Prosecution under section 2: failure to produce immigration document

This guidance is based on section 2 of the Immigration and Asylum (Treatment of Claimants) Act 2004
This guidance is based on the Immigration and Asylum (Treatment of Claimants) Act 2004

**Prosecution under section 2: failure to produce immigration document**

**About this guidance**

| The offence under section 2 and who it applies to | This guidance tells criminal investigators in Immigration Enforcement Criminal and Financial Investigation (CFI) teams, about the offence a person commits under section 2 of the Asylum and Immigration (Treatment of Claimants) Act 2004, if they do not have a valid passport or equivalent travel document at a leave to enter or asylum interview. |
| Defences against prosecution under section 2 | It tells you: |
| Referrals of section 2 cases to the criminal investigation team | • how to interpret the act and what the offence is under section 2 of the Asylum and Immigration (Treatment of Claimants) Act 2004 |
| | • who the offence relates to |
| | • when documents can be provided so an offence is not committed |
| | • defences available to a suspected offender |
| | • what is not considered a reasonable excuse |
| | • about contact with the Crown Prosecution Service |

This guidance has been updated and relates specifically to Criminal and Financial Investigation (CFI) team work. You must only follow the instructions in this guidance when you are dealing with a section 2 prosecution.

**Changes to this guidance** – This page tells you what has changed since the previous version of this guidance.

**Contacts** – This page tells you who to contact for help if your senior caseworker or line manager can’t answer your question.

**Information owner** – This page tells you about this version of the guidance and who owns it.

Safeguard and promote child welfare – This page explains your duty to safeguard and promote the welfare of children and tells you where to find more information.
This guidance is based on the Immigration and Asylum (Treatment of Claimants) Act 2004

**Prosecution under section 2: failure to produce immigration document**

### Changes to this guidance

<table>
<thead>
<tr>
<th>Date of the change</th>
<th>Details of the change</th>
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<tr>
<td>21 May 2015</td>
<td>Change request:</td>
</tr>
<tr>
<td></td>
<td>• Minor housekeeping changes throughout</td>
</tr>
<tr>
<td>11 March 2014</td>
<td>Revised by the guidance, rules and forms team.</td>
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See also

- Contact
- Information owner
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The offence under section 2

A person commits an offence if they:

- attend a leave to enter or asylum interview and do not have with them an immigration document which:
  - is valid
  - establishes their identity and nationality or citizenship to a satisfactory level
- claim to be travelling or living with a dependent child and do not produce an immigration document relating to that child which meets the same requirements

Powers of arrest under the Police and Criminal Evidence Act 1984 (PACE)

If you are an immigration officer working on a Criminal and Financial Investigation (CFI) team in England and Wales you have a power of arrest under section 24 of the Police and Criminal Evidence Act 1984 if you have reasonable grounds to suspect a person has committed a section 2 offence.

About this guidance

Defences against prosecution under section 2

Referrals of section 2 cases to the criminal investigation team

In this section

When a person does not commit an offence under section 2

Immigration Act 1971

Part III Immigration Act 1971

Section 24 Criminal Law (Consolidation)(Scotland) Act 1995
You must only use this power if you have received the relevant training, and been given a letter of authority to use these powers. Otherwise you must continue to use your powers under the immigration acts.

For more information, see related links:
- section 24 Police and Criminal Evidence Act (PACE) 1984
- The Police and Criminal Evidence Act (PACE) Order 2013 explained

**Powers of arrest under the Immigration Act 1971**
A constable or immigration officer can arrest a person without a warrant if they reasonably suspect an offence has been committed under section 2.

You must use this power of arrest if you work in Northern Ireland because you do not yet have powers to arrest under PACE or other legislation.


**Powers of arrest under the Criminal Law (Consolidation)(Scotland) Act 1995**

You must only use this power if you have received the relevant training, and been given a letter of authority to use these powers. Otherwise you must continue to use your powers under the immigration acts.

**The penalty if found guilty**
Section 2 offences are ‘either way’ offences (they can be tried in either a magistrates’ court or a Crown court).

If found guilty of an offence the penalty is:
This guidance is based on the Immigration and Asylum (Treatment of Claimants) Act 2004

- if convicted on indictment (in a Crown court), up to two years in prison, a fine or both
- on summary conviction (in a magistrates’ court) up to six months in prison, a fine or both

**Definition of immigration document**
Under section 2 an immigration document is a passport or document which can be used for the same purposes as a passport which is not a UK document.

**Documents for European Economic Area (EEA) nationals**
EEA nationals and those with a right of residence in the UK which can be enforced under European Union (EU) law and are exempt from immigration control.

In addition to passports they may hold other documents which are immigration documents for the purposes of section 2, for example:

- national identity cards
- EU family permits and residence cards

If such a person arrives in the UK without a document it is possible they could be required to attend a leave to enter or asylum interview and to produce an immigration document at that interview.

However, once they show they are an EEA national or person with EU residence rights they will have a statutory defence available to them under section 2. For more information, see [Defences against prosecution under section 2](#).

**False documents**
A false immigration document is one which:

- pretends to be or is intended to look like a passport, and is used:
  - when it is not valid
  - for a reason it was not issued for
  - by, or in relation to, a person who it was not issued to or for
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When a person does not commit an offence under section 2

This page tells criminal investigators in Immigration Enforcement Criminal and Financial Investigation (CFI) teams when a person does not commit an offence under section 2 of the Immigration and Asylum (Treatment of Claimants) Act 2004, even if they do not produce an immigration document at a leave to enter or asylum interview.

A person does not commit an offence under section 2 if they do not produce an immigration document at a leave to enter or asylum interview, if they meet each of these conditions:

- the interview takes place after they have entered the UK
- they produce the document required under section 2 within 3 days of the date of the interview
- they give the document to an immigration officer or the Secretary of State which will be an immigration officer or officer working for the Home Office on behalf of the Secretary of State

This means the defence is only available to someone who makes an application in the UK (in country), for example, at a public enquiry office (PEO) such as Croydon PEO.

This defence is not available if a person fails to provide an immigration document when they first arrive in the UK and seek entry at the port where they arrive (often referred to as ‘on entry’ cases).

See section 2 of the act to read the exact wording.
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Defences against prosecution under section 2

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<td>If a person is charged with an offence under section 2 of the Immigration and Asylum (Treatment of Claimants) Act 2004 they have a defence if they can:</td>
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|                      | - prove they are a:  
|                      |   o national of the European Economic Area (EEA) (defence under section 2(4)(a)). For a list of EEA nationalities, see Agreement on the European Economic Area, (signed 2 May 1992)  
|                      |   o family member of an EEA national and are exercising a right (often called ‘treaty rights’) under the community treaties in relation to entry to or residence in the UK (defence under section 2(4)(b))  
|                      | - prove they have a reasonable excuse for not possessing an immigration document (defence under section 2(4)(c))  
|                      | - produce a false immigration document and prove they used that document as an immigration document for all purposes connected with their journey to the UK (defence under section 2(4)(d))  
|                      | - prove they travelled to the UK without having an immigration document in their possession at any stage since they started their journey (defence under section 2(4)(e))  |
|                      | The same defences are available to a person charged with an offence in relation to a dependent child. The person must prove one of these defences applies to the child. |

If a person is charged with an offence relating to an interview which takes place after they have entered the UK (not an offence identified when they arrive at a port and seek entry),

In this section

Reasonable excuse
This guidance is based on the Immigration and Asylum (Treatment of Claimants) Act 2004

<table>
<thead>
<tr>
<th>the defence of ‘reasonable excuse’ is not available to them.</th>
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<tbody>
<tr>
<td>They may still have a defence, however, if they can prove they had a ‘reasonable excuse’ for not providing an immigration document within three days of their interview. For more information about ‘reasonable excuse’, see related link.</td>
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</table>
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Reasonable excuse

This page tells criminal investigators in Immigration Enforcement Criminal and Financial Investigation (CFI) teams more about 'reasonable excuse' when dealing with a potential prosecution under section 2 of the Asylum and Immigration (Treatment of Claimants) Act 2004.

**Examples of what is not a 'reasonable excuse'**
Deliberately destroying or disposing of their immigration document is not a 'reasonable excuse' unless the person can show:

- the document was destroyed or disposed of for a reasonable cause
- they had no control over the destruction or disposal

A reasonable cause is not to:

- delay the:
  - handling or resolution of an application or claim
  - taking of a decision
- increase the chance of a successful application or claim
- do as they have been told or advised by a person who offers advice about immigration to the UK, or who facilitates immigration into the UK (unless they can show it would be unreasonable for them not to do as they were told)

**Examples of reasonable excuse**

<table>
<thead>
<tr>
<th>The situation</th>
<th>Potential reasonable excuse</th>
</tr>
</thead>
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<tr>
<td>An applicant has not produced a genuine document.</td>
<td>They do not have a genuine document because either:</td>
</tr>
<tr>
<td></td>
<td>• they could not get one due to the political situation in their country of</td>
</tr>
<tr>
<td>An applicant did not produce a document within three days of an in country (after entering the UK) interview.</td>
<td>There was:</td>
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</table>
|• a medical or family emergency they can prove  
• transport problems, for example, an accident, which can be confirmed |
|The applicant was a minor or a vulnerable adult. | See section on vulnerable people below. |

This is not an exhaustive list and you may identify other ‘reasonable excuses’.
The case owner for an in the UK (in-country) application may allow extra time to produce a document depending on the reason for the delay. If the person does not produce their document within the time allowed you can consider prosecution in the usual way.

**Vulnerable people**
You must treat each case individually but these are some things to consider (you may identify others as well).

<table>
<thead>
<tr>
<th>The person</th>
<th>What you must consider</th>
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</table>
| Minors.                         | • some countries do not issue immigration documents to minors  
• they may be afraid to challenge an adult and so do as they are told  
• they have different levels of understanding to adults and may not realise they need an immigration document to travel  
• they have different levels of maturity and experience |
| Age dispute cases.              | • you cannot consider prosecution until a Merton compliant age assessment has been completed (Merton was a court ruling on best practice for age assessments)  
• even if an adult assessment is made it is open to challenge by the defence  
• if you decide to prosecute it is always best to have some actual evidence to support an adult age assessment |
| For people with a disability or learning difficulty. | • they may:  
 o rely on others to tell them what to do |
Court judgment: R v Soe Thet (2006)
There are some court judgments which have affected what is considered a reasonable excuse. The case of Soe Thet was significant.

Thet travelled to the UK using a false document which he returned to an agent after arriving. He made an in the UK (in country) application and did not provide an immigration document at any point. He was prosecuted and sentenced to 3 months in prison.

On appeal he claimed he had never been in possession of a genuine travel document. He satisfied the court it had been impossible for him to get one as he was a former political prisoner. He could not therefore produce a genuine document.

The judge found this to be a ‘reasonable excuse’ and that he had a defence.

This defence only applies to genuine documents and the individual must be able to show their country of nationality.

Crown Prosecution Service (CPS) guidance on section 2
CPS guidance on prosecuting CPS guidance -not having a travel document at a leave or asylum Interview -section 2 takes into account the Thet ruling and gives examples of ‘reasonable excuse.'
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Referrals of section 2 cases to the criminal investigation team

This section tells criminal investigators in Immigration Enforcement Criminal and Financial Investigation (CFI) teams what information they can expect to be given when they receive a referral for a potential prosecution under section 2 of the Immigration and Asylum (Treatment of Claimants) Act 2004.

You may receive:

- calls from officers requesting general advice on what to do in cases where they think there is a potential prosecution under section 2
- full referrals which require you to consider whether the criminal investigation team will adopt a referral for investigation

The information on this page has been removed as it is restricted for internal Home Office use.

Official sensitive - do not disclose – start of section

Official sensitive – do not disclose – end of section
Prosecution under section 2: failure to produce immigration document

**Referral package**

This page tells criminal investigators in Immigration Enforcement Criminal and Financial Investigation (CFI) teams what the referral package for a potential prosecution under section 2 of the Immigration and Asylum (Treatment of Claimants) Act 2004 must contain.

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### What to do if you take a referral or adopt a section 2 case

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<tr>
<th>About this guidance</th>
<th>This page tells criminal investigation officers in immigration enforcement what to do if they receive a referral for a potential prosecution under section 2 of the Immigration and Asylum (Treatment of Claimants) Act 2004.</th>
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<td>You must consider all potential prosecutions under <a href="#">section 2</a> which are referred to you.</td>
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### Contact

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<th>About this guidance</th>
<th>This page explains who to contact for more help with a question about prosecution under section 2 of the Immigration and Asylum (Treatment of Claimants) Act 2004.</th>
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<tr>
<td>The offence under section 2 explained</td>
<td>If you have read this guidance and still need more help, you must first ask your line manager.</td>
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<tr>
<td>Defences against prosecution under section 2</td>
<td>If the question cannot be answered at that level, you may contact:</td>
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- **Official sensitive - do not disclose – start of section**
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Changes to this guidance can only be made by the guidance, rules and forms team (GRaFT). If you think the policy content needs amending you must contact the guidance team who will ask the GRaFT to update the guidance, if appropriate.

The GRaFT will accept direct feedback on broken links, missing information or the format, style and navigability of this guidance. You can send these using Email: Guidance – making changes.

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See also

- Changes to this guidance
- Information owner
# Prosecution under section 2: failure to produce immigration document

## Information owner

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