



Home Office

**Border &
Immigration Agency**

**PREVENTION OF
ILLEGAL WORKING**

IMMIGRATION, ASYLUM AND NATIONALITY ACT 2006

EQUALITY IMPACT ASSESSMENT

MAY 2007



EQUALITY IMPACT ASSESSMENT

PRELIMINARY SCREENING

Date of Screening **1 March 2007** This is a **new** policy
Name of Policy Writer **Cathy Gardner** This is a **change** to an existing policy
Director General **Lin Homer** This is an **existing** policy

POLICY AIMS, OBJECTIVES & PROJECTED OUTCOMES

1. Implementing the civil penalty provisions in the Immigration, Asylum and Nationality Act 2006;
2. providing advice and guidance to employers on the prevention of illegal working; and
3. encouraging employer compliance.

Will the policy have an impact on national or local people/staff?	YES
Are particular communities or groups likely to have different needs, experiences and/or attitudes in relation to the policy?	YES
Are there any aspects of the policy that could contribute to equality or inequality?	YES
Could the aims of the policy be in conflict with equal opportunity, elimination of discrimination, promotion of good relations?	YES
If this is an amendment of an existing policy, was the original policy impact assessed?	YES

If your answer to any of these questions is **YES**, go on to the full EIA.

If you have answered **NO to any particular questions**, please provide explanatory evidence.

If you have answered **NO to all of these questions** then you must also attach the following statement to all future submissions that are related to this policy and ensure it is signed off by senior management.

You must also include this statement within any regulatory impact assessment that is related to this policy.

‘This policy was screened for impact on equalities on [insert date]. The following evidence [Evidence] has been considered. As a result of this screening, it has been decided that a full equality impact assessment is not required.’

FULL IMPACT ASSESSMENT STATISTICS & RESEARCH

WHAT RELEVANT QUANTITATIVE & QUALITATIVE DATA DO YOU HAVE IN RELATION TO THIS POLICY?

Please site any quantitative (e.g. statistical research) and qualitative evidence (monitoring data, complaints,

satisfaction surveys, focus groups, questionnaires, meetings, research interviews etc) of communities or groups having different needs, experiences or attitudes in relation to this policy area.

EQUALITY TARGET AREAS	HOW DOES THE DATA IDENTIFY POTENTIAL OR KNOWN POSITIVE IMPACTS?
<p>Race (consider e.g. nationalities, Gypsies, Travellers, languages)</p>	<p>The Institute for Employment Studies was commissioned by the Home Office to conduct research into the recruitment and employment of migrant workers in the UK.¹ The focus of the study was on economic migrants.</p> <p>A qualitative methodology was adopted involving face-to-face, in depth, semi-structured interviews with 124 employers across London, East Anglia and north-east England in five employment sectors (Construction; Administration, business and management; Finance and accountancy; Hotels and catering; and Agriculture). In addition, 20 interviews were held with labour providers and representatives of trade unions and employer organisations.²</p>
<p>Disability (consider social access and physical access)</p>	<p>None.</p>
<p>Gender</p>	<p>None.</p>
<p>Gender Identity</p>	<p>There have been representations made to the department regarding issues of gender reassignment and the need to check documents against an individual's physical appearance. These have been considered and incorporated into policy, where appropriate.</p>
<p>Religion and Belief</p>	<p>None.</p>
<p>Sexual Orientation</p>	<p>None.</p>
<p>Age</p>	<p>None.</p>

¹ www.homeoffice.gov.uk/rds/pdfs06/rdsolr0306.pdf

² Data were collected between April and August 2005.

FULL IMPACT ASSESSMENT STATISTICS & RESEARCH

WHAT RESEARCH HAVE YOU CONSIDERED COMMISSIONING TO FILL ANY DATA GAPS?

For example, you may need to ensure quantitative & qualitative data groups include stakeholders with respect to this policy. N.B Include any recommendations in your action plan

The DTI has an ongoing research programme on employment relations and labour market issues, which have fed into policy development. In 2006, the DTI published a review of judgments in race discrimination Employment Tribunal cases,³ where they found that many cases involve people who have recently moved to the UK and identified that this may be subject to further investigation.⁴

In addition, there is ongoing feedback provided to the department by the Employers' Helpline. Qualitative data is provided on a monthly basis and specific issues are identified for further consideration and these have been incorporated into the development of policy, where appropriate.

We have commissioned research through the Immigration Research and Statistics Service (IRSS) to try and identify how various incentives and sanctions would affect sponsors' behaviour when the new Points Based System for managing migration is implemented. It will build upon the sponsorship stakeholder events that have already taken place. Between 40 and 50 major employers have been invited to attend focus groups, and this research will include examining the possible impact of civil penalties on employer behaviour.

It is anticipated that the public consultation and associated research will fill any further data gaps.

WHO ARE THE STAKEHOLDERS, COMMUNITY GROUPS, STAFF OR CUSTOMERS FOR THIS POLICY AREA?

- The Commission for Racial Equality (English, Welsh and Scottish offices)
- The Equality Commission for Northern Ireland
- The Independent Race Monitor
- Race Equality Unit
- The Illegal Working Group (IWG)⁵

WHAT ARE THE OVERALL TRENDS AND PATTERNS IN THIS QUALITATIVE & QUANTITATIVE DATA?

Disproportionality; regional variations; different levels of access, experiences or needs; combined impacts.

The findings of the Institute for Employment Studies only represent the views of those interviewed in this small sample, which is not evenly distributed across sector, geographical area and size. The findings cannot be taken as representative of all employers. However, the research did successfully identify many issues that are important to employers and which should be considered in the policy-making process.

PLEASE LIST THE SPECIFIC EQUALITY ISSUES THAT MAY NEED TO BE ADDRESSED THROUGH CONSULTATION (AND FURTHER RESEARCH)?

The following questions have been included in the consultation document and the responses will be used to inform the further policy and shape the Code of practice.

- The Code recommends that employers conduct document checks on all prospective employees to avoid allegations of unlawful discrimination. Do you think this recommendation will be followed?
- Do you think the recommendation is enough to provide a safeguard against unlawful discrimination?
- Are there any alternatives that would provide further safeguards against unlawful discrimination?

³ The review was of 100 cases that were selected at random from a sample of judgments of Employment Tribunals that included race discrimination as an element of the case, and were decided between January and December 2004.

⁴ DTI, 2006, Review of judgments in race discrimination Employment Tribunal cases. Employment Relations Research Series No. 64, p44. Available via: www.dti.gov.uk/files/file34687.pdf

⁵ Members of the IWG (as at 1 April 2007): Association of Labour Providers (ALP), British Apparel and Textile Confederation (BATC), British Chambers of Commerce (BCC), British Hospitality Association (BHA), Cleaning and Support Services Association (CSSA), Commission for Racial Equality (CRE), Commission for Social Care Inspection (CSCI), Confederation of British Industries (CBI), Construction Confederation (CC), Department of Trade and Industry (DTI), Employability Forum (EF), Health and Safety Executive (HSE), Immigration Advisory Service (IAS), Joint Council for the Welfare of Immigrants (JCWI), National Car Parks (NCP), National Farmers' Union (NFU), NHS Employers, Recruitment and Employment Confederation (REC), Sainsburys, Scottish Trade Union Congress (STUC) and Trades Union Congress (TUC).

GATHERING EVIDENCE THROUGH COMMUNITY ENGAGEMENT

INTERNAL STAKEHOLDER ENGAGEMENT: CONSULTING & INVOLVING OTHER GOVERNMENT DEPARTMENTS, STAFF, AGENCIES & NDPBS

DOES THIS POLICY AFFECT THE EXPERIENCES OF STAFF? HOW? WHAT ARE THEIR CONCERNS?

EQUALITY TARGET AREAS	HOW DOES THE DATA IDENTIFY POTENTIAL OR KNOWN POSITIVE IMPACTS?
Staff	<ul style="list-style-type: none"> • Enforcement and compliance staff will be required to serve the notices; • Central staff having discretion to set level of penalty etc; • Helpline staff dealing with questions from employers; • Some Border and Immigration Agency staff may be Commonwealth citizens and subject to the rechecking of their entitlement documents.
Staff Networks & Associations	Not applicable.
Trade Unions	Public & Commercial Services Union (PCS), Prospect, Immigration Service Union (ISU) and the FDA.

HOW HAVE YOU CONSULTED, ENGAGED AND INVOLVED INTERNAL STAKEHOLDERS IN CONSIDERING THE IMPACT OF THIS PROPOSAL ON OTHER PUBLIC POLICIES AND SERVICES?

For example your policy may affect access to housing, education, health, employment services.

Internal stakeholders have been directly engaged and involved, where appropriate, throughout the development of the content of the consultation document and the Codes of practice.

WHAT POSITIVE AND ADVERSE IMPACTS WERE IDENTIFIED BY YOUR INTERNAL CONSULTEES? DID THEY PROVIDE ANY EXAMPLES?

There were no specific concerns relating to discrimination raised by any internal stakeholders and no examples provided.

Feedback the results of this internal consultation and use it as a basis for work on external consultation

EXTERNAL CONSULTATION & INVOLVEMENT

HOW DID YOUR ENGAGEMENT EXERCISE HIGHLIGHT POSITIVE AND NEGATIVE IMPACTS ON DIFFERENT COMMUNITIES?

EQUALITY TARGET AREAS	HOW DOES THE DATA IDENTIFY POTENTIAL OR KNOWN POSITIVE IMPACTS?
Voluntary Organisations	We anticipate that the Codes will not have an adverse impact on voluntary organisations.
Race	<p>We anticipate that the Codes will not have an adverse impact on particular racial groups if the advice is followed correctly by employers. However, it will be important to ensure, in establishing the entitlement of individuals to work in the UK, that the selection process did not automatically disadvantage people from any particular ethnic group.</p> <p>Third country nationals with limited leave to remain in the UK will be subject to a requirement for repeat checks. Repeat checks will not apply to individuals that do not have a limited right to remain. The requirement for repeat checks will cover a wide range of nationalities.</p>
Faith	We anticipate that the Codes will not have an adverse impact on faith organisations.
Disability Rights	We anticipate that the Codes will not have an adverse impact on disability rights.
Gender	We anticipate that the Codes will not have an adverse impact on gender issues.
Gender Identity	We anticipate that the Codes will not have an adverse impact on gender identity issues.
Sexual Orientation	We anticipate that the Codes will not have an adverse impact on sexual orientation.
Age	We anticipate that the Codes will not have an adverse impact on age issues.

Feedback the results of your community engagement (i.e. involvement and consultation) to all participants including internal and external stakeholders

ASSESSMENT & ANALYSIS

DOES THE EIA SHOW A POTENTIAL FOR DIFFERENTIAL IMPACT ON ANY GROUP(S) IF THIS PROPOSAL IS INTRODUCED? IF YES, STATE BRIEFLY WHETHER IMPACT IS ADVERSE OR POSITIVE AND IN WHAT EQUALITY AREAS.

A statutory system of employer sanctions in relation to illegal migrant working may have an adverse impact on race equality in the following ways:

- Job seekers: the existence of effectively enforced employer sanctions may have an impact on the job seeking population, insofar as the threat of a sanction may make an employer more cautious about employing a worker who is or might appear to be a foreign national. This may give rise to unlawful race discrimination in extreme cases, although this is no different from the current situation.

There may also be a potential stigma for those who will be required to demonstrate their immigration status, for example, asylum seekers.

- Migrant workers: a system requiring employers to carry out follow-up checks on migrant workers with a temporary immigration status would require workers in the affected categories to demonstrate their continued requirement to work, necessitating the possession and production of certain specified documents.
- Migrant communities: whilst we recommend that the document checks should still be applied to all potential employees, further controls on the use of illegal migrant labour may result in ill-feeling in certain communities who may feel particularly targeted by the legislation.
- Employers: the sectoral and geographical distribution of illegal working might mean that employers from some communities or racial groups may be more likely than others to face investigation or enforcement action.

WHAT WERE THE MAIN FINDINGS OF THE ENGAGEMENT EXERCISE AND WHAT WEIGHT SHOULD THEY CARRY?

Not applicable as the consultation has not yet been conducted.

The main findings are to be published following the public consultation and the comments will be incorporated, where appropriate, into the final draft Codes of practice that are laid before Parliament for approval.

DOES THIS POLICY HAVE THE POTENTIAL TO CAUSE UNLAWFUL DIRECT OR INDIRECT DISCRIMINATION? DOES THIS POLICY HAVE THE POTENTIAL TO EXCLUDE CERTAIN GROUP OF PEOPLE FROM OBTAINING SERVICES, OR LIMIT THEIR PARTICIPATION IN ANY ASPECT OF PUBLIC LIFE?

A system of checks by employers on prescribed documents may disadvantage particular groups if they are less likely to be able to produce one of the documents listed as being acceptable as proof of entitlement to work. There may be employers who will not want to learn the new rules and will only employ those who satisfy their view of being 'British.'

However, where correctly applied, this policy will not lead to unlawful direct or indirect discrimination. Individuals will be excluded from employment as a result of their legal entitlement to take the employment in question and not as a result of unlawful discrimination.

HOW DOES THE POLICY PROMOTE EQUALITY OF OPPORTUNITY?

The policy has been designed to prevent discrimination and the Codes are aimed at ensuring that employers have all the information that they require.

HOW DOES YOUR POLICY PROMOTE GOOD RELATIONS? HOW DOES THIS POLICY MAKE IT POSSIBLE FOR DIFFERENT GROUPS TO WORK TOGETHER, BUILD BRIDGES BETWEEN PARALLEL COMMUNITIES, OR REMOVE BARRIERS THAT ISOLATE GROUPS AND INDIVIDUALS FROM ENGAGING IN CIVIC SOCIETY MORE GENERALLY?

The foreseeable positive impact will be:

- Through provision of the Code of practice and by encouraging employer compliance, we will ensure that we reduce the employment opportunities for illegal migrant workers and promote good employment practices.

ASSESSMENT & ANALYSIS

- The statutory excuse will be available for those employers who make the recommended checks, but the knowing offence will ensure that those who wilfully seek to exploit illegal migrant labour will be dealt with proportionately. Equally, the civil penalty scheme will seek to deal quickly with those who do not ensure that their workforce are working legally. This will build up trust by identifying and heavily penalising those who seek to exploit illegal migrant workers.
- We will provide a verification service for employers to ensure that their potential and existing employees have valid entitlement to work in the UK. This will improve employer confidence and make it quicker/easier for employers to check the status of migrant workers without undue discrimination.
- Moving forward, the Points Based System will provide a simpler, more effective means of enabling employers to source labour legally from overseas.

HOW CAN THE POLICY BE REVISED, OR ADDITIONAL MEASURES TAKEN, IN ORDER FOR THE POLICY TO ACHIEVE ITS AIMS WITHOUT RISKING ANY ADVERSE IMPACT?

There are powers to review and revise the policy to improve or correct any problems that may be identified. This may be done through ongoing consultation with the IWG and the CRE, or other appropriate representations.

The policy may be re-considered in the light of representations received during the public consultation.

ARE THERE ANY CONCERNS FROM DATA GATHERING, CONSULTATION AND ANALYSIS THAT HAVE NOT BEEN TAKEN ON BOARD?

Please justify and explain the reason for your decision. Not applicable as the consultation has not yet been conducted.

The main findings are to be published following the public consultation. The comments will be incorporated, where appropriate, into the final draft of the Codes that will be laid before Parliament for approval.

ENSURING ACCESS TO INFORMATION

HOW CAN YOU ENSURE THAT INFORMATION USED FOR THIS EIA IS READILY AVAILABLE IN THE FUTURE? (N.B. You will need to include this in your action plan)

- The information used for this EIA will be published as part of the feedback report on the public consultation.
- The report will be made available from the website and distributed in printed form, by request.

HOW WILL YOU ENSURE YOUR STAKEHOLDERS CONTINUE TO BE INVOLVED / ENGAGED IN SHAPING THE DEVELOPMENT / DELIVERY OF THIS POLICY? (N.B. You will need to include this in your action plan)

- The maintenance of the Illegal Working Group (of which the CRE is a participating member) is part of an ongoing commitment by Ministers from the Home Office and the DTI to engaging relevant stakeholders in the decision-making process.
- A central administrative team will monitor the imposition of penalties and administer the objection process. The Border and Immigration Agency will collect management data relating to the issuance of penalties and will publish these externally.
- The civil penalty scheme will be officially reviewed one year after its commencement.
- Comments made by employers to Employers' Helpline and employees to INEB will be considered and incorporated, where appropriate.

HOW WILL YOU MONITOR THIS POLICY TO ENSURE THAT THE POLICY DELIVERS THE EQUALITY COMMITMENTS REQUIRED?

(N.B. You will need to include this in your action plan)

- There is no statutory obligation to monitor the policy, but the Secretary of State may revise and re-issue the Code following a review.
- The policy will be monitored through ongoing contacts with the Illegal Working Group, the Commission for Racial Equality and the Equality Commission for Northern Ireland.

Now submit your EIA and related evidence for clearance.

ACTION PLAN

RECOMMENDATIONS	RESPONSIBILITY	ACTIONS REQUIRED	SUCCESS INDICATORS	TARGET DATE	WHAT PROGRESS HAS BEEN MADE?
Data Collection	Illegal Working Unit/ IRSS	To conduct public consultation on the Codes of practice and new secondary legislation. To include research questions on the potential impact on employers of the introduction of civil penalties on employers' attitudes to employing migrant workers, at focus groups to be held in May.	N/A	Spring 2007	The consultation is to take place during spring 2007.
Publication Arrangements	Illegal Working Unit/ Border and Immigration Agency Communications Team	Publish report of findings from public consultation	N/A	September 2007	Consultation document will be published in May 2007.
Monitoring & Review Arrangements	Illegal Working Unit	Ongoing monitoring through the IWSG, CRE and correspondence received in the department.	N/A	As required.	The IWG and the CRE have been involved in the detailed development of the prevention of discrimination Code of practice.
List other recommendations that are required	Illegal Working Unit/ Employers' Helpline	To provide a verification service for employers	N/A	May 2007	Announcement of the launch of joint Border and Immigration Agency and Identity and Passport Service verification service for employers.
List other recommendations that are required	Illegal Working Unit/ Crimestoppers	To provide a point of contact for employers to report allegations of illegal working	N/A	Not applicable.	Since 1 January 2007, Crimestoppers has started to take on allegations of illegal migrant working.

Please ensure that the action plan is agreed by your Director/ Minister

THE EQUALITY IMPACT ASSESSMENT REPORT

The EIA report is a concise summary of the results of your EIA work. You should ensure that you cover the topics described below.

BACKGROUND:

- Context of policy/programme
- Link to strategic aims and objectives
- Scope of the EIA work (e.g. if linked to previous EIA or work delivered by another Government Department)

METHODOLOGY:

- Approach to data collection and analysis
- Results of consideration of existing evidence

CONSULTATION & INVOLVEMENT:

- Stakeholder/community involvement in developing proposals
- List of organisations engaged (optional)

ASSESSMENT & ANALYSIS

Key Findings from the data collection and community engagement

- Positive impacts: existing or potential
- Adverse impacts: existing or potential

RECOMMENDATIONS

Describe how you will respond to the key findings by:

- strengthening the potential for positive impact,
- removing areas that may exacerbate or engender adverse impact
- including measures to mitigate any adverse impact that may occur
- including measures that ensure ongoing compliance with statutory obligations
- monitoring arrangements
- ensuring continued public access to information about the policy/programme.
- action plan (optional)

DATE OF EIA REPORT

DATE OF PUBLICATION OF RESULTS

Ensure that the EIA Report is published on the Border and Immigration Agency website before your policy/programme is implemented.