



Home Office

Border & Immigration Agency

PREVENTION OF ILLEGAL WORKING

IMMIGRATION, ASYLUM AND NATIONALITY ACT 2006

**CIVIL PENALTIES FOR EMPLOYERS
CODE OF PRACTICE**

FEBRUARY 2008

The information contained in this document was correct at the time of going to print, but may be subject to revision.

For current information, please visit www.bia.homeoffice.gov.uk

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Asylum and Nationality Act 2006**

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1. INTRODUCTION

- 1.1 The Government is introducing civil penalties for employers of illegal migrant workers as part of a fundamental reform of our immigration system, in which the rights and responsibilities of employers are clearly set out and penalties are proportionate to the level of non-compliance or illegal behaviour.
- 1.2 As an employer, you have a responsibility to prevent illegal working in the United Kingdom. The illegal working provisions of the Immigration, Asylum and Nationality Act 2006 ('the 2006 Act') came into effect on 29 February 2008 and replaced the previous offence under section 8 of the Asylum and Immigration Act 1996¹, ('the 1996 Act'), **which has now been repealed**. Section 15 of the 2006 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 have employed a person aged 16 or over, who is subject to immigration control unless:
- that person has been given valid and subsisting leave to be in the United Kingdom by the Government, and that leave does not restrict them from taking the job in question; **or**
 - the person comes into a category where employment is also allowed.
- 1.3 For the purposes of the 2006 Act, an 'employer' is defined as a person who employs an individual under a contract of employment. This can be a contract of service or apprenticeship, whether express or implied. If the contract is expressed, this can be either orally or in writing. In most cases, it should be clear when you are entering into such a contract of service with an employee.
- 1.4 This Code of practice has been issued under section 19 of the 2006 Act. The Code has been prepared to set out the factors that may be considered when determining the level of penalty to be imposed in each case. This Code has been produced alongside other guidance documents and sources of information. You may wish to refer to this Code alongside that guidance and information.
- 1.5 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 obligations on employers, nor is it an authoritative statement of the law; only the courts can provide that. However, the Code can be used as evidence in legal proceedings and courts must take account of any part of the Code that might be relevant.

¹ As amended by section 22 of the Immigration and Asylum Act 1999, section 147 of the Nationality, Immigration and Asylum Act 2002 and section 6 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004).

2. HOW THE LEVEL OF PENALTY MAY BE DETERMINED

2.1 If we find you to be employing illegal migrant workers, we may look at certain factors when deciding the level of your civil penalty.

2.2 Table 1 is a framework designed to assist the Border and Immigration Agency with the assessment of whether to issue a penalty notice to an employer, and if so, at what level. It provides a sliding scale with minimum and maximum penalties, but the actual amount will be decided by the Border and Immigration Agency on a case by case basis. The framework is provided for guidance purposes (explanatory flow charts are also attached at Appendix 2). The level of penalty to be imposed per worker may be increased or reduced according to different

criteria. For example, the penalty can be increased according to the number of times you are found with illegal migrant workers in your workforce and have failed to establish a statutory excuse.

2.3 Where an objection is made against the imposition of a civil penalty, reference will be made to this framework, in addition to factors listed at Appendix 4. The factors we will take into account are:

- A) the nature of checks that you have conducted; **and**
- B) reporting suspected illegal workers to the Border and Immigration Agency; **and**

Table 1 - framework for assessment of level of civil penalty

		NATURE OF CHECKS COMPLETED			
		FULL	PARTIAL		NO
OCCASION ON WHICH WARNING/PENALTY ISSUED	3RD +	No penalty	Maximum penalty of £10,000 per worker		Maximum penalty of £10,000 per worker
			Reduced by up to £1,250 per worker reported	Reduced by up to £1,250 per worker, with co-operation	
			Minimum penalty of £7,500 per worker		
	2ND	No penalty	Maximum penalty of £7,500 per worker		Maximum penalty of £10,000 per worker
			Reduced by up to £1,250 per worker reported	Reduced by up to £1,250 per worker, with co-operation	
			Minimum penalty of £5,000 per worker		
	1ST	No penalty	Maximum penalty of £5,000 per worker		Maximum penalty of £7,500 per worker
			Reduced by up to £2,500 per worker reported	Reduced by up to £2,500 per worker, with co-operation	
			No penalty Warning letter issued		Minimum penalty of £2,500 per worker

C) your co-operation with the Border and Immigration Agency; **and**

D) the number of offences you have committed in the past.

A. THE NATURE OF CHECKS CONDUCTED

- 2.4 The system of civil penalties is designed to encourage employers to comply with their legal obligations, without criminalising those who are less than diligent in operating their recruitment and employment practices. Under the 2006 Act, an employer may establish a statutory excuse by checking original documents presented by a potential or existing employee. Details of what documents are acceptable and how to do this are provided in Appendix 1.
- 2.5 In all cases, you must undertake these steps **before** a person begins employment to establish the statutory excuse and, where a document or documents from List B are provided, you must also carry out a follow-up check at least once every **12 months** after the initial check to retain the statutory excuse.
- 2.6 The Government is soon to begin introducing identity cards for foreign nationals on a compulsory basis. However, before full roll-out of the cards, if you are presented with a false travel document or visa, you will only be subject to legal action if the falsity is reasonably apparent. 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.
- 2.7 Equally, where a potential employee presents a document and it is reasonably apparent that the person presenting the document is not the rightful holder of that document, then you may also be subject to enforcement action, even if the document itself is genuine. Therefore, you should examine the photograph and personal details in the document and compare these with the holder in order to detect any impersonation.

FULL AND PARTIAL CHECKS

- 2.8 A **full check** shall be considered to have been conducted where you can provide copies of certain documents, as described in Appendix 1, for all relevant employees and the official is satisfied that the specified steps were taken when checking these documents. If a full check has been conducted, then the employer will be entitled to a statutory excuse and no penalty may be payable, even if illegal migrant workers are found to be working.
- 2.9 However, the provision of such records **does not** provide a statutory excuse if you **knew** that the employee was not permitted to take the work in question. You may receive a penalty or be prosecuted for a criminal offence, including the offence of knowingly employing an illegal migrant worker, or facilitating a breach of UK immigration law. Action will be taken against any employer where there is sufficient evidence available and where prosecution would be in the public interest.
- 2.10 Where only a partial check has been carried out for migrant workers who are found to be working illegally, the employer may be subject to a civil penalty. A **partial check** shall be considered to have been conducted where, for example, you have only checked and copied one of a specified combination of two original documents that are required to establish the statutory excuse, or failed to conduct a follow-up check on a worker with temporary immigration status, after having conducted a full document check at the point of recruitment.
- 2.11 If you cannot provide a record of having conducted the prescribed document checks prior to recruitment, or you have accepted a document which clearly does not belong to the holder, or it is reasonably apparent that the document is false, or shows that the person does not have a current entitlement to work in this country, you shall be considered to have conducted no check for the purpose of imposing a penalty. Where **no check** has been conducted, the employer may be subject to the maximum level of penalty.

2.12 In each case, it is for you to show that you have complied with the requirements to establish a statutory excuse.

B. REPORTING SUSPECTED ILLEGAL WORKERS TO THE BORDER AND IMMIGRATION AGENCY

2.13 As shown in Table 1, the civil penalty may be reduced at the discretion of the Border and Immigration Agency, having regard to the suggested minimum and maximum penalties. If more than one employee is found working illegally, you may be penalised for each worker found, but any reduction made may be applied proportionately for each illegal migrant worker detected.

2.14 If you report any suspicions about your employees' entitlement to work in the UK, or to undertake the work in question to the Border and Immigration Agency, a sum may be deducted from the amount of penalty due for each worker. This information must have been reported to the Employers' Helpline on **0845 010 6677²** before any immigration visit is made to the employer. When reporting, you will be given a call reference and this must be referred to when applying a reduction in penalty.

C. CO-OPERATION WITH THE BORDER AND IMMIGRATION AGENCY IN CONDUCTING AN OPERATION

2.15 The penalty due for each worker can also be reduced where you have co-operated with the Border and Immigration Agency in any investigation, or in any consequent operation to detect and detain illegal migrant workers within your workforce.

2.16 The level of any reduction made will depend on whether you have been found to be employing illegal migrant workers within the previous three years. The sliding scale also allows for a warning letter to be issued instead of a civil penalty in cases where:

- It is the first occasion on which you are found with illegal migrant workers in your workforce; **and**
- You have conducted partial checks on the workers; **and**
- You have reported suspected illegal workers; **and**
- There is no evidence of deliberate wrong doing by you; **and**
- You have co-operated with the Border and Immigration Agency.

2.17 Where it can be established that you have conducted full checks and did not knowingly employ an illegal worker, you will receive no penalty or warning.

D. PREVIOUS OFFENCES

2.18 When considering whether a higher level of penalty should apply to an employer who has been visited before, previous penalties or warnings will not be considered if they were issued more than three years before the date of the new visit. Where an employer is revisited, and has received a penalty or warning within three years of the current visit, those penalties and warnings will be counted.

MULTIPLE PREMISES

2.19 A company with multiple premises where recruitment is devolved to each site, will not be liable to a cumulative penalty if illegal workers are detected at different sites, unless this can be attributed to a general failure in the company's centrally set recruitment practices.

TRANSFER OF UNDERTAKINGS

2.20 Employers who acquire staff as a result of a Transfer of Undertakings (Protection of Employment) transfer are provided with a period of 28 days grace to undertake the appropriate document checks.

² For current information, please visit www.bia.homeoffice.gov.uk

APPENDIX 1: DOCUMENTS REQUIRED FOR THE PURPOSE OF ESTABLISHING THE STATUTORY EXCUSE

Any one of the documents, or combination of documents described in **List A** or **List B** will provide you with a statutory excuse if you take reasonable steps to check the validity of the original document and that the person presenting the document is the rightful holder, then make a copy of the relevant page, or pages before employing an individual.

For identity cards, passports and travel documents, a copy should be taken of:

- the document's front cover; **and**
- any page *or side (in the case of identity cards)*³ containing the holder's personal details including nationality, his or her photograph, date of birth and/or signature; **and**
- any biometric details; **and**
- the date of expiry; **and**
- any relevant UK immigration endorsements.

Other documents should be copied in their entirety.

All copies of documents should be kept securely. If your potential employee gives you two documents which have different names, ask them for a further document to explain the reason for this. The further document could be a marriage certificate, a divorce decree, or a deed poll document.

By doing this, the Border and Immigration Agency will be able to examine your right to the statutory excuse if they detect any illegal migrants working for you.

If reasonable steps are taken to check the validity of a document or documents from **List A**, the statutory excuse will have been established for the duration of the employment **and no further checks will be required.**

Each time that a document or combination of documents from **List B** is provided, you must note the date on which you carried out the original document check. In order to retain your excuse against a penalty for employing that individual, you must carry out a follow-up check at least once every **12 months** after the initial check. Again, this will involve asking the employee to produce a valid original document, or documents either from **List A**, or from **List B** and copying it for your records. If a document, or documents, from **List A** are subsequently presented and reasonable steps are taken to check the validity of the document or documents, the statutory excuse will have been established for the remainder of the employment and **no further checks will be required.**

Please note the references to the provision of a National Insurance number in Lists A and B. **The provision of a National Insurance number in isolation is never sufficient for the purpose of establishing a statutory excuse.** The National Insurance number can only be used for this purpose when presented in combination with one of the documents, as appropriate, specified in Lists A and B.

All references to the documents issued by the Home Office in Lists A and B, also include documents issued by the former Immigration and Nationality Directorate (IND) and Work Permits (UK).

³ Italicised text inserted consequential to the Immigration (Restrictions on Employment) (Amendment) Order 2009, coming into force on 24 November 2009.

LIST A DOCUMENTS

1. *An ID Card (issued to the holder under the Identity Cards Act 2006) or a⁴ passport* showing that the holder, or a person named in the passport as the child of the holder, is a British citizen or a citizen of the United Kingdom and Colonies having the right of abode in the United Kingdom; **or**
2. *An ID card (issued to the holder under the Identity Cards Act 2006)⁴, a national identity card or a passport* which has the effect of identifying the holder, or a person named in the passport as the child of the holder, as a national of the European Economic Area or Switzerland; **or**
3. A residence permit, registration certificate or document certifying or indicating permanent residence issued by the Home Office or the Border and Immigration Agency to a national of a European Economic Area country or Switzerland; **or**
4. A permanent residence card issued by the Home Office or the Border and Immigration Agency to the family member of a national of a European Economic Area country or Switzerland; **or**
5. A Biometric Immigration Document issued by the Border and Immigration Agency to the holder which indicates that the person named in it is allowed to stay indefinitely in the United Kingdom, or has no time limit on their stay in the United Kingdom; **or**
6. A passport or other travel document endorsed to show that the holder is exempt from immigration control, is allowed to stay indefinitely in the United Kingdom, has the right of abode in the United Kingdom, or has no time limit on their stay in the United Kingdom; **or**
7. An Immigration Status Document issued by the Home Office or the Border and Immigration Agency to the holder with an endorsement indicating that the person named in it is allowed to stay indefinitely in the United Kingdom, or has no time limit on their stay in the United Kingdom, **when produced in combination with** an official document giving the person's permanent National Insurance Number and their name issued by a Government agency or a previous employer (e.g. P45, P60, National Insurance Card); **or**
8. A full birth certificate issued in the United Kingdom which includes the name(s) of at least one of the holder's parents, **when produced in combination with** an official document giving the person's permanent National Insurance Number and their name issued by a Government agency or a previous employer (e.g. P45, P60, National Insurance Card); **or**
9. A full adoption certificate issued in the United Kingdom which includes the name(s) of at least one of the holder's adoptive parents, **when produced in combination with** an official document giving the person's permanent National Insurance Number and their name issued by a Government agency or a previous employer (e.g. P45, P60, National Insurance Card); **or**
10. A birth certificate issued in the Channel Islands, the Isle of Man, or Ireland, **when produced in combination with** an official document giving the person's permanent National Insurance Number and their name issued by a Government agency or a previous employer (e.g. P45, P60, National Insurance Card); **or**
11. An adoption certificate issued in the Channel Islands, the Isle of Man, or Ireland, **when produced in combination with** an official document giving the person's permanent National Insurance Number and their name issued by a Government agency or a previous employer (e.g. P45, P60, National Insurance Card); **or**

⁴ Italicised text inserted consequential to the Immigration (Restrictions on Employment) (Amendment) Order 2009, coming into force on 24 November 2009.

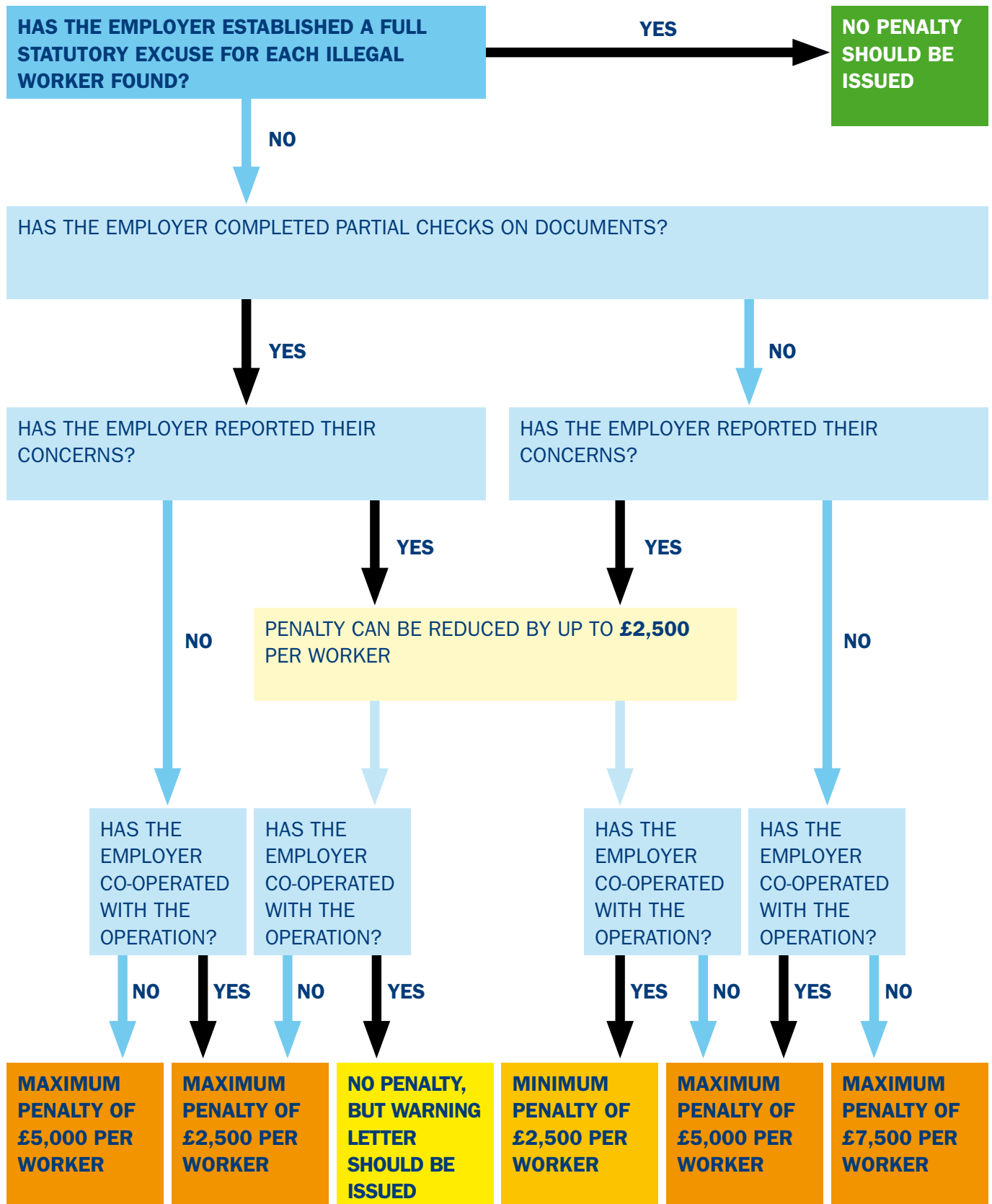
12. A certificate of registration or naturalisation as a British citizen, **when produced in combination with** an official document giving the person's permanent National Insurance Number and their name issued by a Government agency or a previous employer (e.g. P45, P60, National Insurance Card); **or**
13. A letter issued by the Home Office or the Border and Immigration Agency to the holder which indicates that the person named in it is allowed to stay indefinitely in the United Kingdom, or has no time limit on their stay, **when produced in combination with** an official document giving the person's permanent National Insurance Number and their name issued by a Government agency or a previous employer (e.g. P45, P60, National Insurance Card).

LIST B DOCUMENTS

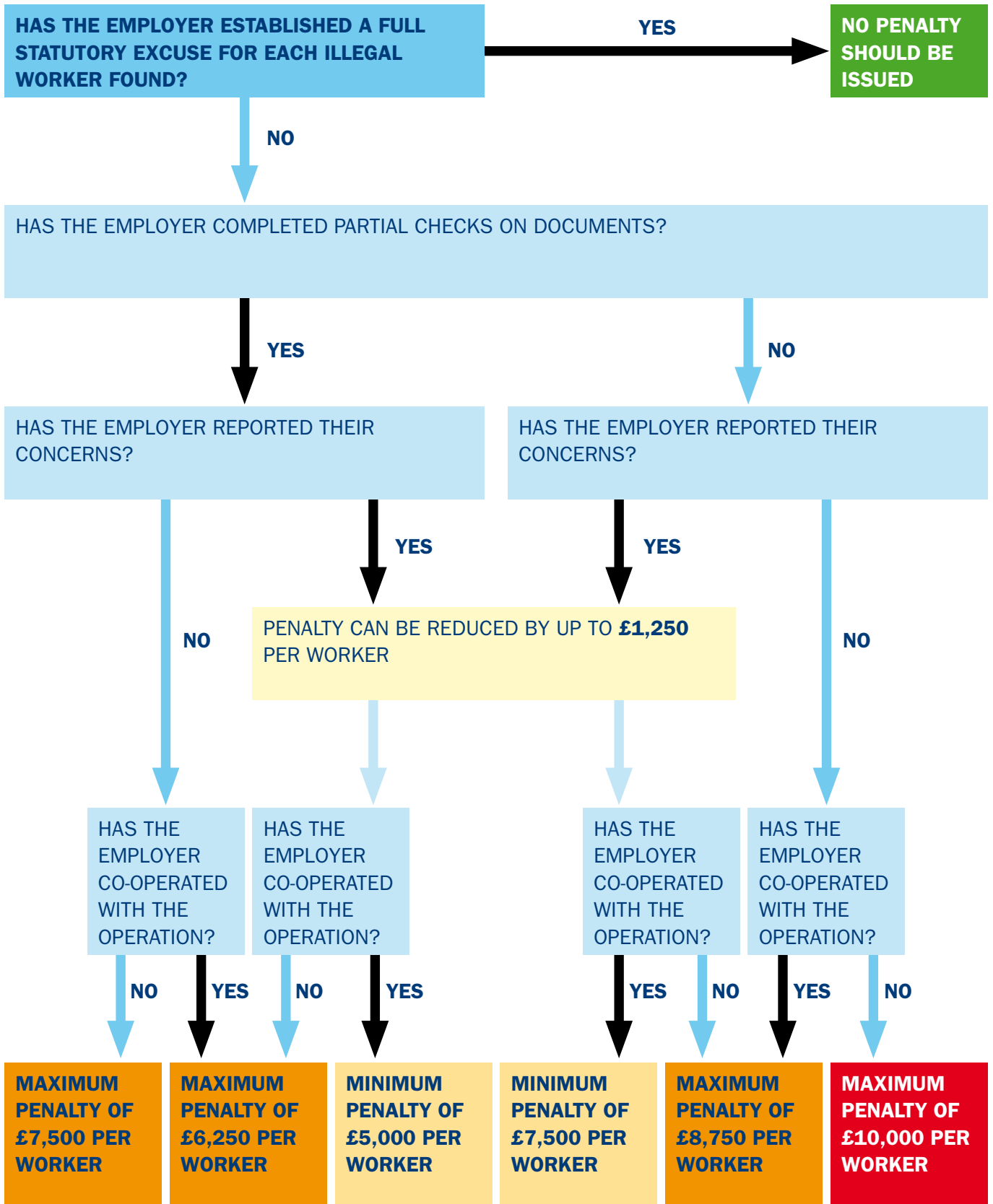
1. A passport or other travel document endorsed to show that the holder is allowed to stay in the United Kingdom and is allowed to do the work in question, provided that it does not require the issue of a work permit; **or**
2. A Biometric Immigration Document, issued by the Border and Immigration Agency to the holder which indicates that the person named in it can stay in the United Kingdom and is allowed to do the work in question; **or**
3. A work permit or other approval to take employment issued by the Home Office or the Border and Immigration Agency, **when produced in combination with** either a passport or another travel document endorsed to show that the holder is allowed to stay in the United Kingdom and is allowed to do the work in question, or a letter issued by the Home Office or the Border and Immigration Agency to the holder, or the employer or prospective employer confirming the same; **or**
4. A certificate of application issued by the Home Office or the Border and Immigration Agency to or for a family member of a national of a European Economic Area country or Switzerland, stating that the holder is permitted to take employment, which is less than 6 months old, when produced in combination with evidence of verification by the Border and Immigration Agency Employer Checking Service; **or**
5. A residence card or document issued by the Home Office or the Border and Immigration Agency to a family member of a national of a European Economic Area country or Switzerland; **or**
6. An Application Registration Card (ARC) issued by the Home Office or the Border and Immigration Agency stating that the holder is permitted to take employment, **when produced in combination with** evidence of verification by the Border and Immigration Agency Employer Checking Service; **or**
7. An Immigration Status Document issued by the Home Office or the Border and Immigration Agency to the holder with an endorsement indicating that the person named in it can stay in the United Kingdom, and is allowed to do the work in question, **when produced in combination with** an official document giving the person's permanent National Insurance Number and their name issued by a Government agency or previous employer (e.g. P45, P60, National Insurance Card); **or**
8. A letter issued by the Home Office or the Border and Immigration Agency to the holder or the employer or prospective employer, which indicates that the person named in it can stay in the United Kingdom and is allowed to do the work in question, **when produced in combination with** an official document giving the person's permanent National Insurance Number and their name issued by a Government agency or previous employer (e.g. P45, P60, National Insurance Card).

APPENDIX 2: FLOWCHARTS FOR DETERMINATION OF THE CIVIL PENALTY

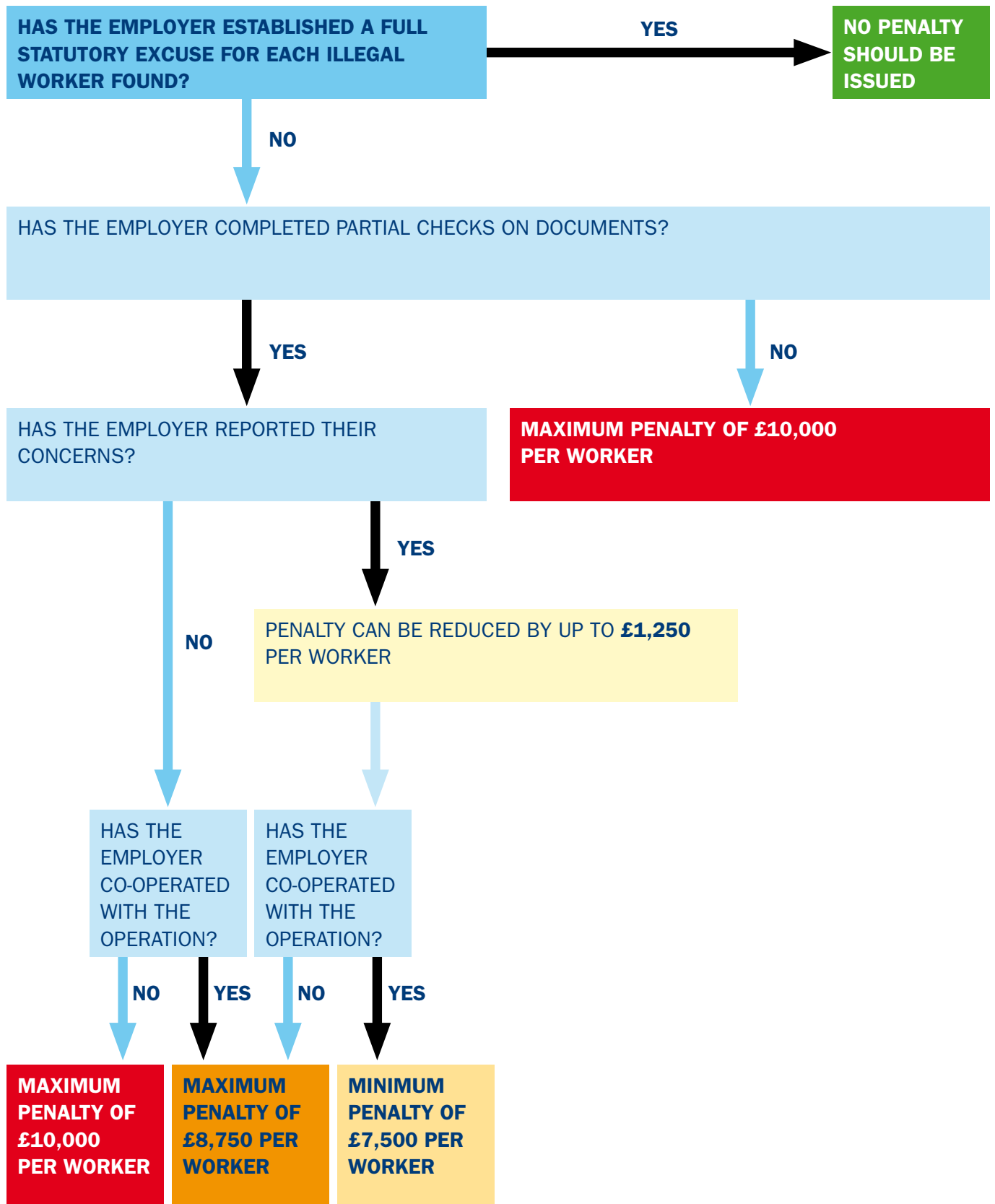
FIRST VISIT TO EMPLOYER



SECOND VISIT TO EMPLOYER (WITHIN THREE YEARS OF FIRST VISIT)



THIRD AND EVERY SUBSEQUENT VISIT TO EMPLOYER (WITHIN THREE YEARS OF FIRST VISIT)



APPENDIX 3: CASE SCENARIOS

In any scenario where the full checks have been completed and the employer did not knowingly employ an illegal migrant worker, the employer will not be liable to a civil penalty. The following scenarios provide examples of potential maximum penalty amounts, however, the penalties set out in these scenarios are only intended as guidelines and each case will be considered on its merits.

CASE A

A company contacts the Border and Immigration Agency Employers' Helpline with concerns that a number of its employees may be working illegally. In co-operation with the employer, the Border and Immigration Agency find that four workers on the staff lists are illegal migrant workers and mount an operation to collect these individuals for removal. The company had not been visited previously by the Border and Immigration Agency. All these employees were taken on on or after 29 February 2008 and the company had accepted letters issued by the Home Office from these employees as evidence of their entitlement to work in each case, rather than as part of a specified combination.

CASE A RESULT: No penalty, warning letter issued, advice provided.

- Number of previous visits – 0
- Number of illegal migrant workers detected for whom the employer had a statutory excuse – 0
- Number of illegal migrant workers detected on whom the employer had conducted partial checks – 4
- Number of illegal migrant workers detected on whom the employer conducted no checks – 0
- Did the company approach the Border and Immigration Agency Employer Helpline? – Yes
- Did the company co-operate with the operation? – Yes

The potential maximum penalty was therefore reduced from £20,000 (4 x £5,000) to no penalty, but a warning letter was issued.

CASE B

A company is visited by the Border and Immigration Agency, but had not approached them beforehand and they had no prior warnings or penalties. The company co-operates with the investigation and the consequent operation to pick up illegal workers. Ten illegal workers are detected; in six cases, the company had carried out appropriate checks, but had been deceived by high quality forgeries. However, in the other four cases, the follow-up checks had not been made, indicating that only partial checks had been completed in those cases.

CASE B RESULT: £10,000 maximum penalty

- Number of previous visits – 0
- Number of illegal migrant workers detected for whom the employer had a statutory excuse – 6
- Number of illegal migrant workers detected on whom the employer had conducted partial checks – 4
- Number of illegal migrant workers detected on whom the employer conducted no checks – 0
- Did the company approach the Border and Immigration Agency Employer Helpline? – No
- Did the company co-operate with the operation? – Yes

The potential maximum penalty was therefore reduced from £20,000 (4 x £5,000) to a £10,000 (4 x £2,500)

CASE C

An employer is visited by the Border and Immigration Agency and co-operates with the operation. The employer had not been visited previously. Six illegal migrant workers were detected, for whom the employer had conducted no checks.

CASE C RESULT: £30,000 maximum penalty

- Number of previous visits – 0
- Number of illegal migrant workers detected for whom the employer had a statutory excuse – 0

- Number of illegal migrant workers detected on whom the employer had conducted partial checks – 0
- Number of illegal migrant workers detected on whom the employer conducted no checks – 6
- Did the company approach the Border and Immigration Agency Employer Helpline? – No
- Did the company co-operate with the operation? – Yes

The potential maximum penalty was therefore reduced from £45,000 (6 x £7,500) to a £30,000 penalty (6 x £5,000).

CASE D

The same employer as case C contacts the Border and Immigration Agency six months later to report suspicions about some members of staff. The employer co-operates with the subsequent operation, which results in the detection of three illegal migrant workers. The employer provides evidence of checks for these workers, having improved their processes, but the checks had only been partial.

CASE D RESULT: £15,000 maximum penalty

- Number of previous visits – 1
- Number of illegal migrant workers detected for whom the employer had a statutory excuse – 0
- Number of illegal migrant workers detected on whom the employer had conducted partial checks – 3
- Number of illegal migrant workers detected on whom the employer conducted no checks – 0
- Did the company approach the Border and Immigration Agency Employer Helpline? – Yes
- Did the company co-operate with the operation? – Yes

The potential maximum penalty was therefore reduced from £22,500 (3 x £7,500) to a £15,000 penalty (3 x £5,000).

CASE E

The same employer as in cases C and D is visited again six months later. The employer did not approach the Border and Immigration Agency this time, but co-operates with the enforcement operation. Two illegal workers are detected and the checks made were only partial.

CASE E RESULT: £17,500 maximum penalty

- Number of previous visits – 2
- Number of illegal migrant workers detected for whom the employer had a statutory excuse – 0
- Number of illegal migrant workers detected on whom the employer had conducted partial checks – 2
- Number of illegal migrant workers detected on whom the employer conducted no checks – 0
- Did the company approach the Border and Immigration Agency Employer Helpline? – No
- Did the company co-operate with the operation? – Yes

The potential maximum penalty was therefore reduced from £20,000 (2 x £10,000) to a £17,500 penalty (2 x £8,750).

CASE F

An employer is visited by the Border and Immigration Agency and co-operates. Two illegal migrant workers are detected whose leave expired over a year ago and began their employment after the Immigration (Restrictions on Employment) Order 2007 came into force. The employer can provide evidence of full checks at the point of recruitment, but has carried out no follow-up checks within the past 12 months. The employer has not been visited previously.

CASE F RESULT: £5,000 maximum penalty

- Number of previous visits – 0
- Number of illegal migrant workers detected for whom the employer had a statutory excuse – 0

- Number of illegal migrant workers detected on whom the employer had conducted partial checks – 2
- Number of illegal migrant workers detected on whom the employer conducted no checks – 0
- Did the company approach the Border and Immigration Agency Employer Helpline? – No
- Did the company co-operate with the operation? – Yes

The potential maximum penalty was therefore reduced from £10,000 (2 x £5,000) to a £5,000 penalty (2 x £2,500).

APPENDIX 4: ADDITIONAL FACTORS TO BE CONSIDERED WHEN DETERMINING THE LEVEL OF A CIVIL PENALTY

Each case will be examined in context, and consideration must be given to the fairness of the financial penalty to be imposed on the employer. Therefore, the following factors may be considered by an official when determining the level of penalty appropriate for each illegal migrant worker detected:

- whether full or partial document checks have been completed by the employer;
- whether any previous penalties or warnings have been issued to the employer within the previous three years, and if there has been any subsequent improvement in their procedures;
- whether the Civil Penalty Code of practice has been adhered to;
- if the employer reported any suspected illegal workers;
- if the employer has not obstructed the Border and Immigration Agency in conducting any operation to apprehend the illegal workers in question;
- whether the migrant worker is living and working in the UK illegally;
- whether the migrant worker is legally resident in the UK, but has been found to be working in breach of their employment restrictions;
- the proportionality of the level of penalty given;
- whether previous civil penalties have been paid in full;
- the ability of the employer to pay; and
- the thoroughness and/or consistency of the employers' existing employment processes.