

As most employers will be aware, the Immigration, Asylum and Nationality Act 2006 imposes a responsibility on employers to prevent illegal working by ensuring that their employees have the right to work in the UK. The Home Office also issues separate guidance on how employees' right to work should be verified and the way in which civil penalties will be imposed if the Act is breached.

Following the results of Government's public consultation on "Strengthening and Simplifying the Civil Penalty Scheme to Prevent Illegal Working" published in October last year, the draft Code will be laid before Parliament and is intended to come into effect on **16 May 2014**. The draft Code updates the one issued when the Act came into force in February 2008 and specifies the factors to be considered by the Home Office in calculating a civil penalty. Details of the key changes are as follows:

- Following the initial right to work check, employers will no longer automatically be required to conduct annual follow-up checks for those with temporary permission to be in the UK. Instead, an employer's time-limited statutory excuse will generally continue for as long as the employee has permission to be in the UK and do the work in question, as evidenced by the documents that the employee produced for the initial right to work check. Most employers will see this as a welcome reduction in their current compliance duties.
- The draft Code claims that there will be a reduction in the range of documents acceptable for checking the right to work but in fact the key documents are exactly the same as before (List A and List B have simply been presented in a format which makes them look shorter!).
- For students who have a restricted right to work, employers will also need to obtain and retain a copy of evidence from the student's education sponsor, setting out their term and vacation times over their period of study in the UK for which they will be employed. This appears to be an additional administrative burden but is already carried out by many employers as a precaution in any event.
- The grace period for conducting right to work checks for employees acquired as a result of the Transfer of Undertakings (Protection of Employment) Regulations will be extended from 28 to 60 days. This is a significant improvement, particularly for employers which acquire a large number of staff in the course of a TUPE transfer and are therefore hard-pressed to conduct the necessary checks within the current deadline.

We anticipate that the Home Office's separate guidance on preventing illegal working in the UK will be updated in line with the changes outlined in the draft Code in due course. It is this guidance (rather than the Code of Practice) which will continue to provide full details on how to conduct right to work checks for employees in the UK. The current guidance can be found [online](#).

Watch for details of our Immigration Seminar on 24 June 2014, covering these changes and those to Tier 2 of the Points Based System introduced in April.

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