



Home Office

DRAFT Code of practice on preventing illegal working:

Civil penalty scheme for employers

June 2021



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Civil penalty scheme for employers

Presented to Parliament pursuant to Section 19(2)(a) of the
Immigration, Asylum and Nationality Act 2006

June 2021



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1: Introduction

The ability to work illegally is often the main driver of illegal migration. Working in the UK without the requisite permission (“illegal working”) encourages people to break our immigration laws and provides the practical means for migrants to remain in the UK illegally. It often results in abusive and exploitative behaviour, the mistreatment of unlawful migrant workers, tax evasion and illegal housing conditions, including modern slavery in the most serious cases. It can also undercut legitimate businesses and have an adverse impact on the employment of people who are in the UK lawfully.

As an employer, you have a responsibility to prevent illegal working in the UK by ensuring that your employees have the right to work here. The illegal working provisions of the Immigration, Asylum and Nationality Act 2006 (‘the Act’) came into force on 29 February 2008. Section 15 of the Act allows the Secretary of State to serve an employer with a notice requiring the payment of a penalty of a specified amount where they employ a person who is:

- subject to immigration control; and
- aged over 16; and
- not allowed to carry out the work in question because either they have not been granted leave to enter or remain in the UK or because their leave to enter or remain in the UK:
 - (i) is invalid;
 - (ii) has ceased to have effect (meaning it no longer applies) whether by reason of curtailment, revocation, cancellation, passage of time or otherwise; or
 - (iii) is subject to a condition preventing them from accepting the employment.

About this version of the code of practice

This code of practice has been issued under section 19 of the Act to specify the factors to be considered by the Home Office in determining the amount of the civil penalty for employing an illegal worker. Separate guidance for employers sets out how to conduct right to work checks and how the Home Office administers the civil penalty scheme to prevent illegal working.

This code updates the one issued in January 2019. It has been updated to reflect the Immigration (Restrictions on Employment and Residential Accommodation) (Prescribed Requirements and Codes of Practice) and Licensing Act 2003 (Personal and Premises Licences) (Forms) Order 2021, which makes a number of changes that will come into force after 1 July 2021.

This is the fourth version of this code, and the changes detailed within come into force on 1 July 2021. This version of the code should be applied to all right to work checks from this date, including where a [follow-up check](#) is required to maintain a statutory excuse, even if the initial check was undertaken using a previous version of the code which was current at the time.

Right to work checks which were carried out in the prescribed manner prior to this code having effect will be considered by the Secretary of State in line with the version of the code which was current at the time at which the right to work check was made.

Changes to right to work checks for EEA citizens from 1 July 2021

The UK has left the European Union (EU) and the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 ended free movement law in the UK on 31 December 2020. There followed a grace period of six-months (until 30 June 2021) during which relevant aspects of free movement law were saved to allow eligible EEA citizens and their family members resident in the UK by 31 December 2020 to apply to the EU Settlement Scheme.

From 1 July 2021, EEA citizens and their family members require immigration status in the UK, in the same way as other foreign nationals. They can no longer rely on an EEA passport or national identity card, to prove their right to work.

Most EEA citizens resident in the UK will have made an application to the EU Settlement Scheme and will have been provided with digital evidence of their UK immigration status. They will evidence their right to work by sharing their immigration status digitally, using the Home Office online right to work service on GOV.UK.

There will however, be other EEA citizens who have another form of leave in the UK, which is held in a physical document, for example an endorsement in a passport, visa or vignette, those documents are included in the prescribed document lists, providing employers with a statutory excuse against liability for a civil penalty.

For whom is this code of practice relevant?

This code applies:

- (i) when calculating the penalty amount; in respect of any employment which commenced on or after 28 January 2019 where the breach of section 15 of the Act occurred on or after 1 July 2021; or
- (ii) when determining liability; where an initial check on a potential employee, or a repeat check on an existing employee, is required on or after 1 July 2021 in order to establish or retain a statutory excuse.

When the employment commenced on or after 29 February 2008 and the breach occurred on or after 28 January 2019 and before 1 July 2021, the code published in January 2019 applies.

When the employment commenced on or after 29 February 2008 and the breach occurred on or after 16 May 2014 and before 28 January 2019, the code published in May 2014 applies.

When the employment commenced on or after 29 February 2008 and the breach occurred before 16 May 2014, the code published in February 2008 applies.

This code applies to employers who employ staff under a contract of employment (a contract of service or apprenticeship), whether express or implied and whether oral or in writing. It does not apply to those who undertake work for you who do not fall within these categories.

How should this code of practice be used?

This code has been issued under section 19 of the Act. It sets out the factors to be considered by the Home Office in determining the amount of the civil penalty.

This code has been issued alongside guidance for employers setting out how to conduct right to work checks and how the Home Office administers the civil penalty scheme. Please refer to this code alongside these documents. They can be found at: <https://www.gov.uk/government/collections/employers-illegal-working-penalties>.

How to avoid discrimination

It is unlawful to discriminate against individuals on grounds of protected characteristics, including race, when carrying out right to work checks. Those experiencing unlawful discrimination may bring a complaint before the courts or before an Employment Tribunal. If the complaint is upheld, the Tribunal will normally order the payment of compensation, for which there is no upper limit.

A separate [Code of Practice for employers: Avoiding discrimination while preventing illegal working](#), gives further advice on how to operate checking processes that are non-discriminatory and in accordance with statutory equalities duties. Employers should apply checks to all employees, whether or not they may already believe the employee to be legally in the UK.

Who should use this code of practice?

This is a statutory code. This means that it has been approved by the Secretary of State and laid before Parliament. The code does not impose any legal duties on employers, nor is it an authoritative statement of the law; only the Courts and Employment Tribunals can provide that. However, the code may be used as evidence in legal proceedings and Courts and Employment Tribunals must take account of any part of the code which may be relevant. Home Office officials will also have regard to this code when administering illegal working civil penalties under the Act.

References in this code

In this code, references to:

‘Breach’ or ‘breaches’ mean that section 15 of the Immigration, Asylum and Nationality Act 2006 has been contravened by employing someone who is:

- subject to immigration control; and
- aged over 16; and
- not allowed to carry out the work in question because either they have not been granted leave to enter or remain in the UK or because their leave to enter or remain in the UK:
 - (i) is invalid;
 - (ii) has ceased to have effect (meaning it no longer applies) whether by reason of curtailment, revocation, cancellation, passage of time or otherwise; or
 - (iii) is subject to a condition preventing them from accepting the employment.

‘Civil penalty notice’ means a notice given under section 15(2) of the Immigration, Asylum and Nationality Act 2006 that requires an employer to pay a penalty of a specified amount.

‘Current document’ means a document that has not expired.

‘Days’ has two separate meanings:

- When referring to an employee - means calendar days, including Saturdays, Sundays and bank holidays.
- When referring to the Employer Checking Service – it does not include Saturdays or Sundays, Christmas Day or Good Friday, or any day which is a bank holiday in England.

‘Document’ means an original document unless specified in the code of practice that a copy, electronic or screenshot is acceptable.

‘EEA or Swiss citizens’ refer to citizens of EEA countries or Switzerland.

The EEA countries are:

Austria, Belgium, Bulgaria, Croatia, Republic of Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain and Sweden.

‘Employee’ means someone who is, or who will be, employed under a contract of employment (contract of service) or apprenticeship.

‘Employment of illegal workers within the previous three years’ means you have been issued with a civil penalty or warning notice in respect of a breach of the Act for one or more illegal workers which occurred within three years of the current breach, or you have committed an offence under section 21 of the Act during the same period.

‘Home Office online right to work checking service’ means the online system allowing employers to check whether a person is allowed to work in the United Kingdom and, if so, the nature of any restrictions on that person’s right to do so. For the avoidance of doubt, this system is accessible for employers on the ‘View a job applicant’s right to work details’ page

on GOV.UK. No other online portal relating to immigration status may be used instead for right to work checking purposes.

‘Leave to enter or remain in the UK’ means that a person has permission from the Home Office to be in the UK. Permission may be time-limited or indefinite.

‘Non-EEA citizens’ means the citizens of countries outside the EEA.

An ‘online right to work check’ means the response generated by the Home Office online right to work checking service in relation to a person.

References to ‘right to work checks’ refer to prescribed manual document checks and prescribed online right to work checks.

‘Statutory excuse’ means the steps an employer can take to avoid liability for a civil penalty.

‘We’ or ‘us’ in this code mean the Home Office. References to ‘you’ and ‘your’ mean the employer.

2: How to conduct a right to work check

Since 28 January 2019, employers have had the option to conduct either a manual right to work check or an online right to work check in order to establish a statutory excuse against a civil penalty in the event that an employee is found to be working illegally.

Increasingly, the Home Office is providing digital evidence of immigration status, rather than issuing physical documents. This means they will only be able to evidence their right to work using the Home Office online service.

However, it will not be possible to conduct an online right to work check in all circumstances, as not all employees, or prospective employees, will have an immigration status that can be checked online at this stage. The Home Office online right to work checking service sets out what information and/or documentation you will need in order to access the service. In circumstances in which an online check is not possible in respect of an individual, you should conduct a manual right to work check.

When conducting [follow-up checks](#) required in respect of those whose right to work is time-limited, you may use either the manual right to work check or the online right to work check where applicable.

Ways to evidence right to work

Manual document-based right to work check

There are three basic steps to conducting an initial manual document-based right to work check:

1. Obtain original versions of one or more of the [acceptable documents](#);
2. Check the documents in the presence of the holder of the documents;¹ and
3. Make copies of the documents, retain the copies and a record of the date on which the check is made. For example: the date on which this right to work check was made: [insert date].

Employers must check the validity of the documents in the presence of the holder. The documents must be checked to ensure that:

- They are genuine
- That the person presenting them is the prospective employee or employee
- That the photograph and dates of birth are consistent across documents and with the person's appearance.

For a step by step guide on how to complete a right to work check please refer to the [Right to work checks: an employer's guide](#).

¹ The person must be present in person or via a live video link.

Where a right to work check has been conducted using the online service, the information is provided in real-time, directly from Home Office systems and there is no requirement to see the documents listed below.

Lists of acceptable documents for right to work checks

The documents that are considered acceptable for establishing a statutory excuse when conducting a manual right to work in the UK are set out in two lists, **List A** and **List B**.

List A contains the range of documents which may be accepted for checking purposes for a person who has a permanent right to work in the UK. If you follow the prescribed right to work checks, you will establish a **continuous statutory excuse** for the duration of that person's employment with you.

List B contains the range of documents which may be accepted for checking purposes for a person who has a temporary right to work in the UK. If you follow the prescribed right to work checks, you will establish a **time-limited statutory excuse**. You will be required to carry out a follow-up check as set out below.

List A – Acceptable documents to establish a continuous statutory excuse

1. A passport (current or expired) showing the holder, or a person named in the passport as the child of the holder, is a British citizen or a citizen of the UK and Colonies having the right of abode in the UK.
2. A passport or passport card (current or expired) showing that the holder is a national of the Republic of Ireland.
3. A **current** document issued by the Home Office to a family member of an EEA or Swiss citizen, and which indicates that the holder is permitted to stay in the United Kingdom indefinitely.
4. A document issued by the Bailiwick of Jersey, the Bailiwick of Guernsey or the Isle of Man, which has been verified as valid by the Home Office Employer Checking Service, showing that the holder has been granted unlimited leave to enter or remain under Appendix EU to the Jersey Immigration Rules, Appendix EU to the Immigration (Bailiwick of Guernsey) Rules 2008 or Appendix EU to the Isle of Man Immigration Rules.
5. A **current** Biometric Immigration Document (Biometric Residence Permit) issued by the Home Office to the holder indicating that the person named is allowed to stay indefinitely in the UK or has no time limit on their stay in the UK.
6. A **current** passport endorsed to show that the holder is exempt from immigration control, is allowed to stay indefinitely in the UK, has the right of abode in the UK, or has no time limit on their stay in the UK.
7. A **current** Immigration Status Document issued by the Home Office to the holder with an endorsement indicating that the named person is allowed to stay indefinitely in the UK, or has no time limit on their stay in the UK, **together with** an official document giving the person's permanent National Insurance number and their name issued by a government agency or a previous employer.
8. A birth or adoption certificate issued in the UK, **together with** an official document giving the person's permanent National Insurance number and their name issued by a government agency or a previous employer.

9. A birth or adoption certificate issued in the Channel Islands, the Isle of Man or Ireland, **together with** an official document giving the person's permanent National Insurance number and their name issued by a government agency or a previous employer.
10. A certificate of registration or naturalisation as a British citizen, **together with** an official document giving the person's permanent National Insurance number and their name issued by a government agency or a previous employer.

List B – Acceptable documents to establish a statutory excuse for a limited period of time

List B Group 1 – documents where a time-limited statutory excuse lasts until the expiry date of leave

1. A **current** passport endorsed to show that the holder is allowed to stay in the UK and is currently allowed to do the type of work in question.
2. A **current** Biometric Immigration Document (Biometric Residence Permit) issued by the Home Office to the holder which indicates that the named person can currently stay in the UK and is allowed to do the work in question.
3. A **current** document issued by the Home Office to a family member of an EEA or Swiss citizen, and which indicates that the holder is permitted to stay in the United Kingdom for a time limited period and to do the type of work in question.
4. A document issued by the Bailiwick of Jersey, the Bailiwick of Guernsey or the Isle of Man, which has been verified as valid by the Home Office Employer Checking Service, showing that the holder has been granted limited leave to enter or remain under Appendix EU to the Jersey Immigration Rules, Appendix EU to the Immigration (Bailiwick of Guernsey) Rules 2008 or Appendix EU to the Isle of Man Immigration Rules.
5. A document issued by the Bailiwick of Jersey or the Bailiwick of Guernsey, which has been verified as valid by the Home Office Employer Checking Service, showing that the holder has made an application for leave to enter or remain under Appendix EU to the Jersey Immigration Rules or Appendix EU to the Immigration (Bailiwick of Guernsey) Rules 2008, on or before 30 June 2021.
6. A frontier worker permit issued under regulation 8 of the Citizens' Rights (Frontier Workers) (EU Exit) Regulations 2020.
7. A **current** Immigration Status Document containing a photograph issued by the Home Office to the holder with a valid endorsement indicating that the named person may stay in the UK, and is allowed to do the type of work in question, together with an official document giving the person's permanent National Insurance number and their name issued by a government agency or a previous employer.

List B Group 2 – Documents where a time-limited statutory excuse lasts for 6 months

1. A document issued by the Home Office showing that the holder has made an application for leave to enter or remain under Appendix EU to the immigration rules on or before 30 June 2021 **together with a Positive Verification Notice** from the Home Office Employer Checking Service.
2. A document issued by the Bailiwick of Jersey or the Bailiwick of Guernsey showing that the holder has made an application for leave to enter or remain under Appendix EU to the Jersey Immigration Rules or Appendix EU to the Immigration (Bailiwick of

Guernsey) Rules 2008 on or before 30 June **together with a Positive Verification Notice** from the Home Office Employer Checking Service.

3. An Application Registration Card issued by the Home Office stating that the holder is permitted to take the employment in question, **together with a Positive Verification Notice** from the Home Office Employer Checking Service.
4. A Positive Verification Notice issued by the Home Office Employer Checking Service to the employer or prospective employer, which indicates that the named person may stay in the UK and is permitted to do the work in question.

Follow-up right to work checks

If you conduct the prescribed right to work checks, you will establish a statutory excuse as follows:

In List A: your statutory excuse will be for the whole duration of your employee's employment with you because there are no restrictions on their permission to be in the UK. You do not have to repeat the right to work check.

In List B: your statutory excuse will be limited because your employee has restrictions on their permission to be in the UK and to do the work in question. In order to retain your excuse, you must undertake follow-up right to work checks as follows:

Group 1 documents:

- If your employee is able to produce a current document in this list, you should make a follow-up check using this document. Your time-limited statutory excuse will continue for as long as your employee has permission to be in the UK and do the work in question, as evidenced by the document, or combination of documents, your employee produced for the right to work check.
- If, however, at the point that permission expires, you are reasonably satisfied that your employee has an outstanding application or appeal to vary or extend their leave in the UK, your time-limited statutory excuse will continue from the expiry date of your employee's permission for a further period of up to 28 days. This is to enable you to verify whether the employee has permission to continue working for you.
- During this 28-day period you must contact the Employer Checking Service and receive a Positive Verification Notice confirming the employee continues to have the right to undertake the work in question.
- In the event that you receive a Positive Verification Notice, your statutory excuse will last for a further six months from the date specified in your Notice. You will then need to make a further check upon its expiry.
- In the event that you receive a Negative Verification Notice, your statutory excuse will be terminated.

An application or appeal must be made on or before a person's permission to be in the UK and do the work in question expires in order to be deemed 'in-time' and valid. In the event that you receive a Negative Verification Notice² from the Employer Checking Service stating

² A 'Negative Verification Notice' is official correspondence from the Home Office Employer Checking Service which confirms that a named person does not have permission to undertake the work in question.

that the employee does not have permission to undertake the work in question, you will not have a statutory excuse and you should no longer employ that person.

Group 2 documents:

- If your prospective employee, or employee, holds one of the documents in Group 2, or is unable to present an acceptable document because they have an outstanding application, appeal, or administrative review with the Home Office in respect of their leave, you must contact the Employer Checking Service and receive a Positive Verification Notice. Your time-limited statutory excuse will last for six months from the date specified in the Positive Verification Notice. You will then need to make a further check upon its expiry.

Conducting an online right to work check

With effect from 28 January 2019, you may choose to conduct an online right to work check to establish a statutory excuse against a civil penalty in the event of illegal working. You can do this by accessing the Home Office online right to work checking service. Not all employees, or prospective employees, will have an immigration status that can be checked online. Currently, the Home Office online checking service supports checks in respect of those who hold:

- a current biometric residence permit;
- a current biometric residence card; or
- status issued digitally under the EU Settlement Scheme;
- status issued digitally under the points-based immigration system;
- British National Overseas (BNO) visa; or
- Frontier workers permit

From 1 July 2021, there will be some individuals who have been issued their immigration status digitally by the Home Office, they can only use the online service to prove their right to work. Employers cannot discriminate against those who can only prove their right to work digitally using the Home Office online service [‘View a job applicant's right to work details’](#).

The online service works on the basis of the prospective employee first viewing their own Home Office right to work profile by using the GOV.UK service [‘Prove your right to work to an employer’](#).

They may then choose to share this information with the employer, by providing them with a ‘share code’, which, when entered along with the individual’s date of birth, enables the employer to access the information via the online service available on GOV.UK [‘View a job applicant's right to work details’](#).

The prospective employee, or employee, may provide this to the employer directly, or they may choose to send this via the service, in which case the employer will receive an email from right.to.work.service@notifications.service.gov.uk

It is not sufficient to view the information provided to the prospective employee, or employee, when they view their profile using the migrant part of the Home Office online right to work checking service, and doing so will not provide you with a statutory excuse.

There are three basic steps to conducting an online right to work check:

1. use the Home Office online right to work checking service (the 'View a job applicant's right to work details' page on GOV.UK) in respect of an individual and only employ the person, or continue to employ an existing employee, if the online check confirms they are entitled to do the work in question;
2. satisfy yourself that any photograph on the online right to work check is of the individual presenting themselves for work; and
3. retain a clear copy of the response provided by the online right to work check (storing that response securely, electronically or in hardcopy) for the duration of employment and for two years afterwards.

If the online right to work check does not confirm that the individual has the right to work in the UK and to do the work in question, you will not have a statutory excuse from this check if you proceed to employ them. If you know or have reasonable cause to believe that they do not have the right to work, and employ them anyway, you risk being found guilty of a criminal offence.

Additional requirement for students

For students who have limited permission to work during term-times, you must also obtain, copy and retain details of their academic term and vacation times covering the duration of their period of study in the UK for which they will be employed.

Follow-up right to work checks

Conducting the online right to work check as prescribed above will provide you with a statutory excuse for the period for which the online right to work check confirmed that the person named in it is permitted to carry out the work in question. You must conduct the check before employment commences in order to have a statutory excuse.

Where an employee has a time-limited right to work, and you have therefore established a time-limited statutory excuse, you are required to do a follow-up right to work check at the point that permission is due to end in order to retain a statutory excuse.

The Home Office Employer Checking Service

When an individual cannot provide the employer with any of the documents from [List A or List B](#), but claims that:

- they have an ongoing immigration application or appeal with the Home Office
- their documents are with the Home Office, or
- they present other information indicating they are a long-term resident of the UK who arrived in the UK before 1988.

The statutory excuse will continue from the expiry date of an existing employee's leave for a further period of up to 28 days to enable the employer to obtain a **Positive Verification Notice** from the Employer Checking Service. This '28-day period' does not apply to checks carried out before the start of the employment. In such circumstances, the employer should delay the start of employment until they have received a **Positive Verification Notice** from the Employer Checking Service.

How: An employer must request verification of right to work from the [Home Office's Employer Checking Service](#) on GOV.UK. This is a different process to the online checking service described in [Conducting an online right to work check](#).

Where an employer does not have access to the internet, a request can be made by telephone. This telephone number can be found in the [Right to work checks: an employer's guide](#).

The Employer Checking Service aims to provide a response within five working days of receiving a valid request. It is your responsibility to inform the person you intend to employ, or continue employing, that you are carrying out this check on them, to complete the verification request correctly and to make the request at least 14 days after the date of the application, appeal or administrative review was delivered or posted.

A **Positive Verification Notice** from the Employer Checking Service will provide you with a defence against a civil penalty enabling you to hire or extend the person's contract for six months from the date specified in the Positive Verification Notice.

If the Employer Checking Service has not considered the request within five working days, an automatic response will be sent to the employer informing them that they can hire the prospective employee. Any response from the Home Office Employer Checking Service must be retained in order to maintain a statutory excuse against a civil penalty.

Please note that the Employer Checking Service is for the use of employers **only**.

3: An overview of how the civil penalty will be administered

The civil penalty scheme is designed to encourage you to comply with your duty as an employer to prevent illegal working by carrying out right to work checks. The civil penalty scheme is applied as the sanction for employing illegal workers in most cases. The civil penalties we impose are intended to be proportionate to the level of non-compliant behaviour and are therefore calculated on a sliding scale. Criminal sanctions may be applied in the most serious cases.

Liability for a civil penalty

If you are found employing an illegal worker we may issue you with a notice informing you that the details of your case are being referred to officials with responsibility for administering the civil penalty scheme, to consider your liability for a civil penalty for breaching section 15 of the Act.

This referral notice will inform you how your case will be considered and the possible decision outcomes. It will also specify the date on which the breach was encountered. If you receive this referral notice, you are advised to consult the separate guidance issued by the Home Office which sets out in more detail how the civil penalty scheme will be administered, including the various documents that you may receive and the deadlines that are relevant to each stage of the process.

The separate guidance will also set out how and when you may exercise your right to object to the Home Office and appeal to a court against a civil penalty. You may object and appeal on the following grounds:

- you are not liable to pay the penalty (for example, this could be because you are not the employer of the illegal worker(s) identified);
- you have a statutory excuse (this means you undertook a prescribed right to work check); or
- the level of penalty is too high (this means we have miscalculated the amount of your penalty by reference to the wrong scale or you have evidence that you have met specified mitigating criteria which we have not taken into account).

In the event that we visit your business premises and you are able to demonstrate to officials at this time that you have a statutory excuse in respect of the identified illegal workers, you will not be served with a referral notice in respect of these employees. Instead, you will be served with a notice indicating that no action will be taken in your case and it will be closed. It will not be taken into account in the event that you breach the Act in future.

Fast payment option

We have a fast payment option which reduces the amount of your civil penalty by **30 per cent** if we receive payment **in full within 21 days** of the date of the civil penalty notice. The reduced penalty amount and the final date by which you must pay it will be clearly shown on your civil penalty notice.

If you object to your penalty before the deadline specified in your civil penalty notice, you will continue to be eligible for the fast payment option. If you are still required to pay a penalty following your objection, you will be given a fresh notice which specifies a new date by which you may pay your penalty at the lower amount.

If you have been found to be employing illegal workers within the previous three years, you are not eligible for this reduced payment after the first penalty notice or offence.

Payment by instalments

We will consider the impact of the penalty on you insofar as you are unable to pay it in one lump sum. We may agree that you are able to pay your penalty by instalments over an agreed period of time, usually up to 24 months, and exceptionally up to 36 months. We will not reduce the penalty amount.

You must provide details of your ability to pay over the instalment plan period and why you cannot pay the penalty in full. This information should be supplied within 28 days of the civil penalty notice in order for your application to be considered. When we inform you of our decision, we will stipulate when the payment or payments are due. Your request to pay by instalments does not affect the time limits within which an objection or an appeal against the civil penalty must be brought.

In the event that you do not pay an instalment on the due date, debt recovery enforcement action will be taken.

A fast payment option may not be paid by instalments.

Enforcement and other consequences of a civil penalty

If you do not pay your penalty in full or by instalments, or object or appeal, by the specified due dates, we will commence enforcement action against you. This includes action in the civil court to recover the unpaid penalty. This action may have an adverse impact on your ability to act in the capacity of a director in a company.

If you are an employer who is subject to immigration control, you should also be aware that if you are liable for a civil penalty, this will be recorded on Home Office systems and may be taken into account when considering any future immigration application that you make.

If you are liable for a civil penalty, it could also affect your ability to sponsor migrants who come to the UK in the future, including those you wish to work for you under the skilled worker route via the points-based immigration system, or to hold a Gangmaster licence.

The Act also provides, under section 21, a criminal sanction for use against employers who employ individuals they know or have reasonable cause to believe are working illegally. This code does not cover this criminal offence.

4: Determining liability and calculating the penalty amount

When considering an employer's liability for a civil penalty, the Home Office will follow the **Consideration Framework** set out below. It comprises three stages of consideration and explains how the level of breach is to be calculated.

Stage 1: Determining Liability

Where an employer has been found to have employed someone with no right to work, do they have a statutory excuse?

- If the answer is yes, the Home Office issues a No Action Notice.
- If the answer is no, proceed to stage 2.

Stage 2: Determining the level of breach

Has the employer breached the Scheme within the past three years?

- If the answer is yes, the case will proceed to Stage 3, level 2.
- If the answer is no, proceed to Stage 3, level 1.

Stage 3: Determining the penalty amount

The Home Office determine the penalty amount by using the **Civil Penalty Calculator** (set out below). This calculator sets out a sliding scale of penalty amounts **for each illegal worker**.

The actual penalty amount will depend on an employer's history of compliance with right to work checks as an employer. It will be determined according to whether an employer qualifies for reductions in the penalty amount by providing evidence that they have met the mitigating factors. Each case of illegal working is considered by officials on the basis of the information available, the Consideration Framework and the Civil Penalty Calculator.

Civil Penalty Calculator

The Civil Penalty Calculator comprises two levels:

- The **Level 1** table should be used where you have **not** been found to be employing illegal workers within the previous three years. The starting point for the calculation of the civil penalty is £15,000 before reductions are applied.
- The **Level 2** table should be used where you have been found to be employing illegal workers within the previous three years. The starting point for the calculation of the civil penalty is £20,000 before reductions are applied.

Where a civil penalty notice has been cancelled following an objection or appeal and has not been replaced by a warning notice, it shall not be taken into account when calculating any subsequent penalty.

Level 1 (first breach)

Mitigating factor 1: is there evidence an employer has already reported the suspected illegal worker to the Home Office and received a unique reference number?

- If the answer is yes, penalty is decreased by **£5,000**
- If the answer is no, no penalty is decreased

Mitigating factor 2: is there evidence an employer has actively co-operated with the Home Office?

- If the answer is yes, penalty is decreased by **£5,000**
- If the answer is no, no penalty is decreased

Mitigating factor 3: is there evidence an employer has effective right to work checking practices in place **together** with mitigation for factors 1 and 2?

- If the answer is yes, the Home Office issues a Warning Notice
- If the answer is no, the Home Office issues a Civil Penalty Notice for the total value calculated in each case

The ending minimum penalty amount may be reduced by 30% to £3,500 per illegal worker under our fast payment option.

Level 2 (second or subsequent breach)

Mitigating factor 1: is there evidence an employer has already reported the suspected illegal worker to the Home Office and received a unique reference number?

- If the answer is yes, penalty is decreased by **£5,000**
- If the answer is no, no penalty is decreased

Mitigating factor 2: is there evidence an employer has actively co-operated with the Home Office?

- If the answer is yes, penalty is decreased by **£5,000**
- If the answer is no, no penalty is decreased

The Home Office issues a Civil Penalty Notice for the total value calculated in each case. Warning Notice is not available.

The fast payment option is not available where you have been found to be employing illegal workers within the previous three years.

Do you have a statutory excuse?

In **stage 1** of our consideration we will determine if you have a statutory excuse against liability for a civil penalty. You will have a statutory excuse if you have correctly carried out the prescribed right to work checks before employment commences.

Where an employee has a time-limited right to work, and you have, therefore, established a **time-limited statutory excuse**, you are required to conduct repeat right to work checks to retain the excuse. Generally, this will be when the employee's permission to be in the UK and undertake the work in question expires, as evidenced by either the document (or combination of documents) produced or by the online right to work check.

It is your responsibility to demonstrate that you have complied with the requirements to establish and, where necessary, retain your statutory excuse.

You will **not** have a statutory excuse if:

- you cannot provide evidence of having conducted the prescribed right to work checks before the employment commenced;

- you have employed someone when it is reasonably apparent that they are not the holder of the document they present, or the person named and shown in the online right to work check (i.e. that person is an imposter);
- you have conducted a manual check and it is reasonably apparent that the document is false (the falsity would be considered to be 'reasonably apparent' if an individual who is untrained in the identification of false documents, examining it carefully, but briefly and without the use of technological aids, could reasonably be expected to realise that the document in question is not genuine);
- you have conducted an online check and it is reasonably apparent that the website you have used to do that check is not the official GOV.UK Home Office online right to work checking service;
- you have attempted to conduct an online check but have not accessed the employer 'View a job applicant's right to work details' part of the service, you have only viewed information online that has been provided directly to the migrant;
- you have employed someone when it is clear from the right to work check that the person does not have valid permission to work in the UK or is subject to an immigration condition which prevents them from carrying out the work in question (i.e. you have employed a person with no right to work or a person in breach of their work restrictions or a person whose right to work has expired);
- you know you are employing a person who is not allowed to undertake the work regardless of whether you have carried out any document checks;
- your statutory excuse was time-limited and has expired; or
- in respect of a student who has a restricted right to work, you have not obtained and retained a copy of evidence setting out their term and vacation times covering the duration of their period of study in the UK.

If we are satisfied that you **have a statutory excuse** in respect of an illegal worker, you will not be liable for a civil penalty.

But if we consider that you **have not established a statutory excuse** in respect of an illegal worker we will consider the level of your civil penalty. Please see **stage 2** in the Consideration Framework.

Have you been found to be employing an illegal worker before?

During **stage 2** of our consideration process we will look at whether you have been found to be employing illegal workers within the previous three years. We will do this to determine the level of your breach, as this will be taken into account and a higher starting level of penalty will apply. We will then use **Level 2** of our **Civil Penalty Calculator** to determine the amount of your civil penalty.

If you **have not** received a civil penalty or warning notice or committed an offence under section 21 within this time period, we will use **Level 1** of our **Civil Penalty Calculator** to determine the amount of your penalty.

Multiple premises

A business with more than one premises which has been found to be employing illegal workers within the previous three years and where recruitment is devolved to each site, will not be subject to a penalty calculation using **Level 2** of the Civil Penalty Calculator if illegal workers are encountered at different sites, unless this can be attributed to a general failure in the business's centrally set recruitment practices.

Transfer of undertakings

Employers who acquire staff as a result of a Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) transfer are provided with a grace period of 60 days from the date of the transfer of the business to correctly carry out their first statutory right to work checks in respect of these acquired employees. There is no such grace period for any follow-up checks to retain the excuse, where applicable.

This 60-day grace period applies in all situations where the new employer acquires employees who are subject to a "relevant transfer"³, even if the transferring business is subject to "terminal" insolvency proceedings falling within regulation 8(7) of the TUPE Regulations, such as cases involving compulsory liquidation⁴.

This means that in all circumstances where employees assigned to a business, or part of a business, that is the subject of a relevant transfer move with that work to a new employer, the new employer has 60 days from the date of the relevant transfer to carry out fresh right to work checks on those employees, even if regulation 8(7) applies.

By complying with prescribed right to work checks within this timescale, the transferee employer will acquire a statutory excuse against liability for a civil penalty in the event that illegal working is identified.

Do you have mitigating evidence?

In **stage 3** of our consideration we will assess whether any of the published mitigating factors apply in your case when determining the amount of your penalty. Depending on the level of your breach, there are up to three mitigating factors which may be taken into account:

(1) Have you reported suspected illegal workers to us?

If you demonstrate that you have reported to us your suspicion about the right to work of one or more illegal workers who have been identified and received an acknowledgement in the form of a unique Home Office reference number, your penalty amount for each of these illegal workers will be reduced by £5,000. To qualify for this reduction, you must have reported your suspicion about them to our Sponsorship and Employers' Helpline on 0300 123 5434 **before** we identify the illegal worker. This mitigating factor is taken into account for both **Level 1** and **Level 2** breaches.

(2) Have you actively co-operated with us?

If you demonstrate that you have actively co-operated with us when we investigate your compliance with the law, your penalty amount for each illegal worker will also be reduced by £5,000.

³ as defined by Regulation 3 of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (the "TUPE Regulations")

⁴ The employment protections set out in regulations 4 (continuation of employment) and 7 (protection from dismissal) of the TUPE Regulations are dis-applied in reg. 8(7) cases.

Active co-operation means:

- providing Home Office officials with access to your premises, recruitment, and employment records and right to work checking systems when requested;
- responding promptly, honestly and accurately to questions asked during Immigration Enforcement visits and responding to any further requests for information by the deadline set;
- making yourself available to our officials during the course of our investigations if required; and
- fully and promptly disclosing any evidence you have which may assist us in our investigations.

This mitigating factor is taken into account for both **Level 1** and **Level 2** breaches.

(3) Do you have effective right to work checking practices in place?

If you demonstrate that you have effective recruitment practices in place **together with** evidence that you have reported your suspicion about the illegal worker(s) in question **and** actively co-operated with us, your penalty will be reduced to the minimum level of a **warning notice**. This will only apply if you have not been found to be employing illegal workers within the previous three years. A warning notice will be taken into account in determining the level of your penalty if you commit a subsequent breach of the Act within the following three years.

We will consider that you have effective right to work checking practices in place if you provide evidence of your general compliance with your responsibility to prevent illegal working. This includes:

- having robust document checking systems in place;
- thorough and consistent right to work checking processes;
- records of right to work checks for your staff; and
- a history of compliance with the requirements.

5: Temporary COVID-19 adjusted right to work checks (the following guidance was issued to employers)

To support social distancing measures during the global pandemic, temporary changes were made to the way in which employers carried out right to work checks between 30 March 2020 and 20 June 2021 (inclusive).

Employers will maintain a defence against a civil penalty if the check you have undertaken during this period was done in the prescribed manner or as set out in the COVID-19 adjusted checks guidance on GOV.UK. However, any individual identified with no lawful immigration status in the UK may be liable to enforcement action.

COVID-19 Adjusted Guidance

Employers should:

- ask the employee to submit a scanned copy or a photo of their original documents via email or using a mobile app
- arrange a video call with the employee – ask them to hold up the original documents to the camera and check them against the digital copy of the documents record date you made the check and mark it as “adjusted check undertaken on [insert date] due to COVID-19”
- if the employee has a current Biometric Residence Permit or Biometric Residence Card or has been granted status under the EU Settlement Scheme or the points-based immigration system, you can use the Home Office online service while doing a video call – the employee must give you permission to view their details.

Checks continue to be necessary and you must continue to check the prescribed documents set out in right to work checks: an employer’s guide or use the Home Office online service. It remains an offence to knowingly employ anyone who does not have the right to work in the UK.

End of COVID-19 Adjusted Checks

COVID-19 adjusted checks ended on 20 June 2021. From 21 June 2021, employers are required to carry out right to work checks as set out in legislation and guidance. Checks should now be carried out either face to face with physical document checks or using the Home Office online service.

Retrospective checks

Employers do not need to carry out retrospective checks on those who had a COVID-19 adjusted check between 30 March 2020 and 20 June 2021 (inclusive). This reflects the length of time the adjusted checks have been in place and supports business during this difficult time.

You will maintain a defence against a civil penalty if the check you have undertaken during this period was done in the prescribed manner or as set out in the COVID-19 adjusted checks guidance. However, any individual identified with no lawful immigration status in the UK may be liable to enforcement action.

