

# Asylum and Immigration

## MAIN FEATURES OF THE ACT

On 27 January 1997, s8 of the Asylum and Immigration Act 1996 came into force. This makes it a criminal offence for an employer to employ someone over the age of 16 years, who is subject to immigration control and who either does not have valid leave to enter or remain in the UK, or is subject to conditions which prevent that person from taking up employment.

In the event that the employer is found to be employing individuals who do not meet these conditions and have, therefore, entered into an illegal contract, the offence is triable in the Magistrates Courts, where the employer would be liable for a fine of up to £5,000 per offence. Furthermore, prosecutions may be brought not only against the employer, but also against a person who is responsible for the overall management, if the offence was committed with their consent or involvement, or as a result of their failure to take reasonable care to ensure that procedures for checking were in place. This would normally be either the director, company secretary, personnel officer, manager or supervisor.

Those who are self-employed or who are agency workers are excluded and, therefore, no criminal offence can be committed under s8 of the Act. The Act only applies to employees and is not retrospective. Employers, therefore, do not have to check documentation relating to employees who were working for them prior to 27 January 1997.

## ASYLUM AND IMMIGRATION IN PRACTICE

### Checking and Recording Documentation

If an offence is identified, you, as the employer, have a statutory defence if you are able to prove that an original document/s relating to the employee was shown to you before the employment began, with the purpose of establishing that the employee had proper immigration status to work in the UK. You can comply with this defence by keeping a photocopy or a scan of the original document/s while the employee is working and for at least 3 years after their employment has terminated. You do not have to check whether the document is genuine, but you must satisfy yourself that the individual is the rightful holder of any of the documents presented to you. The following list of documents must be used to check whether a person is entitled to work in the UK. Individuals should be able to provide either one original document from List 1 or two original documents from a combination given in List 2. There is no requirement for individuals to produce documents from both List 1 and List 2.

### LIST ONE

#### Any ONE of the following documents:

- A passport showing that the holder is a British citizen, or has a right of abode in the United Kingdom.
- A document showing that the holder is a national of a European Economic Area country or Switzerland. This must be a national passport or national identity card.
- A residence permit issued by the Home Office to a national from a European Economic Area country or Switzerland.
- A passport or other document issued by the Home Office which has an endorsement stating that the holder has a current right of residence in the United Kingdom as the family member of a national from a European Economic Area country or Switzerland who is resident in the United Kingdom.
- A passport or other travel document endorsed to show that the holder can stay indefinitely in the United Kingdom, or has no time limit on their stay.
- A passport or other travel document endorsed to show that the holder can stay in the United Kingdom; and that this endorsement allows the holder to do the type of work you are offering if they do not have a work permit.
- An Application Registration Card (ARC) issued by the Home Office to an asylum seeker stating that the holder is permitted to take employment.

## LIST TWO

First combination

- (a) A document giving the person's permanent National Insurance Number and name. This could be a: P45, P60, National Insurance card, or a letter from a Government agency

**And only ONE of the following documents:**

- (a) a full birth certificate issued in the United Kingdom, which includes the names of the holder's parents; OR
- (b) a birth certificate issued in the Channel Islands, the Isle of Man or Ireland; OR
- (c) a certificate of registration or naturalisation stating that the holder is a British citizen; OR
- (d) a letter issued by the Home Office to the holder which indicates that the person named in it can stay indefinitely in the United Kingdom, or has no time limit on their stay; OR
- (e) an Immigration Status Document issued by the Home Office to the holder with an endorsement indicating that the person named in it can stay indefinitely in the United Kingdom, or has no time limit on their stay; OR
- (f) a letter issued by the Home Office to the holder which indicates that the person named in it can stay in the United Kingdom, **and** this allows them to do the type of work offered; OR
- (g) an Immigration Status Document issued by the Home Office to the holder with an endorsement indicating that the person named in it can stay in the United Kingdom, **and** this allows them to do the type of work offered.

**Second combination**

- (a) A work permit or other approval to take employment that has been issued by Work Permits UK.

**And only ONE of the following documents:**

- (b) a passport or other travel document endorsed to show that the holder is able to stay in the United Kingdom and can take the work permit employment in question; OR
- (c) a letter issued by the Home Office to the holder confirming that the person named in it is able to stay in the United Kingdom and can take the work permit employment in question.

## Recruitment and Selection

In practice you will normally make these checks during the recruitment and selection process, making sure that this is carried out before an offer of employment is made. The point at which the checks are made will depend on the recruitment process in the organisation, however, it is normally appropriate to ask for the document/s from all those applicants who have been shortlisted for the first interview.

It is important that you treat all individuals the same and do not distinguish between people on the basis of their perceived immigration status on the grounds of their race, colour, nationality or ethnic origins. To do so contravenes the Race Relations Act 1976 and risks claims for unlawful race discrimination. To avoid this you should adopt a standard procedure for checking the documents and make sure that you provide all job applicants with Lists 1 and 2.

## Employing Nationals from the EEA

Prior to 1 May 2004 the members of the EEA were as follows:

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

Since 1 June 2002 Switzerland have also had the same employment rights as the EEA nationals above.

From 1 May 2004 the following countries joined the EEA:

Cyprus	Czech Republic	Estonia	Hungary
Latvia	Lithuania	Malta	Poland
Slovakia	Slovenia		

From 1 January 2007 the following countries joined the EEA:

Bulgaria

Romania

With the exception of Bulgarian and Romanian nationals, nationals from the EEA countries are not subject to immigration control and can enter and work freely in the UK subject to them satisfying the document checking process as described earlier.

However, in addition to the document checking, for the new countries that joined on 1 May 2004 (except for Cyprus and Malta), the Government has established a Worker Registration Scheme to monitor the participation of workers from those countries in the UK labour market.

This means that for any individuals employed from these countries on or after 1 May 2004 you are required to ensure that they register with the Home office as soon as they begin working and within 1 month of their joining the company, unless they are exempt from this requirement. The employee will need to complete an application form and you should retain a copy of this as your defence, together with a copy of the official notification from the Home Office when it is received. If the application is refused then the worker must immediately stop working for you.

Bulgarian and Romanian Nationals do not require leave to enter or remain in the UK, but if they wish to work in the UK they will need to apply for an accession worker card, and in some cases a work permit as well, unless they are exempt.

#### **ACCESSION WORKER CARDS FOR BULGARIAN AND ROMANIAN NATIONALS**

The worker needs to have an offer of employment in the UK and an accession worker card before starting work. The card is for one particular employment and the worker will need to reapply if there is a change of employer. Application forms are available from the website [www.workingintheuk.gov.uk](http://www.workingintheuk.gov.uk) (see section 'Further Advice' for more information).

Accession worker cards may be issued for the following categories of employment:

- airport-based operational ground staff of an overseas airline
- au pair placements
- domestic workers in a private household
- overseas government employees
- postgraduate doctors, dentists and trainee general practitioners
- private servants in a diplomatic household
- representatives of an overseas newspaper, news agency or broadcasting organisation
- sole representatives of overseas businesses
- teachers and language assistants on approved exchange schemes
- overseas qualified nurses undertaking supervised practice

For other categories of work, a work permit will need to be applied for as well as an accession worker card. Workers who come to the UK under the Seasonal Agricultural Workers' Scheme, highly skilled workers, students and the self-employed will not need accession worker cards but will need to comply with the information in those sections set out below and they will also need to apply to the Home Office for a registration certificate.

## WORK PERMITS

On arrival in the UK every person must be able to produce a valid national passport or other document establishing their identity and nationality. A foreign national who is neither a British Citizen nor an EEA or Swiss national (nor the family member of such a national), nor a Commonwealth national who were allowed to enter or remain in the UK on the basis that a grandparent was born here, will not normally be permitted to take up employment during their stay in the UK unless they are also in possession of a valid work permit.

There are several types of work permits, including training and work experience schemes, sports persons and entertainers, student internships, general agreement on trade in services (GATS) and the sector based scheme (SBS). However, the most popular is the 'business and commercial' work permit.

### BUSINESS AND COMMERCIAL WORK PERMIT

UK employers seeking to employ a foreign national who needs permission to work in the UK must apply for a 'business and commercial' work permit issued by the Work Permits (UK). There is a charge for this. It is important to note that it is you, as the employer, who must apply for the work permit and forward this onto the individual in their country of residence. The permit will only be issued for a named person to fill a specified job vacancy within a named organisation and for a specified period, up to a maximum of 5 years. The work permit must be activated within 6 months of the date of its issue otherwise it ceases to be valid.

### TIER 2 APPLICATIONS

The Tier 2 application route is the main route for applying for work permits and requires you to explain why you have been unable to recruit any resident worker to fill the vacancy. You must also give details of your recruitment methods, explain your reasons for rejecting job applicants from within the EEA, including those amongst them who might well have been capable of doing the job with a little extra training. The Work Permits (UK) must be supplied with copies of the job advertisement placed in EEA national newspapers or professional journals (at least 6 months before the date on which the relevant work permit applications were submitted) and will need to be satisfied that the prominence given to those advertisements truly reflect the level and nature of the vacancy.

The term 'resident worker' means a person who is an EEA national or has settled status in the UK within the meaning of the Immigration Act 1971.

The Work Permits (UK) will normally only issue these work permits for people who have either the following qualifications or skills:

- A UK degree level qualification
- A Higher National Diploma (HND) level occupational qualification which entitles a person to do a specific job
- A general HND level qualification plus one year's work experience doing the type of job for which the permit is sought
- At least 3 years' high level specialist skills acquired through doing the type of job for which the permit is sought. This type of job should be at NVQ level 3 or above.

### TIER 1 APPLICATIONS

These are given preferential treatment. You do not have to provide evidence that the job cannot be filled in the EEA and, therefore, do not have to advertise the job. The work permits can be issued for 5 years, which then qualifies the employee to apply for settlement in the UK. The following fall within the category for Tier 1 applications:

- Intra-company transfers
- Board level and equivalent posts
- Inward investment posts
- Short supply occupations

### THE WORK PERMIT HOLDER'S FAMILY

Non EEA nationals who are the spouse/partner and unmarried dependant children under the age of 18 are entitled to come to the UK with the work permit holder and work without having to obtain a separate work permit, provided they have prior entry clearance as dependants. Dependants who are visa nationals will also require visas.



## **MULTI ENTRY PERMITS**

This permit is for employees of UK based employers who are normally based outside the UK, but who are required to work in the UK for regular periods of short-term employment. This permit allows the person to undertake this employment without the need for their UK based employer to obtain a fresh work permit every time they are required to work in the UK. These permits are issued to individuals for a minimum of 6 months and up to 2 years and for groups for a minimum of 6 months and up to 1 year. Employees who have this permit will not be able to undertake any supplementary employment.

## **EXTENDING EMPLOYMENT**

If you intend to extend the employee's employment beyond the expiry date of the work permit, you must make an extension application no earlier than 3 months before the end of the employee's original work permit. It is the employee's responsibility to make an application for leave to remain in the UK with the Home Office.

If the work permit extension is delayed (for example, because of administration reasons) Work Permits (UK) will usually confirm that the employee can continue working if the application has been received within the time constraints.

## **CHANGING EMPLOYMENT**

If the employee's employment changes within the company, you should obtain approval from the Work Permits (UK). If the change is minor the Work Permits (UK) may accept a letter from you informing them of the change. Otherwise a fresh work permit application may have to be submitted. If the employee wishes to change employer, a fresh work permit application must be made by the prospective employer. The Work Permits (UK) will normally agree to grant another work permit only where the individual will be doing the same kind of work for which the original work permit was issued. If the employee changes employer he must apply for leave to remain in the UK within six months of the new work permit being granted.

## **SUPPLEMENTARY EMPLOYMENT**

An employee who has a current work permit and wishes to take additional work with their employer may do so without further permission from the Home Office provided the work is outside of their normal working hours, is no more than 20 hours and is of a similar nature to the work for which the work permit was issued. The employee is not allowed to enter self-employment, set up a business or join another business without obtaining further permission from the Home Office.

## **UK Ancestry**

Commonwealth nationals 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 or the Isle of Man or if they have a grandparent who was born before 31 March 1922 in what is now Ireland. These individuals will need a visa before traveling to the UK or have been granted leave to remain in the UK on the basis of UK Ancestry. After four years continuous stay in the UK on an Ancestry visa, they may apply for permanent residency.

## **Students**

Overseas students, who are not EEA nationals, studying at UK institutions are permitted to take up some work providing their conditions of entry to the UK allow this and they are given leave as a student in the UK for longer than 6 months. These students are permitted to take spare time or vacation work in the UK without permission, so long as they do not work more than 20 hours a week during term time (full-time during holiday). The exception to this is if the placement with an employer is a necessary part of their education and is endorsed by the college, university or other institution at which they are pursuing their studies. Students, however, must not pursue their careers by filling permanent, full-time vacancies or becoming self employed.

## **Working Holidaymakers**

Commonwealth nationals aged 17-30 inclusive can enter the UK for up to 2 years as working holidaymakers provided they hold a valid UK entry clearance and meet certain criteria. They need to be either single, or if they are married or have a civil partner, the two spouses or partners should intend to take a working holiday together. The employment should be incidental to the holiday and they cannot work for longer than 12 months in the UK. After 12 months in the UK, if they meet the necessary criteria, individuals will be allowed to 'switch' status, letting them take up work permit employment.

### **Highly Skilled Migrant Programme (HSMP)**

This scheme allows individuals with exceptional skills and experience to come to the UK to undertake work. It aims to provide an individual migration route for these highly skilled individuals to compete in the global economy. Individuals are initially given leave to enter or remain in the UK for 12 months but this can be extended for a further 3 years following approval.

### **Seasonal Agriculture Workers' Scheme (SAWS)**

The SAWS scheme operates all year round to enable workers from outside the European Economic Area to enter the UK to do seasonal agricultural work for farmers and growers.

The scheme uses Operators who recruit participants, allocate them to farms and ensure they receive the appropriate wages and conditions. Farmers and growers are required to provide suitable accommodation for scheme participants. Operators are responsible for ensuring this requirement is met prior to allocating participants. A Code of Practice between the Home Office and the Operators governing the operation of the scheme is in place.

Quotas are used to manage the numbers of people that may participate in the scheme. Each year the Operators receive a proportion of the SAWS quota in the form of work cards they issue to scheme participants prior to their entry to the UK. Once a work card is issued the individuals will have to apply for a visa from their nearest Diplomatic Post for Entry Clearance before travelling to the UK.

### **Science and Engineering Graduate Scheme (SEGS)**

From 25 October 2004, non-EEA nationals who have graduated in the UK in the physical sciences, mathematics and engineering with a 2.2 or higher are allowed to remain in the UK for one year following their graduation if they intend to work and can maintain and accommodate themselves without recourse to public funds. They can do any type of work.

### **Au Pairs**

A single person between the ages of 17 and 27 from certain listed countries can come to the UK to study English and work only as an au pair. These individuals can live for up to 2 years as a member of an English-speaking family and help in the home for up to 5 hours a day, in return for a reasonable allowance and with two free days off a week. An au pair cannot be employed outside of these duties.

### **Domestic Workers**

Domestic workers are given permission to enter the UK if their employer is coming to the UK as a visitor or if they intend to live in the UK. 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. The individuals are responsible for informing the Home Office regarding this change of employment.

### **BUNAC Scheme**

This scheme allows 4,000 students from the USA to enter the UK each year for a period of 6 months. Applicants must be citizens of the USA or on study abroad programmes. Green card holders in the USA can also apply. There are no employment restrictions.

### **Visas**

As well as work permits, visas are required for visa nationals who are intending to enter the UK. If you are unsure whether a visa is required for the country in which the individual is coming from to the UK you can access the UK Visas website which is part of the Home Office website found at [www.ukvisas.gov.uk](http://www.ukvisas.gov.uk). If these individuals are entering the UK in order to work then they will need to make a visa application to the nearest Diplomatic Post for Entry Clearance before travelling to the UK within 6 months of the work permit approval date as otherwise the permit will cease to be valid.

Entry clearance is the formal term to describe the application process for visa nationals who wish to travel to the UK and for non visa nationals who intend to stay for a longer period of time or settle in the UK. The entry clearance certificate which is often referred to as a visa is placed in the person's passport or travel document.

From 13 November 2005, all those who are not British or EEA nationals need a visa for stays in the UK of over six months' duration.

## Further Advice

Work Permits (UK)

Tel: 0114 207 4074 (Helpline)

Tel: 01937 840224 (Permits'  
Distribution Centre)

Immigration & Nationality Enquiry Bureau (Home Office)

Tel: 0870 606 7766

Employer's Helpline (Home Office)

Tel: 0845 010 6677

Work Permits (UK) website:

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

Home Office website:

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

UK Visas website:

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

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