



Illegal working civil penalties: policy for publishing details of non-compliant employers

BACKGROUND

1. This document explains the UK Border Agency policy for publishing, on a quarterly basis, online details of employers who have been found liable for a civil penalty. We will publish employers' details on the website because it is in the public interest and considered both proportionate and necessary to deliver our policy objectives of:

- promoting compliance by employers;
- deterring illegal working;
- reassuring the public that enforcement action is fair and effective;
- increasing public confidence in the agency's work and reassuring the public that we have robust controls in place.

2. Illegal working has damaging social and economic consequences for the UK. It undercuts businesses that operate within the law, undercuts British workers, and exploits migrant workers. As long as there are job opportunities for illegal workers, the UK will be an attractive place for illegal migrants. This government works with UK employers to ensure they take their responsibility of avoiding employing illegal workers seriously. Employers must carry out document checks in accordance with the [published guidance](#). Where employers use illegal labour, the UK Border Agency takes robust action.

3. On 29 February 2008 the Immigration, Asylum and Nationality Act 2006 introduced a system of civil penalties for employers who employ illegal migrant workers. The legislation is designed to encourage employers to prevent illegal migrant working, without criminalising those who slip up in operating their recruitment and employment practices.

4. Employers establish a statutory excuse from payment of a civil penalty by checking, copying and retaining copies of their prospective employee's documents prior to the employee starting work.

ILLEGAL WORKING CIVIL PENALTY REGIME

5. Under section 15 of the Immigration, Asylum and Nationality Act 2006, employers found to be employing illegal migrant workers may be found liable for a civil penalty of up to £10,000 for each illegal worker if they have not conducted the recommended checks. UK Border Agency officers usually serve the first notice of potential liability to an employer during a visit to their premises. The UK Border Agency civil penalty compliance team then

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considers the evidence to determine whether to issue a notice of liability (the penalty).
6. The penalty the employer is required to pay is determined individually according to the circumstances of the case. There is a statutory [Code of Practice](#) which sets out guidelines to decide how much the penalty will be. Factors we take into consideration include:

- what document checks the employer has undertaken;
- the number of occasions on which the employer has been issued with a penalty or warning previously; and
- how much the employer cooperates with the UK Border Agency.

7. Where a notice of liability (penalty) is issued, the employer has 28 days to:

- a) pay the penalty in full; or
- b) submit a request to the civil penalty compliance team (CPCT) to pay the civil penalty using an instalment plan (making monthly payments over a term of up to 2 years); or
- c) submit an objection in writing against the service of the civil penalty to the CPCT; or
- d) lodge an appeal against the service of the civil penalty to the County Court (England, Wales and Northern Ireland) or the Sheriff's Court (Scotland).

8. The illegal working civil penalty regime sits alongside a criminal offence set out in section 21 of the Immigration, Asylum and Nationality Act 2006. Employers who knowingly employ an illegal worker are liable to prosecution. Following conviction on indictment, an employer may be liable to imprisonment, to an unlimited fine or both. On summary conviction, an employer may be liable to imprisonment, to a maximum fine of £5000, or to both.

PUBLICATION OF EMPLOYER INFORMATION

9. The UK Border Agency will publish an anonymous regional report each quarter giving details of the:

- number of penalties issued;
- number of illegal workers found; and
- value of the penalties issued.

It will also publish a report each quarter¹ naming employers who have:

- not paid or are not making regular payments towards a penalty 28 days after they have exhausted all their objection and/or appeal rights (at this stage the case will be referred to as 'appeal rights exhausted' or 'ARE'); or
- been served with a second or further penalty² once they have exhausted all their objection and/or appeal rights regardless of whether any payment has been made.

Each report will be broken down by the following regions:

- Scotland and Northern Ireland
- North East, Yorkshire and the Humber
- North West
- Midlands and East of England

¹ Quarterly reports will consider all employers who became appeal rights exhausted within the period reported on.

² A penalty will be counted as a second or further penalty if it issued within 3 years of a previous penalty or warning letter.

- London and South East
- Wales and South West

10. The information published about each employer will include the:

- trading name
- liable party
- location
- postcode
- final value of penalty

Definitions of these terms are in Annex A.

11. The Home Office press office may release the report's information to the media, such as local newspapers and broadcast news media. The contents of publicity will include factual and accurate material.

12. When an employer has been served with a notice of potential liability, this may be publicised through the media, online or using any other appropriate means when doing so is considered necessary and proportionate to achieving one or more of the objectives in paragraph 1 above.

13. The UK Border Agency reserves the right to not publish details when there are compelling reasons, for example where disclosure would be likely to prejudice an ongoing investigation.

14. The purpose of publishing the information in the quarterly reports is to drive up compliance. The reports may be useful to the public, corporate partners and others. For example, local authorities may take an interest in an employer who may be required to comply with other statutory duties or measures such as alcohol licensing.

15. The UK Border Agency has carefully considered the proportionality tests required by the Data Protection Act 1998 Schedules 2 and 3, the Human Rights Act 1998 and general principles of common law. We consider that it is both proportionate and necessary to publish these details in order to deliver the stated policy aims set out at paragraph 1 above.

16. The civil penalty database, used by the civil penalty compliance team, is a management information tool. Information from it is not quality assured under national statistics protocols, and is subject to change due to internal data quality checking.

Annex A

Definitions of employer information:	
Trading name	The name that the employer trades under – what the premises of the business are called, the name that members of the general public would recognise.
Liable party	The employer who is responsible for establishing the excuse and obliged to pay the penalty issued. Where the employer is a franchisee, the report will state the name of the franchise.
Location	Town, city or village (where the illegal worker(s) were encountered – not necessarily the same as the registered office of the liable party).
Postcode	Postcode of establishment or premises where illegal working operation took place.
Final value of penalty	The amount the liable party must pay after appeal rights exhausted* (this may not be the same amount as initially issued on the notice of liability).
* Paragraph 9 defines 'appeal rights exhausted'.	