

# **ILPA** information sheet

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**Immigration Law Practitioners' Association** [www.ilpa.org.uk](http://www.ilpa.org.uk) 020-7251 8383 (t) 020-7251 8384 (f)

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## **Illegal working 2: Strengthening and simplifying the civil penalty framework for illegal working – Home Office consultation**

*30 July 2013*

Since 2008, employers have had a responsibility to check that their employees have the right to work in the UK. Employers who fail to do so face penalties, principally fines. The Government is proposing to get tougher on employers who continue to employ those who do not have permission to work in the UK by “refining” the system but at the same time simplifying checking processes to reduce administrative costs.

On 9 July 2013, the Home Office launched a consultation on these proposed measures: ‘Strengthening and simplifying the civil penalty framework for illegal working’. The consultation documents can be found here:

<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/consultations/civil-penalties>

### Responding to the consultation

Responses must reach the Home Office before/on 20 August 2013. You can respond online (see link above) or in writing to:

Enforcement Partnership Team  
Home Office  
Consultation Response (Civil penalty scheme)  
2nd Floor, Fry 2 Marsham Street London  
SW1P 4DF

### In brief

The proposed measures include:

- Increasing the size of the maximum fines
- Changes to how the fine is calculated
- Changes to the reasons for reducing a fine (‘mitigating factors’)
- Strengthening enforcement so that more fines are actually imposed and collected
- Reducing the range of documents an employer checks to see if a person has permission to work
- Removal of the annual follow-up checks on employees with time-limited permission to work in the UK. Instead, permission to work would be checked when a person’s leave was about to expire.

### Calculation of penalties

There would be no warning letter for first time breach of the requirements and the maximum ‘first’ penalty would be £15,000 per employee without permission to work.

Where there are aggravating factors (including a previous fine for employing people without permission to work), the penalty would be doubled to a maximum of £20,000.

Factors will lead to a reduction in the penalty:

- (i) Reporting the suspected illegal workers to the Home Office Employer Helpline; or
- (ii) Active cooperation with the Home Office investigation (active cooperation must be more than not obstructing the Home Office); or

It is currently the case that employers who have carried out a 'partial check', for example, checking/copying only one of a specified combination of documents, are not fined as much. It is proposed to abolish this.

The fine will be reduced by 30% for fast payment for all employers who have been fined for the first time, irrespective of how many people without permission to work were employed.. The fast payment reduction will not be available to employers who have previously been fined.

The penalty would not be reduced on the grounds that the employer is unable to pay (it will still be possible to pay by instalments).

### Document checking

The Government aims to simplify the document checks that employers have to do by reducing the number of documents that can be used to prove permission to work and how often they should be checked. Broadly, it would like employers to check Biometric Residence Permits.

Non-EEA nationals will be required to produce a Biometric Residence Permit and non-EEA national overseas students will be also required to present 'acceptable evidence' of their term dates (because how many hours a week a student can work depends on whether it is term-time or holiday).

Presently, an employer must conduct 'right to work checks' at the start of employment and, for non-EEA nationals with limited leave, every twelve months thereafter. The Government proposes to end twelve month checks but to require employers to do a follow-up check when the employee's permission to be in the UK is due to expire.

### Objections and appeals

Presently an employer has a right to make representations to the Secretary of State as to why they should not have to pay a fine. The employer also has a right of appeal to the court. The Government proposes that an employer must make an objection before they can appeal.

### Enforcement

The Government proposes changes which will make it harder for employers to delay paying the fines following an unsuccessful appeal. Also, the directors of a limited liability company (who are normally only responsible as individuals if they have been negligent as directors) would be personally liable to pay the fine if the company did not.

### ILPA's comments

In aiming to simplify documentation checks, the Government may well make it even harder for those with a right to work to satisfy their employer that they have this right.

- (a) There are large numbers of non-EEA nationals who have a right to work in the UK (persons with a right of abode, indefinite leave to remain etc.) but do not have a Biometric Residence Permit (and are not eligible to apply for one). It is therefore unclear how basing checks on Biometric Residence Permits will make things simpler. It may lead to non-EEA nationals settled in the UK being regarded with suspicion because they cannot produce a Biometric Residence Permit.
- (b) Removing annual checks may at first sight be welcome but will the proposed check when leave is about to expire be any simpler? An employer will need to understand when leave is due to expire, and what happens when an employee has applied to extend that leave etc.