



Home Office

**Code of practice for employer
civil penalties:
Illegal employment of a Croatian national**

July 2013

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Presented to Parliament pursuant to Regulation 11 (10) of the
Accession of Croatia (Immigration and Worker Authorisation)
Regulations 2013

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Introduction

1. Following the Accession of Croatia to the European Union on 1 July 2013, the Government is applying transitional restrictions on Croatian nationals' access to the labour market. Under these restrictions, which are implemented by the Accession of Croatia (Worker Authorisation and Immigration) Regulations 2013 (the "2013 Regulations"), a Croatian national may require prior permission in the form of an accession worker authorisation document before they can commence work in the United Kingdom.
2. As an employer, you have a responsibility to prevent the illegal employment of Croatian nationals in the United Kingdom. Under the 2013 Regulations, it is an offence to knowingly employ a Croatian national who is subject to the requirement to obtain worker authorisation but either does not have a valid worker authorisation document or works in breach of any conditions placed in their worker authorisation document. The Regulations also provide that where an employer employs a Croatian national contrary to the Regulations, the Secretary of State may serve the employer with a notice requiring the payment of a penalty of a specified amount.
3. For the purposes of the 2013 Regulations, an employer is defined as the person who directly pays the wage or salary of the worker.
4. This Code of Practice has been issued under regulation 11(9) of the 2013 Regulations. It sets out the factors which may be taken into account when determining the level of penalty to be imposed in each case.
5. When we refer to 'we' or 'us' in this code we mean the Home Office. When we refer to 'you' or 'your' this means the employer.

How we determine the level of the penalty

6. If you are found employing a Croatian national illegally we may look at certain factors when deciding if you are liable for a civil penalty, and if so, your penalty amount. The maximum penalty which may be imposed on you for each Croatian national employed in breach of the 2013 Regulations is £5,000.
7. Table 1 sets out the framework which we will apply when calculating your penalty level, if you are liable. It is provided for guidance purposes. The level of penalty to be imposed per worker may be increased or reduced according to different criteria. For example, if you have been found liable for a civil penalty for employing illegal migrant workers in your workforce within the past 3 years then the penalty amount can be increased.

Level 1: 1st Civil Penalty		First offence				Minimum Penalty Amount Per Worker £2,500
		Maximum Penalty Amount Per Worker £3,750	Mitigating Factor 1		Mitigating Factor 2	
			Has suspected illegal working been reported?	Yes: Penalty decreased by £625	Has the employer actively co-operated?	Yes: Penalty decreased by £625
		No: No penalty decrease		No: No penalty decrease		
Level 2: 2nd or subsequent Civil Penalty		Subsequent offence				Minimum Penalty Amount Per Worker £3,750
		Maximum Penalty Amount Per Worker £5,000	Mitigating Factor 1		Mitigating Factor 2	
			Has suspected illegal working been reported?	Yes: Penalty decreased by £625	Has the employer actively co-operated?	Yes: Penalty decreased by £625
		No: No penalty decrease		No: No penalty decrease		

Establishing a statutory excuse

8. Under the 2013 Regulations, you may establish a statutory excuse, and therefore not be liable to payment of a civil penalty, if you have taken certain steps before a Croatian national starts working for you.

9. These steps are:

(a) you have required the Croatian national to produce to you an original:

- accession worker authorisation document that confers permission to take the employment in question; or
- registration certificate which includes a statement that the holder has unconditional access to the UK labour market; or
- passport, identity card or other travel document which confirms that Croatian worker is also a British citizen or a national of another Member State of the European Economic Area; and

(b) you have:

- taken all reasonable steps to check the validity of the document;
- satisfied yourself that the photograph on the document is of the prospective employee;
- satisfied yourself that the date of birth on the document is consistent with the appearance of the prospective employee;
- taken all other reasonable steps to check that the prospective employee is the rightful holder of the document; and
- securely retained a dated copy of the whole of the document in a format which cannot be subsequently altered for a period of not less than two years after the employment has come to an end.

10. For all of the documents mentioned in paragraph 9 (a), you should take a copy of:
- the document's front and back cover; and
 - any page containing the holder's personal details including nationality, his or her photograph, date of birth and/or signature; and
 - any biometric details; and
 - the date of expiry; and
 - any relevant UK Government immigration endorsements.
11. All copies of documents should be kept securely and should be dated with the date on which the check was made.
12. In each case, it is for you to show that you have complied with the requirements to establish a statutory excuse.
13. If the document presented to you is false, you may commit the criminal offence of knowingly employing a Croatian national illegally, if the falsity of the document is reasonably apparent. It would be considered to be reasonably apparent if an individual who is untrained in the identification of false documents, examining it carefully, but briefly and without the use of technological aides, could be reasonably be expected to realise that the document is not genuine.
14. Equally, where a Croatian national presents a document and it is reasonably apparent that the person presenting the document is not the rightful holder of that document, then you may also commit the criminal offence of knowingly employing a Croatian national illegally, even if the document itself is genuine. Therefore, you should examine the photograph and personal details in the document and compare these with the holder in order to detect any impersonation.
15. If you cannot provide a record of having conducted the prescribed document checks prior to recruitment, or you have accepted a document which clearly does not belong to the holder, or it is reasonably apparent that the document is false, or shows that the person does not have a current entitlement to work in this country, you shall be considered to have conducted no check for the purpose of liability for a civil penalty. Where no check has been conducted, you may be subject to the maximum level of penalty, but your case may alternatively be considered for criminal action for knowingly employing an illegal Croatian worker.

Reporting suspected illegal worker to the Home Office

16. If you report any suspicions about your employees' entitlement to work in the UK, or to undertake the work in question to the Home Office, a sum may be deducted from the amount of penalty due for each Croatian national employed illegally. This information must have been reported to the Home Office's Sponsorship and Employers' Helpline on 0300 123 4699 before any immigration visit is made to you. When reporting, you will be given a call reference and this must be referred to when applying a reduction in penalty.

Active co-operation with the Home Office

17. The penalty due for each Croatian national employed illegally can also be reduced where you have actively co-operated with Home Office officials when carrying out checks into your compliance with your duties under the 2013 Regulations. This includes complying accurately and promptly to requests for information in connection with the prevention or detection of crime, the administration of illegal working civil penalties and/or the apprehension or prosecution of immigration offenders. It also includes providing our officials with access to your premises and employment records when requested.

Previous offences

18. When considering whether a higher level of penalty should apply, previous civil penalties for past instances of illegal working (both under the 2013 Regulations and the Immigration, Asylum and Nationality Act 2006) will only be considered where those penalties were issued within 3 years of the date of the new breach.

Multiple premises

19. A company with multiple premises where recruitment is devolved to each site, will not be liable to a cumulative penalty if illegal Croatian workers are detected at different sites, unless this can be attributed to a general failure in the company's centrally set recruitment practices.

Transfer of undertakings

20. If you acquire staff as a result of a Transfer of Undertakings (Protection of Employment) transfer, you are provided with a period of 28 days grace to undertake the appropriate document checks.



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