

# NATIONALITY, IMMIGRATION AND ASYLUM ACT 2002

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### Part 7: Offences

##### Substance

##### *Section 147: Employment*

371. [Section 147](#) amends section 8 of the Asylum and Immigration Act 1996 "the 1996 Act" and modifies the existing law on illegal working. Under section 8 of the 1996 Act it is an offence to employ a person aged 16 or over who is subject to immigration control unless:

That person has current and valid permission to be in the United Kingdom and that permission does not prevent him or her from taking the job in question;

The person comes into a category where such employment is otherwise allowed (e.g. asylum-seekers who have been given permission to work, student nurses admitted under the terms of the Immigration Rules who may enter into contracts of employment without any additional permission being required).

372. A statutory defence is provided in section 8(2) of the 1971 Act. The employer needs to prove that they have taken two steps in order to establish this defence. First, the employer must have had produced to him a document which appeared to him to relate to the worker in question and to be of a description specified in an order by the Secretary of State. The current order is the [Immigration \(Restrictions on Employment\) Order 1996 SI 1996/3225](#). Second, the employer must have retained the document or a copy of it.

373. Subsection (2) inserts two new subsections in the 1996 Act in place of section 8(2) of the 1996 Act. Under subsection (2) it will be a defence for a person charged with an offence under section 8 to prove that he complied with any relevant requirement of an order made by the Secretary of State under subsection (2A). Subsection (2A) expands the type of document that an employer could be required to see under such an order. In practice this could mean that, to establish a defence, an employer must demonstrate that he has seen two documents of particular types, and to produce copies of these when required.

374. Subsection (4) provides new ancillary powers of entry, search and arrest in relation to the section 8 offence. Immigration officers will have powers of entry to arrest by warrant, entry and search of premises by warrant in order to obtain relevant evidence, entry and search of premises after arrest, search of arrested persons and search of persons in police custody.