



Home Office

Border & Immigration Agency

PREVENTION OF ILLEGAL WORKING

IMMIGRATION, ASYLUM AND NATIONALITY ACT 2006

**GUIDANCE FOR EMPLOYERS ON THE AVOIDANCE OF UNLAWFUL
DISCRIMINATION IN EMPLOYMENT PRACTICE WHILE SEEKING TO
PREVENT ILLEGAL WORKING**
[DRAFT] CODE OF PRACTICE

NOVEMBER 2007

The information contained in this document was correct at the time of going to print, but may be subject to revision.

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Presented to Parliament under section 23 of the Immigration,
Asylum and Nationality Act 2006

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1. INTRODUCTION

- 1.1 This Code has been issued by the Border and Immigration Agency and aims to provide employers with guidance on how to avoid a civil penalty for employing an illegal migrant worker, in a way that **does not result in unlawful race discrimination**.¹
- 1.2 Failing to carry out identity checks on potential employees is not a criminal offence, but those employers who only carry out checks on workers who they believe are not British citizens, for example, on the basis of race or ethnicity, could find that this is used against them as evidence in any proceedings brought under the Race Relations Act 1976. This is why we recommend that employers obtain a statutory excuse for all potential employees; this not only protects the employer from liability for a civil penalty, but also demonstrates consistent, transparent and non-discriminatory recruitment practices.
- 1.3 Legal migrant workers make a substantial contribution to this country's economy. However, those who use illegal migrant workers are often guilty of breaking other laws relating to health and safety, exploitation and tax evasion. The United Kingdom, like many other countries around the world, has laws to deal with illegal migrant working.
- 1.4 It is important to remember that the population of the UK is ethnically diverse. Many people from ethnic minorities in this country are British citizens and many non-British citizens from black and minority ethnic communities are entitled to work here. Therefore, it must not be assumed that someone from an ethnic minority is an immigrant, or that someone born abroad is not entitled to work in the UK.

¹ This Code draws on the previous Code, entitled 'Immigration and Asylum Act 1999 - Section 22 Code of Practice: For all employers on the avoidance of race discrimination in recruitment practice while seeking to prevent illegal working.' This document was issued by the Home Office in June 2001. This Code also draws on the 'Statutory Code of Practice on Racial Equality in Employment', which was published by the CRE in April 2006. Further information and details are contained in Appendix 2.

2. PURPOSE AND STATUS OF THIS CODE

- 2.1 The purpose of this Code is to give you practical guidance on how to avoid unlawful racial discrimination whilst also complying with the law to prevent illegal migrant working.
- 2.2 This is a statutory Code. This means that it has been approved by the Secretary of State and laid before Parliament. The Code does not impose any legal obligations on employers, nor is it an authoritative statement of the law; only the courts and Employment Tribunals can provide that. However, the Code can be used as evidence in legal proceedings. Courts and Employment Tribunals must take account of any part of the Code that might be relevant on matters of racial discrimination in employment practices.
- 2.3 This Code, which is issued under section 23 of the Immigration, Asylum and Nationality Act 2006 ('the 2006 Act'), is intended to strengthen the safeguards against unlawful discrimination by re-emphasising your statutory duty to avoid discrimination in your employment practices.
- 2.4 The Equality and Human Rights Commission (EHRC), also known as the Commission for Equality and Human Rights², the Equality Commission for Northern Ireland and the members of the Illegal Working Group (IWG)³, which is comprised of representatives from a range of business sectors, government departments and voluntary organisations, have been consulted on the contents of this Code, as required by section 23 of the 2006 Act. Their comments and recommendations have been incorporated, where appropriate.
- 2.5 This Code applies to all employers in England, Scotland, Wales and Northern Ireland. It also applies to certain organisations, such as employment businesses, employment and recruitment agencies (including on-line agencies). An employment agency or business practising unlawful discrimination will be liable, even if it is acting on the instructions of an employer.
- 2.6 Whilst some smaller organisations may wish to adapt the guidance to suit their particular circumstances, it should be noted that no allowances can be made for smaller companies when considering their liability under the law. We recommend that smaller organisations ensure that their employment practices do not discriminate on grounds of race and that they follow the advice given in this Code.
- 2.7 Public authorities are also subject to the requirements of this Code. They also have a general statutory duty to promote equality of opportunity and good race relations, which includes a requirement to monitor specified employment procedures and practices.
- 2.8 This Code outlines your legal obligations under the Race Relations Act 1976 ('the 1976 Act')⁴, Race Relations (Northern Ireland) Order 1997, the 2006 Act and the [insert name of the Statutory Instrument made under section 15(7) of the 2006 Act]. However, it is not intended to be a comprehensive statement of the law.
- 2.9 This Code has been produced alongside other guidance documents and sources of information, details of which are provided in Appendix 2. You may wish to refer to this Code alongside that guidance and information.

² Formerly known as the Commission for Racial Equality (CRE).

³ Formerly known as the Illegal Working Steering Group and the Illegal Working Stakeholder Group.

⁴ Any reference in this Code to the Race Relations Act includes all subsequent amending legislation.

3. YOUR RESPONSIBILITY AS AN EMPLOYER UNDER THE LAW: THE RACE RELATIONS ACT 1976 AND RACE RELATIONS (NORTHERN IRELAND) ORDER 1997

3.1 Under section 4 of the 1976 Act, and section 6 of the 1997 Order, **it is unlawful** to discriminate in employment practices on racial grounds. That means that an employer cannot discriminate against a potential or existing employee on the following grounds:

- race;
- colour;
- nationality (including citizenship);
- ethnic origin;
- national origin.

Race discrimination may be either **direct** or **indirect**.

3.2 **Direct discrimination** means treating a person less favourably on racial grounds, for example by rejecting all job applicants who do not have British nationality, or by refusing to consider any non-European job applicants. Treatment based on racial or national stereotypes can also constitute direct discrimination. Examples include:

- where the assumption is made that people from certain nationalities or ethnic groups cannot work as a team;
- where individuals are only recruited from one nationality or ethnic group;
- where all refugees are automatically rejected;
- where an employee with limited leave to remain in the UK is given a more degrading form of work to do in comparison with workers with unlimited leave;
- where it is assumed that overseas qualifications and experience are inferior to those gained in the UK⁵.

3.3 **Indirect discrimination** means imposing a condition or requirement which applies equally to everyone, but is harder for people from particular racial groups to satisfy and which cannot be justified. For example, it would be discriminatory to ask for a very high standard of English when the job does not require this, or to reject an applicant who has an unfamiliar accent.

3.4 **It is unlawful** to victimise or harass a person because he or she has made or supported a complaint of racial discrimination. **It is also unlawful** to instruct or induce another person to discriminate, or to publish an advertisement or notice that indicates an intention to discriminate.

3.5 Employers must not discriminate on racial grounds or subject a person to harassment in:

- a) the arrangements they make to decide who should be offered employment; or
- b) the terms on which they offer to employ a person; or
- c) by refusing or deliberately failing to offer employment.

3.6 It is also unlawful for employers to discriminate on racial grounds against a worker, or to subject him or her to harassment:

- a) in the terms of employment provided; or
- b) in the way they make opportunities for training, promotion, transfer, facilities, services or other benefits available; or
- c) by refusing access to such opportunities, benefits, facilities or services; or
- d) by dismissing the worker, or subjecting him to some other detriment.

⁵ If you are unsure about the UK equivalent of an overseas qualification, you could consult the National Recognition Information Centre (NARIC) website at: www.naric.org.uk, which provides useful information.

3. YOUR RESPONSIBILITY AS AN EMPLOYER UNDER THE LAW: THE RACE RELATIONS ACT 1976 AND RACE RELATIONS (NORTHERN IRELAND) ORDER 1997

- 3.7 Under the 1976 Act and the 1997 Order, discrimination committed by an **employee** in the course of his or her employment, is treated as having been committed by the **employer** as well as by the individual employee, **whether or not the employer knew or approved the acts of discrimination**. You can avoid this liability if you can prove that you took sufficient and reasonable steps to prevent such discrimination, for example, by applying consistent checks to all potential employees. A complaint to an Employment Tribunal may be made against both the employer and the individual employee who is alleged to have discriminated.
- 3.8 Separate legislation similarly outlaws discrimination on grounds of religious affiliation, gender, sexual orientation, disability and age⁶ in employment practices. Although this Code only addresses racial discrimination, you should be mindful of other forms of discrimination, particularly religious discrimination, when applying the provisions of the 2006 Act. If people affected by religious discrimination are from a particular racial group, the discrimination might also amount to indirect racial discrimination.

⁶ Regulations on age discrimination came into force on 1 October 2006. See the Equality Act 2006 for further details.

4. RIGHT OF COMPLAINT

- 4.1 Anyone who believes that he or she has been discriminated against, either directly or indirectly, by an employer, a prospective employer, or an employment agency, may bring a complaint before an Employment Tribunal, or an Industrial Tribunal in Northern Ireland. If the complaint is upheld, the Tribunal will normally order the employer to pay compensation, for which there is no upper limit.
- 4.2 The EHRC and the Northern Ireland Equality Commission can also bring proceedings against an employer who publishes a discriminatory advertisement, or who instructs or induces another person to discriminate.
- 4.3 Where an employer has been found to have committed an act of unlawful racial discrimination, the Public Procurement Regulations 2006 provide that public authorities may disqualify the organisation from entering into public procurement contracts.

5. YOUR RESPONSIBILITY AS AN EMPLOYER UNDER THE LAW: SECTION 15 AND SECTION 21 OF THE IMMIGRATION, ASYLUM AND NATIONALITY ACT 2006 EXPLAINED

5.1 The 2006 Act has strengthened the law on the prevention of illegal migrant working by replacing the previous controls under section 8 of the Asylum and Immigration Act 1996 ('the 1996 Act'). There will be/is now a system of civil penalties for employers who employ an illegal migrant worker (section 15) without having obtained a statutory excuse, and a separate criminal offence of knowingly employing an illegal migrant worker (section 21).

The 2006 Act sets out the changes to the law on the prevention of illegal migrant working. You will be committing an offence if you are found to be employing a person aged 16 or over who is subject to immigration control⁷ unless:

- that person has current and valid permission to be in the United Kingdom, **and**
- the person has valid permission to do the type of work offered.

Under section 15, you may be liable for a civil penalty in respect of each illegal migrant worker employed⁸.

5.2 Section 15 can also provide you with a statutory excuse against liability for a civil penalty. This can be done by checking and copying one of the original documents, or a specified combination of original documents from **List A** or **List B** (provided in Appendix 1), **before** employing that person. Those people who have restrictions on their time in the UK may be subject to repeat checks. If you can show that you complied with the requirements, you may be excused from liability for the penalty, even if it turns out that the person being employed is subject to immigration control and is working without the necessary permission.

5.3 However, the excuse is not available if you knew, at any time during the period of employment, that the employment was not allowed. **If you know that you are employing a person without the required permission to work, you could be served with a civil penalty or prosecuted under section 21 for the offence of knowingly employing an illegal migrant worker, for which there is a maximum prison sentence of two years and an unlimited fine.**

5.4 Section 21 deals with cases involving the intentional use of illegal workers, which are often linked to exploitation, or other forms of illegal activity. The offence is committed by a person where he or she employed an individual knowing that they did not have current leave to enter or remain, or that their conditions of stay prevented them from undertaking the employment offered.

5.5 There is a difference between the entitlement of asylum seekers and refugees to work in the United Kingdom. The term asylum seeker is used to describe those who have made a claim for asylum under the Refugee Convention or under Article 3 of the European Convention on Human Rights.

5.6 For the purposes of sections 15 and 21, a person who has been granted temporary admission to the United Kingdom, or temporary release from immigration detention, such as an asylum seeker, may only be employed if the Home Office or the Border and Immigration Agency has lifted restrictions on their taking employment⁹.

⁷ A person subject to immigration control is a person who, under the Immigration Act 1971, requires leave to enter or remain in the UK.

⁸ Further information on the civil penalty scheme is available in the *Prevention of illegal working. Immigration, Asylum and Nationality Act 2006: Civil Penalties for Employers Code of Practice* – Border and Immigration Agency, [2007/8]. See Appendix 2.

⁹ An asylum applicant may apply to the Secretary of State for permission to take up employment (which shall not include permission to become self-employed, or to engage in a business or professional activity) only in exceptional circumstances, for example, if a decision has not been taken on the applicant's asylum application within one year of the date on which it was recorded. The Secretary of State shall only consider such an application if, in his opinion, any delay in reaching a decision at first instance cannot be attributed to the applicant.

5. YOUR RESPONSIBILITY AS AN EMPLOYER UNDER THE LAW: SECTION 15 AND SECTION 21 OF THE IMMIGRATION, ASYLUM AND NATIONALITY ACT 2006 EXPLAINED

- 5.7 In the case of the minority of asylum seekers who enjoy permission to work, this will be clearly indicated on their Application Registration Card (ARC). As part of the checks required to obtain or retain a statutory excuse under section 15, you should contact the Employer Checking Service to verify whether the employee continues to be entitled to work in the United Kingdom¹⁰. You must inform your employee that you are undertaking this check before doing so.
- 5.8 Since 1 May 2004, neither the Standard Acknowledgement Letter (SAL), nor the form entitled IS96(W) have been acceptable as evidence that an asylum seeker has permission to work in the UK. If a potential, or current employee, presents one of these documents to you, please refer them to the Border and Immigration Agency on **0151 237 6375** for further advice on how they can obtain an appropriate ARC.
- 5.9 Those who have been granted refugee status, or have been allowed to remain exceptionally on humanitarian grounds, will have no restriction on the type of work that they can do, whilst their leave remains valid.

¹⁰ The Border and Immigration Agency will issue separate guidance to employers detailing the procedure to be followed.

6. MAKING THE DOCUMENT CHECKS

- 6.1 In order to establish the statutory excuse against liability for a civil penalty, you must check the original document(s) presented from **List A**, or **List B** (see Appendix 1) before the person starts their employment and make a paper copy, or electronic record of the document(s) and store it securely. In certain circumstances, you may retain the document(s)¹¹. Further details are provided in [insert name of the Statutory Instrument made under section 15(7) of the 2006 Act].
- 6.2 You should undertake basic visual checks to ensure that the document(s) relate to the applicant by comparing any photographs in the document(s) and dates of birth against the appearance and apparent age of the applicant. You should check for any obvious discrepancy in age. You should also check that any United Kingdom Government endorsements (stamps, vignettes etc.) entitle the potential employee to do the type of work offered and that any expiry date has not passed.
- 6.3 Where a job applicant has produced an original document or documents from **List A**, you have checked and copied the relevant parts of the document(s), and you are satisfied that the person is entitled to take the job offered, you will have established an excuse in relation to your employment of that person and will not need to carry out any subsequent document checks. This is because the documents from **List A** show that there are no time restrictions on the individual's ability to take up employment in the UK.
- 6.4 Where an employee produces an original document or documents from **List B**, you must note the date on which you carry out the original document check. In order to retain your excuse against a penalty for employing that individual, you must carry out a follow-up check at least once every **12 months** after the initial check. Again, this will involve asking the employee to produce an original document or documents either from **List A**, or **List B**. This is because the documents from **List B** show that there are restrictions on the length of time the individual can stay in the UK and you will need to ensure that your employee has retained their entitlement to work.
- 6.5 The same visual checks should be carried out to ensure that each document is not false and that it relates to the holder. You should take another copy of the document, recording the date on which the check was made. These follow-up checks must be repeated:
- no later than **12 months** after the previous check, **or**
 - until the employee produces a document on **List A**, **or**
 - until the employee leaves your employment.
- 6.6 There may be occasions when an employee is unable to produce a document from **List A** or **List B** when requested to as part of a follow-up check, and claims that this is due to having an outstanding application for leave to remain with the Border and Immigration Agency. If this happens you can use the Employer Checking Service to verify whether the employee continues to enjoy the right to work in the United Kingdom. It is the employers' responsibility to inform the employee, or potential employee, that they may be making the checks.

¹¹ It is not appropriate to retain a person's original documents indefinitely. The only exception to this is when an individual provides a P45 as part of a combination of documents. In these circumstances, the employer may retain part 2 of the P45 for their records, otherwise, an employer may only obtain a person's documents for the purpose of copying them. The employer must also have facilities for keeping the documents and copies of documents safe. A job applicant's original documents must not be kept for longer than a day. If an employer deliberately appropriates a person's passport or other original documents belonging to them, or retains these without their consent, then they may be guilty of an offence under the Theft Act 1968, or under section 25(5) of the Identity Cards Act 2006.

6. MAKING THE DOCUMENT CHECKS

- 6.7 The checks you need to make to claim the statutory excuse are in most cases straightforward and can be built into your normal employment procedures. **These document checks are not compulsory, but they are advisable as part of good employment practice. If you do not make these checks at the point of recruitment, you will not have the benefit of the statutory excuse if you are later found to be employing illegal migrant workers.**

When you make pre-recruitment checks, you should ensure that they are made in a non-discriminatory manner by applying them to all applicants and at the same point of the recruitment process.

- 6.8 We don't expect employers to act as Immigration Officers. Responsibility for immigration control lies firmly with the Border and Immigration Agency. If you are worried that a document you have been shown does not relate to the holder, you do not have to employ that person. The Employer Checking Service is available to employers who may wish to clarify an individual's right to work.
- 6.9 Further details on obtaining a statutory excuse are available in guidance produced by the Home Office and the Border and Immigration Agency. Details are contained in Appendix 2.

7. HOW TO AVOID RACIAL DISCRIMINATION

- 7.1 As a matter of good employment practice, you should have clear written procedures for the recruitment and selection of all staff, based on equal and fair treatment for all applicants. Copies of these procedures should be made available to all relevant staff.
- 7.2 All job selections should be on the basis of suitability for the post. You should ensure that no prospective job applicants are discouraged or excluded, either directly or indirectly, because of their personal appearance or accent. You should not make assumptions about a person's right to work or immigration status on the basis of their colour, race, nationality, or ethnic or national origins, or the length of time they have been resident in the UK.
- 7.3 **The best way to ensure that you do not discriminate is to treat all applicants in the same way at each stage of the recruitment process.** For example, if you provide information to prospective applicants, or if you supply an application form, you could also include a reminder that the successful applicant, or short-listed applicants, will be required to produce an original document or documents included in **List A** or **List B**.
- 7.4 You may ask applicants to provide the specified document(s) to obtain a statutory excuse at any stage **before** they start work. Depending on your recruitment processes, you may find it most convenient to request documents from all those called to a first interview, or just from those called to a second interview, or only from persons short-listed to fill the vacancy. Original documents should be checked before employment commences. If you ask for documents from one applicant, you should make sure you ask for documents from all applicants being considered at that stage.
- 7.5 Job applicants should not be treated less favourably if they produce a document or documents from **List B** rather than **List A**. A person producing document(s) from **List B** will have a time limit on their legal ability to stay and work in the UK, but it is possible for certain categories of entrant to obtain an extension to their entitlement to remain and work in this country.
- 7.6 Once a person who has limited leave to remain has established their initial and ongoing entitlement to work, they should not be treated less favourably during their employment, including the terms of employment provided, opportunities for training, promotion or transfer, benefits, facilities or services, or by dismissing the worker or subjecting them to some other detriment, other than the repeat checks.
- 7.7 You should only ask questions about an applicant's or employee's immigration status, where necessary, to determine whether their status imposes limitations on the number of hours they are entitled to work each week, or on the length of time they are permitted to work within their overall period or type of leave given. For example, those granted leave as students undertaking full-time undergraduate study in the UK should not work for more than 20 hours per week during term time, except where the placement is a necessary part of their studies and is undertaken with the educational institution's express agreement.
- 7.8 If a person is not able to produce the appropriate listed document(s), you should not assume that he or she is living or working in the UK illegally. You should instead refer the person to the Border and Immigration Agency through the Immigration Enquiry Bureau on **0870 606 7766**, or a Citizens Advice Bureau for advice. You should try to keep the job open for as long as possible, but you are not obliged to do so if you need to recruit someone urgently. **It is ultimately the decision of the employer whether or not to employ an individual.**

8. MONITORING APPLICATIONS

- 8.1 As a matter of good practice, you should monitor the ethnicity of applications during the recruitment and selection process of job applicants. This will help you to know whether you are reaching a wide range of potential job applicants. This can then be used in reviewing recruitment procedures. It is also good practice to take measures to encourage an integrated and diverse workforce and provide English language teaching for those who need it.

APPENDIX 1: DOCUMENTS REQUIRED FOR THE PURPOSE OF ESTABLISHING THE STATUTORY EXCUSE

Any one of the documents, or combination of documents described in **List A** or **List B** will provide you with a statutory excuse if you take reasonable steps to check the validity of the original document and that the person presenting the document is the rightful holder, then make a copy of the relevant page, or pages before employing an individual.

For identity cards, passports and travel documents, a copy should be taken of:

- the document's front cover; **and**
- any page containing the holder's personal details including nationality, his or her photograph, date of birth and/or signature; **and**
- any biometric details; **and**
- the date of expiry; **and**
- any relevant UK immigration endorsements.

Other documents should be copied in their entirety.

All copies of documents should be kept securely. If your potential employee gives you two documents which have different names, ask them for a further document to explain the reason for this. The further document could be a marriage certificate, a divorce decree, or a deed poll document.

By doing this, the Border and Immigration Agency will be able to examine your right to the statutory excuse if they detect any illegal migrant(s) working for you.

If reasonable steps are taken to check the validity of a document or documents from **List A**, the statutory excuse will have been established for the duration of the employment **and no further checks will be required.**

Each time that a document or combination of documents from **List B** is provided, you must note the date on which you carried out the original document check. In order to retain your excuse against a penalty for employing that individual, you must carry out a follow-up check at least once

every **12 months** after the initial check. Again, this will involve asking the employee to produce a valid original document, or documents either from **List A**, or from **List B** and copying it for your records. If a document, or documents, from **List A** are subsequently presented and reasonable steps are taken to check the validity of the document or documents, the statutory excuse will have been established for the remainder of the employment and **no further checks will be required.**

Please note the references to the provision of a National Insurance number in Lists A and B. **The provision of a National Insurance number in isolation is never sufficient for the purpose of establishing a statutory excuse.** The National Insurance number can only be used for this purpose when presented in combination with one of the documents, as appropriate, specified in Lists A and B.

All references to the documents issued by the Home Office in Lists A and B, also include documents issued by the former Immigration and Nationality Directorate (IND) and Work Permits (UK).

APPENDIX 1: DOCUMENTS REQUIRED FOR THE PURPOSE OF ESTABLISHING THE STATUTORY EXCUSE

LIST A DOCUMENTS

1. A passport showing that the holder, or a person named in the passport as the child of the holder, is a British citizen or a citizen of the United Kingdom and Colonies having the right of abode in the United Kingdom; **or**
2. A passport or national identity card showing that the holder, or a person named in the passport as the child of the holder, is a national of a European Economic Area country or Switzerland; **or**
3. A residence permit, registration certificate or document certifying or indicating permanent residence issued by the Home Office or the Border and Immigration Agency to a national of a European Economic Area country or Switzerland; **or**
4. A permanent residence card issued by the Home Office or the Border and Immigration Agency to the family member of a national of a European Economic Area country or Switzerland; **or**
5. A Biometric Immigration Document issued by the Border and Immigration Agency to the holder which indicates that the person named in it is allowed to stay indefinitely in the United Kingdom, or has no time limit on their stay in the United Kingdom; **or**
6. A passport or other travel document endorsed to show that the holder is exempt from immigration control, is allowed to stay indefinitely in the United Kingdom, has the right of abode in the United Kingdom, or has no time limit on their stay in the United Kingdom; **or**
7. An Immigration Status Document issued by the Home Office or the Border and Immigration Agency to the holder with an endorsement indicating that the person named in it is allowed to stay indefinitely in the United Kingdom, or has no time limit on their stay in the United Kingdom, **when produced in combination with** an official document giving the person's permanent National Insurance Number and their name issued by a Government agency or a previous employer (e.g. P45, P60, National Insurance Card); **or**
8. A full birth certificate issued in the United Kingdom which includes the name(s) of at least one of the holder's parents, **when produced in combination with** an official document giving the person's permanent National Insurance Number and their name issued by a Government agency or a previous employer (e.g. P45, P60, National Insurance Card); **or**
9. A full adoption certificate issued in the United Kingdom which includes the name(s) of at least one of the holder's adoptive parents, **when produced in combination with** an official document giving the person's permanent National Insurance Number and their name issued by a Government agency or a previous employer (e.g. P45, P60, National Insurance Card); **or**
10. A birth certificate issued in the Channel Islands, the Isle of Man, or Ireland, **when produced in combination with** an official document giving the person's permanent National Insurance Number and their name issued by a Government agency or a previous employer (e.g. P45, P60, National Insurance Card); **or**
11. An adoption certificate issued in the Channel Islands, the Isle of Man, or Ireland, **when produced in combination with** an official document giving the person's permanent National Insurance Number and their name issued by a Government agency or a previous employer (e.g. P45, P60, National Insurance Card); **or**
12. A certificate of registration or naturalisation as a British citizen, **when produced in combination with** an official document giving the person's permanent National Insurance Number and their name issued by a Government agency or a previous employer (e.g. P45, P60, National Insurance Card); **or**

APPENDIX 1: DOCUMENTS REQUIRED FOR THE PURPOSE OF ESTABLISHING THE STATUTORY EXCUSE

13. A letter issued by the Home Office or the Border and Immigration Agency to the holder which indicates that the person named in it is allowed to stay indefinitely in the United Kingdom, or has no time limit on their stay, **when produced in combination with** an official document giving the person's permanent National Insurance Number and their name issued by a Government agency or a previous employer (e.g. P45, P60, National Insurance Card).

APPENDIX 1: DOCUMENTS REQUIRED FOR THE PURPOSE OF ESTABLISHING THE STATUTORY EXCUSE

LIST B DOCUMENTS

1. A passport or other travel document endorsed to show that the holder is allowed to stay in the United Kingdom and is allowed to do the work in question, provided that it does not require the issue of a work permit; **or**
2. A Biometric Immigration Document, issued by the Border and Immigration Agency to the holder which indicates that the person named in it can stay in the United Kingdom and is allowed to do the work in question; **or**
3. A work permit or other approval to take employment issued by the Home Office or the Border and Immigration Agency, **when produced in combination with** either a passport or another travel document endorsed to show that the holder is allowed to stay in the United Kingdom and is allowed to do the work in question, or a letter issued by the Home Office or the Border and Immigration Agency to the holder, or the employer or prospective employer confirming the same; **or**
4. A certificate of application issued by the Home Office or the Border and Immigration Agency to or for a family member of a national of a European Economic Area country or Switzerland, stating that the holder is permitted to take employment, which is less than 6 months old, when produced in combination with evidence of verification by the Border and Immigration Agency Employer Checking Service; **or**
5. A residence card or document issued by the Home Office or the Border and Immigration Agency to a family member of a national of a European Economic Area country or Switzerland; **or**
6. An Application Registration Card (ARC) issued by the Home Office or the Border and Immigration Agency stating that the holder is permitted to take employment, **when produced in combination with** evidence of verification by the Border and Immigration Agency Employer Checking Service; **or**
7. An Immigration Status Document issued by the Home Office or the Border and Immigration Agency to the holder with an endorsement indicating that the person named in it can stay in the United Kingdom, and is allowed to do the work in question, **when produced in combination with** an official document giving the person's permanent National Insurance Number and their name issued by a Government agency or previous employer (e.g. P45, P60, National Insurance Card); **or**
8. A letter issued by the Home Office or the Border and Immigration Agency to the holder or the employer or prospective employer, which indicates that the person named in it can stay in the United Kingdom and is allowed to do the work in question, **when produced in combination with** an official document giving the person's permanent National Insurance Number and their name issued by a Government agency or previous employer (e.g. P45, P60, National Insurance Card).

APPENDIX 2: OTHER SOURCES OF INFORMATION

PUBLICATIONS

- *The Statutory Code of Practice on Racial Equality in Employment* – The Commission for Racial Equality, 2006.
- *Racial Equality and the Smaller Business: A practical guide* (CD-Rom) – The Commission for Racial Equality, 2004.
- *The Immigration and Asylum Act 1999 - Section 22 Code of Practice: For all employers on the avoidance of race discrimination in recruitment practice while seeking to prevent illegal working* – Home Office, June 2001.
- *Changes to the law on preventing illegal working: short guidance for United Kingdom employers* – Home Office, April 2004.
- *Comprehensive guidance for United Kingdom employers on changes to the law on preventing illegal working* – Home Office, April 2004.
- *Prevention of illegal working. Immigration, Asylum and Nationality Act 2006: Civil Penalties for Employers Code of Practice* – Border and Immigration Agency, [2007/8]
- *Prevention of illegal working. Immigration, Asylum and Nationality Act 2006: Summary guidance for employers* – Border and Immigration Agency, [2007/8]
- *Prevention of illegal working. Immigration, Asylum and Nationality Act 2006: Comprehensive guidance for employers* – Border and Immigration Agency, [2007/8]

WHERE TO GET FURTHER INFORMATION

The *Racial Equality and the Smaller Business: A practical guide* CD-Rom is available in PDF, or RTF large print format from www.equalityhumanrights.com/publicationsandresources

The Statutory Code of Practice on Racial Equality in Employment was produced by the Commission for Racial Equality (CRE) in April 2006 and contains detailed and practical guidance to help employers to comply with the Race Relations Act 1976. An electronic copy of the document can be downloaded from the Equality and Human Rights Commission

(EHRC) website at:

www.equalityhumanrights.com

The Border and Immigration Agency's summary and comprehensive guidance booklets on the prevention of illegal migrant working contain practical advice to help employers to comply with the law. These documents are available at:

www.bia.homeoffice.gov.uk

Her Majesty's Revenue and Customs (HMRC) has a dedicated website for employers, giving practical advice on a range of issues and areas of employment legislation available at: www.businesslink.gov.uk

Information for potential employees is available via: www.workingintheuk.gov.uk and www.ukvisas.gov.uk

CONTACT DETAILS

Please address any enquiries about the law on the prevention of illegal working to the Border and Immigration Agency through the contact details given below, and not to the EHRC.

For advice concerning immigration issues you should contact:

Border and Immigration Agency
Lunar House
40 Wellesley Road
Croydon, CR9 2BY

The Immigration Enquiry Bureau (IEB) can be contacted on **0870 606 7766** for questions about immigration.

Advice for employers about complying with the law on preventing illegal migrant working is available from the Employers' Helpline on **0845 010 6677**. The Helpline is open Monday to Friday, between 9am and 5pm, except on bank holidays.

Further information is also available on the Border and Immigration Agency website at: www.bia.homeoffice.gov.uk

APPENDIX 2: OTHER SOURCES OF INFORMATION

The EHRC can advise on matters relating to the law on discrimination, and the contact details for the national offices are listed as follows:

London

EHRC

3 More London

Riverside

Tooley Street

London SE1 2RG

Tel: 020 3117 0235

Fax: 01925 884275

Email: info@equalityhumanrights.com

Cardiff (temporary office)

EHRC

3rd Floor

Capital Tower

Greyfriars Road

Cardiff CF10 3AG

Tel: 02920 663710

Fax: 01925 886905

Glasgow (temporary office)

EHRC

St Stephens House

279 Bath Street

Glasgow G2 4JL

Tel: 0141 245 1855

Fax: 01925 884455

Manchester

EHRC

Arndale House

The Arndale Centre

Manchester M4 3AQ

Tel: 0161 829 8100

Fax: 01925 884000

Email: info@equalityhumanrights.com

The Equality Commission for Northern Ireland

Equality Commission for Northern Ireland

Equality House

7-9 Shaftesbury Square

Belfast, BT2 7DP

Tel: 028 90 500 600

Fax: 028 90 248687

Textphone: 028 90 500589

Email: information@equalityni.org