### R&S - APPENDIX 12

### Prevention of Illegal Working

Section 8 of the Asylum and Immigration Act 1996 states employing a person who is subject to immigration control and is working without the necessary permission is a criminal conviction.

The Act provides a defence which is available to all employers. In practice it is very unlikely that an organisation would be taken to court if checks are carried out as set out here.

A defence can be established by checking one of the documents in List 1 below. This will usually be a United Kingdom passport or a passport from one of the European Economic Area countries.

Alternatively, a defence can also be established by checking for two of the original documents specified in the combinations in List 2 below.

Prior to commencement all recruiting managers should ensure that they have seen and photocopied one document from List 1 or two documents from List 2. Copies of documents should be sent to HR along with the employee’s Notification of Appointment form where they will be kept on the personal file.

**LIST 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.
* 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.
* 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.
* 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 confers rights of entry to or residence in the United Kingdom.
* 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.
* 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.
* 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.
* A Registration Card which indicates that the holder is entitled to take employment in the United Kingdom.

If the family name or other personal details on the two documents checked do not match further proof of the reason for any difference between the two documents produced must be obtained. This should be in the form of a marriage certificate, divorce document, deed poll, adoption certificate or statutory declaration.

**LIST 2**

If the family name or other personal details on the two documents checked do not match further proof of the reason for any difference between the two documents produced must be obtained. This should be in the form of a marriage certificate, divorce document, deed poll, adoption certificate or statutory declaration.

**First combination**

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

One of the following documents from (B- H)

B - a birth certificate issued in the United Kingdom, the Channel Islands, the Isle of Man or Ireland which specifies the names of the holder's parents; or

C - a birth certificate issued in the Channel Islands, the Isle of Man or Ireland; or

D - a certificate of registration or naturalisation as a British citizen; or

E - 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

F - an Immigration Status Document issued by the Home Office, to the holder, endorsed with a United Kingdom Residence, which indicates that the holder has been granted Indefinite Leave to Enter or Remain in the United Kingdom; or

G - 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

H - 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.

**Second combination**

A - A work permit or other approval to take employment issued by Work Permits UK; and either

B - 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

C - a letter issued by the Home Office to the holder, confirming the same.

Steps 1 - 3 set out below should be followed for every potential new employee to ensure that recruitment practices comply with the new requirements for establishing a defence against conviction for employing a person illegally.

**STEP 1**

* Ask all potential employees to provide:
one of the original documents included in List 1;
or
* two of the original documents in the combinations given in List 2.

**STEP 2**

Under legislative requirements the organisation must be satisfied that the potential employee is the rightful holder of any of the documents they present. These documents should also allow them to do the type of work being offered.

All reasonable steps should be taken when checking any documents presented by the potential employee. The guidance below should be followed:

* any photographs should be checked to ensure that they are consistent with the appearance of your potential employee;
* dates of birth listed should be checked so that you are satisfied these are consistent with the appearance of your potential employee;
* expiry dates should be checked to ensure have not been passed;
* any United Kingdom Government stamps or endorsements should be checked to see if the potential employee is able to do the type of work being offered

**STEP 3**

Finally, a photocopy of the following parts of all documents shown should be made and forwarded to the HR Dept:

* the front cover and all of the pages which give the potential employee's personal details. In particular, the page with the photograph and the page which shows his or her signature should be copied; and
* any appropriate page containing a United Kingdom Government stamp or endorsement that permits the potential employee to do the type of work being offered.