
STATUTORY INSTRUMENTS

2004 No. 755

IMMIGRATION

The Immigration (Restrictions on Employment) Order 2004

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| <i>Made</i> | - - - - | <i>15th March 2004</i> |
| <i>Laid before Parliament</i> | | <i>16th March 2004</i> |
| <i>Coming into force</i> | - - | <i>1st May 2004</i> |

The Secretary of State, in exercise of the powers conferred upon him by section 8(1) and (2A) of the Asylum and Immigration Act 1996⁽¹⁾, hereby makes the following Order:

Citation and commencement

1. This Order may be cited as the Immigration (Restrictions on Employment) Order 2004 and shall come into force on 1st May 2004.

Interpretation

2. In this Order—

“the 1996 Act” means the Asylum and Immigration Act 1996;

“the Immigration Rules” has the meaning given in section 33(1) of the Immigration Act 1971⁽²⁾;

“Immigration Status Document” means a document issued by the Home Office containing an endorsement, which confirms that the holder has been granted indefinite or limited leave to enter or remain in the United Kingdom; and

“registration card” has the meaning given in section 26A(1) of the Immigration Act 1971⁽³⁾.

Conditions specified under section 8(1) of the 1996 Act

3.—(1) The set of conditions in paragraph (2) and the condition in paragraph (3) are specified for the purposes of section 8(1) of the 1996 Act (no offence committed in employing a person who satisfies such conditions).

(2) The set of conditions are that—

(1) 1996 c. 49; subsection (2A) was inserted by section 147(2) of the Nationality, Immigration and Asylum Act 2002 (c. 41).
(2) 1971 c. 77.
(3) Section 26A was inserted by section 148 of the Nationality, Immigration and Asylum Act 2002 (c. 41).

- (a) the employee had limited leave to enter or remain in the United Kingdom which did not preclude his taking the employment in question;
 - (b) the employee applied to the Secretary of State for variation of that leave; and
 - (c) the employee is within the period during which an appeal could be brought or has a pending appeal under Part 5 of the Nationality, Immigration and Asylum Act 2002⁽⁴⁾, against refusal of that application.
- (3) The employee is permitted to work under the Immigration Rules.

Requirements for the purposes of section 8(2) of the 1996 Act

4.—(1) The requirements set out in paragraphs (2) to (5) are requirements for the purposes of section 8(2) of the 1996 Act⁽⁵⁾ (defence for a person charged with an offence under section 8 to prove that before the employment began any such requirement was complied with).

- (2) There must have been produced to the employer either—
- (a) a document of a description specified in Part 1 of the Schedule, or
 - (b) one document of a description specified in—
 - (i) each of sub-paragraphs (a) and (b) of paragraph 1 of Part 2 of the Schedule; or
 - (ii) each of sub-paragraphs (a) and (b) of paragraph 2 of that Part.

(3) The employer must have taken the steps specified in Part 3 of the Schedule to copy or record the content of any document produced to him in accordance with paragraph (2).

(4) The employer must have satisfied himself that each document produced in accordance with paragraph (2), appears to relate to the employee in question; in particular—

- (a) if a document contains a photograph, the employer must have satisfied himself that the person photographed is the employee in question, and
- (b) if a document contains a date of birth, the employer must have satisfied himself that the date of birth is consistent with the appearance of the employee.

(5) If either—

- (a) the name on a document produced under paragraph 1(a) of Part 2 of the Schedule differs from the name on a document produced under paragraph 1(b) of that Part; or
- (b) the name on a document produced under paragraph 2(a) of Part 2 of the Schedule differs from the name on a document produced under paragraph 2(b) of that Part,

a document must have been produced to the employer explaining the difference.

Revocation

5. The Immigration (Restrictions on Employment) Order 1996⁽⁶⁾ is hereby revoked.

Home Office
15th March 2004

Beverley Hughes
Minister of State

⁽⁴⁾ 2002 c. 41.

⁽⁵⁾ Subsection (2) of section 8 was substituted by section 147(2) of the Nationality, Immigration and Asylum Act 2002.

⁽⁶⁾ S.I.1996/3225.

SCHEDULE

Article 4(2)(a)

PART 1

Descriptions of documents for the purposes of article 4(2)(a)

1. A United Kingdom passport describing the holder as a British citizen or as a citizen of the United Kingdom and Colonies having the right of abode in the United Kingdom.
2. A passport containing a certificate of entitlement issued by or on behalf of the Government of the United Kingdom, certifying that the holder has the right of abode in the United Kingdom.
3. A passport or national identity card, issued by a State which is a party to the European Economic Area Agreement or any other agreement forming part of the Communities Treaties which confers rights of entry to or residence in the United Kingdom, which describes the holder as a national of a State which is a party to that Agreement.
4. A United Kingdom residence permit issued to a national of a State which is a party to the European Economic Area Agreement or any other agreement forming part of the Communities Treaties which confirms that the holder has rights of entry to, or residence in, the United Kingdom.
5. A passport or other travel document or a residence document issued by the Home Office which is endorsed to show that the holder has a current right of residence in the United Kingdom as the family member of a named national of a State which is a party to the European Economic Area Agreement or any other agreement forming part of the Communities Treaties which confers rights of entry to, or residence in, the United Kingdom, and who is resident in the United Kingdom.
6. A passport or other travel document endorsed to show that the holder is exempt from immigration control, has indefinite leave to enter, or remain in, the United Kingdom or has no time limit on his stay.
7. A passport or other travel document endorsed to show that the holder has current leave to enter, or remain in, the United Kingdom and is permitted to take the employment in question, provided that it does not require the issue of a work permit.
8. A registration card which indicates that the holder is entitled to take employment in the United Kingdom.

PART 2

Descriptions of documents for the purposes of article 4(2)(b)

Article 4(2)(b)

- (a) (a) A document issued by a previous employer, Inland Revenue, the Department for Work and Pensions' Jobcentre Plus, the Employment Service, the Training and Employment Agency (Northern Ireland) or the Northern Ireland Social Security Agency, which contains the National Insurance number of the person named in the document; and
- (b) either:—
 - (i) a birth certificate issued in the United Kingdom, which specifies the names of the holder's parents; or
 - (ii) a birth certificate issued in the Channel Islands, the Isle of Man or Ireland; or
 - (iii) a certificate of registration or naturalisation as a British citizen; or

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

- (iv) a letter issued by the Home Office, to the holder, which indicates that the person named in it has been granted indefinite leave to enter, or remain in, the United Kingdom; or
 - (v) an Immigration Status Document issued by the Home Office, to the holder, endorsed with a United Kingdom Residence Permit, which indicates that the holder has been granted indefinite leave to enter, or remain in, the United Kingdom; or
 - (vi) a letter issued by the Home Office, to the holder, which indicates that the person named in it has subsisting leave to enter, or remain in, the United Kingdom and is entitled to take the employment in question in the United Kingdom; or
 - (vii) an Immigration Status Document issued by the Home Office, to the holder, endorsed with a United Kingdom Residence Permit, which indicates that the holder has been granted limited leave to enter, or remain in, the United Kingdom and is entitled to take the employment in question in the United Kingdom.
- (a) (a) A work permit or other approval to take employment issued by Work Permits UK; and
 - (b) either:—
 - (i) a passport or other travel document endorsed to show that the holder has current leave to enter, or remain in, the United Kingdom and is permitted to take the work permit employment in question, or
 - (ii) a letter issued by the Home Office to the holder, confirming the same.

PART 3

Steps which must be taken to copy or record the content of a document produced to an employer

Article 4(3)

1. In the case of a passport or other travel document, the following parts must be photocopied or scanned into a database, using the technology known as “Write Once Read Many”—

- (a) the front cover; and
- (b) any page containing:
 - (i) the holder’s personal details including nationality;
 - (ii) the holder’s photograph and/or signature;
 - (iii) the date of expiry; and
 - (iv) the information referred to in paragraphs 1 (other than citizenship) and 2 of Part 1 and the endorsements referred to in paragraphs 5, 6 and 7 of Part 1 and paragraph 2(b)(i) of Part 2.

2. All other documents must be photocopied or scanned in their entirety into a database, using the technology known as “Write Once Read Many”.

EXPLANATORY NOTE

(This note is not part of the Order)

Section 8 of the Asylum and Immigration Act 1996 (“the 1996 Act”) provides that an employer commits an offence if he employs a person subject to immigration control who has attained the age of 16, if the employee has not been granted leave to enter, or remain in, the United Kingdom, or if his leave is not valid and subsisting or is subject to a condition precluding him from taking up employment.

Section 8(1) of the 1996 Act provides that the offence is not committed if the employee satisfies one of the conditions to be specified in an Order made by the Secretary of State. Article 3 specifies these conditions. The conditions are similar to those specified in Part I of the Schedule to the Immigration (Restrictions on Employment) Order 1996, which is revoked by this Order. The condition specified in article 3(2) of the Order differs from that specified in paragraph 2 of Part I of the Schedule to the earlier Order, in that it has been modified to reflect the changes to the immigration appeals system brought about by the Nationality, Immigration and Asylum Act 2002 (“the 2002 Act”). The condition now specified in article 3(3) is identical to that specified in paragraph 3 of Part I of the Schedule to the earlier Order.

Section 8(2) of the 1996 Act (as substituted by section 147(2) of the 2002 Act) provides a defence for an employer who proves that before the employment began any relevant requirement of an Order of the Secretary of State under section 8(2A) of the 1996 Act was complied with. Section 8(2A) of the 1996 Act was inserted by section 147(2) of the 2002 Act.

Section 8(2A)(a) of the 1996 Act (as inserted by section 147(2) of the 2002 Act) states that an Order may require the production to an employer of a document of a specified description. Article 4(2)(a) specifies these descriptions of documents.

Section 8(2A)(b) of the 1996 Act (as inserted by section 147(2) of the 2002 Act) states that an Order may require the production to an employer of one document of each of a number of specified descriptions. Article 4(2)(b) specifies these combinations of documents, which if produced provide a defence.

Article 4(3) specifies the steps that an employer must take to copy or record the content of a document produced to him in accordance with the Order. In the case of a passport or other travel document, the front page and any page containing specified information (including the holder’s personal details, the holder’s photograph and/or signature and the date of expiry) must be photocopied or scanned. In the case of other documents, the whole document must be photocopied or scanned.

Article 4(4) states that when a document is produced in accordance with the Order, the employer must satisfy himself that the document appears to relate to the employee in question. If the document contains a photograph, the employer must check the likeness of the photograph and if the document contains a date of birth, the employer must check it to satisfy himself that it is feasible.

Article 4(5) states that where two documents are produced under either paragraph 1 or paragraph 2 of Part 2 of the Schedule, and the name which appears on the documents differs, a document must be produced explaining the difference.

By virtue of section 8(3) of the 1996 Act, the defence is not available in any case where the employer knew that his employment of the employee would constitute an offence under section 8.