



Home Office

# Prosecution under section 2: failure to produce immigration document

**Version 5.0**

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

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# About this guidance

This guidance tells criminal investigators in Immigration Enforcement (IE) and suitably trained and accredited criminal investigators within the Home Office about the offence a person commits under section 2 of the [Asylum and Immigration \(Treatment of Claimants, etc.\) Act 2004](#), if they do not have a valid passport or equivalent travel document at a leave to enter or asylum interview.

It tells you:

- 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

The Home Office has a duty to safeguard vulnerable people and promote the welfare of children for more information see: Vulnerable people and children.

Criminal Investigators in Immigration Enforcement must be aware of their obligations under the UK General Data Protection Regulation (UK GDPR) and Part 3 of the Data Protection Act 2018 see: Data Protection.

## Contacts

If you have any questions about the guidance and your line manager or senior caseworker cannot help you or you think that the guidance has factual errors then email CFI Operational Guidance Risk and Compliance Team.

If you notice any formatting errors in this guidance (broken links, spelling mistakes and so on) or have any comments about the layout or navigability of the guidance then you can email Guidance Reviews Atlas and Forms team.

## Publication

Below is information on when this version of the guidance was published:

- version **5.0**
- published for Home Office staff on **05 December 2025**

## Changes from last version of this guidance

- housekeeping changes
- updates in relation to EEA nationals

### Related content

[Contents](#)

# Section 2 Asylum and Immigration (Treatment of Claimants etc.) Act 2004

This section tells criminal investigators in Immigration Enforcement (IE) and suitably trained and accredited criminal investigators within the Home Office about the offence under section 2 of the [Asylum and Immigration \(Treatment of Claimants, etc.\) Act 2004](#).

This offence is aimed at discouraging people from destroying or disposing of their immigration documents on their way to the UK, in particular to:

- hide their identity, age or nationality
- increase their chances of making a successful application
- make it more difficult to consider their application or remove them from the UK

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

## Section 24(D1) Immigration Act 1971 as modified.

In many cases Section 2 offences have, in effect, been superseded by section 24(D1) Immigration Act 1971 offences. This offence, of knowingly arriving without an entry clearance where one is required, carries a longer term of imprisonment (4 years on indictment). Section 2 Asylum and Immigration (Treatment of Claimants etc) 2004 prosecutions are often run alongside section 24(D1) prosecutions and carry a sentence of up to two years.

Please see for more information: Section 24 Immigration Act 1971

## 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.

## 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

**Related content**

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# Defences against prosecution under section 2

This page tells criminal investigators in Immigration Enforcement (IE) and suitably trained and accredited criminal investigators within the Home Office about defences available to a person who does not produce an immigration document at a leave to enter or asylum interview and in what circumstances they would not commit an offence under section 2.

If a person is charged with an offence under section 2 of the [Asylum and Immigration \(Treatment of Claimants, etc.\) Act 2004](#) they have a defence if they can:

- prove that they are an Irish citizen
- prove that they have leave to enter or remain in the United Kingdom which was granted by virtue of residence scheme immigration rules
- prove that they are a frontier worker within the meaning of regulation 3 of [the Citizens' Rights \(Frontier Workers\) \(EU Exit\) Regulations 2020](#)
- 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), the defence of 'reasonable excuse' is not available to them. They may still have a defence, however, if they can prove they had a 'reasonable excuse' for not providing an immigration document within 3 days of their interview.

## When a person does not commit an offence under section 2

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, and 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 an Immigration Reporting Centre.

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).

#### **Related content**

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# Reasonable excuse

This section tells criminal investigators in Immigration Enforcement (IE) and suitably trained and accredited criminal investigators within the Home Office about 'reasonable excuse' when dealing with a potential prosecution under section 2 of the [Asylum and Immigration \(Treatment of Claimants, etc.\) 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

The situation	Potential reasonable excuse
An applicant has not produced a genuine document.	<p>They do not have a genuine document because either:</p> <ul style="list-style-type: none"><li>• they could not get one due to the political situation in their country of origin (The judgement) <a href="#">[2006] EWHC 2701 (Admin)</a></li><li>• there were no issuing facilities in their country of origin</li><li>• their genuine travel document was stolen or destroyed whilst travelling to the UK and it was not their fault (for example, they travelled as part of a group and someone else had control of the passports)</li><li>• they did as they were told by someone else, for example, they destroyed their document, and the only reason they did this was because they were acting under</li></ul>



The situation	Potential reasonable excuse
	<p>duress (where unlawful pressure was put on them to make them do something they would not normally do)</p> <ul style="list-style-type: none"> <li>they never had a genuine document and, can show they did not hold a document at any stage of their journey, for example they were hidden in the back of a lorry for the entire journey</li> </ul>
An applicant did not produce a document within 3 days of an in country (after entering the UK) interview	<p>There was:</p> <ul style="list-style-type: none"> <li>a medical or family emergency they can prove</li> <li>transport problems, for example, an accident, which can be confirmed</li> </ul>
The applicant was a minor or a vulnerable adult.	See: <a href="#">Vulnerable people</a>

This is not an exhaustive list, and you may identify other 'reasonable excuses'.

The case owner for an application made 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). The Home Office has a duty to safeguard vulnerable people and promote the welfare of children for more information see: [Vulnerable people and children](#)

The person	What you must consider
<p>Minors.</p> <p>In most cases minors are likely to have a 'reasonable excuse' because it is 'reasonable' to expect a minor to do as they are told by an adult. 'Reasonable excuse' therefore tends to be more credible for a minor</p>	<ul style="list-style-type: none"> <li>some countries do not issue immigration documents to minors</li> <li>they may be afraid to challenge an adult, and so do as they are told</li> <li>they have different levels of understanding to adults and may not realise they need an immigration document to travel</li> <li>they have different levels of maturity and experience</li> </ul>

The person	What you must consider
Age dispute cases.	<p>You cannot consider prosecution until a Merton compliant age assessment has been completed.</p> <p>Even if an adult assessment is made it is still open to challenge by the defence. If you decide to prosecute it is always best to have some evidence to support any age assessment.</p> <ul style="list-style-type: none"> <li>• For further information see: Criminal investigation guidance on arrest</li> <li>• Assessing age for asylum applicants: caseworker guidance</li> </ul>
For people with a disability or learning difficulty.	<ul style="list-style-type: none"> <li>• they may:</li> <li>• rely on others to tell them what to do</li> <li>• not understand what is required when they travel</li> </ul>

## 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' and an interpretation of defences.

### Interpretation of Section 2 Defences

#### 1. Burden of Proof

In [R v Navabi and Embaye \[2005\] EWCA Crim 2865](#), the Court of Appeal confirmed that the burden of proving a defence under section 2 lies with the defendant. This is a legal burden, meaning it must be proven on the balance of probabilities.

#### 2. Genuine Document Requirement

In [Thet v DPP \[2006\] EWHC 2701 \(Admin\)](#), the court clarified that the document referred to in subsections (3) and (6) is a genuine document. Therefore, if a person enters the UK using a false passport but does not produce it during interview, it is a reasonable excuse under section 2(6)(b) that it was impossible to obtain a genuine passport in their country of origin.

#### 3. Circumstances Preventing Document Production

In [R v Mohammed and Osman \[2007\] EWCA Crim 2332](#), the court held that the defence applies if:

- the person is unable to obtain a genuine travel document due to the political situation or lack of issuing activities in the country of origin
- the genuine travel document is stolen or destroyed en route, or in the UK, through no fault of the applicant

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