



Home Office

**Immigration Removals, Enforcement and Detention
General Instructions**

Illegal working operations

Version v1.0

Contents

Contents.....	2
About this guidance.....	4
Contacts	4
Clearance and publication	4
Changes from last version of this guidance	4
Illegal working operations: background	5
Definitions and powers: illegal working guidance	5
Illegal worker	5
Definition of employer	5
Definition of working illegally	6
Relevant regulations and acts.....	7
Actions during an illegal working operation	9
Illegal working operation: tasking.....	9
Questioning the employee and employer	9
Questioning the employee	10
Questioning the employer	12
Making notes during illegal working operations.....	13
What the courts require	14
Witness statements concerning illegal working.....	15
Illegal working operations: issuing notices	16
Issuing a no action notice (NAN-E).....	16
Considering evidence of a statutory excuse.....	16
Issuing a referral notice (RN).....	18
Civil penalty objection and appeal cases	19
Illegal working and sponsorship	19
Criminal action against employers and workers	21
Arrest	21
Evidence of a criminal offence.....	21
Seizure of evidence	22
CCTV evidence	22
Dealing with and advising employers	24
Employer asks for general advice.....	24
Employer requests check on immigration status of individuals.....	25
Employer requests document check.....	26

Compliance visits to employers	26
Croatian nationals: employment restrictions.....	28
Issuing a fixed penalty notice (FPN) to Croatian nationals	28
Croatian minors	29

About this guidance

This guidance tells Immigration Enforcement officers how to conduct an illegal working operation.

Contacts

If you have read the relevant legislation, this guidance and the [employer guidance](#) and still need more help with illegal working visits you must first ask your line manager.

If the question cannot be answered at that level, you may email (as appropriate):

- Civil Penalty Compliance team (CPCT) communication and correspondence inbox
- Criminal and Financial Investigations Immigration Secretariat
- Enforcement Policy

General enquiries about illegal working can be directed to the Sponsorship, Employers and Educational Helpline on 0300 123 4699.

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 the guidance rules and forms team.

Clearance and publication

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

- Version 1.0
- published for Home Office staff on 12 July 2016

Changes from last version of this guidance

This is new guidance

Related content

[Contents](#)

Illegal working operations: background

This page tells Immigration Enforcement officers about the legislation relevant to operations to detect illegal workers.

This guidance does not replace the immigration acts or civil penalty regulations or codes of practice. You must read the relevant sections and articles together with this guidance.

To make sure the actions taken when conducting illegal working operations are correct and legal you must be familiar with the following relevant legislation:

- [section 8 – Asylum and Immigration Act 1996](#)
- [Immigration \(Restrictions on Employment\) Order 2004](#)
- [sections 15 to 25 – Immigration, Asylum and Nationality Act 2006](#)
- [sections 34 and 35 – Immigration Act 2016](#) (amending section 24B of the Immigration Act 1971 and section 21 of the Immigration, Asylum and Nationality Act 2006)
- [Immigration \(Restrictions on Employment\) Order 2007](#)
- [Accession of Croatia \(Immigration and Worker Authorisation\) Regulations 2013](#)

The above legislation covers the:

- restrictions on employment, including checks that should be undertaken by the employer before employing a person subject to immigration control
- potential employer liabilities, fines and penalties if they employ an illegal worker
- new offence of working illegally in the UK, which may apply to self-employed as well as employed workers

Definitions and powers: illegal working guidance

Illegal worker

All references to ‘illegal worker’ (with the exception of Croatian nationals) refer to a person who has not been granted leave to enter or remain in the UK, or whose leave to enter or remain in the UK either:

- is invalid
- has ceased to have effect (whether by reason of curtailment, revocation, cancellation, passage of time or otherwise)
- is subject to a condition preventing him from accepting the employment

Other than in the illegal working offence in section 24B of the Immigration Act 1971, the worker must be an employee and at least 16 years of age.

Definition of employer

There are different definitions of employer depending on the act or regulations in place.

Under the [Immigration, Asylum and Nationality Act 2006](#) (the 2006 act), an employer

- is someone who engages another person in a contract of employment – the contract of employment can be expressed orally, in writing or implied – this may be a contract of:
 - service
 - apprenticeship
- is not liable for:
 - the employees of a separate contractor
 - a genuine self-employed person or freelancer
 - workers from an employment agency who continue to be employees of that agency (in which case, the agency is liable)

Employers may offer a wage, a one-off payment, accommodation or food, or a combination of these, in exchange for the worker's labour. The absence of payment of a wage does not prevent an employment relationship being established.

Under the [Accession of Croatia \(Immigration and Worker Authorisation\) Regulations 2013](#) an employer is:

- someone who directly pays the wage or salary of a worker and 'employ', 'employment' and 'employs' shall be construed accordingly.

Definition of working illegally

[Section 34 of the Immigration Act 2016](#) amends the Immigration Act 1971 by inserting a new offence of illegal working as new section 24B. A person commits the offence of illegal working if (both):

- they are subject to immigration control and works when disqualified from doing so by reason of their immigration status
- at the time, they know or have reasonable cause to believe they are disqualified from working by reason of their immigration status

A person is disqualified by reason of their immigration status if either:

- they have not been granted leave to enter or remain in the UK
- their leave to enter or remain in the UK either:
 - is invalid
 - has ceased to have effect (whether by reason of curtailment, revocation, cancellation, passage of time, or otherwise)
 - is subject to a condition preventing the person from doing work of that kind

The reference to immigration bail in the illegal working offence is to be read as temporary admission or release from detention immigration bail until the immigration bail provisions in [section 61](#) and [schedule 10](#) of the Immigration Act 2016 commence. See the [Immigration Act 2016 \(Transitional Provision\) Regulations 2016](#).

An adult victim of slavery or trafficking who has been forced to work illegally may have a defence in:

- England and Wales under [section 45 of the Modern Slavery Act 2015](#)
- Northern Ireland under [section 22 of the Human Trafficking and Exploitation \(Criminal Justice and Support for Victims\) Act \(Northern Ireland\) 2015](#)

Where the victim is a child, compulsion is not a requirement for them to fall within the defence. Similarly, in Scotland, [section 8 of the Human Trafficking and Exploitation \(Scotland\) Act 2015](#) prevents the prosecution of modern slavery victims.

The possibility of a defence based on the above provisions may be overridden in some circumstances where very serious offences have been committed.

See also: Identifying people at risk

Under [section 34 of the Immigration Act 2016](#) (which inserts the new illegal working offence as section 24B of the Immigration Act 1971), the reference to a person working is to the person working:

- under a contract of employment
- under a contract of apprenticeship
- under a contract personally to do work
- under or for the purposes of a contract for services
- for a purpose related to a contract to sell goods
- as a constable
- in the course of Crown employment
- as a relevant member of the House of Commons staff
- as a relevant member of the House of Lords staff

Relevant regulations and acts

The following table explains the regulations and acts relevant to migrants found working illegally in the UK.

Legislation:	Who does it cover:	Sanction:
Section 8 of the Asylum and Immigration Act 1996 This is no longer in force, but can be used for historic offences	Workers who were 16 or over, who had no right to work in the UK and were employed between 27 January 1997 and 28 February 2008.	Criminal offence: section 8(4)
Section 15 and section 21 of the Immigration, Asylum and Nationality Act 2006	Workers who are 16 or over, who started work in the UK on, or after 29 February 2008, who have restricted rights, are restricted by job type, or who have no right to work in the UK.	Penalty notice: section 15 Criminal offence: section 21

Legislation:	Who does it cover:	Sanction:
Section 35 of the Immigration Act 2016	Amended section 21 of Immigration, Asylum and Nationality Act 2006 offence to 'knowing or has reasonable cause to believe' that the employee is disqualified from employment by reason of his immigration status, with effect from 12 July 2016.	For section 21, amended maximum custodial sentence on indictment from 2 to 5 years
Section 34 of the Immigration Act 2016	Those working illegally in the UK on or after 12 July 2016.	Criminal offence, summary only: inserted as section 24B into the Immigration Act 1971.
The Accession of Croatia (Immigration and Worker Authorisation) Regulations 2013	Workers who are from Croatia who were working in the UK on or after 1 July 2013.	Employer civil penalty: regulation 11 Employer criminal offence: regulation 15 Employee criminal offence and civil penalty: regulation 16 Employee criminal offence (deception): regulation 17

See also: [Croatian nationals: employment restrictions](#)

Related content

[Contents](#)

Actions during an illegal working operation

This page tells Immigration Enforcement officers how to interview employers and employees during an illegal working operation. It also tells them how to record the interviews and any witness statements.

Illegal working operation: tasking

All visits will be tasked by the local area Tasking and Coordination Group (TCG), which will allocate work according to the priorities outlined in the current control strategy. A record will be kept of all tasked work and no operational activity must be undertaken unless authorised by the TCG. Prior to any operational arrest visit being undertaken, it is mandatory that all the checks detailed in guidance 'Operational planning and briefing' of the enforcement guidance are carried out.

Identify whether the businesses you intend to visit are registered sponsor licence holders. If so please email Sponsor Investigations team to ensure that there are no ongoing operations being conducted regarding these and to ascertain whether or not they wish to undertake a compliance review in conjunction with Immigration Enforcement activity.

For further information about setting up an illegal working operation see:

- Operational planning and briefing
- Partnership working
- Coercive powers
- Arrest and restraint

Questioning the employee and employer

For a civil penalty under [section 15](#) or an offence under [section 21](#) of the Immigration, Asylum and Nationality Act 2006, there must be an employment relationship. This can be a contract of service or apprenticeship, whether expressed or implied, and whether oral or written.

See also: [What the courts require](#)

You must consider the following 3 conditions when considering whether an employment relationship exists:

- remuneration: an employee must be in receipt of a wage or other method of payment given for work carried out by the employee (this may include payment in kind)
- control: the worker is subject to a high degree of control by the employer in that the employer for example:
 - decides what work their employee is going to do and how and when it will be done
 - the worker may have to ask for permission to do certain things such as take leave

- obligation: mutuality of obligation - both parties, the employer and the employee, have obligations to each other, for example:
 - an employee must be under an obligation to perform work personally as directed by the employer and may have a job scope and/or a job description
 - a written document may set out the hours, days and dates the employee will work

Some of the tasks that can assist you are:

- questioning the employees
- checking for contracts of employment or similar documentation
- checking for rotas
- checking for food hygiene and licensing certificates
- checking for wage or payment slips
- checking for who pays the bills and is authorised to sign cheques
- checking for correspondence or documents that suggest that the individual is the employer
- checking with H M Revenue and Customs (HMRC)
- checking with the UKVI Sponsor Management Unit
- checking with the Gangmaster Licensing Authority

Use the Illegal working civil penalty aide memoire to help you form the questions to ask to get the information you want.

Questioning the employee

You may ask questions relating to a breach of [section 15 of the Immigration, Asylum and Nationality Act 2006](#) or [regulation 11 of the Accession of Croatia \(Immigration and Worker Authorisation\) Regulations 2013](#) as part of exploratory questioning or an administrative interview with an individual as part of an examination regarding a breach of Immigration law. See: Enforcement interviewing.

Where it is intended as a result of the above investigation that there are reasonable grounds to suspect that a criminal immigration offence has been committed and that it is intended to seek to arrest and prosecute the person for the offence then the person must be cautioned in accordance with [Police and Criminal Evidence Act 1984](#) (PACE). Any answers given under caution may be used as evidence in any civil penalty action. A decision to proceed with a prosecution must be taken on advice from Criminal and Financial Investigations.

See also:

- [Criminal action against employers and workers](#)
- Criminal investigations
- Arrest and restraint

When an illegal working breach is identified, every effort must be made to make sure sufficient information and evidence about the employee is gathered. The information needed from the employee is:

- their employer's details, eg contract of employment (or similar documents governing their working arrangements such as wage slips)
- how they obtained employment, for instance via advertisement or friend
- the duties they carry out
- what equipment is supplied in order that they can perform their duties and who provided it
- what they receive in return for carrying out those duties and when:
 - this could be money or payment in kind, such as food or accommodation
- the details of the person who pays them
- the hours and days of the week they work
- the date they started work and any documents they have to confirm the start date
- what documentation they provided to the employer, if any, to show they had a right to work before they were employed
- was this a copy of a document or an original document, and what name was on the document
- if a temporary migrant, what documentation they provided to the employer to show they were allowed to work at the time of any follow up check
- what record was made of the date of any check which occurred after 16 May 2014
- if they are a Tier 4 student employed after 16 May 2014, when their term and vacation periods occur
- If they are a Tier 4 student, whether they have multiple jobs that take them above the hourly maximum
- what name does the employer know them by

You must record the answers to these questions and also record the following factual observations in the notes:

- where they were found in the premises visited
- what they were doing, for example, were they involved in a type of work activity such as operating a till
 - record factual information, not personal assumption
- what they were wearing, for example, were they wearing clothes similar to identified employees
 - if so, confirm in notes that the uniform or work wear was common to other employees on site
- any evidence that any documentation provided is a forgery or does not belong to the employer or employee

See also:

- Record keeping during enforcement visits
- Enforcement Interviews
- Coercive powers

Questioning the employer

When illegal working is identified, you must make every effort to make sure you gather sufficient information and evidence about the employer.

The information needed from a suspected employer, or the person who seems to be the manager or supervisor is:

- what name or names do they know the worker by
- the employer's details including whether the employer is:
 - a sole trader
 - limited company
 - partnership
 - franchise
 - another entity
- the contract of employment (or similar documents governing their working arrangements such as wage slips)
- how the suspected illegal worker obtained this employment
- what duties the suspected illegal worker carries out
- what equipment and clothing was supplied and who supplied it
- what they receive in return for carrying out those duties; for example, money or payment in kind such as food or accommodation
- the hours and days of the week they work
- the date they started work and any documents they have to confirm the start date
- what documentation they were given, if any, to show the illegal worker was eligible to work
- whether the documents they were given were original or a copy
- if the documents were clearly copied by the employer
- whether a passport document was copied correctly, including:
 - any page with the document expiry date
 - nationality and date of birth
 - biometric information details
 - photograph
 - any page containing information indicating the holder has an entitlement to be in the UK and undertake the work in question
- whether other documents were correctly copied in full, including both sides of a biometric residence permit or a residence card with biometric format
- if the employer recorded the date on which the documents were copied
- in respect of Tier 4 students, whether the employer recorded details of the term and vacation dates of the student's course
- whether the employer is a licensed sponsor under Tier 2 or Tier 4 of the points based scheme (this information will be required by the UKVI Sponsor Management Unit)
- whether the employer holds a licence issued by the Gangmaster Licensing Authority (for a possible referral to the Gangmaster Licensing Authority)

[Section 47 of the Immigration Act 2016](#) provides you with a power to search premises for, and seize and retain, documents which might be of assistance in determining whether a civil penalty should be imposed. If originals, photographs or

copies of these documents are provided, you must retain them and note in your **witness statement** and pocket notebook (PNB) what documents were seized during the visit. A receipt for these items must be provided.

You must refer to the [avoiding civil penalties: statutory excuse check sheet](#) for the published criteria on establishing and maintaining an excuse.

The information must be included in the referral pack, which includes the civil penalty referral form, sent to the Civil Penalty Compliance team (CPCT) by recorded delivery within 14 calendar days of the visit to the business.

The Home Office cannot force employers to terminate the contracts of illegal workers or supply advice on employment law. For this, they should consider obtaining independent legal advice. However, you must advise the employer they may be prosecuted if, following this first visit, you find that an illegal worker is still employed by them.

See:

- [Criminal action against employers and workers](#)
- Arrest and restraint
- Record keeping during enforcement visits
- Search and seizure

Making notes during illegal working operations

You must normally record all notes and evidence in your pocket notebook (PNB). Where it appears that a criminal prosecution may ensue, seek advice from Criminal and Financial Investigations.

See:

- Search and seizure
- Record keeping during enforcement visits

It is important that you consider what evidence is needed to support a civil penalty or conviction. You will need to make a judgement of the evidence for the actions you are investigating or when you make an arrest or seizure.

Although there is no statutory requirement to carry out document checks, employers must carry out required checks if they wish to establish a statutory excuse against liability for a civil penalty in the event of illegal working. This is to make sure that a potential employee has the correct permission to undertake the work in question before employing them, and that an existing employee with time-limited permission continues to have the right to work for them.

For more information about the document checks an employer should undertake in order to establish an excuse against penalty, including the frequency of follow-up checks, see:

- [Right to work checks: employer's guide](#)
- [Guidance for employers on preventing illegal working](#)
- [Code of practice on preventing illegal working: Civil penalty scheme for employers](#)

These have been issued along with other documents to support employers in complying with the civil penalty scheme. These documents may be found in [Employers: illegal working penalties](#).

What the courts require

Where there is a civil penalty appeal or a prosecution for illegal working, the following tests may be applied by the courts in respect of considering whether an individual is employed:

- the control test: does the alleged employer have the right to control not just what the worker does, but the way in which they do it
- the organisational test: is the worker an integral part of the alleged employer's organisation
- the economic reality test: who bears the risk of loss and the chance of profit:
 - if it is the worker, then they are probably not an employee, but rather an independent contractor
 - if the worker is working for several different people at the same time, this would suggest they have their own business and are self-employed

The court may also consider:

- method of payment
- method of selection and termination of the relationship
- the extent to which the worker can choose their hours and method of work
- if they can delegate the work
- if pay as you earn (PAYE) and national insurance (NI) contributions are deducted from any payment
- how the parties themselves see the relationship
- the extent to which the parties expect to be called upon to work and to provide work, a loose arrangement where work is provided and done when necessary, suggests self-employment, but a genuine expectation of work being provided consistently indicates employment

You must consider these tests when undertaking an illegal working operation, and search for evidence to support them. Immigration Compliance and Enforcement (ICE) teams are responsible for gathering and recording as much detailed evidence as possible during the visit to include in the referral to CPCT.

When considering whether the offence of illegal working has been committed. The definition of what constitutes 'working' is very wide (refer to [Definitions and powers: illegal working guidance](#)) and many activities which do not fall within the ambit of being employed, do fall within the ambit of illegal working including being self employed and selling goods as a sole trader.

See also: Search and seizure

Witness statements concerning illegal working

Witness statements (form MG11 in Forms for the first referral to CPS for charging) to build the evidence case for a criminal prosecution or to assist CPCT to levy a civil penalty, are needed from all Home Office and other enforcement staff, including policing and licensing officials who are actively or directly involved in the illegal working operation.

Witness statements must contain references to documents or interviews. These must be labelled as 'exhibits', or 'productions' if in Scotland. All statements must describe the observations of the Home Office officer or police officer writing it. If an employee states they are 'helping out', you must conduct further questioning to establish whether they were employed. Consider any other relevant evidence of employment including any evidence from the employer and those lawfully employed at the premises.

ICE team officers are not considered to be actively involved in an illegal working operation if they have not:

- served any immigration notices on any persons on the site
- interviewed any persons on site
- searched or found evidence
- witnessed the illegal working activity

See: Record keeping during enforcement visits

Related content

[Contents](#)

Illegal working operations: issuing notices

This page tells Immigration Enforcement officers when and how to consider issuing a no action notice (NAN-E) or referral notice (RN).

Issuing a no action notice (NAN-E)

Considering evidence of a statutory excuse

If you find illegal workers during an operation, including workers who have permission to be in the UK but are working in breach of their immigration conditions, you must provide the employer or the most appropriate responsible person present representing the employer or the business, with an opportunity at this time to demonstrate to you that they have complied fully with the law. You must do this by requesting evidence of the document checks undertaken in order to ascertain whether the employer has established a statutory excuse from paying a penalty for any illegal workers found.

You must consider any evidence presented to you of a statutory excuse against the published criteria set out in the [statutory excuse check sheet](#) for immigration compliance and enforcement (ICE) teams, and taken from the statutory [Code of practice on preventing illegal working](#), and the [published guidance for employers](#).

Where a positive verification notice (official communication from the Home Office Employer Checking Service stating someone is allowed to undertake the work in question) is presented, you must verify the authenticity of this document by checking the CID person notes for the named worker it is issued for, to ascertain whether the unique reference number matches the one on the notice. You may also have to check that the named individual has a certificate of application which is less than 6 months old and which permits work, or an application registration card which permits the work in question if the positive verification notice was issued alongside one of those documents.

The officer in charge (OIC) will make the decision, after cross-referencing evidence through the statutory excuse check sheet, whether to issue the employer with a NAN-E or a RN. One or both of these notices must be issued for each individual operation and a notice must be issued in respect of each illegal migrant identified. The OIC **must call** the duty chief immigration officer (CIO) of the specific operation for approval before issuing a NAN-E.

The outcome of every enforcement visit where suspected illegal workers are identified must be documented by way of the issue of a referral notice or no action notice. The OIC must record the evidence and reasons for the notice type(s) issued during an operation in their pocket notebook (PNB).

You must issue a NAN-E where a statutory excuse is established and a referral notice where the employer has not managed to do so and make a referral to the Civil Penalty Compliance Team (CPCT) to give consideration as to whether they will issue a civil penalty for the illegal workers.

For more information on the statutory excuse criteria when determining the notice type(s) to issue see: [Avoiding civil penalties: statutory excuse check sheet](#).

You must complete an enforcement version of the NAN-E and:

- issue it at the time of the visit to the employer or representative of the business for all identified illegal workers where there is clear evidence that a statutory excuse has been established
- record that the officer in charge (OIC) has obtained duty chief immigration officer (CIO) authorisation
- has given approval to issue this notice type

The NAN-E must be completed with the:

- name of the person it is issued to
- person's position in the business
- date the notice was given
- relevant enforcement visit reference
- date the breaches of [section 15 of the Immigration, Asylum and Nationality Act 2006](#) were encountered
- business address where the breaches were encountered
- names, nationalities and dates of birth of the illegal workers to which this notice applies (meaning those illegal workers with a statutory excuse)
- applicable 'worker number' and the right to work status of the illegal workers confirming whether they have no permission or restricted permission to work in the UK

You must complete and issue as many NAN-Es as are required to cover the number of identified illegal workers to which this notice type applies.

When issuing a NAN-E, you must identify the person responsible for employing the illegal workers. Where the employment is through an agency, you will need to check their relationship with the employee to ascertain whether the agency or the business is the employer.

If the employer cannot be identified, the NAN-E must be issued to the most appropriate responsible person present who is representing the employer or the business. The individual must be reminded that the statutory excuse will no longer apply when the employer knows that the work is not permitted and it is a criminal offence to knowingly employ an illegal worker.

You must record on the national operations database (NOD) when this notice type has been issued during an illegal working operation, why and for whom. A copy must

be kept on record of all NAN-Es issued by the enforcement office responsible for the operation.

Issuing a referral notice (RN)

You must complete an RN and issue it to the employer or a representative of the business in respect of all identified illegal workers where there is no clear evidence of a statutory excuse, and the officer in charge (OIC), following the referral to the CIO, has made the decision not to issue a NAN-E. A notice must be served in respect of all such illegal migrants.

The RN must be completed with the:

- name of the person it is issued to
- person's position in the business
- date the notice was given
- relevant enforcement visit reference
- employer's name including, if appropriate, company name
- employer's registered address
- business type
- VAT and company number (where applicable)
- names of any directors and/or owners
- date the breaches of section 15 were encountered
- business address where the breaches were encountered
- names, nationalities and dates of birth of the illegal workers to which this notice applies (meaning those illegal workers without a statutory excuse)
- reason for the referral for each of the named illegal workers

You must complete and issue just one RN and then as many additional worker supplements (AWS) as are required to cover the number of identified illegal workers to which this notice type applies.

When issuing a RN, you must identify the person responsible for employing the illegal worker, or workers. An agency that recruits on behalf of the business but does not employ them is not liable. But an agency that directly employs the workers they supply to a business is liable. If the employer cannot be identified, the RN and AWS (if applicable) must be issued to the most appropriate responsible person present representing the employer or the business. The RN **must be issued at the time of the visit** as a consequence of an operation and recorded in the OIC's pocket notebook. You must issue a notice even if you intend to conduct further enquiries.

You must record on the national operations database (NOD) when this notice type has been issued during an illegal working operation, why and for whom. The enforcement office responsible for the operation must keep a copy of the RN and any AWS issued.

You must also send to the CPCT a copy of the RN and any AWS, **unless the case has gone to Criminal and Financial Investigations (CFI)**, together with all supporting evidence (the referral pack) and the completed civil penalty referral form

within 14 calendar days of the visit date. This is a service level agreed timeframe for all performance reporting.

CPCT address:

6th Floor Concorde Offices
Manchester Airport
PO Box 99
Manchester
M90 3WW

Civil penalty objection and appeal cases

CPCT will assess the evidence you supply and take action against the employer if in all the circumstances, it appears that the employer is liable for a civil penalty because both:

- there is sufficient evidence to support the 'employer-employee' relationship
- the employer has not established a statutory excuse against a civil penalty liability

This is for CPCT to assess and not you. You must serve a RN in **all** cases where you suspect illegal working and the employer has failed to establish a statutory excuse, whatever the circumstances. No assurances may be provided to the employer that they will not receive a penalty notice if a RN has been issued.

CPCT will assess each case in accordance with published criteria. Where an employer has worked collaboratively with you, this will be reflected in the calculation of any civil penalty served.

Illegal working and sponsorship

Where an employer is a licensed sponsor under the points based system and is found to be employing a non-EEA migrant without leave or in breach of their conditions of leave, CPCT will inform the UKVI Sponsor Management Unit.

The Sponsor Management Unit will consider whether any breach of the illegal working legislation should have implications for the sponsor's licence, and will adopt a proportionate approach based on the circumstances in the individual case, taking into account the sponsor's general level of compliance with their obligations under immigration legislation. Where appropriate, this may include revoking the sponsor's licence.

Consult the Sponsor Management Unit at an early stage if, during the course of an illegal working operation, you encounter a person holding a Tier 2, 4 or 5 visa or biometric residence permit and there are grounds for believing the individual is working in breach of their conditions. This may include where they are:

- being paid below the minimum remuneration amount required by the Immigration Rules

- occupying an employment role below the skill level for which the visa was issued
- working in excess of permitted hours as a student

This is not an exhaustive list and each case must be considered on its facts.

Related content

[Contents](#)

Criminal action against employers and workers

This page tells Immigration Enforcement officers when and how to take criminal action against an employer or employee during an illegal working operation.

See also: Criminality and harm assessment

Arrest

[Section 34 of the Immigration Act 2016](#) amends section 28A of the Immigration Act 1971 to permit the arrest without a warrant of a worker for the offence of illegal working.

[Section 35 of the Immigration Act 2016](#) similarly amends section 28A of the Immigration Act 1971 to permit the arrest without a warrant of a person committing or attempting to commit the offence of employing an illegal worker under section 21 of the Immigration, Asylum and Nationality Act 2006.

See also: Arrest and restraint.

Evidence of a criminal offence

If you suspect, during questioning, criminal offences have taken place under:

- [section 21 of the Immigration, Asylum and Nationality Act 2006](#), as amended by [section 35 of the Immigration Act 2016](#) (knowingly or having reasonable cause to believe they are employing an illegal worker)
- [regulation 16](#) or [regulation 17](#) of the Accession of Croatia (Immigration and Worker Authorisation) Regulations 2013
- [section 25 of the Immigration Act 1971](#) (facilitation)
- [section 57 to section 59 of the Sexual Offences Act 2003](#) (trafficking)
- [section 1, section 2 or section 4 of the Modern Slavery Act 2015](#)

you must stop questioning immediately and refer the matter to a Criminal and Financial Investigation (CFI) team or CFI duty manager as soon as possible, and record the fact.

This is to make sure operations, including the seizure of evidence and interviews with illegal workers, employers and witnesses, are fully compliant with the Police and Criminal Evidence Act 1984 (PACE), the Police and Criminal Evidence (Northern Ireland) Order 1989 or the Criminal Procedure (Scotland) Act 1995. Where you do suspect a criminal offence and the crime team have advised you to arrest the suspect, you must criminally caution the suspect and advise them why they have been arrested. (See: Arrest and restraint).

If you suspect during exploratory questioning or an administrative interview that the employer may be liable for a civil penalty under [section 15 of the Immigration,](#)

[Asylum and Nationality Act 2006](#), but not an offence under section 21 and their employee has committed the criminal offence of working illegally under section 24B of the Immigration Act 1971 (as inserted by section 34 of the Immigration Act 2016), you may continue the questioning to the extent necessary to establish whether to issue a referral notice (RN). You must otherwise stop questioning and refer the matter to a CFI team or CFI duty manager as soon as possible and record the fact.

If you suspect during exploratory questioning or an administrative interview that the employer may be both liable for a civil penalty under section 15 and have committed the criminal offence of working illegally (as defined above), you must stop questioning and refer the matter to a CFI team or CFI duty manager as soon as possible and record the fact.

See also: Enforcement interviews

A worker may be committing the offence of working illegally irrespective of whether you take action against an employer. This may also occur where the worker is self employed. The Home Office's policy is to seek to remove illegal workers from the UK as quickly as possible and this will remain the normal course of action in preference to prosecution for the new section 24B offence of working illegally, unless the case meets the criteria for criminal prosecution.

Refer cases to CFI for consideration of prosecution action where either:

- the individual has refused to co-operate with the process for removing them from the UK
- the individual has a serious record of abusing immigration laws
- the individual has also used a false instrument to secure their employment
- there is evidence they have been involved in other forms of fraud against the taxpayer

These are the most common reasons for referring to CFI, you may refer any case where you believe CFI may wish to take prosecution action.

In all cases of illegal working, consideration should be given to whether a conditional caution is appropriate in all the circumstances of the case. A conditional caution may result in a timely removal from the UK thus supporting the wider Home Office policy.

Guidance on suspected labour abuse can be found at: Identifying people at risk (enforcement).

Seizure of evidence

CCTV evidence

Immigration Compliance and Enforcement (ICE) team officers have a power to seize anything which they believe to have been obtained in the consequence of the commission of, or evidence in relation to an illegal working section 21 or facilitation section 25 offence where schedule 2 administrative arrest powers are used, but only so far as it is necessary in order to prevent it being concealed, lost, damaged,

altered or destroyed. Such seized items must then be passed to the CFI team. Otherwise, seizure of evidence for a criminal purpose may only be made following a criminal arrest.

See:

- Coercive powers
- Search and seizure
- Investigation of criminal offences and assessing harm

The power to seize evidence in connection with the imposition of a civil penalty includes a device or medium upon which documents are stored in any electronic form, but only so far as a document cannot or is not produced in a form in which it can be taken away and in which it is visible and legible. It is therefore possible that closed circuit television (CCTV) footage can be taken as evidence to support the issue of a civil penalty. In practice, Civil Penalty Compliance team (CPCT) do not wish to receive CCTV and so a screen shot or photograph should be taken where necessary. If this is not possible, add a description of what is seen and said in the witness statement. If there is any advance indication of criminal matters, ICE officers should seek to take a crime officer along to exercise their criminal powers.

See:

- Record keeping during enforcement visits
- Search and seizure

Related content

[Contents](#)

Dealing with and advising employers

This page tells Immigration Enforcement officers how to deal with employers who contact the Home Office about preventing illegal working.

You must always apply caution when advising employers.

The majority of reports about suspected illegal working come from employers.

Because this reporting may lead to enforcement action being taken against the same employer, it is essential that a clear and transparent system is followed. Advice given to employers must be consistent across the Home Office.

A cooperative employer may not automatically avoid liability from prosecution or civil penalty action. Their cooperation and any other relevant factors will be considered on a case by case basis by the Civil Penalty Compliance team (CPCT) in the case of civil penalties, and CFI in the case of prosecutions.

You **must not** give any assurance to an employer that they will not receive an illegal working civil penalty **unless** you have issued a [no action notice \(NAN-E\)](#) in respect of **all** their illegal employees. You must judge this against published criteria.

Employer asks for general advice

If an employer makes a request for general advice on preventing illegal working, you must refer them to either:

- the Sponsorship, Employers and Education Helpline (0300 123 4699):
 - this is a dedicated contact centre for employers who need advice and answers to general questions on preventing illegal working
- the GOV.UK webpage [Employers: illegal working penalties](#)
 - this provides access to guidance on preventing illegal working

The Sponsorship, Employers and Education Helpline also logs reports of suspected illegal working received from employers. The employer is issued with a unique reference number (URN) and given contact details for their local immigration compliance and enforcement (ICE) team.

It is important that reports of suspected illegal working are referred to this helpline as the URN is the **only** method which allows an employer to get a reduction in the value of their civil penalty in respect of the workers that they have reported provided that the URL is issued before any enforcement visit.

Only CPCT has the authorisation to determine liability and administer penalties. A URN is not provided for any other type of call or issued by any other Home Office department.

Employer requests check on immigration status of individuals

The onus is on employers to make a physical check of one or more acceptable documents in the presence of the holder to decide if someone has the right to work.

The Employer Checking Service (ECS) will only provide verification of an individual's right to work in 3 specified circumstances in the form of a positive verification notice. This will provide a statutory excuse which will time expire 6 months from the date of the positive verification notice.

Employers who have questions about the process of conducting a right to work check must be directed to the Sponsorship, Employers and Education Helpline on 0300 123 4699, if the immigration compliance and enforcement (ICE) team is unable to answer them.

If one of the [Right to work checklist - list B – group 2](#) documents below is provided, it must be checked through the ECS:

- certificate of application which is less than 6 months old and which confirms that work is permitted (for non European Economic Area (EEA) dependants of EEA nationals and Swiss nationals)
- application registration card (ARC) stating that the holder is permitted to take the employment in question

ECS will also issue a positive verification notice when an employee or prospective employee has the right to work but is unable to produce one of the documents in the document list because they have an outstanding application, appeal or administrative review pending.

The employer must obtain the agreement of the employee/prospective employee before trying to verify with the Home Office the right to work.

To use ECS the employer must complete all the relevant sections on the [request e-form](#).

The full list of documents that provide assistance for employers are:

- an employer's guide to right to work checks
- an employer's guide to the illegal working civil penalty scheme
- an employer's guide to acceptable right to work documents
- frequently asked questions about the illegal working civil penalty scheme
- code of practice on preventing illegal working: civil penalty scheme for employers
- code of practice for employers: Avoiding unlawful discrimination while preventing illegal working
- an employers 'Right to work checklist'
- an online interactive tool 'Check if someone can work in the UK'
- an online interactive tool 'Employer Checking Service enquires'

See also:

- [Guidance for employers](#)
- [Employer checking service](#)

Employer requests document check

Working with employers is encouraged but you must make sure that a clear and transparent system is fully auditable and maintained. This makes sure that there is a consistent and fair approach for all employers. All dealings with employers must be recorded.

You must not give employers employment advice or advise them to dismiss someone. Home Office staff can only comment on the validity of the immigration documents provided and the immigration status of individual employees. You may remind employers that they should not be employing someone who does not have a right to work in the UK.

The onus is on employers to make a physical check of one or more acceptable documents in the presence of the holder to ascertain whether someone has the right to work. Employers are expected to identify 'reasonably apparent' forgeries. The Employer Checking Service (ECS) will only provide a positive verification notice on the right to work in the 3 specified circumstances indicated above.

See: [Acceptable right to work documents – employers guide](#)

Compliance visits to employers

Advice and instruction visits ('educational visits') are carried out in order to make employers aware of the illegal working legislation and to offer guidance on complying with the requirements.

Such visits should be authorised by a chief immigration officer (CIO) and are undertaken for a variety of reasons. For example:

- to provide advice on how to avoid employing immigration offenders in the future following the detection of illegal migrant workers:
 - these can be at the request of an employer, intelligence unit or an officer in charge of an operation
- to provide a service to local employers, particularly in sectors with a history of illegal working
 - these can be at the request of an intelligence unit or the officer in charge of an operation
- when requested by local employer organisations

An educational visit must cover the following areas:

- an employer's responsibility to prevent a migrant from working illegally
- guidance on how to properly conduct right to work checks
- employment checks pointing employers to the available sources of information on GOV.UK

- advising employers on where to obtain further information and advice if they are concerned about the immigration status of particular individuals within their workforce
- an educational visit must be carried out by Home Office staff who are familiar with the illegal migrant working legislation and can provide an employer with advice on how to comply with it

When conducting such a visit you must set clear objectives agreed with the employer, record the outcome reached and any recommended follow up actions. A record of this must be kept.

Where you suspect illegal working whilst on an educational visit you must document any available evidence and refer it to the relevant intelligence unit for consideration.

Related content

[Contents](#)

Croatian nationals: employment restrictions

This page tells Immigration Enforcement officers about Croatian nationals and their employment restrictions from 1 July 2013.

For more information on the regulations relating to Croatian nationals see [‘Relevant regulations and acts’](#).

Issuing a fixed penalty notice (FPN) to Croatian nationals

If you find Croatian nationals working without permission, you must:

- caution the employer and employee
- complete the corresponding booklet
- serve the corresponding FPN and explanatory notice depending on which regulations the offence was under

See: [Croatia Accession Regulations 11 and 16](#)

The Croatian booklets contain templates for:

- recording the address, power of entry and scene details of the visit
- witness statements
- issuing a referral notice

FPNs are numbered for auditing and monitoring purposes and must not be photocopied and re-used.

You must retain a copy for the enforcement office records and send a copy (by recorded delivery) to the fixed penalty coordinator in the Civil Penalty Compliance team (CPCT) for consideration.

You must update CID with the FPN details.

The Government applied transitional restrictions on the access of Croatian nationals to the UK labour market from 1 July 2013. This means that a Croatian national is only able to take employment in the UK if they hold a valid accession worker authorisation document or if they are exempt from worker authorisation. For example, a Croatian national will be exempt from the requirement to get a worker authorisation document when they have been working legally and continuously in the UK for 12 months.

See also: Regulation 2 of the Accession of [Croatia Regulations 2013](#) with regard to further exemptions from worker authorisation.

An accession worker authorisation document will take the form of a worker authorisation registration certificate (known as a 'purple registration certificate'), which the Croatian national must apply for. This document will contain an endorsement restricting the holder's employment to a particular employer and category of employment.

Where a Croatian national is in the UK exercising Treaty rights as a self-sufficient person or self-employed person, they will not need to be issued any documentation to do this, but can apply for a yellow registration certificate if they wish. The fact, however, that a Croatian national, or their engager, claims that they are working on self-employed terms does not necessarily mean that this is the true nature of their employment status.

In considering whether a Croatian national's work amounts to genuine self-employment (and therefore not subject to worker authorisation requirements), you may take into consideration the factors set out at [HM Revenue and Customs – employment status](#).

For more information, see: [Preventing illegal working: frequently asked questions](#).

Where a Croatian national is in the UK exercising Treaty rights as a student, they will need to get a yellow registration certificate if they want to work while they study. The yellow registration certificate must be obtained before they start work and will allow employment for up to 20 hours during term time and full-time during vacation periods.

See [Guidance for employers on preventing illegal working: Croatian nationals](#) for further information on who needs a worker authorisation document and who is exempt from the requirement.

For instructions on recording the service of a fixed penalty notice (FPN) on CID see A2 CID guidance.

Croatian minors

You must not serve FPNs on anyone under 16 years old. Under child employment laws, if Croatian nationals under 16 are found working, you must refer them to social services. An arrest using immigration powers is inappropriate.

Those aged 16 or 17 years old can be served with FPNs. Safeguarding under 18s is always a consideration when deciding whether to take action or not. The juvenile court needs to be assured the process is followed correctly.

You must carefully consider your statutory duty to children, under section 55 of the Borders, Citizenship and Immigration Act 2009, before you apply the instructions in this guidance either to children or people with children. Please note that in section 55 children are defined as being under 18 rather than 16.

For more information on section 55 see: Safeguard and promote child welfare.

Related content

[Contents](#)