

# Fact sheet

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# Employing foreign nationals

## INTRODUCTION

It has been an offence since 27 January 1997 to take into employment a person who is subject to immigration control unless the person has current and valid permission to be in the UK and the permission does not prevent him or her from taking the job in question, or the person comes into a category where such employment is otherwise allowed.

None of the 'illegal employment' legislation is retrospective and therefore it does not apply to those already in employment before 27 January 1997. The legislation was amended with the expansion of the EU from 1 May 2004 and again from 1 January 2007, and workers who are subject to immigration control and who were in employment prior to these dates are subject to the earlier rules. The current rules came into effect on 29 February 2008 and copies of the earlier rules are available from the *Citation* Helpline.

## EXEMPT WORKERS

With the exception of Bulgaria and Romania (see later), nationals from European Economic Area (EEA) countries and their immediate family members can enter and work in the United Kingdom without any restrictions. This does not mean that individuals can be employed merely because they claim to be a national from an EEA country. They should be asked to produce a document showing their nationality, e.g. a national passport or a national identity card, and the employer should check this document and keep a photocopy of it. Swiss nationals also have the same rights as EEA nationals.

The EEA countries are:

Austria *	France *	Liechtenstein	<b>Romania *</b>
Belgium *	Germany *	<b>Lithuania *</b>	<b>Slovakia *</b>
<b>Bulgaria *</b>	Greece *	Luxembourg *	<b>Slovenia *</b>
Cyprus *	<b>Hungary *</b>	Malta *	Spain *
<b>Czech Republic *</b>	Iceland	Netherlands *	Sweden *
Denmark *	Ireland *	Norway	United Kingdom * **
<b>Estonia *</b>	Italy *	<b>Poland *</b>	
Finland *	<b>Latvia *</b>	Portugal *	

\* EU countries (ex-Eastern bloc in **bold**)

\*\* including the Channel Islands and the Isle of Man

## **EX-EASTERN BLOC NATIONALS**

Although nationals from all EEA countries except Bulgaria and Romania are free to come and work in the United Kingdom, the Government has set up a Worker Registration Scheme to monitor the impact on the UK labour market of immigration from the eight original ex-Eastern bloc countries (i.e. excluding Bulgaria and Romania). Nationals from these countries who do not hold an EEA residence permit are required to apply to register with the Home Office within one month of starting a new job. Once they have worked legally in the UK for 12 months without interruption they will be issued with an EEA residence permit and will no longer need to register.

Ex-Eastern bloc nationals who do not hold an EEA residence permit must be advised that they are required to register with the Home Office. Employers are required to check that they have applied to register and must retain a copy of their application form. Those who do not apply to register within one month will be working illegally.

If the registration process is successful, the Home Office will send the employee a registration certificate and will send a copy of the certificate to the employer. The copy of the certificate should be retained with copies of the other documents outlined below.

## **STATUTORY EXCUSE**

It is a 'statutory excuse' to employ a person who is subject to immigration control if the employer has checked and kept relevant photocopies of the original documents included in **List A** or in **List B**. List A documents only need to be checked and copied once, whereas list B documents must be re-checked and re-copied at least annually.

"Checking" includes taking reasonable steps to be satisfied that photographs and dates of birth on documents are not inconsistent with the appearance of the potential employee, checking that expiry dates have not passed, etc.

If the document is a passport, identity card or other travel document, a copy must be taken of the front cover, any page containing the holder's personal details including nationality, any page containing the holder's photograph, any page containing the holder's signature, any page containing the date of expiry and any page containing information indicating the holder has an entitlement to enter or remain in the UK and undertake the work in question. If the document is not a passport or other travel document, the whole of the document must be copied.

Scanned copies are not acceptable unless WORM (write once, read many) technology is used, and colour scans or photocopies must not be taken of UK passport covers. A record should be kept of every document copied.

### **LIST A – Documents that provide an indefinite statutory excuse**

- A passport showing that 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 that the holder, or a person named in the passport as the child of the holder, is a national of the European Economic Area or Switzerland.
- A residence permit, registration certificate or document certifying or indicating permanent residence issued by the Home Office or the Border and Immigration Agency to a national of a European Economic Area country or Switzerland.
- A permanent residence card issued by the Home Office or the Border and Immigration Agency to the family member of a national of a European Economic Area country or Switzerland.
- A Biometric Immigration Document issued by the Border and Immigration Agency to the holder, which indicates that the person named in it is allowed to stay indefinitely in the United Kingdom, or has no time limit on their stay in the United Kingdom.
- A passport or other travel document endorsed to show that the holder is exempt from immigration control, is allowed to stay indefinitely in the United Kingdom, has the right of abode in the United Kingdom, or has no time limit on their stay in the United Kingdom.

- An Immigration Status Document issued by the Home Office or the Border and Immigration Agency to the holder with an endorsement indicating that the person named in it is allowed to stay indefinitely in the United Kingdom or has no time limit on their stay in the United Kingdom, when produced in combination 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 certificate issued in the United Kingdom which includes the name(s) of at least one of the holder's parents, when produced in combination 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 adoption certificate issued in the United Kingdom which includes the name(s) of at least one of the holder's adoptive parents when produced in combination 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 certificate issued in the Channel Islands, the Isle of Man or Ireland, when produced in combination with an official document giving the person's permanent National Insurance Number and their name issued by a Government agency or a previous employer.
- An adoption certificate issued in the Channel Islands, the Isle of Man or Ireland, when produced in combination 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, when produced in combination 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 letter issued by the Home Office or the Border and Immigration Agency to the holder which indicates that the person named in it is allowed to stay indefinitely in the United Kingdom when produced in combination 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 – Documents that provide the statutory excuse for a maximum of one year**

- A passport or travel document endorsed to show that the holder is allowed to stay in the United Kingdom and is allowed to do the type of work in question, provided that it does not require the issue of a work permit.
- A Biometric Immigration Document issued by the Border and Immigration Agency to the holder, which indicates that the person named in it can stay in the United Kingdom and is allowed to do the work in question.
- A work permit or other approval to take employment issued by the Home Office or the Border and Immigration Agency when produced in combination with either a passport or another travel document endorsed to show the holder is allowed to stay in the United Kingdom and is allowed to do the work in question, or a letter issued by the Home Office or the Border and Immigration Agency to the holder or the employer or prospective employer confirming the same.
- A certificate of application issued by the Home Office or the Border and Immigration Agency to or for 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 6 months old when produced in combination with evidence of verification by the Border and Immigration Agency Employer Checking Service.
- A residence card or document issued by the Home Office or the Border and Immigration Agency to a family member of a national of a European Economic Area country or Switzerland.
- An Application Registration Card issued by the Home Office or the Border and Immigration Agency stating that the holder is permitted to take employment, when produced in combination with evidence of verification by the Border and Immigration Agency Employer Checking Service.

- An Immigration Status Document issued by the Home Office or the Border and Immigration Agency to the holder with an endorsement indicating that the person named in it can stay in the United Kingdom, and is allowed to do the type of work in question, when produced in combination 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 letter issued by the Home Office or the Border and Immigration Agency to the holder or the employer or prospective employer, which indicates that the person named in it can stay in the United Kingdom and is allowed to do the work in question when produced in combination with an official document giving the person's permanent National Insurance Number and their name issued by a Government agency or a previous employer.

### **TRANSFER OF UNDERTAKINGS**

Employers who acquire employees as a result of a Transfer of Undertakings (Protection of Employment) Regulations transfer are required to carry out their own document checks on each of their new employees and are given a period of 28 days grace to undertake these checks.

### **PENALTIES**

Employers are not meant to be experts on immigration and those who are diligent and check and copy the original documents as detailed above will have a statutory excuse against prosecution if they employ an illegal worker. For those employers who do not have a statutory excuse, the maximum civil penalty that the Border and Immigration Agency can impose is currently £10,000 for each person employed illegally. The penalty on conviction in a criminal court is an unlimited fine and up to two years imprisonment. In addition, the Border and Immigration Agency will seek to extradite any person found to be working illegally in the UK.

### **AVOIDING RACE DISCRIMINATION**

It is illegal for employers to racially discriminate in enquiry methods and evidence required to show an entitlement to live and work in the UK. This means that employers must not carry out checks only on applicants who look or sound foreign – the same checks and requests must be made of all applicants in the same circumstances. Employers do not need to make enquiries of all job applicants and may choose to ask for documents only from the person selected to fill the vacancy.

### **BULGARIAN AND ROMANIAN NATIONALS**

Although Bulgarian and Romanian nationals are free to live in the UK, the UK government has a 'managed migration' policy that currently only allows the self-employed and those with a valid work permit to work in the UK.

### **WORK PERMITS**

Guidance for employers on applying for work permits can be obtained from the Border and Immigration Agency website at [www.bia.homeoffice.gov.uk](http://www.bia.homeoffice.gov.uk) and clicking on *Working in the UK - Work permits*.

***This Fact sheet is only intended as a general statement and no action should be taken in reliance on it without specific Helpline advice.***