



Home Office

**Border &  
Immigration Agency**

**PREVENTION OF  
ILLEGAL WORKING**

**IMMIGRATION, ASYLUM AND NATIONALITY ACT 2006**

**CONSULTATION ON THE IMPLEMENTATION OF NEW POWERS  
TO PREVENT ILLEGAL MIGRANT WORKING IN THE UK**

QUESTIONS FOR PARTICIPANTS

MAY 2007

# QUESTIONS FOR PARTICIPANTS

## RECRUITMENT PRACTICES

The Regulatory Impact Assessment<sup>1</sup> published during the passage of the Immigration, Asylum and Nationality Bill, estimated that initially, the direct financial cost to employers of familiarising

themselves with the new guidance would be £27.2 million. The projected cost to business of the new continuing obligation to conduct checks on temporary migrant workers, in the fifth year of its introduction, is £1.3 million.

1. Will the measures outlined in this consultation document lead to significant additional economic costs to recruitment practices?

Yes

Unsure

No

If yes, please explain how and why recruitment practices will be influenced.

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Aside from direct financial costs, would these measures give rise to additional indirect costs?

For example, would these measures discourage individuals from acting as directors? Please explain your answer in the space provided.

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<sup>1</sup> Illegal Working Taskforce Regulatory Impact Assessment for the Immigration, Asylum and Nationality Bill, 22 June 2005 [www.bia.homeoffice.gov.uk/6353/18383/18469/ria11.pdf](http://www.bia.homeoffice.gov.uk/6353/18383/18469/ria11.pdf)

# QUESTIONS FOR PARTICIPANTS

The draft Codes at Annexes B and C require that employers will, in some instances, be required to undertake repeat checks as part of an ongoing process for new and existing employees in order to retain a statutory excuse. We expect that the

majority of new employees will possess one, or a combination of documents stipulated in List 1, but would welcome views as to how far you believe that current recruitment and employment practices could be affected by these new requirements.

## 2. Will the proposed codes significantly impact upon recruitment practices?

Yes	<input type="checkbox"/>	Unsure	<input type="checkbox"/>
No	<input type="checkbox"/>		

If yes, please explain how and why recruitment practices will be influenced.

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### SUPPORT FOR EMPLOYERS

The Home Office established the Employers' Helpline, along with free comprehensive guidance booklets for employers, when section 8 of the Asylum and Immigration Act 1996 was first implemented. In addition, a summary guidance leaflet for employers was sent out to 1.4 million people registered as employers on the Inland Revenue's PAYE mailing list in 1997. The guidance was revised and redistributed in 2004 to reflect changes made to the law.

We acknowledge that there may be cases where it would be helpful for an employer to be able to contact the Border and Immigration Agency and check the entitlement of an individual to work in the UK. That is why a verification service is being developed through the Employers' Helpline for employers to check the work entitlement of individuals. The service became available to employers

at the end of April 2007 and will initially focus on cases where the individual has an outstanding application with Border and Immigration Agency or an outstanding appeal. Further development of extra services will be taking place throughout 2007 and the Helpline will continue to give advice to employers on meeting legal requirements.

On-line step-by-step guidance for employing migrant workers is available at: [www.employingmigrantworkers.org.uk](http://www.employingmigrantworkers.org.uk). There is also a section dedicated to the prevention of illegal migrant working on the Border and Immigration Agency website: [www.bia.homeoffice.gov.uk/lawandpolicy/preventingillegalworking](http://www.bia.homeoffice.gov.uk/lawandpolicy/preventingillegalworking), which provides current information for employers. We have also contributed to other websites that deal with the prevention of illegal migrant working, which include: [www.businesslink.gov.uk](http://www.businesslink.gov.uk).

# QUESTIONS FOR PARTICIPANTS

It will be important that the requirements of the 2006 Act, however they are taken forward, are communicated to employers in a way that is clear and allows them to understand what is required. To help our thinking about how to communicate these

changes we would welcome your views on how we might improve the communication process so that a sufficient amount of information is available to assist employers in complying with the law.

### 3. How well understood are the requirements for employers under the current (1996) legislation?

Well understood

Misunderstood

Understood

Very misunderstood

Unsure

**How much have the Government communication methods described above contributed to a good understanding of the current (1996) legislation?**

A lot

Not at all

A little

Unsure

**If you do not think the current (1996) legislation is well understood, please outline why you think this is so.**

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**What improvements to the Government communication process would aid understanding of the proposed codes and assist employers in complying with the law?**

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# QUESTIONS FOR PARTICIPANTS

The civil penalties Code of practice sets out the different circumstances and considerations that may be made when setting the penalty for those employers who are found to be employing an illegal migrant worker.

The amounts given in the Code of practice are proposed maximums and are subject to objection and a right of appeal.

**9. How important should the following factors be in calculating the amount of the penalty fine?**

a. Whether full or partial document checks have been completed by the employer.

Very important	<input type="checkbox"/>	Not important	<input type="checkbox"/>
Important	<input type="checkbox"/>	Unsure	<input type="checkbox"/>

b. Whether any previous penalties or warnings have been issued.

Very important	<input type="checkbox"/>	Not important	<input type="checkbox"/>
Important	<input type="checkbox"/>	Unsure	<input type="checkbox"/>

c. Whether or not there has been any subsequent improvement in procedures following previous penalties or warnings.

Very important	<input type="checkbox"/>	Not important	<input type="checkbox"/>
Important	<input type="checkbox"/>	Unsure	<input type="checkbox"/>

e. Whether the employer has reported his or her suspicions to the Border and Immigration Agency.

Very important	<input type="checkbox"/>	Not important	<input type="checkbox"/>
Important	<input type="checkbox"/>	Unsure	<input type="checkbox"/>

f. Whether the employer has co-operated with the Border and Immigration Agency.

Very important	<input type="checkbox"/>	Not important	<input type="checkbox"/>
Important	<input type="checkbox"/>	Unsure	<input type="checkbox"/>

**Are there other factors which should be given importance when calculating the fine?**

Please describe these factors below.

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## QUESTIONS FOR PARTICIPANTS

Because the proposed maximum penalty may be high, we acknowledge that this could be potentially difficult for some employers to pay in one lump sum.

We intend to take into account the employers' ability to pay the penalty and, where appropriate, to allow gradual payment.

**10. Do you agree that, in certain circumstances, employers should be allowed to pay fines in instalments?**

Yes	<input type="checkbox"/>	Unsure	<input type="checkbox"/>
No	<input type="checkbox"/>		

**If yes, should a maximum period in which to pay the fine be set?**

Yes	<input type="checkbox"/>	Unsure	<input type="checkbox"/>
No	<input type="checkbox"/>		

**If yes, what maximum period should employers have in which to pay the fine?**

6 months	<input type="checkbox"/>	18 months	<input type="checkbox"/>
1 Year	<input type="checkbox"/>	2 years	<input type="checkbox"/>

Another period (please state)

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# QUESTIONS FOR PARTICIPANTS

The government is committed to tackling the problem of trafficking for forced labour and the civil penalties regime is part of a comprehensive, cross-Government approach to tackling illegal working. This includes strengthened border controls to prevent illegal immigration, increased enforcement activity and action to tackle the organised criminal

networks, who traffic illegal workers to the UK. The International Labour Organization's definition of forced or compulsory labour is: 'all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily'.

## 11. Do people feel that these measures will have any effect upon trafficking for forced labour?

Yes

Unsure

No

Please provide additional comments in the space provided.

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We have introduced the sliding scale, where those employers who have repeatedly employed illegal migrant workers will be heavily penalised. However, we would also welcome views on other aspects, including the use of existing powers to disbar company officers in the more serious cases where a person is convicted of the new 'knowing' offence, and it has been established that they consented or connived in its commission.

Section 2 of the Company Directors Disqualification (CDD) Act 1986 grants a court discretion to make a disqualification order against a person convicted of an indictable offence (such as section 8 of the 1996 Act or section 21 of the 2006 Act) in connection with the promotion, formation, management, liquidation or striking off of a company, or with the receivership or management of a company's property. The court having jurisdiction is the court which could wind up the company in connection with which the indictable offence was committed, the court before which the person was convicted or, in the case of a summary conviction in England and Wales, any magistrates' court.

An officer (including a director) who knowingly employs an illegal migrant worker (as provided by section 21 of the 2006 Act) would have a relevant factual connection with the management of the company and therefore would potentially be subject to a disqualification order. A disqualification order would disbar the person from acting, without leave of the court, as a director, liquidator or administrator of a company, a receiver or manager of a company's property or in any way, directly or indirectly, be concerned or take part in the promotion, formation or management of a company for a specified period. A court of summary jurisdiction can specify up to five years disqualification. Otherwise, up to fifteen years can be specified. Contravening a disqualification order is a criminal offence. Following conviction after indictment, the disqualified officer can be imprisoned for up to two years and receive an unlimited fine. He or she could also have a personal liability for all relevant company debts.

The CDD Act 1986 applies to England, Scotland and Wales. Analogous legislation applies to Northern Ireland (Company Directors Disqualification (Northern Ireland) Order 2002).



# QUESTIONS FOR PARTICIPANTS

## INFORMATION ABOUT YOUR ORGANISATION

13. Please tick one of the following boxes which would best describe your organisation.

Micro Company (0 – 9 employees)

Small business (10 – 49 employees)

Small-medium Enterprise (50 – 249 employees)

Large company (employing over 250 employees)

Individuals completing this questionnaire please tick here

14. Which of the following categories does your organisation fall into?

Voluntary sector / Charity

Public Sector Employer

Employer / Trade Association

Union

Private Company

Immigration Advisor/immigration Law Practitioner

Applicant

Sponsor

Educational institution

Other

If you have answered other, please specify in the space provided:

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## QUESTIONS FOR PARTICIPANTS

15. Please tick the box that best describes the Industrial Sector your organisation falls into.

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|--|--------------------------|
| Administration, Business & Management Services           | <input type="checkbox"/> |
| Agricultural Activities                                  | <input type="checkbox"/> |
| Computer Services  | <input type="checkbox"/> |
| Construction & Land Services                             | <input type="checkbox"/> |
| Education & Cultural Services                            | <input type="checkbox"/> |
| Entertainment & Leisure Services                         | <input type="checkbox"/> |
| Extraction Industries                                    | <input type="checkbox"/> |
| Financial Services                                       | <input type="checkbox"/> |
| Government   | <input type="checkbox"/> |
| Private Health & Medical Services                        | <input type="checkbox"/> |
| NHS Trust  | <input type="checkbox"/> |
| Hospitality, Hotel and Catering & Other Related Services | <input type="checkbox"/> |
| Law Related Services                                     | <input type="checkbox"/> |
| Manufacturing  | <input type="checkbox"/> |
| Real Estate & Property Services                          | <input type="checkbox"/> |
| Retail & Related Services                                | <input type="checkbox"/> |
| Security & Protective Services                           | <input type="checkbox"/> |
| Sporting Activities                                      | <input type="checkbox"/> |
| Telecommunications                                       | <input type="checkbox"/> |
| Transport  | <input type="checkbox"/> |
| Utilities – Gas, Electricity, Water                      | <input type="checkbox"/> |
| Other services   | <input type="checkbox"/> |

## QUESTIONS FOR PARTICIPANTS

16. For statistical purposes, please indicate in which region of the UK your business is based.

England	<input type="checkbox"/>	Wales	<input type="checkbox"/>
Scotland	<input type="checkbox"/>	Northern Ireland	<input type="checkbox"/>

17. Please complete the following details:

Name of company / organisation / individual

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Address of company / organisation / individual

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Telephone number

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Your name

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Your position

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Further comments are also sought from participants arising from participants arising from the Regulatory Impact Assessment and the Equality Impact Assessment.

We would also welcome information on methods of best practice presently operated by UK employers when complying with current section 8 requirements.