

IMMIGRATION

General Guidance – April 2005

The Asylum and Immigration Act 1996 came into force on 27 January 1997, making it a criminal offence to employ a person aged 16 or above who is *subject to immigration control* and *does not have authorisation* by the immigration authorities to work in the UK.

Overview

Employers must check the immigration status of employees and will have a defence under the Act if they have checked certain documents before the prospective employee starts work. Employers must operate this checking procedure fairly and objectively to avoid any possibility of racial discrimination, i.e. all prospective workers, regardless of nationality should be asked for evidence of nationality and the right to work in the UK.

Key Issues

- British citizens, Commonwealth citizens with the right of abode in the UK, and citizens of any country in the European Economic Area and their family members are not subject to immigration control
- All others are likely to be subject to immigration control
- Only applies to employees, so self-employed or certain agency workers and casual workers will not fall under the Act. However, extreme care must be taken if relying on this exception
- There are some excepted employees, however, these are very restricted and checks should be carried out with the Home Office if your worker claims such exemption
- In order to escape a fine and employer must show:
 - They have checked and copied one of the original documents include in List 1 (see chart)
 - OR
 - They have checked and copied two of the original documents from List 2
 - AND
 - That the employer has retained a copy of that document – either a photocopy, a read-only scan or actual retention of the original document
 - AND
 - That the employer did not know the employee did not have a right to work
- Only applies to workers taken on after 27 January 1997 (except those taken on as a result of a business takeover)
- The fines are currently £5000 per illegal worker
- The employer is not required to validate the document, although it should not be accepted if it is an obvious forgery
- Changes were introduced on 1 May 2004 prohibiting checks based only on the workers National Insurance number

WORK PERMITS

Permits to work are only issued to the following categories of workers:

- People with recognised professional qualifications
- Senior executive staff
- Highly qualified technicians with specialist experience
- Senior employees of multi-national companies transferring to the UK operation for periods of career development
- Key workers (who must have technical or specialised skills and experience essential to the day to day running of the business)
- People coming to the UK for a limited period of training or work experience
- Anyone, if, in the option of the Secretary of State for Employment, their employment would be in the national interest

Applications for permits to work have to be made by the prospective employer and cover a named worker doing a specific job.

Applications are made on Form WP1 to:

The Department for Education and Employment
Overseas Labour Service
W5 Moorfoot
Sheffield S1 4PQ
Tel: 0114 259 4074

Workers Registration Scheme (WRS)

The WRS was established by the Government to monitor the participation in the UK of workers from the eight countries listed below:

Latvia	Slovenia	Czech Republic	Lithuania
Estonia	Poland	Hungary	Slovakia

Employers must make sure that a person from one of these countries who starts work for them, registers with the Home Office, unless they are exempt from the requirement to do so.

What if I want to employ a worker from one of these 8 countries?

Once you have checked their nationality by asking them to produce a passport or ID card you should advise your worker to register:

- a) as soon as your worker begins working for you; they must apply to register immediately with the Home Office. To do this you will need to provide them with evidence of their employment (a contract or letter).
- b) You should take a copy of the completed application form before your worker sends this to the Home Office and retain it until you receive notification that the worker has been registered.
- c) Once the worker is successfully registered, the Home Office will send you a copy of the registration certificate confirming this. You must retain the copy sent to you.

What happens if I employ an unregistered worker?

If you continue to employ an unregistered national from one of these 8 countries for more than 30 days without retaining a copy of their application form or certificate of registration, you may commit a criminal offence under the WRS regulations. Also, if you continue to employ a worker where the application has been refused, you may also commit an offence. The maximum penalty on conviction is £5000.

FAQ's

- 1 My company is situated in an ethnically diverse area and I cannot tell who can legally work and who cannot, what should I do?

You should set up a system where all potential workers have to produce the relevant documents (see chart showing checklists), regardless of whether they are 'foreign' or not. Further enquiries will only need to be made on those who cannot produce the correct documentation or where there is a requirement to register on the Workers Registration Scheme (WRS). If you fail to apply the system fairly or have an informal procedure where only 'foreign' workers are asked to provide evidence then may face a claim of racial discrimination.

- 2 I employed a worker who has failed to provide further documents despite a number of requests. He has now been working for me for 3 months, what is the situation here?

You could be breaking the law and liable to a fine of up to £5000 if it was found that the employee did not have the right to work in the UK. Explain that he must produce documentation by a certain date or you will have to consider dismissing him. You do not have a duty to make enquiries as to his status on his behalf, if the documentation is not produced by the specified date you must proceed with the dismissal. You will not be racially discriminating (as long as the process is applied to all workers equally) since you have to comply with your statutory duty under the Asylum and Immigration Act.

- 3 What should I do if a person is not able to work here?

If you have carried out these checks and established your potential worker is not permitted to work in the UK, then you are entitled to refuse employment under the Act.

- 4 My managers are concerned that they could be liable for the fine personally, is this correct?

Home Office guidance makes it clear that if an employee with responsibility for recruitment is NOT involved in the overall management of the company, then s/he will not be committing any offence. However, it is in the interests of senior management/directors of a business to ensure their managers are aware of the requirements and to include compliance as part of their duties. If a manager fails to carry out the requirements on behalf of senior management this does not safeguard the company from any criminal offence/liability.

- 5 How can I check if a passport or visa stamp is authentic?

Whilst you should not accept a document which clearly appears to be fraudulent, you do not need to check the authenticity of the worker's passport or visa. If you are concerned that the document has been tampered with or is in any way fraudulent the following websites will give you further advice:

Home Office: www.ind.homoffice.gov.uk

Passport and visa stamp pictures:

http://www.workingintheuk.gov.uk/ind/en/home/0/preventing_illegal/uk_passport_stamps.html?

- 6 I am employing a worker from Latvia and have been told that although they are an EEA national I still have to obtain a special registration document from them, is this correct?

Yes, this is the Workers Registration Scheme (WRS) which monitors workers from 8 EEA countries. You must advise your employee to register immediately with the Home Office and retain a copy of their application form until you receive notification of registration. You will need to provide the employee with evidence of their employment, such as a letter or contract. The Home Office will forward to you a copy of the registration certificate, once successfully registered.