying a course of degree level study or above, or
- a Tier 4 (General) student studying a foundation degree course, or
- a Tier 4 (General) student studying a course with a highly trusted sponsor, or
- a Tier 4 (Child) student who is 16 years old or over

A Tier 4 student is **not** allowed to take a work placement which occupies more than 50% of the course or period of study (except where it is a statutory requirement). However there is no specified maximum period for work placements which form part of a pre-Tier 4 student's course of study provided the requirements below are met.

Pre-Tier 4 students (those who applied for leave before 31 March 2009) can do a work placement as part of a sandwich course. A sandwich course is a course that includes a clearly defined work placement approved by the institution providing the course. A student is allowed to follow a sandwich course provided:

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

Provided these requirements are met, a pre-Tier 4 student is allowed to take a full time work placement during term time. This is in addition to their right to take employment (not related to the course) of up to 20 hours per week during term time.

Q48 Can a non-EEA student with valid leave to enter or remain in the UK defer (postpone) their studies?

Students who have enrolled on a course may sometimes defer the start, or a later part of a course. This may happen for a variety of reasons. The only circumstances in which we would have granted leave to remain to such a student is if the student needed to

postpone their studies for reasons beyond their control (e.g. an illness or an accident, or as a result of a decision made by the educational provider at which they are attending) and the application was supported by the educational provider. In all other circumstances, the person would be expected either to leave the UK or apply for leave to remain in the UK in a category appropriate to their circumstances.

Q49 What are the rules for student nurses?

Student nurses granted leave under the Immigration Rules in force prior to 31 March 2009:

For the purpose of the rules before Tier 4 of the points based system was introduced, a student nurse means a person accepted for training as a student nurse or midwife leading to a registered nursing qualification.

You can employ a student nurse for more than 20 hours per week during term time, provided the employment is **directly related** to their studies and is carried out with the agreement of the educational establishment providing the course.

Student nurses granted under these rules are not normally allowed to take employment which is not related to their studies.

Further information on pre-Tier 4 student nurses is contained in Chapter 3, Section 5 of our Instructions, which can be viewed at the following link: www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/IDIs/idischapter3/section5/section5.pdf?view=Binary

Student nurses who applied for permission to enter or remain in the UK on or after 31 March 2009 are considered under Tier 4 of the points based system and are therefore subject to the normal Tier 4 conditions which can be viewed on our website: www.ukba.homeoffice.gov.uk/visas-immigration/studying/

Further questions

Q50 Can I be liable for payment of a civil penalty if I am found to be providing voluntary work to someone without the right to work in the UK?

- A. As an employer, you place yourself at risk of getting 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 carrying out 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 involved in. We would not wish to give advice which might lay voluntary organisations open to prosecution for employing people illegally. Therefore, we strongly recommend that organisations seek independent legal advice for their specific volunteering activity.

Voluntary activity must not amount to unpaid work, volunteer work 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). 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).

Volunteering is distinct from work – paid or unpaid, and therefore is no longer covered in this specific guidance in any further detail.

Q51 How can I get a statutory excuse if a person I am looking to employ or existing employee has applied for further leave to remain in the UK, but their documents are with the Home Office?

- A. Our Employer Checking Service assists employers where employees' documents are with us in connection with an outstanding application or appeal. In these instances you should request confirmation of a person's right to work in the UK from our Employer Checking Service and you must receive a positive confirmation in response in order to get an excuse against liability for a civil penalty. You can find out more about this in the section on 'Verifying right to work in the UK'.

Q52 Does the requirement to show a combination of National Insurance number and a birth certificate discriminate against British citizens who have been or are in the process of gender transitioning? The requirement may cause problems for a person in this situation.

- A. We accept that being given 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 checking 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.

Annex A: Framework for calculating the amount of a 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
			May be reduced by up to £1,250 per worker reported	May be reduced by up to £1,250 per worker, with cooperation	
			Suggested minimum penalty of £7,500 per worker		
	2nd	No penalty	Suggested maximum penalty of £7,500 per worker		Maximum penalty of £10,000 per worker
			May be reduced by up to £1,250 per worker reported	May be reduced by up to £1,250 per worker, with cooperation	
			Suggested minimum penalty of £5,000 per worker	Suggested minimum penalty of £7,500 per worker	
	1st	No penalty	Suggested maximum penalty of £5,000 per worker		Suggested maximum penalty of £7,500 per worker
			May be reduced by up to £2,500 per worker reported	May be reduced by up to £2,500 per worker, with cooperation	
			No penalty and a warning letter may be issued	Suggested minimum penalty of £2,500 per worker	

Annex B: Employers Right to Work Checklist

Name of person:

Date of check:

Type of check: First check before employment

Repeat check on an employee

Step 1

You must ask for and be given an acceptable document.

- You must be provided with one of the documents or combinations of documents in List A or List B below as proof that someone is allowed to work in the UK.
- You must only accept original documents.

Acceptable Documents List A

1. A passport showing the holder, or a person named in the passport as the child of the holder, is a British citizen or a citizen of the UK and colonies having the right of abode in the UK
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 an EEA country or Switzerland
3. A residence permit, registration certificate or document certifying or indicating permanent residence issued by the Home Office to a national of an EEA country or Switzerland
4. A permanent residence card or document issued by the Home Office to the family member of a national of an EEA country or Switzerland
5. A Biometric Residence Permit issued by the Home Office to the holder indicating that they are allowed to stay indefinitely in the UK, or have no time limit on their stay in the UK
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 UK, has the right of abode in the UK, or has no time limit on their stay in the UK

7. An Immigration Status Document issued by the Home Office to the holder with an endorsement indicating that the person named in it is allowed to stay indefinitely in the UK or has no time limit on their stay in the UK **together with** an official document issued by a previous employer or Government agency with their name and National Insurance number
8. A full birth **or** adoption certificate issued in the UK including the name(s) of at least one of the holder's parents **together with** an official document issued by a previous employer or Government agency with their name and National Insurance number
9. A birth **or** adoption certificate issued in the Channel Islands, the Isle of Man or Ireland **together with** an official document issued by a previous employer or Government agency with their name and National Insurance number
10. A certificate of registration or naturalization as a British citizen **together with** an official document issued by a previous employer or Government agency with their name and National Insurance number
11. A letter issued by the Home Office to the holder indicating that the person named is allowed to stay indefinitely in the UK **together with** an official document issued by a previous employer or Government agency with their name and National Insurance number

Acceptable Documents List B

1. A passport or travel document showing they are allowed to stay in the UK and is allowed to do the type of work you are offering
2. A Biometric Residence Permit issued by the Home Office to the holder indicating that they can stay in the UK and are allowed to do the work you are offering
3. A residence card or document issued by the Home Office to a family member of a national of an EEA country or Switzerland
4. A work permit or other approval to work issued by the Home Office **together with either** a passport or travel document showing the holder is allowed to stay in the UK and to do the work or a letter issued by the Home Office confirming the same
5. A Certificate of Application **less than 6 months** old issued by the Home Office to or for the family member of a national of an EEA country or Switzerland stating they are allowed to work **together with** a positive verification letter from the Home Office's Employer Checking Service

6. An Application Registration Card issued by the Home Office indicating that they are allowed to work **together with** a positive verification letter from the Home Office's Employer Checking Service
7. An Immigration Status Document issued by the Home Office indicating that they can stay in the UK and are allowed to do the type of work **together with** an official document issued by a previous employer or Government agency with their name and National Insurance number
8. A letter issued by the Home Office to the holder or to you as the potential employer, which indicates that the person named in it can stay in the UK and is allowed to do the type of work you are offering **together with** an official document issued by a previous employer or Government agency with their name and National Insurance number

Step 2

You must check the validity of the documents.

- **You must satisfy yourself that the documents are genuine and that the person presenting the documents is both the rightful holder and allowed to do the type of work you are offering.**

1. Are photographs consistent with the appearance of the person? Yes No N/A
2. Are the dates of birth listed consistent with the appearance of the person? Yes No N/A
3. Are expiry dates for limited leave to enter or remain in the UK in the future (if applicable) i.e. they have not passed? Yes No N/A
4. Do any endorsements show the person is able to work for you and do the type of work you are offering? Yes No N/A
5. Are you satisfied that the document is genuine, has not been tampered with and belongs to the holder? Yes No N/A
6. Have you asked for further documents to explain why you have been given documents with different names? Yes No N/A

Step 3

You must take and retain a copy the documents.

- **You must take a copy of the documents in a format which cannot later be altered and retain them securely.**

Is one of the documents a passport or travel document? Yes No

If **Yes** then you must photocopy or scan:

- the front cover and any pages providing the holder's personal details; their nationality; photograph; date of birth; signature; date of expiry and biometric details; and
- any pages containing UK Government endorsements' showing the person is allowed to work in the UK and carry out the work you are offering.

All other documents should be copied in full, including both sides of a Biometric Residence Permit.

Step 4

Know the type of excuse you have.

If you have correctly carried out the above 3 steps you will have an excuse against payment of a civil penalty if the Home Office find the above named person working for you illegally.

However, you need to be aware of the type of excuse you have as this determines how long it is valid for.

List A

- You have an excuse for the **full duration** of the person's employment with you.
- You are not required to carry out any repeat right to work checks on this person.

List B

- You have an excuse for **up to 12 months** from the date on which you carried out this check.
- To keep your excuse you **must carry out a repeat check** on this person **within 12 months**.
- If the person's leave expires within a 12 month period you should carryout your repeat check at that point to find out if they continue to have the right to work.

Date repeat check required:

Date leave/right to work expires:

You will not have an excuse if at any point during the employment, you know that the above named person is not allowed to work for you, or to carry out the type of work in question and you may face criminal action.

