

**EXPLANATORY MEMORANDUM TO**  
**THE IMMIGRATION (EMPLOYMENT OF ADULTS SUBJECT TO IMMIGRATION**  
**CONTROL)(MAXIMUM PENALTY) ORDER 2008**

**2008 No. 132**

**1.** This explanatory memorandum has been prepared by The Home Office and is laid before Parliament by Command of Her Majesty.

**2. Description**

2.1 This Order sets as ten thousand pounds (£10,000) the maximum penalty that the Secretary of State may prescribe by notice that an employer may be required to pay for employing an illegal migrant worker.

**3. Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 None

**4. Legislative Background**

4.1 Section 15 of the Immigration, Asylum and Nationality Act 2006 (“the Act”) allows the Secretary of State to serve an employer with a notice requiring the payment of a penalty of a specified amount where they have employed a person aged 16 or over who is subject to immigration control, unless that person has been given valid and subsisting leave to be in the United Kingdom by the Government and that leave does not restrict them from taking the job in question or the person comes into a category where the employment is also allowed.

4.2 Section 15(2) provides that the maximum penalty that may be levied shall be set by Order after a draft of the Order has been laid before and approved by resolution of each House of Parliament.

**5. Territorial Extent and Application**

5.1 This instrument applies to all of the United Kingdom.

**6. European Convention on Human Rights**

6.1 The Minister of State for Nationality, Citizenship and Immigration, Liam Byrne MP, has made the following statement regarding Human Rights:

In my view the provisions of the Immigration (Employment of Adults Subject to Immigration Control)(Maximum Penalty) Order 2007 are compatible with the Convention rights.

**7. Policy background**

7.1 The new system of civil penalties for employers who employ illegal migrant workers will provide a swift and effective means of tackling employers who are less than diligent in carrying out specified document checks before and, for their migrant workforce, after the point of recruitment. The system of civil penalties is designed to encourage employers to comply with their legal obligations, without criminalising those who slip up in operating their recruitment and employment practices. Employers will be excused from payment of the penalty if they undertake specified document checks at the point of recruitment and repeat the checks at least once every twelve months for those employees with limited leave to enter or remain in the United Kingdom. The introduction of mandatory Biometric Immigration Documents for non EEA nationals in the UK Borders Act 2007 will provide the opportunity in due course to improve the security and simplify the range of documents to be checked.

7.2 A public consultation on the illegal working provisions contained in the Act ran from 15 May until 7 August 2007. Of the replies received, forty six percent of those who answered the relevant question indicated that the right maximum penalty for an employer who conducts no document checks and is repeatedly found to be employing illegal migrant workers was £10,000 per illegal worker. This was the most popular response to this question.

7.3 Section 19 of the Act provides for a Code of Practice to specify the factors to be considered by the Secretary of State in determining the amount of the penalty to be imposed on the employer. This includes whether any previous penalty notices have been issued on the employers in the preceding two years, whether follow up checks have been undertaken by the employer, if required, and whether the employer reported his suspicions of immigration abuse, or co-operated with the Border and Immigration Agency. A draft of this code will be laid before Parliament and is subject to the negative resolution procedure.

7.4 The illegal working provisions form part of a balanced package of measures to prevent illegal migrant working in the UK, incorporating additional support for law abiding employers through verification services, the points based scheme and identity cards for foreign nationals. The new system needs to reflect a proportionate approach to non-compliance, whilst providing a sufficient deterrent effect so that employers won't want to risk their profits and reputation by using slipshod employment practices and employing illegal migrant workers.

## **8. Impact**

8.1 A Regulatory Impact Assessment was prepared for the Act and was published on 22 June 2005. This estimated that the cost to employers of familiarising themselves with new guidance would be approximately £27.2 million, with the projected cost to business of a continuing obligation in the fifth year after its introduction being approximately £1.3 million.

## **9. Contact**

9.1 The Illegal Working Unit (Tel: 020 8760 2955 or e-mail: [iwu@homeoffice.gsi.gov.uk](mailto:iwu@homeoffice.gsi.gov.uk)) can answer any queries regarding the statutory instrument.