

Employers of paid posts - checking on the right to work in the UK

NB To appoint and employ staff (or volunteers) from overseas ie non EU countries it is necessary to apply for a Licence from the Borders Agency which cost in the region of £175 per individual Licence. A License can only be applied for and issued when the organisation making the application is a registered with the Borders Agency. Advice is available on this issue from Terry Drummond terry.drummond@southwark.anglican.org.

1. Background

- 1.1 The Immigration, Asylum and Nationality Act 2006 has replaced Section 8 of the Asylum and Immigration Act 1996 which set out the law on the prevention of illegal working. It is a criminal offence for you to employ someone, aged 16 or over, who has no right to work in the United Kingdom, or no right to do the work being offered. The maximum penalty a court can impose on you is currently £5,000 but will rise to £10,000 as from 29th February 2008. This fine can be imposed in respect of **each** person found to have been employed illegally. Furthermore, a new criminal offence for employers who knowingly employ illegal migrant workers is being created - this offence will carry a maximum two year prison sentence and/or an unlimited fine.
- 1.2 You would have a **defence** against conviction for employing an illegal worker if you carry out proper checks and copy certain original documents belonging to the employee.
- 1.3 The Government believes the checks will:
 - make it hard for people who do not have permission to work in the United Kingdom to obtain work by using forged or false documents;
 - make it easier for you to ensure that you employ people who are legally permitted to work in the United Kingdom;
 - strengthen the Government's controls on tackling illegal working by making it easier for the United Kingdom Immigration Service to take action against employers who deliberately use illegal labour
- 1.4 In carrying out the checks there is an obligation on you to ensure that recruitment practices do not discriminate against individuals on racial grounds.

2. Document checks

- 2.1 As an employer you will need to check and copy **EITHER one of the original documents** included in **List 1** or a **combination of two original documents** specified in **List 2**. Employees are not required to produce documents from both **List 1** and **List 2**.

3. Checking procedures

- 3.1 The following steps should be taken in respect of **every new potential employee**. By doing this you will be sure that recruitment practices comply with the new requirements for establishing the defence, and will not be convicted of employing a person illegally.
- 3.2 Carry out the necessary steps **before a person begins work**. If you take on an employee without checking beforehand, there will be a risk of committing a criminal offence under section 8 if that employee is found to be working illegally. Where you employ a migrant worker with a time-limited immigration status you must check their ongoing entitlement to work in the United Kingdom at least once a year.

4. Steps to be followed

4.1 Ask all potential employees to provide:

a) **one** of the **original** documents listed below (**List 1**)

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

OR

b) **two** of the **original** documents in the **combination** given below (**List 2**):

- 1) 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; and
- 2) either: -
 - (i) a birth certificate issued in the United Kingdom, which specifies the names of the holder's parents; **or**
 - (ii) a birth certificate issued in the Channel Islands, the Isle of Man or Ireland; **or**
 - (iii) a certificate of registration or naturalisation as a British citizen; **or**
 - (iv) 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; **or**
 - (v) 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; **or**
 - (vi) 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; **or**

(vii) 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.

4.2 Be satisfied that the potential employee is the rightful holder of any of the documents they present and that such documents allow them to do the type of work on offer. The following **reasonable steps must be carried out** by you as an employer when checking all of the documents presented by a potential employee:

- a) **check any photographs**, where available, to ensure that you are satisfied they are consistent with the appearance of the potential employee;
- b) **check the dates of birth listed** so that you are satisfied that these are consistent with the appearance of the potential employee;
- c) **check that the expiry dates** have not been passed;
- d) **check any United Kingdom Government stamps or endorsements** to see if the potential employee is able to do the type of work being offered;
- e) if the potential employee produces two documents from **List 2** which have **different names**, they should be **asked 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.

4.3 Make a photocopy or a scan (using **only** the Write Once Read Many/WORM software package i.e. it does not give you the scope to “edit” the details) of the following parts of all documents shown:

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

4.4 Keep a record of every document copied. By doing this the Immigration Service will be able to examine your right to the defence if they detect anyone working illegally.

4.5 **NB:** If you **know** that someone working for you is not permitted to do the job, then a conviction could follow. This exception allows the Immigration Service to tackle the minority of employers who deliberately employ illegal workers who have forged documents to obtain a false defence. Furthermore, a new criminal offence for employers who knowingly employ illegal migrant workers is being created - this offence will carry a maximum two year prison sentence and/or an unlimited fine.

5. National Insurance Numbers

5.1 It will not be possible to rely on an individual’s National Insurance Number alone. Where this is offered it must be in conjunction with other documents from **List 2**. Furthermore, when checking evidence of a person’s NI Number, it is important that only a permanent number is accepted. The following will **not provide evidence** under section 8 that a person has a permanent number:

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

6. The expanding European Union

6.1 Nationals from all of these additional countries are free to come and work in the UK:

- **Bulgaria**
- **Cyprus**
- **Czech Republic**
- **Estonia**
- **Hungary**
- **Latvia**
- **Lithuania**
- **Malta**
- **Poland**
- **Romania**
- **Slovakia**
- **Slovenia.**

6.2 You will need to ensure that a person from these countries (apart from Cyprus or Malta) registers with the Home Office. In addition you should check that the worker is a national from one of these countries by asking them to produce a national passport or national identity card.

7. Operating a non-discriminatory checking process

7.1 You must ensure that your recruitment practices do not discriminate against individuals on racial grounds. This means that all job applicants must be treated in the same way. Operating a discriminatory recruitment process could make you liable to prosecution under the Race Relations 1976 with an unlimited fine.

7.2 The simplest way to you that you do not discriminate is to ask all potential employees to provide documentary evidence of entitlement to work in the UK irrespective of their perceived status.

8. Further reading

Guidance on the rules is available from:

[http://www.ukba.homeoffice.gov.uk/employers/preventingillegalworking/ /](http://www.ukba.homeoffice.gov.uk/employers/preventingillegalworking/)

Employers' helpline - Phone: 0845 010 6677

This UKBA telephone helpline service offers the following dedicated service for employers:

- Answers any general enquiries on preventing illegal working and carrying out the document checks necessary to attain the defence against conviction;
- Provides free of charge printed copies of the comprehensive guidance for employers on the prevention of illegal working;
- Is the first point of contact if there are concerns with any immigration documents.