



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**

MAY 2007

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This is a consultation document that has been produced by the Border and Immigration Agency, which is part of the Home Office. This document is also available on the Home Office website at the following address:

www.bia.homeoffice.gov.uk/lawandpolicy/consultationdocuments

FOREWORD BY THE MINISTER OF STATE FOR NATIONALITY, CITIZENSHIP AND IMMIGRATION AND CHAIR OF THE ILLEGAL WORKING GROUP



To protect our country from illegal immigration we must stop two things – illegal journeys and illegal jobs. Since January this year we have set out our plans to do precisely this.

Illegal working hurts good business, undercuts legal workers and creates illegal profits. It also puts illegal workers themselves at great risk. Our attack on illegal working has seven key points:

TOUGHER CHECKS ABROAD

The creation of secondary off-shore border controls, harnessing biometric visas, is key to securing our border. We want to tie people to a single identity at the earliest point possible, checking them through each stage of their journey, identifying those presenting risk and stopping them coming to the UK. This new approach, in parallel with our reform of routes for workers and students through the Points Based System, will change the way we grant permission to come to the UK, increase checks on those in transit and strengthen the UK border itself.

IDENTITY CARDS FOR FOREIGN NATIONALS

The overwhelming majority of UK employers and migrants to Britain are law-abiding and wish to comply with their legal obligations. We are keen to support them and make this as simple as possible.

We are introducing measures in the UK Borders Bill which will require foreign nationals subject to immigration control, who are residing in the UK for over six months, to apply for a biometric immigration document.

As we develop secure, compulsory biometric documents for foreign nationals linking the holder to a single genuine identity, we will progressively make things easier for employers by reducing the range of documents that they are asked to check to establish a person's entitlement to work in this country. Phasing

out old, insecure documents will simplify things for employers and make it easier for those who do have the right to work here to demonstrate it simply and securely. Employers can then be confident that they are not being presented with forged identity documents. Similarly, service providers across the public sector will be able to check these new documents to ensure access to services and benefits is provided only to those who are entitled.

CHECKING SERVICE

As a first step in improving the support we offer employers, the Border and Immigration Agency are today launching a pilot verification service in conjunction with the Identity and Passport Service. This enhances the service provided by our existing employer telephone helpline, so that employers can verify the identity and right to work of individuals in certain circumstances.

SPONSORSHIP

The new Points Based System gives employers a way to source labour legally from overseas if skills are not available at home. Employers will be responsible for helping ensure migrants obey the immigration laws, work only within the terms of their permission to come to the UK, and go home at the end of their stay.

PENALTIES FOR RULE-BREAKERS

In this consultation, we invite views on our proposals to implement the measures contained within the Immigration Asylum and Nationality Act 2006 on the prevention of illegal migrant working.

We propose:

- civil penalties for those employers who employ illegal migrant workers as a result of negligent recruitment and employment practices; and
- a tough new criminal offence for those employers found to be knowingly employing illegal migrant workers.

FOREWORD BY THE MINISTER OF STATE FOR NATIONALITY, CITIZENSHIP AND IMMIGRATION AND CHAIR OF THE ILLEGAL WORKING GROUP

We also invite views on our proposal in last July's review document that company directors who are found to be knowingly employing illegal workers be disbarred.

TOUGHER ENFORCEMENT

Improvements in the way in which we assess information received on possible illegal working, including from Crimestoppers, are taking shape and these changes will ensure that our intelligence-led operations yield the best results possible. This, combined with a significant expansion in compliance and workplace enforcement activity and tougher penalties, will send a strong message to unscrupulous employers that if they choose to employ illegal migrant workers, they must face the consequences. Evidence from our recent Joint Workplace Enforcement Pilot in the West Midlands supports the view that employers who knowingly employ illegal migrant workers are often in breach of other workplace regulation. We are taking co-ordinated action with our colleagues across Government to combat this, forging closer partnerships between workplace enforcement agencies to promote the sharing of intelligence.

MAKING SURE PEOPLE KNOW THE RULES

We want to help migrants and employers understand our expectations of them, and the consequences of acting illegally, to ensure that migrants comply with our rules more consistently. We have already conducted highly visible national media and direct mail campaigns on illegal working, reminding employers of their responsibilities and directing them to our online step-by-step guide to employing migrant workers.

Over recent months we have outlined what we intend to do to reform and build confidence in our immigration system. This is your opportunity to shape how we take forward this key area of work and we seek your views on how we should put our new legislation into practice. By working together to clamp down on illegal migrant working we can level the playing field and tackle the exploitation of vulnerable migrants.



Liam Byrne MP

Minister of State for Nationality, Citizenship and Immigration

1. INTRODUCTION

- 1.1 The purpose of this consultation document is to explain the Border and Immigration Agency approach to preventing illegal working and seek your views on our proposals to implement new powers contained in the Immigration, Asylum and Nationality Act ('the 2006 Act') to tackle illegal working by nationals of countries outside the European Economic Area. This document specifically provides information about the proposed new system of civil penalties and criminal offence relating to illegal migrant working, within the wider context of the Government's programme of change for the UK immigration system.
- 1.2 We have discussed these proposals extensively with the Illegal Working Group, which is comprised of representatives from a range of business sectors, government departments and voluntary organisations.¹ Before implementation, we committed to widen this process to consult with employers, representatives and individuals, especially those organisations with an interest in labour law or immigration matters in the United Kingdom. A list of all the participants we have invited to comment can be found at Appendix 1.
- 1.3 We pose specific questions for participants at Annex A and invite wider comment on the Government's plans for the implementation of the legislation. We are particularly interested in receiving comments on two separate draft Codes of practice, which form a key part of the new legal framework on the prevention of illegal working. We invite comments on the draft civil penalties Code of practice at Annex B and ask respondents to highlight any potential unintended consequences of these proposals. The second document for consideration is a Code of practice for employers to help them ensure that they do not contravene the Race Relations Act 1976 ('the 1976 Act'), or the Race Relations (Northern Ireland) Order 1997 ('the 1997 Order'), whilst avoiding liability for a civil penalty. The new draft Code of practice can be found at Annex C and we welcome any views and comments on its provisions.
- 1.4 This consultation document is also available to download from the Border and Immigration Agency website at the following address: www.bia.homeoffice.gov.uk/lawandpolicy/consultationdocuments
- 1.5 You should contact the Illegal Working Unit if you require a printed copy of this consultation paper, or a copy in any other format, e.g. Braille, large font, or audio. A summary will also be made available in Welsh. These can be requested by phoning 020 8760 2955 or by e-mail to iwu@homeoffice.gsi.gov.uk, with the subject heading 'Illegal Working Consultation'.

¹ 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), Sainsbury's, Scottish Trade Union Congress (STUC) and Trades Union Congress (TUC).

2. HOW TO RESPOND TO THE CONSULTATION

2.1 It would be helpful if you could send your comments on these Codes of practice by e-mail to: iwu@homeoffice.gsi.gov.uk, with the subject heading 'Illegal Working Consultation'.

Alternatively, your response can be posted to the following address:

Illegal Working Consultation
Illegal Working Unit,
Border and Immigration Agency,
6th Floor, Green Park House,
29 Wellesley Road,
Croydon, CR0 2AJ

We would ask that your response **arrives no later than 7 August 2007**.

2.2 We have targeted this consultation primarily at individuals and organisations that are likely to take a direct interest in these proposals. However, we are keen to receive comments from as wide a range of individuals and organisations as possible who may be affected by these proposals, so please feel free to copy and circulate this document to those who you think may wish to comment but who are not included on the consultation list at Appendix 1.

CONFIDENTIALITY & DISCLAIMER

2.3 The information you send us may be passed to colleagues within the Home Office, the Government and related agencies. Furthermore, information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

2.4 If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this, it would be helpful if you could explain

to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information, we will take full account of your explanation, **but we cannot give an assurance that confidentiality can be maintained in all circumstances**. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Border and Immigration Agency.

2.5 Please ensure that your response is clearly marked if you do not wish your name to be published. Confidential responses will be included in any statistical summary of numbers of comments received and views expressed.

2.6 The Border and Immigration Agency will process your personal data in accordance with the DPA and in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties. A non-attributed summary of responses to this consultation will be provided to all those who supply comments and a return address. It will be available on request to others and displayed on the Border and Immigration Agency's website.

Your views are valuable to us. Thank you for taking the time to read and respond to this document.

3. THE GOVERNMENT’S APPROACH

3.1 In July 2006 the Home Secretary launched a review of the UK immigration system. Since then the Border and Immigration Agency has developed an ambitious programme of change founded on the review’s four key objectives: strengthening our borders, fast-tracking asylum decisions, ensuring and enforcing compliance with our immigration laws and boosting Britain’s economy. This programme will be supported by up to an additional £100 million for in-country enforcement against illegal immigration.

3.2 Our overall aim is to make it as straightforward as possible for migrants to stay compliant, while penalising those who break the rules. The two key principles for enabling compliance are:

- Clear, easy to understand rules about who is allowed to come here and why, and what obligations there are on migrants, making it easier for people to integrate and for

employers and colleges who benefit from migration.

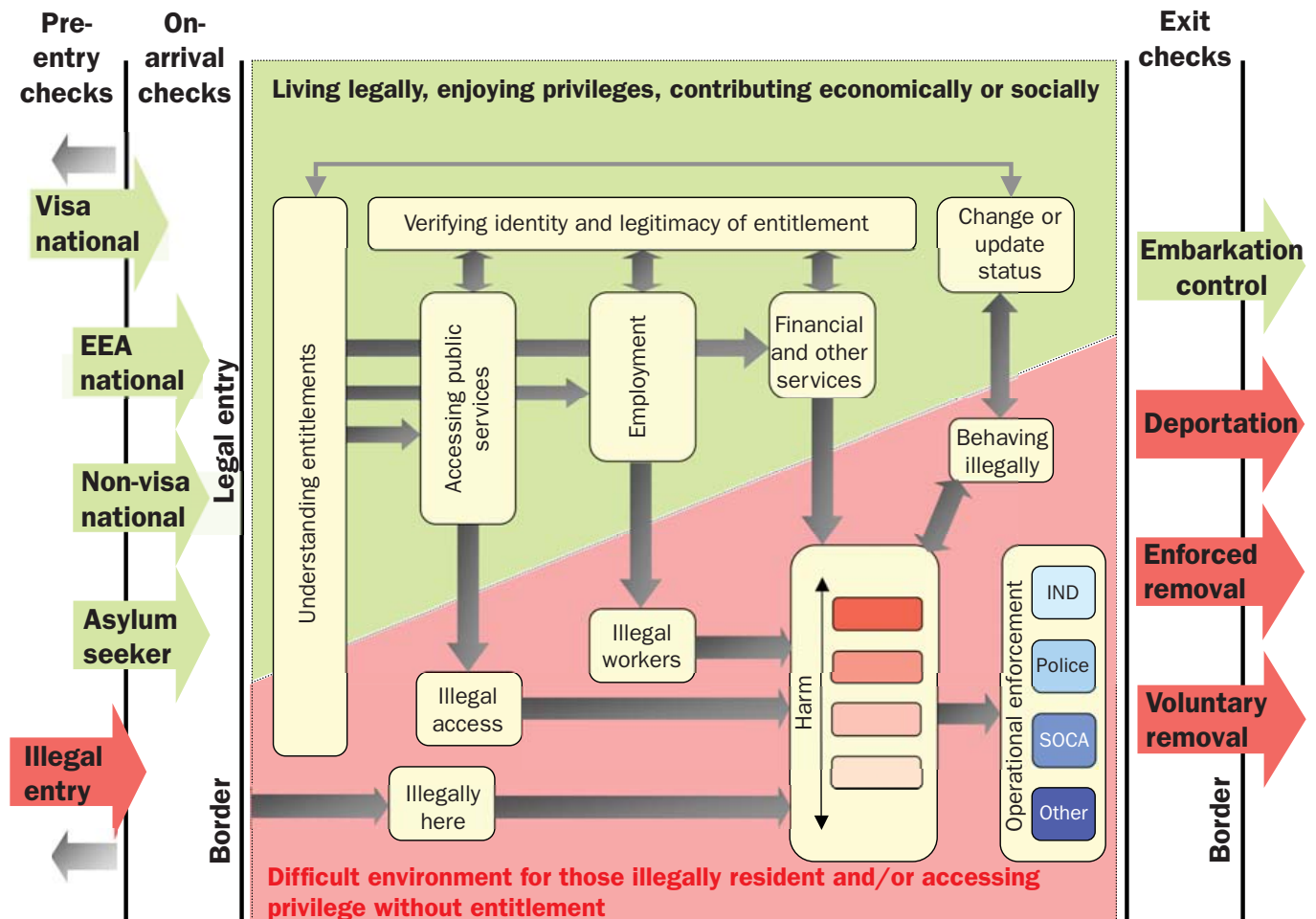
- Make the process of checking identity easy and reliable so that it becomes straightforward to access appropriate services, incentivising people to comply.

Figure 1, below, illustrates our approach towards encouraging legal behaviour, compliance with immigration laws and combatting illegality.

TOUGHER CHECKS ABROAD

3.3 Our aim is to gather as much information on those travelling to the UK before they arrive here. With the rollout of biometric visas and introduction of offshore border controls covering all modes of transport worldwide, we are implementing a border security system which makes life easier for travellers who play by the rules, but stops those who would seek to

Figure 1: Enabling compliance, combating abuse and reducing harm



3. THE GOVERNMENT'S APPROACH

cause harm. As part of our drive to simplify the rules, we are implementing a new Australian-style Points Based System (PBS), which will consolidate more than eighty existing work and study routes into five tiers and enable the UK to control migration more effectively, tackle abuse and identify the most talented workers. A new Migration Advisory Committee will advise the Government on where migration might sensibly fill gaps in the labour market. A Migration Impacts Forum will allow for dialogue with parties from outside Government on the wider impacts of migration.

SECURING IDENTITY

3.4 Once migrants are legally in the UK, we want to make it easier for them to prove their identity and entitlements. Central to our programme to make the rules easier to comply with is a move to compel non-European Economic Area (EEA) foreign nationals to register their biometrics. We want to make it easier to confirm someone's identity and their right to entitlements once they are in the UK. Our **Strategic Action Plan for the National Identity Scheme and Borders, Immigration and Identity Action Plan** underline how the use of identity checks and biometrics, including fingerprints, iris scans and facial recognition, will help secure the UK border and crack down on

illegal working and fraudulent access to services. The power to compel biometric registration would be introduced on a rolling basis and build on the introduction of Biometric Immigration Documents for non-EEA foreign nationals from 2008.

3.5 More immediately we are making things easier for employers by enhancing the service provided by our employer telephone helpline so that employers can verify the entitlement of individuals in certain circumstances. There is web-based guidance² and printed documents are freely available. Employers can contact the Employers' Helpline on **0845 010 6677** if they have any further questions about the prevention of illegal migrant working.

SPONSORSHIP

3.6 The points system will be underpinned by a system of sponsorship, based on the principle that those who benefit from migration (employers, colleges, etc.) should play a part in ensuring that the system is not abused. Every migrant (except in Tier 1 - highly skilled migrants) will need a Certificate of Sponsorship (CoS) from a sponsor on our sponsors' register in order to gain a visa under the PBS. All sponsors will be rated A or B according to good practice criteria and sponsors will have certain obligations. These obligations are being designed with the close involvement of business to ensure that we keep it as simple as possible. Sponsors who fail to comply with their obligations, who are issued a civil penalty, or who are convicted of the offence of knowingly employing an illegal migrant worker may have their rating downgraded or be removed from the sponsor register - making them unable to bring in non-EEA migrants.

3.7 The sponsorship system will be managed by Border and Immigration Agency enforcement and compliance teams, who will help sponsors meet their obligations. Enforcement and



Recording biometric data (in this case iris scanning) will make it easier to confirm people's identity

² Further information is available on-line via: www.bia.homeoffice.gov.uk/lawandpolicy/preventingillegalworking, www.businesslink.gov.uk and www.employingmigrantworkers.org.uk

3. THE GOVERNMENT'S APPROACH

compliance officers will target those whom we believe may not be complying with their obligations. They will be trained and able to issue civil penalty notices and will do so should they come across evidence of offences. Where evidence of an offence of knowingly employing illegal migrant workers is found, Border and Immigration Agency prosecution teams will initiate further action.

TOUGHER ENFORCEMENT

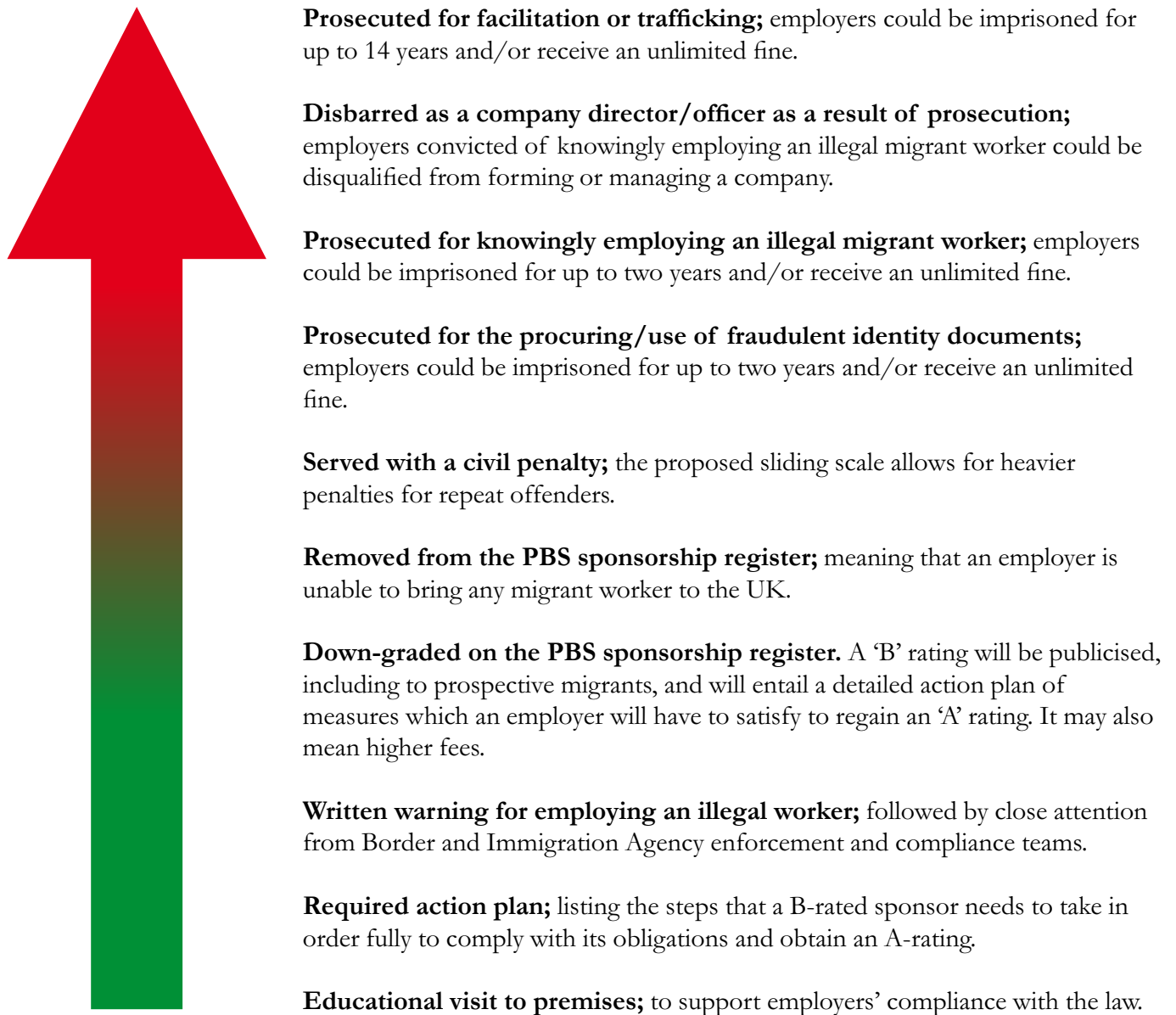
- 3.8 Alongside our work to make it easier to comply with the rules, we are also ensuring we have the right tools in place to clamp down on those who do not comply. In March 2007 we published **Enforcing the rules: A strategy to ensure and enforce compliance with our immigration laws**. This cross-Government enforcement strategy is focused on fairness and enforcement of the rules. It will allow the Border and Immigration Agency to progressively strengthen the safeguards that protect benefits and services from those here illegally by working in partnership with tax authorities, benefits agencies, Government departments, local authorities, police and the private sector.
- 3.9 Employers should be aware that we will work in a concerted way to clamp down on them should they abuse the system. **Figure 2**, on page 10, sets out the comprehensive range of sanctions we will have at our disposal to ensure and enforce compliance with immigration laws. The severity of the sanction will reflect the relative illegal advantage gained and level of harm brought about by the breach.
- 3.10 The new criminal offence and the new civil penalty offences will dovetail with measures available to us under the PBS sponsorship arrangements for those employers who are registered as legal sponsors of migrants. These penalties will not be mutually exclusive, so that if evidence arising from the issuing of a civil penalty notice brings to light information which warrants down-grading or removal from the sponsorship register, we will not hesitate to do so.



An immigration officer interviews a suspected illegal worker after an enforcement operation

3. THE GOVERNMENT'S APPROACH

Figure 2: Hierarchy of enforcement and compliance action against employers



4. NEW PENALTIES

- 4.1 New penalties for those that break the rules are part of our new approach. The Government believes that the majority of UK employers are law abiding and wish to comply with their legal obligation to avoid using illegal labour. We are therefore keen to work with employers to promote compliance with the law on the prevention of illegal migrant working. New guidance for employers on the changes to the law on preventing illegal working will be published in advance of the 2006 Act being implemented.
- 4.2 Under the current law, section 8 of the Asylum and Immigration Act 1996, there is no distinction between less than diligent employers and employers who deliberately and criminally employ illegal migrant workers. It has also proved difficult to enforce. The 2006 Act will provide a two part approach:
- the introduction of the civil penalty regime; and
 - a tough new offence of knowingly employing an illegal migrant worker.

The proposed regulations under the 2006 Act also state that in order to establish an excuse from liability for a civil penalty, employers should carry out specified document checks at the point of recruitment and subsequent checks should be made at specified intervals for migrant employees who have limited leave to enter or remain in the UK. The time given between checks will be subject to the results of this consultation. This approach will help prevent overstaying by making it difficult for people to remain in the UK without lawful authority.

- 4.3 There is a potentially higher cost to employers in terms of the burden on their human resource practices, if they are required to keep track of those employees whose immigration status is temporary, particularly if this involves introducing new procedures for specific groups of workers. However, as the previous section 8 legislation has been unclear on this point, there may be a proportion of conscientious employers who already conduct such checks on employees

CASE STUDY 1

An employer who has made significant use of managed migration schemes to meet his labour needs, now has a diverse workforce comprising employees from all over the world. The employer asks all prospective employees to provide a document or documents, following Border and Immigration Agency guidance, that demonstrates the employee's right to take the job on offer, before confirming employment. After a quick check to verify that his potential employee is the rightful holder of the document(s), the employer copies and retains a copy of the document(s). The employer records that she has a time limit on her permission to work in the UK and so the following year, the employer asks his staff member to provide him with further documentation showing that she has an ongoing right to work for him. The employee, however, has submitted her documents to the Border and Immigration Agency in support of her application for further leave to remain. The employer makes a quick call to the Employers' Helpline, where an agent confirms that his employee does have an outstanding application, and that she retains the right to work in the UK until the application has been decided.

as part of good recruitment practice. There would clearly be no additional cost to such employers.

- 4.4 The new legislation will not operate retrospectively, so employers will not face new duties in respect of individuals they currently employ. The stock of workers subject to post-recruitment checks will increase yearly, as migrants working prior to the changes and therefore not subject to checks return home or change employers in the UK, and new migrants who are subject to checks arrive.
- 4.5 The Hampton and Macrory reports on regulatory enforcement and penalties recommend a move away from prosecution

4. NEW PENALTIES

as the exclusive means of tackling illegal activity and broadening the flexibility available to regulators and the judiciary to meet regulatory objectives and improve compliance. In conjunction with enhanced compliance support, both reports recommend the use of an assortment of penalties, ranging from administrative penalties to enhancing the power of the courts in setting fines/sentences that are an effective deterrent.

- 4.6 All enforcement operations are intelligence-led. We will further develop a risk-assessed approach towards illegal working enforcement activity, prioritised amongst other things, by a reduction in social harms. By introducing civil penalties and the new ‘knowing’ offence, we will be able to swiftly deal with cases of non-compliance and reserve prosecution resources for the more serious breaches of the legislation, where the stigma of a criminal conviction is required.

A NEW SYSTEM OF CIVIL PENALTIES FOR EMPLOYERS, WHO EMPLOY ILLEGAL MIGRANT WORKERS

- 4.7 Section 19 of the 2006 Act provides for a Code of practice to explain the factors to be taken into account when deciding the level of the civil penalty to be imposed. A copy of the draft Code is attached at Annex B.
- 4.8 Civil penalties will provide a swift and effective means of tackling those employers of illegal workers who are less than diligent in carrying out specified document checks before and/or after the point of recruitment. The current maximum fine in a magistrates’ or sheriff court is £5,000. There are also arguments for linking the figure to the full cost of a return. The National Audit Office report ‘Returning Failed Asylum Applicants’ published in July 2005 estimated the average unit cost of removing failed asylum seekers and immigration offenders to be in the order of £10,000. However, there may be discretionary reductions in the penalty payable, according to circumstances. For example, significant reductions may be allowed where the employer reports his or her suspicions of the illegal workers concerned to

the Border and Immigration Agency, or co-operates with any subsequent enforcement action. Examples of the sliding scale based on £5,000 and £10,000 are provided in the tables on the following pages.

4. NEW PENALTIES

Table 1 - Framework for assessment of level of civil penalty - £5,000 maximum

		NATURE OF CHECKS COMPLETED					
		FULL	PARTIAL		NO		
OCCASION ON WHICH CAUTION/PENALTY ISSUED	3RD OR MORE	£0	£5,000 max. penalty per worker.		£5,000 max. penalty per worker.		
			Less max. £625 per worker reported	Less max. £625 per worker, with co-operation			
			£3,750 min. penalty per worker.				
	2ND	£0	£3,750 max. penalty per worker.		£5,000 max. penalty per worker.		
			Less max. £625 per worker reported	Less max. £625 per worker, with co-operation		Less max. £625 per worker reported	Less max. £625 per worker, with co-operation
			£2,500 min. penalty per worker.			£3,750 min. penalty per worker.	
	1ST	£0	£2,500 max. penalty per worker.		£3,750 max. penalty per worker.		
			Less max. £1,250 per worker reported	Less max. £1,250 per worker, with co-operation		Less max. £1,250 per worker reported	Less max. £1,250 per worker, with co-operation
			£0 (warning issued)			£1,250 min. penalty per worker.	

4. NEW PENALTIES

Table 2 - Framework for assessment of level of civil penalty - £10,000 maximum

		NATURE OF CHECKS COMPLETED					
		FULL	PARTIAL		NO		
OCCASION ON WHICH CAUTION/PENALTY ISSUED	3RD OR MORE	£0	£10,000 max. penalty per worker.		£10,000 max. penalty per worker.		
			Less max. £1,250 per worker reported	Less max. £1,250 per worker, with co-operation			
			£7,500 min. penalty per worker.				
	2ND	£0	£7,500 max. penalty per worker.		£10,000 max. penalty per worker.		
			Less max. £1,250 per worker reported	Less max. £1,250 per worker, with co-operation		Less max. £1,250 per worker reported	Less max. £1,250 per worker, with co-operation
			£5,000 min. penalty per worker.			£7,500 min. penalty per worker.	
	1ST	£0	£5,000 max. penalty per worker.		£7,500 max. penalty per worker.		
			Less max. £2,500 per worker reported	Less max. £2,500 per worker, with co-operation		Less max. £2,500 per worker reported	Less max. £2,500 per worker, with co-operation
			£0 (warning issued)			£2,500 min. penalty per worker.	

4. NEW PENALTIES

- 4.9 The majority of employers are law-abiding and want to adopt best practice in recruitment. They have nothing to fear from our proposals. We do not expect employers to act as Immigration Officers, or to be experts in detecting forged documents. However, we do ask that they take reasonable steps to check that a job applicant or, when relevant, employee is the rightful holder of the documents presented. An employer who undertakes appropriate checks as set out in the proposed regulations will not be liable to a civil penalty.
- 4.10 An employer will be able to obtain a statutory excuse from liability for a civil penalty by seeing, copying and retaining the copies of original specified documents that relate to the job applicant. However, the excuse is not available where the employer knows that the employee is not entitled to undertake the work in question. In the majority of cases, employers will be able to establish a person's entitlement to work by performing a single check prior to the commencement of employment by checking and copying a document on **List 1**.³ Where such a check is performed, no further follow-up checks will be required. Where an employer is acting as a sponsor under the Points Based System, they will be responsible for ensuring



Employers who undertake appropriate document checks will not be liable to a civil penalty

CASE STUDY 2

An employer is visited for the third time by Border and Immigration Agency officers. They are seeking to establish whether she has improved her recruitment practices following an educational visit, and a further visit where she was found to have only undertaken partial checks on her staff. This time, however, the employer was uncooperative, and it was found she had not undertaken any checks on the three employees who were found to be illegal migrant workers. The Border and Immigration Agency enforcement and compliance officer serves the employer with a civil penalty for the maximum amount for each of the three illegal workers encountered. The employer is informed of her right to object to or appeal against the service of the penalty. The officer reports the information regarding suspected breaches of other workplace regulation.

that the person is able and qualified to do the job for which they are being sponsored. They may choose to use a recruitment agency or a representative to support them on their management of migrants, but the responsibility remains with the sponsor should evidence of abuse subsequently come to light. Under the civil penalty scheme, liability for penalties will rest with the employer of the illegal worker.

- 4.11 The proposed regulations introduce an additional check that employers may need to make if they want to retain an excuse against a penalty. The additional checks relate to employees whose immigration status is time-limited. Their document(s) will be specified in **List 2**.³ If an individual provides a document or documents from **List 2**, the employer should carry out specified document checks both **before** the employment of the individual begins, **and** carry out follow-up checks of the same

³ List 1 and List 2 documents are included in the Code of practice on the avoidance of unlawful racial discrimination at Annex C.

4. NEW PENALTIES

kind at specified intervals. These repeat checks are required to retain the statutory excuse and are likely to be no more than every 12 months. If employers do not carry out the follow-up checks, then they may be subject to a civil penalty if the employee is found to be working illegally. Employers served with a civil penalty will have the opportunity to object to the Home Secretary and appeal to the courts.

- 4.12 As compulsory biometric identity cards are phased in, we will phase out documents which we believe are especially vulnerable to forgery, so that, over time, identity checking becomes progressively more secure.

UNLAWFUL DISCRIMINATION IN RECRUITMENT PRACTICES

- 4.13 Section 23 of the 2006 Act specifically requires the Secretary of State to consult the Commission for Racial Equality (CRE),⁴ the Equality Commission for Northern Ireland and other appropriate bodies on the contents of a Code of practice to prevent unlawful discrimination in recruitment practices, whilst avoiding a liability for a civil penalty. A draft of the Code at Annex C has already been submitted to the CRE, the Equality Commission for Northern Ireland and a selection of employment representatives for comments, but we would like to consider any further representations before publishing the final version.

⁴ The Commission for Racial Equality (CRE) will be replaced by the Commission for Equality and Human Rights (CEHR) by 2009.

5. WHAT HAPPENS NEXT?

- 5.1 Much will depend on the outcome of this consultation. We will incorporate comments and suggestions into the Codes, where appropriate, and give consideration to any practical concerns raised. We would welcome the views of participants on all aspects of these Codes of practice.
- 5.2 Although under the new proposals employers will, in some instances, have to check and record certain documents more than once, we do not believe that this will increase the regulatory burden significantly on the majority of employers. Most people who apply for jobs will be those whose document(s) are able to establish an ongoing entitlement to work in the UK, for example, by showing a UK or appropriate EU passport. A Regulatory Impact Assessment, which examines the potential impact on employers and was published alongside the Bill which became the 2006 Act is available on the Border and Immigration Agency website: www.bia.homeoffice.gov.uk.
- 5.3 An Equality Impact Assessment (EIA) for these proposals has been included for consideration at Annex D.
- 5.4 We will aim to publish a report summarising the responses to this consultation on the Border and Immigration Agency website within six weeks of the closing date.

6. THE CONSULTATION EXERCISE

6.1 This consultation is being conducted in line with the Code of Practice on Consultation issued by the Cabinet Office.

The six consultation criteria are set out below:-

- Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy. (Less time may be approved in exceptional circumstances.)
- Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.
- Ensure that your consultation is clear, concise and widely accessible.
- Give feedback regarding the responses received and how the consultation process influenced the policy.
- Monitor your department's effectiveness at consultation, including the use of a designated consultation co-ordinator.
- Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.

The full code of practice is available at:
www.cabinet-office.gov.uk/regulation/Consultation

7. THE CONSULTATION CO-ORDINATOR

- 7.1 If you have any complaints or comments specifically about the consultation **process** only, you should contact the Home Office consultation co-ordinator Christopher Brain by email at:

christopher.brain2@homeoffice.gsi.gov.uk

Alternatively, you may wish to write to:

Christopher Brain
Consultation Co-ordinator,
Performance and Delivery Unit,
Home Office,
3rd Floor, Seacole,
2 Marsham Street,
London,
SW1P 4DF

APPENDIX 1: PROPOSED LIST OF PARTICIPANTS

Cabinet Office
Crown Prosecution Service
Department for Education and Skills
Department for the Environment, Food and Rural Affairs
Department for Work and Pensions
Department of Trade and Industry
Department of Health
Health and Safety Executive
HM Revenue and Customs
HM Treasury
Office of Government Commerce
Northern Ireland Office
Scotland Office
Scottish Parliament
Wales Office
Welsh Assembly

Advisory Board on Naturalisation and Integration
Amnesty International
Association of Colleges
British Red Cross
City of London Corporation
Commission for Racial Equality (England)
Commission for Racial Equality (Scotland)
Commission for Racial Equality (Wales)
Centre on Migration Policy and Society
Convention of Scottish Local Authorities
Employability Forum
Employment Lawyers Association
Equality Commission for Northern Ireland
Gangmasters' Licensing Authority
General Register Office
General Register Office for Scotland
General Register Office (Northern Ireland)
Greater London Authority
Home Affairs Committee
Immigration Advisory Service
Immigration Legal Practitioners' Association
Immigration Service Union
Institute for Public Policy Research
Institute of Payroll Professionals
Joint Council for the Welfare of Immigrants
Justice
Justices' Clerks' Society
LACORS
Law Centres Federation
Law Society
Law Society of Northern Ireland

Law Society of Scotland
Liberty
Local Government Association
London Councils
London Organising Committee of the Olympic Games
Magistrates' Association
Medical Foundation
Migrationwatch UK
National Association of Citizens' Advice Bureaux
National Institute of Adult Continuing Education (NIACE)
Northern Ireland Association of Citizens' Advice Bureaux
Northern Ireland Committee, Irish Congress of Trade Unions
Northern Ireland Local Government Association
Office of the Immigration Services Commissioner
Olympic Delivery Authority
Oxfam
Prospect
Public and Commercial Services Union
Refugee Action
Refugee Council
Refugee Legal Centre
Save the Children
Scottish Association of Citizens' Advice Bureaux
Scottish Association of Law Centres
Scottish Trades Union Congress
Trades Union Congress
Transport and General Workers' Union
UKCOSA (Council for International Education)
Union of Construction, Allied Trades and Technicians
Union of Shop, Distributive and Allied Workers
UNISON
Universities UK
Welsh Local Government Association

Alliance of Independent Retailers
Aldi
Amicus MSF
Asda
Asian Business Association
Association of Labour Providers
Association of Licensed Multiple Retailers
Bakers, Food and Allied Workers Union
Bechtel
Berkeley Scott PLC

APPENDIX 1: PROPOSED LIST OF PARTICIPANTS

British Apparel and Textile Confederation
British Beer and Pub Association
British Chambers of Commerce
British Hospitality Association
British Retail Consortium
British Telecom
British Woodworking Federation
BUPA Care Services
Business Services Association
Centrica
Chartered Management Institute
Chartered Institute of Personnel and Development
Christine Lee & Co.
Citigroup
Cleaning and Support Services Association
CMS Cameron McKenna
Commission for Social Care Inspection
Community
Confederation of British Industries
Construction Confederation
Construction Employers Federation (NI)
Construction Skills Certification Scheme
Co-operative Group
Country Land and Business Association
Energy & Utility Skills
Engineering Employers Federation
English Community Care Association
Ernst & Young
Ethical Trading Initiative
Ethnic Minority Business Forum
Ethnic Minorities Law Centre
Eversheds Plc
Farmfoods
Federation of Bakers
Federation of Master Builders
Federation of Small Businesses
Food and Drink Federation
Forum of Private Business
Forum of Private Business (Scotland)
Fresh Produce Consortium
GMB
Goldman Sachs
Honda Manufacturing
Horticultural Trades Association
House Builders Federation
IBM
Iceland
Indian Business Group
Institute of Directors
Institute of Hospitality
Jaeger
John Lewis Partnership
Kwik Save
Labour Relations Agency (NI)
'Legal Island' Solicitors (NI)
Lidl
Manpower UK Ltd
Marks and Spencer
Morrisons
Nasscom
National Association of Agricultural Contractors
National Car Parks
National Consumer Council
National Farmers' Union
National Federation of Roofing Contractors
National Market Traders Federation
National Specialist Contractors Council
Netto
NHS Employers
People 1st
Raymond Lamb Ltd
Recruitment and Employment Confederation
Royal College of Nursing
Royal Mail
Sainsbury's
Scottish Chambers of Commerce
Scottish Council for Development and Industry
Shell International
Small Business Council
Small Business Service
SMART Recruitment
Somerfield
Tesco Plc
Tribunals Service
UK Warehousing Association