

# GUIDE - PREVENTING ILLEGAL WORKING

Human Resources and Organisational Development



## HOW DO I HELP TO PREVENT ILLEGAL WORKING?

In accordance with the Immigration, Asylum & Nationality Act 2006, organisations must gain evidence of an employee's entitlement to live and work in the UK *before* offering employment to them.

Recruiting managers play an *essential* role in this by checking and retaining copies of original documents which establish a potential employee's entitlement to work in the UK. These documents will fall into either List A or List B.

## WHAT DO I NEED TO DO?

You should follow the 3 Step Check; Obtain, Check and Copy for **every** person you consider employing and **before** that person begins working for you.

### Step 1 – Obtain document

You must **obtain** original documents from either List A or List B of acceptable documents at Annex A.

### Step 2 – Check authenticity of document

You must **check** that they are genuine and that the person presenting them is the prospective employee or employee, the rightful holder and allowed to do the type of work you are offering.

You must **check**:

1. photographs and dates of birth are consistent across documents and with the person's appearance in order to deter impersonation;
2. expiry dates for permission to be in the UK have not passed;
3. any work restrictions to determine if they are allowed to do the type of work on offer (for students who have limited permission to work during term-times, you must obtain, copy and retain details of their academic term and vacation times covering the duration of their period of study in the UK for which they will be employed);
4. the documents are genuine, have not been tampered with and belong to the holder; and
5. the reasons for any different names across documents (eg marriage certificate, divorce decree, deed poll). Supporting documents should also be photocopied and a copy retained.

When checking the validity of the documents you must ensure that you do this in the presence of the holder.

### Step 3 – Copy

You must make a clear **copy** of each document in a format which cannot later be altered, and retain the copy securely; electronically or in hardcopy. You must retain a record of the date on which you made the check.

You must copy and retain:

1. **Passports:** any page with the document expiry date, the holder's nationality, date of birth, signature, leave expiry date, biometric details, photograph and any page containing information indicating the holder has an entitlement to enter or remain in the UK and undertake the work in question.
2. **All other documents:** the document in full, including both sides of a Biometric Residence Permit.

**You must retain the copy or copies securely for not less than two years after the employment has come to an end.**

Useful links:

<https://www.gov.uk/legal-right-work-uk>

### ACCEPTABLE DOCUMENTATION

The original documents you may accept from a person to provide are set out in two lists – List A and List B.

### WHAT IS THE DIFFERENCE BETWEEN THE TWO LISTS?

**List A** - contains the range of documents which you may accept for a person who has a permanent right to work in the UK. If you conduct the right to work checks correctly before employment begins, you will establish a continuous statutory excuse\*\* for the duration of that person's employment with you. You do not have to conduct any further checks.

**List B** contains a range of documents which may be accepted for a person who has a temporary right to work in the UK. If you conduct the right to work checks correctly you will establish a time-limited statutory excuse\*\*. You will be required to conduct a follow-up check in order to retain your statutory excuse\*\*.

\*\*Statutory excuse – a defence against a potential illegal working fine

### WHAT DOCUMENTS ARE ACCEPTABLE TO USE AS EVIDENCE?

#### List A:

- A passport showing the holder or a person named in the passport as the child of the holder, is a British citizen or a citizen of the United Kingdom and Colonies having the right of abode in the United Kingdom
- A passport or national identity card showing the holder, or a person named in the passport as the child of the holder, is a national of a European Economic Area country or Switzerland
- A Registration Certificate or Document Certifying Permanent Residence issued by the Home Office to a national of a European Economic Area country or Switzerland
- A permanent residence card issued by the Home Office to the family member of a national of a European Economic Area country or Switzerland

- A **current** Biometric Immigration Document (Biometric Residence Permit) issued by the Home Office to the holder indicating that the person named is allowed to stay indefinitely in the United Kingdom, or has no time limit on their stay in the United Kingdom
- A **current** passport endorsed to show that the holder is exempt from immigration control, is allowed to stay indefinitely in the UK, has the right of abode in the UK or has no time limit on their stay in the UK
- A **current** Immigration Status Document issued by the Home Office to the holder with an endorsement indicating that the named person is allowed to stay indefinitely in the UK or has no time limit on their stay in the UK, **together with** an official document giving the person's permanent National Insurance number and their name issued by a Government Agency or a previous employer
- A **full** birth or adoption certificate issued in the UK which includes the name(s) of at least one of the holder's parents or adoptive parents, **together with** an official document giving the person's permanent National Insurance number and their name issued by a Government agency or a previous employer
- A birth or adoption certificate issued in the Channel Islands, the Isle of Man or Ireland, **together with** an official document giving the person's permanent National Insurance number and their name issued by a Government agency or a previous employer
- A certificate of registration or naturalisation as a British citizen, **together with** an official document giving the person's permanent National Insurance number and their name issued by a Government agency or a previous employer

#### List B:

#### **Group 1 – Documents where a time limited statutory excuse lasts until the expiry date of leave. Follow up check is required when the employee's permission to be in the UK and do the work in question expires.**

- A **current** passport endorsed to show that the holder is allowed to stay in the UK and is currently allowed to do the type of work in question
- A **current** Biometric Immigration Document (Biometric Residence Permit) issued by the Home Office to the holder which indicates that the named person can currently stay in the UK and is allowed to do the work in question
- A **current** Residence Card (including an Accession Residence Card or a Derivative Residence Card) issued by the Home Office, to a non-European Economic Area national who is a family member of a national of a European Economic Area country or Switzerland or who has a derivative right of residence
- A **current** Immigration Status Document containing a photograph issued by the Home Office to the holder with a valid endorsement indicating that the named person may stay in the UK, and is allowed to do the type of work in question, **together with** an official document giving the person's permanent National Insurance number and their name issued by a Government agency or a previous employer

#### **Group 2 – Documents where a time limited statutory excuse lasts for 6 months. Follow up check is required six months after verification.**

- A Certificate of Application issued by the Home Office under regulation 17(3) or 18A (2) of the Immigration (European Economic Area) Regulations 2006, to a family member of a national

of a European Economic Area country or Switzerland stating that the holder is permitted to take employment which is **less than six months old together with a Positive Verification Notice+** from the Home Office Employer Checking Service

- An Application Registration Card issued by the Home Office stating that the holder is permitted to take the employment in question, **together with a Positive Verification Notice+** from the Home Office Employer Checking Service
- A **Positive Verification Notice+** issued by the Home Office Employer Checking Service to the employer or prospective employer, which indicates that the named person may stay in the UK and is permitted to do the work in question

### + Positive Verification Notice

If you are presented with a document from Group 2 you will need to obtain a **Positive Verification Notice**. You are required to contact the Home Office (Employer Checking Service) via the link below to verify the individual has the right to work in the UK to establish and retain your statutory excuse. The Home Office aim to respond within five working days and you should inform the individual that you are carrying out this check on them.

<https://www.gov.uk/government/publications/employer-checking-service-form-check-employees-right-to-work>

You should continue to check the original documents presented in the usual way and make the necessary copies. Once you receive the Positive Verification Notice, this should also be copied. This provides a statutory excuse for 6 months from the date stated in the Notice. If you receive a **Negative Verification Notice**, you should not employ or continue to employ the individual as this confirms that the individual concerned does not have permission to do the work in question.

### TRANSFER OF UNDERTAKINGS

If you acquire staff as a result of a Transfer of Undertakings (Protection of Employment) (TUPE) transfer you are provided with a grace period of 60 days from the date of the transfer of the business to correctly carry out their first statutory document checks in respect of these new employees.

You should not rely on checks made by the previous employer, as they will not provide you with a statutory excuse in the event that any workers you acquire are working illegally.

There is no such grace period for the follow up checks undertaken to retain the statutory excuse.

### USEFUL LINKS

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/338399/An\\_employers\\_guide-28-07-14.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/338399/An_employers_guide-28-07-14.pdf)

<https://www.gov.uk/legal-right-work-uk>

**Annex A**

Country	Code	Identity list	Frequency of checks	Additional info
UK	GB	List A	Before employment starts	Copy of Evidence Required
EEA Nationals: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden Plus: Nationals of Switzerland	EEA/Swiss	List A	Before employment starts	Nationals from these EEA countries (and Switzerland) can enter and work freely in the UK without restriction. Copy of evidence of required.
Croatian Nationals* <a href="https://www.gov.uk/government/publications/employer-civil-penalties-code-of-practice-croatian-nationals">https://www.gov.uk/government/publications/employer-civil-penalties-code-of-practice-croatian-nationals</a> *	EU	List B Group 1	Before employment starts Follow up check when the document evidencing permission to work expires	Nationals can move and reside freely in any EEA member state. There are restrictions on their access to the labour market and individuals wishing to work in the UK will need to obtain an accession worker authorisation document (permission to work) before starting employment*
All other counties	Outside EEA	List A  List B Group 1 and Group 2	Before employment starts Before employment starts If Group B1, follow up check when the document evidencing permission to work expires  If Group B2, follow up check at 6 months from the date specified in the Positive Verification Notice	Copy of Evidence Required  <b>Sponsorship:</b> Those individuals that PCC sponsor will fall under this category and PCC must report to UKBA termination of their employment.