Home Office

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

1 October 2026

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1. Introduction

The ability to work without permission is a driver of illegal migration. It undermines the effective operation of the UK's immigration system and can expose individuals to exploitation and abuse, including modern slavery in the most serious cases. It may also have adverse impacts on compliant employers and the wider labour market, including through unfair competition and breaches of employment and tax laws.

An employer's legal duty to prevent illegal working is a key element of the enforcement framework established under the Immigration, Asylum and Nationality Act 2006 ("IANA 2006"). The illegal working provisions came into force on 29 February 2008.

Section 15 of the IANA 2006 creates the civil penalty liability. Where an employer employs an individual who is disqualified from carrying out the work in question by reason of their immigration status, they will be liable for a civil penalty. The Secretary of State will serve an employer with a notice requiring the payment of a civil penalty.

Employers can prevent illegal working and establish a statutory excuse against liability by conducting a prescribed right to work check before employment commences.

The legislative framework underpinning right to work checks and civil penalties is referred to in this code of practice as "the Scheme". The Scheme applies across the whole of the UK.

The Border Security, Asylum and Immigration Act 2025 ("BSAI 2025") amends the IANA 2006 by extending the scope of employers required to prevent illegal working under the Scheme, and the sanctions for non-compliance, beyond traditional employment relationships to a wider range of working arrangements.

Section 48 of the BSAI 2025 amends and expands the definition of "employer" for the purposes of sections 15 to 24 of the IANA 2006 and inserts a new section 14A into the IANA 2006. Section 14A provides that references to a person employing another individual includes engaging an individual under a worker's contract, engaging an individual sub-contractor and through an online matching service providing details of an individual who is a service provider to potential clients or customers.

Section 48 of the BSAI 2025 also inserts a new section 15A of the IANA 2006, under which civil penalty liability may also extend beyond the employer who holds the direct contractual relationship with the worker. This applies where:

- a person is under a contract to provide work or services to a third party and enters into a contract with another employer providing workers to fulfil that contract.

- where an online matching service provides details of a service provider to clients or customers, and the service provider enters into a contract with a client or customer, or

- where an employer employs an individual to provide work or services, and the contract has a substitution provision or clause.

This means the person contracted to provide work or services to a third party, an online matching service or the employer in the case of a substitution clause, may be treated as employing any individual who personally provides the work or services. In these circumstances, they can prevent illegal working and establish a statutory excuse through compliance with the prescribed requirements relating to the contractual arrangements.

References

In this code, references to:

'Active co-operation' means there is evidence that an employer has engaged with the Home Office investigation in relation to illegal working. This could lead to a reduction in the amount of the civil penalty being applied. Active co-operation may include where an employer has:

- provided Home Office officials access to premises, including to recruitment and employment records, and right to work checking systems when requested.

- provided accurate and relevant responses to any questions or requests for information from the Home Office within deadlines specified.

- ensured their availability to Home Office officials during the course of the investigation in relation to illegal working.

- disclosed any information relating to the individual who is to provide, or is providing, the work or services necessary to enable the Home Office to determine whether the employer is liable to a civil penalty, the amount of any penalty and any other information that the Home Office considers is or may be relevant to the investigation.

'Breach' or 'breaches' mean that section 15 of the IANA 2006 has been contravened by employing someone who is:

- subject to immigration control, and

- aged 16 and over, 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 such as not being permitted to work, restrictions on the type of work that can be conducted or limits on the number of hours that can be worked. individuals working in breach of these conditions will be doing so illegally.

'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 IANA 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 the civil penalty scheme – this means calendar days, including Saturdays, Sundays and bank holidays, and

- 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 which may include a digital document, where specified.

'Employer' means a person who employs an individual;

- under a contract of employment (a contract of service or apprenticeship).

- under a worker's contract.

- as an individual sub-contractor, or

- when operating as an online matching service providing the details of an individual who is a service provider to potential clients or customers.

In the context of this code of practice, the definition of 'employer' is in relation to the Right to Work Scheme only.

References to 'employment' or 'employ' include the types of working arrangements described and references to a 'contract' include a contract that is express or implied, and whether oral or in writing.

Where specified elsewhere in this code, references to an employer may include any other person who is liable for a civil penalty under the relevant legislation.

'Employer Checking Service (ECS)' refers to the enquiry and advice service operated by the Home Office that employers are required to contact in certain circumstances to check whether an individual is allowed to work in the UK and, if so, the nature of any restrictions on that individual'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 IANA 2006 for one or more illegal workers which occurred within three years of the current breach, or they have committed an offence under section 21 of the IANA 2006 during the same period.

'eVisa' is an online record provided by the Home Office of an individual's immigration status and the conditions of their permission to enter or stay in the UK.

'Facial recognition technology' is a digital system that identifies or verifies individuals by analysing the unique features of their face.

'Home Office online right to work checking service' means the online system allowing employers to check whether an individual is allowed to work in the UK and, if so, the nature of any restrictions on that individual's right to do so. For the avoidance of doubt, this system is accessible to employers to check a job applicant's right to work: use their share code page. No other online portal relating to immigration status may be used for right to work checking purposes.

'Individual sub-contractor' means an individual who has entered into a contract with a person to provide work or services, in circumstances where that other person has entered into a contract with a third party to provide, or arrange for the provision of, the work or services but the individual has not.

'Leave to Enter' or 'Leave to Remain' see 'Permission to Enter' and 'Permission to Stay'.

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

'Online matching service' means a person who, in the course of a business:

(a) keeps a register of service providers for the purpose of matching them with potential clients or customers.

(b) provides an online service by which potential clients or customers can submit enquiries for the purpose of being matched with suitable service providers, and

(c) charges a fee or commission in return for making such matches.

'Passive authentication' verification is the process of reading and verifying a chip and data as authentic using digital technology that can communicate with the document's data chip.

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

'Person' means a company, organisation, business, or other entity, and does not refer to an individual worker unless expressly stated.

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

'Positive Verification Notice (PVN)' is a positive confirmation of an individual's right to work from the ECS. This will provide the employer with a statutory excuse for 6 months from the date specified in the Notice.

'Reasonably apparent', in relation to a false document, means that an employer conducting a right to work check, who is not trained in the identification of such documents, could reasonably be expected to identify that the document is false when undertaking a careful but brief inspection, without the use of specialist or technological aids.

This includes circumstances where it is reasonably apparent that the photograph or image of an individual on a document, or on an online right to work check, does not correspond to the worker to whom the right to work check relates.

'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 a DVSP for these checks.

'Right to work digital verification service provider (RtW DVSP)' is a service provider that enables people to digitally prove who they are, information about themselves or their eligibility to do something. Right to Work DVSPs are registered and can be used by employers to conduct digital right to work checks on holders of relevant DVSP documents and facial recognition checks according to the Right to Work Office of Digital Identity and Attributes Trust Framework and Supplementary code.

'Settlement' also known as **'**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'.

'Service provider' in relation to an online matching service means a person providing, or seeking to provide, work or services for remuneration.

'Statutory excuse' refers to:

(a) an employer's defence against liability for payment of a civil penalty, which is established where the employer carries out prescribed right to work checks before the worker commences employment, and where applicable, retains that excuse by carrying out required follow-up checks for workers with a time-limited right to work (as shown by an expiry date), and

(b) a person's defence against extended liability for payment of a civil penalty, which is established where that person has complied with prescribed requirements in relation to the relevant contractual arrangements.

'Substitution' refers to where a worker is permitted to substitute their work or services to another individual. This includes through a clause or provision in a contract that allows a worker to be replaced by another individual to perform the same work or services.

'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.

'Worker' or **'individual'** means an individual who is engaged to carry out work or provide services under a contract of employment (employee), a worker's contract, as an individual sub-contractor, or through an online matching service, as defined for the purposes of the Right to Work Scheme.

In the context of this code of practice, the definition of worker is broader than the definition in s.230(3)(b) of the Employment Rights Act 1996.

'Worker's contract' means a contract (other than a contract of service or apprenticeship) under which:

(a) an individual undertakes to perform work or services personally for another person (whether or not that person is specified in the contract), and

(b) the person is neither a client nor customer of any profession or business undertaking carried on by the individual.

About this version of the code of practice

This code updates the version issued in January 2024. It is the seventh version of this code and will come into force on 1 October 2026. It has been issued under section 19 of the IANA 2006 and sets out the factors to be considered by the Home Office in determining the amount of the civil penalty.

This code of practice has been issued alongside Home Office guidance about how to carry out right to work checks.

Who is this code of practice relevant for?

This code applies to all employers in the UK who employ a worker(s):

- under a contract of employment (a contract of service or apprenticeship).
- under a worker's contract.
- as an individual sub-contractor, or
- are an online matching service providing the details of an individual who is a service provider to potential clients or customers.

It also applies to employers who are contracted to provide work or services to a third party, and who then in turn, contract all or part of that work or services to another employer who provides workers to carry out the work or services.

This includes where an online matching service provides details of a service provider to clients or customers, and the service provider enters into a contract with a client or customer. It also applies to employers who employ individuals where the contractual arrangements allow an individual to substitute their work or services to another individual.

Individuals who are operating in business on their own account, trading in their own name or as part of their own business, who contract directly with clients or customers for the provision of work or services, are not in scope of the Scheme. This includes arrangements where services are provided directly to members of the public or under traditional business-to-business contracts for the supply of services, where the arrangement is for the purchase of a service rather than the employment of an individual to carry out work or services.

This does not include individuals who obtain work through an intermediary, platform, or similar arrangement where the individual is not operating an independent business in their own right.

When engaging a worker under a contract of employment, an employer is only liable for a civil penalty under section 15 of the IANA 2006 where the employment commenced on or after 29 February 2008. As a result, the code of practice only applies to employment that commenced on or after that date.

In relation to employment under a worker's contract, as an individual sub-contractor or in the case of an online matching service providing the details of a service provider to clients or customers, a civil penalty may only be imposed where the employment commenced on or after 1 October 2026.

This applies both to civil penalty liability arising directly under section 15 of the IANA 2006 and to civil penalty liability arising under the extended liability provisions in section 15A of the IANA 2006.

When this code of practice applies

This code applies:

(i) when calculating the penalty amount, where the breach of section 15 of the IANA 2006 occurred on or after 1 October 2026, or

(ii) when determining liability, where an initial check on a prospective worker, or a repeat check on an existing worker, is required on or after 1 October 2026 in order to establish or retain a statutory excuse, or

(iii) when determining liability in cases of extended liability, where the prescribed requirements in relation to the contractual arrangements apply on or after 1 October 2026 in order to establish a statutory excuse.

The date of the breach refers to the date of the most recent evidence of an individual working, who did not have the right to work or do the work in question, contrary to section 15 of the IANA 2006.

The version of the code of practice which applies will depend on the matter under consideration. Prescribed right to work checks, and compliance with the prescribed requirements in relation to contractual arrangements, must be assessed against the code in force at the time the check was carried out or the requirements fell to be complied with. The applicable civil penalty amount will be determined by reference to the code in force at the date of the breach.

The IANA 2006 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.

Summary of changes in this code of practice

- incorporation of other working arrangements brought into scope of the Right to Work Scheme under section 48 of the BSAI 2025 and the prescribed requirements applicable to employers. These changes amend the IANA 2006.

- updates to the lists of acceptable documents to reflect that an official document providing an individual's name and National Insurance number may include a digital version issued by or on behalf of a government agency.

- updated terminology to reflect all working arrangements in scope of the Right to Work Scheme and reference to the updated term 'Right to work digital verification service provider' (RtW DVSP).

- updates to the requirements when a RtW DVSP is used, including to mandate the use of right to work registered providers when using a DVSP to conduct digital 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.

The 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 workers whether or not they may already believe the worker to be legally in the UK.

How should this code of practice be used?

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 IANA 2006.

2. Application to employers in direct contractual relationships with workers

Types of right to work checks

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

1. a manual right to work check.
2. a Home Office online right to work check.
3. a right to work check using a RtW DVSP.

For a step-by-step guide, please refer to guidance about how to carry out right to work checks.

The Home Office began issuing eVisas in 2018, with a wider rollout in 2024 as part of the transition to a fully digital immigration system. This means individuals who have been issued with an eVisa will only be able to evidence their right to work using the Home Office online service.

With the exception of prescribed checks carried out by a RtW DVSP in accordance with this code of practice, an employer must not delegate the responsibility for conducting right to work checks to a third party. Where a check is performed by a third party, such as by a recruitment agency or professional adviser, the employer will not establish a statutory excuse.

In some circumstances a worker may be unable to demonstrate their right to work as detailed above. Employers can use the Employer Checking Service where an individual has an outstanding application, administrative review or appeal and their digital profile is not yet enabled to evidence this, or if their immigration status requires verification by the Home Office such as an individual who has immigration permission issued in a Crown Dependency.

1. Conducting a manual document-based right to work check

Employers can conduct right to work checks using an individual's original documents. There are three basic steps employers must take to conduct manual document-based right to work checks:

1. Obtain original documents from either List A or B of the acceptable documents. Where official evidence of an individual's permanent National Insurance number

issued by or on behalf of a government agency is presented, a digital version of this document may be accepted, provided it is used in combination with the appropriate document from the acceptable document lists.

2. Check the documents are genuine and that the individual presenting them is the prospective worker whilst in their presence – in person or via video link, to ensure documents are genuine and to detect impersonation.

   As part of this step, the employer must satisfy themselves that the worker is the same individual in respect of whom the right to work has been conducted. They can do this by ensuring the photograph and biographical details, such as dates of birth, are consistent across documents and with the individual's appearance.

   If an employer wishes to conduct this element of the check through the use of facial recognition technology, this must be carried out using a RtW DVSP.

   Where facial recognition technology is used, the RtW DVSP will provide a comparison verifying the image on the document and the match to the individual. Employers must retain a copy of this comparison securely alongside a copy of the document checked as outlined in step 3. The employer must provide the worker reasonable opportunity to verify their identity, if the technology is unable to verify the images.

   Where an employer has carried out a right to work check in the prescribed manner, whether they have taken reasonable steps to verify the individual's identity to ensure the worker is the same individual who is the subject of the check will be taken into account when determining whether a statutory excuse has been established. Each case will be assessed on its merits.

3. Copy each document clearly (front and back where applicable and the biographic data pages in passports) in a format which cannot be manually altered, retaining the copies securely (electronically or hard copy) and retain a secure record for the duration of employment and for two years after the employment has come to an end (then securely destroyed) of the date on which the check is made. For example: **The date on which this right to work check was made: [insert date]**.

   If the individual is subject to restrictions such as the type of work or job role that can be undertaken or limits on the number of hours they can work, employers must ensure that the employment offered is in line with those restrictions.

For a manual check, employers should take all reasonable steps to check the validity of the documents presented to them. This includes where they are presented with official evidence of a worker's name and National Insurance number in a digital format, for example, by checking that it appears genuine and originates from a reliable source such as an official government digital service or account. An employer will only be liable for payment of a civil penalty where a document is false, if it is reasonably apparent that it is false.

List A - Acceptable documents to establish a continuous statutory excuse

1. A passport[1] (current or expired) showing the holder is a British citizen.

2. A passport or passport card[1] (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 ECS, showing that the holder has been granted unlimited leave to enter or remain under Appendix EU(J) 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[2].

5. A **current** Immigration Status Document issued by the Home Office to the holder with an endorsement indicating that the named individual 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 individual's permanent National Insurance number and their name issued by a government agency or a previous employer.

6. A long or short birth [3]or adoption certificate issued in the UK, **together with** an official document giving the individual's permanent National Insurance number and their name issued by a government agency or a previous employer.

7. A birth or adoption certificate issued in the Channel Islands, the Isle of Man or Ireland, **together with** an official document giving the individual'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 individual's permanent National Insurance number and their name issued by a government agency or a previous employer.

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[1] A clipped passport is a cancelled document (identified by the corners of certain pages in the passport being cut/removed) and therefore is not acceptable proof of right to work.

[2] Definition includes those with a document which shows that the holder is entitled to readmission to the UK (RUK endorsement)' and ILR endorsements from a Crown Dependency.

[3] Definition includes a birth certificate issued by a UK diplomatic mission (British Embassy or British High Commission) and consular birth certificates.

List B Group 1 - Acceptable documents where a time-limited statutory excuse lasts until the expiry date of leave to enter or remain

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[4].

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 ECS, showing that the holder has been granted limited leave to enter or remain under Appendix EU(J) 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 individual may stay in the UK and is allowed to do the type of work in question, **together with** an official document giving the individual's permanent National Insurance number and their name issued by a government agency or previous employer.

List B Group 2 - Acceptable where a time-limited statutory excuse lasts for six 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 ECS.

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 ECS.

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 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 ECS.

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 ECS.

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[4] 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.

5. A Positive Verification Notice issued by the ECS to the employer or prospective employer, which indicates that the named individual may stay in the UK and is permitted to do the work in question.

Requirements for students

For students who have permission to work for a limited number of hours per week during term times, employers must also obtain, copy and retain details of their academic term and vacation dates for both manual and online checks of this cohort, covering the duration of their period of study in the UK for which they will be employed.

Further information is available guidance about how to carry out right to work checks.

Follow-up right to work checks

Employers need to re-check the right to work of those individuals who have time-limited permission to work in the UK if they intend on continuing to employ them after their current permission expires. This check does not have to be the same types of right to work check as the initial check. They must do this on, or before, the date their permission comes to an end. This ensures they are not inadvertently employing anyone who no longer has the right to work and dissuades individuals from considering overstaying their immigration permission.

Employers will have a statutory excuse against liability for a civil penalty provided they carried out an initial check before they started employing the individual, and the required follow-up checks as set out in legislation and published guidance that applied at the time the checks were conducted.

In the event a follow-up check confirms a worker is working illegally, employers are advised to take steps to cease employment and report the circumstances to the Home Office via the Helpline as set out in section 5 of this code of practice.

Follow-up manual document-based right to work checks

If an employer conducted a manual document-based right to work check using documents from List B, the employer will have a time-limited statutory excuse because the worker has restrictions on their permission to be in the UK and to do the work in question. To retain a statutory excuse an employer must complete a follow-up check as follows:

List B Group 1 documents

1. If the individual can produce a current document in this list, the employer must make a follow-up check using this document. Their time-limited statutory excuse will continue for as long as their worker has permission to be in the UK and do the work in question, as evidenced by the document, or combination of documents, the worker produced for the right to work check.

2. If, however, at the point that the individual's permission expires, the employer is reasonably satisfied that the worker has an outstanding application or appeal to vary or extend their leave in the UK, their time-limited statutory excuse will continue from the expiry date of their worker's permission for a further period of up to 28 days. This is to enable the employer to verify whether the worker has permission to continue working for them.

3. During this 28-day period the employer must contact the ECS and receive a PVN or carry out a Home Office online check confirming the worker continues to have the right to undertake the work in question.

   Further information is available in guidance about how to carry out right to work checks.

4. In the event that the employer receives a PVN, their statutory excuse will last for a further six months from the date specified in their Notice. The employer will then need to make a further check before it is due to expire.

5. In the event that the employer receives an NVN, their statutory excuse will be terminated, and they should no longer employ that individual.

An immigration application or appeal must be made to the Home Office on or before an individual'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.

List B Group 2 documents

If the individual holds a Group 2 document, 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 permission and they are unable to provide the employer with a share code to carry out an online check, the employer must contact the ECS and receive a PVN.

The individual's time-limited statutory excuse will last for six months from the date specified in the PVN. The employer will then need to make a further check before it is due to expire.

2. Conducting a Home Office online right to work check

Where an individual has an eVisa, employers must use the Home Office online right to work checking service to establish a statutory excuse by accessing the individual's right to work information using a share code. This service provides real-time information directly from Home Office systems.

Where it is not possible to conduct a Home Office online right to work check, employers may only carry out a right to work check using another prescribed method where the individual is able to demonstrate their right to work using that method.

Where the online service cannot be accessed due to a technical issue, for example which results in the production of an incorrect share code, online right to work check result or an individual is temporarily unable to generate a share code, employers are able to use the Employer Checking Service to obtain verification of the individual's right to work, where applicable.

Employers may use technology to support them with the required steps to carry out an online check. However, it remains the employer who is responsible for conducting the check in the prescribed manner to establish a statutory excuse. The Home Office does not currently provide support to the use of technology for the purposes of carrying out online checks.

Should the employer be found to be employing individuals without their identity and eligibility to work being verified as prescribed in this code of practice, the employer will not have a statutory excuse in the event the individual is found to be working illegally and therefore will be liable for payment of a civil penalty.

When conducting a Home Office online right to work check, including follow-up checks, employers must:

1. use the Home Office online service to check a job applicant's right to work using their share code. Employers should ensure the correct employer or business name is recorded in full when conducting the check using the online service. Accurate recording helps support the integrity of the check and reduces the risk of the employer's statutory excuse being questioned.

2. check that the photograph on the online right to work check is of the individual in question (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.

   If an employer wishes to conduct this element of the check digitally, such as through facial recognition technology, this must be carried out using a RtW DVSP.

   Where facial recognition technology is used, the RtW DVSP will provide a comparison verifying the image on the online check and the match to the individual. The employer must provide the worker reasonable opportunity to verify their identity, if the technology is unable to verify the images.

3. securely store a copy of the 'profile' page confirming the individual's right to work in hardcopy or in an electronic format such as HMTL or PDF. This will include the photo and date on which the check was conducted. The copy should be retained for the duration of employment and for two years afterwards. The file/hard copy must then be securely destroyed,

4. where the output of the check shows the individual is subject to restrictions such as the type of work or job role that can be undertaken or limits on the number of hours they can work, employers must ensure that the employment offered is in line with those restrictions. Individuals working in breach of these conditions will be doing so illegally.

A statutory excuse will only be obtained where the checks have been conducted as prescribed. It is not sufficient to simply view the details provided to the individual on the migrant-facing part of the service through their eVisa account or via printed copies of the service output for example.

If the Home Office online right to work check confirms the individual does not have the right to work in the UK and to do the work in question, the employer will not have a statutory excuse if they proceed to employ them. If the employer knows or has reasonable cause to believe the individual does not have the right to work, or if it is reasonably apparent that the individual is not the individual to whom the right to work check applied and they continue to be employed in spite of this knowledge, the employer risks committing a criminal offence.

Follow-up online right to work checks

Conducting an online right to work check as prescribed will provide employers with a statutory excuse for the period for which the online right to work check confirmed that the individual named in it is permitted to carry out the work in question. Employers must conduct the check **before** employment commences to have a statutory excuse.

Where an individual has a time-limited right to work, and the employer has established a time-limited statutory excuse, the employer must carry out a follow-up check before the time-limited statutory excuse expires to maintain a statutory excuse against a civil penalty.

3. Conducting a right to work check using a RtW DVSP

Digital identity verification, in the context of right to work checks, is the secure and efficient process of obtaining evidence of the workers identity, checking it is valid and belongs to the individual who is presenting it, where this verification takes place through digital means.

The Data (Use and Access) Act 2025 provides the legislative foundation for the digital checks that DVSPs have provided for the Right to Work Scheme since 2022.

A RtW DVSP can provide a verification check of the following relevant DVSP documents:

- Valid British or Irish passports, including an Irish passport card (up to six months past the expiry date).

- Acceptable documents from List A and List B where the document provided to a RtW DVSP by or on behalf of a government department is a digital version of document contained on the lists. In practice, this will initially be limited to official evidence of a worker's name and National Insurance number issued by a government agency.

- Additionally, the RtW DVSP can provide facial recognition technology to enable employers to confirm that the worker is the same individual in respect of whom a right to work check has been carried out.

Where an expired passport is relied upon for a RtW DVSP check, verification must be carried out using passive authentication in accordance with the prescribed requirements.

It is mandatory that when choosing to engage the services of a DVSP to conduct right to work checks, they must be a RtW DVSP, be registered on the Office for Digital Identities Attributes (OFDIA) register, with a note on the register confirming they can provide right to work checks[5].

It is not mandatory for employers to use a DVSP to conduct right to work checks. Where appropriate, employers and workers can still choose to use other checking methods set out in this Code of Practice.

The RtW DVSP must provide the employer with a notification confirming if the worker has a right to work and verification that they are registered to provide right to work checks. The employer must satisfy themselves that the photograph and biographic details on the output from the check (for example date of birth) provided by the RtW DVSP are consistent with the individual who is the subject of the check (i.e. the information provided by the check relates to the individual and they are not an imposter). This can be done in person, by video call or using facial recognition technology provided by the RtW DVSP.

Where facial recognition technology is used, the RtW DVSP will provide a comparison verifying the image on the document and the match to the individual. Employers must retain a copy of this comparison securely alongside the output of the check. The employer must provide the worker reasonable opportunity to verify their identity, if the technology is unable to verify the images.

The employer must retain a clear copy of the output of the check for the duration of the employment and for two years afterwards.

Should the employer be found to be employing individuals without their identity and eligibility to work being verified as prescribed in this code of practice, the employer will not have a statutory excuse in the event the individual is found to be working illegally and therefore will be liable for payment of a civil penalty.

The Home Office Employer Checking Service (ECS)

In certain circumstances, an employer will need to contact the ECS to verify an individual's right to work and establish a statutory excuse. This is a different process to the online checking service described in Conducting a Home Office online right to work check.

[5] Data (Use and Access) Act 2025

The employer will need to contact the ECS when:

1. they 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.

2. they are presented with a non-digital Certificate of Application confirming receipt of an application to the EUSS on or after 1 July 2021.

3. they are presented with an Application Registration Card stating that the holder is permitted to undertake the work in question. Where the individual made an application for permission to work **before 24 March 2026** which has been granted, they will be entitled to work in a job on the Immigration Salary List. Where the individual made an application for permission to work **on or after 24 March 2026** which has been granted, they will be entitled to work in a job on the Skilled Worker Occupation List at RQF level 6 and above only.

4. they are satisfied that they have not been provided with any acceptable documents by a non-British or non-Irish citizen and are unable to carry out a check using the online service, for example due to a technical issue with the individual's eVisa or digital immigration status.

5. they are satisfied that they have not been provided with any acceptable documents and the individual is unable to generate a share code because they have an outstanding application with the Home Office which was made before their previous permission to stay expired and, as a result, the individual is unable to provide evidence of their right to work.

6. they are satisfied that they have not been provided with any acceptable documents because the individual falls within a cohort for whom verification of the right to work must be obtained from the ECS, such as an individual who has immigration permission issued in a Crown Dependency.

7. they consider that they have not been provided with any acceptable documents, but the individual presents other information indicating they are a long-term resident of the UK who arrived in the UK before 1988.

In the above circumstances, an employer will establish a statutory excuse only where they have contacted the ECS and have been issued with a **Positive Verification Notice (PVN).** This will confirm that the named individual is allowed to carry out the type of work in question and enable them to hire or extend the individual's contract for 6 months from the date specified in the PVN.

The ECS aims to provide a response within five working days of receiving a valid request. It is the employer's responsibility to inform the individual they intend to employ, or continue employing, that they are carrying out a check on them, to complete the verification request correctly and to ensure that the request is made in the circumstances described where verification of the right to work must be obtained from the ECS.

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

3. Application to non-direct contractual arrangements: extended liability

Section 15A of the IANA 2006 extends civil penalty liability in specific contractual arrangements. It applies:

- where a person is under a contract to provide work or services to a third party and enters into a contract with another employer who employs the workers to carry out all or part of the work or services required to fulfil that contract.

- where an online matching service matches a service provider with a client or customer to provide work or services, and the service provider enters into a contract with the client or customer, or

- where an employer employs an individual to provide work or services, and the contract permits that individual to substitute their work or services to be carried out by another individual in their place.

In these circumstances, the person contracted to provide work or services to a third party, the online matching service, or the employer in the case of a substitution clause, may be treated as employing any individual who personally provides the work or services.

These provisions do not apply to persons who act solely as end-users, clients or customers of a service, or who commission or purchase work or services, where they are not under a contract to provide those work or services onwards to a third party as part of a chain of contracts.

Nature of extended liability

The provisions in this section set out the circumstances in which civil penalty liability may extend beyond the employer who holds the direct contractual relationship with the worker.

The Home Office will, in the first instance, seek to identify the employer who holds the direct contractual relationship with the worker. The extended liability provisions operate as a mechanism to ensure responsibility in cases of illegal working where that employer cannot be identified, or the prescribed requirements set out in this section have not been met.

Direct contractual relationships

Where an employer has a direct contractual relationship with a worker, that employer is responsible for carrying out a right to work check as prescribed in legislation and preceding sections of this code of practice, to confirm the worker has the right to carry out the work in question and to obtain a statutory excuse.

Where illegal working is identified, the Home Office objective will continue to be to identify the employer who is in the direct contractual relationship with the worker.

Extended liability

Where the Home Office cannot identify the employer who holds the direct contractual relationship with the worker, or where the prescribed requirements have not been met, liability for payment of a civil penalty may be imposed on another person upstream in the chain of contracts in relation to the work or services.

In determining whether liability should be applied to another person upstream in the chain of contracts, the Home Office will have regard to the nature of the contractual arrangements and the extent to which each party has complied with the prescribed requirements.

A person who is not in a direct contractual relationship with the worker will establish a statutory excuse against extended liability under this section where the prescribed requirements set out in this section have been met in full and can be evidenced.

This means a person seeking to rely upon a statutory excuse against extended liability for payment of a civil penalty must be able to demonstrate compliance with the prescribed requirements. This will require the person to retain sufficient evidence of the steps taken, and to provide evidence of that compliance on request.

Prescribed requirements

For the purposes of this section, the prescribed requirements relate to:

- contractual terms and conditions (written statement).
- substitution controls, and
- identity verification systems and processes.

Contractual terms and conditions (written statement)

Where a person is under a contract to provide work or services to a third party, and enters into a contract with another employer to provide or arrange for the delivery of the work or services, such as by providing workers to carry out the work, or where an online matching service matches a service provider to clients or customers, and the service provider enters into a contract with that client or customer, the employer or the online matching service must have in place a written statement **before** the work or service commences.

That statement must set out the following terms and conditions to be included in the contract with the employer or the service provider to:

a) require the employer or the service provider to conduct prescribed right to work checks on any individual employed to perform the relevant work or services.

b) not further subcontract the work or services without the prior written consent of the person or the online matching service and replicate equivalent right to work obligations in any permitted subcontracting arrangements.

c) permit the person or the online matching service to conduct audits of the employer or the service provider's compliance with prescribed right to work checks to establish a statutory excuse.

d) enable the person or the online matching service to take enforcement action against the employer or the service provider where illegal working is identified and a statutory excuse has not been established, and equivalent provisions in respect of the direct contractual relationship between the employer or the service provider and the individual who is carrying out the work or services. These provisions may include (but are not limited to) suspension or termination of the contract, and

e) require the employer or the service provider to co-operate with any Home Office investigation relating to illegal working, by providing:

- information relating to the purpose and make-up of the chain of contracts in relation to the work or services.

- details of each employer or service provider involved, such as its official name, company type, registered address or principal place of business and company registration number (where applicable), and any other information which the Home Office considers is, or may be, relevant to the investigation.

A person or an online matching service may, as part of meeting these requirements, put in place arrangements to obtain assurance from an employer in the chain of contracts or a service provider that prescribed right to work checks have been carried out, provided that the person or the online matching service ensures that the prescribed requirements have been met.

The application of these provisions is not limited to a single tier of contracting (for example, the first contract in a chain only), and whether liability for illegal working applies will be considered on a case-by-case basis. This will include (but is not limited to) how the arrangements operate in practice.

Substitution controls

Where a contractual arrangement between an employer and a worker permits substitution, the employer will only obtain a statutory excuse against liability for payment of a civil penalty where they have implemented, **before** the work or service commences, processes ensuring that:

a) a prescribed right to work check is carried out in respect of any substitute.

b) responsibility for such checks is not delegated to individuals carrying out the work or services, including where the contractual arrangement describes that individual as operating in business on their own account.

c) no individual may carry out work or services as a substitute before their right to work has been verified.

d) contractual provisions are in place between the employer and the worker (which may include but are not limited to suspension or termination of the contract) where the employer or the worker know, or have reasonable cause to believe, that a substitute is working illegally. This may include where the substitute has failed to comply with a request to complete a right to work check, and

e) for the duration of employment, the employer ensures that the worker and their registered substitute are the same individuals in respect of whom right to work checks have been carried out. This must include by way of identity verification systems of the kind described in this section of the code of practice.

In the event of illegal working, and where requested by the Home Office, the employer must provide the necessary information to enable the Home Office to determine whether a statutory excuse has been established and the amount of any civil penalty to be applied, where appropriate.

In determining whether a statutory excuse has been established in cases involving substitution, the Home Office will have regard to whether the employer has implemented and maintained the above processes in a reasonable and proportionate manner. This includes in circumstances where substitution occurs without the employer's knowledge or control, including where the worker does not have a substitution clause in the contract, or where an individual engages in fraud or other criminal activity to circumvent the checks despite the employer having suitable mitigations and controls in place.

Where there is evidence that the substitution controls do not reflect how the working arrangements operate in practice, the Home Office may take this into account when determining whether a statutory excuse has been established and whether a civil penalty should be applied.

Identity verification

To establish a statutory excuse against liability for payment of a civil penalty under this section, a person in a chain of contracts, an online matching service or an employer in the case of a substitution clause must, as part of the prescribed requirements, maintain proportionate systems and processes to ensure that the individual carrying out the work or services is the same individual on whom a right to work check has been conducted.

Such systems and processes may include:

a) identity cards or workplace access passes.

b) facial verification technology, including use of registered RtW DVSPs.

c) biometric or attendance management systems.

d) verification against training records, qualifications or licences relating to the role, and

e) re-verification of identity at set intervals. For example, this may include when a worker starts a period of or shift of work or when they have requested, or are allocated a new piece of work or job role (such as a specific assignment, service or task) or such other interval as is appropriate in the circumstances of the work being performed, subject to ensuring that this is no less than once in any 24-hour period of activity.

A person, an online matching service or an employer may, as part of meeting these requirements, rely on identity verification systems and processes operated by another party in the chain of contracts or by a third party provider, such as a registered Right to Work DVSP, provided that they have taken reasonable steps to satisfy themselves that those systems and processes are effective and that the prescribed requirements are being met.

Detailed examples illustrating how these provisions apply in the different types of contractual arrangement in scope, including contractual chains, online matching services and substitution clauses, are provided in the Employer right to work checks supporting guidance of 1 October 2026.

4. How a civil penalty is administered

Breach

The Scheme is deemed to be breached if an employer is identified as responsible for the employment of an individual who is disqualified from working by virtue of their immigration status or without the requisite immigration permission to do the work in question.

In this section, references to an employer include any other person who may be liable for a civil penalty under the relevant legislation.

Where a potential breach of the Scheme is identified, the evidence will be considered by the Civil Penalty Compliance Team (CPCT); the Home Office team responsible for considering potential breaches of the Scheme and determining whether an employer is liable for a civil penalty.

Evidence of potential breaches arise from a range of sources, including through operational enforcement visits, information sharing with other government departments, or other evidence indicating that an employer may be responsible for the employment of an illegal worker.

Where a potential breach is identified through an operational enforcement visit, the employer may be served with a Notice which will inform them that they are being referred to CPCT for consideration of their liability for a civil penalty.

Information Request

The employer will be sent an Information Request, providing an opportunity to supply further information or evidence of a statutory excuse. This information will be considered when determining liability for a civil penalty.

Decision

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 them to be liable, the amount of the penalty, ways to pay, and information on how the 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.

The Home Office may issue a Warning Notice where the employer has met the criteria set out in section 5 of this code. This will inform the employer of the reasons why a civil penalty is not being issued on this occasion. The notice is a formal warning, that will be taken into account in the event the employer breaches the Scheme again within 3 years.

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 unless they object to the notice.

The civil penalty scheme operates a Faster Payment Option (FPO). The FPO reduces the amount of the civil penalty due by 30 per cent if this payment is made within 21 days of the Civil Penalty Notice being given. The FPO is only available for employers in receipt of their first penalty and cannot be paid in instalments.

An employer may request to pay their civil penalty by instalments over an agreed period. 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 and have no liability under the relevant legislation).

- They have a statutory excuse (this means they undertook a prescribed right to work check or complied with the prescribed requirements in relation to the contractual arrangements, where applicable), 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 employer will be sent an Objection Outcome Notice if the penalty is to be cancelled, reduced, or maintained.

If an employer objects to the penalty before the deadline specified in the Civil Penalty Notice, they will continue to be eligible for the FPO. If the employer is still required to pay a penalty following objection, they will have 21 days to pay by FPO (if applicable) and 28 days to pay in full, from the date specified in the Objection Outcome Notice.
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.

The Home Office will inform the employer of the outcome of the objection within 28 days of receipt of the objection or by the date of any extension to the outcome as agreed with the employer.

Where an employer does not receive a response to their objection

Where an employer has lodged an objection and has not received a response within 28 days of the date on which the Home Office is deemed to have received the objection, the employer may proceed to lodge an appeal.

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.

An appeal is considered a re-hearing of the Home Office decision. As a result of the appeal, the court may allow the appeal and cancel or reduce the civil penalty or the appeal may be dismissed and the penalty will be maintained. The court must have regard to this code of practice where the appeal concerns the level of the penalty and may take into account other relevant factors not considered at the time the penalty was issued.

An employer may only appeal on the same grounds on which they can 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 dates, the penalty will be registered with the civil court, after which enforcement action may be commenced immediately.

If an employer is subject to immigration control and 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.

An employer who is liable for a civil penalty may face additional consequences. Where the employer is the direct employer of the individual, this could include:

- in serious cases, a criminal conviction carrying a prison sentence of up to five years and an unlimited fine.

- closure of the business and a compliance order issued by the court.

- disqualification as a director.
- not being able to sponsor migrants.
- seizure of earnings made as a result of illegal working.
- review and possible revocation of a licence in the alcohol and late-night refreshment sector and the private hire vehicle and taxi sector.
- appear in the publication of non-compliant employers on GOV.UK: Employers: illegal working penalties.

5. Determining liability and calculating the penalty amount

When considering whether an employer is liable for payment of 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.

In this section, references to an employer include any other person who may be liable for a civil penalty under the relevant legislation.

Stage 1: Determining liability

The version of the code of practice used by the Home Office to assess any right to work checks or prescribed requirements conducted by the employer will be the code in force at the time the check was carried out or the prescribed requirements in relation to the contractual arrangements were complied with, where applicable.

Where it is determined that an employer is responsible for the employment of an individual who does not have the right to work or does not have permission to carry out the work in question, the Home Office will consider whether the employer has established 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 civil penalty amount

The applicable civil penalty levels will be determined by the Home Office with reference to the code in force at the date of the breach.

The Home Office determines the civil penalty amount depending on whether it 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 first breach calculation should be used where the employer **has 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.

- The repeat breach calculation should be used where the employer **has** 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.

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 the 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.

Mitigating factor 3: is there evidence the 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 the 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.

Does the employer have a statutory excuse?

In **stage 1** of our consideration, the Home Office will determine if the employer has a statutory excuse against liability for a civil penalty. An employer will have a statutory excuse if they have carried out the prescribed right to work checks or complied with the prescribed requirements in relation to the contractual arrangements, where applicable, **before** employment commences.

Where a worker has a time-limited right to work, and the employer has, therefore, established a **time-limited statutory excuse**, they are required to conduct follow-up right to work checks to retain the statutory excuse.

It is the employer's responsibility to demonstrate that they have complied with the requirements to establish and, where necessary, retain their statutory excuse.

An employer **will not** have a statutory excuse if:

- they cannot provide evidence of having conducted the prescribed right to work checks or having complied with the prescribed requirements in relation to the contractual arrangements, where applicable, before the employment commenced.

- they have employed an individual when it is reasonably apparent that they are not the holder of the document they present (either in person or digitally), or the individual named and shown in the Home Office online right to work check (i.e., that individual is an imposter).

- they have not satisfied themselves of an individual's identity or implemented appropriate mitigations or controls.

- they have conducted a manual check and it is reasonably apparent that the document is false.

- they have used the services of a RtW DVSP, where it is reasonably apparent that the output of the check sent to them is incorrect or does not contain the required information.

- they have used the services of an unregistered DVSP or a non-Right to Work DVSP.

- they have conducted a Home Office online check using a website or service other than the official GOV.UK Home Office online right to work checking service.

- they 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 and have only viewed information online that has been provided directly to the individual.

- they have employed an individual when it is clear from the right to work check that they do 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. the employer has employed an individual with no right to work or an individual in breach of their work restrictions (such as allowing them to work more hours than they are permitted) or an individual whose right to work has expired).

- they know they are employing an individual who is not allowed to undertake the work regardless of whether they have carried out any right to work checks.

- their statutory excuse was time-limited and has expired, or

- in respect of a student who has a restricted right to work, the employer has 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.

Where the Home Office is satisfied that the employer **has a statutory excuse** in respect of an illegal worker, they will not be liable for payment of a civil penalty.

Has the employer been found to be employing an illegal worker before?

During **stage 2**, the Home Office will consider whether the employer has been found liable for the employment illegal workers within the previous three years. The Home Office will do this to determine the level of the penalty, as this will be taken into account and a higher starting level of penalty will apply.

If the employer has not been issued with a Civil Penalty Notice or Warning Notice in respect of a breach within the previous three years and has not committed an offence under section 21 of the IANA 2006 during the same period, the Home Office will apply the **first breach amount.**

Multiple premises

A business with more than one premises 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 the breach 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 Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) transfers, are provided with a grace period of

60 days from the date of the "relevant transfer[6]", to carry out prescribed right to work checks in respect of these acquired workers. 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 workers who are subject to a relevant transfer, 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[7].

This means that in all circumstances where workers 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 workers, 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.

Further information is available in the Employer right to work checks supporting guidance.

Does the employer have mitigating evidence?

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

(1) Reporting suspected illegal workers

Where the employer demonstrates that they have reported their suspicion about the right to work of one or more illegal workers to the Home Office and received an acknowledgement in the form of a **Unique Reference Number (URN)**, **before** the Home Office has identified the individual(s), their civil penalty amount for each of the illegal workers will be reduced by £5,000.

To qualify for this reduction, the employer must have reported their suspicion of illegal working to the Home Office helpline on **0300 790 6268**, selecting the employers' option, stating they are reporting illegal working in their workforce and requesting a URN, **before** the Home Office identifies the illegal worker.

This applies to both **first and repeat** breaches.

(2) Active co-operation

Where the employer demonstrates **active co-operation** with the Home Office investigation, the civil penalty amount for each illegal worker will also be reduced by £5,000.

This applies to both **first and repeat** breaches.

(3) Effective right to work practices

Where the employer demonstrates effective right to work practices, **together with** reporting and active co-operation, their civil penalty will be reduced to the minimum level of a **Warning Notice (first breach only)**.

A Warning Notice will be taken into account for future breaches within three years.

The Home Office will consider that the employer has effective right to work practices in place if they provide evidence of their general compliance with their responsibility to prevent illegal working. This includes:

- having robust checking systems in place.
- consistent right to work checking processes.
- retention of records, and
- a history of compliance with the requirements.

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[6] As defined by Regulation 3 of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (the "TUPE Regulations").

[7] 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.