

Global Employer Services (GES)

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GES NewsFlash

United Kingdom — Immigration Update: Preventing Illegal Working — Draft Code of Practice



May 20, 2014

Overview

Code of Practice

On 6 May 2014, the government published a **Draft Code of Practice** (the “Code”) which will be effective from 16 May 2014.

The Code, which has been issued under s.19 of the Immigration, Asylum and Nationality Act 2006 that came into force in February 2008, includes information and changes to the prevention of illegal working rules.

Changes to the Code

The main purpose of the Code is to:

- (i) Set out some changes to right-to-work checks
- (ii) Explain the factors that the Home Office can consider to determine the amount of civil penalty for employing an illegal worker

The Code applies to checks or repeat checks made on or after 16 May 2014 — and penalties (in respect of any employment which commenced on or after 29 February 2008) where the breach occurs on or after 16 May 2014.

Preventing Illegal Working

- **Remote Checks** — We know that the potential employee usually has to be present when the checks are made (so, for example, passport photos can be compared to the person standing in front of the checker) — but now it is clear that you can be “present” via a live video link. This adds some flexibility to the checking process, if it does need to be carried out remotely in extreme circumstances.
- **Twelve Monthly Checks** — One of the more substantive changes contained in the Code is that employers are not automatically required to conduct checks every 12 months following the initial right-to-work check to retain their statutory excuse. A follow-up check will instead be required as specified in the Code. Generally, this will be when the employee’s permission to be in the United Kingdom is due to expire.

- **List B: the six-month statutory excuse** — There are documents on List B which will provide a statutory excuse for only six months (where, for example, applications are pending at the Home Office) — and checks will have to be carried out again at the six-month point.
- **Students** — In respect of students who have a restricted right to work, employers will be required to obtain and retain a copy of evidence from a student's education sponsor, setting out their term and vacation times covering the duration of their period of study in the UK for which they will be employed.
- **Checks where TUPE applies** — There is an extension to the grace period (to 60 days) for conducting right-to-work checks for employees acquired as a result of TUPE transfers.

Civil Penalty

The draft code provides a revised method for calculating civil penalty levels with the option for payment by instalment and the reduction of the civil penalty amount for early payment (fast payment option).

The maximum starting penalties are £15,000 per worker for a first breach and £20,000 per worker for a second or repeat breach (up from a previous maximum of £10,000 per worker for repeat breaches). The new framework for civil penalties includes consideration of mitigating factors, such as cooperation with the Home Office and effective internal procedures, which may reduce the penalty.

Deloitte's view

The changes in abolishing 12 monthly checks will decrease employers' administrative burden together with the flexibility of allowing verification of employees' documents via video link will enable employers to carry out the document checks efficiently. These changes may affect the processes employers already have in place and although the code does not impose any legal duties on an employer, the Home Office officials will most likely refer to this Code when considering issuing civil penalties for the engagement of illegal workers.

Employers should ensure they have familiarized themselves with this Code and amend their policies where applicable.

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