

Work Permits in the UK



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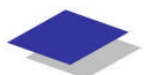




Table of Contents

2. Introduction

2. Work Permits and Visas

3. Workers from New Member States

3. Bulgaria and Romania

3. The UK's Immigration and Nationality Directorate

3. Download Forms

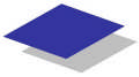
4. Who can apply for Work Permits?

4. Guidance for Employers

4. Useful Links

5. Mandatory Employee Checks

6. Further Information






Introduction

Many UK employers are not aware of the risks involved when employing someone who does not have a valid work permit. In fact, it is a criminal offence to employ anyone who does not have the right to work in the UK. Section 8 of the *Asylum and Immigration Act 1996* imposes an onus on employers to ensure that all employees are not in breach of the Immigration Rules. It also imposes sanctions on employees who fail to conform to the Immigration Rules with a £5,000 fine for each employee in breach - employing a group without work permits could result in a fine for each person.

Don't be misled by the title of the Asylum and Immigration Act. Its purpose is not solely to control political asylum applicants but is aimed at all immigrants into the UK.

Although not responsible for checking the authenticity of such documents, employers ought to see that all prospective employees produce the following papers:

-  National Insurance number (or P45, P60 or payslip which shows that number);
-  British birth certificate;
-  European Economic Area passport or any other passport suitably endorsed with entitlement to work in the UK (or certificate of registration or naturalisation as a British citizen).

Since 1 May 2004, employers have been required to make changes to the checks they make on potential new employees before they offer them a job.

Immigration law in the United Kingdom is governed by the Immigration Act 1971 (which came into force on 1 January 1973). That Act has been amended and supplemented by the Immigration Act 1988, particularly the Asylum and Immigration Appeals Act 1993 and the Asylum and Immigration Act 1996, but is still the governing piece of legislation on the subject.

Citizens of the European Economic Area, Switzerland and the UK

If you are a British citizen, a Swiss national or a national of a country in the European Economic Area (EEA) you do not need our permission to work in the United Kingdom.

The EEA includes these countries:

- Austria
- Belgium
- Bulgaria
- Cyprus
- 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

Iceland, Liechtenstein and Norway are not members of the European Union (EU). However, the European Economic Area Agreement gives nationals of these countries the same rights to enter, live in and work in the United Kingdom as EU citizens.

Since 1 June 2002, Swiss nationals have been able to work in the UK without a work permit.

Work Permits and Visas

Work permit schemes were originally designed to ensure that non-EEA nationals did not compete with the resident British labour force. Today, most people living in a European Economic Area (EEA) are entitled to take employment in the UK without a work permit. But, if they are planning to stay for longer than six months, they do need to apply for a residence permit.

Who can work in the UK?

- EEA Nationals and Swiss Nationals.
- Permanent Residents of the UK.
- Commonwealth citizens with UK, Channel Islands or Isle of Man parents or grandparents. 'Patriality' visas, issued for 5 years, are obtainable from a local British High Commission. After 5 years holders are generally eligible for Permanent Resident status.
- Spouses and partners of EEA nationals or permit holders residing in the UK. Partners must have co-habited for at least 2 years.
- Since 1 May 2004, EU New Member States have been able to work in the UK, provided they are registered and financially self-sufficient. Special rules apply for Bulgarian and Romanian nationals.

Work Permits

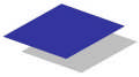
Only an employer can apply for a work permit.

The permit remains specific to one role and does not cover a transfer to another position within the company or a move to another.

Permits are seldom granted for jobs with an annual salary of less than £20,000 and do not cover manual, secretarial or domestic positions.

The candidate must also not have held a training or work experience permit in the preceding two years.

The onus is on the employer to prove it has gone to all reasonable lengths to find an EEA worker before looking elsewhere.



Job applicants from a Commonwealth country such as Canada, Australia, New Zealand or South Africa and aged between 17 and 27, are eligible for a two-year working holiday visa. A visa for this must be applied for from a British embassy outside the UK. If, as a Commonwealth citizen, an applicant has a parent or grandparent who was born in the UK, Channel Islands or Isle of Man he/she is entitled to a residency visa for up to five years. This can be applied for from the British High Commission. Usually after five years, permanent residency can be applied for.

If an applicant is not eligible for any of the above, or a two-year visa has expired, then it is up to the applicant's UK employer to apply for a work permit on the applicant's behalf.

Workers from New Member States

New Member States nationals have been subject to regulations that govern their rights to work legally in the UK since 1 May 2004. Such workers may work in the UK, provided they register under the "workers registration scheme". This will prove that they have permission to reside and work in the UK. The Government will use the scheme to monitor the number, type and origin of New Member States nationals coming to the UK, and impose restrictions if the labour market is threatened.

Registered New Member States nationals will not have access to benefits for at least two years, and must therefore be financially self-sufficient. These measures are intended to allow UK employers to fill labour shortages legally, rather than fuelling the labour sub-economy.

The eight countries affected by the regulations are Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia. Nationals from Cyprus and Malta also joined the European Union on 1 May 2004, but are not required to register.

Bulgaria and Romania

Bulgaria and Romania joined the EU on 1 January 2007 and are subject to both the workers registration scheme and additional

regulations designed to manage the flow of new workers into the UK.

The new regulations restrict low-skilled workers to existing quota schemes in the agricultural and food processing sectors. Skilled workers will continue to be able to work in the UK if they qualify for a work permit or under the Highly Skilled Migrant Programme.

For more information visit:
www.workingintheuk.gov.uk/working_in_the_uk/en/homepage/your_status/european_citizens.html

The UK's Immigration and Nationality Directorate

Work permits are governed by the 1971 Immigration Act. The work permit scheme allows UK-based employers to employ people who are not nationals of a European Economic Area country and are not otherwise entitled to work in this country.

Work Permits (UK) is part of the Home Office's Immigration and Nationality Directorate, based in Sheffield, England. They administer the work permit scheme on behalf of the UK Government - but they do not find jobs for people or people for jobs. Visit them on the Internet at:
www.workpermits.gov.uk.

Download Forms

www.workpermits.gov.uk
Visitors to their website are permitted to access the application forms on line but are reminded of Crown copyright material with restrictions on usage - visitors to this Website are not permitted to copy, distribute, sell or publish any of the material taken but may make photocopies for personal or in-house use. If you cannot find the form you are looking for, or cannot download one for any reason, please contact the Application Forms Unit on 0870 241 0645.

Although the forms are relatively straightforward, it may be advisable to seek professional advice prior to lodging an application, as work permit scheme criteria will have to be met.

Government gets tough on employers of illegal workers

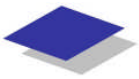
The Immigration Asylum and Nationality Act came into force in three stages during 2006. Its provisions tackle illegal working through a civil penalties scheme for employers that introduces fines of up to £2,000 per illegal employee, custodial sentences of up to two-years and unlimited fines for those found knowingly to use or exploit illegal workers.

Further measures to increase fines and checkups on business that employ workers illegally come into force in February 2008. Employers who negligently hire illegal workers could be fined up to £10,000 per illegal employee; and those who knowingly hire one face unlimited fines and a custodial sentence.

Check if your staff are legal

An Employer Verification Service has been set up to provide employers with a service to check the entitlement to work for individuals who do not have the relevant documentation when seeking employment and to support employers in complying with immigration laws when employing migrant workers.

The service is available at:
www.employingmigrantworkers.org.uk/



Who can apply for Work Permits?

- Individuals cannot apply for a work permit on their own behalf. Applications must be made by the UK based employer;
- There are separate work permit arrangements for employers based in Northern Ireland, the Isle of Man and the Channel Islands;
- Employers can apply up to three months in advance of when they want the overseas worker to start in the UK;
- The Work Permit Scheme enables employers based in England, Scotland or Wales to recruit or train people who are not nationals of a European Economic Area (EEA) country;
- Overseas companies cannot apply for work permits. However, if they have a UK presence, then this organisation can make the application;
- Recruitment agencies, employment agencies or other similar businesses cannot apply for work permits.

Guidance for Employers

The work permit arrangements allow employers based in England, Scotland and Wales to employ people who are not nationals of a European Economic Area (EEA) country and are not entitled to work in this country. The Government aims to strike the right balance between enabling employers to recruit or transfer skilled people from abroad and protecting job opportunities for resident workers. For these purposes a 'resident worker' is defined as a person who is a national of an EEA member state or has settled status within the meaning of the Immigration Act 1971.

There are six main categories under which work permit applications may be made:

- Business and Commercial;
- Sportspeople and Entertainers;
- Training and Work Experience Scheme;
- Student Internships;
- General agreement on trade and services;
- Sectors based scheme.

Students studying at a UK institute who want to do casual work in their spare time or vacation or a work placement which is part of their course, do not need permission but should be aware of restrictions on the type of work they may do.

For more information visit:

www.workingintheuk.gov.uk/working_in_the_uk/en/homepage/work_permits0/applying_for_a_work.html?

Useful Links

- Immigration and Asylum Act 1999 - www.hmso.gov.uk/acts/acts1999/19990033.htm
- Asylum and Immigration Act 1996 - www.hmso.gov.uk/acts/acts1996/1996049.htm
- Information on the Working Time regulations - www.berr.gov.uk/employment/employment-legislation/working-time-regs/index.html
- General UK Government pages on immigration and other policy details - www.direct.gov.uk.
- UK entry clearance / visa application forms - www.ukvisas.gov.uk
- Work Permits (UK) - provides information on the work permit scheme, application forms and guidance on how to apply - www.workpermits.gov.uk
- Guidance for UK employers on preventing illegal working - www.ind.homeoffice.gov.uk
- Working in the UK - This site aims to provide you with clear information about the various routes open to Foreign Nationals who want to come and work in the United Kingdom - www.workingintheuk.gov.uk

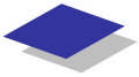
"Working In The UK" Website Goes Live

A new website providing information about the rules for foreign nationals who want to work legally in the UK went live on 1 December 2003.

The "Working in the UK" site is a one-stop shop for foreign nationals and businesses who need to recruit them. It sets out the ways people can come to the UK to work, including giving information on applying for a work permit.

It also gives employers advice on preventing illegal working and reporting illegal workers. There is also clear and concise information available for legal representatives on immigration policy.

The "Working in the UK" website can be found at: www.workingintheuk.gov.uk



Mandatory Employee Checks

Since 1 May 2004, employers have been required to introduce new checks on potential employees: they will no longer be able to use the National Insurance number on a document as their only reasonable check. The checks must be completed before an employee starts work for the employer. The new checks are as follows:

1. Employees must check and copy one of the following original documents:

- A passport showing the holder is a British citizen or has the right of abode in the UK;
- A document, either a passport or national identity card showing that the holder is an EEA national or from Switzerland;
- A residence permit issued by the UK to an EEA national or from Switzerland;
- A passport or document issued by the Home Office which carries an endorsement that provides the holder with the right to residence in the UK as a family member of an EEA national or from Switzerland;
- A passport or other document endorsed to show the holder can stay indefinitely in the UK or there is no time limit to their stay;
- A passport or other document to show the holder can stay in the UK and allows them to carry out the work offered if they do not have a work permit;
- An Application Registration Card issued by the Home Office to an asylum seeker stating that the holder is permitted employment.

or

Check and copy two of the following original documents:

A document giving the person's NI number and name e.g. P45, P60 or NI card and one of the following:

- Full birth certificate issued in the UK which includes the names of the holder's parents;
- A birth certificate issued in the Channel Islands, the Isle of Man or Ireland;
- A certificate of registration or naturalisation stating the holder is a British citizen;
- A letter or an Immigration Status Document issued by the Home Office indicating the person can stay indefinitely or there is no time limit on their stay or it allows them to carry out the work being offered.

or

A work permit or other approval to take up employment which has been issued by the Work Permits UK

and one of the following:

- A passport or other travel document endorsed to show that the holder is able to stay in the UK and take the work permit employment in question;
- A letter issued by the Home Office confirming that the individual is able to stay in the UK and take the work permit employment in question.

2. Employers must carry out the following reasonable steps when checking all the documents, which have been presented by the potential employee:

- Check any photographs that are presented with the appearance of the potential employee;
- Check the dates of birth list so that you are satisfied that they are consistent with the age of the potential employee;
- Check that any expiry dates have not passed e.g. Passport;
- Check any UK Government stamps or endorsements to ensure that they are consistent with the type of work being offered.

If the potential employee provides two documents from List 2 and they have different names, the employer should ask for further documents to justify the reason for this such as a marriage certificate, deed poll, divorce document, adoption certificate or statutory declaration.

3. Employers should take a photocopy or take a scan of any documents. For scans they must use only the Write Once Read Many/WORM software package. The copies should be of the following parts of the documents:

- Front cover and all pages showing the individual's personal details. Include any photographs and individual's signature;
- Any page which contains the UK Government stamp or endorsement, which allows the individual to do the type of work being offered.

Keep a record of every document you have copied, as the Immigration Service may want to examine them if they detect that this person is working illegally.

Documents from the following list are not considered acceptable proof:

- A shortened version of the UK birth certificate;
- A passport describing the holder as a British Dependant Territories Citizen with a connection to Gibraltar;
- A letter issued by the Home Office stating the holder is a British citizen;
- A Home Office Standard Acknowledgement Letter or Immigration Service Letter stating the asylum seeker can work in the UK;
- Temporary NI numbers including those ending E – Z;
- Driving licence;
- A bill or letter from a bank or utility company bearing the individual's name and address.



Further Information

Perhaps the most comprehensive online guidance is that provided by Work-Permits.com whose contact details are:

Work-Permits.com

11 Bolt Court, Fleet Street
London EC4A 3DQ, UK
Tel: +44 (0) 20 7495-3999
Fax: +44 (0) 20 7495-3991
Web: www.workpermit.com/index.html

This guide is for general interest - it is always essential to take advice on specific issues. We believe that the facts are correct as at the date of publication, but there may be certain errors and omissions for which we cannot be responsible.

If you would like to receive further information about this subject or other publications, please call us – see our contact details on the next page.

Update on the new points based immigration system

A revised timetable for the new points based system has recently been announced by the Government. The new scheme will be phased in from early 2008 as part of the comprehensive new regulations governing immigration. It is to replace the current large number of work related immigration schemes with one new comprehensive scheme devised on a new points based system.

The new system is intended to be simpler and clearer and to establish a greater focus on attracting the most skilled workers into the UK economy. It is envisaged that the new system will work alongside new measures intended to enhance other non-work related immigration measures to be introduced.

The new system will allow migrants to come to the UK under one of five tiers.

- Tier 1, concerned with highly skilled migrants including scientists and entrepreneurs, to be launched at the beginning of 2008.
- Tier 2, concerned with skilled workers who have already secured a job offer, to be launched in the summer of 2008.
- Tier 4, concerned with students and is intended to be implemented from the beginning of 2009.
- Tier 5, concerned with youth mobility and certain specified categories of temporary workers to be launched in the summer of 2008.

Arrangements for low skilled workers (Tier 3) to fill particular labour shortages are to be the subject of further announcements. It is also proposed that there will be a new system of sponsorship by employers and educational institutions to help increase compliance with the immigration rules, also to be implemented from the beginning of 2008.

To assist in advising the Government on the UK labour market, it is also intended that a Migration Advisory Committee (MAC) be established to advise on any gaps or developments in the labour market and how migration may be used for the best interests of the UK.

The new points based system will be considered in more detail in the intervening period and further announcements will be made about the procedures, practicalities and also to set out any transitional arrangements.

For more information see our publication, *IP399: Coming to the UK to Work*.

Important Notice

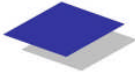
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- Search and Selection
- Advanced Skills Testing
- Contract and Interim
- Response Management
- Executive Research

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- Recruitment Training
- Coaching & Mentoring
- Sales Training, Sales Training Needs Analysis
- Occupational Psychologists

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