

Title: Strengthening and simplifying civil penalties to prevent illegal migrant working. IA No: HO0105 Lead department or agency: The Home Office Other departments or agencies: The Department for Business, Innovation and Skills	Impact Assessment (IA)		
	Date: 05/02/2014		
	Stage: Final		
	Source of intervention: Domestic		
	Type of measure: Secondary legislation		
Contact for enquiries: Home Office			
Summary: Intervention and Options		RPC Opinion: Awaiting Scrutiny	

Cost of Preferred (or more likely) Option			
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Two-Out? Measure qualifies as
	£10.1m	-£1.0m	Yes OUT

What is the problem under consideration? Why is government intervention necessary?

The ability to work illegally encourages migrants to come to the UK illegally and legal migrants to overstay their visas. Illegal working is frequently associated with tax evasion and exploitative working conditions, and undercuts legitimate business. Employers are required to check that a prospective employee has the right to work. It is proposed that the current maximum penalty of £10,000 per illegal worker is increased to give a greater deterrent to illegal working, and to ensure any financial gain is eliminated. Simplifying the right to work check will reduce employer's costs and encourage compliance. The penalty increase and process simplification requires secondary legislation. More effective debt recovery requires an amendment to primary legislation.

What are the policy objectives and the intended effects?

The policy objective is to encourage employers to comply with their responsibilities to prevent illegal working; to strengthen the scheme by levying heavier penalties on non-compliant employers and enforcing these debts more effectively; and to simplify the right to work checks and Code of Practice and reduce the regulatory burden on compliant employers.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Option 1 - Do nothing: will not result in any reduced levels of illegal working, as it provides no additional deterrent. It will also maintain the existing regulatory burden on employers, including the wide range of documents being acceptable for right to work checks and frequency of follow-up checks required.

Option 2 - Strengthen and simplify the civil penalty scheme: A higher penalty, increased operational enforcement and improved debt recovery process will have a greater deterrent on employers in the recruitment of illegal workers, and will ensure that a breach of the rules results in a penalty more proportionate to the unfair competitive advantage they obtain. Simplification of the right to work checks and employer guidance will reduce the burden on compliant employers.

Will the policy be reviewed? It will be reviewed. If applicable, set review date: 04/2015					
Does implementation go beyond minimum EU requirements?				N/A	
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.		Micro Yes	< 20 Yes	Small Yes	Medium Yes
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)				Traded: N/A	Non-traded: N/A

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.

Signed by the responsible Minister: _____ **Mark Harper** _____ Date: _____ **05/02/2014** _____

Summary: Analysis & Evidence

Policy Option 2

Description: Strengthen and simplify the existing civil penalty regime

FULL BUSINESS ECONOMIC ASSESSMENT

Price Base Year 2014	PV Base Year 2014	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: 3.5	10.1	Best Estimate: 10.1

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	£4.8m	£0m	£4.8m
High	£19.3m	£0m	£19.3m
Best Estimate	£9.7m	£0m	£9.7m

Description and scale of key monetised costs by 'main affected groups'

Familiarisation with revised policy (Central estimate - £9.7m)

Other key non-monetised costs by 'main affected groups'

No additional non-monetised costs have been identified. Any costs to employers of illegal migrants are not included in accordance with Green Book principles.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	£0m	£1.0m	£8.4m
High	£0m	£3.4m	£29.4m
Best Estimate	£0m	£2.3m	£19.8m

Description and scale of key monetised benefits by 'main affected groups'

Reduced training time for new firms in future years (Central estimate - £8.6m)

Reduced time needed to carry out checks and reduced frequency of checks. (Central estimate - £11.2m)

Other key non-monetised benefits by 'main affected groups'

A reduction in illegal working should bring a non-monetised benefit to compliant employers and legitimate businesses operating in the UK, as a result of fairer competition.

Key assumptions/sensitivities/risks

Discount rate (%) 3.5

The level of migration and employment of non EEA migrants is assumed to be constant over the time period assessed.

The time taken to carry out a right to work check is as suggested in the impact assessment that accompanied the introduction of the civil penalty.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: £0.9m	Benefits: £1.9m	Net: -£1.0m	Yes	OUT

Evidence Base (for summary sheets)

A. Strategic Overview

A.1 Background

The Immigration, Asylum and Nationality Act 2006 (the Act) introduced a civil penalty for employers of illegal workers. The Act reinforced an existing duty on employers to establish that prospective employees are permitted to work in the UK by conducting specific document checks before employment commences. Employers of migrants with limited leave to be in the UK must repeat these checks within every twelve months. Employers who comply with these duties establish and retain a statutory excuse against a penalty if their workers are found to be illegal.

Employers who are not able to establish a statutory excuse are currently liable to receive a civil penalty on a scale up to a current maximum of £10,000 per worker. Employers may object to the Home Secretary on the ground that the employer is not liable; there is a statutory excuse or the penalty is too high. In addition, or alternatively, employers may appeal to the civil court on the same grounds.

Around 10,000 civil penalty notices have been issued to employers since the start of the scheme in February 2008, until the end of 2013. The gross value of the penalties levied during this time is in excess of £90 million. The net recoverable value (resulting from penalty reductions at objection stage and in settlement of debts) is £70.8 million. During this period almost £30 million was collected. Civil penalties to the value of £20 million were written off.

Illegal migrant working causes problems such as tax evasion, undercutting legitimate competition and exploitative working conditions. Unlike in other EU states, illegal workers in the UK are not entitled to bring legal action for non payment of the national minimum wage (NMW) because their contracts of employment are unlawful. Arguably this makes them attractive to rogue employers in the UK by virtue of being cheaper to employ. Extending NMW protection to illegal workers is not the answer because it would encourage and reward migrants for working illegally, and illegal workers would still be used and controlled by rogue employers in the illicit economy.

The ability to work illegally encourages legal migrants to work in breach of their visa conditions or overstay their visas, and illegal migrants to remain in the UK. Getting tougher with the employers of illegal workers is therefore an important strand in the government's action against illegal immigration. It is also an important strand of the government's commitment to tackling the illicit economy and exploitation of workers.

This impact assessment is a validation stage impact assessment. It is a simplified version of an impact assessment which focuses solely on the impacts to business arising from the policy changes described below. The Regulatory Policy Committee has already accepted that these measures are deregulatory and have positive impacts upon business.

A.2 Groups Affected

All businesses that employ migrant labour will be affected by the changes outlined in this impact assessment. The changes to strengthen the civil penalty regime will only directly affect businesses that do not comply with current legislation.

A.3 Consultation

Within Government

The following were consulted by the Home Office in the development of these proposals: Department for Business, Innovation and Skills and a range of other government departments including HM Treasury and HM Revenue and Customs.

Public Consultation

The Home Office conducted a public consultation on ‘*Strengthening and simplifying the civil penalty scheme to prevent illegal working*’ from 9 July to 20 August 2013. It sought views on proposed changes to the current civil penalty scheme. The consultation document was available online. In total, 499 responses were received. Responses were received to an online questionnaire by post and email. In addition, two meetings and two webinar discussions took place with employers and employer organisations and representatives of the education sector. The results of the consultation were published on 10 October 2013. The main findings of the consultation can be found at Annex A.

B. Rationale

Government intervention is necessary to amend the current civil penalty regime. Legislation is required, firstly, to strengthen the civil penalty regime by increasing the penalty to a level that provides a deterrent to the employment of illegal workers and that reflects the costs to legitimate business, secondly, to more effectively enforce the penalty and thirdly, intervention is required to simplify the right to work check processes and lighten the regulatory burden on compliant employers.

The higher penalty will provide a greater deterrent to employers who may otherwise employ illegal migrants, thus reducing the harm they inflict, both in terms of the unfair competitive advantage they accrue and the impact on public services. It will also reflect the costs to the Home Office of enforcement against employers and the costs of removing illegal workers who have no basis to remain in the UK. The higher penalty, combined with increased operational enforcement¹ and improved debt recovery process will have a greater deterrent effect on non-compliant employers. The civil penalty has remained the same since the implementation of the scheme in February 2008. If it had been increased in line with CPI inflation, it would now be around £12,000².

An employer who employs an illegal migrant at less than the minimum wage could save thousands of pounds per year per employee in lower wages and avoided national insurance payments. Increasing the civil penalty to a maximum of £20,000 per illegal worker is likely to reduce the gains from non-compliance, reflecting the potential benefits of illegal working to an employer. The Government has also announced its intention to quadruple the maximum penalty for breaching the National Minimum Wage Act 1998 to £20,000 per underpaid worker. It is also intended to reflect the cost of the Home Office of removing an illegal worker who otherwise has no basis to stay in the UK. The National Audit Office (NAO) states that the cost of removing a person illegally present in the UK is in the range of £400 to £60,100 for all cases³ depending on their profile.

There is scope to simplify the operation of the existing scheme – to make it easier for legitimate businesses to comply. Respondents to the consultation were generally in support of simplifying the scheme through reducing the number of follow up checks required on non-EEA nationals with time-limited status in the UK and the number of documents acceptable for right to work checks over time.

The aim is thereby to encourage employers to fulfil their responsibilities in conducting right to work checks on prospective employees and ensure that those who have limited permission to remain in the UK are not employed once their permission has expired.

C. Objectives

The policy objectives are:

1. To dissuade employers from recruiting illegal workers and more proportionately penalise those who do exploit illegal workers; and

¹ Illegal working visits increased by 62% in 2013 compared to 2012

² Reflecting the change in CPI inflation from February 2008 until December 2013.

³ For single detained adults the range is between £11,000 and £23,200 (NAO) 2009

2. To support compliant employers to fulfil their responsibilities by reducing the regulatory burden and simplifying the right to work checks.

Raising revenue is neither an objective nor requirement for implementing the reforms. Revenue will accrue to the HM Treasury Consolidated Fund. The Home Office retains £3m of this.

D. Options

Option 1 is do nothing and retain the current civil penalty regime.

Continuing with current regime will not increase the deterrent for non compliant employers to use illegal migrant labour. It will also not support compliant employers by preventing unfair competition resulting from illegal working nor will it reduce the regulatory burden through simplifying right to work checks.

Option 2 is to strengthen and simplify the scheme

1. Strengthen the civil penalty scheme

A number of changes are proposed:

- An increase in the maximum penalty to £20,000⁴ to encourage employers to comply with the requirement for right to work checks on prospective employees;
- The sliding scale of penalties would be simplified and be tougher on repeat offenders;
- First time offenders would also be offered a reduction for early payment of the penalty;
- The objection and appeal stages will be rationalised; and
- The recovery of unpaid civil penalties in the civil court will be made easier.

2. Simplification of the scheme for compliant employers

There is scope to simplify the operation of the scheme and Code of Practice on the prevention of illegal working. The following changes will be made:

- Guidance for employers will be simplified, made more easily available and publicised;
- The number of acceptable documents for right to work checks will be reduced over time, alongside an increasing reliance on biometric residence permits and the development of associated automated checking facilities;
- The Home Office employer checking services will be improved;
- In respect of migrants with limited leave, the current requirement of repeating the check every 12 months will be replaced with a requirement to conduct a follow-up checks to coincide with the expiry of leave;
- The grace period for checks on employees transferred to a business as a result of a Transfer of Undertakings (Protection of Employment) Regulations will be extended from 28 days to 60 days; and
- Clarification that no further administrative action will be taken where an employer can establish a statutory excuse during a visit to their premises.

E. Appraisal (Costs and Benefits)

General assumptions and data

This IA covers a 10-year period from 2014/15, in line with guidance from the Regulatory Policy Committee (RPC) and the Better Regulation Executive (BRE). The Home Office proposes to fully implement the scheme outlined in this IA from April 2014. This IA aims to set out the best estimates of the policy impacts at the final stage of policy development, using the available evidence. Any key

⁴ This penalty has been set in accordance with the Macrory Review. Annex B sets out the principles that have been followed.

uncertainties are highlighted and key assumptions are tested through the use of a range of potential impacts.

Objective of this IA

The aim of this validation stage impact assessment is to set out the direct costs and benefits to businesses who comply with existing legislation. The Better Regulation Framework Manual (2013) states that an IA should not include costs and benefits that accrue to non compliant organisations or individuals, hence the costs falling to businesses not complying with legislation by employing those working in the UK illegally are discussed below but do not form part of the impact assessment Net Present Value. As it is a validation stage impact assessment, the costs and benefits to other groups such as the Home Office or individuals are not considered here.

Volume assumptions and scenarios

The Home Office does not forecast future levels of migration labour market activity by migrants. Thus, it is assumed that the volumes affected and the volume of checks made by employers remains constant over the period assessed in this impact assessment.

Current regime

Under the current civil penalty scheme, employers are required to check the status of each employee. The employer is required to take and retain a copy of the documents used to establish the right to work status. There are a considerable number of documents which can be accepted, meaning the employer must be familiar with a wide range of documentation. Employers are expected to identify 'reasonably apparent' forgeries and satisfy themselves that the employee is not an imposter. They are not expected to be immigration or forgery experts. Where a worker is a national from outside the European Economic Area (EEA) with a time-limited immigration status, employers are required to conduct annual follow-up document checks to maintain their statutory excuse.

In addition to the published guidance, the Home Office has a dedicated Sponsorship and Employers' Helpline for enquiries. Employers may also contact the Employer Checking Service to verify a person's right to work in the UK in a number of circumstances.

It is estimated that it takes an employer on average around 15 minutes per year per employee to complete a satisfactory check. This includes the time taken by the employer to record the date of the check and schedule a repeat check each year.

The current maximum civil penalty per illegal worker is £10,000. There is a 'sliding scale' of factors that are taken into account in the calculation of penalties. They include the number of previous offences/breaches within the last 3 years; whether the employer has conducted partial checks, reported the illegal workers to the Home Office or co-operated with the Home Office in its investigation.

If an employer is served with a civil penalty they may lodge an objection with the Secretary of State and/or appeal to the civil courts. The grounds for objection and appeal are the same: that the employer is not liable for the penalty; is excused from the payment because they have complied with prescribed requirements in relation to employment, or the penalty is too high.

Strengthened and simplified regime

The simplified regime will require employers to check the status of each employee at the start of their employment and then again when their initial status expires. Seventy two per cent of respondents to the consultation, and 81 per cent of employer groups, supported this change. This will reduce the number of checks made by employers.

The policy will shorten and simplify the guidance, in consultation with employers, so that the administrative burden on businesses is reduced. There are currently over 190 documents that could be presented to employers for a pre-employment check by non-EEA migrants. The scheme will reduce these over time so that the majority of non EEA workers will present only one document to check, biometric residence permits (BRP). This will produce time savings to businesses but also ensure that the process is much easier to manage and to control. It will also make it harder to use

forged documents. 76 per cent of all consultation respondents supported working towards the biometric residence permit (BRP) being the main acceptable document for right to work checks for non-EEA nationals. Employers will still be expected to retain a copy of the document.

It is assumed that employer checks will take 10 minutes per employee per check as a result of shorter guidance and the reduced number of permissible documents. This is expected to fall further as the roll out of BRPs expands. It is thought that checks will take 5 minutes after expansion. For the purposes of the central estimate in this impact assessment, this is estimated to take a further three years⁵. These estimates include the time taken to record the date for the subsequent check to take place. This will take the form of adding dates for re-checks to existing calendar arrangements. This could equally be achieved with a paper diary. Either way, we would expect this to be incorporated into existing administrative arrangements at little or no additional expense.

In addition to the Home Office's Sponsorship and Employers' Helpline, the Home Office has been piloting a new biometric residence permit checking facility to inform the development of a larger scale automated verification solution to make right to work checks simpler.

Where employers are found to be non compliant with the legislation, the maximum penalty will be increased to encourage employers to conduct the correct right to work checks on prospective employees. The maximum penalty will be increased to £20,000. 62 per cent of consultation respondents were in favour of this increase. The sliding scale of penalties would be simplified to be tougher on repeat offenders and also to reward those who report illegal working suspicions to the Home Office and actively co-operate in illegal working investigations. First time offenders would also be offered a reduction for early payment of the penalty. A warning notice would also be retained in certain tightly defined circumstances, in response to concerns expressed in particular by small businesses in response to the consultation.

There are a number of mitigating factors that can be taken into account in the calculation of a penalty and results in numerous possible outcomes. These will be reduced and simplified to make it easier to understand. The requirement to conduct an annual check on an employee will be removed and replaced with a check that will coincide with the expected expiry of leave.

The objection and appeal stages will be rationalised. Administrative reviews of the decision to levy a civil penalty (objections) and appeals to the county court would be retained. The proposal is to require the employer to object to a civil penalty before they pursue an appeal to reduce the volume of litigation and cost and effectively filter cases proceeding to appeal. This change will require primary legislation.

Unpaid debts may be enforced through the civil court. The proposal is to amend the relevant section of the Act to allow the outstanding penalty to be registered as is a debt due under a court order. This change will accelerate the process of enforcement, reduce costs and provide clarity to the employer that there is no right to file a defence and dispute the debt at this stage. It does not however, affect the employer's rights to object and appeal against the penalty earlier in the process.

OPTION 1 – To make no changes (do nothing)

There are no additional costs or benefits of option 1. However, there will be a number of risks and costs that will continue to arise. In particular, if there is no policy change, it is unlikely that there will be any change in the behaviour of employers who do not put in place adequate right to work checks or make a commercial decision to recruit those who are present in the UK illegally or not permitted to undertake the employment in question. The costs associated with illegal workers, such as businesses operating illegally and undercutting legitimate businesses, will continue. There are no additional benefits associated with option 1. The lack of deterrence will not lead to a change in the number of illegal workers.

⁵ Current planning assumption

Making no changes to the current regime will not help to support compliant employers to fulfil their responsibilities by reducing the regulatory burden and simplifying the right to work checks.

OPTION 2 – Strengthen and simplify the civil penalty regime

The direct costs and benefits are those that are clearly and immediately related to employers checking the right to work status of their employees. The direct costs include, for example, the cost to the employers of familiarising themselves with the changes. The direct benefits, on the other hand, include time savings for employers of conducting simplified and less frequent checks.

The following sections describe in more detail how costs and benefits have been calculated, and summarise the results. In general the method is straightforward: total costs and benefits are the product of a change in volume and an estimated unit cost or benefit, adjusted for the particular impact being considered.

Costs

Strengthening the civil penalty regime

There will be no additional costs for legitimate firms. The scope of the penalty regime has not changed. Firms that continue to act in a legitimate manner, by checking and recording the documents of their employees, will not be affected by the strengthened penalty regime. Firms are not required to take any additional actions. Firms who repeatedly act in an illegitimate manner by employing those who do not have permission to work will face a higher maximum penalty. The additional costs to those firms who fail to comply with the legislation have not been considered as a cost to business in line with the Better Regulation Framework Manual (2013). The revised regime will offer more clarity on the structure of the penalties and the process for responding to the penalties. It will also increase the reductions to the penalty available to employers who co-operate with the Home Office. This may benefit firms affected by the penalties.

After a business employing an illegal worker is identified, the Home Office will conduct an investigation to determine if a penalty will be issued. The business will be able to submit evidence of the checks they have undertaken to the Home Office before issue of the civil penalty notice and again at the objection and appeal stages. This will prevent penalties being issued and maintained in error. Furthermore, the Home Office will clarify that, in the event that an employer is able to establish a statutory excuse during the visit to the business premises, a notice of potential liability will not be issued, and no further action will be taken on that occasion. This clarification will reduce the burden on businesses which currently begin to allocate resources at this stage pending receipt of the outcome of consideration by the Home Office.

Simplifying the civil penalty regime

Training and familiarisation costs for existing employers

Existing employers will be required to be familiar with the guidance on conducting right to work checks on employees. The guidance applies to the employment of all employees to avoid discrimination, not just those with time limited migration status.

Business Population Estimates⁶ (2013) suggest that there are 1.2 million businesses in the UK with employees. Table 1 sets out the assumptions used to estimate the number of firms affected and the total familiarisation cost. This applies in year 1 only.

The time taken to familiarise with the whole policy is estimated to be 1 hour (see below). Thus it is expected that firms who are already familiar with the current regime will require less time to become familiar with the revised policy. The central estimate assumes that 30 minutes is sufficient to identify the key changes.

⁶ <https://www.gov.uk/government/publications/business-population-estimates-2013>

Table 1 – Estimated familiarisation cost

	Low	Central	High	Source
Number of employers in the UK	1,210,000	1,210,000	1,210,000	Business Population Estimates 2013
Time taken	15	30	60	Assumption
Wage	15.96	15.96	15.96	ASHE
Total	£4.8m	£9.7m	£19.3m	

Benefits

Strengthening the civil penalty regime

Those businesses that employ illegal workers undercut legitimate business through their unfair and illegal cost-cutting activity. Firms operating legitimately are likely to benefit from increased fairness when competing with firms who may have employed illegal migrants. These benefits have not been quantified, as there is no data to support an estimate of the potential gain to legitimate businesses of reducing the incidence of illegal working.

Simplifying the civil penalty regime

Familiarisation savings for new businesses

Over the last 4 years (2009-2012) an average of 250,000⁷ new businesses were established in the UK each year. These firms are required to be familiar with the guidance on checking the right to work before employing a labour force. It is assumed that between 10 per cent and 50 per cent of firms will be employers. The Business Population estimates suggest that 25% of businesses have employees. The impact assessment for the introduction of the policy estimated the familiarisation time as 2 hours⁸. We assume that this will reduce to 1 hour as a result of the simplification of the regime. Table 2 sets out the assumptions used to estimate the annual familiarisation savings for new firms

Table 2 – Estimated familiarisation savings

	Low	Central	High	Source
Number of new firms	250,500	250,500	250,500	Business Demography 2012
Proportion with employees	10%	25%	50%	Central - Business Population Estimates
Time saved (minutes)	60	60	60	Assumption
Wage	15.96	15.96	15.96	ASHE
Total	£3.4m	£8.6m	£17.2m	

Reduction in time taken for checks to be carried out for new and existing businesses

Businesses have to make pre-employment checks and the reduction over time in the volume of documents that may have to be checked will produce a saving to employers as they will eventually need to consider a much smaller range of documents. This will be a Biometric Residence Permit for non EEA nationals. Moreover, where an employee has time-limited status, employers will also only be required to conduct a follow-up check to coincide with the expiry of leave, whereas currently an annual check is required.

Table 3 sets out the estimated time savings due to the reduced frequency of checks using the following assumptions:

⁷ Business Demography (2012) <http://www.ons.gov.uk/ons/publications/re-reference-tables.html?edition=tcm%3A77-329345>

⁸ Home Office (2005) *Regulatory Impact Assessment for Immigration, Asylum and Nationality Bill*, Illegal Working Taskforce, June, London.

- The Labour Force Survey (LFS) suggests that there are around 430,000 non-EEA nationals, who have arrived since 2007, working in the UK in 2013. The vast majority of this group will be employees. This group reflects the best estimate of those requiring a right to work check as they have not been in the UK long enough to obtain unlimited leave.
- Using the 2005 IA assumption that a complete document check takes 15 minutes, reducing the volume of documents to check may reduce this to 10 minutes and to 5 minutes after the full roll out of BRPs.
- The low savings estimate assumes that checks are still required annually, due to people moving jobs. The maximum estimate assumes that checks will only be required every 3 years, as this is the most common length of time granted to non-EEA migrants entering the UK.

Table 3 – Time savings from reduced checks

	Low	Central	High	Source
Number of migrants requiring a right to work check	430,000	430,000	430,000	LFS
Time saved (minutes)	5 minutes	5 minutes until BRP roll out, then 10 minutes.		Assumption
Frequency of checks - years between checks	1	2	3	Assumption
Wage	15.96	15.96	15.96	ASHE
Total £m (PV)	£4.9m	£11.2m	£12.2m	

Summary of costs and benefits

A summary of the key monetised costs and benefits included in the NPV is set out below.

Table 4 – Summary of monetised costs and benefits

Summary of Costs and Benefits	Low Summary	Central Summary	High Summary
	10 yr impact (£m) PV	10 yr impact (£m) PV	10 yr impact (£m) PV
Costs			
<u>Set-up costs</u>			
1. Training and familiarisation costs - Businesses	£4.8	£9.66	£19.33
Total costs	£4.8	£9.7	£19.3
Benefits			
Ongoing Benefits			
1. Reduction in familiarisation for future firms	£3.4	£8.6	£17.2
2. Reduction in annual checks	£4.9	£11.2	£12.2
Total benefits	£8.4	£19.8	£29.4
Net present value	£3.5	£10.1	£10.1

One-in-one-out (OIOO)

These measures count as a regulatory OUT under OITO. The direct costs on business include the cost of employers familiarising themselves with the proposals. However, these costs are more than offset by the benefits associated with simplified guidance and reduced volumes of checks. The net cost to business per year (EANCB) is estimated to be -£1.0m. (A negative cost is considered to be a benefit)

The policy change will apply to all businesses with employees, including small and micro⁹ sized businesses. The Business Population estimates (2013) suggest that 97 per cent of businesses with employees, accounting for 35% of all employees, are small or micro sized businesses. As the proposal is deregulatory, and benefits businesses, its application to small and micro sized businesses is appropriate.

⁹ Micro sized businesses are defined as those with less than 10 employees while small businesses are defined as those with less than 50 employees.

F. Risks and Sensitivities

The estimates set out above rely on a number of assumptions. The low and high ranges test the sensitivity of a number of these assumptions. However the base-case is dependent on the following assumptions.

- The level of migration and employment of non EEA migrants is assumed to be constant over the time period assessed. The Home Office does not make forecast of migration of labour market activity.
- The time taken to carry out a right to work check is as suggested in the impact assessment that accompanied the introduction of the civil penalty.

Any inaccuracies in these assumptions may affect the conclusions drawn in section H. However, the main aim of the changes is to help legitimate businesses through reducing the level of illegal working and simplifying and reducing number of checks they have to make. It is unlikely that these changes will impose costs on legitimate businesses.

G. Enforcement

Deterrence to the employment of illegal workers is also supported by a more effective operational enforcement response to employers of illegal workers. With the creation of the Immigration Enforcement Directorate in the Home Office, there has been an increased focus on action against illegal working. Illegal working operations increased by 62% in 2013 compared to 2012. In addition, reform of the Home Office's administration of the civil penalties scheme and recovery of unpaid penalties, including in the civil courts, will further underpin compliance with the checking requirements and the enforcement of appropriate sanctions against those who currently evade their responsibilities and subsequent penalties. The 'enforcement reach' against non compliant employers who also breach other workplace compliance regulations will be enhanced through the government's currently increasing multi-agency and cross-government action to address the illicit economy.

H. Summary and Recommendations

The table below outlines the costs and benefits of the proposed changes.

Table H.1 Costs and Benefits		
Option	Costs	Benefits
2	£9.7m (PV over 10 years)	£19.8m (PV over 10 years)
Source: HO Analysis		

The preferred option is option 2 – changes to the existing civil penalty regime for preventing illegal migrant working. The quantified benefits exceed the quantified costs. Option 2 meets the objectives of the policy.

I. Implementation

The proposals will be implemented from April 2014 following a change in secondary legislation.

J. Monitoring and Evaluation

The Home Office will continue to monitor the effectiveness of the civil penalty scheme to prevent illegal working. The regulations which determine the acceptable documents for checking purposes will be amended as the range of documents is reduced over time. In other respects the outcomes will be subject to internal review after 12 months and the legislation may be amended accordingly.

Annex A - Findings on the main consultation questions

The responses to each of the main questions in the consultation are set out below. In summary, there was majority support for all proposals, with the exception of the proposal in question 3. The quantitative response is usually followed by an example of the comments received, and then the government's response.

Question 1. If an employer breaches the right to work checks on more than one occasion, should a maximum civil penalty of £20,000 per illegal worker be levied?

62 per cent of respondents agreed that a maximum civil penalty of £20,000 per illegal worker should be levied when an employer breaches the right to work checks on more than one occasion. 29 per cent disagreed.¹⁰

A small number of respondents noted that the consultation document did not contain evidence to support the level of the increased penalty, but only a few respondents provided any evidence as to why £20,000 was too high. In addition, it was suggested that individual employer circumstances should be taken into account and some respondents noted the potential impact on small businesses.

Question 2. Should the calculation of civil penalties be simplified as proposed in the consultation?

74 per cent of respondents agreed that the calculation of civil penalties should be simplified as set out in the consultation document. 17 per cent disagreed.

Linked to question 3, some respondents were concerned that employers could make simple administrative errors and did not understand the requirements, which resulted in a breach of the right to work checks.

Question 3. Should a warning letter no longer be issued for a first time breach of the right to work checks?

Views on this proposal were mixed. 41 per cent of respondents felt that a warning letter should no longer be issued in these circumstances. 54 per cent felt a warning letter should continue to be issued. This proposal was of particular concern to employers and employers' associations.

Employers who commented further were concerned that the approach to breaches of right to work checks should accommodate those employers, particularly small employers, who inadvertently make a mistake and otherwise have systems in place to conduct checks. These respondents felt employers should be warned in the first instance.

Question 4. If an employer has already received one or more civil penalty notices, should these be considered an aggravating factor when determining the current penalty level?

81 per cent of respondents agreed that if an employer has already received one or more civil penalty notices, these should be considered an aggravating factor when determining the current penalty level. 15 per cent disagreed.

Question 5. What should be the starting point for the calculation of a first civil penalty to act as an effective deterrent to employing illegal workers?

This question offered three response options for the calculation of a first civil penalty to act as an effective deterrent to employing illegal workers. Most respondents opted for the lower (£10,000, 54%) or higher (£15,000, 40%) options, with only six per cent choosing the middle option of £12,000.

¹⁰ Totals do not equal 100% due to 'don't know' responses.

A higher proportion of the employers group (62%) were in favour of the £10,000 starting point, compared to individual respondents (46%). 50 per cent of individuals felt the starting point should be £15,000, compared to 29 per cent of the employers group.

As with the responses to the maximum civil penalty proposals, some respondents suggested that greater evidence was needed to justify changes to the level of penalties set. However, as previously noted, only a few respondents presented any evidence as to why these levels were not appropriate.

Question 6. Would reducing the number of acceptable documents simplify the right to work checks?

64 per cent of respondents agreed that reducing the number of acceptable documents would simplify the right to work checks. 29 per cent disagreed.

The employers group was significantly more likely to support this proposal than individual respondents with 73 per cent supporting it, compared to 61 per cent of individuals.

Comments from a range of stakeholders were broadly supportive as the current range of documents made checks time consuming, difficult and increased the chance of error. So this proposal would simplify the scheme. A small number of respondents were concerned that the proposed change might lead to a situation where some individuals did not have the correct documents.

Question 7. Do you support working towards the biometric residence permit being the main acceptable document for right to work checks for most non-EEA nationals?

76 per cent of respondents supported working towards the biometric residence permit (BRP) being the main acceptable document for right to work checks for most non-EEA nationals. 20 per cent of respondents disagreed.

This proposal attracted particularly strong support from the employers group, with 85 per cent agreeing with the proposal, compared to 68 per cent of individual respondents.

Although largely supportive, a concern raised by a range of stakeholders was the current penetration of BRPs and that it was necessary to ensure transitional arrangements were in place and migrants were able to evidence their right to work.

Question 8. Would a follow-up check linked to the expiry of permission to stay in the UK reduce the burden on employers?

72 per cent of all respondents felt that a follow-up check linked to the expiry of permission to stay in the UK would reduce the burden on employers. 20 per cent of respondents disagreed.

As with the preceding question, this proposal attracted particularly strong support from the employers' group. A significantly higher proportion (81%) of the employers' group supported the proposal, compared to private individuals (65%).

Question 9. Should directors and partners of limited liability businesses be held jointly and severally liable for civil penalties to allow recovery action to be taken against them if the business does not make payment?

62 per cent of all respondents felt that directors and partners of limited liability businesses should be held jointly and severally liable for civil penalties to allow recovery action to be taken against them if the business does not make payment. 26 per cent of respondents disagreed.

There was majority support (57%) for this proposal from the employers group, but this was significantly lower than the level of support (68%) from members of the public. Comments received included concern about the complexity of this proposal and its relationship with company and partnership law.

Annex B

Macrory Review: principles and characteristics

1. I recommend that the Government initiate a review of the drafting and formulation of criminal offences relating to regulatory non-compliance.
2. I recommend that in designing the appropriate sanctioning regimes for regulatory non-compliance, regulators should have regard to the following six Penalties Principles and seven characteristics.

Six Penalties Principles

A sanction should:

1. Aim to change the behaviour of the offender;
2. Aim to eliminate any financial gain or benefit from non-compliance;
3. Be responsive and consider what is appropriate for the particular offender and regulatory issue, which can include punishment and the public stigma that should be associated with a criminal conviction;
4. Be proportionate to the nature of the offence and the harm caused;
5. Aim to restore the harm caused by regulatory non-compliance, where appropriate; and
6. Aim to deter future non-compliance

Seven characteristics

Regulators should:

1. Publish an enforcement policy;
2. Measure outcomes not just outputs;
3. Justify their choice of enforcement actions year on year to stakeholders, ministers and Parliament;
4. Follow-up enforcement actions where appropriate;
5. Enforce in a transparent manner;
6. Be transparent in the way in which they apply and determine administrative penalties; and
7. Avoid perverse incentives that might influence the choice of sanctioning response.