



Prevention of Illegal Working

1. Introduction

The law on preventing illegal working is set out in sections 15 to 25 of the Immigration, Asylum and Nationality Act 2006 (known as the 2006 Act). These rules came into force on 29 February 2008

Duty under the 2006 Act

MSK Ltd (The Company) is required to make document checks on all potential and current employees and workers in order to confirm that they have the right to work in the UK. If it is found that an employee has a time limit on their stay then we should carry out repeat checks at least once every 12 months. Additionally if there's a restriction on the type of work they can do and, or, the amount of hours they can work, then we must not employ them in breach of these restrictions.

Under section 21 of the 2006 Act, knowingly employing an illegal worker can lead to a prison sentence for up to 2 years & / or an unlimited fine if the case is dealt with by a Crown Court.

If this happens, you might get a 'referral notice' to let you know your case is being considered and that you might have to pay a civil penalty (fine) of up to £10,000 for each illegal worker.

Statutory excuse against payment of a civil penalty

Provided that the Company follows the guidance of the UK Border Agency, adopts this policy and procedure and ensures that it carries out the required document checks then it will have a legal excuse (known as a statutory excuse) against payment of a civil penalty if it was found to be employing an illegal worker.

2. Who is entitled to work in the UK?

Whether a person is allowed to work in the UK, the type of work they are able to do and for how long will depend on their immigration status. There are work restrictions on nationals from certain countries, these could be a restriction on the type of work they can do and, or the amount of hours they can work.

The Company can employ the following people without restriction:

- British Citizens
- Commonwealth citizens with the right of abode
- Nationals from the Common Travel Area
- Nationals from European Economic Area (EEA countries and Switzerland)
- Family Members of Adult nationals from EEA countries and Switzerland, providing the EEA/Swiss national is residing lawfully within the UK

3. Employing Nationals from the European Economic Area

Swiss Nationals and nationals from the following European Economic Area (EEA) can work in the UK without restriction:

Austria	Greece	Malta
Belgium	Hungary	Netherlands
Cyprus	Iceland	Norway
Czech Republic	Ireland	Poland
Denmark	Italy	Portugal
Estonia	Latvia	Slovakia
Finland	Liechtenstein	Slovenia
France	Lithuania	Spain
Germany	Luxembourg	Sweden

Their immediate family members are also able to work freely in the UK while their adult EEA family members are legally residing and working here. However all job applicants are required to produce an official document showing their nationality, this will usually be either a national passport or national identity card.

Bulgarian and Romanian nationals are free to come to the UK, restrictions were lifted in 2014.

Croatian nationals are free to move/ reside freely within any EU member state, however the UK has applied transitional restrictions on their access to the labour market – they will need to obtain a accession worker authorization document before employment.

4. Employing Students

Students from outside the European Economic Area (EEA) are permitted to take limited employment in the UK, providing their conditions of entry to the UK allow this. There are strict conditions on the type of work students can carry out and the hours they can work while they are studying in the UK.

The limits on a student’s working hours depend on when they applied for permission to come to, or stay in the UK, the type of course they study and the type of educational provider they are studying with. Those studying here who have entered the UK as ‘student visitors’ are not allowed to work.

5. Checking that a person is entitled to work in the UK

What documents are acceptable?

The documents that are acceptable for proving someone has the right to work in the UK are split into two lists. These lists are called List A and List B. (See Appendix 1)

Any of the documents, or specified combinations of documents, described in List A show that the holder has an **on-going** right to work in the UK

Any of the documents, or specified combinations of documents, described in List B show that the holder has a right to work in the UK for a **limited period of time**. If the checks are made correctly, these checks must be checked at least every 12 months if The Company is to be protected from prosecution and penalties.

How to carry out the checks

Action should be taken complying with steps 1-3 prior to the employee starting work with the Company so as to ensure that we only employ those who are eligible to work in the UK.

Step 1 – Documents to be produced

All prospective employees (or existing employees, if you are carrying out repeat checks) must be asked to provide one of the single documents, or specified combinations of documents from **List A** or **List B** (see Appendix 1)

Only original documents are to be accepted

If a new or existing employee is only able to provide documents from List B, these documents must be checked again at least once every twelve months.

Step 2 – Examination of documents

The Company is required to take all reasonable steps to ensure the validity of the documents produced and that they correspond in every way to the person to be employed.

You should do this by:

- Checking any photographs are consistent with the appearance of the person
- Checking any dates of birth listed are consistent across documents and that you are satisfied that these match up with the appearance of the person; and
- Checking that the expiry dates of any limited leave to enter or remain in the UK have not passed; and
- Checking any UK government endorsements (Biometric Residence Permits, stamps, stickers, visas) to see if the person is able to do, or can continue to do, the type of work you are offering; and
- Satisfying yourself that the documents are genuine, have not been tampered with and belong to the holder; and
- Asking for a further document in explanation if you are given two documents which have different names. The further document could, for example, be a marriage certificate or a divorce decree absolute, a deed poll or statutory declaration.

These documents should also specify that the prospective employee (or an existing employee undertaking a re-check) is allowed to undertake the post.

Step 3 – Record of documents

You must take a copy of the relevant pages of the document in a format which cannot later be altered, for example a photocopy or scan. In the case of a passport or other travel document, the following parts must be copied:

- The document's front cover and any page containing the holder's personal details particularly those providing details of nationality, his or her photograph, date of birth, signature, date of expiry or biometric details; and
- Any page containing UK Government endorsements indicating that the holder has an entitlement to be in the UK and is entitled to undertake the work in question.

Other documents should be copied in their entirety.

A record should then be kept of every document that has been copied. The Supervisor or Line Manager who has checked and copied the document should sign and date the copy to confirm that they have checked the original document.

These copies of the documents should be kept securely in the employee's HR file for the duration of the employment and for a further two years after the employment has ceased. This will enable the Border and Immigration Agency to determine The Company's liability if they detect anyone who is employed illegally

Required documentation not produced prior to recruitment

The Company will refuse to employ any person who fails to produce evidence of their entitlement to work in the UK.

6. Carrying out repeat checks

If the potential employee provides a document or documents, from List A, this will establish an "excuse" for the duration of their employment.

If the employee presents a document from List B, this is likely to indicate that they only have limited leave to be in the UK. To comply with the regulations and avoid penalty, follow-up checks must be made by repeating steps 1 to 3 **at least once every 12 months** until the individual provides documents indicating that they can remain permanently in the UK.

If the required documentation is not produced, or it is found that the employee is no longer allowed to work or carry out the work in question in the UK then The Company must terminate the contract of employment on expiry of the document confirming the right to work. This action will only be taken in consultation with Human Resources.

7. Avoiding Discrimination

It is important that we adopt procedures which protect us from prosecution, but equally important to ensure that these procedures do not fall foul of the Race Discrimination Laws. The Human Resource Team will ensure that there are no discriminatory practices and all potential employees will be treated in the same way and be required to provide documentation as outlined in this procedure before they start work.

This will ensure that we have complied with the changes and have a valid defence against payment of a civil penalty if it is found that an employee is not legally allowed to work in the UK.

8. Asylum Seekers/ Refugee's

Asylum seekers are those who have made an application for international protection on the basis that it would have be contrary to our obligations under the Refugee Convention of the European Convention of Human Rights (ECHR) to remove them from the UK.

They must apply to the Home Office for permission to work unless they already have the right to work from any previous leave to remain in the UK that they had before claiming asylum. If this is the case it will be clearly shown in their passport or valid Biometric Residence Permit. If an asylum seeker is allowed to work they will hold a Home Office issued Application Registration Card (ARC).

Restrictions on Asylum Seekers Working

Some asylum seekers have restrictions on the kind of work that they can do. If an asylum seeker gives you an ARC stating that their working arrangements are restricted you should ensure any work offered is NOT in breach of these restrictions, as you may be liable to a penalty.

Refugees

Refugees are foreign nationals or stateless people who have leave to remain in the UK because they have demonstrated a well founded fear of persecution, for one of the reasons listed in the 1951 Geneva Convention, if they returned home.

Appendix 1

LIST A (DOCUMENTS WHICH SHOW AN ONGOING RIGHT TO WORK)

1. 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.
2. 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.
3. A residence permit, registration certificate or document certifying or indicating permanent residence issued by the Home Office, the Border and Immigration Agency or the UK Border Agency to a national of a European Economic Area country or Switzerland.
4. A permanent residence card issued by the Home Office, the Border and Immigration Agency or the UK Border Agency to the family member of a national of a European Economic Area country or Switzerland.
5. A Biometric Residence Permit issued by the UK Border 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.
6. A passport 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.
7. An Immigration Status Document issued by the Home Office, the Border and Immigration Agency or the UK Border 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 National Insurance Number and their name issued by a Government agency or a previous employer.
8. 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 National Insurance Number and their name issued by a Government agency or a previous employer.
9. 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 National Insurance Number and their name issued by a Government agency or a previous employer.
10. 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 National Insurance Number and their name issued by a Government agency or a previous employer.
11. 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 National Insurance Number and their name issued by a Government agency or a previous employer.
12. A certificate of registration or naturalisation as a British citizen, when produced in combination with an official document giving the person's National Insurance Number and their name issued by a Government agency or a previous employer.
13. A letter issued by the Home Office, the Border and Immigration Agency or the UK Border 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 National Insurance Number and their name issued by a Government agency or a previous employer.

You can find out more about these documents and view images in the 'Full guide for employers on preventing illegal working in the UK' which can be downloaded from the following website:

www.ukba.homeoffice.gov.uk/business-sponsors/preventing-illegal-working

LIST B (DOCUMENTS WHICH SHOW A RIGHT TO WORK FOR UP TO 12 MONTHS)

1. A passport 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.
2. A Biometric Residence Permit issued by the UK Border 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.
3. A work permit or other approval to take employment issued by the Home Office, the Border and Immigration Agency or the UK Border 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, Border and Immigration Agency or UK Border Agency to the holder or the employer or prospective employer confirming the same.
4. A Certificate of Application issued by the Home Office, the Border and Immigration Agency or the UK Border 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 a positive confirmation letter from our Employer Checking Service.
5. A residence card or document issued by the Home Office, the Border and Immigration Agency or the UK Border Agency to a family member of a national of a European Economic Area country or Switzerland.
6. An Application Registration Card issued by the Home Office, the Border and Immigration Agency or the UK Border Agency stating that the holder is permitted to take employment, when produced in combination with a positive confirmation letter from our Employer Checking Service.
7. An Immigration Status Document issued by the Home Office, the Border and Immigration Agency or the UK Border 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 National Insurance Number and their name issued by a Government agency or a previous employer.
8. A letter issued by the Home Office, Border and Immigration Agency or UK Border 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 National Insurance Number and their name issued by a Government agency or a previous employer.

Any questions relating to the checking of documentation or individuals eligibility should be addressed either to the MSK Ltd HR department or to your Line Manager.

Employers Right to Work Checklist

Name of Person:	
Date of Check:	
Type of Check	First check before employment <input type="checkbox"/> Repeat check on an employee <input type="checkbox"/>

Step 1	<ul style="list-style-type: none"> You must ask for and be given an acceptable document. You must be provided with one of the documents or combinations of documents in List A or List B below as proof that someone is allowed to work in the UK. You must only accept original documents.
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Acceptable Documents List A - Documents which show an ongoing right to work		Received / Checked
1.	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 UK and colonies having the right of abode in the UK	<input type="checkbox"/>
2.	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 an EEA country or Switzerland	<input type="checkbox"/>
3.	A residence permit, registration certificate or document certifying or indicating permanent residence issued by the Home Office to a national of an EEA country or Switzerland	<input type="checkbox"/>
4.	A permanent residence card or document issued by the Home Office to the family member of a national of an EEA country or Switzerland	<input type="checkbox"/>
5.	A Biometric Residence Permit issued by the Home Office to the holder indicating that they are allowed to stay indefinitely in the UK, or have no time limit on their stay in the UK	<input type="checkbox"/>
6.	A passport or other travel document 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	<input type="checkbox"/>
7.	An Immigration Status Document issued by the Home Office to the holder with an endorsement indicating that the person named in it is allowed to stay indefinitely in the UK or has no time limit on their stay in the UK together with an official document issued by a previous employer or Government agency with their name and National Insurance number	<input type="checkbox"/>
8.	A full birth or adoption certificate issued in the UK including the name(s) of at least one of the holder's parents together with an official document issued by a previous employer or Government agency with their name and National Insurance number	<input type="checkbox"/>
9.	A birth or adoption certificate issued in the Channel Islands, the Isle of Man or Ireland together with an official document issued by a previous employer or Government agency with their name and National Insurance number	<input type="checkbox"/>
10.	A certificate of registration or naturalization as a British citizen together with an official document issued by a previous employer or Government agency with their name and National Insurance number	<input type="checkbox"/>
11.	A letter issued by the Home Office to the holder indicating that the person named is allowed to stay indefinitely in the UK together with an official document issued by a previous employer or Government agency with their name and National Insurance number	<input type="checkbox"/>

Acceptable Documents List B - Documents which show a right to work for up to 12 months		Received / Checked
12.	A passport or travel document showing they are allowed to stay in the UK and is allowed to do the type of work you are offering	<input type="checkbox"/>
13.	A Biometric Residence Permit issued by the Home Office to the holder indicating that they can stay in the UK and are allowed to do the work you are offering	<input type="checkbox"/>
14.	A residence card or document issued by the Home Office to a family member of a national of an EEA country or Switzerland	<input type="checkbox"/>
15.	A Certificate of Application less than 6 months old issued by the Home Office to or for the family member of a national of an EEA country or Switzerland stating they are allowed to work together with a positive verification letter from the Home Office's Employer Checking Service	<input type="checkbox"/>
16.	A work permit or other approval to work issued by the Home Office together with either a passport or travel document showing the holder is allowed to stay in the UK and to do the work or a letter issued by the Home Office confirming the same	<input type="checkbox"/>
17.	An Application Registration Card issued by the Home Office indicating that they are allowed to work together with a positive verification letter from the Home Office's Employer Checking Service	<input type="checkbox"/>
18.	An Immigration Status Document issued by the Home Office indicating that they can stay in the UK and are allowed to do the type of work together with an official document issued by a previous employer or Government agency with their name and National Insurance number	<input type="checkbox"/>
19.	A letter issued by the Home Office to the holder or to you as the potential employer, which indicates that the person named in it can stay in the UK and is allowed to do the type of work you are offering together with an official document issued by a previous employer or Government agency with their name and National Insurance number	<input type="checkbox"/>

	Insurance number			
Step 2	<ul style="list-style-type: none"> You must check the validity of the documents. You must satisfy yourself that the documents are genuine and that the person presenting the documents is both the rightful holder and allowed to do the type of work you are offering. 	Yes	No	N/A
1.	Are photographs consistent with the appearance of the person?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2.	Are the dates of birth listed consistent with the appearance of the person?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3.	Are expiry dates for limited leave to enter or remain in the UK in the future (if applicable) i.e. they have not passed?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4.	Do any endorsements show the person is able to work for you and do the type of work you are offering?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5.	Are you satisfied that the document is genuine, has not been tampered with and belongs to the holder?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6.	Have you asked for further documents to explain why you have been given documents with different names?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Step 3	<ul style="list-style-type: none"> You must take and retain a copy the documents. You must take a copy of the documents in a format which cannot later be altered and retain them securely 	Yes	No	
1.	Is one of the documents a passport or travel document?	<input type="checkbox"/>	<input type="checkbox"/>	
<p>If Yes then you must photocopy or scan:</p> <ul style="list-style-type: none"> the front cover and any pages providing the holder's personal details; their nationality; photograph; date of birth; signature; date of expiry and biometric details; and any pages containing UK Government endorsements' showing the person is allowed to work in the UK and carry out the work you are offering. 				
Step 4	Know the type of excuse you have.			
	<ul style="list-style-type: none"> If you have correctly carried out the above 3 steps you will have an excuse against payment of a civil penalty if the Home Office find the above named person working for you illegally. However, you need to be aware of the type of excuse you have as this determines how long it is valid for. 			
List A	<ul style="list-style-type: none"> ✓ You have an excuse for the full duration of the person's employment with you. ✓ You are not required to carry out any repeat right to work checks on this person. 		<input type="checkbox"/>	
List B	<ul style="list-style-type: none"> ✓ You have an excuse for up to 12 months from the date on which you carried out this check. ✓ To keep your excuse you must carry out a repeat check on this person within 12 months. ✓ If the person's leave expires within a 12 month period you should carry out your repeat check at that point to find out if they continue to have the right to work. 		<input type="checkbox"/>	
	Date of repeat check			
	Date Leave / Right to work expires			

Documents Checked By: NAME	SIGNATURE:
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You will not have an excuse if at any point during the employment, you know that the above named person is not allowed to work for you, or to carry out the type of work in question and you may face criminal action