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# Eligibility to Work in the UK



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[hrpolicy@torbay.gov.uk](mailto:hrpolicy@torbay.gov.uk)

# 1 Introduction

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All employers in the UK have a duty to prevent illegal working by carrying out certain checks known as 'Right to work' checks on all employees before they commence employment.

Failure to carry out these checks, and to properly retain copies of right to work documents can result in civil and criminal liabilities for employers.

In 2016 a number of changes under the Immigration Act 2016 came into force, including extending criminal offences for employers in relation to illegal working. The current criminal liabilities will be extended from knowingly employing an individual who does not have the right to undertake the work for which they are employed to include employers who have reasonable cause to believe that an employee is disqualified from employment by reason of their immigration status. In addition, the maximum term of imprisonment on indictment for a criminal immigration offence increased from two to five years. A civil penalty of up to £20,000 per illegal worker remains if an employer employs someone without the right to undertake the work for which they are employed.

A new criminal offence of illegal working, where an individual works in the UK with the knowledge or reasonable cause to believe that they are doing so illegally was also introduced. This carries a maximum term of imprisonment of six months and allows for the individual's earnings to be seized under the Proceeds of Crime Act 2002.

To avoid race discrimination, these checks should be carried out on every new employee or applicant, regardless of their ethnic or apparent national origin. Non-compliance could result in proceedings being brought under the Equality Act 2010.

A Code of Practice was enforced in November 2016 (as part 7 of the Immigration Act 2016) to introduce a new requirement that workers in the public sector in customer facing roles speak fluent English. The Home Office sets language requirements as a condition of granting immigration status in some cases. Individuals from outside the EEA who make an immigration application may need to provide evidence that they have passed an appropriate language test listed by the Home Office.

Further information can be found here:

<http://www.gov.uk/government/publications/guidance-on-applying-for-uk-visa-approved-english-language-tests>

## 2 Scope & Responsibilities

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All new employees who start work on or after 29<sup>th</sup> February 2008 are subject to the checks outlined in this document. Line managers (including those within Schools) are responsible for carrying out documentation checks of all applicants at the interview stage of the recruitment process. Where an employee produces an original document or documents from List B (see pages 6 & 7) they will have restrictions on the length of time they can remain in the UK. In order to retain the excuse against a

penalty for employing that individual, line managers must make a note of the date on which the original document check was taken and carry out a follow up check at least once every 12 months after the initial check. This 12 monthly check must be repeated until the individual provides documents indicating that they can remain permanently in the UK from List A or until they leave employment with the Council.

## 3 Equality Statement

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This guidance applies equally to all Council employees regardless of their age, disability, sex, race, religion or belief, sexual orientation, gender reassignment, pregnancy and maternity, marriage and civil partnership. Care will be taken to ensure that no traditionally excluded groups are adversely impacted in implementing this guidance.

Governing bodies and head teachers of foundation and voluntary aided schools within Torbay are strongly advised to follow these statutory guidelines for their employees and applicants.

## 4 Information for new Employees

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You will need to bring certain documentation before the first day of your employment to confirm your eligibility to work in the UK. Failure to provide relevant documentation (from either List A or B) will result in us not being able to commence employment until satisfactory documents have been seen and copied by your line manager.

## 5 List A Documents which provide ongoing excuse for Right to Work in the UK

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Provide any one (or combination where indicated) of the documents included below in List A. You do not need to produce any further documents contained in List B.

- A passport showing that the holder is a British citizen or a citizen of the UK and Colonies having the right of abode in the UK;
- A passport or national identity card showing that the holder is a national of the European Economic Area or Switzerland; **or**
- A residence permit, registration certificate or document certifying or indicating permanent residence issued by the Home Office or the Border and Immigration Agency to a national of a European Area country or Switzerland; **or**
- A permanent residence card issued by the Home Office or the Border and Immigration Agency to the family member of a national of a European Economic Area country or Switzerland; **or**

- A Biometric Immigration Document issued by the Border and Immigration Agency to the holder which indicates that the person named in it is allowed to stay indefinitely in the UK, or has no time limit on their stay in the UK; **or**
- 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; **or**
- An Immigration Status Document issued by the Home Office or the Border and Immigration Agency to the Holder with an endorsement indicating that the person named in it is allowed to stay indefinitely in the UK or has no time limit on their stay in the UK, **when produced in combination with** an official document giving the person's permanent National Insurance Number and their name issued by a Government agency or a previous employer (eg P45, P60, National Insurance Card) ; **or**
- A full birth certificate issued in the UK which includes the name(s) of at least one of the holder's parents, **when produced in combination with** an official document giving the person's permanent National Insurance Number and their name issued by a Government agency or a previous employer (eg P45, P60, National Insurance Card) ; **\*\***
- A full adoption certificate issued in the UK which includes the name(s) of at least one of the holder's adoptive parents **when produced in combination with** an official document giving the person's permanent National Insurance Number and their name issued by a Government agency or a previous employer (eg P45, P60, National Insurance Card) ; **or**
- A birth certificate issued in the Channel Islands, the Isle of Man or Ireland, **when produced in combination with** an official document giving the person's permanent National Insurance number and their name issued by a Government agency or a previous employer (e.g. P45, P60, National Insurance Card) ; **or**
- An adoption certificate issued in the Channel Islands, the Isle of Man or Ireland, **when produced in combination with** an official document giving the person's permanent National Insurance Number and their name issued by a Government agency or a previous employer (eg P45, P60, National Insurance Card) ; **or**
- A certificate of registration or naturalisation as a British citizen, **when produced in combination with** an official document giving the person's permanent National Insurance Number and their name issued by a Government agency or a previous employer (e.g. P45, P60, National Insurance Card) ; **or**
- A letter issued by the Home Office or the Border and Immigration Agency to the holder which indicates that the person named in it is allowed to stay indefinitely in the UK **when produced in combination with** an official document giving the person's permanent National Insurance Number and their name issued by a Government agency or a previous employer (eg P45, P60, National Insurance Card).
- N.B. British Citizens may demonstrate their right to work through their UK passport, even if the passport is out of date. You should ensure that the document photograph is consistent with the physical appearance of the employee or prospective employee. Request further evidence if you are unsure.

## 5.1 Documents that DO NOT show a person is entitled to work in the UK

Many British citizens do not have a UK passport or a full birth certificate, but the short birth certificate is not acceptable as a document as it is a document that has proved vulnerable to forgery. A person could enter fictitious details about their parents, or a person could attempt to work here illegally by making a false statement about themselves. These types of false representation can be prevented by the requirement for a full birth certificate and would ultimately be prevented by the introduction of an identity card with biometric information.

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

## 5.2 Birth and Adoption Certificates

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

General Register Office (England and Wales)

Smedley Hydro

Trafalgar Road

Southport

PR8 2HH

[www.gro.gov.uk](http://www.gro.gov.uk)

General Register Office (N Ireland)

Oxford House

49-55 Chichester Street

Belfast BT1 4HL

[www.groni.gov.uk](http://www.groni.gov.uk)

General Register Office (Scotland)

New Register House

Edinburgh EH1 3YT

[www.gro-scotland.gov.uk](http://www.gro-scotland.gov.uk)

## 6 List B Documents which provide an Excuse for up to 12 months.

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List B covers combinations of documents that provide a limited leave to remain and work in the UK. **These checks should be repeated at least once every 12 months until the employee provides specified documents or documents indicating that they can remain permanently in the UK from List A.**

- 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 in question, provided that it does not require the issue of a work permit; **or**
- A Biometric Immigration Document issued by the Border and Immigration Agency to the holder which indicates that the person named in it can stay in the UK and is allowed to do the work in question; **or**
- A work permit or other approval to take employment issued by the Home Office or the Border and Immigration Agency, **when produced in combination with** either a passport or another travel document endorsed to show that the holder is allowed to stay in the UK and is allowed to do the work in question, or a letter issued by the Home Office or the Border and Immigration Agency to the holder, or the employer or prospective employer confirming the same; **or**
- A certificate of application issued by the Home Office or the Border and Immigration Agency to or for a family member of a national of a European Economic Area country or Switzerland, stating that the holder is permitted to take employment, which is less than 6 months old, **when produced in combination with** evidence of verification by the Border and Immigration Agency Employer Checking Service; **or**
- A residence card or document issued by the Home Office or the Border and Immigration Agency to a family member of a national of a European Economic Area country or Switzerland; **or**
- An Application Registration Card issued by the Home Office or the Border and Immigration Agency stating that the holder is permitted to take employment, **when produced in combination with** evidence of verification by the Border and Immigration Agency Employer Checking Service; **or**
- An Immigration Status Document issued by the Home Office or the Border and Immigration Agency to the holder with an endorsement indicating that the person named in it can stay in the UK, and is allowed to do the type of work in question, **when produced in combination with** an official document giving the person's permanent National Insurance Number and their name issued by a Government agency or a previous employer (eg P45, P60, National Insurance Card); **or**
- A letter issued by the Home Office or the Border and Immigration Agency to the holder or the employer or prospective employer, which indicates that the person named in it can stay in the UK and is allowed to do the work in question **when produced in combination with** an official document giving the person's permanent National Insurance Number and their name issued by a Government agency or a previous employer (eg P45, P60, National Insurance Card).

## 7 Documents that do not provide you with an excuse for Right to Work in the UK

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

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

## 8 Repeat checks every 12 months

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Employees who have a restriction on their eligibility i.e. because they have a specific type of visa or restriction on what they can do for work, need to have the status of their work permits checked at least once every twelve months. This forms an important part of the evidence which would be relied upon should the Home Office require proof of why we are continuing to employ someone. These checks must be undertaken until the employee is able to provide specified documentation indicating that they can remain permanently in the UK.

The HR Support Team will send out reminders to Line Managers three months prior to the 12 month deadline the Line Manager must then request to see the individual's passport, and any other documentation relating to their continued eligibility. (Schools should contact HR Support for further advice on the process).

The employee's status will be checked by HR Support on the Home Office Employers Checking Service:

<http://www.ukba.homeoffice.gov.uk/employers/preventingillegalworking/support/ecs/ecsstep2/>



Where because of this check the employee is no longer eligible to continue to work in the UK or for Torbay Council/School, Human Resources will advise managers on any dismissal process.

The following guidance is available which provides information to employers on checking the validity of right to work checks

### An Employers Guide to Right to Work Checks

## 9 Manager's Guidelines

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### 9.1 The law for employers on preventing illegal working

The Immigration, Asylum and Nationality Act 2006 sets out the law on the prevention of illegal migrant working. These provisions came into force on 29<sup>th</sup> February 2008.

- It makes it a criminal offence for you to employ someone, aged 16 or over, who has no right to work in the United Kingdom, or no right to do the work you are offering.
- It gives employers a statutory defence against conviction for employing an illegal worker. You get this by checking and copying certain original **documents** belonging to your employee.
- It obliges you to ensure that your recruitment practices **do not discriminate** against individuals on racial grounds.

# 10 Employing nationals from the European Economic Area

## 10.1 Which Countries are part of the EEA (European Economic Area)?

Austria*	Denmark*	Germany*	Italy*	Malta*	Romania <sup>2</sup>	Switzerland*
Belgium*	Estonia <sup>1</sup>	Greece*	Latvia <sup>1</sup>	Norway*	Slovakia <sup>1</sup>	United Kingdom
Bulgaria <sup>2</sup>	Finland*	Hungary <sup>1</sup>	Lithuania <sup>1</sup>	Netherlands*	Slovenia <sup>1</sup>	
Cyprus*	France*	Iceland*	Liechtenstein*	Poland <sup>1</sup>	Spain*	
Czech Republic <sup>1</sup>		Ireland*	Luxembourg*	Portugal*	Sweden*	

\* Nationals from these EEA countries can enter and work freely in the UK without restriction. Their immediate family members are also able to work freely in the UK while their adult EEA family member is legally residing and working here. However, you should still ask nationals from all EEA countries (including the UK) to produce a document showing their nationality to demonstrate this entitlement. This will usually be either a national passport or national identity card. Some nationals from EEA may also produce a residence permit issued by the Home Office which confirms their right to reside and work here. All of these documents are included in List A and will provide you with the defence if checked and copied.

<sup>1</sup> Workers from these countries are often referred to as 'Accession State workers' or 'A8 workers'

<sup>2</sup> Workers from these countries are often referred to as 'A2 Workers'.

### Employing an A2 Worker

As of 1<sup>st</sup> January 2014 restrictions on Bulgarian and Romanian nationals' rights to work in the UK no longer apply. As a result Bulgarian and Romanian nationals are now exempt from immigration control, can work in the UK without restrictions like other EEA Nationals, and can present their passport or national identity card to satisfy a right to work check.

### Employing an A8 Worker

The Workers Registration Scheme ended in 2011 and therefore A8 workers now no longer have to register with the UK government in order to enter employment.

# 11 How to comply with the Law and Establish the Defence

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## 11.1 Step 1

In their letter of invitation to an interview, all new candidates will be asked to provide the following documents which you must check and copy during the interview stage and BEFORE an offer of employment is made:

- one of the original documents included in List A OR
- two of the original documents in the combinations given in List B
- There is no need to ask your potential employee to produce documents from both List A and List B.

Any new employees who do not produce documentation on or before the first day of employment will not be able to commence employment with Torbay Council until such documents have been seen by the appointing manager. You will be required to 'send them home'.

## 11.2 Step 2

Satisfy yourself that your new employee is the rightful holder of any of the documents they present to you. These documents should also allow them to do the type of work you are offering.

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

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

### 11.3 Step 3

Make a photocopy of the following parts of all documents shown to you:

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

The copies of the documents should then be passed to Human Resources along with the second part of the Starters Form.

## 12 What should I do if a person is not eligible to work here?

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

### 12.1 Will I still have the defence for employees who I took on before 29<sup>th</sup> February 2008?

These new arrangements for establishing the defence will only apply to those employees who started working for you on or after 29<sup>th</sup> February 2008. You will still be liable for prosecution under the Asylum and Immigration Act 1996 where you employed illegal migrants between 27 January 1997 and 28 February 2008 and did not establish the statutory defence at the point of recruitment. Equally, if you established a statutory defence under section 8 of the 1996 Act for employees taken on or before 29 February 2009, this will be retained for the duration of that person's employment.

### 12.2 What is the penalty if I employ someone illegally?

The maximum penalty which a court can impose on an employer is currently £10,000 per illegal migrant worker if they are convicted for a section 8 offence. You can be fined this amount for each person you are found to have employed illegally. In addition, knowingly employing an illegal migrant worker can result in the potential of an unlimited fine and/or a prison sentence of up to two years.

## 13 How to avoid racial discrimination when preventing illegal working

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You should not employ anyone on the basis of their claim to be British or whether you think they appear to be British. The best way to make sure that you do not discriminate in your recruitment practices is to treat all job applicants the same way.

## 14 Further information

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If you require any further information please contact Human Resources (contact numbers available on the intranet) or the Home Office Employers' Helpline on 0845 010 6677.

The Employers' Helpline offers the following dedicated service for employers:

- Answers any general enquiries you may have on preventing illegal working
- Will provide you with general advice about the new Workers Registration Scheme for workers from the new European Union countries
- Will be your first point of contact if you have concerns about false or forged documents, or if you wish to report allegations of illegal working

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

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

[www.bia.homeoffice.gov.uk](http://www.bia.homeoffice.gov.uk)

Comprehensive guidance on the prevention of illegal migrant working is available to download from the Border and Immigration Agency website at:

[www.bia.homeoffice.gov.uk/employingmigrants](http://www.bia.homeoffice.gov.uk/employingmigrants)

## 15 Policy Feedback

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Should you have any comments regarding this policy, please address them to the HR Policy mailbox – [HRpolicy@torbay.gov.uk](mailto:HRpolicy@torbay.gov.uk)

## 16 History of Policy Changes

This guidance was first agreed by the Torbay JCC in 2008.

Date	Page	Details of Change	Agreed by:
May 2011	8,9	Repeat checks	FIO – SSG 12.5.11
May 2011	2	Update to Equality Statement	FIO – SSG 12.5.11
June 2014	1	Increase to Civil Penalty	
Sept 2016	3	Extension to civil penalty for employers and introduction of criminal offence of illegal working	
Oct 2016	11	Changes to restrictions for A2 and A8 workers and cessation of Workers Registration Scheme	
May 2017	3	Introduction of the Fluency Duty Code of Practice	
March 2018	5	Update to List A with regard to British Citizens and out of date passports.	TJCC – 9.2.18

Policy to be reviewed when legislation or operational reasons require it.