

# A Guide To The Prevention Of Illegal Working



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# Contents

Introduction	2
The New Law	4
Establishing The Statutory Excuse	6
Knowingly Employing An Illegal Migrant	9
Civil Penalties	10
Employing EEA Nationals	11
List A	14
List B	16
Documents That Don't Provide An Excuse	17
The Points Based System	18

# Introduction

Employing overseas workers creates responsibilities for employers. According to the Home Office, people born overseas account for one in eight of the UK's working population creating a variety of issues for employers. Illegal working and unfair dismissal has become a major issue in recent years.

The Immigration, Asylum and Nationality Act 2006 places certain requirements upon employers. This guidance will help you understand what documents you must ask prospective employees to produce if you are to ensure that they can work for you legally and so that you can establish a statutory excuse ('the excuse') against payment of a civil penalty.

In this booklet we explain the steps you should take to satisfy yourself that any documents produced by a prospective employee demonstrate an entitlement to work in the UK. It also explains what repeat checks should be made on those who have limits on their time in the UK.

On 29 February 2008, the Government introduced changes which all UK employers, need to know and follow to avoid liability for payment of a civil penalty for employing illegal migrants. The law relating to enforcement of immigration checks is now significantly more stringent. The Borders and Immigration Agency (BIA) confirm that breach of the law is likely to close down employers who knowingly employ illegal workers; the fact is, it could also close down careless employers, so make sure that you check your records and can establish the statutory excuse.

As an employer you may be presented with a document, or documents, from one of two lists. Documents provided from List A establish that the person has an ongoing entitlement to work in the UK, Documents from List B indicate that the applicant or employee has restrictions on their entitlement to be in the UK.

The changes were made for three key reasons:

- to make it more difficult for people who overstay their permission to be in the UK, or their entitlement to work, or to remain in employment in breach of the UK's immigration laws;
- to make it easier for you to ensure that you employ people who are legally permitted to work for you; and
- to strengthen the Government's controls on tackling illegal working by making it easier for the BIA to take appropriate action against employers who use illegal labour.

These changes do not make a major difference to the type of documents you might have checked under the previous law.

This guidance is only a summary of the law. A more detailed *Comprehensive Guidance For United Kingdom Employers On Preventing Illegal Working* booklet is also available on the BIA's website.

**Disclaimer**

The information contained in this document was correct at the time of publication. Whilst every effort has been made to ensure that the contents of this booklet are accurate and up-to-date, no responsibility will be accepted for any inaccuracies found.

This booklet should not be taken as a definitive guide, or as a stand-alone document on all aspects of immigration law and you should therefore seek legal advice where appropriate.

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**Note**

For convenience and brevity I have referred to “he” and “him” throughout the booklet. It is intended to refer to both male and female workers.

**More Information**

For current information, please visit [www.bia.homeoffice.gov.uk/employingmigrants](http://www.bia.homeoffice.gov.uk/employingmigrants).

# The New Law

As an employer, you have a responsibility to prevent illegal migrant working in the UK. The Immigration, Asylum and Nationality Act 2006 sets out the law on the prevention of illegal migrant working. These provisions came into force on 29 February 2008.

## How Did The Law Change On 29 February 2008?

An employer who employs someone subject to immigration control aged over 16 who is not entitled to undertake the work in question will be liable to pay a civil penalty of up to £10,000 per illegal worker. The new Act provides that notice of liability to pay a civil penalty of a specific amount can be served by BIA officials on behalf of the Secretary of State. The penalty will be calculated on a sliding scale (see chart on page 10), but the final amount that the employer is required to pay will be determined on an individual basis, according to the circumstances of the case. A Code of Practice has been produced to provide further information.

The new legislation enables employers to establish an excuse against liability for payment of a civil penalty for employing an illegal migrant. You can establish the excuse by checking and copying certain original documents before he starts working for you. If the person provides a document, or documents, from List A, this will establish an excuse for the duration of their employment. A document or documents from List B that indicate that he only has limited leave to be in the UK, then the checks should be repeated on that employee at least once every twelve months, until he provides specified document, or documents, indicating he they can remain permanently in the UK from List A, or he leaves your employment.

If you know that you are employing a person who is not permitted to work, then you will not be entitled to the excuse. In addition, you could be prosecuted for the offence of knowingly employing an illegal worker. Conviction under this offence will carry the potential of an unlimited fine and/or prison sentence of up to two years.

## Employees Taken On Before 29 February 2008

The new arrangements for establishing the excuse only apply to those employees who started working for you on or after 29 February 2008. You will still be liable for prosecution under the earlier legislation where you employed illegal migrants between 27 January 1997 and 28 February 2008 and did not establish the statutory defence at the point of recruitment. Equally, if you established a statutory defence for employees taken on before 29 February 2008, this will be retained for the duration of that person's employment.

## **Race Relations Act**

Checks need to be carried out on everyone. Many people from minority ethnic groups who live in the UK are British citizens. The best way to make sure that you do not discriminate in your recruitment practices is to treat all job applicants in the same way.

If you discriminate against someone on racial grounds, then this may be used as evidence against you under race relations legislation before an employment tribunal. You should not employ anyone simply on the basis of his claim to be British, or if you think he appears to be British. Note that there is no upper limit for compensation in cases of unlawful discrimination.

### **What If An Existing Employee Is An Over-Stayer?**

If an employee does not have permission to work in the UK, this is a fair reason for dismissal. The difficulties faced by employers trying to deal with immigration rules were highlighted in a recent case, *Klusova v London Borough of Hounslow*. In this case a claim for unfair dismissal was made.

Ms Klusova is a Russian national who was granted leave to remain in the UK until May 2004. She had been employed by Hounslow Council since November 2000. In August 2005, the Council dismissed her, believing that her continued employment contravened immigration legislation. It did not follow the statutory dismissal procedures, and later argued that these did not apply because the dismissal was for breach of a statutory restriction.

At the time of her dismissal, Ms Klusova was in the process of making an application to the immigration authorities to extend her permit. Because she had made this application she was entitled to work in the UK. In March 2005, Ms Klusova was detained by the police for immigration offences. She was released subject to the condition that she did not take up employment. Her employer received a copy of the form that set out this condition. They made enquiries with the Home Office and received information that they should not continue to employ her.

The case went to the Court of Appeal. The Court was satisfied that Ms Klusova had made a valid application for leave to remain before her visa expired, and that she could work until that application had been determined. Conditions imposed by an immigration officer following her detention did not cancel her entitlement to work while her application was being considered.

The reason for the dismissal was fair because the Court accepted that the Council genuinely believed Ms Klusova's continued employment would breach a legal restriction. Despite this, the dismissal was unfair because they had dismissed her without following any procedure and because there was no *actual* breach of the law, the statutory exception did not apply.

## Establishing The Statutory Excuse

Under the new law, employers will be able to establish the excuse for your prospective employees by checking and copying one, or a specified combination, of original documents. In all cases, the excuse must be established before the employment begins. The repeat checks can only enable you to rely on the original excuse, as the excuse cannot be established after employment has started. Where you can demonstrate that you have complied with these requirements, you will have established the excuse and may not have to pay the civil penalty, even if it becomes apparent that the employee was working illegally.

NB The excuse will not be available if you knowingly employ an illegal migrant worker.

The BIA recommend that you carry out checks on all prospective employees, as this will establish a statutory excuse from paying the civil penalty, provide evidence of an open and transparent recruitment process and will ensure that your recruitment practices do not discriminate against individuals on grounds of race.

### What Documents Do I Check?

If the individual is not subject to immigration control, or has no restrictions on his stay in the UK, he should be able to produce a document, or a specified combination of documents, from List A (see pages 14 and 15). The checks must be made before he is employed and the excuse will then be established for the duration of his employment.

Where the leave to enter or remain in the UK granted to an individual is time-limited, the document or documents provided will be specified in List B (see page 16). If an individual provides a document or documents from List B, you should carry out specified document checks before his employment begins. Carry out follow-up checks of the same kind at least once every 12 months. Repeat checks are required to retain the excuse. If you don't carry out the follow-up checks, then you may be subject to a civil penalty if the employee is found to be working illegally.

### Establishing An Excuse

There are three steps to establish an excuse for every new prospective employee whom you intend to employ from 29 February 2008 onwards. Please note, a National Insurance number can only be used for this purpose when presented in combination with one of the appropriate documents, as specified in Lists A and B.

#### Step 1

Your prospective employee must provide one of the original documents alone, or two of the original documents in the specified combinations given in List A; OR one of the original documents alone, or two of the original documents in the specified combinations given in List B.

## Step 2

Check the validity of the document and satisfy yourself that your prospective, or existing employee, is the person named in the documents he presents to you. These documents should also allow him to do the work in question. Carry out the following specified steps when checking all of the documents presented to you by your prospective or current employee:

- check any photographs, where available, contained in the documentation are consistent with the appearance of the employee;
- check the dates of birth listed, where available, to ensure that these are consistent across documents and that you are satisfied that these correspond with the appearance of the individual presenting the document(s);
- check that the expiry dates of any limited leave to enter or remain in the UK have not passed;
- check any UK Government endorsements (stamps, visas, etc.) to see if the individual is able to do the type of work you are offering;
- satisfy yourself that the documents are genuine and have not been tampered with and belong to the holder;
- if the individual gives you two documents which have different names, ask him for a further document to explain the reason for this. The further document could be a marriage certificate, a divorce decree, a deed poll document or statutory declaration.

## Step 3

Make a copy of the relevant page or pages of the document, in a format which can not be subsequently altered, for example, a photocopy or scan. Where an electronic copy is made of a document, it must be made using Write Once Read Many format, for example, on a non-rewritable disk.

In the case of a passport or other travel document, the following parts must be photocopied or scanned:

- passports and travel documents – take a copy of the document's front cover and any page containing the holder's personal details. In particular, copy any page that provides details of nationality, his photograph, date of birth, signature, date of expiry or biometric details;
- any page containing UK Government endorsements, noting the date of expiry and any relevant UK immigration endorsement which allows your prospective or current employee to do the type of work you are offering.

Copy other documents in their entirety. You should then keep a record of every document you have copied. The copies of the documents should be kept securely for the duration of the individual's employment and for a further two years after his employment has ceased. By doing this, the BIA will be able to examine your right to the excuse if they detect anyone working illegally for you.

On each occasion that a follow-up document check is undertaken, repeat the specified steps given above within the given time period and record the date of each subsequent check that has been carried out.

If you employ an employee with a List B document or documents and have not made the required follow-up checks required in order to retain the excuse, then you may be liable for payment of a civil penalty if that person is found to be working illegally in the UK.

Employers who acquire staff as a result of a Transfer of Undertakings (Protection of Employment) transfer are provided with a grace period of 28 days to undertake the appropriate document checks following the date of transfer.

If you are presented with a false travel document or visa, you will only be liable to pay a civil penalty if the falsity is reasonably apparent. The test for what would be considered to be 'reasonably apparent' is if an individual who is untrained in the identification of false documents, examining it carefully, but briefly and without the use of technological aids, could reasonably be expected to realize that the document in question is not genuine. Equally, where a prospective employee presents a document and it is reasonably apparent that the person presenting the document is not the person referred to in that document, then you may also be subject to legal action, even if the document itself is genuine.

If the falsity is not reasonably apparent, or a valid document is presented by the named person, then you will not normally be liable to the payment of a civil penalty.

### **Will The Excuse Apply In All Circumstances?**

If you know that a person who is working for you is not permitted to do the job in question, then you will lose your right to the excuse and could face prosecution.

### **What Should I Do If A Person Is Not Able To Work Here?**

If you have carried out these checks and have established that your prospective employee is not permitted to work, you are entitled to refuse employment to that person. It is up to your prospective employee to show you that he is permitted to do the work you are offering.

## **Knowingly Employing An Illegal Migrant**

You will commit a criminal offence if you knowingly employ an illegal migrant. On summary conviction, the maximum penalty will be a fine of no more than the statutory maximum for each person employed illegally, and/or imprisonment for up to six months.

Following conviction on indictment, there is no upper limit to the level of fine that can be imposed, and you may also be subject to imprisonment for up to two years. The BIA will prosecute and/or remove from the UK any person found to be working illegally in the UK.

### **The Employer Checking Service**

As an employer, you may be presented with documents that require verification by the BIA's Employer Checking Service to establish the excuse.

The service is delivered via a process where an employer is required to complete a form to enable the BIA to verify any entitlement to work. For all checks through the Employer Checking Service, it is the employers' responsibility to inform the prospective employee that he may undertake a check on them with the BIA. To establish or retain an excuse against payment of a civil penalty, the records and documents relating to the check should be retained for examination and submitted to officials upon request.

## Civil Penalties

There is a sliding scale of penalties, which are principally determined by the number of times an employer has been found to be employing illegal migrants. The level of penalty to be imposed per worker may be increased or reduced according to different criteria, for example, the penalty can be increased according to the number of times you are found with illegal migrants in your workforce and have failed to establish a statutory excuse. A Code of Practice has been produced to provide further information.

### Nature Of Checks Completed

Occasion on which warning/ penalty issued	Full Checks	Partial Checks	No Checks
1 <sup>st</sup>	No penalty	<p>No penalty and a warning letter may be issued</p> <p>Reduced by up to £2,500 per worker reported</p> <p>Reduced by up to £2,500 per worker, with co-operation</p> <p>Suggested maximum penalty of £5,000 per worker</p>	<p>Suggested minimum penalty of £2,500 per worker</p> <p>Reduced by up to £2,500 per worker reported</p> <p>Reduced by up to £2,500 per worker, with co-operation</p> <p>Suggested maximum penalty of £7,500 per worker</p>
2 <sup>nd</sup>	No penalty	<p>Suggested minimum penalty of £5,000 per worker</p> <p>Reduced by up to £1,250 per worker reported</p> <p>Reduced by up to £1,250 per worker, with co-operation</p> <p>Suggested maximum penalty of £7,500 per worker</p>	<p>Suggested minimum penalty of £7,500 per worker</p> <p>Reduced by up to £1,250 per worker reported</p> <p>Reduced by up to £1,250 per worker, with co-operation</p> <p>Suggested maximum penalty of £10,000 per worker</p>
3 <sup>rd</sup>	No penalty	<p>Suggested minimum penalty of £7,500 per worker</p> <p>Reduced by up to £1,250 per worker reported</p> <p>Reduced by up to £1,250 per worker, with co-operation</p> <p>Suggested maximum penalty of £10,000 per worker</p>	<p>Suggested maximum penalty of £10,000 per worker</p>

# Employing EEA Nationals

Nationals from European Economic Area (EEA) countries and Switzerland can enter the UK without any restrictions. Note that not all EEA nationals can work in the UK without restrictions, so you should not employ any individual on the basis of his claim to be a national from an EEA country without further checks.

Ask nationals from all EEA countries and Switzerland to produce a document showing their nationality. This will usually be either a national passport or national identity card. Some nationals from EEA countries and Switzerland may also be able to produce a residence permit issued by the BIA which confirms their right to reside and work here.

All of these documents are included in List A and may provide you with the excuse against a civil penalty if checked and copied.

The following EEA nationals can work in the UK without restriction

Austria *	Belgium *	Cyprus*
Denmark *	Finland *	France *
Germany *	Greece *	Iceland
Ireland *	Italy *	Liechtenstein
Luxembourg *	Malta*	Netherlands *
Norway	Portugal*	Spain *
Sweden *	UK*	

Those countries marked with a star are also members of the European Union.

Nationals from these EEA countries can enter and work freely in the UK without restriction. Their immediate family members are also able to work freely in the UK while their adult EEA family member is legally residing and working here. Remember you should still check their documents to demonstrate this entitlement.

Since 1 June 2002, nationals from Switzerland and their family members have also had the same free movement and employment rights as EEA nationals.

## Accession State (A8) Workers

A number of countries have joined the European Union since 1 May 2004. The Government imposed a registration scheme on nationals from eight of these European Union countries and a requirement for authorisation to work for another two. This will allow the Government to monitor and in some cases, to restrict the participation of workers from these new EU countries in our labour market. This guidance gives you details about what you should do if you employ nationals from any of these countries.

On 1 May 2004, ten new countries joined the European Union and became part of the EEA. Nationals from these countries are also free to come to the UK to live and seek work here.

In 2004, the Government established a Worker Registration Scheme to monitor the participation of workers from eight of these countries in the UK labour market, as follows:

Czech Republic	Estonia	Hungary
Latvia	Lithuania	Poland
Slovakia	Slovenia	

Workers from these countries are often referred to as 'Accession State workers' or 'A8 countries'. Make sure that a person from one of the A8 countries who starts working for you registers with the BIA within one month of starting work, unless they are exempt from the requirement to do so.

## **Newer Members Of The European Union And The EEA (A2 Workers)**

On 1 January 2007, Bulgaria and Romania joined the European Union, and also became part of the EEA. They're known as A2 workers.

A2 workers are free to come to the UK, but may be subject to worker authorization. This means that they are only able to work in the UK if they hold a valid accession worker authorization document or if they are exempt from authorization.

Exemptions from the A8 and A2 schemes are set out in the BIA's *Comprehensive Guidance for Employers*.

### **What Should I Do If I Want To Employ An A8 Or A2 Worker?**

When you take on a new worker from one of the ten countries above, you must firstly establish an excuse. Check that the worker is a national from one of these ten countries, so you do not risk payment of a civil penalty. You can do this by asking him to produce a national passport or national identity card and then follow the steps set out earlier.

You must also ensure that your prospective A2 employee is authorized. An A2 worker will require authorization before he begins working for you, unless he is exempt. A worker authorization document for an A2 worker provides you with evidence of authorization from the BIA that the holder is entitled to work in the UK. The authorization will be in the form of a card or a certificate, which will set out any conditions on their employment.

Where the A2 worker is not subject to the worker authorization, he may be issued with a registration certificate that states he has unconditional access to the UK labour market, or may be able to demonstrate his exempt status by other means.

To establish a defence against prosecution under the Accession (Immigration and Worker Authorization) Regulations 2006, you should take a copy of the relevant worker authorization document before the A2 worker starts working for you. You should otherwise take copies of documents that establish that the person is exempt from authorization.

Advise your A8 employee to register and retain your copy of the application form and registration certificate. Unlike an A2 worker, an A8 may start work for you without registering first, but your A8 employee should apply to register with the BIA within one month of starting his employment. To do this, you will need to provide evidence of their employment (a contract or letter). You should then take a copy of the completed application form before your worker sends this to the BIA. You should keep this copy until you receive notification from the BIA that your worker has been registered. Once the worker has successfully registered, you will receive a copy of the registration certificate confirming this which you should keep.

### **What Happens If I Employ An Unauthorized Or Unregistered EEA Worker?**

An employer who employs any non-exempt A2 workers without authorization may be liable to prosecution under the Accession (Immigration and Worker Authorization) Regulations 2006.

On conviction, the employer may be liable for a fine of up to £5,000. If the fine is not paid, the BIA may pursue any unpaid fines through the courts.

If you continue to employ a non-exempt unregistered national from one of the A8 countries for more than one month without retaining a copy of his application form or his certificate of registration, you may commit a criminal offence under the Accession (Immigration and Worker Registration) Regulations 2004. The maximum penalty on conviction is £5,000. Similarly, if the BIA notifies you that your employee's application has been refused and you continue to employ that person, you may also commit an offence.

### **National Insurance And Tax Arrangements For EEA Nationals**

Remember that as well as the registration and authorization schemes set out above, any EEA national you employ will be subject to the same UK tax and National Insurance legislation as any other employee. The HM Revenue and Customs booklet *CWG2 Employer Further Guide to PAYE and NICs* provides more details and you can order this by calling 08457 646 646.

## **LIST A**

### **Documents Which Provide An Ongoing Excuse**

- 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 or the BIA to a national of a European Economic Area country or Switzerland.
- 4.** A permanent residence card issued by the Home Office or the BIA to the family member of a national of a European Economic Area country or Switzerland.
- 5.** A Biometric Immigration Document issued by the BIA 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 his stay in the United Kingdom.
- 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 United Kingdom, has the right of abode in the United Kingdom, or has no time limit on his stay in the United Kingdom.
- 7.** An Immigration Status Document issued by the Home Office or the BIA 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 his stay in the United Kingdom, when produced in combination with an official document giving the person's permanent National Insurance Number and his 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 permanent National Insurance Number and his 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 permanent National Insurance Number and his 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 permanent National Insurance Number and his 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 permanent National Insurance Number and his 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 permanent National Insurance Number and his name issued by a Government agency or a previous employer.

**13.** A letter issued by the Home Office or the BIA 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 his name issued by a Government agency or a previous employer.

## **LIST B**

### **Documents Which Provide An Excuse For Up To 12 Months**

- 1.** 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.
- 2.** A Biometric Immigration Document issued by the BIA 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 or the BIA 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.
- 4.** A certificate of application issued by the Home Office or the BIA 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 six months old when produced in combination with evidence of verification by the BIA Employer Checking Service.
- 5.** A residence card or document issued by the Home Office or the BIA 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 or the BIA stating that the holder is permitted to take employment, when produced in combination with evidence of verification by the BIA Employer Checking Service.
- 7.** An Immigration Status Document issued by the Home Office or the BIA 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 his name issued by a Government agency or a previous employer.
- 8.** A letter issued by the Home Office or the BIA 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 his name issued by a Government agency or a previous employer.

## Documents That Do Not Provide You With An Excuse

The following documents will not provide a statutory excuse:

- a Home Office Standard Acknowledgement Letter or Immigration Service Letter (IS96W) which states that an asylum seeker can work in the UK. If you are presented with these documents then you should advise the applicant to call the BIA on 0151 237 6375 for information about how he can apply for an Application Registration Card;
- a temporary National Insurance Number beginning with TN, or any number which ends with the letters from E to Z inclusive;
- a permanent National Insurance number when presented in isolation;
- a driving licence issued by the Driver and Vehicle Licensing Agency;
- a bill issued by a financial institution or a utility company;
- a passport describing the holder as a British Dependent Territories Citizen which states that the holder has a connection with Gibraltar;
- a short (abbreviated) birth certificate issued in the UK which does not have details of at least one of the holder's parents;
- a licence provided by the Security Industry Authority;
- a document check by the Criminal Records Bureau;
- a card or certificate issued by the Inland Revenue under the Construction Industry Scheme.

# The Points Based System

During 2008, the United Kingdom will be implementing a points based system for non-European Union migrants wishing to come to the UK to work, study, and train.

The new immigration system will be broken into a five tiers replacing the current 80 or so routes that exist now. Each tier will have different conditions, entitlements, and entry requirements for migrants wishing to work in the UK.

Underpinning the new immigration system is a five tier framework. This will help people understand how the system works and direct applicants to the category that is most appropriate for them. The tiers are:

- Tier 1: Highly skilled individuals to contribute to growth and productivity;
- Tier 2: Skilled workers with a job offer to fill gaps in United Kingdom labour force;
- Tier 3: Limited numbers of low skilled workers needed to fill temporary labour shortages;
- Tier 4: Students;
- Tier 5: Youth mobility and temporary workers: people allowed to work in the United Kingdom for a limited period of time to satisfy primarily non-economic objectives.

The five tiers have different conditions, entitlements and entry-clearance checks.

Tiers 3 and 5 are temporary routes and migrants in them will not be able to switch out of them once they are in the United Kingdom.

Those in tiers 1, 2 and 4 will be eligible to switch between these tiers subject to meeting the requirements of the tier they want to switch to.

Tiers 1 and 2 will potentially lead to settlement if settlement requirements are met at the time of that application.

## **Tier 1**

Tier 1 has four categories.

### **General**

This includes individuals looking for highly skilled employment in the United Kingdom, or is self-employed or setting up a business. This sub-category is for highly educated and highly skilled migrants who can score enough points on their qualifications, previous earnings, age, and UK experience.

### **Investor**

Wealthy individuals who plan to make a substantial financial investment in the UK can come under the sub-category of Tier 1. At least £1,000,000 of disposable funds is required. Investors are exempt from the English language requirement and the requirement to prove the ability to support themselves and any dependants.

### **Entrepreneur**

Individuals who plan to invest in the UK by setting up or taking over a business, and being actively involved in running the business can come to the UK under the sub-category of Tier 1. At least £200,000 of disposable capital held in a regulated financial institution is required.

### **Post-study**

This sub-category is meant to retain the brightest foreign students who have studied in the UK. It is part of Tier 1 because successful applicants will be able to find work after graduation without having a sponsor.

## **Implementation**

Tier 1 will be implemented in two phases:

- Phase 1 (already operational): if the employee is in the United Kingdom and is eligible to switch into tier 1, or if he is applying from India;
- Phase 2: if the employee is applying from the rest of the world, and the remaining tier 1 categories (investors, entrepreneurs and post-study), both in and outside the United Kingdom and will be implemented in the summer of 2008.

Categories for tiers 2 to 5 will launch later as the tiers are phased in.

The implementation of Tier 3 has been postponed indefinitely.

## **Points-based assessment**

For each tier, applicants need to score enough points to gain entry clearance or leave to remain in the United Kingdom. Points are awarded based on objective and transparent criteria. The BIA will also look at whether the applicant is likely to comply with his immigration requirements in the United Kingdom.

Each tier will require the migrant to score a sufficient number of points to gain entry clearance or leave to remain (permanent residence) in the United Kingdom. Points will be awarded for various criteria specific to each tier. In all tiers, points will be awarded for criteria which indicates that the individual is likely to comply with immigration requirements.

In Tier 1 and Tier 2 points are awarded for attributes such as age, previous salary or prospective salary and qualifications. For example, Under Tier 1, General applicants must score at least 95 points. This must include at least 75 points scored for primary attributes and, in all cases, 10 points each for English language and maintenance (funds).

Prospective applicants can assess themselves against these criteria using the BIA's points-based calculator, which is an online self-assessment tool, to see whether they have enough points to qualify before paying an application fee.

## **Dependants**

Dependants are allowed under tiers 1, 2, 4 and 5. However, dependants are not be allowed to work where accompanying a student (Tier 4) or a temporary worker (Tier 5) who has been given less than 12 months leave in the United Kingdom.

## **Sponsorship duties**

All migrants applying under Tiers 2-5 will be required to have sponsorship from a licensed sponsor (an employer or educational institution). The certificate of sponsorship assures that the migrant is able to perform the particular job or course of study. Highly skilled Tier 1 migrants do not require a job offer and thus do not require sponsorship.

Employers and institutions must apply for a licence to sponsor and bring migrants in to the United Kingdom, and meet a number of sponsorship duties.

All sponsors are given an A or B rating when they are licensed, which will be published on the BIA website on the register of sponsors. Prospective employees or students will therefore be able to see the rating and take it into account in deciding which sponsor to choose.

A B-rating is a transitional rating. This means the B-rated sponsor will have to improve their performance sufficiently within a relatively short time period, to be upgraded to an A-rating, or risk having their licence withdrawn.

A sponsorship action plan will be drawn up, listing the steps that they need to take in order fully to comply with your sponsorship duties and obtain an A-rating.

Serious breaches of the rules may lead to sponsors being removed from the register of sponsors and prevented from employing migrant workers.