Home Office

Comprehensive guidance for United Kingdom employers on changes to the law on preventing illegal working

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

April 2004

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This document is only a summary of the law. It will, however, help you to understand how the changes to the law affect you.

INTRODUCTION

Introduction

Our 2002 White Paper, *Secure Borders, Safe Haven*, sets out the damaging social and economic consequences illegal working[1] has for the United Kingdom.

The availability of all forms of employment to illegal workers acts as an incentive for people to flout our immigration laws and abuse our asylum system.

A minority of employers also exploit illegal workers by not paying them the national minimum wage and failing to protect their health and safety in the workplace. These exploitative practices often enable unscrupulous employers to gain an unfair advantage over legitimate competitors.

It is crucial that the Government works together with employers to ensure that illegal workers cannot readily obtain work in the UK. We will also continue to take tough action against those employers who seek to profit from exploiting illegal labour.

As part of our strategy to improve the way we tackle illegal working, the Government laid new secondary legislation before Parliament on 16 March 2004. This legislation changes the type of documents which employers are required to check under section 8 of the Asylum and Immigration Act 1996 to avoid employing illegal workers. This new legislation comes into force on 1 May 2004.

These legislative changes have been discussed extensively with the Illegal Working Steering Group,[2] and the Government also carried out a public consultation exercise on its proposals from July to October 2003.

This booklet has been produced by the Home Office and contains comprehensive information and best practice advice for employers on how to implement the changes. It will be a particularly useful reference tool for human resources staff and employment agencies, who are likely to be involved in recruiting large numbers of new staff.

Appendix B also has further information for employers about what to do if they want to employ workers from the new European Union member states after 1 May 2004.

We recommend that this booklet is read alongside our summary guidance,[3] which provides employers with basic advice on how to comply with the new requirements.

If you have any questions about this guidance, or would like to obtain further copies, you can phone the Employers' Helpline on 0845 010 6677.

The law for employers on preventing illegal working

Your basic responsibilities as an employer in the United Kingdom to prevent illegal working have not changed. It remains a criminal offence under section 8 of the Asylum and Immigration Act 1996 to employ a person aged 16 or over who is subject to immigration control unless:

- that person has been given valid and subsisting leave to be in the United Kingdom by the Government, and that leave does not restrict them from taking the job in question; or
- the person comes into a category where employment is also allowed.

Appendix D has further details about those groups of people who are not subject to immigration control, or who come under the categories where employment is allowed.

1 In this context illegal working refers to migrants who are in the United Kingdom illegally and working, or migrants who are here lawfully, but working in breach of their conditions of stay.

2 The Illegal Working Steering Group is chaired by a senior Home Office minister. It comprises senior representatives from a range of business sectors, and also has members from the Trades Union Congress, the Confederation of British Industries, the Commission for Racial Equality and the Health and Safety Executive.

3 *Changes to the law on preventing illegal working: short guidance for United Kingdom employers.* This can be downloaded free of charge from: www.ind.homeffice.gov.uk

The statutory defence for employers

Section 8 will also continue to provide you, as an employer, with a **statutory defence** from conviction if you check and record certain specified documents belonging to your potential employees. You should make this check **before** a person starts working for you.

Changes to the statutory defence

While you will still be able to obtain the statutory defence[4] from conviction, the Government has decided to change the type of documents which employers must check under section 8 to establish a defence for new employees. These changes come into force on 1 May 2004.

Under the new arrangements, you will be able to establish a defence for each of your potential employees by checking for **one of the original documents** included in **List 1** on pages 8–12.

Most of your potential employees who can work here legally will be able to demonstrate this to you by producing an original document from **List 1** on pages 8–12. This will usually be a UK passport or a passport from one of the European Economic Area (EEA) countries listed on page 37.

You will also be able to establish a defence by checking for two of the original documents specified in the combinations in **List 2** on pages 13–24.

The minority of people who do not possess a national travel document but who can work here legally will be able to demonstrate this to you by producing original documents from one of these combinations.

Arrangements for existing employees

You do not need to apply the new document checks to any of your current employees who you took on before 30 April 2004. In most cases you should have already obtained a defence for them under the previous arrangements. Details of these can be found on the following Home Office web page until 30 April 2004:

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

You can also call the Employers' Helpline for further advice on 0845 010 6677.

Complying with the new document checks

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

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

Step 1

You should ask all of your potential employees to provide:

- **one** of the **original** documents included in **List 1** on pages 8–12; OR
- **two** of the **original** documents in the combinations given in **List 2**, on pages 13–24.

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

Step 2

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

[4] The term statutory defence which is provided by section 8 will be referred to as 'the defence' or 'a defence' throughout the rest of this booklet.

You must carry out the following reasonable steps when checking any 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 are valid;
- check any United Kingdom Government stamps or endorsements (see Appendix D for further advice) 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 that 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. Page 31 has further advice on this.

Step 3

Finally, make a photocopy or a scan (using only the Write Once Read Many/WORM software package) of the following parts of all the 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 appropriate page containing a United Kingdom Government stamp or endorsement that permits your potential employee to do the type of work you are offering.

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

If you have carried out these checks and establish that your potential employee is not permitted to work, or is not the rightful holder of the document presented, then you are entitled to refuse employment to that person. In these circumstances you may also want to call the Employers' Helpline on 0845 010 6677 for further advice.

The penalty for employing an illegal worker

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

Any prosecutions will be dealt with in the local magistrates' court – or the sheriff courts in Scotland.

At the time this document was going to print, the Government was considering substantially increasing the maximum fine which employers may face if convicted under section 8. Further details on this will be posted on the Employers' Information section of the following website:

www.ind.homeffice.gov.uk

Avoiding racial discrimination while complying with section 8

The population of the United Kingdom contains a range of ethnic groups; an individual's race, ethnicity or religion is no indication of their right to work here. It is important that your recruitment practices do not discriminate against any person on the basis of their racial background.

Code of practice

In 1999 the Government published a code of practice for employers on how to comply with section 8 without discriminating unlawfully. To bring the code into line with the changes to section 8, it will be revised later this year, but you can obtain a copy of the current version by calling the Employers' Helpline on 0845 010 6677. Alternatively, you can download a copy from the Employers' Information section of the following Home Office website:

www.ind.homeffice.gov.uk

Failure to observe a provision of this code does not make an employer liable to proceedings. It can, however, be used as evidence in proceedings brought against an employer under the Race Relations Act 1976 (as amended) and the Race Relations (Northern Ireland) Order 1997 before an employment tribunal (Industrial Tribunal in Northern Ireland). The tribunal must take all relevant provisions of the code into account in any proceedings that it considers.

If a complaint is upheld, the tribunal will normally order you to pay compensation, for which there is no upper limit.

Ensuring your document checks do not discriminate

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 job applicants for a document from List 1 or a combination of documents from List 2 before they begin working for you. You should not make presumptions about a person's right to work in the UK on the basis of their background, appearance or accent.

Our summary guidance also provides further advice for employers on how to avoid discrimination under the new document changes to section 8 (see page 3 for details of the summary guidance).

If you operate discriminatory recruitment processes, not only could you be prosecuted under the Race Relations Act 1976, but you will also place yourself at risk of being prosecuted for employing an illegal worker, as you may not have guaranteed a defence for all of your employees.

If you need further advice on preventing discrimination in your recruitment checks, you should consult your nearest office of the Commission for Racial Equality for advice:

Head Office/
London and the South of England
CRE
St Dunstan's House
201–211 Borough High Street
London SE1 1GZ
Tel: 020 7939 0000
Fax: 020 7939 0001
Email: info@cre.gov.uk

Birmingham
CRE
3rd Floor
Lancaster House
67 Newhall Street
Birmingham B3 1NA
Tel: 0121 710 3000
Fax: 0121 710 3001

Leeds
CRE
1st Floor
Yorkshire Bank Chambers
Infirmary Street
Leeds LS1 2JP
Tel: 0113 389 3600
Fax: 0113 389 3601

Manchester
CRE
5th Floor
Maybrook House
40 Blackfriars Street
Manchester M3 2EG
Tel: 0161 835 5500
Fax: 0161 835 5501

Scotland
CRE Scotland
The Tun
12 Jackson's Entry
Off Holyrood Road
Edinburgh EH8 8PJ
Tel: 0131 524 2000
Fax: 0131 524 2001
Email: scotland@cre.gov.uk

Wales
CRE Wales
3rd Floor
Capital Tower
Greyfriars Street
Cardiff CF10 3AG
Tel: 02920 729 200
Fax: 02920 729 220

The Employers' Helpline

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

Employers' Helpline on 0845 010 6677

It offers the following dedicated service for employers:

- answers any general enquiries you may have on preventing illegal working;
- will provide you, free of charge, with printed copies of this booklet, and the code of practice on preventing racial discrimination;
- will provide a limited number of printed copies of the new summary guidance for employers on preventing illegal working;
- will provide you with general advice about the new Worker Registration Scheme for workers from the new European Union countries;
- will be your first point of contact if you have concerns about false or forged documents, or if you wish to report allegations of illegal working;
- can provide your human resource units with a presentation on preventing illegal working, subject to limited availability.

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

Other sources of information

This guidance, a shorter summary of the law to prevent illegal working, and the code of practice on preventing racial discrimination are available from the Employers' Information pages of the Home Office's website at:

www.ind.homeffice.gov.uk

Application forms and further information on the Worker Registration Scheme can be obtained from:

www.workingintheuk.gov.uk

Information on work permits can be obtained at:

www.workingintheuk.gov.uk

Details on visa and entry clearance requirements for certain nationals are available at the UK Visas website:

www.ukvisas.gov.uk/

Further information on European Economic Area national passports and identity cards can be found in Keesing International Publisher's document *The Keesing Identity Checker*.

You can contact them to find more about this document at:

Keesing Reference Systems BV
PO Box 1118
1000 BC Amsterdam
The Netherlands
Tel: + 31 20 5641 228
Fax: + 31 20 5641 115
Email: ref@keesing.nl
Website: www.keesingref.com

List 1

DOCUMENTS WHICH PROVIDE THE DEFENCE IF PRODUCED ALONE

Any one of the documents described in List 1 and below in purple text will provide you with a defence if you follow all of the Steps set out on pages 4–5. Once you have done this, there is no need to ask for any other documents contained in List 2.

- A United Kingdom passport describing the holder as a British citizen or as a citizen of the United Kingdom and Colonies having the right of abode in the United Kingdom.

You should only check for the UK passports pictured below:

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.'*

Page 33 has further details of certain other types of British passport that do not provide a defence as they do not confirm that the holder is a British citizen.

- A passport containing a certificate of entitlement issued by, or on behalf of, the Government of the United Kingdom, certifying that the holder has the right of abode in the United Kingdom.

Certain Commonwealth citizens and citizens with dual nationality have the right of abode in the United Kingdom and do not have any immigration restrictions placed on the work they can do here.

You can check that someone has the right of abode by looking only for this sticker in their national passport →

- A passport or national identity card, issued by a State which is a party to the European Economic Area Agreement, or any other agreement forming part of the Communities Treaties which confers rights of entry to or residence in the United Kingdom, which describes the holder as a national of a State which is a party to that Agreement.

All nationals from European Economic Area countries and Switzerland are free to come and work here just like British citizens. You will be able to find more details about employing these nationals in Appendix B.

- A United Kingdom Residence Permit issued to a national of a State which is a party to the European Economic Area Agreement, or any other agreement forming part of the Communities Treaties which confirms that the holder has rights of entry to or residence in the United Kingdom.

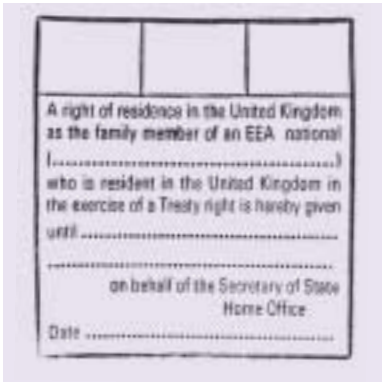
For nationals from EEA countries, this document consists of a blue permit carrying a photograph and personal details of the holder. Nationals from EEA countries can obtain a residence permit from the Home Office, as shown here:

Swiss nationals receive a similar document in the form of a pink residence permit, as pictured above.

- A passport or other travel document, or a residence document issued by the Home Office which is endorsed to show that the holder has a current right of residence in the United Kingdom as the family member of a named national of a State which is a party to the European Economic Area Agreement, or any other agreement forming part of the Communities Treaties which confers rights of entry to or residence in the United Kingdom, and who is resident in the United Kingdom.

When nationals from EEA countries and Switzerland reside in the UK, their immediate family members from outside the EEA or Switzerland gain the same rights to enter or remain here 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.

You will be able to establish that a non-EEA national has this status by checking in the person's passport or travel document for any of the endorsements shown here.



These endorsements are given by the Home Office to confirm that a person has a right of residence here.

- A passport or other travel document endorsed to show that the holder is exempt from immigration control, has Indefinite Leave to Enter or Remain in the United Kingdom or has no time limit on their stay.

Appendix D has full details of the various UK Government stamps and endorsements which demonstrate a person's immigration status.

- A passport or other travel document endorsed to show that the holder has current leave to enter, or remain in, the United Kingdom and is permitted to take the employment in question, provided that it does not require the issue of a work permit.

Those nationals from outside the EEA who have been given current leave to work here will be able to demonstrate this by producing a UK Government stamp or endorsement in their national passport or travel document. When the Government grants a person current leave (also known as 'limited leave') it places restrictions on the length or type of work a person can do here according to their immigration status. If you have had to apply for a work permit from Work Permits UK to employ someone, then you should refer to pages 23 and 24 for details of how to establish a defence.

- A registration card which indicates that the holder is entitled to take employment in the United Kingdom.

Only a small number of asylum seekers are permitted to work here while they await a decision on their claim. After 1 May 2004 you will only be able to establish that an asylum seeker has permission to work by checking a Home Office-issued Application Registration Card (ARC). If the holder can work, it will state 'employment permitted' on both sides of their card as indicated below.

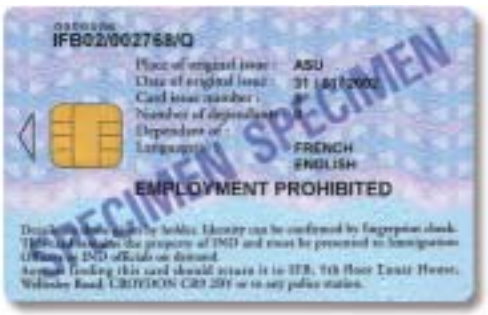
Front

Reverse

If you see an ARC which states 'employment prohibited' on either side, as shown here, then you must not employ that person.

Front

Reverse



You should not accept a Standard Acknowledgement Letter (SAL) or Immigration Service Letter (IS96W) as evidence that an asylum seeker has permission to work after 1 May 2004.

If an asylum seeker presents these documents to you, refer them to the Home Office on 0151 237 6375 for further advice on how they can obtain an ARC card.

List 2

DOCUMENTS WHICH PROVIDE THE DEFENCE IF PRODUCED IN COMBINATION

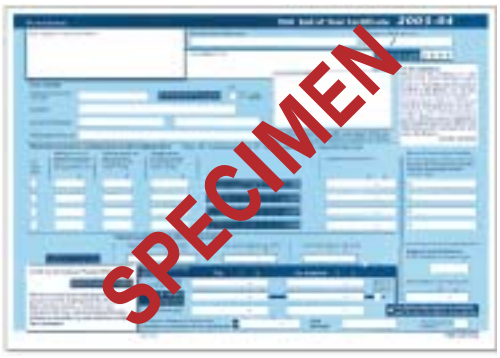
List 2 covers the combinations of documents, shown in purple, which will provide you with a defence if you follow all of the Steps set out on pages 4–5. Once you have done this, you do not need to ask for any further documents contained in List 1.

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

First combination

A. a document issued by a previous employer, Inland Revenue, the Department for Work and Pensions, Jobcentre Plus, the Employment Service, the Training and Employment Agency (Northern Ireland) or the Northern Ireland Social Security Agency which contains the National Insurance number of the person named in the document

Only a P45, P60, National Insurance numbercard, or a letter from a Government agency is acceptable as proof of a person's permanent National Insurance Number in order to establish this part of your defence.



The following will not provide you with evidence under section 8 that a person has a permanent National Insurance number:

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

Along with checking and copying a document giving the person's permanent National Insurance Number, you must also check and copy ONLY ONE of the documents listed at B–H to establish the defence.

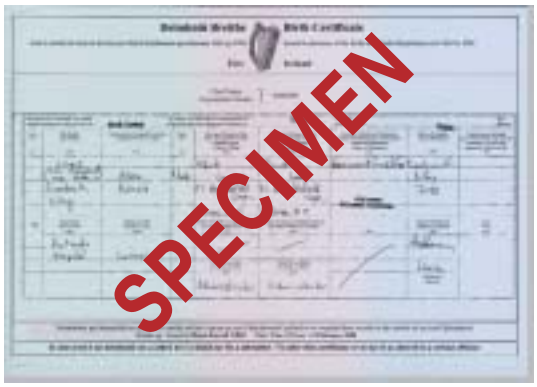
B. a birth certificate issued in the United Kingdom which specifies the names of the holder's parents

You should accept only the original of a full UK birth certificate, which must include the names of the holder and 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 defence. Short birth certificates which do not have details of either of the holder's parents will not establish this part of your defence.

OR

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



Nationals from Ireland have no immigration restrictions placed on the type of employment they can take here and you can check their birth certificates to form part of your defence.

OR

D. a certificate of registration or naturalisation as a British citizen

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

From February 2004, these documents were replaced by new certificates of registration and naturalisation as shown below.

OR

E. a letter issued by the Home Office, to the holder, which indicates that the person named in it has been granted Indefinite Leave to Enter or Remain in the United Kingdom

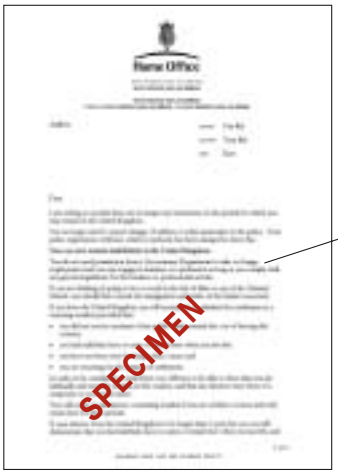
Those asylum applicants who have been awarded refugee status are granted Indefinite Leave to Enter or Remain in the UK. This means that, as with anyone with indefinite leave, there are no immigration restrictions on either the length of time they can stay here or the type of work they can do.

Until March 2004, those asylum seekers granted refugee status will usually have received this via a Home Office status letter as pictured opposite.

These letters will be endorsed with this Home Office stamp

GRANT OF ASYLUM

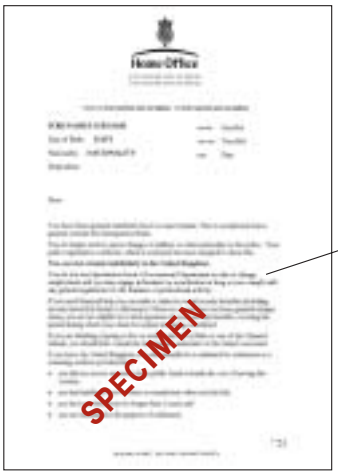
ENTITLEMENTS
You are free to take a job and do not need the permission of any Government Department before doing so.



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.

A small number of non-asylum applicants who do not possess a national passport have also been granted Indefinite Leave to Enter or Remain by a Home Office status letter.

These letters clearly state that the holder is able to take up employment.



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.

By the end of 2004, the Home Office will no longer issue any of the letters pictured. All new applicants granted indefinite leave will instead receive an Immigration Status Document, as pictured in Section F.

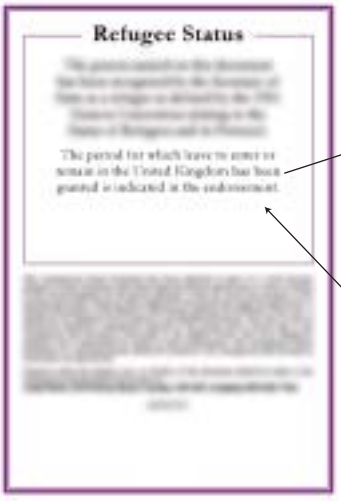
OR

F. an Immigration Status Document issued by the Home Office to the holder, endorsed with a United Kingdom Residence Permit, which indicates that the holder has been granted Indefinite Leave to Enter or Remain in the United Kingdom

In December 2003, the Home Office began to phase in the issuing of the Immigration Status Document (ISD) to new applicants granted Indefinite Leave to Enter or Remain in the United Kingdom. The ISD is only provided to those nationals who do not have their own national passport.

The ISD contains a United Kingdom Residence Permit endorsement (see Appendix D for further information). The ISD also has a section providing further details of the holder's status and personal details. You should copy all of the separate parts of the ISD, which are pictured.

The Residence Permit clearly shows that the individual has Indefinite Leave to Remain



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.

Where an applicant has refugee status, the ISD makes it clear that the holder is free to work here

OR

G. a letter issued by the Home Office, to the holder, which indicates that the person named in it has subsisting leave to enter or remain in the United Kingdom and is entitled to take the employment in question in the United Kingdom

All of the letters pictured indicate that an asylum seeker has been granted a form of temporary protection by the Home Office, and they have permission to stay in the UK for a limited period of time, and no immigration restrictions have been placed on the type of work they can do here.

GRANT OF HUMANITARIAN PROTECTION

You have been granted leave/further leave to enter/remain until 30 February 2005.

ENTITLEMENTS
You are free to take a job and do not need the permission of any Government Department before doing so.

DISCRETIONARY GRANT OF LEAVE TO ENTER/REMAIN

You have been granted leave/further leave to enter/remain until 30 February 2005.

ENTITLEMENTS
You are free to take a job and do not need the permission of any Government Department before doing so.

GRANT OF LEAVE TO ENTER/REMAIN ON AN EXCEPTIONAL BASIS

…a decision has been taken that it would be appropriate, because of the particular circumstances of your case, to grant you leave to enter/remain in the United Kingdom until 30 February 2005 on an exceptional basis outside the Immigration Rules.

ENTITLEMENTS
You are free to take a job and do not need the permission of any Government Department before doing so.

In order to establish this part of your defence, you should only accept the original Home Office letters pictured in this guidance. The letter must grant the holder current leave to enter or remain in the UK. You should also check the stamps on this letter carefully to see if the holder is permitted to take the type of work that you are offering. Appendix D has further details on the types of endorsements or ink stamps and what employment they allow someone to take here.

By the end of 2004, the Home Office will no longer issue any of the status letters pictured in this section. All new applicants will instead receive an ISD, as pictured in section H.

OR

H. an Immigration Status Document issued by the Home Office, to the holder, endorsed with a United Kingdom Residence Permit, which indicates that the holder has been granted Limited Leave to Enter or Remain in the United Kingdom and is entitled to take the employment in question in the United Kingdom

From March 2004 onwards, the Home Office began to phase in the issuing of an Immigration Status Document (ISD) to those asylum applicants who have been awarded temporary protection in the United Kingdom. Discretionary Leave and Humanitarian Protection are forms of Limited Leave to Enter or Remain. The ISD will be issued to those nationals who do not have their own national passports.

Those asylum seekers who are awarded temporary protection are granted what is called Limited Leave to Enter or Remain and their ISD will contain a United Kingdom Residence Permit endorsement which clearly states what status the holder has.

The ISD will also clearly state that the individual is free to work in the UK. You should copy all of the parts indicated on this page.

The Residence Permit clearly shows that the individual has Limited Leave to Remain.

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.

In December 2003, the Home Office also began to phase in the issuing of the ISD to the small number of non-asylum seekers who do not have a national travel document and are granted Limited Leave to Enter or Remain in the United Kingdom.

The United Kingdom Residence Permit endorsement will in this case indicate what type of limited leave a person has and what restrictions are placed upon their employment. You should copy all of the parts indicated.

This Immigration Status Document has been endorsed in place of a valid national passport or travel document and confers upon the person named leave to enter or remain in the United Kingdom for the period indicated.

You can find further information on the various United Kingdom Residence Permit endorsements and the types of employment they allow holders to take in Appendix D.

Second combination

A. A work permit or other approval to take employment issued by Work Permits UK

If you are planning to employ someone on a work permit, you may be involved in making an application for that person and will have received direct notification from Work Permits UK (WPUK) of the success of that application. You may also use the services of a representative to obtain a permit. In these cases you should ensure that your representative provides you with the original approval from WPUK.

If you have made an application before your employee arrives in the UK, then WPUK will issue you directly with a work permit (shown below) if you have been successful.

If you have made an application while the employee is in the UK, then WPUK will notify you with a letter of permission. This will be in the form of the letter shown here:

Along with the actual permission from WPUK for the person to take the employment in question, you must also ensure that the work permit applicant has been given leave to enter or remain in the UK. This will be in the form of:

B. a passport or other travel document endorsed to show that the holder has current leave to enter or remain in the United Kingdom and is permitted to take the work permit employment in question

Most work permit applicants will have been granted leave in their passports stating that they are able to 'work as authorised by the Secretary of State'.

Full details of the endorsements or ink stamps can be found in Appendix D.

OR

C. a letter issued by the Home Office to the holder, confirming the same

A small number of work permit applicants may not have a national travel document and instead will be issued with an Immigration Status Document and United Kingdom Residence Permit, as shown here.

This Residence Permit clearly shows that the individual has Limited Leave to Remain and is able to work.

This Immigration Status Document has been endorsed in place of a valid national passport or travel document and confers upon the person named leave to enter or remain in the United Kingdom for the period indicated.

Appendix A

SOME QUESTIONS YOU MIGHT HAVE

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Some questions you might have

Main groups you can employ in the UK without commiting an offence

Q1. Which groups in the UK are not subject to immigration control?

A. The main groups who are not subject to immigration control here, and who you can employ without restriction, are:

- British citizens;
- Commonwealth citizens with the right of abode; and
- family members of nationals from EEA countries and Switzerland, providing the EEA national is lawfully residing in the UK.

You should not employ any individual solely on the basis of their claim to belong to one of these groups – this will place you at risk of employing someone illegally if their claims are false. You should obtain a defence for all of your prospective employees by following Steps 1–3 outlined on pages 4 and 5.

Appendix B provides you with further information about what to do when employing a national from an EEA country.

Q2. Are there any other circumstances in which I will not commit an offence for employing someone under section 8?

A. Yes, you will not commit an offence if you are employing a person who is subject to any of the following immigration conditions:

- they have Limited Leave to Enter or Remain in the UK which does not prevent them from taking the employment in question; or
- they have applied to the Secretary of State for variation of this leave; or
- they are within the period during which an appeal could be brought, or have a pending appeal under Part 5 of the Nationality, Immigration and Asylum Act 2002(a) against refusal of that application; or
- they are permitted to work under the Immigration Rules.

There will also be certain people working in the UK under the terms of arrangements which are well known to the employers in the sectors concerned. Section 8 will not affect those arrangements.

Satisfying the requirements to establish a defence

Q3. 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?

A. You can obtain the statutory defence by following Steps 1–3 on pages 4 and 5. Providing you are satisfied that your prospective employee is entitled to take the job you are offering, no further checks need to be made during the course of that person's employment to comply with section 8.

Q4. Can I have the defence throughout a person's employment?

A. No. If you know that a person who is working for you is not permitted to do the job in question, then you will lose your right to the defence and could face prosecution under section 8. This exception allows the Immigration Service to tackle the minority of employers who deliberately employ illegal workers and use forged documents to obtain a false defence.

Q5. What if a potential employee cannot satisfy the statutory defence requirement?

A. The onus remains on your potential employee to demonstrate that they are permitted to do the job you are offering. You can withdraw your offer of employment to a potential employee if they cannot produce satisfactory documentation and you need to fill the post urgently.

If you do not need to fill your post immediately and the applicant does not have any of the documents included in List 1 or List 2, you can keep the post open and allow them time to produce a document, or documents, from these lists.

Q6. What should I do if I have concerns about the validity of the documents presented to me by an employee?

A. If you have carried out Steps 1–3 on pages 4 and 5 and are not satisfied that the applicant is the rightful holder of the documents they have produced to you, then you should not employ that person.

If you have any other concerns about the validity of the documents presented to you, you should contact the Employers' Helpline on 0845 010 6677 for further advice. They will treat any information you provide in confidence and pass this on to the relevant Immigration Service Local Enforcement Office for further investigation.

Copying documents and maintaining records

Q7. How do I record any documents produced to me by potential employees to gain the defence?

A. You should always ask for original documents from all of your potential employees. There are two ways in which you can then make and keep a record of any documents you have seen:

- make a clear photocopy of the original; or
- scan the original onto a computer database using Write Once Read Many (WORM) technology.

Scanned images must be captured by WORM. If you use any other form of package, you will not establish a defence.

Q8. Which parts of the documents do I need to record?

A. Usually it is advisable to copy every part of any document presented to you by your potential employee.

If, however, you are provided with a national passport or travel document, then you only need to copy:

- the front cover and any pages giving personal details of the holder and the date showing that the document is still valid. In particular you should copy the page with the photograph of the holder, and the page which shows their signature; and
- any page containing the UK endorsement (stamp or sticker) which permits the holder to take the employment you are offering them (see Appendix D for further details about Government immigration stamps and endorsements).

Q9. Should I retain original documents?

A. It is not appropriate to retain a person's original documents, except for the purpose of copying them. The only exceptions to this are:

- when an individual gives you a P45 as part of a combination of documents in List 2; or
- when you employ someone for a day or less and it is not practicable to obtain a copy of the documents. 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.

If you deliberately appropriate a person's passport or other original documents belonging to them, or retain these without their consent, then you may be guilty of an offence under the Theft Act 1968.

Q10. How long do I need to keep the copies of any of the documents I have recorded?

A. You should keep any copies you have made throughout the period for which you are employing a person; and for at least three years after he or she has left your employment. Part 2 of the P45 must also be kept for at least three years after the end of the current tax year in order to comply with Inland Revenue regulations.

If you accept original documents from an employee because the employment is of a day or less and return the documents at the end of that day, you do not need to worry about the three-year period mentioned above.

Q11. Will I commit an offence if I do not keep records for each new employee?

A. It is only an offence under section 8 to employ a person over 16 who is subject to immigration control and who has no permission to work in the UK, or works for you in breach of their conditions of stay in the UK.

You will not commit an offence if you fail to keep a record for your employee and that person is not subject to immigration control (see page 28) or is permitted to work here.

You should follow Steps 1–3 outlined on pages 4 and 5 before you take on every new employee and that way you can be sure you will not commit an offence.

Q12. What if my copies of the documents are lost or accidentally destroyed?

A. You establish a defence by copying or otherwise recording any documents produced to you. It is easier to prove that you did this by producing records for each of your employees, which the Immigration Service can check to assess whether you are entitled to the defence.

The Immigration Service will also decide whether a prosecution is appropriate in any given case, by taking into account wider evidence of your recruitment processes when considering if you have established a statutory defence.

Checking the document combinations in List 2

Q13. If a potential employee only has one of the documents contained in List 2, what should I do?

A. If your potential employee only shows one of the documents contained in List 2, you should ask them to produce another document as specified in List 2 before you begin employing them. Otherwise you will not have a defence for that person.

You can choose to keep the offer of employment open until the person has produced a further document which satisfies the defence requirements under List 2, or a single document under List 1.

An applicant's ethnicity, race or religion should not play any part in your decision on how to operate your recruitment process. You should not, for example, keep a job offer open to a white individual who is awaiting a further document, but refuse to keep the offer open to someone from a minority ethnic group in the same circumstances.

Q14. What if I have an existing employee who I employed on the basis of them producing just one of the documents included in List 2?

A. The new document changes only apply to employees who you employ on or after 1 May 2004. If you have taken on an employee before that date, you will have a defence for that person, providing you met the requirements under the previous arrangements for establishing a defence.

Q15. What if a new employee produces two of the documents included in List 2, but not in the combinations you have set out?

A. You will only establish the defence if you have checked for the two documents as they are set out in the combinations in List 2, and not in any other combination. For example, if an applicant was to present you with an Immigration Status Document and a certificate of naturalisation, this would not establish your defence as this is not a specified combination of documents.

Q16. What happens if the details do not match on the combination of documents produced by my potential employee under List 2?

A. If the names or any other personal details shown on the two documents do not match, then you will not have a defence and must ask your potential employee for a further document which explains this difference. This could be a marriage certificate, divorce document, deed poll, adoption certificate or statutory declaration.

If this further document satisfies you that there is a genuine reason for the difference in names on the two documents, you should also take a copy of this. This will then form part of your defence.

If someone cannot account for the difference in names on the documents and cannot produce any of the documents from List 1, then the safest course of action would be not to employ that person.

You should make sure that you only carry out these extra checks on the basis of the documents produced to you, and where the details do not match.

Checking for National Insurance Numbers under the new requirements

Q17. If a new employee only possesses a document with details of their National Insurance Number (NINO), does this establish a defence?

A. No. A document containing details of a person's NINO will no longer provide you with a defence on its own if produced to you by a potential employee starting work for you after 30 April 2004.

You will only have the statutory defence from 1 May 2004 if a document containing a person's NINO is presented to you with one of the other combined documents in List 2 at sections B–H.

The Government has made this change because the core purpose of the NINO is to link an individual to their social security contribution record. While the overwhelming majority of people who have a NINO can work in the UK, possession of a number does not always mean that the individual's immigration status allows them to undertake all forms of employment in the UK.

Q18. Can I accept any document which contains a NINO?

A. No. When checking for evidence of a person's NINO, it is important that you only accept a permanent number on the documents set out on page 14. The following will not provide you with evidence under section 8 that a person has a permanent number:

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

Q19. What if a potential employee produces one of the documents from List 2 but does not have a document containing a NINO? Should I employ that person and obtain a NINO for them after they start working for me?

A. The overwhelming number of job applicants who do not possess national passports, but who are able to work here, will already have been issued with a NINO by the Department for Work and Pensions' Jobcentre Plus. You will need to have checked and copied a person's NINO along with one of the other documents from List 2, B–H. If you do this then you will establish a defence.

If, however, you choose to employ someone who has one of the documents included in List 2 categories B–H, but does not have a permanent NINO, then you may face prosecution. Even if the individual concerned is in the process of applying for a NINO, then there is no guarantee that you will not be prosecuted.

Q20. What if a UK resident who is under 20 applies for a job with me and claims they have not been issued with a NINO, but does have a full UK birth certificate?

A. Nearly all residents in the UK are automatically given a NINO as they approach age 16. On or after reaching the age of 15, a young person will receive a small plastic card notifying them of their NINO (see picture on page 14).

A small number of young people may, however, miss the automatic registration process. Providing they are over age 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 has been issued with a number.

If an applicant is 20 years or over and does not have a NINO, then they will need to apply as an adult to their nearest Jobcentre Plus or social security office.

Employing asylum seekers

Q21. Can I employ asylum seekers?

A. On 23 July 2002, the Government ended the employment concession for asylum seekers. Before this date, asylum seekers could apply for permission to work in the UK if they had not received an initial decision within six months of applying for asylum. There were no restrictions placed on the type of work that they could undertake.

As a result of the ending of the concession, any asylum seeker who made an initial asylum application after 23 January 2002 will not be able to undertake any form of paid or unpaid employment, unless they have been granted the concession by the Home Office in exceptional circumstances.

Any asylum seeker who was granted the concession before it was ended on 23 July 2002 will still be able to work until they have received a final negative decision in the case where their claim was rejected.

Since the Government abolished the concession, an increasingly small number of asylum seekers are permitted to work here.

Q22. How will I know if an asylum seeker is able to work?

A. After 1 May 2004, any asylum seeker who is able to work must demonstrate this through their Application Registration Card (ARC). This will state on the front 'Employment Permitted' if they are able to work. See List 1 for further details.

Q23. What if an individual presents me with a Standard Acknowledgement Letter (SAL) or Immigration Service 96W (IS96W) letter after 1 May 2004 which states that they are entitled to work?

A. You should not employ anyone on the basis of seeing either of these documents after 1 May 2004 as they will not provide you with a statutory defence. Any asylum seeker who is still able to work will need to show an Application Registration Card (ARC) to demonstrate this. If a job applicant is an asylum seeker who can work, but does not have an ARC, you should advise them to call the Home Office on 0151 237 6375 for further information about how to obtain one.

Q24. If I am already employing an asylum seeker, who I employed on the basis of seeing their SAL or IS96W before 1 May 2004, should I ask for an Application Registration Card?

A. No. If your existing employee produced an SAL or IS96W prior to 1 May 2004 and you established a defence for that person in line with the existing requirements, then you will not need to ask them for an ARC during the course of their employment.

Other documents not acceptable under the new requirements

Q25. Are there any other documents, like the SAL and IS96, which are being removed as part of the defence?

A. As well as the SAL and IS96W no longer being acceptable after 1 May 2004, the following documents, which you may have checked previously, will also be removed from the document lists:

- a letter issued by the Home Office stating the holder is a British citizen;
- a passport describing the holder as a British Dependent Territories Citizen and which states that the holder has a connection with Gibraltar;
- a short birth certificate issued in the UK which does not contain details of at least one of the holder's parents; and
- a card or certificate issued by the Inland Revenue under the Construction Industry Scheme.

Q26. What if I check other documents which establish evidence of someone's identity?

A. You must only check the documents specified in List 1 and List 2 to establish a defence. The following documents have never been acceptable as proof of a person's right to work in the UK, and should not form any part of your section 8 checks:

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

You may also see some passports which contain the words 'British' but which are not acceptable. These are:

- a British Visitor's Passport;
- a passport that describes the holder as:
  - a British National (Overseas);
  - a British overseas territories citizen;
  - a British Overseas citizen;
  - a British subject or a British protected person (unless it contains a certificate of entitlement as shown on page 9 or an endorsement as shown in Appendix D).

United Kingdom Residence Permit (UKRP)

Q27. Is the UKRP the same as the residence permit issued by the Home Office to EEA nationals?

A. No. The two documents are different. A UKRP is issued to non-EEA nationals who have been granted leave to enter or remain here for longer than six months but do not require entry clearance. An EEA residence permit is only issued to EEA nationals by the Home Office to confirm their residence in the UK. Further details can be found at List 1.

Definition of an employer for the purposes of section 8

Q28. What is the definition of 'employer' for the purposes of section 8?

A. Under section 8 an 'employer' is defined as a person who employs an individual under a contract of employment. This can 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 make a check under section 8 to establish a defence.

Q29. How can I tell if my prospective worker will be classed as someone who is 'self-employed' or 'my employee' for section 8 purposes?

A. In a small number of cases it may not be easy to decide whether someone who will undertake work for you will be your employee or will be self-employed. The exact nature of the relationship is not determined by whether the worker is designated as an 'employee' or 'self-employed'. Rather, whether a person is truly your employee or self-employed will depend on all the facts and circumstances of the case.

The criteria below should provide you with a guide as to what status your worker may have, 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 point to the worker you are due to take on being 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 point to your worker being 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, you should look to establish the defence for that person, rather than risking conviction if you are found to be employing an illegal worker.

Q30. Where can I get further advice?

A. If you are concerned about the position of someone who is due to work for you, or is currently working for you, the following guidance is available free of charge:

- Department of Trade and Industry leaflet PL810: *Contracts of Employment* www.dti.gov.uk/er/pay/contracts-pl810.htm
- Inland Revenue leaflet IR56: *Employed or self-employed? A guide for tax and National Insurance* www.ir.gov.uk/pdfs/ir56.htm

You may also wish to seek legal advice before taking someone on.

Q31. Am I defined as the 'employer' if I use an employment agency to find my staff?

A. Again 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 directly employ those staff under a contract of service with you, then you will 'employ' those people for the purposes of section 8.

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 section 8.

Even where you use an agency to select candidates and you are not the employer for the purposes of section 8, you should still ensure that you regularly audit their document-checking processes, or even carry out documentation checks yourself.

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

Q32. Who in the organisation is held liable for employing someone illegally?

A. The 'employer' commits the offence and it will depend on the circumstances 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 will be liable.

If the employer is a company, certain individuals[5] may also be guilty of an offence, if it was committed with their consent or connivance, or as a result of their negligence.

In the case of partnerships, each partner will be considered guilty of the section 8 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, secretary or other similar officer of a company would be liable.

Q33. What if I acquire staff as the result of a Transfer of Undertakings (Protection of Employment) transfer?

A. You are not expected to make checks on people who become your employees as a result of the provisions of the Transfer of Undertakings (Protection of Employment) Regulations. You will not be prosecuted if you can demonstrate that any staff working illegally for you were acquired under this process.

[5] Any director, manager, secretary or other similar officer or any person who was purporting to act in such a capacity may be guilty of committing an offence.

Appendix B

EMPLOYING NATIONALS FROM THE EUROPEAN ECONOMIC AREA

Until 30 April 2004, members of the European Economic Area (EEA) were as follows:

Austria*	Belgium*
Denmark*	Finland*
France*	Germany*
Greece*	The Netherlands*
Iceland	Ireland*
Italy*	Liechtenstein
Luxembourg*	Norway*
Portugal*	Spain*
Sweden*	United Kingdom*[6]

Nationals from these EEA countries are not subject to immigration control and can enter and work freely in the UK. Their family members[7] are also able to work freely in the UK while their EEA family member is residing here. Those countries marked with an asterisk are also members of the EU.

From 1 June 2002, nationals from Switzerland and their family members have also had the same free movement and employment rights as EEA nationals. Where this appendix refers to 'EEA countries', Switzerland is included in this definition.

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

You should ask all EEA nationals to confirm their nationality by producing a document from List 1 on pages 8–12. They will usually do this by showing you a national passport or national identity card issued by an EEA country. They may also confirm their right to reside and work in the UK by showing you a Home Office Residence Permit issued to EEA nationals (see page 10). All of these documents will provide you with a defence if you check them and follow the Steps set out on pages 4 and 5.

If your potential 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 only 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 you should **not** accept these as part of your section 8 checks.

If you have any doubts about whether an identity card allows the holder to work or relates to your potential employee, you should ask that person to produce their national passport. If you still have doubts about whether that person is permitted to work in the UK, having carried out all the Steps outlined on pages 4 and 5, then you are entitled to refuse employment to that person.

If you experience regular difficulties verifying whether national identity cards or passports from EEA countries are genuine, you may also wish to purchase *The Keesing Identity Checker* which has detailed information on European national travel documents. See page 7 for further details.

The Employers' Helpline will also be able to provide you with further advice on national identity cards.

You will also be able to establish whether a non-EEA family member who is in the UK with an EEA national can work, by checking endorsements in their national passport or travel document. These will confirm their right to work in the UK without restriction. You can find further details on page 11.

[6] Although the UK is a member of the EEA, in general the information in this section is not relevant to British citizens and their families.

[7] A family member is the spouse or any dependent child up to the age of 21 of any EEA national. Even if the family member is a national from outside of an EEA country, they still acquire rights to reside and work in the EEA by virtue of their connection to an EEA national.

New members of the European Union and the EEA

On 1 May 2004, the following ten countries will join the European Union and become part of the EEA:

Cyprus	CZECH REPUBLIC
ESTONIA	HUNGARY
LATVIA	LITHUANIA
Malta	POLAND
SLOVAKIA	SLOVENIA

These new countries are often referred to as 'Accession States'.

Nationals from all ten of these countries are free to come to the UK and seek work here from 1 May 2004.

The Government has established a Worker Registration Scheme to monitor the participation of workers from eight of these countries (those marked in bold capitals) in the UK labour market. These countries will be referred to as 'A8 countries' throughout the remainder of this appendix and workers from these countries will be referred to as 'A8 workers'.

Nationals from Cyprus and Malta will not be required to register and you will be able to employ them by following the same procedures outlined on page 37 for employing nationals from existing EEA countries.

A8 Worker Registration Scheme

As a UK employer, you will need to make sure that any new A8 worker who starts working for you after 1 May 2004 registers with the Home Office, unless they are exempt from this requirement. You will find details in this appendix about how to establish whether your worker is exempt from registering.

If you have already been legally employing a national from one of these countries prior to 1 May 2004, they will not be required to register if they continue working for you. If you have been legally employing a national from one of the A8 countries on a work permit or any other managed migration scheme, and they continue working for you in the same job, then that person will not need to register. (Details of managed migration routes allowing A8 nationals to work in the UK before 1 May 2004 can be found in Appendix C.)

What should I do if I want to employ a new A8 worker after 1 May 2004?

When taking on a new A8 worker after 1 May 2004, you should:

1. Carry out an initial section 8 check

Before you start employing an A8 worker, you must confirm they are an A8 national, so you do not put yourself at risk of employing them illegally. You can do this by asking them to produce a national passport, or a national identity card. They may be able to produce another document from List 1 on pages 8–12, such as a residence permit, which shows their right to work here. You should make sure that if they produce a national identity card, this confirms they are a national or citizen of an A8 country.

2. Check if your A8 worker is required to register

Once you have established that an A8 worker is able to work in the UK legally, you can then begin employing that person. Under new regulations,[8] from 1 May 2004 you will be required to check if your A8 worker needs to register with the Home Office. Some A8 workers will be exempt from this requirement.

If you establish that your A8 worker is required to register with the Home Office, then you should follow the Steps 3–5.

If your A8 worker informs you that they are exempt from registering, you will still need to ask them for documentary evidence of this within one month. In this way, you can satisfy yourself that they are exempt from the scheme, and establish a statutory defence from conviction for employing an unregistered A8 worker. The documents you should ask them to produce are explained below, under

[8] Accession (Immigration and Worker Registration) Regulations 2004.

'Exemptions from the Worker Registration Scheme'.

3. Advise your worker to register with the Home Office

Your A8 worker should apply to register with the Home Office as soon as they begin working, and within one month of starting work for you at the latest. It is your A8 worker's responsibility to apply to register, but you will need to provide them with evidence of their employment (a contract or letter) in order for them to apply. Application forms can be obtained by calling 08705 210224 or by downloading from www.workingintheuk.gov.uk

You should take a copy of the completed application form before your worker sends this to the Home Office and within one month of them starting work for you. You should keep a copy of this application form until you receive official notification from the Home Office about the outcome of your worker's application, and this will provide you with a defence from conviction for employing an unregistered worker who is not exempt from the scheme.

4. Retain your copy of the registration certificate

In the overwhelming majority of cases, the Home Office will swiftly register your worker, and will send you a copy of your worker's registration certificate confirming this. You should retain the copy sent to you, which will be issued by Work Permits (UK). It will be printed on secure paper, and will contain the applicant's name, unique reference number, job title, and start date, your name and address as the employer, and the issue date of the certificate. The registration certificate expires on the date that your worker stops working for you.

5. Refusal of registration

In the unlikely scenario that the Home Office sends you notice of its refusal to register your worker, you should immediately stop employing that person.

What if I employ an A8 worker who does not register or who is refused registration?

If you continue to employ an unregistered A8 worker after one month and have not retained a copy of their Home Office application form, and they do not receive a certificate of registration, then you may commit a criminal offence under the new regulations for employing A8 workers. The maximum penalty on conviction will be £5,000. Similarly, if the Home Office notifies you that your employee's application has been refused and you continue to employ that person, you may also commit an offence.

You will not commit an offence if you have obtained a defence by copying your worker's application form, retaining their registration certificate, or checking a document showing that your worker is exempt from the scheme (see below), as long as you have not received a refusal notice from the Home Office.

Exemptions from the Worker Registration Scheme

Some A8 workers will be exempt from the requirement to register. You should ask these workers to provide you with documentary evidence of their exemption. Checking and recording one of the documents listed below will not only establish a defence from conviction for employing an unregistered A8 worker, but it will also establish a defence for your worker under section 8.

You should check for one of the following documents:

- a UK Residence Permit issued by the Home Office confirming the holder is an EEA national. This is pictured in Appendix D;
- a national passport or travel document containing an endorsement which states that the holder is also a dual national of the UK, Switzerland or one of the EEA countries listed on page 37;

- a national passport or travel document containing a valid endorsement which states that the holder is a family member of an EEA or Swiss national. Appendix D contains details of the endorsements which you should check; or
- a national passport or travel document containing a valid endorsement which shows that the holder has Indefinite or Exceptional Leave to Enter or Remain in the UK, or has been granted Limited Leave to Enter or Remain with no immigration restrictions on employment, as set out on pages 49–51 of this guidance.

You should check, make and retain a copy of one of these documents if your worker is exempt from the registration scheme.

Other exempt categories

The following categories will also be exempted from registering:

- A8 nationals on the Seasonal Agricultural Workers Scheme (SAWS) will be issued with a SAWS card. This card will be valid until the expiry date on the card, or 31 December 2004 (whichever is first), while they remain on the SAWS scheme;
- A8 nationals here on a self-employed basis (for the purpose of the Worker Registration Scheme, you will employ an A8 worker if you directly pay their wages); and
- A8 nationals who have been employed without interruption in the UK for 12 months. This means that any periods of unemployment within those 12 months do not exceed 30 days in total.

What about agency and temporary workers?

A8 workers who are employed on a short-term or temporary basis by agencies or labour providers should also, unless they are exempt, register with the Home Office within one month of starting work for the agency. They should register as soon as they start work and, for the purposes of registration, the agency or labour provider will be the employer if it pays the worker's wages.

Further details and guidance for labour providers and temporary workers will be available from the following website shortly: www.workingintheuk.gov.uk

Appendix C

EMPLOYMENT ROUTES TO THE UK FOR NATIONALS FROM OUTSIDE THE EUROPEAN ECONOMIC AREA

This appendix sets out a brief guide to the main schemes under the immigration rules which currently allow nationals from outside the European Economic Area (EEA) to come and work in the UK.[9]

Over the past few years the Government has increased the number of migration routes which nationals from outside the EEA can use to enter and work legally in the UK. There are also a number of routes of entry under our immigration rules that allow individuals to work as part of their stay here.

Those nationals who have entered the UK through these routes have to abide by strict conditions on the length of time they can stay in the UK, and in some cases there are immigration restrictions placed on the type of work they can do here.

You will need to be aware of some of the basic immigration rules that may restrict the employment of these nationals if you wish to check that they are permitted to take the type of employment you are offering.

The Government has also recently established a dedicated website for employers and foreign nationals, which provides clear information about the various ways to come and work in the UK. This can be found at: www.workingintheuk.gov.uk

You will also be able to find further information about other routes of entry that allow non-EEA nationals to take employment in the UK on the Home Office and UK Visas websites at: www.ind.homeoffice.gov.uk and www.ukvisas.gov.uk

Highly Skilled Migrant Programme

The Highly Skilled Migrant Programme is an individual migration route for the most highly skilled migrants to come to the UK for work or self-employment opportunities.

There is no requirement for a pre-existing job offer, unlike the work permit system, and no immigration restrictions on the type of work that you can offer them.

Highly Skilled Migrants are initially given leave to enter or remain in the UK for 12 months, and you will be able to check their status through a stamp or endorsement in their passport. Appendix D shows what these look like.

In the last month before the end of their one-year period in the UK, applicants can apply to the Home Office for further permission to stay as a Highly Skilled Migrant.

If this application is approved, they will normally be given permission to remain and work in the UK for a further three years, and they will receive the same endorsement (see Appendix D) in their passport.

Again, there are no immigration restrictions on the type of work which you can offer them during these three years.

UK Ancestry

Commonwealth citizens aged 17 or over may be permitted to enter or remain in the UK providing they have:

- a grandparent who was born in the UK, the Channel Islands, the Isle of Man; or
- a grandparent who was born before 31 March 1922 in what is now Ireland; and
- obtained a visa before travelling to the UK, or been granted leave to remain in the UK on the basis of UK Ancestry.

There are no immigration restrictions on the type of work which you may offer a person with this status, while they are allowed to remain in the UK on this basis.

You will be able to establish whether a person has UK Ancestry status by looking for a stamp or endorsement in their passport. Appendix D shows what these look like.

Science and Engineering Graduates' Scheme (SEGS)

From the summer of 2004, selected graduates from UK institutions in the physical sciences, maths and engineering will be able to stay in the UK and look for work for one year following their graduation under SEGS.

[9] Correct at time of going to print.

Closer to the launch of SEGS, further details will become available at: www.workingintheuk.gov.uk

Work permit route

The work permit scheme allows UK employers to recruit or transfer people from outside the EEA while safeguarding the interests of resident workers in the UK. Recruitment agencies, employment agencies and other similar businesses cannot apply for work permits, as they are not recruiting to fill a specific vacancy.

The following key immigration rules apply to work permit holders and their employment.

- The employer must have applied directly to Work Permits UK (WPUK) for a work permit for their potential employee. Employers can, however, use a representative if they want to obtain a training or work experience permit.
- A work permit will contain details of a specific individual who is permitted to carry out a particular job in the UK for a given period of time.
- The work permit holder is not able to take work other than the type specified on the work permit (except in the circumstances outlined below).
- Any changes in employment must be authorised by the Home Office.

You must copy the documentation from WPUK which confirms the holder's work permit to you, and also take a copy of their passport endorsement or Immigration Status Document which grants them leave to enter or remain. The work permit by itself does not provide your employee with immigration leave and is not enough to establish a defence under section 8. See Appendix D for more details.

A person who has a work permit, and wishes to take work additional to that for which the permit was issued, may do so without further permission from the Home Office provided the work is:

- no more than 20 hours per week;
- in the same profession and at the same professional level as the employment for which the work permit was issued;
- not supplied by a recruitment or employment agency; and
- compliant with employment legislation, such as the national minimum wage and the European Working Time Directive.

Employment of students from outside the EEA

Students from outside the EEA who are over the age of 16 are permitted to take some work here, providing their conditions of entry to the UK allow this, and they are given leave as a student in the UK for longer than six months.

There are strict conditions on the type of work they can take while they are studying in the UK. You can employ a student:

- for up to 20 hours per week only during term time. The only exception to this is where a student may have been placed with you to meet the definition of their sandwich course or internship; and
- full time only outside of their term time and they must still have valid leave.

A student from outside of the EEA must not:

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

Further details of the passport endorsement or stamps which students receive can be found in Appendix D.

The Government recognises that on some occasions it may be difficult for employers to verify an applicant's student status or otherwise. You should remember that the onus remains on the student, as it does on all of your prospective employees, to demonstrate that they are able to work for you legally.

You are perfectly entitled 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.

Working Holidaymakers Scheme

This section has been amended as of Feb 05
Please see page 46 below for new version.

Seasonal Agricultural Workers Scheme (SAWS)

This scheme allows students aged 18 or over from countries outside the EEA to take short-term casual work in the UK agricultural sector. SAWS students are allocated to employers by a small number of Home Office-approved operators and can only be placed with employers in a relevant agricultural business.

SAWS students will have an endorsement or stamp in their passport which clearly states that they can work here as a SAWS student.

Au pairs

A single person between 17 and 27 from certain listed countries can come to the UK to study English and work only as an au pair.

Those entering on this scheme can live for up to two years as a member of an English-speaking family and help in the home for up to five hours a day.

You cannot employ an au pair outside of their au pair duties or you will be committing an offence under section 8. Their passport will state clearly that they are here as an au pair.

Domestic workers

Domestic workers are only given permission to enter the UK in conjunction with their employer.

They can only change to another job as a domestic worker in a private household and the work must be similar in skill to their original job. Domestic workers must also write to the Home Office informing them of their change of employment.

You will commit an offence under section 8 if you employ someone with domestic worker status in the UK and you are offering them work other than as a domestic worker in a private household. Their passport will state clearly that they are here as a domestic worker.

The BUNAC Scheme

This scheme allows 4,000 students from the USA to enter the UK each year for a period of six months.

[10] The current members of the Commonwealth are:
Antigua and Barbuda, Australia, The Bahamas, Bangladesh, Barbados, Belize, Botswana, Brunei, Canada, Cameroon, Cyprus, Dominica, Fiji, The Gambia, Ghana, Grenada, Guyana, India, Jamaica, Kenya, Kiribati, Lesotho, Malawi, Malaysia, Maldives, Malta, Mauritius, Mozambique, Namibia, Nauru, New Zealand, Nigeria, Pakistan, Papua New Guinea, Saint Christopher and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Seychelles, Sierra Leone, Singapore, Solomon Islands, South Africa, Sri Lanka, Swaziland, Tanzania, Tonga, Trinidad and Tobago, Tuvalu, Uganda, United Kingdom, Vanuatu, Western Samoa, Zambia and Zimbabwe.

To be eligible to participate in the scheme, the applicants must be citizens of the USA or on study abroad programmes. Green Card holders in the USA (i.e. non-US permanent residents) also benefit from the provisions of this scheme.

There are no immigration restrictions on the type of work which you may offer a BUNAC student during their six months' stay here.

You will be able to establish whether someone has BUNAC status by checking for a stamp or endorsement in their passport which will clearly state that they are in the UK under this scheme.

The information provided here on the schemes that allow non-EEA nationals to enter and work legally in the UK is subject to change. For the most up-to-date information on employing workers from outside the EEA, please refer to the following website: www.workingintheuk.gov.uk

Fresh Talent: Working in Scotland

The Scottish Executive's Fresh Talent Initiative encourages overseas students at Scottish institutions to consider living and working in Scotland after graduation. Overseas students who have been awarded a HND or UK recognised undergraduate or Masters Degree or PhD by a relevant Scottish institution and who have lived in Scotland for an appropriate period during their studies may apply under the scheme.

The application should be made within 12 months of completing that qualification. If granted, they will be entitled to undertake any type of employment, self employment or business whilst the leave is valid. It can be granted for a maximum period of two years less any period granted under the Science & Engineering Graduates' Scheme.

It is anticipated that successful applicants will participate in the scheme in Scotland and this will be monitored by the Scottish Executive. If, after a successful application, they are subsequently granted leave to remain in the United Kingdom under a work permit, they will be required to work in Scotland.

Working Holidaymakers Scheme - February 2005

The Working Holidaymaker Scheme enables 17-30 year-old Commonwealth nationals to come to the UK for two years for a working holiday. They are permitted to work here to supplement their funds, but must be able to support themselves without relying on welfare benefits.

Working holidaymakers can only stay in the UK as such for a maximum of two years, and may only participate in the Working Holidaymaker Scheme once. Entry clearance is mandatory, and to be eligible for entry clearance in the category applicants must intend to work during their stay and to take a holiday break at some point.

The rules covering the employment of working holidaymakers changed on 8 February 2005. ***Working holidaymakers who were issued with entry clearances for entry to the United Kingdom as working holidaymakers before 8 February 2005*** can work within their two years' stay here either full time or part time, and there are no immigration restrictions on the type of employment you can offer them during this period.

Working holidaymakers who were issued with entry clearances on or after 8 February may only work for 12 months in total during their stay in the UK as a working holidaymaker, and may not engage in business or provide services as a professional sportsperson. The entry clearance is endorsed with the work restrictions that apply. The 12 months work may be spread over the two-year period of stay, or taken in one block. There is no distinction made as re hours worked per week – it is the period in days/weeks/months during which a WHM is employed by an employer that is relevant.

Employers who receive an application for employment from a working holidaymaker who entered the UK on an entry clearance issued on or after 8 February are advised to ask the applicant how long they have already spent working during their current stay in the United Kingdom. No further enquiries should be necessary, as the obligation is on the working holidaymaker to comply with their conditions of entry. Although working holidaymakers are barred from engaging in business and providing services as professional sportspersons, they can undertake any other type of work, including professional and managerial work, during their stay.

You will be able to establish whether someone has this working holidaymaker status by checking for an endorsement or stamp in their passport which will clearly state that they are in the UK under this scheme (see Appendix D).

Appendix D

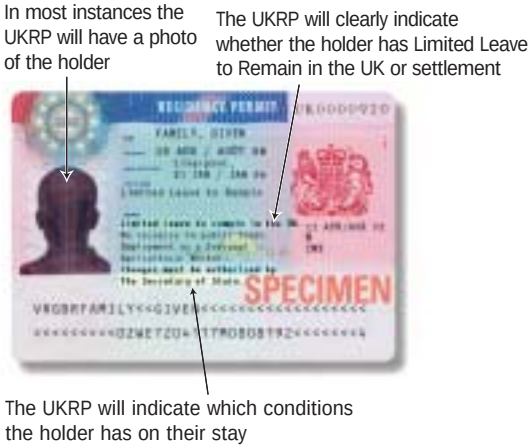
GUIDE TO UK GOVERNMENT IMMIGRATION STAMPS AND ENDORSEMENTS

This appendix provides you with comprehensive details of the immigration stamps and endorsements that the UK Government places in a person's passport or travel document when they are from outside the European Economic Area (EEA). It will help you to understand what you need to check to ensure that the person in question is permitted to do the type of work you are offering.

If you need further assistance when presented with any of the immigration stamps or endorsements, then you should call the Employers' Helpline for further advice on 0845 010 6677. An operator will provide you with advice about whether a stamp or endorsement permits the holder to take the employment you are offering. You should also consult the following Employers' Information page on the Home Office website for further updates: www.ind.homeoffice.gov.uk

United Kingdom Residence Permit

The United Kingdom Residence Permit (UKRP) is a new form of endorsement introduced by the Home Office in 2003.



It will be used to endorse passports belonging to nationals from outside the EEA, and will also be placed on Home Office Immigration Status Documents to show what type of Leave to Enter or Remain a person has been granted whilst in the United Kingdom. The UKRP is being phased in over the course of 2004 and will replace all of the Home Office ink stamps which are shown later in this section and which state 'Leave to Remain'.

The UKRP will only be issued to those nationals who intend to stay here for longer than six months. It will not be issued to any non-EEA nationals who are required to obtain a visa or entry clearance (see page 53) to enter the United Kingdom before they travel here.

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

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 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.

The UK has introduced the new European-style vignette residence permit. It will be used to identify those persons who have permission to stay in the UK and will sometimes contain an image of the holder. 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 colours 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.

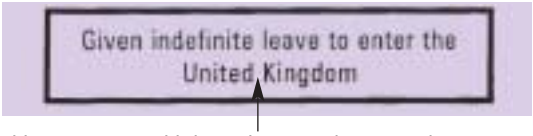
Secure Paper and Background Print
The paper used contains blue and red visible fibres. The background print contains high detail and uses subtly merging colours (rainbow print).

Indefinite Leave to Enter or Remain, exemption from immigration control, or no time limit on a person's stay in the United Kingdom

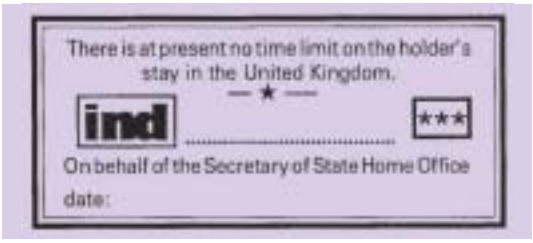
Any individual who is granted Indefinite Leave to Enter or Remain in the UK, who is exempted from immigration control, or who has no time limit on their stay here may stay and work here as long as they like. There are no immigration restrictions placed on the type of job you may offer them.

The Home Office began endorsing passports with the UKRP from December 2003 to demonstrate that the holder has Indefinite Leave to Enter or Remain here (see below).

You may also see the following endorsements which demonstrate that a person has this status. These will be phased out by the end of 2004, but will still provide you with a defence if they are presented to you in a valid passport by the holder.



This stamp was withdrawn in November 2003 but may still be seen by employers



The holders of travel documents who have been granted Indefinite Leave to Enter or Remain here will have a printed endorsement in their travel document stating: '*There is no time limit on the holder's stay in the United Kingdom.*'

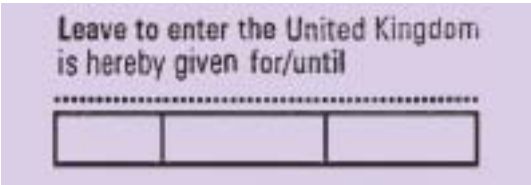
Those asylum seekers who have been awarded refugee status or remain to stay here under a form of temporary protection, will not usually possess a national passport.

In certain special circumstances, they are able to apply to the Home Office for a travel document. You should only accept the three Home Office travel documents pictured below.

Exceptional Leave to Enter or Remain, discretionary leave or humanitarian protection

A person who has been granted exceptional leave, discretionary leave or humanitarian protection by the Home Office will have what is known as 'current' or Limited Leave to Enter or Remain here. You will be able to employ a person with this status while the date shown on their endorsement or stamp is valid. There are no restrictions placed on the type of work you may offer them.

The following passport endorsements will indicate that a person has this status:



Those individuals who do not possess a national passport but have Home Office-issued travel documents and who have been granted this status will have printed wording in their travel document which states: '*Holder's leave to remain in the United Kingdom was varied by the Home Office.*'

Limited Leave to Remain granted with no immigration restrictions on employment

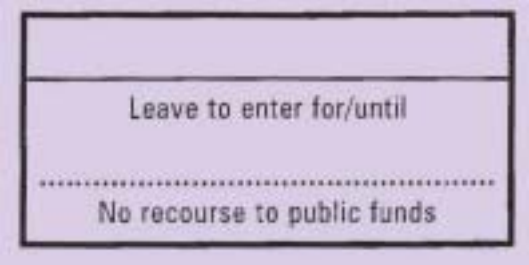
Certain qualified people and their dependants who meet the requirements of the UK immigration rules are granted leave to enter or remain here for a limited period of time. These are:

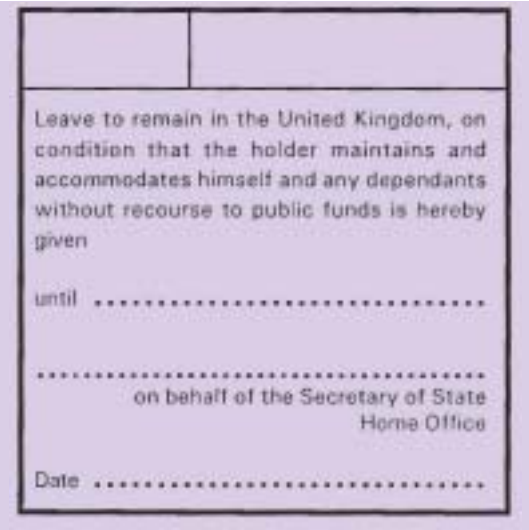
- Highly Skilled Migrant Programme;
- UK Ancestry;
- SEGS students;

- postgraduate doctors and dentists;
- dependent family members of work permit holders and students; and
- partner or spouse of a UK citizen on their probationary period.

You will be able to employ anyone in these categories while the date shown on their passport endorsement or stamp is valid. There are no immigration restrictions placed on the type of work you may offer them.

The following stamps and endorsements will indicate that someone has this status:

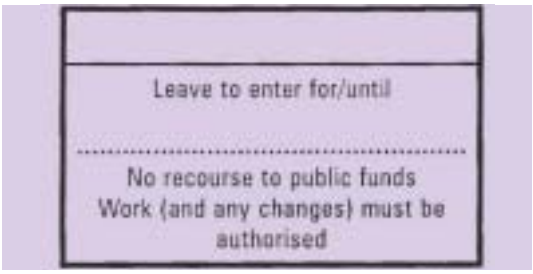


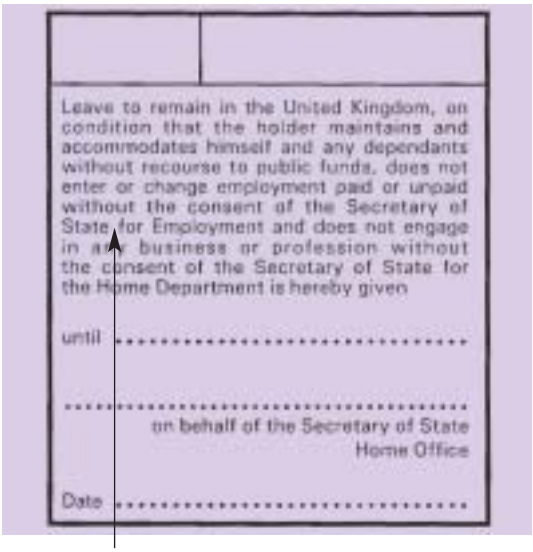


Leave granted to work permit holders and students

If a person has been granted leave to enter or remain here as either a **student** or **work permit holder**, then you can employ them while the date shown on their passport stamp or endorsement is valid. You must only offer them certain types of employment in line with Immigration Rules.

Work permit holders and students will have the following stamps which indicate this status:





This older ink stamp allows students to work even though it states that work must be authorised by the Secretary of State for Employment

You should follow the guidelines on page 43 to ensure you employ students legally.

You will not be able to rely upon checking a passport endorsement alone to establish a defence for work permit holders. You are also required to copy the work permit or letter of permission issued by Work Permits UK. Page 43 provides further details about the guidelines you must follow.

Limited leave granted with specific types of employment

Certain workers who meet the requirements of the immigration rules are granted limited leave to enter or remain in the UK but can only carry out specific forms of employment during their stay here. Those who enter the UK in specific immigration categories include:

- working holidaymakers;
- seasonal agricultural workers;
- au pairs;
- overseas domestic workers; and
- BUNAC entrants.

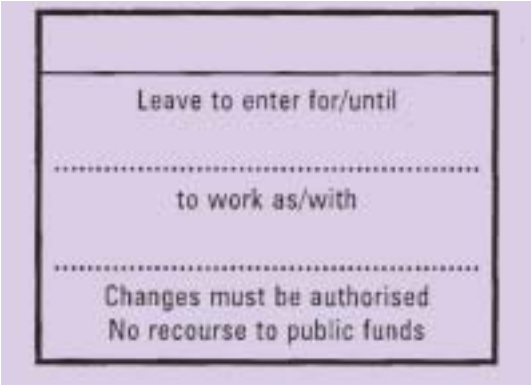
You can employ people in these categories only:

- while the date shown on their passport endorsement or stamp is valid; and
- according to the specific types of employment they may carry out here.

If the person is in the UK as a working holidaymaker you must employ them according to these conditions (see page 44 for further details).

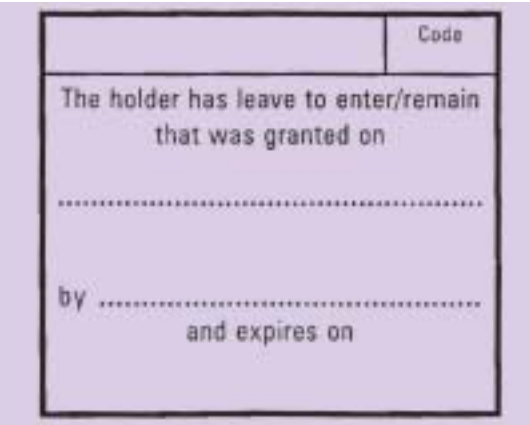
If a person is here under any of these categories, then the stamp or endorsement in their passport will indicate the specific employment the holder is limited to taking while in the UK.

You may also see specific endorsements for au pairs, BUNAC entrants, overseas domestic workers, or Seasonal Agricultural Workers



Change of conditions

You may also be presented with the following ink stamp, which was formerly used by Immigration Officers to transfer a person's conditions from an old passport into a new passport.



If someone presents this ink stamp to you in their passport, you should ask them to produce their previous passport containing their previous leave so you can be sure that they are permitted to take the job you are offering.

Visas/entry clearance certificates

Nationals from certain countries are required to obtain a visa or entry clearance certificate from UK embassies before they travel to the UK. A list of these can be found on the UK Visas website at: www.ukvisas.gov.uk

If a person has been issued with a valid visa or entry clearance and it has not expired, then they will not need a UKRP or any of the previously indicated ink stamps to demonstrate to you whether than can work here.

The entry clearance will state under which category of the Immigration Rules the person has been given leave to enter the UK

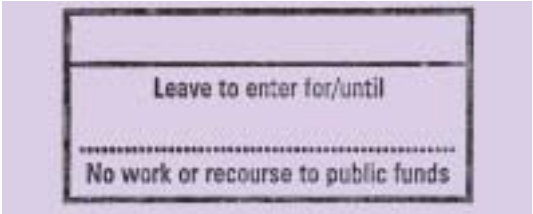
You should check the date the entry clearance is valid from and its expiry date to ensure that the holder has current leave to enter

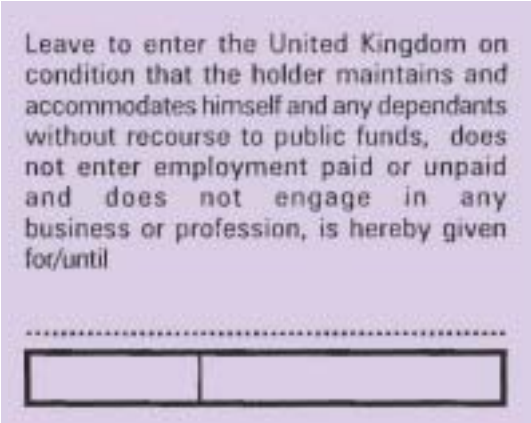
The conditions stating what type of employment a person can take are set out

Stamps and endorsements which prohibit working in the UK

Any non-EEA national who has the following endorsements in their passport is not able to work in the UK. You will commit an offence under section 8 if you employ a person with any of the pictured stamps in their passports.

This visa is given to nationals who require a visa to enter the UK





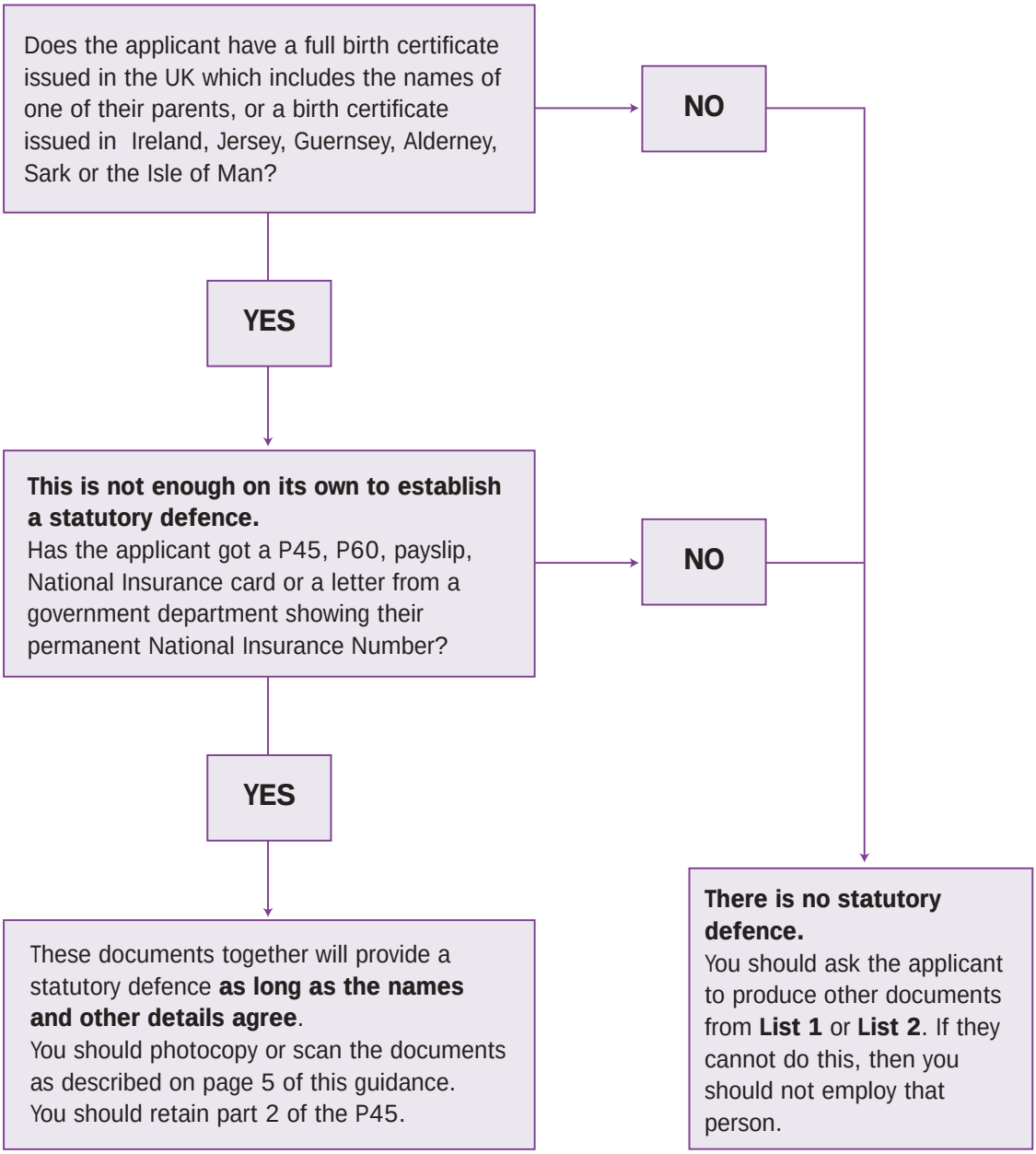
Appendix E

FLOWCHARTS FOR CARRYING OUT DOCUMENT CHECKS

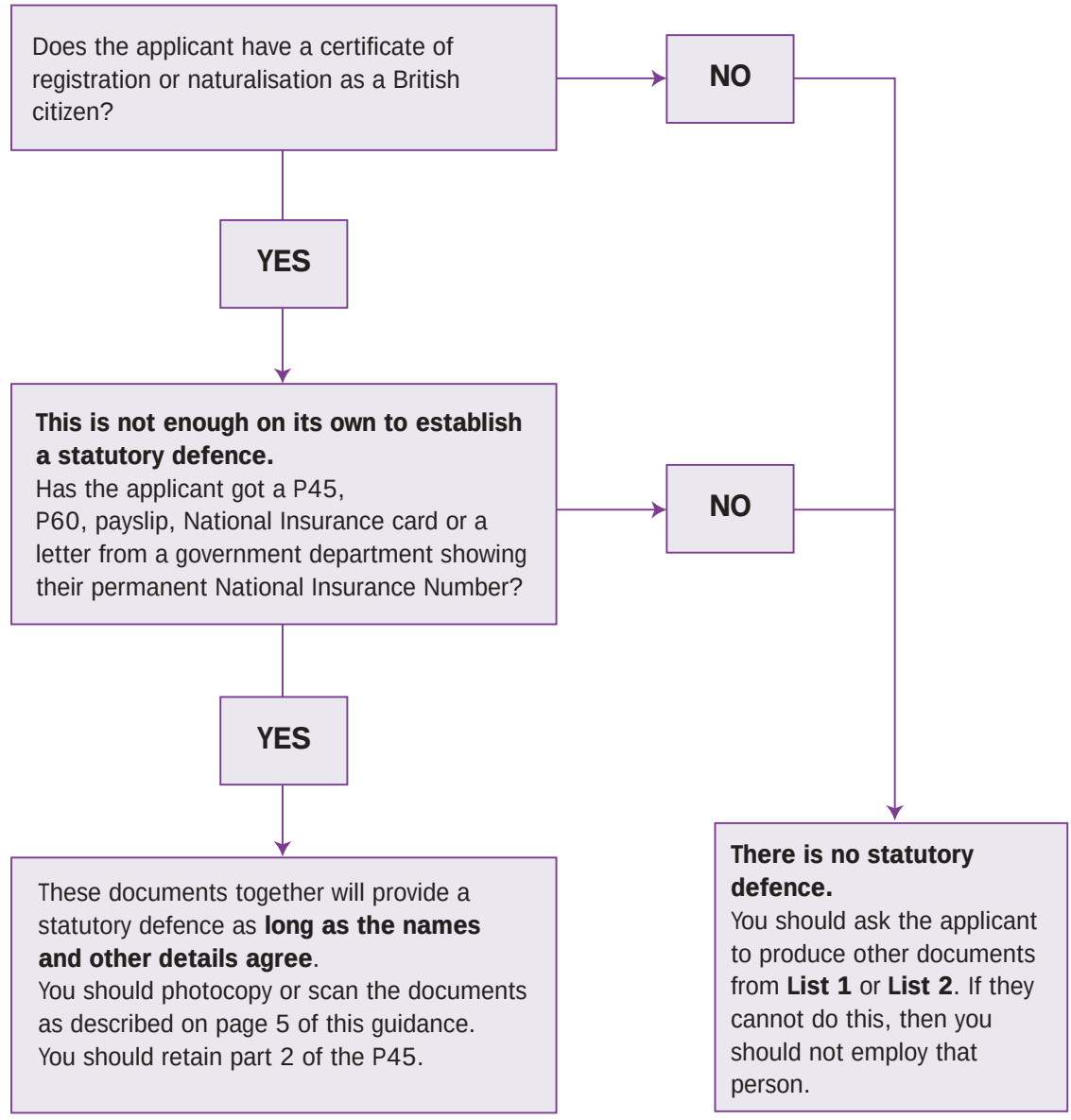
This appendix aims to provide you with some examples of documents that prospective employees may show you and describes the action you should take when presented with certain documents from List 1 and List 2. The examples presented here are not exhaustive.

Remember that you must see original documents and follow the Steps set out on pages 4 and 5 to gain the defence.

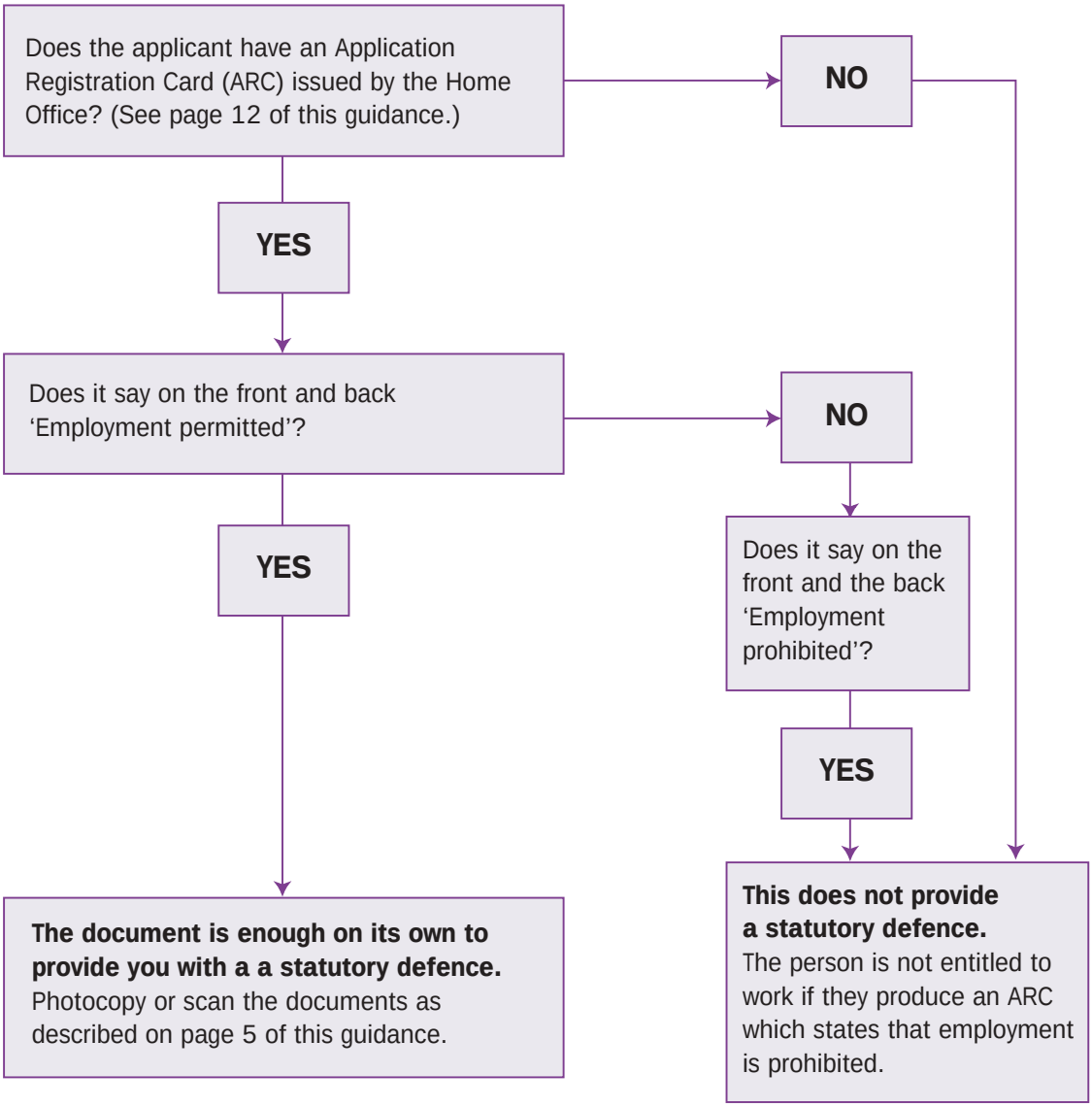
Flowchart for employers: birth certificate combination



Flowchart for employers: registration certificate combination



Flowchart for employers: application registration card



Terms and abbreviations

A8 countries
Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia.
These countries joined the European Union and EEA on 1 May 2004.

A8 workers
Workers from the A8 countries who may be required to register with the Home Office if they begin working in the UK after 1 May 2004.

Asylum seeker
An individual with an outstanding claim for asylum under the 1951 United Nations Convention relating to the Status of Refugees.

Application Registration Card (ARC)
The Application Registration Card is currently issued by the Home Office to all new asylum seekers. It is a secure document which confirms evidence of the holder's identity.

European Economic Area (EEA) countries
The EEA countries are the EU countries listed below, plus Iceland, Norway and Liechtenstein. Switzerland is not a member of the EEA, but since June 2002, Swiss nationals and their families benefit from similar rights to EEA nationals on freedom of movement and work.

European Union (EU)
The EU countries are Austria, Belgium, Denmark, France, Finland, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden and the United Kingdom.
From 1 May 2004, the A8 countries will also join the EU along with Cyprus and Malta.

Indefinite Leave to Enter/Remain
This is the immigration status granted by the Home Office to those foreign nationals who qualify for settlement or permanent residence in the United Kingdom. A person granted this status has no immigration restrictions placed on the work they may carry out in the UK, and no time limits on their stay.

Immigration and Nationality Directorate (IND)
A directorate within the Home Office with responsibility for immigration and asylum issues.

Immigration Officer
A civil servant with responsibility for enforcement of immigration controls, including the operation of border controls at ports in the UK.

Immigration Service
The operational arm of IND which has responsibility for the enforcement of immigration controls, including entry clearance at the UK borders of individuals wanting to enter the UK.

Immigration Status Document
A document which contains a UKRP and grants the holder Limited/Indefinite Leave to Enter or Remain in the UK.

Leave
When a non-EEA national is permitted to stay in the UK, they are granted leave by the Government.

Leave to Enter
When an Immigration Officer at a port grants permission for a non-EEA national to enter the UK, this is referred to as 'leave to enter'.

Leave to Remain
When leave is granted by the Home Office to a non-EEA national after that person has arrived in the UK, this is referred to as 'leave to remain'.

Limited Leave to Enter/Remain
A form of leave granted to non-EEA nationals which permits them a limited period of stay in the UK. Some nationals will be able to take employment as part of their limited leave, although immigration restrictions may be imposed on the types of work they can do during their stay here. This is also often referred to as 'current' or 'subsisting' leave.

National Insurance Number (NINO)
A National Insurance Number is a personal number issued to monitor an individual's National Insurance contributions and credited contributions. It is also used as a reference number for individuals within the social security system.

Refugee status
Granted to those asylum seekers who are recognised by the Home Office in accordance with the criteria set out in the 1951 United Nations Convention relating to the Status of Refugees. All refugees are granted Indefinite Leave to Enter or Remain in the UK.

Standard Acknowledgement Letter (SAL)
A document issued by the Home Office to asylum seekers upon application for asylum. The SAL document is currently being replaced by the Application Registration Card.

Temporary Protection
Those applicants who do not qualify to remain here as a refugee or under the immigration rules may be given temporary protection on humanitarian grounds by the Home Office and granted Limited Leave to Enter or Remain in the UK. Until 1 April 2003, those applicants granted Temporary Protection were granted Exceptional Leave to Enter or Remain. Since 1 April 2003, applicants are granted Discretionary Leave or Humanitarian Protection.

United Kingdom Residence Permit (UKRP)
The United Kingdom Residence Permit (UKRP) is a recently introduced passport endorsement which authorises an individual to stay in the UK. It is attached either to an individual's passport or to their Immigration Status Document. The UKRP is issued in the UK for those people seeking further stay here.

Worker Registration Scheme
This is the scheme established by the Home Office to monitor the participation of A8 workers in the UK labour market.

Work permits
Work permit arrangements allow employers based in the UK to employ people from countries outside the EEA.

Work Permits UK
Work Permits UK (WPUK) is part of the Immigration and Nationality Directorate. It administers work permit arrangements on behalf of the UK Government and will also operate the Worker Registration Scheme.