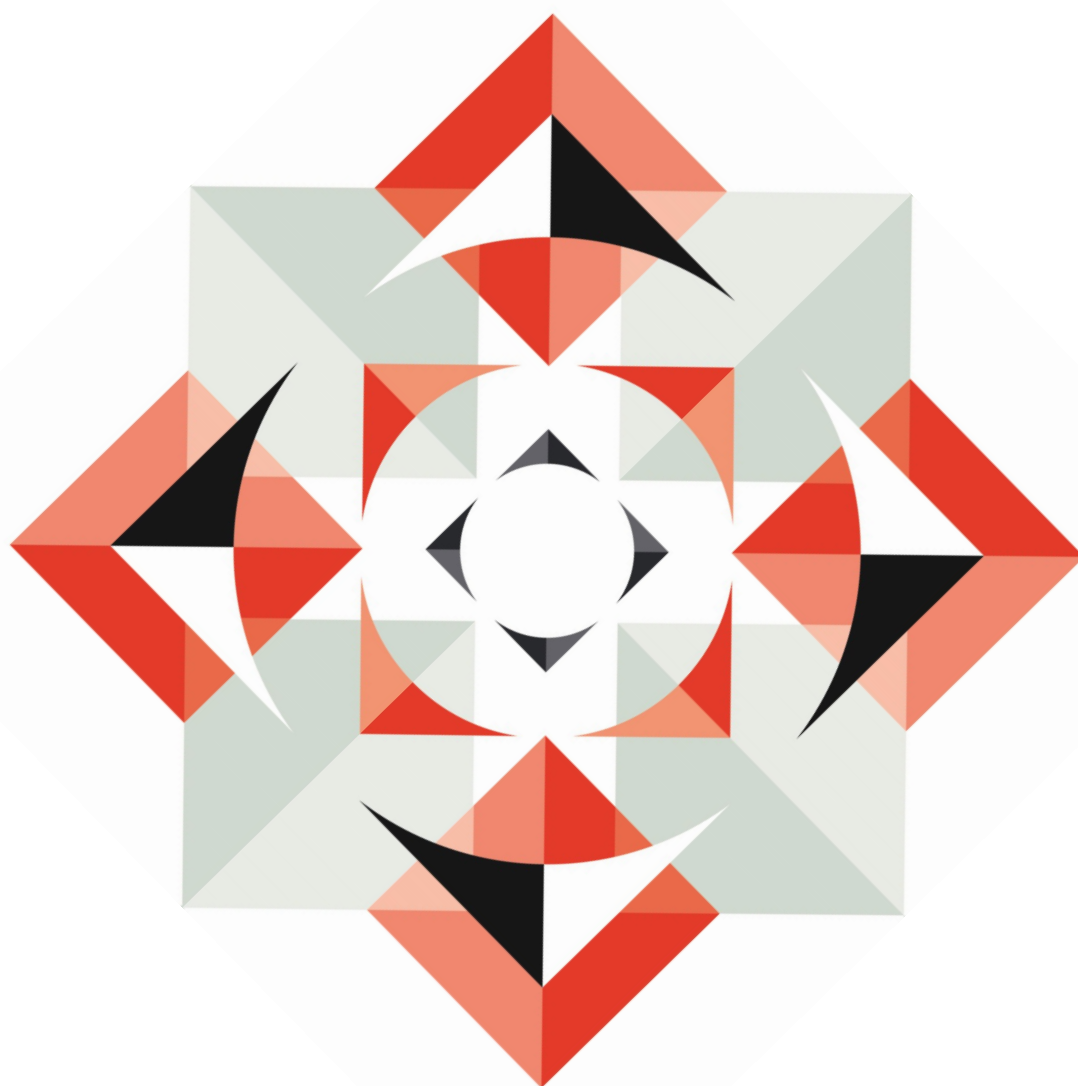


Prevention of illegal working - a compliance guide for employers



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Introduction

This Inbrief summarises how employers can reduce their exposure to fines and other penalties under the Home Office's Prevention of Illegal Working regime.

Risks of non-compliance

It is a criminal offence to employ someone if it is known or there is reasonable cause to believe that the person is an illegal worker. A conviction could trigger penalties of up to 5 years in jail and/or an unlimited fine.

Under the civil penalty scheme, any employer found inadvertently employing an illegal worker could face an on-the-spot fine of up to £20,000 per illegal worker.

An immigration officer is not required to check the documentation. The immigration officer can simply issue the fine if he believes that an employee is working illegally. Employers are afforded 28 days to object to penalties.

If the Home Office discovers an illegal worker, it will affect the employer's ability to obtain a licence to sponsor foreign workers. An employer who already has a sponsor licence and is discovered to be employing an illegal worker could lose its sponsor licence.

The illegal worker themselves may be subject to a fine and/ or imprisonment. Their wages may be seized as the proceeds of crime.

How to check employees' documents

The Home Office publishes two lists of documents that are acceptable as evidence of the right to work in the UK. The lists are reproduced below.

List A documents show an ongoing right to work. If an employee provides a document or combination of documents described in List A, the employer does not need to recheck his or her immigration status for the duration of the employment.

The employer will be excused from a fine for the duration of the employment, as long as the employer does not at any stage come to know that the employee is working illegally.

List B Group 2 documents involve obtaining a Positive Verification Notice from the Home Office Employer Checking Service. They provide a statutory excuse from a fine for 6 months from the date of the Positive Verification Notice. Employers should recheck the documents of people who provide List B Group 2 documents before the end of the 6-month period.

An employer may substantially reduce its chances of being fined, or substantially reduce the amount of the fine, by doing the following:

- > Checking and copying documentation of all new employees, before they begin employment
- > Rechecking the permission to stay of every employee who provides documentation from List B below, showing that they have temporary leave to remain in the UK. List B Group 1 documents should be rechecked before expiry. List B Group 2 documents should be rechecked within 6 months

Rechecking means looking at the original documents and putting new copies on file. An employer should do this for every employee who is on a temporary visa, until the employee produces documents from List A below

When copying a passport, the employer must copy any page containing personal details: nationality, a photograph, date of birth, date of expiry or biometric details. The employer should also copy any page containing UK Government endorsements indicating that the holder has an entitlement to do the work in question.

When copying any document other than a passport, the employer should copy the whole document. For example, both sides of a Biometric Residence Permit should be copied.

The person who checks the documents should write on each copy "I confirm this is a true and accurate copy of the original, which I have seen." The person checking the document should then sign the copy, print their name, and date the copy. This is so it is clear when the documentation was last checked.

When checking documents, one must verify they are genuine, have not been tampered with, and belong to the holder. The standard of verification is that someone who is untrained in the identification of false documents, who examines the document carefully but briefly and without the use of technological aids, could reasonably be expected to realise that it is not genuine.



The employer must also check that the person presenting the document is the person referred to in the document. Specific aspects that must be checked are as follows:

- > Any UK Government endorsements to see if the employee is authorised to do the work in question
- > Photos and dates of birth are consistent across documents and with the person's appearance
- > The expiry dates of any limited leave to remain in the UK have not passed
- > If the employee produces two documents which have different names, the employer must ask for evidence of a name change, such as a marriage certificate and make a copy of this evidence

When checking a Biometric Residence Permit, check the permit number on the front of the permit in the top right hand corner. It should start with two letters followed by seven numbers. Check that the employee's picture is in grey-scale. Check the raised design of the UK's four national flowers is on the back. The design can be seen by shining a light across the permit. You can also feel the raised design by running your finger over it.

Documents needed on file as evidence of employees' right to work

List A - Documents that do not need to be checked again

- > A passport showing that the holder is a British citizen. (Please note that British Overseas Citizens do not automatically have the right to work in the UK)
- > A passport or national identity card showing that the holder is a citizen of the European Economic Area (EEA), or of Switzerland. (Please note the situation is slightly different for Croatian nationals. See below)
- > A Registration Certificate or Document Certifying Permanent Residence issued by the Home Office which states that the holder, a national of the EEA or Switzerland, has permanent residence

- > A Permanent Residence Card issued by the Home Office to the family member of a national of the EEA or Switzerland
- > A current Biometric Residence Permit issued by the Home Office which states that the holder is allowed to stay indefinitely in the UK, has the right of abode in the UK, or has no time limit on their stay
- > A current passport endorsed to show that the holder is 'exempt from immigration control', is allowed to stay indefinitely in the UK, or has no time limit on their stay
- > A current Immigration Status Document issued by the Home Office which has been endorsed to show that holder is allowed to stay indefinitely in the UK or has no time limit on their stay in the UK. This must be produced in combination with an official document giving the holder's permanent National Insurance number and their name, which has been issued by a government agency or a previous employer
- > A full birth or adoption certificate, issued in the UK, which includes the name of at least one parent or adoptive parent. This must be produced in combination with an official document giving the holder's permanent National Insurance number and their name, which has been issued by a government agency or previous employer
- > A birth certificate or adoption certificate issued in the Channel Islands, the Isle of Man, or Ireland. This must be produced in combination with an official document giving the holder's permanent National Insurance number and their name, which has been issued by a government agency or previous employer
- > A certificate of registration or naturalisation as a British citizen. This must be produced in combination with an official document giving the holder's permanent National Insurance number and their name, which has been issued by a government agency or previous employer

List B Group 1 - Documents that need to be checked again before expiry

- > A current passport endorsed to show that the holder is allowed to stay in the UK and is allowed to do the work in question
 - > Since the Government's rollout of Biometric Residence Permits to overseas applicants for UK visas of 6 months or longer in 2015, migrants' passports will often be endorsed with a short-validity vignette, valid for 30 days. The migrant will have to collect their Biometric Residence Permit, a card evidencing their right to work in the UK, within 10 days of their arrival in the UK
 - > If a migrant starts work before collecting the Biometric Residence Permit, you must check right to work documents twice: You will have to check the short-validity vignette and then check the biometric residence permit after the migrant has collected it and before the short-validity vignette expires
- > A current Biometric Residence Permit issued by the Home Office that indicates that the holder can stay in the UK and is allowed to do the work in question
- > A current Residence Card, Accession Residence Card, or Derivative Residence Card issued by the Home Office to a family member of an EEA national or Switzerland, or to someone who has a derivative right of residence
- > A current Immigration Status Document containing a photograph issued by the Home Office with a valid endorsement which states that the holder may stay in the UK and is allowed to do the type of work in question. This must be produced in combination with an official document giving the holder's permanent National Insurance number and their name, which has been issued by a government agency or previous employer

List B Group 2 - Documents that need to be checked again within 6 months

- > A Certificate of Application, issued by the Home Office to a family member of a national of the EEA or Switzerland stating that the holder is permitted to take employment. This must be produced in combination with a Positive Verification Notice from the Home Office Employer Checking Service. Both the Certificate of Application and the Positive Verification Notice must be less than 6 months old to maintain the statutory excuse
- > An Application Registration Card issued by the Home Office stating that the holder is permitted to take employment. This must be produced in combination with a Positive Verification Notice from the Home Office Employer Checking Service
- > A Positive Verification Notice issued by the Home Office Employer Checking Service issued 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

Students

When conducting checks, if you are presented with documents indicating that the holder is a student with a limited right to work in the UK during term time, you are required to obtain and retain evidence of their academic term and vacation dates, as follows:

- > A printout from the student’s education institution’s website or other material published by the institution setting out its timetable for the student’s course of study. You should check the website to confirm the link is genuine
- > A copy of a letter or email addressed to the student from their education institution confirming term time dates for the student’s course
- > A letter addressed to you as the employer from the education institution confirming term time dates for the student’s course

Croatian nationals

The Home Office’s list of documents showing an ongoing right to work in the UK includes ‘a passport or national identity card showing that the holder is a national of a European Economic Area country or of Switzerland.’

Croatia joined the EU on 1 July 2013. However, Croatian nationals do not have the automatic right to take employment in the UK. They must obtain permission to do so.

Croatian nationals should provide their passport and one of the following:

- > A Registration Certificate stating that he or she can undertake the work in question:
 - > A Blue Registration Certificate means that there are no work restrictions
 - > A Yellow Registration Certificate indicating that the holder is a student means that they can work only 20 hours per week during term time and full time during holiday periods of their study course. (A Yellow Registration Certificate indicating that the holder is self-employed or self-sufficient means that they can only work in a self-employed capacity, or that they cannot work, respectively)
 - > A Purple Registration Certificate, or Accession Worker Card, means that he or she can only work in the role for which the certificate was granted. In this case the employer will have sponsored the employee under Tier 2 of the Points-Based System
 - > A valid endorsement in their passport, dated before 1 July 2013, stating they can undertake the work in question.
 - > A free-standing Document Certifying Permanent Residence or a Residence Card endorsed into the employee’s passport, stating that the holder has permanent residence in the UK

- > A passport, national identity card or travel document confirming the holder’s immigration status falls within a category provided in the List of Exemptions in the Home Office’s ‘Guidance for employers on preventing illegal working in the UK: Croatian nationals’

The EEA member states are as follows:

- Austria
- Belgium
- Bulgaria
- Cyprus
- Croatia
- 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
- United Kingdom

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