

**EXPLANATORY MEMORANDUM TO**  
**THE IMMIGRATION (RESTRICTIONS ON EMPLOYMENT) ORDER 2007**  
**2007 No. 3290**

1. This explanatory memorandum has been prepared by The Home Office and is laid before Parliament by Command of Her Majesty.

**2. Description**

2.1 This Order sets out detailed provisions to prevent illegal migrant working in the United Kingdom as required by sections 15, 16, 19 and 23 of the Immigration, Asylum and Nationality Act 2006 (“the Act”).

**3. Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 None

**4. Legislative Background**

4.1 Section 15 of the Act allows the Secretary of State to serve an employer with a notice of liability requiring the payment of a penalty of a specified amount where they have employed a person aged 16 or over, who is subject to immigration control unless that person has been given valid and subsisting leave to be in the United Kingdom by the Government and that leave does not restrict them from taking the job in question or the person comes into a category where the employment is also allowed. An employer may acquire a statutory excuse from payment of the penalty by checking, copying and retaining the copy of specific documents belonging to the applicant prior to the employment commencing. This instrument sets out the detailed provisions whereby the statutory excuse may be acquired and retained. When the potential employee or employee presents a document(s) that demonstrates an entitlement to work in the UK for an indefinite period, as contained in List A, no further checks are required during that employment. Where a potential employee or employee presents a document(s) that demonstrates a limited entitlement of employment as contained in List B, the checks need to be undertaken again within a twelve month period, if the statutory excuse is to be retained.

4.2 Section 16(3) of the Act provides that the employer may object to the payment of a penalty to the Secretary of State on the basis that he is not liable, has acquired a statutory excuse or the penalty is too high. This instrument prescribes the manner in which the objection shall be made. The instrument also provides that the Secretary of State shall determine the objection within 28 days from the date on which the notice of objection was given to the Secretary of State.

4.3 Section 19(1) of the Act provides that the Secretary of State shall issue a Code of practice specifying the factors to be considered by the Secretary of State in

determining the amount of the penalty. This instrument allows for the said Code to be brought into effect.

4.4 Section 23(1) of the Act provides that the Secretary of State shall issue a Code of practice specifying what an employer should or should not do in order to ensure that while avoiding the liability of a penalty or committing an offence of knowingly employing an illegal migrant worker as provided for in section 21 of the Act, the employer also avoids contravening the Race Relations Act 1976 or the Race Relations (Northern Ireland) Order 1997. This instrument allows for the said Code to be brought into effect.

## **5. Territorial Extent and Application**

5.1 This instrument applies to all of the United Kingdom.

## **6. European Convention on Human Rights**

6.1 As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy background**

7.1 The new system of civil penalties for employers who employ illegal migrant workers will provide a swift and effective means of tackling employers who are less than diligent in carrying out specified document checks before and, for their migrant workforce, after the point of recruitment. The system of civil penalties is designed to encourage employers to comply with their legal obligations, without criminalising those who slip up in operating their recruitment and employment practices. Employers will be excused from payment of the penalty if they undertake specified document checks at the point of recruitment and repeat the checks at least once every twelve months for those employees with limited leave to enter or remain in the United Kingdom. This Order will set out how the statutory excuse can be acquired and retained. It will confirm which specific documents need to be checked at the point of recruitment, which specified documents need to be checked at least once every twelve months, what steps the employer must take in copying and retaining the copied document and what steps the employer should take in checking that the document belongs to the holder in order that the statutory excuse may be acquired and retained.

7.2 An employer who has been served with a civil penalty is entitled to object to the Secretary of State on the basis that the employer is not liable to the penalty, has acquired and retained the necessary statutory excuse to the penalty or that the amount of the penalty is too high. This instrument sets out the prescribed manner in which the objection shall be made. The objection shall contain the following minimum information:-

- Penalty reference number
- Name and contact address of employer
- Name and contact address of employee in respect of whom the penalty was issued
- Full grounds of objection

- Full details of the employer's ability to pay if the employer requests permission to pay by instalments
- Confirmation and details of any appeal made by the employer to a County Court or Sheriff Court on the basis that the employer is not liable to the penalty, has acquired and retained the necessary statutory excuse to the penalty or that the amount of the penalty is too high.

The employer must also annex any documents to be relied upon in support of the objection.

The objection shall be signed, dated and served upon the Secretary of State at the address set out in the penalty notice within 28 days of the date specified in the penalty notice. The Secretary of State shall determine the objection within 28 days from the date on which the notice of objection was served on the Secretary of State or such longer period as may be agreed between the Secretary of State and the employer.

7.3 Section 19 of the Act provides for a Code of practice to specify the factors to be considered by the Secretary of State in determining the amount of the penalty to be imposed on the employer. This includes whether any previous penalty notices have been issued on the employers in the preceding three years, whether follow up checks have been undertaken by the employer, if required, and whether the employer reported his suspicions of immigration abuse, or co-operated with the Border and Immigration Agency. A draft of this Code has been the subject to a public consultation held between 15 May and 7 August 2007 and been laid before Parliament. This instrument allows for this Code to be brought into effect.

7.4 Section 23 of the Act provides for a Code of practice specifying what an employer should or should not do in order to ensure that while avoiding the liability of a penalty or committing an offence of knowingly employing an illegal migrant worker as provided for in section 21 of the Act, the employer also avoids contravening the Race Relations Act 1976 or the Race Relations (Northern Ireland) Order 1997. The draft Code has been subject to a public consultation held between 15 May and 7 August 2007 and been the subject of specific consultation with the Commission for Racial Equality, the Equality Commission for Northern Ireland and bodies representing employers and workers. This instrument allows for this Code to be brought into effect.

7.5 The illegal working provisions form part of a balanced package of measures to prevent illegal migrant working in the UK, incorporating additional support for law abiding employers through verification services, the points based scheme and identity cards for foreign nationals. The new system needs to reflect a proportionate approach to non-compliance, whilst providing a sufficient deterrent effect so that employers won't want to risk their profits and reputation by using slipshod employment practices and employing illegal migrant workers. The introduction of mandatory Biometric Immigration Documents for non-EEA nationals in the UK Borders Act 2007 will provide the opportunity in due course to improve the security and simplify the range of documents to be checked.

## **8. Impact**

8.1 A Regulatory Impact Assessment was prepared for the Act and was published on 22 June 2005. This estimated that the cost to employers of familiarising themselves with new guidance would be approximately £27.2 million, with the projected cost to business of a continuing obligation in the fifth year after its introduction being approximately £1.3 million.

## **9. Contact**

9.1 The Illegal Working Unit (Tel: 020 8760 2955 or e-mail: [iwu@homeoffice.gsi.gov.uk](mailto:iwu@homeoffice.gsi.gov.uk)) can answer any queries regarding the statutory instrument.