



Home Office

# Guidance for employers on preventing illegal working in the UK: Croatian nationals

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# Who should read this guide?

This guide is about preventing illegal working by Croatian nationals in the UK. It is aimed at employers and Human Resources (HR) staff involved in recruiting and employing people. It contains important information and advice. It explains:

- the law on the illegal employment of a Croatian national;
- your role and duty as an employer;
- who needs authorisation to work and how this is obtained;
- the document checks you should carry out; and
- the consequences if you do not carry out document checks and we find you employing a Croatian national illegally.

When we refer to 'we' or 'us' in this guide we mean The Home Office. When we refer to 'you' or 'your' this means the employer.

You can find more information, together with important updates on preventing illegal working, on our website: [www.ukba.homeoffice.gov.uk/business-sponsors/preventing-illegal-working/](http://www.ukba.homeoffice.gov.uk/business-sponsors/preventing-illegal-working/)

## Complaints

If you are unhappy about any aspect of our service you can use our complaints procedure. More information about this is on our website at: [www.ukba.homeoffice.gov.uk/aboutus/contact/makingacomplaint/](http://www.ukba.homeoffice.gov.uk/aboutus/contact/makingacomplaint/)

## Introduction

After 1st July 2013, as European Economic Area (EEA) nationals, Croatians will be able to move and reside freely in any European Union (EU) Member State. However, Member States may apply restrictions on access to the labour market for a transitional period. The UK is applying such transitional restrictions. These are applied by the Accession of Croatia (Immigration and Worker Authorisation) Regulations 2013.

Under these Regulations, a Croatian national who wishes to work in the UK and who is subject to the worker authorisation requirement will need to obtain an accession worker authorisation document (permission to work) before starting any employment.

This means that from 1 July 2013 a Croatian national will only be able to work in UK if they hold a valid accession worker authorisation document or if they are exempt from work authorisation.

# 1: What is the law and my duty as an employer?

The law on preventing illegal working by Croatian nationals is set out in regulations 11- 15 of the Accession of Croatia (Immigration and Worker Authorisation) Regulations 2013 (known as the 2013 Regulations). These rules came into force on 1 July 2013.

These rules are in place to:

- restrict Croatian nationals' access to the UK labour market for a transitional period;
- make it hard for non-exempt Croatian nationals without work authorisation to unlawfully gain employment;
- make it easier for you to ensure that you only employ people who are legally allowed to work for you; and
- strengthen the Government's controls on tackling illegal working by making it easier for us to take action against employers who use illegal workers.

## Your duty under the Accession of Croatia Regulations 2013

Under the 2013 Regulations you have a duty to prevent illegal working by carrying out document checks to confirm if a Croatian national either: a) has unrestricted access to the UK labour market as they are exempt from work authorisation, or b) holds a valid worker authorisation document allowing them to carry out the type of work in question.

You should check, validate and keep dated copies of original, acceptable documents before they start working for you.

If a Croatian national has a worker authorisation document endorsed with a restriction to a particular named employer, or the type of work they can do, then you must not employ them or you will be in breach of these restrictions.

This duty applies to Croatian nationals employed in the UK on or after 1 July 2013.

## Penalties if you fail to carry out your duty

If you do not carry out these checks you may be required to pay a fine, known as a civil penalty, under regulation 11(2) of the 2013 Regulations, if you employ a Croatian national illegally.

You will commit a civil offence under regulation 11(1) of the 2013 Regulations if you employ a Croatian national who is subject to worker authorisation during the accession period (1 July 2013 – 30 June 2018) if that person is not the holder of a valid accession worker authorisation document or, where that person holds such a document, the person would be in breach of a condition of that document in undertaking the employment.

A civil penalty up to a maximum amount of £5,000 for each illegal Croatian worker can be imposed on you. We can serve you with a Notice of Liability to pay a penalty for a specific amount on behalf of the Secretary of State.

The amount that you are required to pay will be calculated on an individual basis taking into consideration the circumstances of your case. Our 'Code of practice for employer civil penalties: Illegal employment of a Croatian national' booklet sets out what factors we will consider when calculating the amount of your penalty. You can find out more about the factors we consider in the section **'What is the civil penalty process?'**.

## Statutory excuse against payment of a civil penalty

If you correctly carry out the document checks required of you, you will have a legal excuse (known as a statutory excuse) against liability for a civil penalty if we find you employing a Croatian national illegally.

However, if you **know** that you are employing a Croatian national who is subject to work authorisation and that they either do not hold a valid work authorisation document, or they are not allowed to work for you and/or carry out the type of work you are offering, then you **will not** have an excuse against liability for a civil penalty, **regardless of whether you have carried out any document checks**.

You will commit a criminal offence under regulation 15 of the 2013 Regulations if you knowingly employ an illegal Croatian worker and you may face imprisonment and/or a fine if liable on summary conviction.

You can find out more in the section **'How do I carry out document checks?'**.

## 2: What is a work authorisation document and who needs one?

Unless exempt, a Croatian national needs to have a work authorisation document (permission to work), before starting work in the UK. A Croatian national subject to this requirement, will only be legally allowed to work in the UK if they hold a valid accession worker authorisation document for the employment in question.

### Work authorisation documents

Work authorisation will normally be in the form of a Purple Registration Certificate issued by us which contains an endorsement restricting the holder's right to work to a particular named employer and/or, type of work.

For a non-exempt Croatian national to qualify for a Purple Registration Certificate they need to either:

- a. have been issued with a valid Certificate of Sponsorship under Tiers 2 or 5 of the Points Based System by a licensed sponsor; or
- b. be seeking employment as:
  - i. a representative of an overseas business;
  - ii. a postgraduate doctor or dentist; or
  - iii. a domestic worker in a private household.

### Exemption from work authorisation

Some Croatian nationals are exempt from the requirement to have work authorisation. This means they do not require permission from us to work before doing so as they have unrestricted access to the UK labour market.

A Croatian national is exempt, and therefore not required to have work authorisation, if they fall within one of the immigration status categories in the list below.

#### List of exemptions

1	On 30 June 2013, they had leave to enter or remain, and that leave did not place any restrictions on taking employment in the UK (see examples below).
2	On 30 June 2013 they had already been working with permission in the UK and have done so for a continuous period of 12 months ending on that date. This can be in any number of jobs, provided that they had leave in their passport that allowed them to work for each one.
3	They have been working legally and continuously for a period of 12 months ending or after 30 June 2013. This can be in any number of jobs, provided that they had permission for each one, or was not required to obtain it.
4	They have acquired a right of permanent residence under regulation 15 of the EEA regulations (see below).
5	They are also a national of another EEA Member State (except where, until the end of December 2013, they are a national of Bulgaria and Romania and are subject to the worker authorisation requirements applied to nationals of those countries).

6	They are the spouse, civil partner, unmarried or same sex partner of a UK national or a person settled in the UK.
7	They are the spouse, civil partner, unmarried or same sex partner or child under 18 of a person who has leave to enter or remain in the UK that allows a person to work in the UK. For example, this would apply to a Croatian whose husband was a non-EEA national who was a work permit holder or had leave under a category of the Points Based System that allowed them to work for a particular employer or a specific job category.
8	They are the spouse, civil partner, unmarried or same-sex partner or the Croatian descendant aged under 21 or dependant of a Croatian national who has been issued with an accession worker authorisation document and is working in accordance with the conditions placed in that document.
9	They are a highly skilled person and hold a registration certificate confirming that they have unrestricted access to the labour market.
10	They are a posted worker (see information below).
11	They are a member of a diplomatic mission or are in another specified category exempt from the 1971 Act.
12	They are in the UK as a student and they either:
a.	hold a registration certificate confirming that they:
i.	are exercising a Treaty right as a student and they cannot work for more than 20 hours per week during term time, (not including any time spent on a work placement that is an assessed part of their course); or
ii.	are working during vacation periods; or
b.	have leave to enter or remain as a student and are working in accordance with any conditions attached to that leave. The conditions on employment of leave granted as a student are usually that the holder can only work up to a maximum of 20 hours during term time, but as long as they want during holiday periods. This will apply in circumstances where they had leave as a student before 1 July 2013, continue to meet the criteria as a student and this leave is still valid.
13	If they do not fit into any of the above categories, they will need an accession worker authorisation document.

## Leave that allows a person to work in the UK without any restrictions

Leave which does not restrict a person's right to work includes:

- indefinite leave to enter or remain;
- limited leave to enter or remain on code 1A conditions, such as:
  - leave as a refugee;
  - humanitarian protection;
  - discretionary leave, or
  - exceptional leave to enter or remain.
- limited leave to enter or remain on code 1 conditions, such as:
  - leave as the spouse, civil partner, unmarried partner or same-sex partner of a British citizen or person present and settled in the UK;
  - leave as a dependant of a worker permit holder;
  - leave under the Highly Skilled Migrant Programme (HSMP), or
  - leave under the pre-Tier 4 postgraduate doctors and dentists scheme.

If the leave has a restriction (or prohibits employment) then it does not count under this exemption. Leave that restricts or prohibits a person's right to work includes:

- code 2 leave (work permit holders, students)
- code 3 or 5N leave (visitors – no right to work),

You should be able to determine the kind of leave the prospective employee has by looking at the endorsement on their passport.

## Permanent residence under regulation 15 of the EEA Regulations

Under regulation 15 of the Immigration (European Economic Area) Regulations 2006, an EEA national or their family member can acquire permanent residence in the UK under European law if they have lived here in line with the European regulations for a continuous period of 5 years.

This could mean they were exercising a Treaty right as a worker, self employed person, as a student or as a self sufficient person for 5 years, or that they have had a right to reside as the family member of another EEA national who was exercising a Treaty right for 5 years.

Although not obliged to have documentation proving they have permanent residence, EEA nationals and non EEA nationals can obtain documents confirming their permanent residence status. The Document Certifying Permanent Residence is a free standing document issued to EEA nationals. A Permanent Residence Card is an endorsement (also called a vignette) which is placed in the holder's passport and is issued to non EEA nationals.

## Posted workers

A posted worker is someone who is the subject of a posting within the meaning of Article 1(3) of the Posted Workers Directive (Council Directive 96/71/EC). They will therefore be the employee of business established on the territory of another Member State and posted to the UK in the context of the supply of a service by that business to a UK client. A Croatian who is a posted worker is exempt from worker authorisation only as long as they continue to be a posted worker and will not become exempt from the worker authorisation requirement by virtue of working for a period of 12 months in that capacity. If they want to do other work apart from that entailed in their posting they will need work authorisation from the Home Office.

## Highly skilled persons

A Croatian national may apply for a registration certificate confirming the holder has free access to the labour market (a "Blue Registration Certificate") on the basis that they are a highly skilled person.

In order to be regarded as highly skilled, the Croatian will have to either:

- meet the relevant requirements of the Exceptional Talent category under Tier 1 of the Points Based System by obtaining an endorsement (e.g. a letter of recommendation) from a Designated Competent Body. These bodies will either be The Royal Society, The Royal Academy of Engineering, The British Academy or the Arts Council; or
- in the period of 12 months preceding the date of their application for a Blue Registration Certificate, been awarded one of the following from a UK higher education institution:
  - i. A recognised bachelor, masters or doctoral degree, or
  - ii. A Higher National Diploma (HND) by a Scottish higher education institution

Further information on which Croatian nationals can be regarded as highly skilled can be found on our website at: [www.ukba.homeoffice.gov.uk/eucitizens/croatia/applying](http://www.ukba.homeoffice.gov.uk/eucitizens/croatia/applying)



## 3: How is work authorisation obtained?

There are 3 stages to the process of obtaining work authorisation, and these are as follows:

1. You must be a licensed sponsor under the relevant Tier and category of the Points Based System.
2. You must assign a Certificate of Sponsorship under the correct Tier 2 or Tier 5 category.
3. The Croatian national must then use their Certificate of Sponsorship to support their application for work authorisation.

### Holding a valid sponsor licence

If you want to employ a Croatian national who requires authorisation in any type of work that falls within Tier 2 or Tier 5 of the Points Based System, then you must hold a valid sponsor licence.

If applicable, before you apply for a sponsor licence, you should check whether you are eligible and able to comply with your 'sponsorship duties'.

Very briefly, you can apply for a sponsor licence if:

- you are a legitimate organisation, operating lawfully in the UK;
- we have no reasons to believe that you may be a threat to immigration control; and
- you are able and willing to comply with the duties we expect you to meet.

Once you hold a valid sponsor licence, and so long as all of the requirements we set out have been met, then you can assign Certificates of Sponsorship.

Further information on the conditions and process for applying for a sponsor licence, together with the requirements for assigning a Certificate of Sponsorship, are set out in the full policy guidance for Tier 2 and Tier 5 sponsors, which you can find using the following link: [www.ukba.homeoffice.gov.uk/sitecontent/documents/employersandsponsors/pbsguidance/](https://www.ukba.homeoffice.gov.uk/sitecontent/documents/employersandsponsors/pbsguidance/)

### Impact of a civil penalty when applying for a sponsor licence

If you are considering applying for a licence to sponsor workers you should be aware of the following:

We will refuse your application if you or a relevant person (any owner, director, authorising officer, key contact, level 1 user, or anyone involved in your day-to-day running of the business) have, within the previous 12 months, been issued with a civil penalty for employing one or more illegal workers and liability still stands once your objection and appeal rights have been exhausted.

If the fine for at least one of those workers was set at the maximum amount of £5,000, or if the fine was for a repeat offence and set below the maximum amount we will refuse your application if:

- you paid the fine within the given time limit and applied within six months of the date the fine became payable; or
- you paid the fine after the given time limit and applied within 12 months of the date the fine became payable.

If the fine was for a first offence and set below the maximum amount, we will refuse your application if you paid the fine after the given time limit and applied within six months of the date the fine became payable.

We will refuse your application if you, or a relevant person, have not paid an outstanding illegal working civil penalty issued since the introduction of the civil penalty system for employers in February 2008 and where liability still stands once your objection and appeal rights have been exhausted.

## Impact of a civil penalty on a licensed sponsor

If you are a licensed sponsor of workers you should be aware of the following:  
We will revoke your licence immediately if:

- You or a relevant person (any owner, director, authorising officer, key contact, level 1 user, or anyone involved in your day-to-day running of the business) are issued with a civil penalty for employing one or more illegal workers, and the fine for at least one of those workers stands at the maximum £5,000 once your objection and appeal rights have been exhausted.
- You or a relevant person are issued with a civil penalty as above for a first offence, where the fine is below the maximum amount, and you have failed to pay the fine in full or set up a payment instalment plan with us by the 29th day following notification of liability after an initial, objection or appeal determination.
- You or a relevant person goes on to breach the conditions of your civil penalty payment instalment plan.

You can find out more about sponsoring workers on our website:  
[www.ukba.homeoffice.gov.uk/business-sponsors/points/](http://www.ukba.homeoffice.gov.uk/business-sponsors/points/)

## Certificate of sponsorship

A Croatian national must quote their Certificate of Sponsorship reference number on their application for work authorisation. Once they have been granted permission to work, they will only be allowed to work for you if you are their named sponsor and in the job as stated on their authorisation documentation.

A Certificate of Sponsorship is not required where a Croatian national is seeking employment as either:

- a. a Foundation programme Doctor or Dentist; or
- b. a Domestic Worker in a Private Household; or
- c. the Representative of an Overseas Business.

However, the Croatian national must still apply for a Purple Registration Certificate as evidence of permission to work in the UK. If you want to take on a Croatian national in one of the above three categories, then you must provide them with a letter confirming your job offer. This letter will then need to be submitted by them with their application for a Purple Registration Certificate.

## Purple registration certificates

Once a Croatian national has their Certificate of Sponsorship, they must then apply for a Purple Registration Certificate using form CR3 which is available on our website. They must complete all the relevant sections and include the fee with their application. Further information about the application process is available on our website via the following link:

**[www.ukba.homeoffice.gov.uk/eucitizens/croatia/applying](http://www.ukba.homeoffice.gov.uk/eucitizens/croatia/applying)**

## Tier 2 and Tier 5 employment

Croatian nationals who need worker authorisation will only be able to obtain it for jobs covered by Tiers 2 and 5 of the Points Based System. This is unless they are seeking employment as either a) a Foundation programme Doctor or Dentist; or b) a Domestic Worker in a Private Household; or c) the Representative of an Overseas Business.

In general Tier 2 covers full-time skilled employment, while Tier 5 covers temporary work. Further information on Tiers 2 and 5 and the kinds of jobs they cover can be found at:

**[www.ukba.homeoffice.gov.uk/eucitizens/croatia/applying](http://www.ukba.homeoffice.gov.uk/eucitizens/croatia/applying)**

## English language requirements

Some of the Tier 2 categories require a worker to meet specific English language requirements. These requirements also apply to Croatian nationals. If the Croatian national in question does not have the required level of English, their application for work authorisation will be refused. For further information on the required level of English for each Tier 2 category and the relevant documentation that needs to be provided, see the links below:

**[www.ukba.homeoffice.gov.uk/policyandlaw/immigrationlaw/immigrationrules/appendixb/](http://www.ukba.homeoffice.gov.uk/policyandlaw/immigrationlaw/immigrationrules/appendixb/)**

**[www.ukba.homeoffice.gov.uk/visas-immigration/working/tier2/general/supportingevidence/englishlanguage/](http://www.ukba.homeoffice.gov.uk/visas-immigration/working/tier2/general/supportingevidence/englishlanguage/)**

# 4: How do I carry out document checks?

This section explains the document checks you should carry out to find out if a Croatian national is either authorised to work and carry out the type of working you are offering, or alternatively, is exempt from having work authorisation and therefore has unrestricted right to work in the UK.

Checking documents is a straightforward **3 step process** that should already form part of your recruitment and employment practices. By carrying out these checks you will ensure that you only employ people who are legally allowed to work for you, and you will also have a statutory excuse against liability for a civil penalty if we find you are employing a Croatian national illegally.

To make sure you have a statutory excuse there are some key things to remember:

- You will only have an excuse if you **correctly** carry out checks on **acceptable** documents **before** a person starts working for you by following the **3 step process**.
- If a person has a restriction on the type of work they can do and, or, the employer they can work for, then you should make sure that you do not employ them in breach of these work conditions.
- You will not have an excuse if you knowingly employ a Croatian national illegally, regardless of any document checks you carry out.

## Acceptable documents

We only consider certain documents acceptable for proving that a Croatian national has the right to work in the UK. This is in line with any conditions attached to that right, as clearly stated on these documents.

### List of acceptable documents

1	<b>A Blue Registration Certificate</b> <p>This document is issued to a Croatian national who is <b>not</b> subject to work authorisation. It gives the holder free access to the UK labour market. There is no restriction on who they can work for or the type of work they can do.</p>
2	<b>A Yellow Registration Certificate</b> <p>This document is issued to a Croatian national who is either self-employed, self-sufficient or a student, and it will clearly indicate in which of these ways the holder is exercising their Treaty rights.</p> <p>You should only accept this document where the Yellow Registration Certificate shows that the holder is a student, and they are allowed to work. If the document clearly states this then they will be able to work for you for up to 20 hours per week during term-time and full-time during vacation time. If they are on a course of vocational training they can also work as part of that training.</p> <p>However, where a Yellow Registration Certificate indicates that the holder is self-employed, then they cannot work for you as an employee.</p> <p>Where a Yellow Registration Certificate indicates that the holder is self-sufficient, then they are <b>not</b> allowed to work at all.</p>

<b>3</b>	<b>A Purple Registration Certificate</b>
	<p>This document is issued to a Croatian national who needs worker authorisation from us for employment under Tiers 2 or 5 of the Points Based System. It allows the holder to work for the named employer as stated on the document and they will only have permission to work in the job stated on their Certificate of Sponsorship.</p> <p>If they are allowed to undertake supplementary employment this will be noted on their Registration Certificate. If the document does not contain a statement saying that supplementary employment is allowed, then no supplementary employment can be undertaken.</p>
<b>4</b>	<b>A passport or other travel document endorsed before 1 July 2013 showing the holder has leave to enter or remain in the UK</b>
	<p>These documents must contain a UK Government stamp or endorsement, dated before 1 July 2013, which clearly shows that the holder is allowed to stay in the UK and carry out the work in question.</p> <p>These documents will usually indicate that the holder has a condition on their right to work in the UK, restricting them to a named employer, and/or a type of work.</p>
<b>5</b>	<b>An EEA Registration Certificate which confirms that the holder has permanent residence</b>
	<p>A Document Certifying Permanent Residence is a free standing document issued to EEA nationals. A Permanent Residence Card is a vignette placed in the holder's passport and is issued to non EEA nationals. They both state that the holder has permanent residence in the UK. As a person with permanent residence, they can work without restriction.</p>
<b>6</b>	<b>A passport, national identity card or travel document confirming the holder's exemption from the requirement to have work authorisation</b>
	<p>These documents must confirm that the holder's immigration status falls within a category provided in the 'List of Exemptions'. You should see the section on 'Leave that allows a person to work in the UK without any restrictions' for more information.</p>

## The 3 step process

**You should correctly follow Steps 1 to 3 below for every Croatian national you are looking to employ.** By doing this, you will make sure that you only employ people who are allowed to work and you will also have a statutory excuse against liability for a civil penalty if you are found employing a Croatian national illegally.

<b>Step 1</b>	<b>You must ask for and be given an acceptable document</b>
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**You must only accept original documents.**

Details of the documents considered acceptable for proving that a Croatian national has the right to work in the UK can be found in the **'List of acceptable documents'**.

**Step 2**

You must take all reasonable steps to check that the document is genuine and to satisfy yourself that the holder is the person named in the document. You should also check that the document allows them to do the work in question.

For the document given to you, you **must**:

- check any photographs are consistent with the appearance of the person; **and**
- check any dates of birth listed are consistent with the appearance of the person; **and**
- check that the expiry dates of any limited leave to enter or remain in the UK have not passed (if applicable); **and**
- check any UK Government stamps or endorsements to see if the person is allowed to work for you and carry out the type of work you are offering; **and**
- satisfy yourself that the document is genuine, has not been tampered with and belongs to the holder.

**Step 3**

You must take and retain a dated copy of the whole of the document, in a format which cannot later be altered, for the duration of employment and 2 years after.

A copy can be, for example, a photocopy or scan. However, where an electronic copy is made of a document, it **must** be made using a non-rewritable format, such as CD-R.

In taking a copy of the whole of the document, you must ensure this includes **both** the front and back, together with, if applicable, **all** of the pages in the document.

You must ensure the copy taken is **dated** with the date that the check was made, and you must then keep the copy securely for the duration of the person's employment and for a further two years after they stop working for you. By doing this, we will be able to check whether you have complied with the law or if you are required to pay a civil penalty if we find anyone working illegally for you.

We recommend that you use our 'Croatian Right to Work Checklist' at Annex B to help you make sure that you have correctly carried out all the steps required of you in your duty to prevent illegal working by Croatian nationals and to get a statutory excuse.

You are only required to carry out these document checks for Croatian nationals who start working for you on or after **1 July 2013**.

You will not have a statutory excuse if:

- you cannot provide a record of having conducted the document checks prior to recruitment; or
- you have accepted a document which clearly does not belong to the holder; or
- you have conducted a check and it is reasonably apparent that the document is false; or
- you have accepted a document which clearly shows that the person does not have permission to work in the UK and, or carry out the type of work you are offering.

## When given false documents

If you are given a false document, you will only be required to pay a civil penalty if it is reasonably apparent that it is false. We consider the falseness 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 aids, could reasonably be expected to realise that the document in question is not genuine.

Equally, where a person presents a document and it is reasonably apparent that the person presenting the document is not the person referred to in that document, even if the document itself is genuine then you may be liable to prosecution for knowingly employing a Croatian national illegally.

You will not have as statutory excuse against liability if you knew that the document was false or did not rightfully belong to the holder.

If someone gives you a false document or a genuine document that does not belong to them, then you should report the individual to us by either calling our Sponsorship and Employers' Helpline on 0300 123 4699 , by emailing us at: [UKBApublicenquiries@ukba.gsi.gov.uk](mailto:UKBApublicenquiries@ukba.gsi.gov.uk) or through our 'Reporting a Crime' page on our website: <http://www.ukba.homeoffice.gov.uk/aboutus/contact/report-crime/>. You can also call Crime stoppers on 0800 555 111.

## When a Croatian national does not have the right to work in the UK

If you have carried out these document checks and found that the person you are looking to employ is not allowed to work and, or to carry out the type of work in question, then you are allowed to refuse employment to them. It is up to the person seeking employment to prove to you that they have the right to do the work you are offering.

## Avoiding racial discrimination

The best way to make sure that you do not discriminate is to treat **all** job applicants in **the same way** at each stage of your recruitment process. You should ask all people you are looking to employ to present their documents **before** they start working for you. You should not make presumptions about a person's right to work in the UK on the basis of their background, appearance or accent.

We have published a Code of Practice to help you comply with the law on illegal working by carrying out document checks without discriminating against individuals. You can download the Code of Practice from our website at: [www.ukba.homeoffice.gov.uk/sitecontent/documents/employersandsponsors/preventingillegalworking/](http://www.ukba.homeoffice.gov.uk/sitecontent/documents/employersandsponsors/preventingillegalworking/)

If you breach this Code of Practice it may be used as evidence against you under race relations legislation before an employment tribunal. You will also place yourself at risk of payment of a civil penalty for employing an illegal worker, as you may not have a statutory excuse for all of your employees.

If you need further advice on preventing discrimination in your recruitment checks, you should consult your nearest office of the Equality and Human Rights Commission (EHRC).

# 5: What is the civil penalty process?

Our system of civil penalties is designed to encourage you to comply with your duty to prevent illegal working without us unfairly criminalising you if you have not acted with due care and diligence in operating your recruitment and employment practices.

## Liability for a civil penalty

If you are found to have employed a Croatian national illegally you may be served with a **Notice of Potential Liability** for a civil penalty. The decision on whether a penalty is appropriate and, if so, how much it will be, will not be made immediately. The details of your case will be passed to our Civil Penalty Compliance Team for consideration of liability and, where liability is found, consideration of a number of factors to decide the penalty amount. The team will then notify you of any action to be taken against you.

If the team decides that there is no action to be taken, you will be sent written notification of this decision. Your case will then be closed. However, if it is decided that you are liable for a penalty, you will be advised of this by the service of a **Notice of Liability** for a civil penalty which will be your first formal notification that a penalty has been imposed on you.

This notice will state:

- a. why you are liable;
- b. the amount payable;
- c. when it must be paid by;
- d. how the penalty must be paid;
- e. a reference number;
- f. how you may object to the penalty; and
- g. how the penalty may be enforced.

## Fast payment option

We have a Fast Payment Option which gives you the opportunity to pay a 20% lower amount for your civil penalty as long as the qualifying criteria are met and payment is made in **full** and received by us **within 21 days** of the given date on your penalty notice.

The option will only be available if:

- you have not been previously served with a penalty or a warning letter within the last three years; **and**
- you have actively co-operated with Home Office officials when carrying out checks into your compliance with your employer illegal working duties; **and**
- you were found liable for employing no more than two illegal workers.



You should note that when we refer to previous penalties this means those issued in respect of both Croatians nationals under the 2013 Regulations and non-EEA nationals under the Immigration, Asylum and Nationality Act 2006. When we refer to warning letters this means those issued in respect of the employment of illegal migrant workers.

If you object to the penalty, you will lose this option unless the penalty is then reduced at the objection stage

## Information Sharing

When the Home Office issues a penalty, information may be shared with other government departments such as Her Majesty's Revenue and Customs (HMRC) and the Department of Work and Pensions (DWP).

Employers who are themselves subject to immigration control should also be aware that any civil penalty will be recorded on Home Office systems.

If you do not pay your civil penalty by the due date, debt recovery action will be initiated and the debt will be recoverable as if payable under a court order.

## Objecting to or appealing against a civil penalty

### Objecting

On receipt of the penalty, you will have **28 days from the date specified in the notice** to pay the penalty or to object. An objection must be made in writing and submitted on a IWCP-4 pro-forma ensuring all mandatory fields are completed with the information required, and providing your reasons for the objection.

You can download the IWCP-4 pro-forma from our website using the following link:  
<http://www.ukba.homeoffice.gov.uk/sitecontent/applicationforms/sponsors/illegalworking>

You can submit your completed IWCP-4 pro-forma to the team by post to the following address:

Civil Penalty Compliance Team  
PO Box 99  
Manchester  
M90 3WW

### Reasons for objecting

Your objection must set out your grounds in full for objecting to the penalty. You may object on the grounds that:

- you are not liable to pay the penalty; **or**
- you have a statutory excuse; **or**
- the level of penalty is too high.

The team will review the evidence again in light of your objection and may consider any additional evidence provided of financial means, including evidence of the impact of the civil penalty on the viability of your business.

You may request permission to pay your penalty by instalments. In order to be granted permission, you must provide full details of your ability to pay the penalty over the duration of the instalment plan/your inability to pay the penalty in full.

You should also indicate in your objection whether you have also lodged an appeal. You may wish to first exercise your right of objection and await the outcome before exercising your right to appeal.

Under regulation 12(4) of the 2013 Regulations the Secretary of State, when considering an objection, may decide to cancel, reduce, increase, or to take no further action on the penalty.

## Appealing

When a penalty is issued, you can appeal to the courts on the grounds that:

- you are not liable to pay the penalty; **or**
- you have a statutory excuse; **or**
- the level of penalty is too high.

On receipt of the penalty, you have **28 days from the specified date** to appeal to the court. If you choose to lodge an objection to the penalty first, you will have **28 days from the date specified** in the notice of determination of the objection to appeal to the court.

If you choose to appeal against the imposition of a civil penalty the court may allow the appeal and cancel the penalty; or allow the appeal and reduce the penalty; or dismiss the appeal.

If you are unsuccessful at the appeal you may also be liable for our costs in preparing for and attending the hearing.

## Factors considered when calculating a penalty amount

When you are required to pay a civil penalty, we calculate the penalty amount using a sliding scale up to a maximum of £5,000 for each Croatian worker you have employed illegally. We consider a variety of factors when calculating your penalty amount including:

### Have you reported suspected illegal workers to us?

If you report to us any suspicions about your employees' right to work for you a sum may be deducted from the amount of penalty due for those workers. You must have reported your suspicions to our Sponsorship and Employers' Helpline on 0300 123 4699 **before** any visit by us is made known to you. When reporting your suspicions, you will be given a unique reference number and this must be referred to in any correspondence you have with us.

### Have you actively cooperated with us?

The penalty amount due for each worker can be reduced where you have actively cooperated with us when carrying out checks into your compliance with your employer illegal working duties under the 2013 Regulations. This includes complying accurately with 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. This also includes providing our officials with access to your premises and employment records when requested.

## Have you had any previous penalties?

When we consider whether a higher amount of penalty should apply to you, we will consider if you have been found employing illegal migrants before. Previous penalties will not be considered if they were issued more than three years before the date of the new penalty. Where you have received a penalty within three years of the current penalty, those penalties will be counted in calculating the amount of your current penalty.

You should note that when we refer to previous penalties this means those issued in respect of both Croatians nationals under the 2013 Regulations and non-EEA nationals under the Immigration, Asylum and Nationality Act 2006.

If you are repeatedly found using illegal workers or you are caught employing multiple illegal workers you may be liable for criminal prosecution.

## Do you have multiple premises?

You will be required to pay an increased penalty amount if illegal workers are detected at different sites, and this is due to a general failure in your company's centrally set recruitment practices. However, if you are a company with multiple premises where recruitment is devolved to each site, you will not be liable to an increased penalty.

## 6: Where can I find more information?

If you would like further information or advice on complying with the law on preventing illegal working you should contact our: **Sponsorship and Employers' Helpline on 0300 123 4699**

The helpline is open 9am to 5pm Monday to Thursday and 9am to 4.30pm Friday, except on Bank Holidays. Calls to the helpline may be recorded and used for training purposes.

### Illegal working allegations

You can also report any suspicions you may have about your employees' right to work in the UK or to carry out the work in question, by phoning our Sponsorship and Employers' Helpline. If your information is reported to our helpline **before** an illegal working immigration visit is made by our enforcement teams, any civil penalty amount that you may be liable for could be reduced. When reporting your suspicions you will be given a call reference and this must be referred to in any further correspondence you have with us. You can also call Crime stoppers on 0800 555 111.

### Further sources of information

You can find out more about the law on preventing illegal working and your duty as an employer under the 2013 Regulations, and the Immigration, Asylum and Nationality Act 2006, on our website. We suggest that you check our website regularly for access to the most up-to-date information and important updates.

**[www.ukba.homeoffice.gov.uk/business-sponsors/preventing-illegal-working/](http://www.ukba.homeoffice.gov.uk/business-sponsors/preventing-illegal-working/)**

Further information on the application process that Croatian nationals need to go through to obtain a worker authorisation document (Purple Registration Certificate) as well as an employers leaflet with general information on the process, exemptions and documents, can be found on the Home Office website using the link below:

**<http://www.ukba.homeoffice.gov.uk/eucitizens/croatia/applying>**

We have published a 'Full guide for employers on preventing illegal working in the UK' containing important information and advice to help you understand the law and your duty under the 2006 Act. It describes in detail how to carry out the document checks as well as providing images of the documents considered acceptable for showing right to work.

We have also published three codes of practice booklets. One to explain how we administer our system of fines, known as civil penalties under the 2013 Regulations, one on how we administer civil penalties under the 2006 Act, and a further one on how to avoid discrimination when complying with the law.

The 'Full guide' and all three codes of practice are available to download from our website:

**[www.ukba.homeoffice.gov.uk/business-sponsors/preventing-illegal-working/](http://www.ukba.homeoffice.gov.uk/business-sponsors/preventing-illegal-working/)**

For advice concerning immigration issues you should contact our **Croydon Contact Centre on 0870 606 7766**. The opening hours are Monday to Thursday, between 9am and 4.45pm, and on Friday from 9am until 4.30pm.

# Annex A: Framework for calculating the amount of a civil penalty

Table 1: Sliding scale for calculating the penalty amount

First offence						
Level 1: 1st Civil Penalty	Maximum Penalty Amount Per Worker  £3,750	Mitigating Factor 1		Mitigating Factor 2		Minimum Penalty Amount Per Worker  £2,500
		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	
Subsequent offence						
Level 2: 2nd or subsequent Civil Penalty	Maximum Penalty Amount Per Worker  £5,000	Mitigating Factor 1		Mitigating Factor 2		Minimum Penalty Amount Per Worker  £3,750
		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	

# Annex B: Croatian Worker Authorisation Checklist

Name of person:

Date of check:

## Step 1: You must ask for and be given an acceptable document

You must be provided with one of the documents from the list below as proof that the Croatian national is either authorised to work and carry out the type of working you are offering, or, is exempt from having work authorisation.

You must only accept originals documents.

### Acceptable Document List

1. A Blue Registration Certificate which clearly states that the holder is not subject to work authorisation, giving them free access to the UK labour market and no restriction on who they can work for or the type of work they can do
2. A Yellow Registration Certificate which clearly states that the holder is a student and authorised to work for you in line with the conditions attached to their work rights i.e. limited hours during term-time
3. A Purple Registration Certificate which clearly states that the holder is authorised to work for you as the named employer and only in the job as stated
4. A passport or other travel document endorsed before 1 July 2013 showing the holder has leave to enter or remain in the UK and the endorsement either has no restrictions on employment or states the holder can work for you.
5. An EEA Residence Card or Document Confirming Permanent Residence which confirms that the holder has permanent residence
6. A passport, national identity card or travel document confirming the holder's exemption from the requirement to have work authorisation

## Step 2: You must check the validity of the document

You must satisfy yourself that the document is genuine and that the person presenting the documents is the rightful holder, allowed to work for you and to do the type of work you are offering.

1. Are photographs consistent with the appearance of the person?	Yes <input type="checkbox"/>	No <input type="checkbox"/>	N/A <input type="checkbox"/>
2. Are the dates of birth listed consistent with the appearance of the person?	Yes <input type="checkbox"/>	No <input type="checkbox"/>	N/A <input type="checkbox"/>
3. Are expiry dates for limited leave to enter or remain in the UK in the future (if applicable) i.e. they have not passed?	Yes <input type="checkbox"/>	No <input type="checkbox"/>	N/A <input type="checkbox"/>
4. Do any endorsements show the person is able to work for you and do the type of work you are offering?	Yes <input type="checkbox"/>	No <input type="checkbox"/>	N/A <input type="checkbox"/>
5. Are you satisfied that the document is genuine, has not been tampered with and belongs to the holder?	Yes <input type="checkbox"/>	No <input type="checkbox"/>	N/A <input type="checkbox"/>

## Step 3: You must take and retain a dated copy the document.

You must take a copy of whole of the document, in a format which cannot later be altered, for the duration of employment and 2 years after.

You must 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.

If you have correctly carried out the above 3 steps you will have an excuse against liability for a civil penalty if the Home Office find the above named person working for you illegally. However, you will not have an excuse if at any point during the employment , you know that the above named person is not authorised to work for you, or to carry out the type in question, or exempt from the requirement to have work authorisation, and you may face criminal action .

