



Asylum and Immigration – 3 Step Process Guidelines

As from 29 February 2008 you will need to demonstrate that you have complied with the requirements of checking and copying one, or a specified combination of the original documents as set out in the specified documents lists, known as List A and List B.

Whilst there is no law that says you are legally required to conduct the checks, it is best to conduct all the changed checks to all new employees as if challenged about the legality of an employee, you will need to be able to establish the excuse for the checking of the required documents.

These checks need to be undertaken for every new employee at the same time during the recruitment process before the employee starts work. Therefore, in order to establish a valid defence to show that you have complied with the changes, employers should implement a 3-Step Test for checking documents. Following this test will amount to a statutory excuse and ensure that you are not convicted for unknowingly employing a person illegally for which the penalty could be a fine of up to £10,000 for each employee found to be working illegally and a new criminal offence for employers that will carry a maximum 2 year prison sentence and / or an unlimited fine.

The basis of the change is that you will need to:

- Obtain the original documents
- Check the original documents
- Save copies of the documents

What is the difference between List A and List B?

If the individual is not subject to immigration control, or has no restrictions on their stay in the UK, they should be able to produce a document, or a specified combination of documents from List A. The checks must be made **before** they are employed.

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. If an individual provides a document or documents from List B, you should carry out specified document checks **before** the employment begins and checks of the same kind need to be carried out at least every 12 months until they have the right to remain permanently in the UK without any restrictions. If you do not carry out the follow-up checks and the employee is found to be working illegally, a civil penalty as stated above will be imposed.

What do I need to do?

Step 1

You will need to ensure that the prospective employee provides original documents in line with List A or List B.



Step 2

If documents from List B have been presented you need to then verify that they are the rightful owner of the documents they present by:

- checking any photographs to ensure the appearance of the person is the same
 - checking the dates of birth listed to ensure they are consistent with other documents presented
 - checking the signature against any other documents presented
 - checking that the expiry dates of any limited leave to enter or remain in the UK have not passed
 - checking any UK Government endorsements (stamps, visas, etc) to see if the individual is able to do the type of work you are offering*
 - satisfying yourself that the documents are genuine and have not been tampered with and belong to the holder
 - if the individual has given you documents with different names you need to ask for an explanation /evidence which could be due to a change due to marriage, divorce, deed poll, etc.
- *The Home Office has set up an Employer Checking Service to help with any queries or you can download a full Comprehensive Guide (April 2004) that includes examples of passport stamps and other useful guides and documentation from:*

<http://www.bia.homeoffice.gov.uk/sitecontent/documents/employersandsponsors/preventingillegalworking/>

Step 3

- Take a copy of the relevant pages of the documents in a format which cannot be subsequently altered.**
- It is advised that the person checking the documents verifies that they have had sight of the originals by signing and dating the documents. To make this as easy as possible it is advisable to have a rubber stamp where the employee responsible can just sign and date it
- Keep a copy of the documents for at least 2 years after the employment terminates

** *for passports and travel documents, a copy should be taken of:*

- *The document's front cover and any page containing the holder's personal details. In particular you should copy any page that provides details of nationality, their photograph, date of birth, signature, date of expiry or biometric details*
- *Any page that contains 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*

Therefore as an overview employers need to:

1. Ensure that the same checks are made on all **new employees at the same** time during the recruitment process

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2. Check documents before an employee starts work and made copies of such documents (before and during employment) a condition of their employment
3. Put in place a system of checking documents for all migrant workers **every 12 months**
4. Ensuring you keep good records
5. If you acquire staff under TUPE you are given a grace period of 28 days to undertake the appropriate document checks following the date of transfer

Additional Information

- Employees who need to register under the Workers Registration Scheme where they have been in the UK for under a year need to make fresh applications for each new job they have been in the UK for under the 12 months and within a month of starting work.
- Employers need to take a copy of the completed application form as evidence until you receive notification that the worker has been registered.
- Employees who wish to work in the UK outside of the EEA, A8 or A2 countries have to apply under a points based system that needs to be complied with. This is far more complicated and advice needs to be taken to ensure compliance with this new scheme. However, it is worth noting that any work permit issued **is only for that job** and the employee cannot change their job without a fresh work permit application being made and the work permit issued for this change.

To find out more about the new points based system visit the Borders and Immigration Agency website: <http://www.bia.homeoffice.gov.uk>

