



## **Premises Licence Review**

ZARA's INDIAN CUISINE

MAYLAND MILL PUBLIC HOUSE

STEEPLE ROAD

MAYLAND

SOUTHMINSTER

ESSEX

CM3 6EG

## Premises Licence Review – Zara Indian Cuisine

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## 1.0 Outline of the circumstances leading to the Review Application

1.1 This premise has been granted a Premises Licence by Maldon District Council City Council, authorised for the sale and supply of alcohol each day from 10:00hrs until 23:30hrs, the provision of late night refreshments on a Friday and Saturday from 23:00hrs until 01:00hrs along with other regulated entertainment fitting of an Indian restaurant.

1.2 Alcohol may be sold on and off of the premises and the business is essentially and Indian Restaurant offering meals to eat in and take out.

1.3 The premises licence was transferred to [REDACTED] on 3<sup>rd</sup> December 2007 and he remains the current premises licence holder (PLH). [REDACTED] is apparently not concerned with the business but it is noted that he has three other live businesses at which he holds an Officer position.

1.4 The Designated Premises Supervisor (DPS) is a [REDACTED] who has also held this position since 3<sup>rd</sup> December 2007.

1.5 Enquiries show that the business director is currently [REDACTED] and the business is registered as Zara Essex Ltd (09448468) having transferred to that position from her husband [REDACTED] in February 2017.

1.6 Following intelligence received, officers from the Home Office Immigration Service exercised their right to enter the premises under the authority of a Magistrates Court Warrant in the expectation of finding illegal workers working on the premises at about 18:45hrs on Wednesday 6<sup>th</sup> June 2018.

1.7 Immigration Officers were met without resistance and ***found three persons working*** on the premises who – following enquiries – were found to be working illegally and were arrested and taken to Chelmsford Police station.

1.8 The Home Office confirm that each of these persons have no right to remain in the UK and were each subject of asylum applications. One of the three had had their claim for asylum rejected and that that is currently subject to an appeal. None were

entitled to work or have recourse to public funds. Copies of the Home Office position in respect of each illegal worker can be found at pages 42 -44

1.9 Of two workers spoken to at any length it appeared that they were working without payment in return for food and accommodation with one paid £50 per week 'cash in hand'. The arrangements in respect of the third person is unknown.

1.10 The venue was being managed by a [REDACTED] at the time officers made their entry with neither the PLH nor DPS present - nor any person officially connected with the business that could be established - and the manager declined to be voluntarily interviewed.

1.12 The management was served with a Referral Notice by Immigration Officers in consideration of an illegal working civil penalty fine for the attention of [REDACTED] the business owner. The business had changed directorship in February 2017 from [REDACTED], the partner of [REDACTED]. This matter is still under consideration.

1.13 It is the contention of Essex Police that no right to work checks are being carried out at this premises as had they done so then the status of any right to work would be quite clear. A copy of the current Home Office guidance can be found at page 64.

1.14 With no apparent structural management or effective policies and procedures in place and no documentary evidence that the correct (or any) checks have been carried out (suggested checklist at page 103), the Licence Holder has demonstrated and that the objective of Prevention of Crime and Disorder under the Licensing Act 2003 has been undermined.

1.15 Essex Police primary policing objectives (page 105) include tackling Human Trafficking and Modern Day Slavery and considers that the employment of illegal workers infringes on them both by encouraging unscrupulous persons to facilitate paid and unpaid work to persons who consequently have no employment rights and are often paid below the minimum wage rates for their own personal financial gain as is the case in this particular matter.

1.16 Essex Police treat the employment of illegal workers at licensed premises very seriously and find this practice unacceptable. Positive action will be taken against those unscrupulous licensees who choose to engage in this practice and due to the guidance at section 11.28 take the decision to move straight to making application to review the licence rather than follow any enforcement protocol as the responsibilities of licence holders on this matter is quite clear.

1.17 Since the application to review the premises licence was made by Essex Police the police licensing officer has had contact with the Premises Licence Holder - [REDACTED] who stated he was only the leaseholder of the premises and confirmed the involvement of [REDACTED] and [REDACTED] as the business owners. He stated that he should have transferred to licence to them some time ago but he has held the licence since December 2007.

1.18 Should an unopposed application be made to transfer the licence at this stage, Essex Police expect the licence to continue to be reviewed by the licensing authority and in doing so would have proposals for consideration to add conditions to the licence to ensure an employment policy that is fit for purpose and the exclusion of certain persons in whom Essex Police no longer have confidence that the licensing objectives would be promoted if permitted to have any continued future involvement with the business i.e.

1. [REDACTED] (Premises Licence Holder)
2. [REDACTED] (Designated Premises Supervisor)
3. [REDACTED] (Present Company Director and business owner)
4. [REDACTED] (Partner of [REDACTED] previous director and joint business owner)
5. [REDACTED] (The manager on the day of the event)

## 2.0 Reasons for Review

- 2.1 Essex Police has brought this review because the statutory crime prevention objective in the 2003 Act includes the prevention of immigration crime and the prevention of illegal working in licensed premises (*Paragraph 11.26 Guidance for Licensing Authorities to Prevent Illegal Working in Licensed Premises in England and Wales* [6 April 2017] (Home Office)).
- 2.2 Paragraphs 7.1 – 7.4 of this application detail why a warning or other intervention falling short of a review would have been inappropriate when considering premises who have been found to engage illegal workers and therefore why Essex Police has proceeded straight to review.
- 2.3 Illegal worker(s) were discovered at the premises. It is an offence to work when a person is disqualified to do so and such an offence can only be committed with the co-operation of a premises licence holder or its agents. It is also an offence to employ an illegal worker where there is reason to believe this is the case. The case of *East Lindsey District Council v Hanif* (see 8.12) determined that in such circumstances, even without a prosecution, the crime prevention objective is engaged.
- 2.4 Whether by negligence or wilful blindness illegal workers were engaged in activity on the premises. It is a straightforward process for an employer to ascertain what documents they should check before a person is allowed to work (please see section 5 and Appendix A of this application). In following Home Office guidance employers are afforded a 'statutory defence'.
- 2.5 Essex Police submits that for commercial reasons those engaged in the management of the premises ought to have known illegal workers had been engaged or had otherwise deliberately avoided finding out.

### 3.0 Outcome Sought

- 3.1 Essex Police asks that the premises licence is revoked. The premises licence holder himself or through its agents have engaged in criminal activity by employing illegal workers and facilitating disqualified immigrants to work illegally or have failed to take any responsible steps to establish their entitlement to work.
- 3.2 Sections 4 – 7 (of this submission), Appendix A and appended documents provide the licensing sub-committee background arguments and information relating to this review. These:
- Support Essex Police's submission that revocation is an appropriate step;
  - Provide the sub-committee with a sound rationale as to why, despite the respondent's argument, it should revoke the licence; and
  - Satisfy the Authority that its decision is defensible if challenged on appeal.
- 3.3 A respondent to an application to Review a Premises Licence may suggest that conditions are imposed which would prevent a reoccurrence of the employment of illegal workers in the future; an argument that the sub-committee should take remedial and not punitive action.
- 3.4 Paragraph 1.16 of the Guidance states "that "Licence conditions should not duplicate other statutory requirements or other duties or responsibilities placed on the employer by other legislation".
- 3.5 Since 2006 (with the introduction of the Immigration, Asylum and Nationality Act 2006) employers have had a duty to conduct checks to ensure employees and potential employees are not disqualified from working. Only by completing the required checks and maintaining records of such checks can an employer demonstrate a 'statutory excuse' and evade liability for a civil penalty issued by Immigration Enforcement.
- 3.6 Essex Police contends that a licence holder who has himself or through his agents has negligently or deliberately failed to conduct right to work checks which have been a requirement since 2006 should not be afforded an opportunity to do so until caught and then merely be asked to do what they should have been doing already.
- 3.7 Essex Police would refer the committee to section 5 and Appendix A of its submission and rely on paragraph 1.16 of the Guidance, together with paragraph 11.27 and 11.28 of the Guidance (set out in this submission at 7.9 and 7.10) as to why conditions are inappropriate.

- 3.8 The cases of *Bassetlaw* (set out at 8.2 onwards) considered punitive (suspension/revocation) v remedial responses where a review is brought and in particular set out that deterrence was a legitimate outcome of a review.
- 3.9 The imposition of conditions would be (even if it were not replicating 'other duties or responsibilities placed on the employer') merely an action to remedy the harm occasioned by the employment of illegal workers. This is a serious matter (as defined by paragraph 11.27 of the Guidance) and Mrs Justice Slade (case of *Bassetlaw*) examining was clear that "*the action on appeal being confined in effect to reiterating existing practice with a minimal addition was entirely inappropriate*".
- 3.10 The case of *Bassetlaw* is clear in its examination of the legitimacy of deterrence and the imposition of conditions in 'serious matters' and finds support within the Guidance itself at paragraph 11.26 (detailed in this submission at 7.5) – **deterrence is a legitimate response** and the committee does not need to consider only remedial action when a review is brought.
- 3.11 If it were not for criminally minded or complicit employers; illegal workers would not be able to obtain a settled lifestyle and deprive legitimate workers of employment. The use of illegal labour provides an unfair competitive edge and deprives the UK economy of tax revenue. Illegal workers are often paid below the minimum wage (itself an offence) and National Insurance payments are not paid. The main draw for illegal immigration is work and low-skilled migrants are increasingly vulnerable to exploitation by criminal enterprises; finding themselves in appalling accommodation and toiling in poor working conditions for long hours for little remuneration.
- 3.12 Respondents who fail to convince a sub-committee that the imposition of conditions to undertake proper right to work checks is a suitable alternative to a punitive (deterrent) outcome often point to the option of suspension of a licence; pointing out that this may be a suitable punitive response instead which will deter others.
- 3.13 Often this will include claims that the business has 'learnt its lesson' and that since its criminal activity has been discovered it has reconsidered its position, brought in new procedures, referred to specialist consultants and introduced managers etc. On occasion it is hinted that the respondent will 'accept' a suspension as an alternative to revocation, assuaging an authority's concern that an appeal may otherwise be launched.
- 3.14 Essex Police would counter such claims and point to the continuing changes made to both immigration law and the Guidance which point to a requirement to send a clear message to potential illegal immigrants that UK authorities will do all they can to prevent them finding illegal employment and a similar



message to employers that those employing illegal workers will face severe disruption and penalties.

- 3.15 Paragraph 11.26 of the Guidance provides that, *"The licensing authority's duty is to take steps with a view to the promotion of the licensing objectives and the prevention of illegal working in the interests of the wider community and not those of the individual licence holder"*.

- 3.16 That illegal working is considered extremely serious is set out within paragraph 11.27 of the Guidance:

*"There is certain criminal activity that may arise in connection with licensed premises which should be treated particularly seriously. These are the use of the licensed premises...for employing a person who is disqualified from that work by reason of their immigration status in the UK".*

- 3.17 Essex Police would point out that the above paragraph requires no 'knowledge' that an individual is an illegal worker – instead it again draws the sub-committees attention to the simplicity (set out at section 5 and Appendix A of the police submission) in avoiding the occurrence in the first place.

- 3.18 Finally; Essex Police would invite the sub-committee to consider paragraph 11.28 of the Guidance which states:

*"It is envisaged that licensing authorities, the police, the Home Office (Immigration Enforcement) and other law enforcement agencies, which are responsible authorities, will use the review procedures effectively to deter such activities and crime. Where reviews arise and the licensing authority determines that the crime prevention objective is being undermined through the premises being used to further crimes, it is expected that revocation of the licence –even in the first instance –should be seriously considered."*

- 3.19 Essex Police concedes that this does not say a sub-committee MUST revoke a licence but what it would say is that where an employer has employed an illegal worker or otherwise permitted an illegal worker (whether paid or unpaid) to undertake work; it has done so when it ought to have known it should not have done.

- 3.20 A punitive response is required to ensure that licence holder and/or its agents are not allowed to repeat the exercise and in particular, in the interests of the wider community to support responsible businesses and the jobs of both UK citizens and lawful migrants. It is also required to act as a deterrent to others who would otherwise seek to seek an unfair competitive advantage, exploit workers and deny work to the local community, evade the payment of income tax and (unlawfully) inflate their profits to the expense of others.

- 3.21 Essex Police believes revocation is an appropriate outcome to this review application.

#### 4.0 Immigration Offences

- 4.1 The prevention of crime and disorder licensing objective has been engaged because it is, in part, concerned with the prevention of immigration crime in connection with licensed premises.
- 4.2 The basis of the police submission seeking revocation of the premises licence is that the employment of illegal workers is a criminal matter as is working illegally. Illegal workers are those subject to immigration control and either do not have leave to enter or remain in the UK, or who are in breach of a condition preventing them taking up the work in question.
- 4.3 It is an employer's responsibility to be aware of their obligations and ensure they understand the immigration landscape to avoid the risk of prosecution, the imposition of a civil penalty or the revocation/suspension of their premises licence.
- 4.4 Since 2006, with the introduction of the Immigration, Asylum and Nationality Act, it has been unlawful to employ a person who is disqualified from employment because of their immigration status. Employers risk a civil penalty (of up to £20,000 per employed person) if they are found to have negligently employed someone who is disqualified. A statutory excuse against payment exists where the employer can demonstrate they correctly carried out document checks, i.e. that they were duped by fake or forged documents. Employers therefore have to conduct checks to ensure that their employees have the right to work.
- 4.5 The Immigration Act 2016 came into force in July 2016 and its explanatory notes state that "these offences were broadened to capture, in particular, employers who deliberately did not undertake right to work checks in order that they could not have the specific intent (previously) required to 'knowingly' employ an illegal worker. It amended other immigration legislation and specifically reduced the burden of proof for offences.
- 4.6 Since 2016 an employer may be prosecuted not only if they knew their employee was disqualified from working **but also** if they had reasonable cause to believe that an employee did not have the right to work: what might be described as **wilful ignorance**', where either no documents are requested or none are presented despite a request. This means an offence is committed when an employer 'ought to have known' the person did not have the right to work.
- 4.7 Since 2016 it has also been an offence to work when disqualified from doing so. It is obvious that without a negligent or wilfully ignorant employer, an illegal worker cannot work. Such an employer facilitates a criminal offence

and Essex Police highlights this as relevant irrespective of whether a civil penalty is imposed or a prosecution launched for employing an illegal worker.

- 4.8 In this context, under section 3(1)(C)(i) Immigration Act 1971 (as amended by the 2016 Act) working restrictions are not limited simply to employed work but includes paid or **unpaid** work, paid and unpaid work placements undertaken as part of a course or period of study, self-employment and engaging in business or professional activity. Undertaking, for instance, an unpaid work trial or working in exchange for a non-monetary reward (such as board and lodging) is illegally working and is a criminal offence committed by the worker and facilitated by the 'employer'.

## 5.0 Steps to Avoid the Employment of an Illegal Worker

- 5.1 It is a straightforward process for any employer, no matter how small, to prevent themselves employing an illegal worker. If an employer has failed to take even the most basic steps then they have chosen to remain ignorant of the immigration status of their workforce and no amount of potential imposed conditions is sufficient, in our opinion, to avoid the legitimacy of revocation in proving a deterrent to others to the employment of illegal workers.
- 5.2 The Home Office has made checklists widely available which set out what a responsible employer should ask for ahead of employing any person in order to demonstrate 'due diligence' and avoid liability for inadvertently employing an illegal worker.
- 5.3 Since April 2017 these checklists have been embedded in the statutory applications for personal licences and premises licences, the transfer of premises licences and designated premises supervisor variations.
- 5.4 The first 4 'hits' on a Google search for "right to work" are links to employer checklists and information on the GOV.UK website.
- 5.5 The first link (<https://www.gov.uk/check-job-applicant-right-to-work>) details general advice, checking the documents, taking a copy of the documents, what if the job applicant can't show their documents and provides details of an employers' telephone helpline. This page has a direct link to what documents are acceptable proofs of a right to work in the UK and also allows an employer to fill out an online enquiry about a named individual they are considering offering employment to.
- 5.6 Appendix A sets the above out in some detail.

## 6.0 Relevance/Irrelevance of a Civil Penalty or Prosecution

- 6.1 An employer found to have 'employed' an illegal worker may, dependent on culpability and the evidence available, be issued with a civil penalty or prosecuted or indeed neither. In common with other agencies with law enforcement responsibilities there exist a number of reasons why Immigration Enforcement may prefer a non-judicial disposal (e.g. a warning or immigration civil penalty etc.) to a judicial disposal (prosecution) – one being cost.
- 6.2 A prosecution may follow where the evidence is compelling that an employer has employed an illegal worker and had reasonable cause to believe that worker was disqualified from working.
- 6.3 Alternatively, where the evidence is less compelling or the evidence points to negligence rather than intent, a civil penalty may be issued in accordance with the Home Office Code of Practice on Preventing Illegal Working (May 2014). In the case of a civil penalty the balance of probabilities test applies whereas a prosecution requires a higher burden of proof.
- 6.4 There are many factors where, even if an illegal worker is discovered, a penalty may not be imposed and these include the subsequent cooperation of the employer. Often though there is no dispute that an illegal worker was working at a premises, immigration officers conducting the initial investigation cannot gather sufficient evidence to 'prove' that the individual was 'employed' at that time. This can often be the case where wages are not paid, 'friends' assist or it is alleged an unpaid trial period was underway – as well as 'they only started today' defence.
- 6.5 However, to issue a civil penalty under section 15 Immigration, Asylum and Nationality Act 2006 the Home Office Code of Practice requires some proof that not only was an illegal worker working at the premises but they were 'employed'. Usually this is taken as meaning the illegal worker was under a contract of service or apprenticeship, whether express or implied and whether oral or written.
- 6.6 In such cases where this cannot be demonstrated, a civil penalty may not be issued even where the premises licence holder or his agent has facilitated an illegal worker committing an offence under section 24B Immigration Act 1971 (as amended by Immigration Act 2016) of working illegally. This does not however prevent the crime prevention objective being engaged with as the premises licence holder has nonetheless facilitated a criminal offence taking place and the lack of checks suggests that in the past (and is likely in the future) 'employed illegal workers. The *East Lindsey* case (see 8.2) provides that action (revocation) to prevent what is likely to happen in the future is legitimate.

- 6.7 The issuing of a civil penalty means Immigration Enforcement is confident it can demonstrate (on the balance of probabilities) that the illegal worker was 'employed' and that a statutory excuse (i.e. that proper checks were carried out) does not exist. A prosecution demonstrates that Immigration Enforcement is confident it can show (beyond all reasonable doubt) that the illegal worker was 'employed' and the employer had reasonable grounds to believe they had no right to work.
- 6.8 The lack of either a civil penalty or prosecution **does not** mean that an illegal worker was not working; rather that the strict definition of 'employed' has not been made out sufficiently even though the illegal worker themselves committed an offence which was facilitated by the premises licence holder or its agents.

## 7.0 Statutory Guidance (s182 LA 2003) and the Authority's Licensing Policy

- 7.1 In order to deflect responsibility and avoid punitive action, respondent's to review hearings sometimes refer to both the statutory guidance issued under section 182 Licensing Act 2003 and those parts of the Authority's own policy which replicate paragraph 11.10 of that Guidance, viz:

*Where authorised persons and responsible authorities have concerns about problems identified at premises, it is good practice for them to give licence holder's early warning of their concerns and the need for improvement, and where possible they should advise the licence or certificate holder of the steps they need to take to address those concerns.*

- 7.2 Essex Police submits that in the particular circumstances of cases where Immigration Control and Enforcement receive intelligence concerning the employment of illegal workers and act upon it; such warnings are inappropriate.
- 7.3 Not only would advance warning of enforcement activity prevent the detention of persons committing crimes and the securing of evidence; a warning after the event to comply with immigration legislation serves as an inducement to continue serious criminal activity until caught 'the first time'.
- 7.4 In particular; Essex Police submits that paragraph 11.10 does not apply when more specific paragraphs (Reviews arising in connection with crime, 11.24 – 11.29) apply to the case in question.

### 7.5 Paragraph 11.26

*Where the licensing authority is conducting a review on the grounds that the premises have been used for criminal purposes, its role is solely to determine what steps should be taken in connection with the premises licence, for the promotion of the crime prevention objective. ....The licensing authority's duty is to take steps with a view to the promotion of the licensing objectives and the **prevention of illegal working** in the interests of the wider community and not those of the individual licence holder.*

- 7.6 Thus the financial hardship occasioned by the suspension or revocation of the premises licence should, we opine, not sway the sub-committee but instead it should look at what is appropriate to promote the objective within the wider business and local community given (as the Rt. Hon James Brokenshire, Immigration Minister quoted when he introduced the Immigration Act 2016) "illegal labour exploits workers, denies work to UK citizens and legal migrants and drives down wages". It also provides those employing illegal workers with a competitive advantage over its business rivals and deprives the UK



Government of income tax receipts. It also deprives workers access to State care and protection, the minimum wage, protection of the working time and health and safety regulations and both the State and (compulsory) private pension schemes.

- 7.7 In particular; the sub-committee will be asked to consider (below) the cases of *R (Bassetlaw District Council) v Worksop Magistrates' Court*; [2008] WLR (D) 350 and *East Lindsey District Council v Abu Hanif (Trading as Zara's Restaurant and Takeaway)*, [2016] EWHC 1265 (Admin) where in both cases the High Court stated remedy of the harm or potential harm is not the only consideration and that deterrence is an appropriate consideration in dealing with reviews where there has been activity in connection with crime.
- 7.8 Essex Police submit that in this case, revocation of the premises licence is appropriate and proportionate as deterrence to other businesses in implementing the authority's duty to prevent illegal working.

- 7.9 Paragraph 11.27 of the Guidance states:

*There is certain criminal activity that may arise in connection with licensed premises which should be treated particularly seriously. These are the use of the licensed premises..... for employing a person who is disqualified from that work by reason of their immigration status in the UK.*

Essex Police would draw the sub-committee's attention to the change in wording of this paragraph following the April 2017 revision of the guidance, where the previous reference to 'knowingly employing' was removed.

- 7.10 Paragraph 11.28 of the Guidance states:

*It is envisaged that licensing authorities, the police, the Home Office (Immigration Enforcement) and other law enforcement agencies, which are responsible authorities, will use the review procedures effectively to deter such activities and crime. Where reviews arise and the licensing authority determines that the crime prevention objective is being undermined through the premises being used to further crimes, it is expected that revocation of the licence – even in the first instance – should be seriously considered.*

Essex Police considers this paragraph self-explanatory; where an enterprise employs illegal workers it is the duty of Essex Police to work with Immigration Enforcement to bring forward reviews and for the authority to consider revocation in the first instance.

- 7.11 In support of this statement; Essex Police would draw the sub-committee's attention to the "*Guidance for Licensing Authorities to Prevent Illegal Working*

*in Licensed Premises in England and Wales*" (Home Office)[April 2017] where at section 4.1 it states;

*"It is envisaged that licensing authorities, the police, Home Office (Immigration Enforcement) and other law enforcement agencies will use the review procedures effectively to deter illegal working".*

- 7.12 The changes to the Statutory Guidance (11.25 & 11.26) and the July 2016 changes to the Immigration Act aim to disrupt undocumented migrants' ability to secure a settled lifestyle or establish themselves in the UK by depriving them of employment opportunities, such as either they choose to not come to the UK or they remove themselves voluntarily.
- 7.13 Since the main draw for illegal migration is work, and since low-skilled migrants are increasingly vulnerable to exploitation at the hand of criminal enterprises, the law has strengthened enforcement measures and the statutory Guidance to deter illegal workers and those that employ them.
- 7.14 Deterrence is a key element of the UK government's strategy to reduce illegal working and is supported by both the Guidance and Case Law (see 8.0 below).

## 8.0 Case Law

8.1 Deterrence as a legitimate consideration by a licensing sub-committee has been considered before the High Court where remedial measures (such as the imposition of additional conditions) were distinguished from legitimate deterrent (punitive) measures such as revocation.

8.2 *R (Bassetlaw District Council) v Worksop Magistrates' Court; [2008] WLR (D) 350.*

This was a case where a premises had sold alcohol to under age persons and subsequently the licensing authority suspended the licence. This was overturned on appeal to the Magistrates' Court and subsequently appealed to the High Court by the authority.

8.3 Issues relevant to the case before today's sub-committee which were considered in the *Bassetlaw* judgement included:

- whether a licensing authority was restricted to remedial action (not punitive action such as revocation); and
- certain criminal activities which may arise in connection with licensed premises, and which the Secretary of State considers should be treated particularly seriously - and the licensing authority's duty in circumstances such as these "... *to take steps with a view to the promotion of the licensing objectives in the interests of the wider community and not those of the individual holder of the premises licence* (now contained within paragraphs 11.26 and 11.27).

8.4 It also considered what is now contained withi) paragraph 11.20

*In deciding which of these powers to invoke, it is expected that licensing authorities should so far as possible seek to establish the cause or causes of the concerns that the representations identify. The remedial action taken should generally be directed at these causes and should always be no more than an appropriate and proportionate response to address the causes of concern that instigated the review.*

8.5 It also considered; what is now contained within paragraph 11.21

*However, it will always be important that any detrimental financial impact that may result from a licensing authority's decision is appropriate and proportionate to the promotion of the licensing objectives and for the prevention of illegal working in licensed premises.*

8.6 In the judgement, in favour of the Authority, Mrs Justice Slade stated (at 32.1 & 33.1 of the citation):

*"Where criminal activity is applicable, as here, wider considerations come into play and the furtherance of the licensing objective engaged includes the prevention of crime. In those circumstances, deterrence, in my judgment, is an appropriate objective and one contemplated by the guidance issued by the Secretary of State. However, in my judgment deterrence is an appropriate consideration when the paragraphs specifically directed to dealing with reviews where there has been activity in connection with crime are applicable."*

- 8.7 Having confirmed the legitimacy of punitive measures (suspension/revocation) for offences listed in (what is now contained within paragraph 11.27 of the Guidance), Mrs Justice Slade concerned herself with another aspect of the appeal – namely the imposition of conditions which were already present but not properly implemented (paragraph 34.1).
- 8.8 This has some corollary with the argument of some review application respondents that the imposition of conditions to check immigration status either directly or through an agency (*though essentially a requirement since 2006 under the Immigration, Asylum and Immigration Act 2006*) would serve as sufficient remedy for the employment of illegal workers to negate a deterrent (suspension/revocation) being imposed by the sub-committee despite the wording of the Guidance at paragraph 11.28.
- 8.9 Mrs Justice Slade stated: *The sixth new provision was acceptable identification to establish the age of a purchaser shall be a driving licence with photographs, passport or proof of age scheme card recognised by or acceptable by the licensing authority. I am told these provisions were already in place, but not properly implemented. No doubt those are perfectly sensible and appropriate provisions to be included on a licence. However it is said that the action taken on appeal being confined in effect to reiterating existing practice with a minimal addition was entirely inappropriate to meet the situation where there have been sales of alcohol to 14 year old girls.*
- 8.10 Essex Police contends that in the case before the sub-committee the facts are similar. In the cited case straightforward sensible enquiries could have been made as to the age of the children and the imposition of additional conditions as a form of remedy was considered inappropriate by Mrs Justice Slade for 'those serious cases' set out in the Guidance.
- 8.11 In the case before the sub-committee, simple steps (set out at Appendix A) were available to prevent the employment of illegal workers – none were taken; the imposition of conditions to remedy this situation is inconsistent with the section 182 Guidance and this case citation. A negligent employer should expect revocation in the first instance.

8.12 *East Lindsey District Council v Abu Hanif (Trading as Zara's Restaurant and Takeaway), [2016] EWHC 1265 (Admin)*

This is a recent High Court decision (published April 2016) which has similarities with the one before the sub-committee in that it related to the employment of an illegal worker and where a prosecution for such had not been instigated.

Amongst other matters it had been argued for the premises licence holder that the crime prevention objective was not engaged where a prosecution or conviction for the employment of an illegal worker was not in place. Whilst the initial hearing may have suggested several illegal workers being employed, the High Court appeal and decision related to the employment of one individual and is therefore, Essex Police would argue, indistinguishable from the matter before the sub-committee today.

- 8.13 The case reaffirms the principle that responsible authorities need not wait for the licensing objectives to actually be undermined; that crucially in considering whether the crime prevention objective has been engaged a prospective consideration (i.e. what is likely to happen in the future) of what is warranted is a key factor. It also reaffirmed the case of *Bassetlaw* in concluding that deterrence is a legitimate consideration of a sub-committee.

Mr Justice Jay stated: *"The question was not whether the respondent had been found guilty of criminal offences before a relevant tribunal, but whether revocation of his licence was appropriate and proportionate in the light of the salient licensing objectives, namely the prevention of crime and disorder. This requires a much broader approach to the issue than the mere identification of criminal convictions. It is in part retrospective, in as much as antecedent facts will usually impact on the statutory question, but importantly the prevention of crime and disorder requires a prospective consideration of what is warranted in the public interest, having regard to the twin considerations of prevention and deterrence. In any event, I agree with Mr Kolvin that criminal convictions are not required."*

Mr Justice Jay added: *"Having regard in particular to the twin requirements of prevention and deterrence, there was in my judgment only one answer to this case. The respondent exploited a vulnerable individual from his community by acting in plain, albeit covert, breach of the criminal law. In my view his licence should be revoked."*

## APPENDIX A

### HOW DOES AN EMPLOYER ENSURE THEY EMPLOY ONLY 'LEGAL WORKERS'

The Home Office has made checklists widely available which set out what a responsible employer should ask for ahead of employing any person in order to demonstrate 'due diligence' and avoid liability for inadvertently employing an illegal worker.

Since April 2017 these checklists have been embedded in the statutory applications for personal licences and premises licences, the transfer of premises licences and designated premises supervisor variations.

**The first 4 'hits' on a Google search for "right to work" are links to employer checklists and information on the GOV.UK website.**

The first link (<https://www.gov.uk/check-job-applicant-right-to-work>) details general advice, checking the documents, taking a copy of the documents, what if the job applicant can't show their documents and provides details of an employers' telephone helpline (see below). This page has a direct link to what documents are acceptable proofs of a right to work in the UK this lists the acceptable documents and what to look for (it includes photographs and what to look for in particular).

The second link is to the Home Office document; "An Employer's Guide to Right to Work Checks" (published 16 May 2014 last updated 16 August 2017).

Another link provides a site (<https://www.gov.uk/employee-immigration-employment-status>) which guides an employer through the process **AND** allows an employer to make an online submission to the Home Office to check if the proposed employee is prohibited from working as well as providing a telephone helpline.

The first link (<https://www.gov.uk/check-job-applicant-right-to-work>) provides:

#### **General Advice**

Amongst the advice contained on the GOV.UK website is the following:

- You must see the applicant's original documents;
- You must check that the documents are valid with the applicant present; and
- You must make and keep copies of the documents and record the date you made the check.

#### **Checking the Documents**

In relation to checking the documents it also adds that an employer needs to check that:

- the documents are genuine, original and unchanged and belong to the person who has given them to you;

- the dates for the applicant's right to work in the UK haven't expired;
- photos are the same across all documents and look like the applicant;
- dates of birth are the same across all documents;
- the applicant has permission to do the type of work you're offering (including any limit on the number of hours they can work);
- for students you see evidence of their study and vacation times; and
- if 2 documents give different names, the applicant has supporting documents showing why they're different, eg a marriage certificate or divorce decree

### **Taking a copy of the documents**

When you copy the documents:

- make a copy that can't be changed, e.g. a photocopy
- for passports, copy any page with the expiry date and applicant's details (eg nationality, date of birth and photograph) including endorsements, eg a work visa
- for biometric residence permits and residence cards (biometric format), copy both sides
- for all other documents you must make a complete copy
- keep copies during the applicant's employment and for 2 years after they stop working for you
- record the date the check was made

### **If the job applicant can't show their documents**

You must ask the Home Office to check your employee or potential employee's immigration employment status if one of the following applies:

- you're reasonably satisfied that they can't show you their documents because of an outstanding appeal, administrative review or application with the Home Office;
- they have an Application Registration Card; or
- they have a Certificate of Application that is less than 6 months old

Application registration cards and certificates of application must state that the work the employer is offering is permitted. Many of these documents don't allow the person to work.

The Home Office will send you a 'Positive Verification Notice' to confirm that the applicant has the right to work. You must keep this document.

### **ACCEPTABLE DOCUMENTS**

The list of acceptable documents can be found via the link to [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/441957/employers\\_guide\\_to\\_acceptable\\_right\\_to\\_work\\_documents\\_v5.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/441957/employers_guide_to_acceptable_right_to_work_documents_v5.pdf)

**[[APPLICANT'S] [OCCUPIER'S] COPY]**

**Magistrates' Court in South East England**



**WARRANT TO ENTER AND SEARCH PREMISES**

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Any queries regarding this document should be directed to the Legal Support Team, Essex Magistrates' Court, PO Box 10754, Chelmsford, CM1 9PZ

This warrant is issued under: **Paragraph 17 (2) of the Immigration Act 1971 (as amended)**

I authorise the person or persons identified beneath to enter the specified premises, on the number of occasions indicated, to search for:

**Persons subject to immigration control who have entered the United Kingdom illegally, remained beyond their period of leave, or who have failed to observe a condition of their leave to enter or remain.**

Premises authorised to be searched:

**Zara Mayland Restaurant, The Mayland Mill, Steeple Road, Mayland, CM3 6EG**

Number of occasions on which search is authorised:

**One.**

Person(s) authorised by me to execute this warrant:

**Any Constable or Immigration Officer.**

This warrant was applied for by: **Immigration Officer** [REDACTED]

This warrant is valid for 3 months from the date of its issue.

Warrant issued by: **Tim Thirst [Justice of the Peace]**

Signature or other authentication

Date: 04.06.18



**Endorsement by officer executing warrant**

The record beneath must be completed for each set of premises entered and searched under the authority of this warrant, and for each occasion on which such premises are searched: section 16(9), Police and Criminal Evidence Act 1984. Attach other records to this warrant as required.

Date and time of search:

Premises searched: *[enter address(es) or description(s)]*

The following was found, for which search was authorised by this warrant:  
*[List the material, etc. that was found, or enter 'none']*

The following additional material, etc. was seized:  
*[List the additional material, etc. that was seized, or enter 'none']*

Record completed by ..... (name of endorsing officer)  
 of ..... (name of police force or investigating agency)  
 Signed: ..... (endorsing officer)  
 Date: .....

**WITNESS STATEMENT**

Criminal Procedure Rules, r 27. 2; Criminal Justice Act 1967, s. 9; Magistrates' Courts Act 1980, s.5B

URN TS 31 EAX 1178

Statement of: [REDACTED]

Age if under 18: Over 18 (if over 18 insert 'over 18')

Occupation: Immigration Officer [REDACTED]

This statement (consisting of 2 page(s) each signed by me) is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false, or do not believe to be true.

Signature: [REDACTED] ..... (witness) Date: 06/06/2018

I am an Immigration Officer, (IO) [REDACTED] Warrant Number [REDACTED], based at the Immigration Enforcement Office in Bedfordshire, Franklin Court, Bedford, MK44 3JZ.

On WEDNESDAY 6<sup>TH</sup> JUNE 2018, I was assigned as cover Officer ) on attendance to an Enforcement Visit to the ZARA MAYLAND RESTAURANT, THE MAYLAND MILL, STEEPLE ROAD, MAYLAND, CHELMSFORD CM3 6EG. I was in full arrest uniform, wearing Home Office issued Personal Protective Equipment (PPE) and other officers present on this enforcement visit were: OIC (Officer in charge) [REDACTED], IO [REDACTED], IO [REDACTED], IO [REDACTED], IO [REDACTED], IO [REDACTED], IO [REDACTED].

These premises had been entered on the authority of a warrant that had been obtained on the 04/06/2018, and endorsed by Justice of the peace, this warrant had been issued on the information suggesting illegal immigrants had gained employment within this business, and gained work illegally.

At 18:45 hrs the team deployed by the request of the OIC from the vehicles to the target address, as we approached the target address; I entered the premises with the rest of the team following, I moved to the right hand side of the premises as I had been placed by the OIC to cover any potential side exits, as the premises had been contained by the rest of the arrest team, I was then asked by the OIC to enter the premises to help assist clear a number of staff that had been encountered. The OIC had designated an area away from any potential customers, to help minimise the inconvenience to the business, and in order as to keep the purpose of the visit from the few customers who were using the restaurant.

At this point a number of males were encountered working within the Kitchen area , and asked to go to the designated area so as to be cleared quickly and returned to work.

At this point my attention turned to the males that had been brought to the designated area, the first male I spoken to was a male sitting to my left in full cooks uniform , this consisted of black and white chequered chefs trousers, a black T shirt with STAFF in capital letters on the back, I exhibit 3 photos of this individual as PP001- PP002 – PP003. After establishing his identity [REDACTED] (10/02/1972) and that he had no status within the UK and is a Visa Overstayer since 2004, therefore the subject has not right to work within the UK with no further applications pending.

my Q+A is as follows;

- Q: HOW LONG HAVE YOU BEEN WORKING HERE.
- A: FOUR OR FIVE WEEKS.
- Q: WHO EMPLOYED YOU.
- A: [REDACTED].
- Q: HOW MUCH DO YOU GET PAID A WEEK.
- A: I GET ACCOMODATION, FOOD AND ABOUT 50 POUNDS A WEEK CASH IN HAND.

[REDACTED] was placed under arrest and taken to the Immigration vehicle to be transported to custody, along with his personal effects. Once the booking in process had been conducted, the subject was served relevant immigration paperwork by the arresting officer.

This statement is made from my recollection of events and with reference to my PNB, serial number 013967, pages 62 – 66, that I exhibit as PP004

Signature.....[REDACTED].....Signature witnessed by:



Immigration  
Enforcement

OFFICIAL - SENSITIVE  
(when completed)

IMMIGRATION ENFORCEMENT  
NOTEBOOK

Name of user

Date taken into use

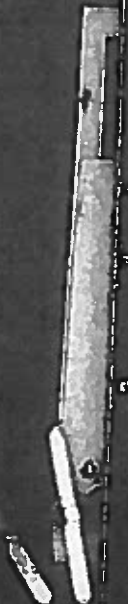
Date taken out of use

Serial number IE

013967

OFFICIAL - SENSITIVE  
(when completed)

IE10CA



06/06/2018 - 12:00 PM

Wieder in Chelmsford.

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25/11/20

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TS 316AX1178

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 200. Placed in Sundance box  
 for delivery 3/18/28  
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 1000 N. 10th St. Omaha  
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 at 2:40 PM. 2/28/28  
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 in  
 2000 N. 10th St. Omaha  
 Omaha, Nebraska  
 at 2:40 PM. 2/28/28  
 in





**RESTRICTED** (when complete)**WITNESS STATEMENT**

(CJ Act 1967, s.9 MC Act 1980, ss.5A (3) (a) and 5B; MC Rules 1981, r.70)

URN

Statement of: ..... [REDACTED] .....

Age if under 18 **Over 18** .... (If over 18 Insert "over 18") Occupation: Immigration Officer .....

This statement (consisting of 2 page(s) each signed by me) is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated anything which I know to be false or do not believe to be true.

Signature .. [REDACTED] ..... Date: 27/06/2018

Tick if witness evidence is visually recorded ☐ (supply witness details on rear)

On Wednesday 6th June 2018 I was on duty as an arrest trained Immigration Officer. The Officer in charge of the visits to be conducted on this day was Immigration Officer [REDACTED]. [REDACTED] conducted a pre visit briefing for the visit and other officers present were Immigration Officers, [REDACTED], [REDACTED] and [REDACTED]. The target premises for the visit was Zara Mayland Restaurant, Mayland Mill, Mayland, Chelmsford, Essex, CM3 6EG and entry to the premises was via a 17 (2) warrant issued by the magistrates court. There was no named targets for the visit however there was an allegation received stating that the premises was suspected of employing three illegal workers who worked in the kitchen. I was instructed during the briefing that I was to sweep through the restaurant and contain any staff in the kitchen/storage area. I entered the premise at approximately 1840hrs and located the kitchen at the rear of the premises. I encountered three males in the kitchen area and all three of these males were escorted to the front of the restaurant area. I spoke with one of these males who I now know to be [REDACTED]. I introduced myself to this male and

Signature: [REDACTED] ..... Signature Witnessed by: .....

**RESTRICTED (when complete)**

Continuation of Statement of: [REDACTED] .....

Page 2

went on to ask him for his name, date of birth and nationality. [REDACTED] responded [REDACTED], born [REDACTED] a national of Bangladesh.' With this information, I conducted checks with an officer based within the Bedford enforcement office. These checks showed [REDACTED] to be an immigration offender and at 1852hrs I arrested [REDACTED] as a person who was liable to be arrested and detained under Paragraph 17(1) of the Immigration Act 1971 as amended. I went on to ask [REDACTED] the following questions. At the time of these question [REDACTED] was wearing 'chef's whites'. Do you have any medical issues? [REDACTED] replied 'NO' Do you have any family in the United Kingdom? [REDACTED] replied 'NO, 4 CHILDREN IN BANGLADESH MY MOTHER IS IN THE UNITED KINGDOM.' How long have you worked at the restaurant? [REDACTED] REPLIED '2 WEEKS AS AN ASSISTANT IN THE KITCHEN' How much do you get paid? [REDACTED] replied, 'I DON'T GET PAID' Do you pay rent to live upstairs? ALI replied 'NO'. This was the end of my questioning of [REDACTED]. I allowed [REDACTED] to pack a small bag of personal belongings and he was the conveyed to Chelmsford custody along with another male who had been arrested at the restaurant. I escorted [REDACTED] from the premises in the escort position and placed him in the cellular van. [REDACTED]

Signature:  
2004/05(1)

Signature Witnessed by: .....

TS315AX1178

DANIELA

06/66/18 CATZ UNITS - GIC

1752 RETURN TO UAN —  
 End of UNIT (1) —  
 UNIT? BRIDING FOR UNIT (2) —  
 1816 G, S, B AS UNIT 1 —  
 GIC - [REDACTED] —  
 TS315AX1178 —  
 NO NAME OFFENSES —  
 ZARA MAKANA RETURNED —

Maryland Md, STEELE Rd  
 Maryland CHAMBERS, CMJ 686  
 17(2) Warrant - 4/6/18  
 Md (law) - ARREST 1  
 ACCUSATION of ILLEGAL WORKING  
 3 x KITCHEN WORKERS  
 ESTABLISH ID, NAT + STATUS  
 [REDACTED]  
 BUSINESS OWNER  
 AREA (1 PREMISE)  
 3 x MALES in KITCHEN  
 SWEET ACCOMMODATION  
 1 x MALE ESCORTED TO  
 ACCOMMODATION  
 ARREST CARD - PG-1578864  
 [REDACTED]  
 [REDACTED]  
 1846 CHECKS 4/10 CARRI  
 06/02/18 ASYLUM REFUSED  
 06/02/18 ASYLUM REFUSED

12/03/18  
 23/09/18 DUMMISER/FIRST  
 TIER  
 SERVED 1896 - ALU CLONDER  
 1852 ARREST 17(1)  
 STATES UNDERSTOOD  
 Q (1) IN CHIEF WRITER  
 Q MEDICAL ISSUES?  
 A No  
 Q FAMILY IN UK?  
 A No 4 CHILDREN IN  
 BKO & WIFE  
 MOTHER IN UK  
 [REDACTED]  
 Q WORK IN PREMISES  
 A 2 LEVELS AS KITCHEN  
 ASSISTANT  
 Q How Much GET PAID?  
 A 1 Jans GET PAID  
 Q Do you GET PAID?  
 A No

Under P  
Liable to  
Obstruction  
Facilitation  
Harbour  
CIB  
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OS  
Fail to C  
Entry or  
IE Entry  
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IE Decel

52

① Placed small box  
Escorted from premise  
1972 Placed in car van  
1900 A/CIO [REDACTED] [REDACTED]  
Detention

APR 13 59 Ho [REDACTED]  
2004 Arrive @ [REDACTED]  
Customs

Customs Sat [REDACTED]  
Unsub looking in informed  
By OIC that ① had arrived  
and was to be released  
Set [REDACTED] released ①  
Bail 201 served by 10  
[REDACTED] Authorized by A/CIO

2238 ① returned to place of  
arrest  
Return to FEL  
[REDACTED]

07/06/18 CATZ/MID UNITS - OIC DENTCO  
[REDACTED] @ [REDACTED] [REDACTED]  
TS31CEP1078

①

②

③

[REDACTED] INO

Good - [REDACTED]

Silver - [REDACTED]

Bronze - [REDACTED]

Audiation of ① [REDACTED]  
Working @ ① + [REDACTED] ②

16 LACIO 25/10/04 - 10/6/12

No further Apps

O/S [REDACTED] (b)(1)

Arrive + [REDACTED]

LC [REDACTED] [REDACTED] [REDACTED]  
+ [REDACTED]

OFFICIAL SENSITIVE (when completed)

MG 11

## WITNESS STATEMENT

Criminal Procedure Rules, r 27.2; Criminal Justice Act 1967, s. 9; Magistrates' Courts Act 1980, s.5B

Statement of

URN:

Age if under 18

Over 18

(if over 18 insert 'over 18') Occupation:

Immigration Officer

This statement (consisting of: 2 pages each signed by me) is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated anything in it which I know to be false, or do not believe to be true.

Signature:

Date: 09.06/2018

Tick if witness evidence is visually recorded ☐

(supply witness details on rear)

I am a designated Immigration Officer employed by the Home Office. On WEDNESDAY 6TH JUNE 2018 I was on duty and in full uniform inclusive of personal protective equipment. I attended THE ZARA MAYLAND RESTAURANT, STEEPLE ROAD, CHELMSFORD, CM3 6EG. At approximately 18:30 hrs Immigration Officer [REDACTED] gained entry to the premises, executing a Schedule 2, Paragraph 17 (2) of the Immigration Act 1971 warrant, gained from SOUTH EAST MAGISTRATES COURT.

Immigration officers on our team encountered three illegal workers on site after the team interviewed the restaurant's staff. They had been found working on the premises. I had interviewed a male named [REDACTED], DOB [REDACTED], Bangladesh born but naturalised British. He claimed he was the duty manager for the evening. I asked him if he would engage with me and partake in an illegal working interview as we had found the three illegal workers in the restaurant. I explained that this interview was voluntary but he could put his case forward in this interview why there were illegal workers in the restaurant. [REDACTED] refused to be interviewed.

This statement is made from my recollection of events and with reference to my pocket notebook, serial number 013963, which has been exhibited as PB01.

Signature:

Signature witnessed by:

OFFICIAL SENSITIVE - (when completed)

Continuation of Statement of IO

I.O.

Signature:

03 2015

Signature witnessed by:

N/A

## Immigration Enforcement

OFFICIAL - SENSITIVE  
(when completed)

# IMMIGRATION ENFORCEMENT NOTEBOOK

Page 10

## Discussion

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Stateful Firewall: 

013963

OFFICIAL - SENSITIVE  
(when completed)

IE100A

**you today?**

LV 06/06/18  
IO [REDACTED]



WEDNESDAY JUNE 6TH 2018  
 14:00 ON DUTY AT FLYVORT  
 X 3 VISITS IN CHELMSFORD  
 VISIT 1 TSSIE AXITT -  
 - TARGET - [REDACTED]  
 BGD MALE [REDACTED]  
 HO REF - U1073543 -  
 ADDRESS - [REDACTED]  
 RESTAURANT, [REDACTED]  
 [REDACTED]  
 POE - WARRANT ON 04/06/18  
 GOLD - CIO [REDACTED]  
 SILVER - IO [REDACTED]

BROWN - IO [REDACTED]  
 TEAM AS PER OP ORDER,  
 MY ROLE ARREST 2 -  
 INFO STATES SUBJECT  
 WORKS AS A WAITER AT THE  
 RESTAURANT, HAS DONE FOR  
 3 YEARS & LIVES ABOVE  
 THE PREMISES HE IS  
 AN ILLEGAL ENTRANT.  
 HAS APPLIED FOR LEAVE  
 TO REMAIN SINCE 09/09/11  
 BUT ALL APPS HAVE BEEN  
 REFUSED. 22/06/16 -  
 LISTED AS ARSCONDER.  
 NO FURTHER APPS TO H.O.  
 17:40 ARRIVED AT PREMISES.  
 17:43 SPACE TO A ROMANIAN  
 SUBJECT IS [REDACTED]  
 [REDACTED] ID CARDS  
 [REDACTED] - CLEARED -  
 18:10 LEFT PREMISES.

Q. Finally, All others  
 you today?

11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30

2ND VISIT IS SICHXINX<sup>0</sup>

NO NAMES OFFENDERS -

[REDACTED]

WARRANT -

MY ROLE - COVER 3 -

INFO STATES 3 ILLEGALS

WORKING IN RESTAURANT

FOR 5 YRS [REDACTED] -

[REDACTED] IS THE DIRECTOR

[REDACTED] IS HER

HUSBAND. THEY OWN

OTHER RESTAURANTS

WHERE ILLEGALS WERE FOUND

ARRIVED AT FREMEX

SPOKE TO A MALE. -

[REDACTED]

1976, BANG-BORN, NAT.

UNUSUAL BRITISH ADDRESS

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] 79

MANAGER, HE IS CHANGING

TOGETHER [REDACTED]

HAS SAID HE WILL COM

RETC. AN ILLEGAL

WORKING INTERVIEW

WITH ME. -

AS I (X-CH) TO START

THE INTERVIEW, MR.

[REDACTED] TELLS ME HE -

DOESN'T NOW WANT

TO ENGAGE IN THE -

INTERVIEW AS HE -

IS THE ASSISTANT &

HE DOESN'T WANT TO

SAY ANYTHING. -

I TELL HIM THE INTER

VIEW IS ONLY VOLUNT

ARY & HE IS NOT -

OBLIGED TO GO AHEAD

[REDACTED]

[REDACTED]

## PERSONAL DETAILS

WITH THE INTERVIEW.<sup>80</sup>  
 1905 OIC ASKS ME TO GO &  
 PREP THE CELL VAN  
 AS WE HAVE ARRESTED  
 ILLEGAL WORKERS —  
 1912 TO'S [REDACTED]  
 BRING A DETAINEE TO  
 THE CELL VAN. —  
 1925 TO'S [REDACTED]  
 BRING ANOTHER DETAINEE  
 DOWN TO THE CELL VAN.  
 LEFT PREMISES —  
 2006 ARRIVED CHEMSFORD  
 POLICE STATION. —  
 08/06/18 DEPART POLICE STATION.  
 0040 ARRIVE BACK AT FUNCT.  
 [REDACTED] - TO 16768  
 [REDACTED] - 08/06/18

OFFICIAL - SENSITIVE

Status Verification, Enquiries  
and Checking

<b>Subject 1 filled : To be completed by the Police</b> (Justification and legislation must be completed or your request will be rejected)		
<b>Home Office ref (if known)</b>		
<b>Police Officer</b>	[REDACTED]	
<b>Police email address</b>	[REDACTED]@essex.pnn.police.uk	
<b>Subject's name</b>	[REDACTED]	
<b>Subject's nationality</b>	Bangladeshi	
<b>Subject's date of birth</b>	[REDACTED]	
<b>Male / female</b>	Male	
<b>Subject's address</b>	[REDACTED]	
<b>Additional information</b>	Found working at Zara Mayland restaurant, Steeple Road, CM3 6EG	
<b>Justification / legislation:</b> Subject of a Premises Licence review application under the Licensing Act 2003 following warrant executed by HM Immigration where the above person was believed to be subject of an outstanding asylum application (HO ref: M1115147) and illegally working. These matters need clarification before the review application can be submitted.		
<b>Below: Home Office official use only</b>		
<b>Cid/Personal ID/HO</b>		
<b>Check(s) requested</b>	<b>Response</b>	
<b>Confirmation of details</b>	Is there a trace of the subject?	Yes
	Name	[REDACTED]
	Date of birth	[REDACTED]
	Nationality	Bangladesh
<b>Current status</b>	Valid leave to remain in the UK?	No
<b>Right to work</b>	Does the individual have the right to work in the UK?	No
<b>Recourse to public funds</b>	Does the individual have recourse to public funds in the UK?	No
<b>Other</b>	Home Office records show that the subject claimed Asylum on 07-Jun-2018, this is currently outstanding.	

**Standard Disclaimer**

The above information is confidential and forwarded on the understanding that it is not disclosed to any third party. Should there be any ensuing criminal legal proceedings, any of the above information may only be submitted in the form of an official Home Office witness statement, which you can obtain through this office. If a witness statement is required, please send this form by email to: [ICSSVECStatements@homeoffice.qsi.gov.uk](mailto:ICSSVECStatements@homeoffice.qsi.gov.uk).

Page 1 of 1

OFFICIAL - SENSITIVE

OFFICIAL - SENSITIVE

Status Verification, Enquiries  
and Checking

<b>Subject 1 filled : To be completed by the Police</b> (Justification and legislation must be completed or your request will be rejected)		
<b>Home Office ref (if known)</b>		
<b>Police Officer</b>		
<b>Police email address</b>	[REDACTED]@essex.pnn.police.uk	
<b>Subject's name</b>	[REDACTED]	
<b>Subject's nationality</b>	Bangladeshi	
<b>Subject's date of birth</b>	[REDACTED]	
<b>Male / female</b>	Male	
<b>Subject's address</b>	[REDACTED]	
<b>Additional information</b>	Found working at Zara Mayland restaurant, Steeple Road, CM3 6EG	
<b>Justification / legislation:</b> Subject of a Premises Licence review application under the Licensing Act 2003 following warrant executed by HM Immigration where the above person was believed to be subject of an outstanding asylum application (HO Ref: A1913359) and illegally working. These matters need clarification before the review application can be submitted.		
<b>Below: Home Office official use only</b>		
<b>Cid/Personal ID/HO</b>		
<b>Check(s) requested</b>	<b>Response</b>	
<b>Confirmation of details</b>	Is there a trace of the subject?	Yes
<b>Current status</b>	Valid leave to remain in the UK?	No
<b>Right to work</b>	Does the individual have the right to work in the UK?	No
<b>Recourse to public funds</b>	Does the individual have recourse to public funds in the UK?	No
<b>Other</b>	Home Office records show that the subject claimed Asylum on 15-Aug-2017 which was refused on 06-Feb-2018. An appeal was lodged on 19-Feb-2018, this is currently ongoing.	

**Standard Disclaimer**

The above information is confidential and forwarded on the understanding that it is not disclosed to any third party. Should there be any ensuing criminal legal proceedings, any of the above information may only be submitted in the form of an official Home Office witness statement, which you can obtain through this office. If a witness statement is required, please send this form by email to: [ICESSVECStatements@homeoffice.gsi.gov.uk](mailto:ICESSVECStatements@homeoffice.gsi.gov.uk).

Page 1 of 1

OFFICIAL - SENSITIVE

OFFICIAL - SENSITIVE

Status Verification, Enquiries  
and Checking

<b>Subject 1 filled : To be completed by the Police</b> (Justification and legislation must be completed or your request will be rejected)		
<b>Home Office ref (if known)</b>		
<b>Police Officer</b>		
<b>Police email address</b>	[REDACTED]@essex.pnn.police.uk	
<b>Subject's name</b>	[REDACTED]	
<b>Subject's nationality</b>	Bangladeshi	
<b>Subject's date of birth</b>	[REDACTED]	
<b>Male / female</b>	Male	
<b>Subject's address</b>	[REDACTED]	
<b>Additional information</b>	Found working at Zara Mayland restaurant, Steeple Road, CM3 6EG	
<b>Justification / legislation:</b> Subject of a Premises Licence review application under the Licensing Act 2003 following warrant executed by HM Immigration where the above person was believed to be subject of an outstanding asylum application and illegally working. These matters need clarification before the review application can be submitted.		
<b>Below: Home Office official use only</b>		
<b>Cid/Personal ID/HO</b>		
<b>Check(s) requested</b>	<b>Response</b>	
<b>Confirmation of details</b>	Is there a trace of the subject?	Yes
<b>Current status</b>	Valid leave to remain in the UK?	No
<b>Right to work</b>	Does the individual have the right to work in the UK?	No
<b>Recourse to public funds</b>	Does the individual have recourse to public funds in the UK?	No
<b>Other</b>	Home Office records show that the subject claimed Asylum on 13-Nov-2017, this is currently outstanding.  Home Office reference: H1195754	

**Standard Disclaimer**

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Page 1 of 1

OFFICIAL - SENSITIVE

Immigration  
Enforcement

OFFICIAL - SENSITIVE  
(When completed)

IMMIGRATION ENFORCEMENT  
NOTEBOOK

Name of user [REDACTED]

Date taken into use 17/05/18

Date taken out of use

Serial number (S) 013156

OFFICIAL - SENSITIVE  
(When completed)

IS 100A

[REDACTED]

20

WB Mary 02/02/18

TSJ/CX 1177

→ TALKED: [REDACTED]

BIO Hole [REDACTED] HO Ref

[REDACTED] Awas Mel

→ ADDRESS: [REDACTED]

POE - Sch 2 P1762) Warrant

US Inspect SE MNG 04/06/18

C - [REDACTED] S - [REDACTED]

B - [REDACTED] DB - [REDACTED]

A1 [REDACTED] C1 [REDACTED]

A2 [REDACTED] C2 [REDACTED]

A3 [REDACTED] C3 [REDACTED]

(History)

Interf. Accused Subject is

working illegally and was

21

PROCC.

ICE Refused 5/1/11

19/12/11 [REDACTED] ICE sent 15/12/11

Manning Ref [REDACTED] 17/12/15

1/3/16 RIC/LES ECA Refused

11/10/16 " " "

22/8/16 Listed as Absconder

ONE - Alleged Illegal Working

PNC - TRACED MNG / WORK HOURS

1445 Left Before ICE to Ref

FEZ AT SAN JOSE CHZ

SPA.

Refused AT San Jose

Colombian Angel Collection

Felix Stone born.

1760 Arrived AT APPROX

5 Adults And 1x Child

Spoken to. NO one of

interest.

15:10 Left Heloress.



TS/164X1178 NC Agreement  
OFFICERS, ZARA MARYLAND  
RESTAURANT, STEELE Ld,  
CHLAWSON CN36EC  
POE SEC 2 P17(2) WARRANT  
ARREST PAUL SWAPPED  
INFO OF 2x ULLAGE WEIBERO  
IN THE KITCHEN FOR 5 YEARS  
[REDACTED] IS DIRECTOR  
[REDACTED] IS HIS BORN  
Hd Know of Couple was taken  
to 2x Restaurants in  
Cambridge and St. John  
12x officers found in  
2012 & 2014, ESS, LERO  
Fitted.

Philical RT Andrews -  
 20 elegant works final -  
 1x catadromy, rhythm, chroma  
 phil count work final left

23

the business.

2x. Prevalent Arct. species  
to Chelonicar. Cystoids

20.05 Adams at Centre,

10	[REDACTED]	
11	Anel	Bozka

2x Subjects into Control.

20:40 ACIO by GEAR McElmurn

Her name, Alice [redacted]

April 10 [REDACTED]

Task Corrected to Complete  
 Mike By [redacted] of [redacted] —

Leaf to Chic Restaurant

1/5 4' 2" 9' 6" 12' 15'

place. Station and

Closure with 22.00.4425

Weak Acid Ligand + Polyamine:

Left for Lakeland, Fla.

21:15	AGC	[REDACTED]	+ 10	[REDACTED]
	"	"	"	[REDACTED]

Robert [redacted] [redacted]

24

~~4:35~~ STEAD DOWN SILVER —  
 21:20 GOLD AS 2nd VISIT —  
 Canceled due to —  
 22:00 WAS CLOSING HALL —  
 AND LONG CUSTODY —  
 Back in. —  
 21:30 Colloaf ACIO [REDACTED] —  
 Wks. Multitasked Protection —  
 AS LONG DREW BK to —  
 [REDACTED] ICE AND COAST —  
 VSRERK Required, ALSO —  
 FEZ ICE TO RETURN —  
 Subject Marked to —  
 ZARA Restaurant & —  
 ICE to RCA [REDACTED] —  
 Expansion, Multitasked —  
 21:40 Left Chelmsford Police —  
 Station, to [REDACTED] —  
 to [REDACTED] and [REDACTED] —  
 21:55 Left to Return to —

25

[REDACTED] ICE. —  
 16/06/18 CH [REDACTED] —

CH 16/06/18 [REDACTED] —

TS31EAX1178

10

page 1

[REDACTED]

Briefing held at DonHull  
Farm Shop car park.

TS31EAX1178

No named offenders.

Zara mayland Restaurant  
mayland mill Steeple Rd,  
mayland, Chelms, CM3 7EG  
Para 17(2) Sch 2 Warrant.

C.I. Structure the same

I am now arrest 2 of officer

covered by [REDACTED]

Allegation of illegal worker -  
3 illegal workers.

[REDACTED] are managers.

2 other premises. 6 offenders  
at each premises in 2012

PNC - No Trace.

18.36 Arrived at premises assumed  
lead cover.

18.38 Entered premises and cleared  
back storage rooms + upstairs  
Went back downstairs

18.47 Speaking to male who claims  
ID upstairs. States he is ROV.  
Gave Italian ID cos used to live  
in ITA for while. lived there  
3/6 years.

[REDACTED] 19 years old

[REDACTED] - ROV ID card

Came to UK year and a half  
ago.

Kitchen porter. Been at this  
place 2 months.

18.40 Escorted male upstairs to get  
ID. obtained above info.

10 [REDACTED] satisfied with

TS31EAX1178  
page 2

18:48 Cleared male.  
18:49 Left male upstairs + went  
back down to restaurant.  
18:53 Stood as cover for 10 [REDACTED]  
18:59 10 [REDACTED] arrests.  
19:03 Went upstairs w/ 10 [REDACTED]  
and 1x detained male to pack  
belongs. Back downstairs.  
19:26 Left premises with 10 [REDACTED]  
I escorted 1 detained male  
to the awaiting cell van.  
19:39 Left vicinity of premises.  
Travelled to Thelmsford custody  
19:56 Arrived at custody  
20:50 Began booking in. Remained  
with 10 [REDACTED] while he booked  
in his detained male.  
22:00 All officers leave custody with  
1 male to drop back at  
restaurant.

22:38 Dropped male off back at  
restaurant.  
All officers departed back  
to office.  
10 [REDACTED] 15114 [REDACTED]

05/06/18

02/04/18 TS31 EAX1177 - OIC - 1st Lt. -  
BRICK @ CHICAGO  
- (A) [REDACTED] NGA 01/01/34 -  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] 04/04/13 17 (2)  
GOLD [REDACTED]  
SILVER [REDACTED]  
BRASS [REDACTED]  
Rice: COIN @ of RY  
- 1st Lt. Sun Warming UICAM  
2011 - IL2, 14/12/11 UICALL GUT  
ISIS/4, SNUY,

MANAGE ALGORITHM. STEAM  
EAX X2 REUSED  
PINK TO REPORT, AOS 22/06/14 -  
AUS, MD  
1743 - ARRIVE AT ADDRESS  
INTO POSITION, TO RGM  
FROM RIGHT SIDE, ON KITCHEN  
REMAIN OUTSIDE  
1745 - CAME IN TO RGM  
REMAIN AT COIN,  
1752 - STOOD DOWN,  
RETURN TO UICALL

1817 — DRUG VISIT (2) —

SAME OFFICER,

BALF MAUDON ROAD,

— G/S/D SAME.

— TS31EAX1178 — CLINIC HANDED

— NO NAMES OFFICER

ZARA MAUDON ROAD, HANDED

MUR, STAGLE ROAD, CRYSTAL PALACE, ON 3 GGG

47

to want to.

Carrier

Witness 04/06/18 17(2)

ROLE: ARREST (3) with BARRY

ALLEGATION OF UNDERMINING

HUSBAND'S LIFE DIRECTED

TRAVEL TO ADOPTION

TO REGAIN

1839 - ENTER PREMISES

4 MILES SAT DOWN

REMAIN AT FRONT,

MA [REDACTED]

DATE OF DEATH [REDACTED]

NO

WHAT PERMISSION IN UK

PENDING CASE, ASYLUM

WHEN MADE ASYLUM APP

3 MONTHS AGO.

1842

(4)

PERSON CASE, ASYLUM

HE IS ABOUT 18 MONTHS





- FULLY UNDERSTANDS. AGENTS  
LET MEAL TO WORK.
- CHECK WITH MURPHY.
- REFUSED CC ANTON, ASYLUM  
13/11/17 - 9/11/17 ESSENTIAL, -  
REF: H119.5754.
- ASYLUM OUTSTANDING.
- ADVISED NO WORK, -  
REGARDS TO DECKET, 22/05/17  
NO OUTCOME, -
- WORKING Q & A. -
- HOW LONG WORKS HERE.  
ONE WEEK -  
WHERE LIVE, -  
LONDON. -
- WHERE DO YOU STAY TONIGHT.  
UPSTAIR, STAFF ROOM -
- HOW MANY HRS THIS WEEK -  
SUN - 17:00 - 22:00, MON -  
17:00 - 22:00, TUE OFF -

49

50



THOM - 1700

- HOW MUCH MONEY, AND  
- E195 WEEK

- WHEN A YOU GET AND  
- SUMMER

- LIKE ANYS YOU

- HASSAN

- IS HE HERE TODAY

- NO TODAY IS OFF

- ABOUT TO LEAVE MENY  
AT END OF VISIT.

1859 - AUTHORITY DETENTION OF

SUBJECT FROM TO DEPTEN  
DGL WIL RECORDED FOR I/O SCHE.

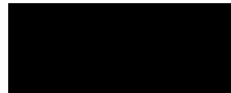
- REMAIN AT FRONT,

1428 - LINE ADDRESS, TO CM PAGE.

LINE ADDRESS

TRANSFER TO CLERGY

ARMED CLERGY



Immigration  
Enforcement

OFFICIAL – SENSITIVE  
(when completed)

IMMIGRATION ENFORCEMENT  
NOTEBOOK

Name of user

Date taken into use

Date taken out of use

Serial number: IE

013152

OFFICIAL – SENSITIVE  
(when completed)

IE100A

EX-100 (Rev. 1-75)

Assist C/H with photo products for  
 visit (Laptop print issues)  
 1665 Depart ICE  
 1620 Arrive FUP  
 1635 Briefing TSS/BAx1177  
 [REDACTED] BGD 01/01/1984  
 [REDACTED]  
 Kara (1/2) SEMCS 04/06/2018  
 CI Gold DFN, Silver ID [REDACTED]  
 Dep Bruce Me AI RV CIMG  
 A2 PB C2 EC A3 IP C3 JD  
 Det - subject works/hires illegally  
 for x3 years. Arrived illegally  
 claims 10+ yrs ago.  
 ISISA-2014 (19/12) Oct 2015 -  
 Marriage Show ECA RP 2  
 refused in 2016. FTR  
 22/06/2016 - ABS  
 ONF - illegal working only. FVR

- ABS only + poss. weak heart.<sup>27</sup>  
 Also had drugs on him  
 1740 Entry Warrant / NFO served by  
 OIC Target not encountered.  
 Owner on site (GBL) No  
 employee records on site Possible  
 Encl Health issues.  
 1807 All officers off site - no offenders  
 encountered  
 [REDACTED]

04/06/2018 SEMCS.  
 Same CI structure AI JD CIRV  
 A2 EC C2 PP A3 MG C3 PB  
 Allegation - illegally employing x3  
 staff in kitchen for past 3 years  
 No tax/NT paid  
 [REDACTED] - Company owner  
 [REDACTED] - N/KV

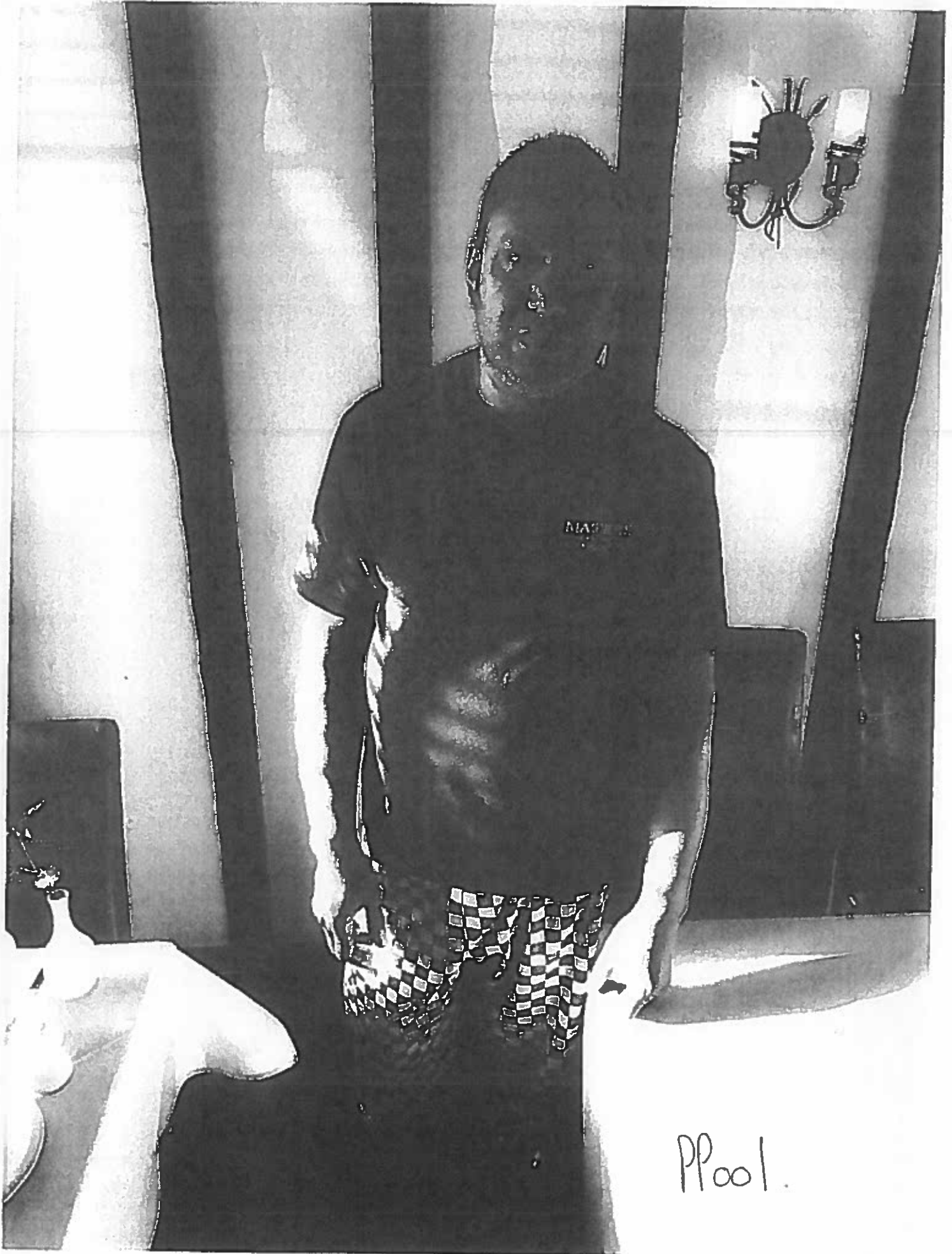
## POWERS OF AN IMMIGRATION OFFICER

IMMIGRATION ACT 1971 (as amended)

## POWERS TO ARREST

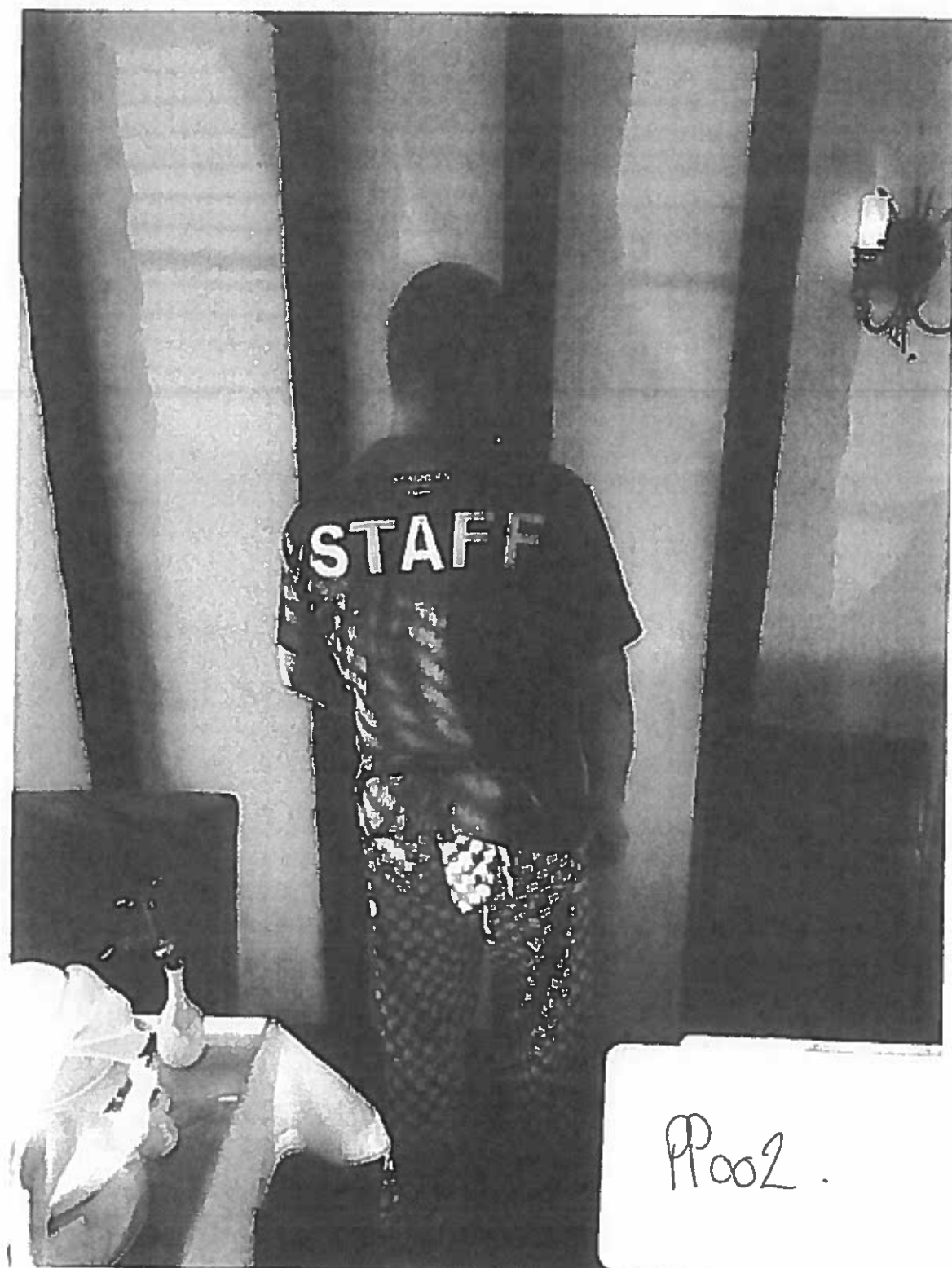
28

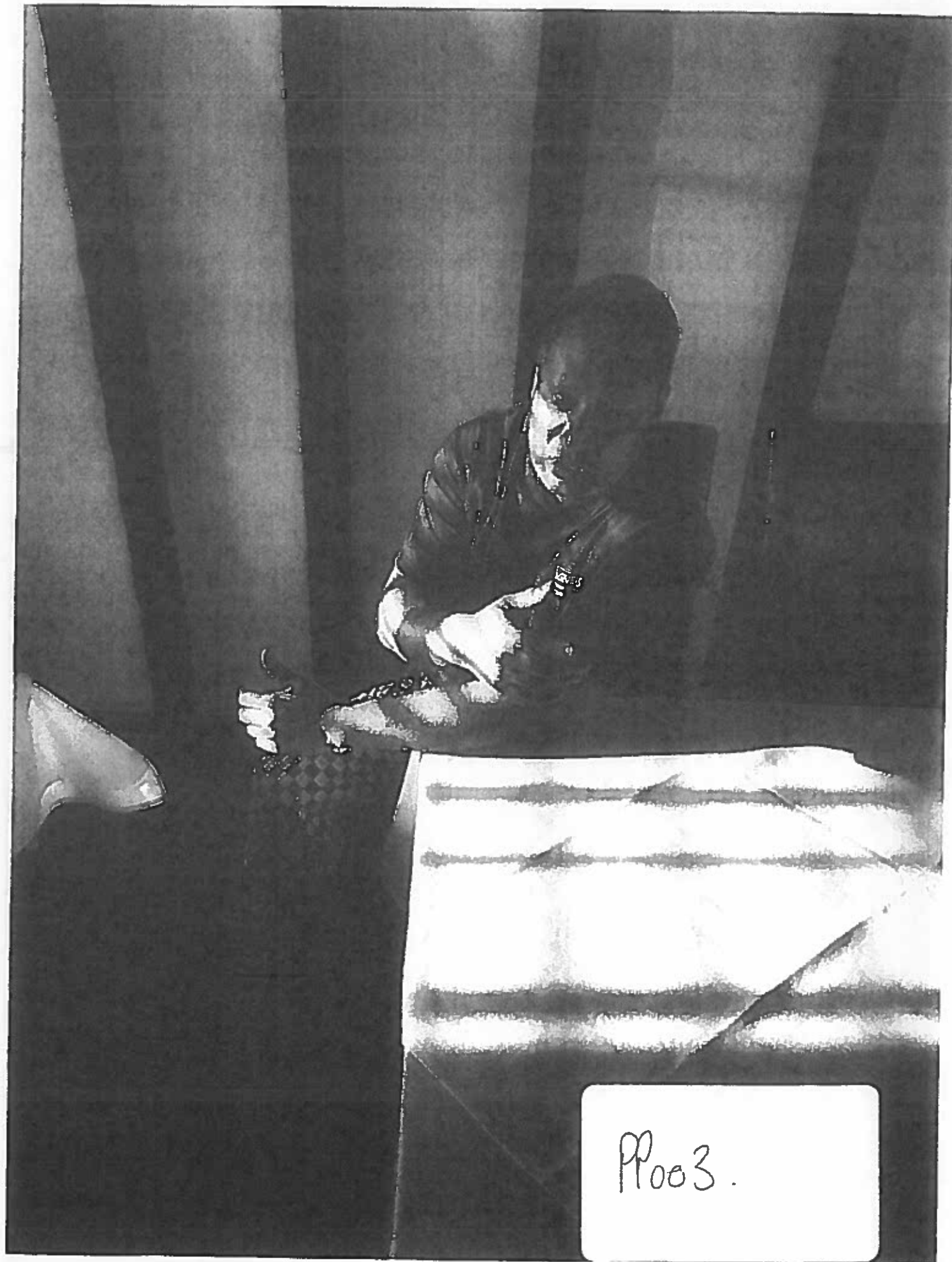
- Other premises linked (x2) -  
 x6 offenders located x2 ADPLs  
 served. £85k fines  
 CNF - no issues. PNC no issues.  
 Entry x4 men in kitchen x1 room  
 x3 BGD, x3 BGD, making  
 1922 Airmanes to VG (Ch80) - space  
 for x2 males requested  
 1926 CPCT Notice completed / served by  
 OIC on PIC - Mr [REDACTED] - per  
 x3 illegal workers.  
 Chelmsford ✓ CMI INF for custody.  
 1928 All officers exit  
 1928 Arrive Chelmsford Custody  
 2005 No incidents en route  
 and VG glazed.  
 2200 Depart Custody - Heavy traffic  
 M25.  
 0040 Arrive ICE  
 0115 End. - A/CIO [REDACTED]



PPool.









Immigration  
Enforcement

# Referral Notice

## Illegal Working Civil Penalty

Employer name: [REDACTED]

Employer registered address: [REDACTED]

This is an important notice. Please do not ignore it. Your case will be referred for consideration of your liability for a civil penalty.

This Referral Notice is issued in respect of (a) suspected breach(es) under section 15 of the Immigration, Asylum and Nationality Act 2006.

Business type: Sole-Trader/Limited Company  
Franchise/Other.....

Tasking Reference: TS31EAX1178

Notice given date: 06/06/18

VAT No: 221 04 18 68

Company number:

Issued to: [REDACTED]

Director(s)/Owner(s): [REDACTED]

Position: ASSISTANT MANAGER

### We have encountered suspected illegal working

We encountered (a) suspected breach(es) of section 15 on 06/06/18 at the following business address:

ZARA INDIAN CUISINE  
THE HAYLHILL HILL, STEEPLE 201  
MILTOND CHARLTON CHS 666

### Who we suspect of working illegally

	Names of suspected illegal workers	Nationality	DOB	Reason
1	[REDACTED]	BGD	[REDACTED]	No right to work/Working in-breach.
2	[REDACTED]	BGD	[REDACTED]	No right to work/Working in breach
3	[REDACTED]	BGD	[REDACTED]	No right to work/Working in breach
4				No right to work/Working in breach
5				No right to work/Working in breach
6				No right to work/Working in breach
7				No right to work/Working in breach
8				No right to work/Working in breach

#### Reason for referral

Your case will be referred to the Home Office's Civil Penalty Compliance Team which will consider your liability for a civil penalty for employing the identified suspected illegal worker(s). It is illegal to employ an adult subject to Immigration control if he has not been granted leave to enter or remain in the UK or his leave to enter or remain is invalid or has ceased to have effect, or he is subject to a condition preventing him from accepting the employment in question.

#### What this means

The Civil Penalty Compliance Team will consider whether you are liable for a civil penalty, and if so your penalty level.

- A **Civil Penalty Notice** will be issued if you are found liable. This Notice will require you to pay a penalty for a specified amount by a specified due date.
- A **Warning Notice** may be issued if you meet the mitigating criteria set out in our **Code of practice on preventing illegal working** which is on [www.GOV.UK](http://www.GOV.UK).
- A **No Action Notice** will be issued if you are not liable for a civil penalty. This Notice will inform you that no civil penalty action will be taken against you on this occasion, and that your case has been closed.



<b>What happens next</b>	<p>You will receive an <b>Information Request</b> which requires you to provide information and evidence. You will be asked to confirm your business details and provide documentary evidence to demonstrate that you carried out the required right to work checks on the workers named in this <b>Referral Notice</b>. You will also be asked to provide the unique Home Office reference number you received if you reported your suspicions about these people working illegally to us. It is important that you respond to this request accurately, in full and before the deadline given in the <b>Information Request</b>, as this evidence will inform our decision in your case. You should respond to this request using the <b>Response Form</b> you will receive from us. <b>If you actively co-operate with us in our investigations, any penalty for which you may be liable may be reduced.</b></p>
<b>What factors do we consider</b>	<p>We will consider the following factors when looking at your case:</p> <ol style="list-style-type: none"> <li>1. Are you liable for a civil penalty? You will have established an excuse against liability and will not be served with a civil penalty if you have correctly carried out document checks as set out in our <b>Code of practice on preventing illegal working</b>.</li> <li>2. Have you been found to be employing illegal workers within the previous three years? This factor determines your breach level and the civil penalty calculator to be used in determining your penalty amount if you are found liable for employing illegal workers.</li> <li>3. Have you reported suspected illegal working to us? This mitigating factor is considered when determining your penalty amount. You must have reported your suspicions about the workers in question before any visit by us is made known to you.</li> <li>4. Have you actively co-operated with us? This mitigating factor is considered when determining your penalty amount. You must have complied accurately and timely with our investigations, and provided us with access to your premises, records and systems.</li> <li>5. Do you have effective document checking practices in place? This mitigating factor is considered when determining whether you will be issued with a <b>Warning Notice</b> instead of a <b>Civil Penalty Notice</b>. It is only taken into consideration when you have not been found to be employing illegal workers within the previous three years, and where there is mitigating evidence for factors 2 and 3 above.</li> </ol> <p>You can find out more about how these factors are considered in calculating your civil penalty in our <b>Code of practice on preventing illegal working</b> which is on <a href="http://www.GOV.UK">www.GOV.UK</a>.</p>
<b>What you do if you receive a penalty</b>	<p><b>If you receive a Civil Penalty Notice you must either pay the penalty or object within 28 days.</b> If you do not either pay your penalty or object by the due dates, enforcement action will be taken against you to recover the debt through the courts. This may have an adverse impact on your ability to obtain credit in the future and act in the capacity of a director in a company. The <b>Civil Penalty Notice</b> will set out why you are liable to pay a penalty and the amount. It will also set out how you should pay and by when or, if you wish to object, how you should do this and by when.</p>
<b>What amount might you have to pay</b>	<p>The maximum penalty amount you could receive is <b>£20,000 per illegal worker</b>. We will take into account a number of factors which may reduce the amount you are required to pay. These are set out in our <b>Code of practice on preventing illegal working</b>.</p>
<b>If you need more information</b>	<p>You can call our helpline on 0300 123 4699 if you have any questions. You can visit our website on <a href="http://www.GOV.UK">www.GOV.UK</a> to view our <b>Code of practice on preventing illegal working</b> and guidance for employers, including guidance which sets out how we administer illegal working civil penalties. You can use our online employers' toolkit to help you understand your responsibilities and how to carry out the correct right to work checks on your employees.</p>



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# **AN EMPLOYER'S GUIDE TO RIGHT TO WORK CHECKS**

16 August 2017

Produced by the Home Office

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# 1. Introduction

The ability to work illegally is a key driver of illegal migration; it encourages people to break the UK's immigration laws and provides the practical means for migrants to remain unlawfully in the country. It encourages them to take risks by putting their lives in the hands of unscrupulous people smugglers and leaves them vulnerable to exploitative employers. Illegal working results in businesses that are not playing by the rules, undercutting legitimate businesses that are. It also negatively impacts on the wages of lawful workers and is linked to other labour market abuse such as tax evasion, breach of the national minimum wage and exploitative working conditions.

All employers, irrespective of size or sector, are required to prevent the employment of illegal workers. They should fulfill this duty by carrying out a simple 3 step check to confirm that a potential employee is entitled to work in the UK.

The law on preventing illegal working is set out in sections 15 to 25 of the Immigration, Asylum and Nationality Act 2006 (the 2006 Act) and sections 24 and 24B of the Immigration Act 1971.

The 2006 Act replaced section 8 of the Asylum and Immigration Act 1996 (the 1996 Act) in respect of employment commencing on or after 29 February 2008. Under section 15 of the 2006 Act, an employer may be liable for a civil penalty if they employ someone who does not have the right to undertake the work in question. They may be excused from paying a penalty if they carry out prescribed document checks on people before employing them to ensure they are lawfully allowed to work. These checks should be repeated in respect of all those who have time-limited permission to work in the UK.

On 16 May 2014, changes came into force to strengthen and simplify the civil penalty scheme for employers, and this included some changes to the document checks employers are required to undertake to be excused from paying a civil penalty liability. This guidance was last amended in July 2016.

## Summary of changes in this issue of the guide

The most significant updates contained in this guidance relate to:

- (i) Application Registration Cards (ARC) which are now issued as biometric documents containing an expiry date;
- (ii) advice in respect of those who claim to have a right to work as a non European Economic Area (EEA) family member of an EEA national;
- (iii) advice in respect of voluntary work and being a volunteer;
- (iv) illegal working measures introduced by the Immigration Act 2016: closure notices and compliance orders, and immigration checks in the licensing regimes for taxis and private hire vehicles and alcohol and late night refreshment; and

- (v) the employment of international students.

## For whom is this guide relevant?

**This guide applies to checks required on or after 16 May 2014** to establish or retain an excuse from having to pay a civil penalty for employing a person who is not permitted to work for you.

Where the employment commenced on or after 29 February 2008 and a statutory excuse was established for the duration of that person's employment before 16 May 2014, the document checks set out in the 'Full guide for employers on preventing illegal working in the UK' published in October 2013 continue to apply.

This guide applies to employers who employ staff under a contract of employment, service or apprenticeship, whether expressed or implied and whether oral or in writing. However, even if you are not the direct employer of the workers involved in your business, there are compelling reasons why you should seek to know that your workers have a right to work. If illegal workers are removed from your business, it may disrupt your operations and result in reputational damage. There could be adverse impacts on your health and safety and safeguarding obligations, as well as the potential invalidation of your insurance if the identity and skill levels of your workers are not as claimed. Accordingly, you should check that your contractors conduct the correct right to work checks on people they employ. You may also wish to use this guidance when you use workers who have a genuine self employment status.

## How should this guide be used?

This guide sets out what an employer needs to know about conducting right to work checks. It provides guidance on what right to work checks are and why it is important that employers do them. It also explains on whom an employer needs to make checks, how frequently they should perform the checks, and how to do the checks correctly.

This guide has been issued alongside other guidance, Codes of Practice and tools. This collection comprises:

- The online interactive tool 'Check if someone can work in the UK';
- The online interactive tool 'Employer Checking Service Enquiries';
- Carry out a right to work check: a 3 step guide;
- An employer's 'Right to Work Checklist';
- Acceptable right to work documents: an employer's guide;
- Frequently asked questions;
- Code of practice on preventing illegal working: Civil penalty scheme for employers;
- Code of practice for employers: Avoiding unlawful discrimination while preventing illegal working; and
- An employer's guide to the administration of the civil penalty scheme.

They can be found on the illegal working penalties page of GOV.UK.

## Who should read this guide?

Employers, including their Human Resource staff and those staff within the same business with delegated responsibility for the recruitment and employment of individuals, should read this guide to understand their responsibility to correctly carry out right to work checks, and therefore ensure compliance with the law.

## References in this guide

'We' or 'us' in this guide mean the Home Office. References to 'you' and 'your' mean the employer.

'Days' means calendar days, i.e. including Saturdays, Sundays and bank holidays.

'Employee' means someone who is employed under a contract of employment, service or apprenticeship. This can be expressed or implied, oral or in writing.

'Breach' or 'breaches' mean that section 15 of the Immigration, Asylum and Nationality Act 2006 has been contravened by employing someone who is:

- subject to immigration control; and
- aged over 16; and
- not allowed to carry out the work in question because either they have not been granted leave to enter or remain in the UK or because their leave to enter or remain in the UK:
  - is invalid;
  - has ceased to have effect (meaning it no longer applies) whether by reason of curtailment, revocation, cancellation, passage of time or otherwise; or
  - is subject to a condition preventing them from accepting the employment.

A breach also refers to the contravention of the Accession of Croatia (Immigration and Worker Authorisation) Regulations 2013.

'Employment of illegal workers within the previous three years' means you have been issued with a civil penalty or warning notice in respect of a breach of the Act or the Accession of Croatia Regulations 2013 for one or more workers which occurred within three years of the current breach and where your liability was maintained following the exercise of any objection and/or appeal, or you have committed an offence under section 21 of the 2006 Act, as amended by the 2016 Act, during the same period.

'A current document' means a document that has not expired.

## 2. What is a right to work check?

As an employer, you have an important role to play in preventing illegal working by undertaking simple checks on your employees' right to work in the UK.

A right to work check means that you check a document which is acceptable for showing permission to work. You must do this **before** you employ a person to ensure they are legally allowed to do the work in question for you. It is not enough to simply undertake the check on the first day of employment if the employment has already started. You are also required to conduct a follow-up check on people who have time-limited permission to work in the UK.

Checking a person's documents to determine if they have the right to carry out the type of work you are offering comprises three key steps:

1. **Obtain** the person's original documents as specified in this guidance;
2. **Check** the validity of the documents in the presence of the holder; and
3. **Make and retain a clear copy**, and make a record of the date of the check.

You are responsible for conducting the visual inspection of the documents presented to you. You are only required to verify someone's right to work with our Employer Checking Service in three specified circumstances. These are set out in the section on our verification checks.

You can find detailed information on how to correctly conduct right to work checks and a list of acceptable documents later in this guidance. A separate document: 'An employer's guide to acceptable right to work documents' contains example images of the documents contained in the lists.



### 3. Why do you need to do checks?

As an employer, you have a duty to prevent illegal working. You should conduct document checks to make it harder for people with no right to work in the UK to unlawfully obtain or stay in employment, and to make it easier for you to ensure that you only employ people who have permission to do the work in question.

It is illegal to employ someone aged 16 or over subject to immigration control and who is not allowed to undertake the work in question.

If you carry out document checks as set out in this guide, you will have a **statutory excuse** against a liability for a civil penalty. This means that if we find that you have employed someone who does not have the right to work, but you have correctly conducted document checks as required, you will not receive a civil penalty for that illegal worker.

As the employer, you are liable for the civil penalty even if the actual check is performed by a member of your staff. You are unable to establish a statutory excuse when the check is performed by a third party, such as a recruitment agency, if you are the employer.

If you fail to carry out these checks correctly, or at all, and you are found employing someone illegally, we will take tough action against you. In this respect, we have strengthened our legislation and operational enforcement response to illegal working and it is now highly likely that employers and workers involved in illegal working will be detected and tough sanctions will be applied. Illegal working is increasingly being tackled through a 'whole government approach', with greater co-ordination across agencies in government, including HMRC, to ensure that illegal working is detected more effectively, through the sharing of intelligence and joint enforcement operations. More and more frequently, government departments are sharing data to prevent or stop access to benefits, services and work by people who are disqualified by reason of their immigration status. When illegal working is identified, the fullest range of sanctions is applied.

If you know or have reasonable cause to believe that you are employing someone who is not allowed to carry out the work in question, you will not have a statutory excuse, regardless of whether you have conducted document checks.

You will commit a **criminal offence** under section 21 of the 2006 Act, as amended by section 35 of the Immigration Act 2016, if you **know or have reasonable cause to believe that you are** employing an illegal worker. You may face up to 5 years' imprisonment and/or an unlimited fine.

We will determine the level of your breach and the amount of any civil penalty for which you may be liable will be determined on a case-by-case basis. In doing so, we will refer to the **Consideration Framework** and **Civil Penalty Calculator** set out in our 'Code of practice on preventing illegal working: Civil penalty scheme for employers' published in May 2014. If you are found liable, you will be issued with a **Civil Penalty Notice** setting out the total penalty amount you are required to pay, and the date by which you must pay it. It will also inform you how you can exercise your right to object, following which you will be able to appeal.

The employer must always object against the penalty notice before appealing to the court, except if served with a penalty notice for a higher amount following an objection.

Further information is contained in the 'Employer's guide to the administration of the civil penalty scheme' which sets out in more detail the stages of the civil penalty process, how the penalty is calculated, the range of notices you may receive and the deadlines by which you need to take action at each stage.

## Wider sanctions against illegal working

If you are an employer who is subject to immigration control, you should also be aware that if you are liable for a civil penalty, this will be recorded on Home Office systems and may be taken into account when we consider any future immigration application that you make.

If you are liable for a civil penalty, it could also affect your ability to sponsor migrants who come to the UK in the future, including those you wish to work for you under Tiers 2 or 5 of the Points Based System, or to hold a Gangmaster's licence. If an employee is undertaking a role which is different from that for which the certificate of sponsorship was issued and permission to enter or remain was granted, you are employing the worker illegally. Further information on sponsoring migrants may be found [here](#). Having a civil penalty may also affect your ability to obtain or retain a licence in the private hire and taxi sector and the alcohol and late night refreshment sector.

### The offence of illegal working

Working illegally is a criminal offence. Illegal workers face having their wages seized. They may also be prosecuted and can be imprisoned for up to 6 months.

As a result of an amendment to the Immigration Act 1971 (Section 24B), it is now a criminal offence to work illegally in the UK. A person commits this offence if they require immigration permission to live and work in the UK and they work when they know, or have reasonable cause to believe, that they have no permission to do so. This means that they:

- have not been granted leave to enter or remain in the UK; or
- their leave to enter or remain in the UK
  - is invalid,
  - has ceased to have effect (whether by reason of curtailment, revocation, cancellation, passage of time, or otherwise), or
  - is subject to a condition preventing the person from doing work of that kind.

The offence has a wide reach. As well as work under a contract of employment, the offence of illegal working also applies to self employment, and covers both informal as well as formal working arrangements.

The new offence strengthens our ability to seize wages from illegal working as the proceeds of crime and to pursue the confiscation of assets. In England and Wales, the offence carries a maximum penalty of six months' imprisonment and/or an unlimited fine. In Scotland and Northern Ireland, the offence carries a maximum penalty of six months' imprisonment and/or a fine of the statutory maximum.

## The offence of employing an illegal worker

You will commit a **criminal offence** under section 21 of the 2006 Act, as amended by section 35 of the Immigration Act 2016, if you **know or have reasonable cause to believe that you are** employing an illegal worker. You may face up to 5 years' imprisonment and/or an unlimited fine.

The pre-existing offence of knowingly employing an illegal worker, set out in section 21 of the 2006 Act, was amended by section 35 of the 2016 Act. An employer can now be prosecuted for employing an illegal worker if they know, *or have reasonable cause to believe*, that the person has no right to do the work in question. This means that it is no longer necessary for Immigration Enforcement to prove that the employer *knew* that the employee had no permission to work. The amended offence enables employers to be prosecuted where *they had reason to believe* the employment was illegal, but, for example, deliberately ignored information or circumstances that would have given the employer reasonable cause to believe that the employee lacked permission to work. The maximum prison sentence for this offence has been increased from two to five years.

We will continue to apply the civil penalty as a sanction in most routine cases involving the employment of illegal workers. However, in more serious cases, prosecution may be considered where it is deemed the appropriate response to the non compliance encountered.

## Closure notices and compliance orders

The 2016 Act (Section 38 and Schedule 6) introduced illegal working closure notice and compliance order provisions to provide a power to deal with those employers who have continued to flout the UK's laws by using illegal labour where previous civil and/or criminal sanctions have not curbed their non-compliant behaviour.

The provisions commenced on 1 December 2016. The closure notice is a fast power which may be used to close premises for a limited time where an employer (or a person connected with the employer) operating at the premises is found to be employing illegal workers and has been previously non-compliant with illegal working legislation.

The notice prohibits access to the premises and paid or voluntary work on the premises, unless it is authorised in writing by an immigration officer. The closure notice does not prevent access to the premises by any person who habitually lives there. In addition to the issue of the notice, consideration will also be given to the service of penalties or prosecution for illegal working and other immigration offences.

Whenever an illegal working closure notice has been issued, and which has not been cancelled, an immigration officer must make an application by complaint to a Magistrates' Court for a compliance order. The application is sent to the court and served on the respondent before the hearing, and forms the basis of the application to the court for the compliance order. The aim of a compliance order is to prevent an employer operating at the premises from employing illegal workers. The employer is placed under special conditions to support compliance, as directed by the court, and may be inspected by immigration officers.

## Preventing illegal working in licensed sectors

The 2016 Act amended existing licensing regimes in high risk sectors of the economy (private hire vehicles and taxi sector and the alcohol and late night refreshment sector). Licences will not be issued to those who break the UK's immigration laws, and may be revoked where an existing licence holder commits immigration crime or receives a civil penalty for employing illegal workers.

Since 1 December 2016, immigration checks have been a mandatory part of the licensing regime for taxis and private hire vehicles. Applicants need to provide evidence of their right to work in the UK and licences will not be issued to those who do not have the right to work. Where immigration permission is time-limited, a licence will not be issued for a period that exceeds this period. Where the holder of a licence breaches immigration laws or receives a civil penalty, this will be grounds for licensing authorities to review, suspend or revoke a licence. If immigration permission is curtailed (cut short), the holder of the licence will be committing an offence if they do not return the licence to the licensing authority, for which they may be fined.

The 2016 Act amended the Licensing Act 2003 (the 2003 Act) to make immigration checks a mandatory part of the licensing regime for premises licensed to sell alcohol and late night refreshment (food and hot drinks served between 2300 and 0500). Immigration offences and penalties are grounds on which a licence may be refused or revoked, and we are now a designated responsible authority. As a result, we are notified of premises and some personal licence applications in the same way as the police. This allows us to make representations when we believe that to grant a licence will be prejudicial to preventing immigration crime and illegal working in licensed premises. We now have the same power of entry as licensing enforcement officers to facilitate joint operations and inspections for immigration offences in relation to the licensable activity.

Provisions for England and Wales are set out in the amended 2003 Act and commenced in April 2017 in England and Wales. Equivalent provisions in regulations will be made for Scotland and Northern Ireland later in 2017.

If you fail to adequately carry out a right to work check and are found to have employed an illegal worker, you will face robust sanctions which could include:

- a civil penalty of up to £20,000 per illegal worker;
- a criminal conviction carrying a prison sentence of up to 5 years and an unlimited fine;
- closure of the business and an application for a court compliance order;
- disqualification as a director;
- not being able to sponsor migrants; and
- seizure of earnings made as a result of illegal working.

## 4. Who do you conduct checks on?

Do not simply check the status of those who appear to be migrants. Treat all potential employees in the same way.

You should conduct right to work checks on **all** potential employees. This means you should ask all people you are considering employing to provide you with their documents. To ensure that you do not discriminate against anyone, you should treat all job applicants in the same way at each stage of your recruitment processes.

You should not make assumptions about a person's right to work in the UK or their immigration status on the basis of their colour, nationality, ethnic or national origins, accent or length of time they have been resident in the UK.

The 'Code of practice for employers: Avoiding unlawful discrimination while preventing illegal working' aims to strengthen safeguards against unlawful discrimination when recruiting people and complying with your duty to conduct right to work checks. We strongly recommend that you refer to this Code when conducting document checks.

If you breach this Code of practice, it may be used as evidence in legal proceedings. Courts and Employment Tribunals may take account of any part of the Code relevant to matters of discrimination.

You may face a civil penalty if you do not carry out a check on someone you have assumed has the right to work for you, but is found to be an illegal worker.

## 5. How do you conduct checks?

Remember to obtain, check and copy the appropriate documents. By doing so, and recording the outcome, you will prevent liability for a civil penalty.

There are three basic steps to conducting a right to work check. Remember three keywords:

1. Obtain
2. Check
3. Copy

Further information is contained in Frequently Asked Questions.

### Illustration 1: Summary of a right to work check

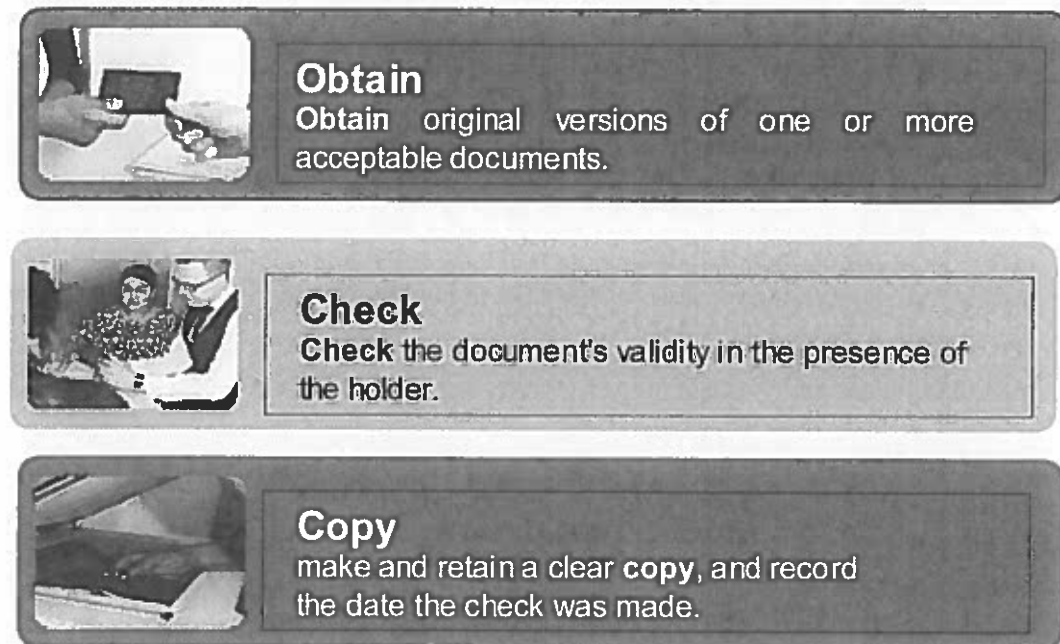


Illustration 2 explains in more detail what you need to do in each of the 3 steps to correctly conduct a check, and establish a statutory excuse.

## Illustration 2: The 3-Step Check

### Step 1 Obtain

You must obtain **original** documents from either **List A** or **List B** of acceptable documents at Annex A.

### Step 2 Check

You must **check** that the documents are genuine and that the person presenting them is the prospective employee or employee, the rightful holder and allowed to do the type of work you are offering. You must check that:

1. photographs and dates of birth are consistent across documents and with the person's appearance in order to detect impersonation;
2. expiry dates for permission to be in the UK have not passed;
3. any work restrictions to determine if they are allowed to do the type of work on offer (for **students** who have limited permission to work during term-times, you **must** also obtain, copy and retain details of their academic term and vacation times covering the duration of their period of study in the UK for which they will be employed);
4. the documents are genuine, have not been tampered with and belong to the holder; and
5. the reasons for any difference in names across documents (e.g. original marriage certificate, divorce decree absolute, deed poll). These supporting documents must also be photocopied and a copy retained.

### Step 3 Copy

You must make a **clear copy** of each document in a format which cannot manually be altered, and retain the copy securely: electronically or in hardcopy. You must also retain a secure record of the date on which you made the check.

You must copy and retain:

1. **Passports:** any page with the document expiry date, the holder's nationality, date of birth, signature, leave expiry date, biometric details, photograph and any page containing information indicating the holder has an entitlement to enter or remain in the UK (visa or entry stamp) and undertake the work in question (the front cover no longer has to be copied).
2. **All other documents:** the document in full, including both sides of a Biometric Residence Permit, Application Registration Card and a Residence Card (biometric format).

You must retain copies securely for not less than two years after the employment has come to an end. The copy must then be securely destroyed.

We recommend you use our:

- employers' 'Right to Work Checklist' to ensure you have correctly carried out all the steps you need to; or
- use our online interactive tool 'Check if someone can work in the UK' which will take you through the process by asking you a series of questions.

Both will help you confirm that you have undertaken each step correctly to establish your statutory excuse.



## Step 1: Acceptable documents

The documents you may accept from a person to demonstrate their right to work are set out in two lists – List A and List B. These are set out in Annex A to this guidance. You must obtain an original document or document combination specified in one of these lists in order to comply with **step 1** of the 3-step check.

**List A** contains the range of documents you may accept for a person who has a permanent right to work in the UK. If you conduct the right to work checks correctly before employment begins, you will establish a continuous statutory excuse for the duration of that person's employment with you. You do not have to conduct any further checks on this individual.

**List B** contains a range of documents you may accept for a person who has a temporary right to work in the UK. If you conduct the right to work checks correctly you will establish a time-limited statutory excuse. You will be required to conduct a follow-up check in order to retain your statutory excuse. This should be undertaken in the same way as the original check.

More detailed information about all of these acceptable documents, together with examples of what they look like can be found in 'An employer's guide to acceptable right to work documents'.

Ensure you obtain an original document that is contained in list A or list B, including a passport or biometric residence permit.

## Step 2: Checking the validity of documents

When you are checking the validity of the documents, you must ensure that you do this in the presence of the holder. This can be a physical presence in person or via a live video link. In both cases you must be in physical possession of the original documents. You may not rely on the inspection of the document via a live video link or by checking a faxed or scanned copy of the document.

The responsibility for checking the document is **yours**. Whilst it may be delegated to your members of staff, you will remain liable for the penalty. You may not delegate this responsibility to a third party. Whilst you may use a third party to provide support in terms of technical knowledge or specialised equipment to prevent the employment of illegal workers, the responsibility of performing the check to prevent a civil penalty liability will remain with you as the employer.

If you are given a false document, you will only be liable for a civil penalty if it is **reasonably apparent** that it is false. This means that a person 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 realise that the document in question is not genuine.

You will not obtain a statutory excuse if:

- the check is performed by an individual who is not employed by you;

- it is reasonably apparent that the person presenting the document is not the person referred to in that document, even if the document itself is genuine. You may be liable to prosecution if you know or have reasonable cause to believe that the individual does not have immigration permission to work;
- you know that the individual is not permitted to undertake the work in question; or
- you knew that the documents were false or did not rightfully belong to the holder.

In order to establish a statutory excuse, you are required only to conduct an examination of the document and to check this against the holder of that document. You may, however, wish to consider using commercially available document validation technology to help check the authenticity of biometric documents presented to you, notably passports and biometric residence permits (BRPs). Guidance about using such technology is available [here](#).

You may also wish to read the online guidance about recognising fraudulent identity documents. Further advice about document fraud and illustrations of documents which are suitable for right to work checks are available in the 'Employer's guide to acceptable right to work documents'. Guidance on examining identity documents may be found [here](#).

If someone gives you a false document or a genuine document that does not belong to them, you should use this link to report the individual to us, or call our Sponsorship, Employer and Education Helpline on **0300 123 4699**, (Monday to Thursday, 9am to 5pm, Friday, 9am to 4:30pm).

If you do not employ the person, or you have employed them having made the correct checks, you will be excused from paying a civil penalty.

### Step 3: Retaining evidence

You must keep a record of every document you have checked. This can be a hardcopy or a scanned copy in a format which cannot be manually altered, such as a jpeg or pdf document. You should keep the copies securely for the duration of the person's employment and for a further two years after they stop working for you. You should also be able to produce these document copies quickly in the event that you are requested to show them to demonstrate that you have performed a right to work check and retain a statutory excuse. By doing this, we will be able to check whether you have complied with the law if we find that someone is, or has been working for you illegally.

You must also make a contemporaneous record of the date on which you conducted your check. This can be by either making a dated declaration on the copy or by holding a separate record, securely, which can be shown to us upon request to establish your statutory excuse. This date may be written on the document copy as follows: **'the date on which this right to work check was made: [insert date]'** or a manual or digital record may be made at the time you conduct and copy the documents which includes this information. You must be able to show this evidence if requested to do so in order to demonstrate that you have established a statutory excuse. You must repeat this process in respect of any follow up check.

You may face a civil penalty if you do not record the date on which the check was performed.

Simply writing a date on the copy document does not, in itself, confirm that this is the actual date when the check was undertaken. If you write a date on the copy document, you must also record the fact that this is the date on which you conducted the check.

## Additional evidence from students

International students are often able to work part-time during their studies in the UK and full-time during their vacations and any period of time between completing their studies and the expiry of their permission to be in the UK. Some international students have no right to work at all. **Annex B** contains further information about permitted employment for students.

Where a student has permission to study under Tier 4 of the Points Based System, their conditions allow them to work when they are "following a course of study":

- at the appropriate academic level; and
- with a sponsor of the specified academic status that permits them to work the number of hours that they are working.

Their entitlement to work full time during vacations and during the period of permission that is granted before a course begins and after the course ends only applies if they are following, or have completed, the required course of study.

When you conduct checks and are presented with documents indicating that the holder is a student with a limited right to work in the UK during term time, you are required to obtain and retain evidence of their academic term and vacation dates. This will make it easier for you to know when an international student employee may work part-time for you, and when they are permitted to work full-time.

You should request this evidence from the student. This evidence should originate from the education institution which is sponsoring the student. You may obtain the dates for the entire duration of the course or, if this is not possible, you may obtain and copy them annually providing the information you hold is current at the time of the student's employment.

We consider acceptable evidence to be one of the following:

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

We would expect the evidence in paragraph (i) above to be readily available for most students and therefore will be provided to you in most cases. In exceptional circumstances, for example where the student is following a course timetable which differs from that published, you may need to obtain bespoke evidence from the sponsor. It is important to remember that you require this evidence in order to establish and retain a statutory excuse against a civil penalty and we may check this evidence.

You may face a civil penalty if your Tier 4 student employee exceeds the maximum period they are permitted to work during term time in any given period of a week running from Monday to Sunday.

Where you are employing a student on a **work placement** which forms an integral part of their course (see Annex B of this guidance for further details), you may have a written agreement with the student's education institution about the work placement. You are strongly advised to retain this agreement as evidence that the student's work placement with you does not exceed the time permitted for this activity.

Further information on Tier 4 students, including work placements, may be found [here](#).

## When to contact the Home Office to verify right to work

When conducting checks on someone's has the right to work in the UK, you are required to contact us to establish or retain your statutory excuse in the following circumstances:

1. You are presented with a Certificate of Application which is less than six months old and which indicates that work is permitted; or
2. You are presented with an Application Registration Card stating that the holder is permitted to undertake the work in question. This will be restricted to employment in a shortage occupation; or
3. You are satisfied that you have not been provided with any acceptable documents because the person has an outstanding application with us which was made before their previous permission expired or has an appeal or administrative review pending against our decision and therefore cannot provide evidence of their right to work.

In the above circumstances, you will establish a statutory excuse only if you are issued with a **Positive Verification Notice** from us confirming that the named person is allowed to carry out the type of work in question.

### Certificate of Application

You must check the original Certificate of Application which is not more than six months old in the usual way. You must make a copy of this document and retain this copy, together with the Positive Verification Notice. In so doing, you will have a statutory excuse for six months from the date stated in the Positive Verification Notice. A Positive Verification Notice will not provide a statutory excuse if you know that the employment is not permitted. In such circumstances, you will also be committing a criminal offence.

## Application Registration Card and asylum seekers

Since July 2017, new upgraded Application Registration Cards (ARC) have been issued to new asylum applicants through a gradual rollout. The ARC is the identification card used by asylum applicants to demonstrate they have made an asylum claim. The new ARC closely resembles the BRP. It includes new security features, a biometric facial image and an expiry date. Whilst the earlier version of the ARC is no longer being issued, the cards already in circulation will continue to be valid until 2019.

Asylum claimants are not normally allowed to work whilst their claim is being considered. They are instead provided with accommodation and support to meet their essential living needs if they would otherwise be destitute. We may grant permission to work to asylum seekers whose claim has been outstanding for more than 12 months through no fault of their own. Anyone who is permitted to work on the basis of this policy is restricted to working in a job on the shortage occupation list published by the Home Office. Their ARC will state **“work permitted shortage OCC”**. Any permission to work granted will come to an end if their claim is refused and any appeal rights are exhausted because at that point they are expected to leave the UK. Anyone who is granted permission to remain in the UK as a refugee has unrestricted access to the labour market.

You may accept a new biometric style or an old style ARC as an evidence of a right to work provided you verify the right to work and any work restrictions by obtaining a Positive Verification Notice issued by our Employers Checking Service. This excuse will expire six months from the date of the Positive Verification Notice when a further check must be undertaken if the statutory excuse is to be retained.

If you receive a Negative Verification Notice from the Employer Checking Service, which informs you that the individual does not have the right to work, if you employ this person you will not have a statutory excuse and may be liable for a civil penalty or be committing a criminal offence. Further information about employing asylum seekers may be found [here](#).

**Note:** Do not make a request of the Employer Checking Service in the case employment that commenced before 29 February 2008 and has been continuous ever since. You will receive a Negative Verification Notice because this employment is out of scope of the civil penalty scheme.

To find out if you need to request a verification check from the Employer Checking Service and to make that check you should use the online tool 'Employer Checking Service Enquiries'.

## Outstanding applications, appeals and administrative reviews

If you request verification from the Employer Checking Service because the employee or potential employee has an outstanding application with the Home Office or appeal or administrative review against a Home Office decision, you should wait at least **14 days** after the application, appeal or administrative review has been delivered or posted to us or the court, before requesting a verification check. This is because it takes this amount of time for most applications, appeals or administrative reviews to be registered with the Home Office.

In order to make the verification request with the Employer Checking Service, you must obtain confirmation from your employee or potential employee of when the application,

appeal or administrative review was made to the Home Office. This information must be included in the request form.

The Employer Checking Service aims to provide a response within **5 working days** of receiving a valid request. It is your responsibility to inform the person you intend to employ, or continue employing, that you are carrying out this check on them, to complete the verification request correctly and to make the request at least 14 days after the date of the application, appeal or administrative review was delivered or posted.

## Biometric Residence Permits

The Home Office began rolling out Biometric Residence Permits (BRPs) in November 2008. Since July 2015, BRPs are the only evidence of lawful residence currently issued by the Home Office to most non-EEA nationals and their dependants granted permission to remain in the UK for more than six months. For migrants overseas, granted permission to enter the UK for more than six months, they are issued with a vignette (sticker) in their passport which will be valid for thirty days to enable them to travel to the UK. Following their arrival, they will have 10 days or before their vignette expires (whichever is later) to collect their BRP from the Post Office branch detailed in their decision letter. For most migrants granted permission to be in the UK, the BRP will be the document that demonstrates they have permission to work in the UK.

BRPs are credit-card sized immigration documents that contain a highly secure embedded chip and incorporate sophisticated security safeguards to combat fraud and tampering. BRPs therefore provide employers with a secure and simple means to conduct a right to work check.

BRPs provide evidence of the holder's immigration status in the UK. They contain the holder's unique biometric identifiers (fingerprints, digital photo) within the chip, are highly resistant to forgery and counterfeiting, display a photo and biographical information on the face of the document and details of entitlements, such as access to work and/or public funds.

Migrants permitted to work in the UK are strongly encouraged to collect their BRP before they start work. If they need to start work for you prior to collecting their BRP, they will be able to evidence their right to work by producing the short validity vignette in their passport which they used to travel to the UK. You will need to conduct a full right to work check on the basis of this vignette, which must be valid at the time of the check. However, as this will expire 30 days from issue, you will have to repeat the check using the BRP for the statutory excuse to continue.

If you employ someone on the basis of the short validity vignette and they are unable to present you with a BRP when the vignette time expires, you are not required to immediately terminate the employment if you believe the employee continues to have the right to work. However, once the 30 days has expired, you will not be able to establish a statutory excuse if it transpires that the employee is working illegally. You will also not know when the employee's permission to work expires. In addition, without the BRP, the individual will have no evidence of their right to be in the UK and their right to work here. They will also not be able to travel in or out of the country. It is therefore important that you conduct the follow up check using the BRP before the vignette expires.

## BRPs and National Insurance numbers

There is a gradual rollout of the combined BRP and National Insurance number (NINo) for migrants who have the right to work in the UK. This commenced with Tier 2 (skilled workers) main applicants who make an application in the UK, and is being extended to other categories.

By themselves, NINos do not provide evidence that someone has the right to work in the UK. However, adding the NINo to the BRP assists the employer in two ways. First, the BRP provides an employer with a secure and simple means of checking a migrant's right to work in the UK. Second, the provision of the NINo on the same document makes it easier for employers to meet their requirements to administer PAYE and national insurance.

## 6. When do you conduct checks?

You are required to carry out an **initial right to work check** on all people you intend to employ **before** you employ them. Once you have completed this check, you will be required to carry out **follow-up right to work checks** on this person if they have time-limited permission to be in the UK and to do the work in question.

You need to recheck the status of those individuals who have limited permission to work in the UK. This should occur when their previous permission comes to an end.

If a person provides you with acceptable documents from List A at Annex A there is no restriction on their right to work in the UK, so you establish a **continuous statutory excuse** for the duration of that person's employment with you. You are **not required** to carry out any further checks on this person.

If a person provides you with acceptable documents from List B there are restrictions on their right to work in the UK, so you will establish a **time-limited statutory excuse**. You **are required** to carry out follow-up checks on this person. The frequency of these follow-up checks depends on whether the documents you are provided with are from **Group 1** or **Group 2**.

**Group 1** documents provide a time-limited statutory excuse which expires when the person's permission to work expires. This means that you should carry out a **follow-up check when permission which demonstrates their permission to work expires**.

**Group 2** documents provide a time-limited statutory excuse which expires six months from the date specified in your Positive Verification Notice. **This means that you should carry out a follow-up check when this notice expires**.

Table 1 summarises when follow-up checks are required.

**Table 1: Follow-up Checks**

Document Type	Excuse Type	Frequency of Checks
List A	Continuous	Before employment starts only.
List B - Group 1	Time-limited	Before employment starts and again when permission (as set out in the document checked) expires.
List B – Group 2	Time-limited	Before employment starts and again after six months (as set out in the Positive Verification Notice).

If, on the date on which permission (as set out in the document checked) expires, you are reasonably satisfied that your employee has either:



- submitted an in time application to us to extend or vary their permission to be in the UK; or
- made an appeal or an administrative review against a decision on that application;

your statutory excuse will continue from the expiry date of your employee's permission for a further period of up to 28 days to enable you to obtain a positive verification from the Employers' Checking Service. This 'grace period' of 28 days does not apply where the right to work check is taking place before employment commences. In such circumstances, you should delay employing the migrant until you have received a Positive Verification Notice from our Employers' Checking Service.

If during this period of 28 days, your employee provides evidence that their application, appeal or administrative review has been determined with permission to remain granted together with the relevant acceptable document from List A or List B Group 1, you may establish your excuse by checking these documents in the normal way and a positive verification by the Employers' Checking Service will not be required. If, however, the documents provided are from List B Group 2, positive verification by our Employers' Checking Service will still be required for you to obtain a continuing excuse.

In respect of an appeal or administrative review, you should seek positive verification through our Employers' Checking Service. A letter from a solicitor indicating a successful appeal or administrative review or a copy of a successful court judgment will not provide you with a statutory excuse.

You can reasonably satisfy yourself of a pending application through, for example, a Home Office acknowledgment letter or a Home Office or appeal tribunal reference number, and proof of date of postage. If your employee cannot provide this evidence, this does not necessarily mean that they have not made an application, appeal or applied for an administrative review.

## In-time applications

A person's application for further immigration permission to stay in the UK must be made before their existing permission expires for it to be deemed 'in-time'. If so, any existing right to work will continue until that in-time application has been determined. In such circumstances, a Positive Verification Notice from our Employers' Checking Service would demonstrate your statutory excuse for six months from the date of the Notice. If you receive a Negative Verification Notice in response to your verification request, you will no longer have a statutory excuse and you will be liable for a civil penalty if the person is not permitted to work in the UK. You may also be convicted of the offence of employing an illegal worker.

**It is important that a person makes an application to the Home Office before their permission to be here expires because this has an impact on their right to work.**

## Appeals and Administrative Reviews

A Positive Verification Notice from our Employers' Checking Service will also be required to demonstrate a right to work where the person has an outstanding appeal or administrative review. It will provide a statutory excuse for six months from the date of the Notice.

Administrative reviews have replaced many rights of appeal where the applicant believes our decision to refuse their application incorrect. For decisions made in the UK, the review application must be made within 14 calendar days from notification of the decision. Any previous permission to work continues during the period that an administrative review can be made and, if made, will continue until the administrative review has been determined (decided or withdrawn). This will normally be within 28 days. You will need to obtain a Positive Verification Notice from our Employers Checking Service, to confirm that work is permitted. This Notice will provide you with a statutory excuse for six months from the date of the Notice.

Where an application for an administrative review is brought after the period for making an administrative review has expired, we may decide to accept the administrative review as valid. If so, any permission to work will continue **from the date** that the administrative review is valid. This will be confirmed by a Positive Verification Notice from the Employers' Checking Service. The migrant will not be permitted to work between the date that their previous permission to work time expired and the date we decide that the administrative review is valid.

Further detail on administrative reviews may be found [here](#).

## Transfer of undertakings

Transfer of Undertakings (Protection of Employment) (TUPE) regulations provide that right to work checks carried out by the transferor (the seller) are deemed to have been carried out by the transferee (the buyer). As such, the buyer will obtain the benefit of any statutory excuse acquired by the seller. However, if the seller did not conduct the checks correctly, the buyer would be liable for a penalty if an employee is later found to be working illegally. Also, a check by the buyer would be necessary to determine when any follow-up check should be carried out in respect of employees with limited permission to work in the UK. For these reasons, employers who acquire staff through TUPE regulations should undertake a right to work check on all new TUPE members of staff.

We recognise that there may be practical problems in undertaking these checks before the employment commences for workers acquired as a result of a TUPE transfer and for this reason a period of grace has been provided during which you should undertake the check. This period runs for 60 days from the date of the transfer of the business to correctly carry out their first statutory document checks in respect of these new TUPE employees. There is no such grace period for any subsequent follow-up checks.

## Changes in the Employer's legal constitution

Where the employer is a corporate body and there has only been a change in the employer's legal constitution e.g. a change from a private limited company to a public limited company or change from a partnership to a limited company or a limited liability

partnership or a TUPE transfer within the same group of companies, the right to work check does not need to be repeated because of this change. This is only the case when the employer is effectively the same entity and is only changing its legal status. Where there is any doubt, we recommend that the employer checks the person's right to work, rather than risking liability for a civil penalty should an employee be found to be working illegally.

## 7. Do you have any questions?

In the first instance, please refer to the Home Office guidance:

- The online interactive tool 'Check if someone can work in the UK';
- The online interactive tool 'Employer Checking Service Enquiries';
- Carry out a right to work check: a 3 step guide;
- An employer's 'Right to Work Checklist';
- Acceptable right to work documents: an employer's guide;
- Frequently asked questions;
- Code of practice on preventing illegal working: Civil penalty scheme for employers;
- Code of practice for employers: Avoiding unlawful discrimination while preventing illegal working; and
- An employer's guide to the administration of the civil penalty scheme.

If you cannot find the answer to your question, please contact our Sponsorship, Employer and Education **Helpline** on **0300 123 4699**.

## 8. Annex A

### Lists of acceptable documents for right to work checks

List A	
Acceptable documents to establish a continuous statutory excuse	
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.
2.	A passport or national identity card showing the holder, or a person named in the passport as the child of the holder, is a national of a European Economic Area country or Switzerland.
3.	A Registration Certificate or Document Certifying Permanent Residence issued by the Home Office to a national of a European Economic Area country or Switzerland.
4.	A Permanent Residence Card issued by the Home Office to the family member of a national of a European Economic Area country or Switzerland.
5.	A <b>current</b> Biometric Immigration Document (Biometric Residence Permit) issued by the Home Office to the holder indicating that the person named is allowed to stay indefinitely in the UK, or has no time limit on their stay in the UK.
6.	A <b>current</b> passport 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.
7.	A <b>current</b> Immigration Status Document issued by the Home Office to the holder with an endorsement indicating that the named person is allowed to stay indefinitely in the UK or has no time limit on their stay in the UK, <b>together with</b> an official document giving the person's permanent National Insurance number and their name issued by a Government agency or a previous employer.
8.	A <b>full</b> birth or adoption certificate issued in the UK which includes the name(s) of at least one of the holder's parents or adoptive parents, <b>together with</b> an official document giving the person's permanent National Insurance number and their name issued by a Government agency or a previous employer.
9.	A birth or adoption certificate issued in the Channel Islands, the Isle of Man or Ireland, <b>together with</b> an official document giving the person's permanent National Insurance number and their name issued by a Government agency or a previous employer.
10.	A certificate of registration or naturalisation as a British citizen, <b>together with</b> an official document giving the person's permanent National Insurance number and their name issued by a Government agency or a previous employer.

<b>List B</b>	
<b>Group 1 – Documents where a time-limited statutory excuse lasts until the expiry date of leave</b>	
1.	A <b>current</b> passport endorsed to show that the holder is allowed to stay in the UK and is currently allowed to do the type of work in question.
2.	A <b>current</b> Biometric Immigration Document (Biometric Residence Permit) issued by the Home Office to the holder which indicates that the named person can currently stay in the UK and is allowed to do the work in question.
3.	A <b>current</b> Residence Card (including an Accession Residence Card or a Derivative Residence Card) issued by the Home Office to a non-European Economic Area national who is a family member of a national of a European Economic Area country or Switzerland or who has a derivative right of residence.
4.	A <b>current</b> Immigration Status Document containing a photograph issued by the Home Office to the holder with a valid endorsement indicating that the named person may stay in the UK, and is allowed to do the type of work in question, <b>together with</b> an official document giving the person's permanent National Insurance number and their name issued by a Government agency or a previous employer.
<b>Group 2 – Documents where a time-limited statutory excuse lasts for 6 months</b>	
1.	A Certificate of Application issued by the Home Office under regulation 17(3) or 18A (2) of the Immigration (European Economic Area) Regulations 2006, to 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 <b>less than 6 months old together with a Positive Verification Notice</b> from the Home Office Employer Checking Service.
2.	An Application Registration Card issued by the Home Office stating that the holder is permitted to take the employment in question, <b>together with a Positive Verification Notice</b> from the Home Office Employer Checking Service.
3.	A <b>Positive Verification Notice</b> issued by the Home Office Employer Checking Service to the employer or prospective employer, which indicates that the named person may stay in the UK and is permitted to do the work in question.

# Annex B

## Employment of specific categories of workers

### Students

Not all international students (those from outside the European Economic Area (EEA) or Switzerland) are entitled to work while they are in the UK, but some are allowed to take limited employment providing the conditions of their permission to study permit this.

A student granted permission to be in the UK as a Tier 4 student who is permitted to work will have a clear endorsement in their passport or Biometric Residence Permit, which states they are permitted to work and the number of hours of work allowed during term time e.g. 10 hours or 20 hours in a week, considered to be Monday to Sunday. If this information is not set out in these documents, the student does not have the right to work. Students who have the right to work are permitted to work full-time during vacations.

Short-term students are not permitted to work, either in the term time or the vacation, or do a work placement.

### Work placements

Work placements are intended to enable the student to gain specific experience of working in the field for which they are studying. Work placements are distinct from any employment that a student may (if permitted) take while they are following a course of study.

Tier 4 students, including child students aged 16 or over, are allowed to undertake work placements where they are integral and related to the course and are assessed as part of the course. Where their Tier 4 sponsor is a Probationary Sponsor, such courses must be at least RQF level 6 or SCQF level 9. Activity as part of a course-related work placement is restricted to no more than one third of the total length of the course undertaken in the UK unless:

- the student is following a course at degree level or above and is sponsored by a Higher Education Institution (HEI) or by an overseas HEI to undertake a short-term Study Abroad Programme in the UK, in which case the work placement is restricted to no more than 50 per cent of the total length of the course; or
- the student is a child student aged 16 or over, in which case the work placement can form no more than 50 per cent of the total length of the course; or
- there is a statutory requirement for the course to include a specific period of work placement which exceeds this limit.

Tier 4 education sponsors should provide a **letter** addressed to you as the work placement provider confirming that the work placement forms an integral part of the course and does not, by itself or in combination with other periods of work placement, breach the above restrictions. The letter should also include the terms and conditions of the work placement, including the work that the student will be expected to do, and how and when they will be

assessed. You are strongly advised to obtain and retain such a letter as evidence of the work placement and evidence that the work placement restrictions have not been breached as you may be liable for a civil penalty if your student employee does not comply with their immigration conditions.

While your student employee is undertaking a work placement as required by their course, this period of placement is not included within the period of term time employment permitted by their immigration conditions.

Further information on Tier 4 students, including work placements, may be found [here](#).

## **Impact of a change in circumstances on a Tier 4 points based system student's right to work**

1. **The student has changed their sponsor** – If we grant the student permission to study with a different education sponsor, it will be clear whether work is permitted and for how long. If we do not grant permission see the advice below: 'student is in the process of changing their sponsor'.

2. **The student is in the process of changing their sponsor** – Under Tier 4 guidance a student may start a new course when:

- they have applied to us for permission to study with a Tier 4 sponsor which has Tier 4 Sponsor status; and
- their permission to study in the UK with the former sponsor is still valid; and
- their prospective Tier 4 sponsor has assigned a confirmation of acceptance for studies to them for the new course.

If all these criteria are met, the student is permitted to start the course with the new sponsor and can undertake employment in line with the current conditions which are attached to their permission to study once they have started the new course. If any of the criteria are not met, the student does not have permission to work and will be in breach of their immigration conditions if they do so.

3. **The student changes to a new course with the same sponsor** – If the new course is below the level of academic study which permits restricted work, the student will be working in breach of their immigration conditions if they do work. You should not employ them. If their new course results in a reduction of the number of hours the student is permitted to work, and they continue to work more than this number, they will be in breach of their immigration conditions.

4. **The migrant has stopped studying** – If the migrant has stopped studying before they complete their course (whether they have withdrawn themselves or been withdrawn by their education sponsor) they are no longer following the course of study and will therefore be in breach of their immigration conditions if they work, even if they still have permission to be in the UK. You should not employ them. The only exception to this will be if the criteria in the 'student is in the process of changing their sponsor' scenario (above) are met.

5. **The student has completed their course early** – Where a student is given permission to come to the UK to study, they are given a short period of time to stay in the



UK after their course ends. The student may work full time during this additional period. If the student completes their course early, we will normally vary the student's permission so that this short period of time to stay in the UK runs from the new course end date. If their permission to be in the UK has not been varied in this way but the person is found working beyond the additional period of time to stay that would apply to their new course end date, they will be in breach of their immigration conditions. In such circumstances, you should not employ them.

**6. The student's education sponsor has had their licence revoked or ceased trading** – The right to work is dependent on the student (i) following a course of study at the appropriate academic level and (ii) with a sponsor of the specified academic status. If the sponsor no longer has a sponsor licence because it has been revoked, the migrant can no longer meet this second requirement. If the sponsor has ceased trading, the migrant is unable to meet either requirement. In both cases, the migrant would be in breach of their conditions if they work and you should not employ them.

**7. The student continues to study but not with the named sponsor** - As indicated above, the right to work is dependent on the student being sponsored. Accordingly, the migrant would be in breach of their conditions if they work whilst they are not being educated by their sponsor (unless other conditions apply) and you should not employ them.

## Nationals from the European Economic Area (EEA) and their Family Members

The rights of EEA nationals and their family members to live and work in other EEA states are set out in European Union legislation, primarily Directive 2004/38/EC – known as ‘the Free Movement Directive’, by which all Member States are bound.

The EEA consists of the countries within the European Union together with Iceland, Liechtenstein and Norway. Switzerland is not part of the EEA. However, the same rights to live and work in other Member States have been extended to Swiss nationals and their family members, and you should carry out the same checks for them as set out in this guidance for EEA nationals and their family members. Throughout this section, any reference to an EEA national should be interpreted as also including Swiss nationals.

The relevant UK legislation is the Immigration (European Economic Area) Regulations 2016 (‘the EEA Regulations’) which sets out the rights of EEA and Swiss nationals and their family members.

### EEA nationals

EEA nationals have the right to work in the UK. However, you should not employ any individual simply on the basis that they claim to be an EEA national. You should also be aware that not all EEA nationals are permitted to work in the UK without restrictions (please see the section on Croatian nationals below).

You should require any person who claims to be an EEA national to produce an official document showing their nationality. This will usually be either a national passport or national identity card which indicates that the holder is a national of an EEA state.

**Registration Certificates:** some EEA nationals may also have been issued with a registration certificate. This is a document issued by us to confirm that they are living here in compliance with the EEA Regulations, either by fulfilling the requirements for residence (also known as ‘exercising Treaty rights’) or by residing here as the family member of another EEA national who is exercising Treaty rights, or who has permanent residence.

**Document Certifying Permanent Residence:** some EEA nationals may be able to produce a document certifying that they have a right of permanent residence in the UK. Under EU law, an EEA national can acquire permanent residence after five years’ lawful and continuous residence in the UK.

All of these documents (passport establishing EEA nationality, national identity card establishing EEA nationality, registration certificate and document certifying permanent residence) are included in **List A** of acceptable documents, and production of any one of them will provide you with a continuous statutory excuse if checked and copied correctly **before** the person starts working for you.

## EEA nationals who may work without restriction:

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

Nationals of Switzerland may also work without restriction.

## Croatian nationals

Separate restrictions on Croatian nationals' access to the labour market are set out in the Accession of Croatia (Immigration and Worker Authorisation) Regulations 2013. Please refer to the 'Code of practice for employers civil penalties: illegal employment of a Croatian national'.

Since 1 July 2013, as EU nationals, Croatians have been able to move and reside freely in any EEA Member State. However, the UK has applied transitional restrictions on their access to the labour market. These are set out in the Accession of Croatia (Immigration and Worker Authorisation) Regulations 2013. Under these Regulations, a Croatian national who wishes to work in the UK and who is subject to the worker authorisation requirement will need to obtain an accession worker authorisation document (permission to work) before starting any employment.

This means that since 1 July 2013, a Croatian national will only be able to work in the UK if they hold a valid accession worker authorisation document (such as a purple registration certificate) or if they are exempt from work authorisation. Under the 2013 Regulations, you are required to carry out document checks to confirm if a Croatian national is either exempt from work authorisation or holds a valid worker authorisation document for the work in question. You should check, validate and keep dated copies of original acceptable documents before they start working for you. The list of exempt categories is contained in our guidance.

Croatian students who have been issued with a yellow registration certificate are only permitted to work for 20 hours a week during term time and full time during vacation periods. If you do not carry out these checks and you are found to be employing a Croatian national who does not have a right to work, you may be required to pay a civil penalty. If

you knowingly employ a Croatian national illegally, you will have committed a criminal offence.

You can find out more information on your duty under the Accession of Croatia Regulations 2013 in our separate Code of practice for employer civil penalties: illegal employment of a Croatian national.

## Non-EEA Family Members of EEA nationals

Non-EEA nationals who are the family members of an EEA (or Swiss) national who is exercising Treaty rights or has permanent residence, are also entitled to live and work in the UK.

You should not employ any individual simply on the basis that they claim to be the family member of an EEA national. You should also be aware that not all family members of EEA nationals are permitted to work in the UK without restrictions.

**Residence Cards:** Residence cards are issued by us to the non-EEA family members of EEA nationals who are exercising Treaty rights or have permanent residence in the UK. A valid residence card can be used to demonstrate that the holder has a right to work in the UK. Residence cards are included in **List B** of acceptable documents, and will provide you with a time-limited statutory excuse if they are current, and have been checked and copied correctly.

**Permanent Residence Cards:** Some non-EEA family members of EEA nationals may also be able to produce a permanent residence card, issued by us which indicates that they have lived in the UK for five years in compliance with the EEA Regulations. A permanent residence card, issued to a family member of an EEA national, is included in **List A** of acceptable documents, and will provide you with a continuous statutory excuse if checked and copied correctly.

**Accession Residence Cards:** Accession residence cards are issued by us to the **non-EEA family members of Croatian nationals** who are subject to worker authorisation requirements. Accession residence cards are included in **List B** of acceptable documents, and will provide you with a time-limited statutory excuse if checked and copied correctly **before** the person starts working for you. Accession Residence Cards will not be issued in a biometric format.

When the current residence card, permanent residence card, accession residence card or derivative residence card is inserted into the holder's national passport, there is no requirement for that passport to be current. However, you should ensure that the passport belongs to that person and take particular care checking the passport photograph if the passport is a number of years old. Since 6 April 2015, residence cards and permanent residence cards have been issued in biometric format. For more information please see Residence Cards (biometric format).

## Non-EEA Nationals with a Derivative Right of Residence

Some non-EEA nationals have what is called a 'derivative right of residence' in the UK based on their relationship with an EEA (or Swiss) national or a British citizen. This means

that these rights have been established by the Court of Justice of the European Union in cases where the non-EEA national's presence is necessary in order to enable the EEA national or British citizen to live here. For example, the non-EEA parent of an EEA child may meet the requirements. These rights only arise in a limited range of circumstances and only where the specific conditions are met. Non-EEA nationals with a derivative right of residence are entitled to reside and work in the UK. Derivative residence cards are in **List B** of acceptable documents, and will provide you with a time-limited statutory excuse if checked and copied correctly.

## **Residence Cards (biometric format)**

Since 6 April 2015, we have issued Residence Cards (including Permanent Residence Cards and Derivative Residence Cards) for non EEA family members in a biometric format. From this date we stopped issuing the vignette in the passport or standalone document, though these will continue to be acceptable documents for the purpose of right to work checks.

The new Residence Cards (biometric format) closely resemble Biometric Residence Permits. They are of a standard credit card size and contain the holder's digital image, name and signature, date and place of birth, nationality, gender, expiry date of card, place of issue, type of residence card (category of residence) and a unique number. They will also contain a biometric chip. The cards are more secure against forgery and abuse and therefore provide a helpful means to employers to conduct a right to work check.

A sample Residence Card (biometric format) may be found in 'Acceptable right to work documents: an employer's guide'. Current Residence Cards which are endorsed in passports or are standalone documents will continue to be valid until they expire. Accession Residence Cards will not be issued in a biometric format.

## **Certificate of Application**

Since 6 April 2015, an application by a non EEA Family Member of an EEA National for a Residence Card or Derivative Residence Card has only been considered valid at the point at which the applicant successfully enrolls their biometric information. Applicants will continue to receive an initial acknowledgement letter which will not demonstrate a right to work. Instead, they will have 15 working days in which to enrol their biometrics. If they fail to do so, they will be sent a reminder giving them a further 10 working days in which to enroll. If they fail to enroll their biometrics after the 10 days have passed, their application will be rejected as invalid.

Where the application is made by a direct family member who has successfully enrolled their biometric information and has submitted

- their valid passport; and
- the valid EEA passport or national identity card for the EEA national; and
- evidence of relationship to their EEA national; and
- evidence that the EEA national is exercising Treaty rights or has acquired permanent residence

the applicant will be issued with a Certificate of Application which states that the individual has a right to work in the UK whilst their application for a Residence Card or Derivative Residence Card is being considered. This Certificate of Application will only give you a statutory excuse if it is less than six months old and is accompanied by a Positive Verification Notice issued by our Employer Checking Service stating that the holder has permission to do the work in question. The excuse will last for six months from the date of the Positive Verification Notice.

Applicants who are not direct family members, or do not provide the required documents, will not receive a Certificate of Application that states that work is permitted.

If you are presented with a Certificate of Application that does not state that work is permitted, this will not demonstrate a right to work and our Employer Checking Service will provide a Negative Verification Notice.

If the employee or potential employee's Certificate of Application is more than six months old, but the individual's application for a Residence Card or Derivative Residence Card has not been finally determined, they can apply to the Home Office for a replacement Certificate of Application which will again be valid for six months. If work has been permitted, this work entitlement will be verified by the Employer Checking Service through a Positive Verification Notice.

## Additional information

Non-EEA nationals may claim to have a right to work in the UK as a family member of an EEA national, or by virtue of a derivative right, but do not hold documentation issued by us.

There is no mandatory requirement for non-EEA nationals who are resident in the UK as a family member of an EEA national, or who have a derivative right of residence in the UK, to register with us or to obtain documentation from us.

Consequently, it is open to any non-EEA national who has an enforceable European Union law right to work in the UK - as a direct family member<sup>1</sup> of an EEA national or by virtue of a derivative right of residence - to demonstrate the existence of that right through means other than those documents in Lists A and B which are explained in the preceding sections.

In such cases, you may choose to accept such alternative evidence. You should ask to see the following, **however, in so doing you will not establish a statutory excuse against a penalty** should the individual be found to be working illegally:

- evidence of the applicant's own identity – such as a passport; and
- evidence of their relationship with the EEA family member – e.g. a marriage certificate, civil partnership certificate or birth certificate, and
- evidence that the EEA national has a right of permanent residence in the UK or is one of the following if they have been in the UK for more than 3 months:

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<sup>1</sup> In this context 'family member' means a spouse, civil partner, child under 21 and dependent relative in the ascending line such as a parent or grandparent. Other relatives such as unmarried partners can only fall into the 'family member' category if they have been issued a Residence Card by the Home Office.

- (i) working e.g. employment contract, wage slips, letter from the employer; or
- (ii) self-employed e.g. contracts, invoices, or audited accounts; or
- (iii) studying e.g. letter from the school, college or university and evidence of sufficient funds; or
- (iv) self-sufficient e.g. bank statements.

For family members of EEA nationals who are studying or financially independent, you must also see evidence that the EEA national and any family members hold comprehensive sickness insurance in the UK. This can include a private medical insurance policy, an EHIC card or a S1, S2 or S3 form.

You must only accept original documents as evidence.

In such cases, you may choose to accept such alternative evidence. However, in the event that a non-EEA national is found not to qualify to work in the UK, you would be liable to payment of a civil penalty as you will not have established a statutory excuse unless you have also seen, copied and retaining a copy of the appropriate documents set out in Annex A of this guidance. Further guidance on EEA and non-EEA family members of EEA nationals can be found in the European casework instruction page on GOV.UK.

## Entrepreneur

A person granted immigration permission under Tier 1 of the Points Based Scheme as an entrepreneur **is not permitted to be employed**. They are only allowed to work for their own business. The endorsement in the passport or Biometric Residence Card will clearly state what they are permitted to do. The Biometric Residence Permit currently states:-

Front:

T1 HS ENTREPRENEUR  
LEAVE TO REMAIN  
RESTRICTED WORK  
BUS INVEST  
NO SPORTSPERSON

Reverse:

NO PUBLIC FUNDS

## Voluntary Work

Individuals who have been granted immigration permission to be in the UK are permitted to volunteer. This includes visitors who can volunteer for a registered charity for a maximum of 30 days during their visit, but volunteering cannot be the main purpose of their visit, and students. However, subject to the exception set out below, individuals who have limited permission to work in the UK may not carry out any voluntary work.

The legal distinction between volunteering and voluntary work can be quite complex. However, there are some key questions to consider when assessing whether an activity is voluntary work:

It is likely to be voluntary work if:

- there is an obligation on the individual to perform the work and in return an obligation on the organisation to provide it. The obligation does not have to be in writing.
- the individual is rewarded for that work, either through money or benefits in kind. An obligation to work or receipt of remuneration is likely to mean that the individual is working under a mutuality of obligation. Where there is mutuality of obligation, it is voluntary work.

However as the legal distinction is not always clear, we recommend that those involved seek independent legal advice for their specific activity.

An individual who is not permitted to work might commit a criminal offence by engaging in voluntary work when they are subject to contractual obligations. In such circumstances, their employer might also be liable for a civil penalty for employing an illegal worker.

Tier 4 (General) students and Tier 4 (Child) students aged 16 and over can do voluntary work if they are permitted to work, but this work and any other (for example paid) work must not exceed the total number of hours they are permitted to work during term time. For example, if a student is permitted to work 20 hours a week during term-time and has paid work of 15 hours a week during term time, they cannot do more than 5 hours voluntary work. If they are not permitted to work they cannot do voluntary work.

## Employment of other categories

For information about other immigration categories including the employment of refugees and asylum seekers, please refer to the Frequently Asked Questions document.





Home Office

# Right to Work Checklist

Name of person:	
Date of check:	
Type of check:	Initial check before employment <input type="checkbox"/> Follow-up check on an employee <input type="checkbox"/>

## Step 1 Obtain

- You must obtain original documents from either **List A** or **List B** of acceptable documents.

### List A

- ☐ 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.
- ☐ A passport or national identity card showing the holder, or a person named in the passport as the child of the holder, is a national of a European Economic Area country or Switzerland.
- ☐ A Registration Certificate or Document Certifying Permanent Residence issued by the Home Office, to a national of a European Economic Area country or Switzerland.
- ☐ A Permanent Residence Card issued by the Home Office, to the family member of a national of a European Economic Area country or Switzerland.
- ☐ A current Biometric Immigration Document (Biometric Residence Permit) issued by the Home Office to the holder indicating that the person named is allowed to stay indefinitely in the UK, or has no time limit on their stay in the UK.
- ☐ A current passport 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.
- ☐ A current Immigration Status Document issued by the Home Office to the holder with an endorsement indicating that the named person is allowed to stay indefinitely in the UK or has no time limit on their stay in the UK, together with an official document giving the person's permanent National Insurance number and their name issued by a Government agency or a previous employer.
- ☐ A full birth or adoption certificate issued in the UK which includes the name(s) of at least one of the holder's parents or adoptive parents, together with an official document giving the person's permanent National Insurance number and their name issued by a Government agency or a previous employer.
- ☐ A birth or adoption certificate issued in the Channel Islands, the Isle of Man or Ireland, together with an official document giving the person's permanent National Insurance number and their name issued by a Government agency or a previous employer.
- ☐ A certificate of registration or naturalisation as a British citizen, together with an official document giving the person's permanent National Insurance number and their name issued by a Government agency or a previous employer.

### List B Group 1

- ☐ A current passport endorsed to show that the holder is allowed to stay in the UK and is currently allowed to do the type of work in question.
- ☐ A current Biometric Immigration Document (Biometric Residence Permit) issued by the Home Office to the holder which indicates that the named person can currently stay in the UK and is allowed to do the work in question.
- ☐ A current Residence Card (including an Accession Residence Card or a Derivative Residence Card) issued by the Home Office to a non-European Economic Area national who is a family member of a national of a European Economic Area country or Switzerland or who has a derivative right of residence.
- ☐ A current Immigration Status Document containing a photograph issued by the Home Office to the holder with a valid endorsement indicating that the named person may stay in the UK, and is allowed to do the type of work in question, together with an official document giving the person's permanent National Insurance number and their name issued by a Government agency or a previous employer.

### List B Group 2

- ☐ A Certificate of Application issued by the Home Office under regulation 17(3) or 18A (2) of the Immigration (European Economic Area) Regulations 2006, to 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 together with a Positive Verification Notice from the Home Office Employer Checking Service.
- ☐ An Application Registration Card issued by the Home Office stating that the holder is permitted to take the employment in question, together with a Positive Verification Notice from the Home Office Employer Checking Service.
- ☐ A Positive Verification Notice issued by the Home Office Employer Checking Service to the employer or prospective employer, which indicates that the named person may stay in the UK and is permitted to do the work in question.

## Step 2 Check

- You must **check** that the documents are genuine, that the person presenting them is the prospective employee or employee, the rightful holder and allowed to do the type of work you are offering.

1. Are photographs consistent across documents and with the person's appearance?	Yes <input type="checkbox"/>	No <input type="checkbox"/>	N/A <input type="checkbox"/>
2. Are dates of birth consistent across documents and with the person's appearance?	Yes <input type="checkbox"/>	No <input type="checkbox"/>	N/A <input type="checkbox"/>
3. Are expiry dates for time-limited permission to be in the UK in the future i.e. they have not passed (if applicable)?	Yes <input type="checkbox"/>	No <input type="checkbox"/>	N/A <input type="checkbox"/>
4. Have you checked work restrictions to determine if the person is able to work for you and do the type of work you are offering? (for <b>students</b> who have limited permission to work during term-times, you <b>must</b> also obtain, copy and retain details of their academic term and vacation times covering the duration of their period of study in the UK for which they will be employed)	Yes <input type="checkbox"/>	No <input type="checkbox"/>	N/A <input type="checkbox"/>
5. Are you satisfied the document is genuine, has not been tampered with and belongs to the holder?	Yes <input type="checkbox"/>	No <input type="checkbox"/>	N/A <input type="checkbox"/>
6. Have you checked the reasons for any different names across documents (e.g. marriage certificate, divorce decree, deed poll)? (Supporting documents should also be photocopied and a copy retained.)	Yes <input type="checkbox"/>	No <input type="checkbox"/>	N/A <input type="checkbox"/>

## Step 3 Copy

You must make a clear **copy** of each document in a format which cannot later be altered, and retain the copy securely: electronically or in hardcopy. You must copy and retain:

- ☐ **Passports:** any page with the document expiry date, nationality, date of birth, signature, leave expiry date, biometric details and photograph, and any page containing information indicating the holder has an entitlement to enter or remain in the UK and undertake the work in question.
  - ☐ **All other documents:** the document in full, both sides of a Biometric Residence Permit.
- You must also record and retain the date on which the check was made.

## Know the type of excuse you have

If you have correctly carried out the above 3 steps you will have an excuse against liability for a civil penalty if the above named person is found working for you illegally. However, you need to be aware of the type of excuse you have as this determines how long it lasts for, and if, and when you are required to do a follow-up check.

The documents that you have checked and copied are from:

- List A** ☐ You have a **continuous statutory 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.
- List B: Group 1** ☐ You have a **time-limited statutory excuse** which expires when the person's permission to be in the UK expires. You should carry out a **follow-up check** when the document evidencing their permission to work expires.
- List B: Group 2** ☐ You have a **time-limited statutory excuse** which expires 6 months from the date specified in your Positive Verification Notice. **This means that you should carry out a follow-up check when this notice expires.**

Date follow-up check required:

# HIGH PRIORITY STRATEGIC THEMES



Protecting and serving Essex

## CHILD ABUSE & EXPLOITATION

The most common reason for children to be trafficked are sexual exploitation and criminal exploitation.



### CSE THREAT TRENDS

1. The production, distribution and possession of indecent images of children, with live streaming of child abuse for payment, is an emerging trend
2. Online child sexual exploitation and abuse
3. Contact sexual abuse of children in the UK by lone (non-familial) offenders, groups or gangs. The abuse by urban street gangs of girl gang members/associates is under-reported but recognised as a threat which has become part of street culture in mainly metropolitan forces.

Over 2,400 children were victims of sexual exploitation in police led groups from August 2010 to October 2011

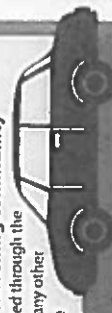
August 2010 to October 2011



## IMMIGRATION/ MODERN SLAVERY



More victims exploited by criminal elements within the Travelling community have referred through the NRM than any other victim type



month of action

car washes, restaurants and takeaways, beauty industry.

NAILS



## DOMESTIC ABUSE

1 in 4 women with experience of domestic abuse

£15 billion

### INTELLIGENCE GAPS

Peak Times

93%

Home Office deficit on domestic violence and abuse

An Ipsos survey revealed that 93% of women experience domestic violence, which is a significant increase from 88% in 2008. The survey also found that 1 in 4 women have experienced domestic violence in the last 12 months. This is a significant increase from 1 in 5 in 2008. The survey also found that 1 in 4 women have experienced domestic violence in the last 12 months. This is a significant increase from 1 in 5 in 2008.

## URBAN STREET GANG RELATED VIOLENCE & VULNERABILITY

OPERATION RAPTOR was launched in June 2013

Of the current Gangs matrix there are

70

Individuals representing

33

different Gangs



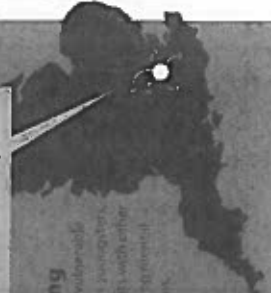
### INTELLIGENCE GAPS

Vulnerable children are missing

Intelligence shows a strong presence of 'Assembly Lines' travelling out of London to Essex in order to sell drugs, usually class A.

Curkooing

Gangs exhibit vulnerable people such as young people, adults or adults with other vulnerable people to attract recruits.



## OCG CRIMINALITY

There are 134

mapped organised crime groups (OCGs) across Essex and Kent

59

in Essex

75

in Kent



Drugs criminality remains the most common crime type associated with OCGs across Essex and continues to expand. The importation and supply of Class A drugs remains the biggest threat.

Child sexual exploitation (CSE) and modern-day slavery are national threats and OCGs are being identified which are engaged in this crime type.



### INTELLIGENCE GAPS

Digital crime

Training to prevent and detect digital crime would be advantageous, to allow for the identification of OCGs involved in digital criminality.

## COUNTER TERRORISM AND DOMESTIC EXTREMISM

Identifying community intelligence and open source intelligence, particularly around officer safety (Operation Javelin).

Dwelling burglary



Criminal use of firearms



Digital crime



Other priority areas include: