

Immigration Bill

Factsheet: Work (clauses 39-40)

Immigration Minister Mark Harper:

"Illegal working encourages illegal immigration, undercuts legitimate businesses and is often associated with exploitation.

"The existing illegal working regime isn't simple enough; the penalties have remained the same since 2008 and don't provide a sufficient deterrent; it is also too easy for companies to evade paying them.

"New legislation will increase the penalties for rogue businesses, make it easier to enforce payment, while also making it easier for legitimate businesses to verify individuals' right to work."

Background:

The right of non-EEA nationals to work in the UK is restricted; and where the right of work is granted it may be restricted to a particular employer or limited hours.

Employers are required to ensure that their employees have the right to work in the UK. This statutory requirement is underpinned by a civil penalty scheme.

The civil penalty scheme was introduced on 29 February 2008. It allows for penalties of up to £10,000 per illegal worker to be imposed on an employer who has failed to undertake the documentary checks required by the scheme (and thereby failed to establish a statutory excuse). The maximum fine has remained at £10,000 since the scheme was introduced.

Between February 2008 and the end of 2012, over 8,100 penalties were levied against employers of illegal workers. Where a penalty is imposed, there is an objection and appeals procedure, and enforcement of the debt can be pursued by the Secretary of State via the civil courts.

We recently consulted on measures to ensure a more robust response to rogue employers who continue to exploit illegal labour and undercut legitimate business, and to simplify right to work checks to reduce the burden on compliant employers.

What we are going to do:

- We will increase the maximum penalty for employing each illegal worker from £10,000 to £20,000. This better reflects the benefits that rogue employers can enjoy from employing illegal workers, and is the first time the penalty has been increased since the scheme was introduced in 2008.
- We will streamline the processes by which an employer can object to and appeal against a civil penalty.

- We will improve and make it easier to enforce unpaid civil penalty debts in the civil courts
- We will simplify the right to work checks required, to make it easier for compliant employers to fulfil their responsibilities.

How we are going to do it:

We will use the Immigration Bill to:

- (i) require employers to raise an objection to the Secretary of State before making an appeal to the civil court. This will be achieved by an amendment to section 17 of the Immigration, Asylum and Nationality Act 2006 Act (the Act). Currently an employer can exercise their right to object to a civil penalty and appeal simultaneously, consecutively or alternatively.

The measure means that an administrative review of a decision will be conducted first. This may negate the need for an appeal to the civil court, with an associated reduction in costs for the Home Office and the employer; and

- (ii) improve and make it easier to enforce the recovery of unpaid civil penalty debts in the civil courts. This will be achieved by an amendment to section 18 of the Act to allow an outstanding penalty to be registered with the court as if it were a debt due under a court order, after which enforcement action can be commenced immediately.

This change will eliminate the need for the Secretary of State to first make an application to the court for a substantive order for payment. This change will accelerate the process of enforcement, reduce costs and provide clarity that there is no right to file a defence and dispute the debt at this stage. It will not affect the employer's rights to object and appeal against a civil penalty earlier in the process.

We will amend existing secondary legislation in early 2014 to:

- (i) increase the maximum civil penalty from £10,000 to £20,000, which will be subject to an affirmative resolution procedure; and
- (ii) simplify processes to reduce the burden of right to work checks on compliant employers, including reducing the number of acceptable documents for checking purposes.

The Bill and regulation changes will benefit:

- Legitimate businesses – through simplified documentation and right to work checks, as well as more robust action against non-compliant employers.
- Taxpayers - as a result of a reduction in direct costs that can be attributed to illegal immigration and illegal working.

- The government – the system will be simpler to administer and more focused on targeting non-compliant employers.

Next steps:

- We will amend the current regulations in April 2014.
- We will simplify our processes and guidance and provide more support for employers.
- Provided that the provisions in the Immigration Bill complete their passage through Parliament, they will come into force in late 2014.

Q&A:

How and when will you change the maximum level of civil penalties?

We will take forward the increase in the civil penalty as an amendment to regulations in April 2014, and this will be subject to an affirmative resolution procedure in Parliament. An evidence-based impact assessment will be produced beforehand.

How do the changes make it easier for legitimate employers to comply with their responsibilities?

Our aim is to reduce the burden on employers of making right-to-work checks. The measures we intend to implement include reducing the number of documents for checking over time, removing the annual right to work document checks on migrants with time-limited status in the UK but who may have several years' leave remaining, simplifying guidance and providing more support for employers.

Also, where an employer acquires new staff under the Transfer of Undertakings (Protection of Employment) Regulations, we will extend the grace period for the new employer to make right-to-work checks from 28 days to 60 days.

Further reading:

1. The government's consultation on Strengthening and simplifying the civil penalty scheme to prevent illegal working:
<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/consultations/civil-penalties/>
2. The government's response setting out the results of the consultation:
<https://www.gov.uk/government/organisations/home-office/series/immigration-bill>