



Home Office

# **DRAFT Code of practice on preventing illegal working: Right to Work Scheme for employers**

November 2023





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

November 2023



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# 1: Introduction

All employers have a responsibility to prevent those without lawful immigration status from working in the UK. 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 unlawfully. 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 updates the version issued in March 2022. It is the sixth version of this code and will come into force at the same time as the Immigration (Employment of Adults Subject to Immigration Control) (Maximum Penalty) (Amendment) Order 2023 and the Immigration (Restrictions on Employment and Residential Accommodation) (Codes of Practice) (Amendment) Order 2023.

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 the right to work check was made.

## **For whom is this code of practice relevant?**

This version of the code should be applied to all right to work checks from 22 January 2024 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.

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.

An employer is only liable for a civil penalty under section 15(2) of the Immigration, Asylum and Nationality Act 2006 (“the Act”) where the employment commenced on or after 29 February 2008. As a result, the codes of practice (below) only apply to employment that commenced on or after that date.

This code applies:

- (i) when calculating the penalty amount; where the breach of section 15 of the Act occurred on or after 22 January 2024; 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 22 January 2024 in order to establish or retain a statutory excuse.
- When the breach occurred on or after 6 April 2022 and before 22 January 2024, the code published in March 2022 applies.
  - When the breach occurred on or after 1 July 2021 and before 6 April 2022, the code published in July 2021 applies.
  - When the breach occurred on or after 28 January 2019 and before 1 July 2021, the code published in January 2019 applies.
  - When the breach occurred on or after 16 May 2014 and before 28 January 2019, the code published in May 2014 applies.
  - When the breach occurred on or after 29 February 2008 but before 16 May 2014, the code published in February 2008 applies.

## **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 this document. It can be found at: ['An employer's guide to right to work checks'](#)

## 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 County Court (and equivalent in Scotland) is required to determine appeals against liability for a civil penalty by having regard to this code of practice. Courts and Employment Tribunals may take account of any part of this code which may be relevant. Home Office officials will also have regard to this code when administering illegal working civil penalties under the Act.

This code explains the actions an employer can take to avoid liability for a civil penalty if they breach section 15 of the Act, which prohibits an employer from employing a person who does not have the right to work in the UK. This is called establishing a statutory excuse against liability for a civil penalty. A statutory excuse may be continuous or time-limited in relation to a particular employee.

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. Criminal sanctions may be applied in the most serious cases. This code does not cover this criminal offence.

The legislation underpinning the Right to Work Scheme (in this code the prescribed checks and civil penalty provisions are referred to as “the Scheme”) applies across the whole of the UK.

## 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.



‘Certificate of Application’ (CoA) is a digital, or non-digital document which individuals can rely on to demonstrate their eligibility to work, rent, and access benefits and services. This document is issued when a valid application is made to the EU Settlement Scheme (EUSS).

‘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.

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

‘Home Office Employer Checking Service’ refers to the enquiry and advice service operated by the Home Office that employers are required to contact in certain circumstances to check whether a person is allowed to work in the UK and, if so, the nature of any restrictions on that person’s right to do so.

‘Employment of illegal workers within the previous three years’ means the employer has 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.

‘eVisa’ refers to a digital visa provided by the Home Office as evidence of a person’s immigration status (permission to enter or stay in the UK).

‘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 [Check a job applicant's right to work: use their share code](#) page on GOV.UK. No other online portal relating to immigration status may be used instead for right to work checking purposes.

‘Identity Document Validation Technology (IDVT)’ are forms of technology operated for the purpose of verifying the identity of a person, whereby a digital copy of a physical document relating to that person is produced for verification of the document’s validity, and whether that person is the rightful holder of the document.

‘Identity Service Provider (IDSP)’ is a provider of identity verification services using IDVT. In the context of this code of practice, an IDSP may be certified to provide identity verification to specific levels of confidence, specified by government standards. IDSPs are sometimes referred to as ‘identity providers’.

‘Leave to Enter’ or ‘Leave to Remain’ see ‘Permission to Enter’ and ‘Permission to Stay’.

‘Level of Confidence’ (LoC) is determined through a process required of IDSPs called ‘identity checking’ which is made up of 5 parts. Each step of the identity checking process is scored, and these scores are used to determine the Level of Confidence which has been achieved.

'Negative Verification Notice' (NVN) is a negative confirmation that a person does not have the right to work from the Employer Checking Service. If an employer receives an NVN, but continues to employ this person, the employer will not have a statutory excuse and may be liable for a civil penalty or be committing a criminal offence.

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.

'Permission to Enter' also known as 'Leave to Enter'. Immigration documents and guidance may refer to either term, both are appropriate. This means that a person has permission from the Home Office to enter the UK.

'Permission to Stay' also known as 'Leave to Remain'. Immigration documents and guidance may refer to either term, both are acceptable. This means that a person has permission from the Home Office to be in the UK.

'Positive Verification Notice' (PVN) is a positive confirmation of a person's right to work from the Employer Checking Service. This will provide the employer with a statutory excuse for six months from the date specified in the Notice.

'Right to work' means allowed to be employed by virtue of qualifying immigration status.

'Right to work checks' refer to prescribed manual document checks, prescribed Home Office online right to work checks and prescribed use of an Identity Service Provider (IDSP).

'Settlement' (formerly Indefinite Leave to Remain) means how an individual settles in the UK. This gives an individual the right to live, work and study in the UK for as long as they like and apply for benefits if they are eligible. This is sometimes referred to as 'settled status'.

'Statutory excuse' means the steps an employer can take to avoid liability for payment of a civil penalty.

'Valid application' means individuals who comply with the validation requirement of an application process, including enrolment of biometrics, if required, and the provision of evidence of nationality and identity.

'Validity period' in the context of this code of practice means the period for which an immigration document issued to the individual by or on behalf of the Secretary of State is valid.

'Check a job applicant's right to work: use their share code' means the Home Office online service on GOV.UK which enables employers to check whether a person has a right to work and, if so, the nature of any restrictions on that person's right to do so.

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

## 2: How to establish a statutory excuse for right to work checks

In order to establish a statutory excuse against a civil penalty in the event that an employee is found to be working illegally, employers must do one of the following before the employee commences employment:

1. a manual right to work check (all citizens);
2. a right to work check using Identity Document Validation Technology (IDVT) via the services of an Identity Service Provider (IDSP) (British and Irish citizens only); or
3. a Home Office online right to work check (non- British and non-Irish citizens)

Increasingly, the Home Office is issuing eVisas rather than issuing physical documents as proof of an individual's immigration status. This means those individuals will only be able to evidence their right to work using the Home Office online service.

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. However, it will not be possible to conduct an online right to work check in all circumstances, as not all individuals will have an immigration status that can be checked online at this stage.

In circumstances in which a Home Office online check is not possible, you should conduct a manual right to work check. For British or Irish citizens who hold a valid passport (or Irish passport card) you can also use the services of an IDSP instead of conducting a manual right to work check if you wish.

When conducting [Follow-up right to work checks](#) for those whose right to work is time-limited, you may use either the manual check or the Home Office 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;<sup>1</sup> and
3. make clear 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 or existing employee; and
- that the photograph and date- of birth are consistent across documents and with the person's appearance.

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<sup>1</sup> The person must be present in person or via a live video link.

For a manual check, employers should take all reasonable steps to check the validity of the documents presented to them. If an employer is given a false document, they will only be liable for a civil penalty if it is reasonably apparent that it is false. “Reasonably apparent” means: where a person 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. Employers must retain a clear copy of the document for the duration of employment and for two years after the employment has come to an end.

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

## **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 check in the UK are set out in two lists, **List A and List B**.

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

**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 (including British and Irish citizens). 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 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 (in either case, whether current or expired) showing that the holder is an Irish citizen.
3. 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.
4. 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<sup>2</sup>
5. 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.

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<sup>2</sup> Definition includes those with a document which shows that the holder is entitled to readmission to the UK (RUK endorsement)’.

6. 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<sup>3</sup>.
7. 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.
8. 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 immigration 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.<sup>4</sup>
2. 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.
3. 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 (known as the EU Settlement Scheme or EUSS) on or before 30 June 2021 **together with a Positive Verification Notice** from the Home Office Employer Checking Service.
2. A Certificate of Application (non-digital) 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 (known as the EU Settlement Scheme or EUSS), on or after 1 July 2021, **together with a Positive Verification Notice** from the Home Office Employer Checking Service.
3. A document issued by the Bailiwick of Jersey, the Bailiwick of Guernsey, or the Isle of Man, showing that the holder has made an application for leave to enter or remain under

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<sup>3</sup> Definition includes a full birth certificate issued by a UK diplomatic mission (British Embassy or British High Commission)

<sup>4</sup> This includes a current passport endorsed with a stamp showing an individual has been granted leave to enter and there are no work-related conditions attached. If, under the conditions of the individual's leave, work was restricted or prohibited the endorsement placed in the individual's passport would explicitly set that out as a condition.

Appendix EU(J) to the Jersey Immigration Rules or Appendix EU to the Immigration (Bailiwick of Guernsey) Rules 2008, or Appendix EU to the Isle of Man Immigration Rules **together with a Positive Verification Notice** from the Home Office Employer Checking Service.

4. 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.
5. 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. This includes where you have carried out a digital check using an IDSP in relation to a British or Irish citizen employee with a valid passport (or Irish passport card).

**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:**

1. 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.
2. 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.
3. During this 28-day period you must contact the Employer Checking Service and receive a Positive Verification Notice or carry out a Home Office online check confirming the employee continues to have the right to undertake the work in question.
4. 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.
5. In the event that you receive a Negative Verification Notice, your statutory excuse will be terminated, and you should no longer employ that person.

An immigration application or appeal must be made to the Home Office on or before a person's permission to be in the UK and do the work in question expires in order to result in the 28-day period referred to above.

## 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 immigration application, appeal, or administrative review with the Home Office in respect of their leave and they are unable to provide you with a share code to carry out an online check, 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.

## Using an Identity Service Provider (IDSP)

Since 6 April 2022, employers have been able to use Identity Document Validation Technology (IDVT) via the services of an IDSP to complete the digital identity verification element of right to work checks for British and Irish citizens who hold a valid passport (including Irish passport cards).

Digital identity verification conducted by IDSPs is the process of obtaining evidence of the prospective employee's identity, checking that it is valid and belongs to the person who is claiming it.

If you use the services of an IDSP for digital identity verification, holders of valid British or Irish passports (or Irish passport cards) can demonstrate their right to work using this method. This will provide you with a continuous statutory excuse. It is your responsibility to obtain evidence of the IDVT check from the IDSP. You will only have a statutory excuse if you reasonably believe that the IDSP has carried out their checks in accordance with guidance issued here: [Employer right to work checks supporting guidance](#)

You must not treat those who do not hold a valid passport, or do not wish to prove their identity and eligibility using an IDSP less favourably. You must provide individuals with other ways to prove their right to work and should carry out a manual document-based right to work check in these circumstances.

For a detailed guide on how to complete a right to work check, including detailed guidance on using an IDSP, please refer to: [Employer right to work checks supporting guidance](#).

## Basic steps to conducting a right to work check using an IDSP:

1. IDSPs can carry out digital identity verification to a range of standards or levels of confidence. The Home Office recommends that employers only accept checks via an IDSP that satisfy a minimum of a Medium Level of Confidence. A list of certified providers is available for you to choose from on GOV.UK: [Digital identity certification for right to work, right to rent and criminal record checks](#). It is not mandatory for you to use a certified provider; you may use a provider not featured within this list if you are satisfied that they are able to provide the required checks.
2. Satisfy yourself that the photograph and biographic details (for example date of birth) on the output from the IDVT check are consistent with the individual presenting themselves for work (i.e., the information provided by the check relates to the individual and they are not an imposter). This can be done in person or by video call.
3. You must retain a clear copy of the IDVT identity check output for the duration of employment and for two years after the employment has come to an end.

Should you be found to be employing individuals without their identity and eligibility being verified correctly in the prescribed manner, you will not have a statutory excuse in the event

the individual is found to be working illegally by reason of their immigration status. The employer remains liable for any civil penalty if there is no statutory excuse.

## **Conducting a Home Office online right to work check**

Employers can conduct a check by accessing the Home Office online service [Check a job applicant's right to work: use their share code](#) on GOV.UK. The online service allows checks to be carried out by video call, and employers do not need to see physical documents as the right to work information is provided in real-time from Home Office systems.

Currently, the Home Office online service supports checks for a range of individuals, depending on the type of immigration documentation they are issued with. The use of digital proof of immigration status forms part of our move towards a UK immigration system that is digital by default. This will be simpler, safer and more convenient.

Biometric Residence Card (BRC), Biometric Residence Permit (BRP) and Frontier Worker Permit (FWP) holders are only able to evidence their right to work using the Home Office online service. This means you cannot accept or check a physical BRC, BRP or FWP as proof of right to work.

There are three basic steps to conducting a Home Office online right to work check:

1. use the Home Office online right to work checking service [Check a job applicant's right to work: use their share code](#) on GOV.UK.
2. satisfy yourself that the photograph on the online right to work check is of the individual presenting themselves for work (i.e. the information provided by the check relates to the individual and they are not an imposter); and
3. retain a clear copy of the response provided (storing that response securely, electronically or in hardcopy) for the duration of employment and for two years afterwards. The file must then be securely destroyed.

If the Home Office 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 committing a criminal offence.

### **Additional requirement for students**

For students who have permission to work for a limited number of hours per week 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.

Further information is available in the [Employer right to work checks supporting guidance](#).

### **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 established a time-limited statutory excuse, you are required to do a follow-up check before this time-limited statutory excuse expires in order to maintain a statutory excuse against a civil penalty.



In the event a follow-up check confirms an employee is working illegally in your workforce, you are advised to take steps to cease employment and report the circumstances to the Home Office via the UKVI Helpline as set out in section 4 of this code.

## The Home Office Employer Checking Service

In certain circumstances, an employer will need to contact the [Home Office' Employer Checking Service](#) (ECS) to verify an individual's right to work and establish a statutory excuse. These are when:

1. You are presented with a document (non-digital Certificate of Application or an acknowledgement letter or email) confirming receipt of an application to EUSS on or before 30 June 2021; or
2. You are presented with a non-digital Certificate of Application confirming receipt of an application to the EUSS on or after 1 July 2021; or
3. You are presented with an Application Registration Card stating that the holder is permitted to undertake the work in question. If the card contains an expiry date, this date must not have expired. Any work will be restricted to employment in a shortage occupation; or
4. You are satisfied that you have not been provided with any acceptable documents because the person has an outstanding application with us (which was made before their previous permission expired) or has an appeal or administrative review pending and, therefore, cannot provide evidence of their right to work; or
5. You consider that you have not been provided with any acceptable documents, but the person presents other information indicating they are a long-term resident of the UK who arrived in the UK before 1988.

In the above circumstances, you will establish a statutory excuse only if you are issued with a **Positive Verification Notice** from us confirming that the named person is allowed to carry out the type of work in question.

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 ECS or carry out a Home Office online check. 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 ECS or have carried out a right to work check in the prescribed manner.

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

The ECS 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 immigration application, appeal or administrative review was delivered or posted.

A **Positive Verification Notice** from the ECS will provide you with a statutory excuse against liability for 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.

Please note that the ECS is for the use of employers **only**.

## **COVID-19 temporary adjusted checks**

The temporary adjustments to right to work checks, introduced on 30 March 2020 ended on 30 September 2022.

Since 1 October 2022, employers must carry out one of the prescribed checks as set out in this code of practice before employment begins.

You do not need to carry out retrospective checks on employees who had a COVID-19 adjusted check between 30 March 2020 and 30 September 2022 (inclusive). You will maintain a statutory excuse against liability for a civil penalty if the check undertaken during this period was done in the prescribed standard 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 immigration enforcement action.

# 3: An overview of how the civil penalty is administered

## **Breach**

The Scheme is deemed to be breached if an employer is found employing a person who is disqualified from working by virtue of their immigration status or without the requisite permission to work attached to their immigration permission.

## **Referral**

If an employer is found to be employing someone in breach of the Scheme, they may be served with a Civil Penalty Referral Notice informing them that the details of their case are being referred to Home Office officials for consideration of liability for a civil penalty.

This Referral Notice will inform the employer how their case will be considered and the possible decision outcomes. It will also specify the date on which the breach was identified.

## **Information Request**

The Home Office will contact the employer with an Information Request giving them the opportunity to present further information and evidence of a statutory excuse which will inform the decision on liability. Where the employer responds to the Information Request within 10 days as requested, this will be considered as active co-operation with the process, which could result in the level of the penalty being reduced.

## **Decision**

The Home Office will review all the evidence available and decide if the employer is liable for a civil penalty. If the employer is found liable for a civil penalty, they will be issued with a Civil Penalty Notice. This notice will include details of why the Home Office considers the employer to be liable, the amount of the penalty, ways to pay it, and information on how an employer may object to the penalty. The notice will be accompanied by a Statement of Case setting out the evidence and the reasons for the Home Office decision.

In circumstances set out in section 4 of this code, the Home Office may issue a Warning Notice to the employer. This will inform the employer of the reasons why a civil penalty is not being issued on this occasion. A Warning Notice is a formal warning, that will be taken into account in the event the employer breaches the Scheme again.

If an employer is not found liable for a civil penalty, they will be issued with a No Action Notice which makes clear that no further action will be taken under the Scheme on this occasion, and the case will be closed. This notice will not be taken into account for the purposes of calculating penalty amounts in the event of any future breach of the Scheme.

## **Paying the penalty**

The employer must pay the civil penalty by the date specified in the Civil Penalty Notice or object to the notice.

The Scheme operates a faster payment option (FPO) that gives the employer the opportunity to pay the penalty at a 30% reduction if payment is made **in full within 21 days**. The FPO is only available for employers in receipt of their first penalty and cannot be paid in instalments.

An employer may request permission from the Home Office's Shared Service Centre to pay their civil penalty by instalments over an agreed period, usually up to 24 months. In such cases, employers should provide the full reasons for their inability to pay the full penalty amount in one payment.

## **Objecting to the penalty**

If the employer receives a Civil Penalty Notice from the Home Office, they can object in writing within 28 days of the due date specified in the notice. Details of the reason for objecting must be supplied along with evidence supporting one or more of the acceptable grounds for objection as set out on the Objection Form.

An employer may object on one or more of the following grounds:

- they are not liable to pay the penalty (for example, because they are not the employer of the illegal worker(s) identified);
- they have a statutory excuse (this means they undertook a prescribed right to work check);  
or
- the level of penalty is too high (this means the Home Office have calculated the penalty incorrectly or the employer has evidence that they have met specified mitigating criteria which has not been taken into account).

The Home Office will send an Objection Outcome Notice if the penalty is to be cancelled, reduced or maintained. If the penalty is to be increased, a new Civil Penalty Notice will be sent. Each of these notices will include a Statement of Case.

## **Appealing against the penalty**

When an employer's objection against a civil penalty has determined they remain liable for a civil penalty, the employer may then appeal to the County Court (England, Wales and Northern Ireland) or the Sheriff Court (Scotland only) if they are not satisfied with the decision. The employer must appeal to the Courts within 28 days of either the date specified on the Objection Outcome Notice, or the date specified on the new Civil Penalty Notice. The deadline for appeal will be specified on the new notice.

If the employer does not receive a response from the Home Office to their objection within the 28-day period, an appeal must be brought within 28 days beginning with the date by which the Home Office should have replied.

An employer may only appeal on the same grounds on which they could object to a penalty. An employer should be aware that if their appeal to the court does not succeed, the court may order that they pay the reasonable costs/expenses of the Home Office in defending their appeal.

## **Enforcement and other consequences of a civil penalty**

If the employer does not pay the penalty in full or by instalments, or object or appeal, by the specified due dates, the penalty will be registered with the civil court, after which enforcement

action may be commenced immediately. This action may have an adverse impact on an employer's ability to act in the capacity of a director in a company.

If an employer is subject to immigration control, if they 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 they make.

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

## 4: Determining liability and calculating the penalty amount

When considering an employer's liability for a civil penalty, the Home Office will follow the 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, repeat breach.
- If the answer is no, proceed to Stage 3, first breach.

### Stage 3: Determining the penalty amount

The Home Office determine the penalty level depending on whether this is the employer's first breach of the Scheme or a repeat breach.

	Penalty level for first breach within the last three years	Penalty level for repeat breach (within 3 years)
Employers	£45,000 (per worker)	£60,000 (per 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 Home Office officials on the basis of the information available.

- The first breach calculation 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 £45,000 before reductions are applied.
- The repeat breach calculation 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 £60,000 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.

## 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** per worker.
- If the answer is no, the penalty is not decreased.

Mitigating factor 2: is there evidence an employer has actively co-operated with the Home Office? (Active co-operation during our visit and investigations could lead to any civil penalty being reduced in amount).

- If the answer is yes, penalty is decreased by **£5,000** per worker.
- If the answer is no, the penalty is not 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.

## Repeat 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** per worker.
- If the answer is no, the penalty is not 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** per worker.
- If the answer is no, the penalty is not decreased.

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

## 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 statutory 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 (either in person or digitally via a check carried out using an IDSP), or the person named and shown in the Home Office 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 used the services of an IDSP (Identity Service Provider), but it is reasonably apparent that the result of the check sent to you is incorrect or that the document which they are relying upon is not genuine, or that, for some other reason, in the circumstances, you could not reasonably have believed the IDSP had carried out the prescribed checking requirements;
- you have conducted a Home Office 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 a Home Office online check but have not accessed the employer '[Check a job applicant's right to work: use their share code](#)' part of the service, you have only viewed information online that has been provided directly to the individual;
- 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 (such as allowing them to work more hours than they are permitted) 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.

### **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.

If you have not been issued with a Civil Penalty Notice or Warning Notice in respect of a breach of section 15 of the Act for one or more illegal workers which occurred within three years of the current breach, and you have not committed an offence under section 21 of the Act during the



same period, we will use the **first breach amount** 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 using the **repeat breach** amount 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) transfers 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"<sup>5</sup>, 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 liquidation<sup>6</sup>.

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 in your workforce, and received an acknowledgement in the form of a **Unique Reference Number (URN)** 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 UKVI Helpline on 0300 790 6268 select the employers' option, Monday to Friday (excluding bank holidays), 8am to 8pm Saturday and Sunday, 9:30am to 4:30pm **before** we identify the illegal worker. You must state that you are reporting illegal working in your workforce and request a URN.

This mitigating factor is taken into account for both **first and repeat** breaches.

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<sup>5</sup> as defined by Regulation 3 of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (the "TUPE Regulations")

<sup>6</sup> 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.

## **(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.

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;
- fully and promptly disclosing any evidence you have which may assist us in our investigations.

This mitigating factor is taken into account for both **first and repeat** 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.



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