

Preventing illegal working

This guidance is based on the Immigration Acts

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About this guidance

About this guidance Powers of a Home Office officer A2 nationals Croatian nationals Definition of employer Pre-visit actions Actions during an illegal working operation Asylum seekers and failed asylum seekers Post-visit actions Relevant regulations Contact from employers	<p>This guidance is for all staff involved in operations to detect illegal workers.</p> <p>To make sure the actions taken when conducting illegal working operations are correct and legal you must be familiar with:</p> <ul style="list-style-type: none">the relevant legislation (see related links):<ul style="list-style-type: none">Section 8 – Asylum and Immigration Act 1996Section 6 – Asylum and Immigration Act 2004Accession Regulations 2006Immigration Order 2004Immigration Order 2007Section 15 to 26 – Immigration, Asylum and Nationality Act 2006,Accession of Croatia (Immigration and Worker Authorisation) Regulations 2013, andthe powers of an immigration officer (some of these powers are also used by police officers, and the Secretary of State) relating to operations on business premises. See link on left: Powers of a Home Office officer. <p>This guidance does not replace the Immigration Acts. You must read the relevant sections together with this guidance.</p> <p>All references to illegal worker (with the exception of Bulgarian, Romanian and Croatian nationals) refer to a person who:</p> <ul style="list-style-type: none">is subject to immigration control, aged over 16, andwhose conditions of stay do not allow them to work or to carry out the type of work in question, including those whose conditions have expired. <p>Changes to this guidance – This page tells you what has changed since previous versions of this guidance.</p>	<p>In this section</p> <p>Changes to this guidance</p> <p>Contacts</p> <p>Information owner</p> <p>Links to staff intranet removed</p>
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	<p>Contact – This page tells you who to contact for help if your senior caseworker or line manager can't answer your question.</p> <p>Information owner – This page tells you about this version of the guidance and who owns it</p> <p>Safeguard and promote child welfare – This page explains your duty to safeguard and promote the welfare of children and tells you where to find more information.</p>	
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Changes to this guidance

About this guidance Powers of a Home Office officer A2 nationals Croatian nationals Definition of employer Pre-visit actions Actions during an illegal working operation Asylum seekers and failed asylum seekers Post-visit actions Relevant regulations Contact from employers	<p>This page tells you what changes have been made to the preventing illegal working guidance.</p> <table><tr><th>Date of the change</th><th>Details of the change</th></tr><tr><td>1 July 2013</td><td><p>Change request:</p><ul style="list-style-type: none">• Croatian nationals:<ul style="list-style-type: none">○ new section• Croatian nationals employment restrictions:<ul style="list-style-type: none">○ new page• What is a Croatian minor?:<ul style="list-style-type: none">○ new page• Definition of employer:<ul style="list-style-type: none">○ page revised to take account of the Accession of Croatia regulations 2013• Repeat visits:<ul style="list-style-type: none">○ new sixth paragraph• Powers of entry:<ul style="list-style-type: none">○ new fifth and sixth paragraphs, and additional related links• Serving notice of potential liability (NOPL):<ul style="list-style-type: none">○ second paragraph, second sentence, inserted at end, ‘in all cases where a potential offence has been committed under section 15 of the 2006 act or regulation 11 of the Accession of Croatia regulations 2013.’○ third paragraph, first bullet point, added ‘with the referral pack’</td></tr></table>	Date of the change	Details of the change	1 July 2013	<p>Change request:</p> <ul style="list-style-type: none">• Croatian nationals:<ul style="list-style-type: none">○ new section• Croatian nationals employment restrictions:<ul style="list-style-type: none">○ new page• What is a Croatian minor?:<ul style="list-style-type: none">○ new page• Definition of employer:<ul style="list-style-type: none">○ page revised to take account of the Accession of Croatia regulations 2013• Repeat visits:<ul style="list-style-type: none">○ new sixth paragraph• Powers of entry:<ul style="list-style-type: none">○ new fifth and sixth paragraphs, and additional related links• Serving notice of potential liability (NOPL):<ul style="list-style-type: none">○ second paragraph, second sentence, inserted at end, ‘in all cases where a potential offence has been committed under section 15 of the 2006 act or regulation 11 of the Accession of Croatia regulations 2013.’○ third paragraph, first bullet point, added ‘with the referral pack’	<p>Related links</p> <p>Croatian nationals</p> <p>Croatian nationals employment restrictions</p> <p>What is a Croatian minor?</p> <p>Definition of employer</p> <p>Repeat visits</p> <p>Powers of entry</p> <p>Serving notice of potential liability (NOPL)</p> <p>Issuing a fixed penalty notice</p> <p>Questioning the employee</p> <p>Questioning the employer</p> <p>Seizure of evidence</p>
Date of the change	Details of the change					
1 July 2013	<p>Change request:</p> <ul style="list-style-type: none">• Croatian nationals:<ul style="list-style-type: none">○ new section• Croatian nationals employment restrictions:<ul style="list-style-type: none">○ new page• What is a Croatian minor?:<ul style="list-style-type: none">○ new page• Definition of employer:<ul style="list-style-type: none">○ page revised to take account of the Accession of Croatia regulations 2013• Repeat visits:<ul style="list-style-type: none">○ new sixth paragraph• Powers of entry:<ul style="list-style-type: none">○ new fifth and sixth paragraphs, and additional related links• Serving notice of potential liability (NOPL):<ul style="list-style-type: none">○ second paragraph, second sentence, inserted at end, ‘in all cases where a potential offence has been committed under section 15 of the 2006 act or regulation 11 of the Accession of Croatia regulations 2013.’○ third paragraph, first bullet point, added ‘with the referral pack’					

		<ul style="list-style-type: none"> • Issuing a fixed penalty notice: <ul style="list-style-type: none"> ○ changed reference to 'A2 nationals' to 'A2 and Croatian nationals' • Questioning the employee: <ul style="list-style-type: none"> ○ second paragraph, added reference to the Accession of Croatia regulations 2013 ○ sub-heading 'The Zhou judgement', replaced text with reference and a link to chapter 50.7 of the enforcement instructions and guidance (EIG) • Questioning the employer: <ul style="list-style-type: none"> ○ third paragraph, new second bullet point, referring to the Accession of Croatia regulations 2013 • Seizure of evidence: <ul style="list-style-type: none"> ○ first paragraph, added to end 'where a criminal offence may have been committed.' • What the courts require: <ul style="list-style-type: none"> ○ new sub-heading 'Civil penalty cases' ○ existing text placed under new sub-heading 'Prosecution cases' • Recording information: <ul style="list-style-type: none"> ○ sub-heading 'Recording information – NOD', fourth bullet point deleted ○ sub-heading 'Recording A2 information – CID' changed to 'Recording A2 and Croatian national information – CID' • Written debrief: <ul style="list-style-type: none"> ○ third paragraph, changed 'criminal investigation team (CIT)' to 'criminal and financial investigation team (CFI)' 		What the courts require Recording information Written debrief Referring illegal working cases Checklist for referrals sent to the civil penalty compliance team (CPCT) Relevant regulations – European Union (EU) See also Contact Information owner Links to staff intranet removed
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		<ul style="list-style-type: none"> Referring illegal working cases: <ul style="list-style-type: none"> second paragraph, first sentence, changed criminal investigation team (CIT) to 'criminal and financial investigation team (CFI)', and changed 'seven calendar days of the issue of the notice of potential liability' to 'fourteen (14) calendar days..' table has new seventh, eighth and ninth rows Checklist for referrals sent to the civil penalty compliance team (CPCT): <ul style="list-style-type: none"> second paragraph, third bullet point, added 'who are actively or directly involved, in the illegal working operation or visit' second paragraph, new seventh bullet point Relevant regulations – European Union (EU): <ul style="list-style-type: none"> removed first row of table and added new second row. 	
	19 June 2013	<p>Six month review by the modernised guidance team:</p> <ul style="list-style-type: none"> Minor housekeeping changes only. 	
		For previous changes you will need to access the archived guidance. See related link: Illegal working – archive .	

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Powers of a Home Office officer

About this guidance Powers of a Home Office officer A2 nationals Croatian nationals Definition of employer Pre-visit actions Actions during an illegal working operation Asylum seekers and failed asylum seekers Post-visit actions Relevant regulations Contact from employers	<p>This page tells you where to find guidance and information about the powers available when you carry out illegal working operations.</p> <p>The powers of a Home Office officer are in the Immigration Act 1971 and the Immigration and Asylum Act 1999. For more information see related links.</p> <p>Those relevant to immigration officers carrying out illegal working operations are the powers:</p> <ul style="list-style-type: none">• to detain• to set reporting conditions• to arrest a person liable to detention• to enter and search premises or search a detained person• of arrest, entry or search• to fingerprint• relating to facilitation and harbouring. <p>Further information can be found in the relevant chapters of the enforcement instructions and guidance as follows:</p> <ul style="list-style-type: none">• powers to detain – Chapter 16: powers• power to arrest a person liable to detention – Chapter 16: powers• power to enter and search premises or search a detained person – Chapter 16: powers• powers of arrest, entry or search – Chapter 16: powers• power to set reporting conditions – Chapter 55.20: detention and temporary release• powers to fingerprint – Chapter 24: fingerprinting• powers relating to facilitation and harbouring – Chapter 16.5: assisting unlawful immigration. <p>For more information see related links.</p>	Links to staff intranet removed
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A2 nationals

About this guidance Powers of a Home Office officer A2 nationals Croatian nationals Definition of employer Pre-visit actions Actions during an illegal working operation Asylum seekers and failed asylum seekers Post-visit actions Relevant regulations Contact from employers	<p>This section tells you about A2 nationals and their current employment restrictions.</p> <p>For more information on the regulations relating to A2 nationals see link on the left 'Relevant regulations'.</p>	<p>In this section</p> <p>A2 nationals employment restrictions</p> <p>What is an A2 minor?</p>
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A2 national's employment restrictions

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What is an A2 minor?

About this guidance Powers of a Home Office officer A2 nationals Croatian nationals Definition of employer Pre-visit actions Actions during an illegal working operation Asylum seekers and failed asylum seekers Post-visit actions Relevant regulations Contact from employers	<p>This page tells all staff involved in operations to detect illegal workers what an A2 minor is and the action to take if they are found working in the UK.</p> <p>Fixed penalty notices (FPNs) must not be served on anyone under 16 years old. Under child employment laws, if A2 nationals under 16 are found working, you must refer their employment to social services. An arrest using immigration powers is inappropriate.</p> <p>16 to 17 year olds can be served with FPNs. Safeguarding under 18s is always an issue when deciding whether to take action or not. The juvenile court need to be assured the process is followed correctly.</p> <p>You must carefully consider your statutory duty to children, under section 55 of the Borders, Citizenship and Immigration Act 2009, before you apply the instructions in this guidance either to children or people with children.</p> <p>For more information on section 55 see related link: Safeguard and promote child welfare.</p>	<p>In this section</p> <p>A2 nationals</p> <p>A2 nationals employment restrictions</p> <p>Related links</p> <p>Relevant regulations</p> <p>Links to staff intranet removed</p>
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Croatian nationals

About this guidance Powers of a Home Office officer A2 nationals Croatian nationals Definition of employer Pre-visit actions Actions during an illegal working operation Asylum seekers and failed asylum seekers Post-visit actions Relevant regulations Contact from employers	<p>This section tells you about Croatian nationals and their employment restrictions from 1 July 2013.</p> <p>For more information on the regulations relating to Croatian nationals see link on the left 'Relevant regulations'.</p>	<p>In this section</p> <p>Croatian nationals employment restrictions</p> <p>What is a Croatian minor?</p>
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Croatian nationals employment restrictions

About this guidance Powers of a Home Office officer A2 nationals Croatian nationals Definition of employer Pre-visit actions Actions during an illegal working operation Asylum seekers and failed asylum seekers Post-visit actions Relevant regulations Contact from employers	<p>This page tells all staff involved in operations to detect illegal workers what a Croatian national's employment restrictions are.</p> <p>On 1 July 2013 the Republic of Croatia joined the European Union (EU). From this date, as European Economic Area (EEA) nationals, Croatians will be able to exercise their Treaty rights to enter and reside freely within the UK.</p> <p>However, the Government has applied transitional restrictions on the access of Croatian nationals to the UK labour market. This means that a Croatian national will only be able to work in UK if they hold a valid accession worker authorisation document or if they are exempt from work authorisation.</p> <p>An accession worker authorisation document will normally take the form of a worker authorisation registration certificate or purple registration certificate which the Croatian national must apply for. This document will contain an endorsement restricting the holder's employment to a particular employer and category of employment.</p> <p>Where a Croatian national is in the UK exercising Treaty rights as a self sufficient person or self employed person, they will not need to be issued any documentation to do this, but can apply for a yellow registration certificate if they wish.</p> <p>Where a Croatian national is in the UK exercising Treaty rights as a student, they will need to get a yellow registration certificate if they want to work while they study. The yellow registration certificate must be obtained before they start work and will allow employment up to 20 hours during term time and full time during vacation periods.</p> <p>See related link: Guidance for employers on preventing illegal working: Croatian nationals, for further information on who needs a worker authorisation document and who is exempt from the requirement.</p>	<p>In this section</p> <p>Croatian nationals</p> <p>What is a Croatian minor?</p> <p>Links to staff intranet removed</p>
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What is a Croatian minor?

About this guidance Powers of a Home Office officer A2 nationals Croatian nationals Definition of employer Pre-visit actions Actions during an illegal working operation Asylum seekers and failed asylum seekers Post-visit actions Relevant regulations Contact from employers	<p>This page tells all staff involved in operations to detect illegal workers what a Croatian minor is and the action to take if they are found working in the UK.</p> <p>You must not serve fixed penalty notices (FPNs) on anyone under 16 years old. Under child employment laws, if Croatians nationals under 16 are found working, you must refer their employment to social services. An arrest using immigration powers is inappropriate.</p> <p>16 to 17 year olds can be served with FPNs. Safeguarding under 18s is always an issue when deciding whether to take action or not. The juvenile court need to be assured the process is followed correctly.</p> <p>You must carefully consider your statutory duty to children, under section 55 of the Borders, Citizenship and Immigration Act 2009, before you apply the instructions in this guidance either to children or people with children.</p> <p>For more information on section 55 see related link: Safeguard and promote child welfare.</p>	<p>In this section</p> <p>Croatian nationals</p> <p>Croatian nationals employment restrictions</p> <p>Related links</p> <p>Relevant regulations</p> <p>Links to staff intranet removed</p>
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Definition of employer

About this guidance Powers of a Home Office officer A2 nationals Croatian nationals Definition of employer Pre-visit actions Actions during an illegal working operation Asylum seekers and failed asylum seekers Post-visit actions Relevant regulations Contact from employers	<p>This page tells all staff involved in operations to detect illegal workers what the definitions of employers are and what is expected from them.</p> <p>This is under both the Immigration Asylum and National Act 2006 (the 2006 Act) and the Accession of Croatia Regulations 2013 (the 2013 Regulations).</p> <p>Under the 2006 Act an employer is someone who engages another person in a contract of employment. This is defined as:</p> <ul style="list-style-type: none">• a contract of service, or• an apprenticeship. <p>The contract of employment can be expressed orally, in writing or implied.</p> <p>Under the 2006 act an employer is not liable for:</p> <ul style="list-style-type: none">• the employees of a contractor• a self employed person or freelancer• workers from an employment agency who continue to be employees of that agency. <p>Under the 2013 regulations an employer is someone who directly pays the wage or salary of a worker.</p> <p>Employers may offer a wage, a one off payment, accommodation or food, or a combination of these, in exchange for the worker's labour.</p> <p>During an illegal working operation you need to gather evidence to show who the employer is. Some of the tasks that can assist you are:</p>	Links to staff intranet removed
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	<ul style="list-style-type: none">• questioning the employees• checking for contracts of employment• checking for wage or payment slips, and• checking the insurance certificate for the premises. <p>Employers must carry out certain document checks to make sure a potential employee has the correct permission to work before employing them. For more information about the documents an employer is required to check, see related links:</p> <ul style="list-style-type: none">• Full guidance for employers• Guidance for employers on preventing illegal working: Croatian nationals.	
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Pre-visit actions

About this guidance Powers of a Home Office officer A2 nationals Croatian nationals Definition of employer Pre-visit actions Actions during an illegal working operation Asylum seekers and failed asylum seekers Post-visit actions Relevant regulations Contact from employers	<p>This section explains the actions to carry out before conducting an illegal working operation.</p> <p>If illegal working is suspected, you must:</p> <ul style="list-style-type: none">• Check if the business concerned was visited within the last three years. The process is different for repeat visits.• Identify the owner of the business and establish if the employer is someone different, and consider your powers of entry in to the business premises.• Identify if the employer is a licensed sponsor and check their current status with the sponsor management unit. <p>For further information on pre-visit actions see related links:</p> <ul style="list-style-type: none">• Repeat visits• Intelligence unit actions• Powers of entry.	<p>In this section</p> <p>Repeat visits</p> <p>Intelligence unit actions</p> <p>Powers of entry</p>
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Repeat visits

About this guidance Powers of a Home Office officer A2 nationals Croatian nationals Definition of employer Pre-visit actions Actions during an illegal working operation Asylum seekers and failed asylum seekers Post-visit actions Relevant regulations Contact from employers	<p>This page explains what actions to take before carrying out a repeat illegal working visit on business premises.</p> <p>If illegal working is suspected, you must check if the business concerned has been visited within the last three years.</p> <p>To establish if a business premises has been visited before, you must use the national operations database (NOD). For more information see related link: National operations database (nodMMX).</p> <p>If you identify a previous visit you must contact the civil penalty compliance team (CPCT). They will tell you the status of the first visit, which will help you decide whether to carry out a repeat visit.</p> <p>For contact details for the CPCT, see related link: Email Home Office civil penalty compliance team.</p> <p>Repeat visits to employers previously served with a notice of potential liability (NOPL) must be referred to the local crime team or crime trained member of an enforcement team to consider criminal action against the employer. If the crime team or crime trained member of enforcement team reject the criminal option then enforcement and NOPL activity must proceed as normal.</p> <p>If proceeding as normal, the referral pack sent to the CPCT must highlight a previous visit was made. This makes sure full consideration is given when the penalty is set.</p> <p>For more information on referral packs and how to send them, see related link: Checklist for referrals sent to the civil penalty compliance team (CPCT).</p> <p>For further guidance on actions to take before conducting an illegal working operation see</p>	<p>In this section</p> <p>Pre-visit actions</p> <p>Intelligence unit actions</p> <p>Powers of entry</p> <p>Links to staff intranet removed</p>
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	<p>related links:</p> <ul style="list-style-type: none">• Intelligence unit actions• Powers of entry.	
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Intelligence unit actions

About this guidance Powers of a Home Office officer A2 nationals Croatian nationals Definition of employer Pre-visit actions Actions during an illegal working operation Asylum seekers and failed asylum seekers Post-visit actions Relevant regulations Contact from employers	<p>This page tells you the actions the regional intelligence units must take before conducting an illegal working operation.</p> <p>Before an operation you must identify the owner of the business and establish if the employer is someone different.</p> <p>If you do not know who the employer is, the details of the owner of the business must be entered in to the employer field on the National operations database (NOD). The correct employer information can be added after the operation.</p> <p>The employer will be the owner of the business unless they have delegated responsibility for employment to another party. For example, the manager.</p> <p>Sources that can assist you in identifying the owner or employer of a business are:</p> <ul style="list-style-type: none">• Fire service records – fire safety legislation.• Companies House checks.• HM Revenue and Customs (HMRC) – who is registered for paying value added tax (VAT) or national insurance (NI)?• Who is registered for paying business rates?• Food safety or Trading Standards records.• 192.com – online directory enquiries where business searches can be conducted.• Local licensing authorities - all licensing authorities keep a register containing a record of, for example, personal, premises, vendor, taxi licences. Contact the local authority for advice.• Land Registry – identifying owner of land / premises; who do they rent to? <p>For more information about employers see link on the left: Definition of employer</p>	<p>In this section</p> <p>Pre-visit actions</p> <p>Repeat visits</p> <p>Powers of entry</p> <p>Links to staff intranet removed</p>
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Powers of entry

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Actions during an illegal working operation

About this guidance Powers of a Home Office officer A2 nationals Croatian nationals Definition of employer Pre-visit actions Actions during an illegal working operation Asylum seekers and failed asylum seekers Post-visit actions Relevant regulations Contact from employers	<p>This section tells you the actions to carry out during an illegal working operation.</p> <p>The Home Office cannot force employers to terminate the contracts of illegal workers.</p> <p>Illegal workers cannot be arrested if they have previous Home Office enforcement action, documentation or removal issues. You must advise the employer they will be prosecuted if following another visit, that worker is still employed.</p> <p>See related links for further guidance on:</p> <ul style="list-style-type: none">• serving a notice of potential liability (NOPL)• issuing a fixed penalty notice• recording evidence• making notes• questioning the employee• questioning the employer• seizure of evidence• what the courts require• refugee status and humanitarian protection• interpreters.	<p>In this section</p> <p>Serving notice of potential liability (NOPL) Issuing a fixed penalty notice Recording evidence Making notes Interpreters - how to use them on an illegal working visit Questioning the employee Questioning the employer Seizure of evidence What the courts require Refugee status and humanitarian protection</p>
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Serving notice of potential liability (NOPL)

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Issuing a fixed penalty notice

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Recording evidence

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Making notes

About this guidance Powers of a Home Office officer A2 nationals Croatian nationals Definition of employer Pre-visit actions Actions during an illegal working operation Asylum seekers and failed asylum seekers Post-visit actions Relevant regulations Contact from employers	<p>This page tells you the notes you must take during an illegal working operation.</p> <p>Witness statements must contain references to documents or interviews. These must be labelled as 'exhibits' (or 'productions' if in Scotland). All statements must describe the observations of the Home Office officer or police officer writing it.</p> <p>The main things to note in the witness statements are:</p> <ul style="list-style-type: none">• Time and date of the visit• Names of colleagues present• Questions asked of the employer and employee• Where the employee was encountered and what they were wearing• The activities of the employee• Who the owner of the business is (not the owner of the premises)• Any documentation that has been seen that clearly details the employer. For example, licensing agreements, health and safety certificates• The status of the company. For example, sole trader, limited company. <p>If an employee states they are 'helping out' you must conduct further questioning to establish if they were 'helping out' in exchange for food and/or accommodation.</p> <p>The Premise Search Book (PSB) must be completed for all illegal working operations by the member of staff designated as the PSB officer.</p> <p>All other staff on the operation must record their notes at the scene in an issued pocket notebook (PNB) – these are individual to the Home Office member of staff. They must be used to record your activities during operations and to assist in completing the witness statements later.</p> <p>The primary evidence of illegal working is found in these notes.</p>	<p>In this section</p> <p>Actions during an illegal working operation Serving notice of potential liability (NOPL) Issuing a fixed penalty notice Recording evidence Interpreters - how to use them on an illegal working visit Questioning the employee Questioning the employer Seizure of evidence What the courts require Refugee status and humanitarian protection</p>
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Preventing illegal working

Interpreters – how to use them on an illegal working visit

About this guidance Powers of a Home Office officer A2 nationals Croatian nationals Definition of employer Pre-visit actions Actions during an illegal working operation Asylum seekers and failed asylum seekers Post-visit actions Relevant regulations Contact from employers	<p>This page tells you how to use interpreters on an illegal working visit.</p> <p>Chapter 39 of the enforcement instructions and guidance tells you how to use interpreters on an illegal working visit, see related link: 39 Interpreters – used in operational enforcement activity .</p> <p>If there is doubt about a person’s ability to understand English, you must use an interpreter, recognised by the Home Office, to carry out the interview. This means either:</p> <ul style="list-style-type: none">• a colleague accredited by the Home Office in that language• an official interpreting service, for example, Big Word, or• an interpreter from the national database of casual interpreters maintained by the central interpreters unit (CIU). <p>If you use a colleague to interpret, you must make it clear in witness statements they hold the appropriate Home Office language accreditation, so the civil penalty compliance team (CPCT) can evidence correct procedures are followed. CPCT cannot rely on evidence gathered during ‘unofficial’ interpreting.</p> <p>Evidence obtained using unofficial interpreters, for example an unaccredited colleague or another worker, must not be relied on when considering if someone is liable for a civil penalty.</p>	<p>In this section</p> <p>Actions during an illegal working operation Serving notice of potential liability (NOPL) Issuing a fixed penalty notice Recording evidence Making notes Questioning the employee Questioning the employer Seizure of evidence What the courts require Refugee status and humanitarian protection</p> <p>Links to staff intranet removed</p>
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Preventing illegal working

Questioning the employee

<p>About this guidance</p> <p>Powers of a Home Office officer</p> <p>A2 nationals</p> <p>Croatian nationals</p> <p>Definition of employer</p> <p>Pre-visit actions</p> <p>Actions during an illegal working operation</p> <p>Asylum seekers and failed asylum seekers</p> <p>Post-visit actions</p> <p>Relevant regulations</p> <p>Contact from employers</p>	<p>This page lists the questions you must ask the employee during an illegal working visit.</p> <p>You can ask questions relating to possible service of a notice of potential liability (NOPL) under section 15 of the Immigration, Asylum and Nationality (IAN) Act 2006 or regulation 11 of the Accession of Croatia regulations 2013 as part of an interview under the Police and Criminal Evidence Act (PACE), if the employee is arrested for an immigration offence using a criminal power of arrest.</p> <p>When illegal working is identified, every effort must be made to make sure sufficient information and evidence about the employee is collected.</p> <p>The information needed from the employee is:</p> <ul style="list-style-type: none"> • Their employer's details. • The duties they carry out. • What they receive in return for carrying out those duties? This could be money or payment in kind, such as food or accommodation. • The details of the person who pays them. • The hours and days of the week they work. • The date they started work and any documents they have to confirm the start date. • What documentation they provided to the employer, if any, to show they were eligible to work before they were employed? <p>You must also record the following observations in the notes:</p> <ul style="list-style-type: none"> • Where they were found in the premises visited? • What they were doing for example, were they involved in a work activity? • What they were wearing for example, were they wearing work clothes? <p>Students</p>	<p>In this section</p> <p>Actions during an illegal working operation</p> <p>Serving notice of potential liability (NOPL)</p> <p>Issuing a fixed penalty notice</p> <p>Recording evidence</p> <p>Making notes</p> <p>Interpreters - how to use them on an illegal working visit</p> <p>Questioning the employer</p> <p>Seizure of evidence</p> <p>What the courts require</p> <p>Refugee status and humanitarian protection</p>
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	<p>If the employee is a student you also need to establish:</p> <ul style="list-style-type: none"> • where they attend their studies • what they are studying, and • if they are in term time or vacation time as this will affect the civil penalty issued. <p>You must contact the place of study and get verification from them of the term dates for the course that the worker is attending.</p> <p>Applications for leave as a student made before 3 March 2010 If an application for leave as a student was made before 3 March 2010 the student can work for no more than 20 hours in term time regardless of the level of course.</p> <p>Applications for leave as a student made after 3 March 2010 After 3 March 2010 the hours they can work depends on the level of the course:</p> <ul style="list-style-type: none"> • Students at degree level or above can work for no more than 20 hours each week in term time. • Students below degree level can work for no more than 10 hours each week in term time. <p>They can all work full time in vacation time. If their place of study has closed down they have 60 days to find a new college or course. This time is classed as vacation time, during which they can work full time. After 60 days, if the student has not notified temporary migration of the new college or course, temporary migration must curtail the student's outstanding leave.</p> <p>The Zhou judgement</p> <p>Full and current guidance on the Zhou judgment can be found in chapter 50.7 of the enforcement instructions and guidance (EIG), see related link: 50 Persons liable to administrative removal under section 10.</p>	<p>Links to staff intranet removed</p>
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	For more information about students, see related link: Studying in the UK .	
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Preventing illegal working

Questioning the employer

About this guidance Powers of a Home Office officer A2 nationals Croatian nationals Definition of employer Pre-visit actions Actions during an illegal working operation Asylum seekers and failed asylum seekers Post-visit actions Relevant regulations Contact from employers	<p>This page lists the questions you must ask the employer during an illegal working visit.</p> <p>When illegal working is identified, you must make every effort to make sure sufficient information and evidence about the employer is collected.</p> <p>If you suspect, during questioning, criminal offences under:</p> <ul style="list-style-type: none">• section 21 of the Immigration, Asylum and Nationality (IAN) Act 2006 (knowingly employing illegal workers)• regulations 16 or 17 of the Accession of Croatia (Immigration and Worker Authorisation) Regulations 2013• section 25 of the Immigration Act 1971 (facilitation), or• section 57 to section 59 of the Sexual Offences Act 2003 (trafficking) <p>have taken place you must stop questioning immediately and discuss the case with a member of a Home Office crime team.</p> <p>The information needed from an employer or the person of highest responsibility present (this could be the suspected illegal worker) is:</p> <ul style="list-style-type: none">• The employer's details including whether the employer is:<ul style="list-style-type: none">○ a sole trader○ limited company○ partnership○ franchise, or○ another entity.• What duties the suspected illegal worker carries out?• What they receive in return for carrying out those duties? For example, money or payment in kind, such as food or accommodation.• The hours and days of the week they work.	<p>In this section</p> <p>Actions during an illegal working operation</p> <p>Serving notice of potential liability (NOPL)</p> <p>Issuing a fixed penalty notice</p> <p>Recording evidence</p> <p>Making notes</p> <p>Interpreters - how to use them on an illegal working visit</p> <p>Questioning the employee</p> <p>Seizure of evidence</p> <p>What the courts require</p> <p>Refugee status and humanitarian protection</p>
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	<ul style="list-style-type: none">• The date they started work and any documents they have to confirm the start date.• What documentation they gave the employer, if any, to show they were eligible to work?<ul style="list-style-type: none">○ were the documents copied by the employer and on what date○ if copies of these documents are provided they must be retained. <p>The information must be included in the referral pack sent to the civil penalty compliance team (CPCT) by recorded delivery.</p>	Links to staff intranet removed
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Preventing illegal working

Seizure of evidence

About this guidance Powers of a Home Office officer A2 nationals Croatian nationals Definition of employer Pre-visit actions Actions during an illegal working operation Asylum seekers and failed asylum seekers Post-visit actions Relevant regulations Contact from employers	<p>This page tells you about the seizure of evidence from illegal working operations where a criminal offence may have been committed.</p> <p>Material considered of substantial value to the criminal investigation can be seized under powers of an immigration and police officer under Section 28FA (3) of the Immigration Act 1971.</p> <p>Section 29 (1) of the Data Protection Act 1998 explains how some records are exempt from disclosure and the requirement for data to be processed fairly and lawfully. The employer and / or the Home Office are not obliged to tell the illegal worker their records or data have been seized.</p> <p>Any personal data seized is protected under the Data Protection Act but may be shared with:</p> <ul style="list-style-type: none">• the police• other government departments, and• local authorities. <p>The employer is allowed to photocopy any documents being removed from the site. You can share these documents with other parts of the Home Office if they have an interest in the illegal worker, the documents or the business.</p> <p>Once investigations are complete, the original documents are no longer required. There is no timescale for returning these documents as the prosecution team will need to use some of them as evidence.</p> <p>Evidence that is useful includes:</p> <ul style="list-style-type: none">• personal details of those working without permission	<p>In this section</p> <p>Actions during an illegal working operation</p> <p>Serving notice of potential liability (NOPL)</p> <p>Issuing a fixed penalty notice</p> <p>Recording evidence</p> <p>Making notes</p> <p>Interpreters - how to use them on an illegal working visit</p> <p>Questioning the employee</p> <p>Questioning the employer</p> <p>What the courts require</p> <p>Refugee status and humanitarian protection</p>
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	<ul style="list-style-type: none">• dates of employment• photographs taken at the scene• notes taken at the time of visit, and• closed circuit television (CCTV) footage – this can be seized where there are reasonable grounds to believe that a criminal offence has been captured on the CCTV camera footage.	Links to staff intranet removed
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Preventing illegal working

What the courts require

About this guidance Powers of a Home Office officer A2 nationals Croatian nationals Definition of employer Pre-visit actions Actions during an illegal working operation Asylum seekers and failed asylum seekers Post-visit actions Relevant regulations Contact from employers	<p>This page tells you the information needed by a court when deciding the nature of an employment relationship following prosecution for illegal working.</p> <p>This is in a case appealing liability for a civil penalty.</p> <p>Civil penalty cases In civil penalty cases the three conditions judges look for, in line with Ready Mixed Concrete v Ministry of Pensions are:</p> <ul style="list-style-type: none">• Remuneration - a wage or other method of payment given for work carried out by the employee.• Control – the worker is subject to control by the employer in that the employer for example:<ul style="list-style-type: none">○ recruits○ is responsible for providing work for their employees○ decides what work their employee is going to do and how it will be done.• Obligation – mutuality of obligation. Both parties, the employer and the employee, have contractual obligations to each other. For example:<ul style="list-style-type: none">○ the worker performs work as directed by the employer and they have a job scope and/or a job description○ the contract sets out the hours, days and dates the employee will work, and○ the employer pays the employee for the work. <p>Prosecution cases The following tests are applied by the courts:</p> <ul style="list-style-type: none">• The control test - does the alleged employer have the right to control not just what the worker does, but the way in which they do it.• The organisational test - is the worker an integral part of the alleged employer's organisation.	<p>In this section</p> <p>Actions during an illegal working operation</p> <p>Serving notice of potential liability (NOPL)</p> <p>Issuing a fixed penalty notice</p> <p>Recording evidence</p> <p>Making notes</p> <p>Interpreters - how to use them on an illegal working visit</p> <p>Questioning the employee</p> <p>Questioning the employer</p> <p>Seizure of evidence</p> <p>Refugee status and humanitarian protection</p>
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	<ul style="list-style-type: none"> • The economic reality test - who bears the risk of loss and the chance of profit? If it is the worker, then they are probably not an employee, but rather an independent contractor. If the worker is working for several different people at the same time, this would suggest they have their own business and are self-employed. <p>The courts also consider:</p> <ul style="list-style-type: none"> • Method of payment • Method of selection and termination of the relationship • The extent to which the worker can choose their hours and method of work • Whether they can delegate • Whether pay as you earn (PAYE) and national insurance (NI) contributions are deducted from any payment • How the parties themselves see the relationship, and • The extent to which the parties expect to be called upon to work and to provide work. A loose arrangement where work is provided and done when necessary, suggests self-employment. But a genuine expectation of work being provided consistently indicates employment. <p>You must consider these tests when undertaking an illegal working operation, and search for evidence to support them.</p> <p>You must consider taking action against the employer if, when the tests are applied:</p> <ul style="list-style-type: none"> • there is sufficient evidence to support the 'employer-employee' relationship, and • it appears the employer has not established a defence. 	
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Preventing illegal working

Refugee status and humanitarian protection

About this guidance Powers of a Home Office officer A2 nationals Croatian nationals Definition of employer Pre-visit actions Actions during an illegal working operation Asylum seekers and failed asylum seekers Post-visit actions Relevant regulations Contact from employers	<p>This page is for Home Office staff involved in operations to detect illegal workers.</p> <p>It tells you what to do when a person with refugee or humanitarian protection status, whose leave is about to expire or has expired, is discovered on an operation.</p> <p>Refugees are allowed to remain in the UK if they demonstrate a well-founded fear of persecution under one of the grounds in the 1951 Geneva Convention. If a person does not qualify for refugee status but there are substantial grounds for believing, if returned to their country of origin, there is a real risk they would suffer serious harm, that person is granted humanitarian protection (HP) instead.</p> <p>Anyone granted refugee status before 30 August 2005 will have indefinite leave to remain (ILR) once they are recognised as a refugee.</p> <p>Anyone granted humanitarian protection between 1 April 2003 and 29 August 2005 will be granted three years' limited leave, at the end of which they can apply for ILR.</p> <p>Anyone granted refugee status or humanitarian protection on or after 30 August 2005 will be given five years' limited leave, at the end of which they can apply for ILR.</p> <p>If a refugee or person with HP applies for further leave out of time (after their limited leave has expired) or does not apply for further leave at all, they continue to have the right to work until their refugee or HP status is revoked.</p> <p>The first refugees granted limited leave in 2005 can apply for ILR from July 2010, a month before their leave expired. When undertaking illegal working operations you may encounter employees who are refugees or have HP, and whose leave has expired or is about to expire.</p> <p>If so, you must encourage the refugee or person with HP to apply immediately to the Home</p>	<p>In this section</p> <p>Actions during an operation</p> <p>Serving notice of potential liability (NOPL)</p> <p>Issuing a fixed penalty notice</p> <p>Recording evidence</p> <p>Making notes</p> <p>Interpreters</p> <p>Questioning the employee</p> <p>Questioning the employer</p> <p>Seizure of evidence</p> <p>What the courts require</p> <p>Related links</p> <p>Contact</p>
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	<p>Office for ILR, free of charge, on a SET (Protection Route) application form (available on the Home Office website). If they have any questions about the application, refer them to the immigration enquiry bureau page of the website. See related link: Home Office website – immigration enquiry bureau.</p> <p>You must email the contact details of the refugee or person with HP status to the settlement protection inbox (see related link). The team will update CID and send out correspondence to encourage the migrant to apply for settlement.</p> <p>You must reassure the employer the refugee or person with HP has an ongoing right to work while the application is being considered and the application must be submitted without delay. Advise the employer to continue to follow the current guidance for employers on the Home Office website. See related link: Full guidance for employers.</p> <p>Under section 15 of the Immigration Asylum and Nationality (IAN) Act 2006 an employer may be liable for a civil penalty if an employee has no valid leave.</p> <p>In view of their right to work you must not include an employee who is currently a refugee or person with HP status on a notice of potential liability (NOPL) regardless of whether they have leave or not.</p> <p>Under section 21 of the IAN Act 2006 an employer commits a criminal offence if they employ somebody knowing they have no valid leave. It is preferable in these cases to encourage the employee to regularise their status. The Crown Prosecution Service (CPS) advises treating each case on its individual merits. You must consider each case carefully. It is not in the public interest to pursue a criminal prosecution of an employer found to be employing a recognised refugee or person with HP.</p> <p>Any general enquiries about illegal working can be directed to the sponsorship and employers' helpline.</p> <p>Contact details can be found on the contacts page, see related link: Contact.</p>	<p>Links to staff intranet removed</p>
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Preventing illegal working

Asylum seekers and failed asylum seekers

About this guidance Powers of a Home Office officer A2 nationals Croatian nationals Definition of employer Pre-visit actions Actions during an illegal working operation Asylum seekers and failed asylum seekers Post-visit actions Relevant regulations Contact from employers	<p>This page tells Home Office staff about asylum seekers and failed asylum seekers.</p> <p>As part of the implementation of the EU Reception Conditions Directive, paragraph 360 of the Immigration Rules was amended to reflect that from 5 February 2005 asylum applicants who have been waiting for a year for an initial decision may apply for permission to work.</p> <p>Paragraph 360 of the Immigration Rules was further amended on 9 September 2010 to:</p> <ul style="list-style-type: none">• provide for failed asylum seekers obtaining permission to work in certain circumstances, following the Supreme Court judgement in ZO (Somalia), and• restrict the type of employment asylum seekers and failed asylum seekers can take up, to jobs on the shortage occupation list. <p>Paragraph 360 says:</p> <ul style="list-style-type: none">• only asylum seekers who have not received an initial decision on their claim within 12 months and failed asylum seekers who have made further submissions on asylum grounds, but who have not received a decision on those further submissions after 12 months, can apply for permission to work• they will not be eligible for permission to work if any delay was their fault• those granted permission to work will be subject to the following restrictions:<ul style="list-style-type: none">○ they may only work in a job which is included on the shortage occupation list (at the time an offer of employment is accepted)○ they may not be employed in a self-employed capacity, and○ they may not set up a business• permission to work will come to an end:<ul style="list-style-type: none">○ for asylum seekers, once the asylum application has been finally determined (that is, once appeal rights are exhausted)○ for failed asylum seekers, once a negative decision has been taken on a further submission or, in the event that appeal rights are granted, those appeals are	Links to staff intranet removed
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	<p>exhausted.</p> <p>The Home Office does not review applicants' qualifications and experience when considering permission to work applications. It is the responsibility of the applicant and their potential employer to make sure the job is one which is included on the list of shortage occupations published by the Home Office.</p> <p>The asylum seeker and failed asylum seekers' right to work ends once their asylum claim or further submission is decided. An employer has a statutory excuse if they check the individual's application registration card (ARC) with the employer checking service (who will make it clear to the employer the individual can only work in a job on the shortage occupation list).</p> <p>For more information on the Home Office national shortage occupation list, see related link.</p>	
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Post-visit actions

About this guidance Powers of a Home Office officer A2 nationals Croatian nationals Definition of employer Pre-visit actions Actions during an illegal working operation Asylum seekers and failed asylum seekers Post-visit actions Relevant regulations Contact from employers	This section explains what actions you must carry out following an illegal working operation.	In this section Recording information Written debrief Witness statements Referring illegal working cases Checklist for referrals sent to the civil penalty compliance team (CPCT) National operations database (NOD)
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Recording information

About this guidance Powers of a Home Office officer A2 nationals Croatian nationals Definition of employer Pre-visit actions Actions during an illegal working operation Asylum seekers and failed asylum seekers Post-visit actions Relevant regulations Contact from employers	<p>This page tells you what information to record on the national operations database (NOD) and CID following an illegal working operation.</p> <p>Recording information - NOD</p> <p>You must update NOD with the following information:</p> <ul style="list-style-type: none">• the outcome of the visit• the offenders detected• the notice of potential liability (NOPL) unique reference number (URN) on the 'debrief' screen• the correct employer details, if different from the employer information previously added. <p>Recording A2 and Croatian national information - CID</p> <p>The service of a fixed penalty notice (FPN) must be recorded on CID. For instructions on how to do this on see related link: A2 CID Guidance.</p>	<p>In this section</p> <p>Post-visit actions</p> <p>Written debrief</p> <p>Witness statements</p> <p>Referring illegal working cases</p> <p>Checklist for referrals sent to the civil penalty compliance team (CPCT)</p> <p>National operations database (NOD)</p> <p>Links to staff intranet removed</p>
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Written debrief

About this guidance Powers of a Home Office officer A2 nationals Croatian nationals Definition of employer Pre-visit actions Actions during an illegal working operation Asylum seekers and failed asylum seekers Post-visit actions Relevant regulations Contact from employers	<p>This page explains who needs to provide a written debrief following an illegal working operation and the information that must be included.</p> <p>The officer in charge (OIC) of the operation must complete a written debrief which will include:</p> <ul style="list-style-type: none">• the names and personal details of the offenders identified• the potential offences• the evidence available, and• the level of cooperation provided by the employer. <p>The OIC must sign off the written debrief before it is added to the referral pack. This must be sent by recorded delivery to the criminal and financial investigation team (CFI) or the civil penalty compliance team (CPCT).</p> <p>See related links:</p> <ul style="list-style-type: none">• Email: Criminal investigation review team• Email: Home Office civil penalty compliance team.	<p>In this section</p> <p>Post-visit actions</p> <p>Recording information</p> <p>Witness statements</p> <p>Referring illegal working cases</p> <p>Checklist for referrals sent to the civil penalty compliance team (CPCT)</p> <p>National operations database (NOD)</p> <p>Links to staff intranet removed</p>
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Witness statements

About this guidance Powers of a Home Office officer A2 nationals Croatian nationals Definition of employer Pre-visit actions Actions during an illegal working operation Asylum seekers and failed asylum seekers Post-visit actions Relevant regulations Contact from employers	<p>This page tells you who needs to give witness statements following an illegal working operation.</p> <p>Witness statements (MG11) are needed from all Home Office and police staff who are actively or directly involved in the illegal working operation.</p> <p>Staff are not considered to be actively involved in an illegal working operation if they have not:</p> <ul style="list-style-type: none">• served any immigration notices on any persons on the site• interviewed any persons on site• searched or found evidence, or• witnessed the illegal working activity.	In this section Post-visit actions Recording information Written debrief Referring illegal working cases Checklist for referrals sent to the civil penalty compliance team (CPCT) National operations database (NOD)
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Preventing illegal working

Referring illegal working cases

About this guidance Powers of a Home Office officer A2 nationals Croatian nationals Definition of employer Pre-visit actions Actions during an illegal working operation Asylum seekers and failed asylum seekers Post-visit actions Relevant regulations Contact from employers	<p>This page tells you where to refer illegal working offences.</p> <p>You must send a referral to the criminal and financial investigation team (CFI) and civil penalty compliance team (CPCT) within fourteen (14) calendar days of the notice of potential liability (NOPL) being served. It must be securely packaged and sent by recorded delivery.</p> <p>This allows the team time to consider the case and decide what actions to take next. For example, serve a notice of liability (NOL) or a notice of no liability (NONL).</p> <table><tr><th>Date employment began:</th><th>Applicable legislation:</th><th>Refer case to:</th></tr><tr><td>From 27 January 1997 to 28 February 2008</td><td>S8 1996 Act</td><td>Local CFI</td></tr><tr><td>From 29 February 2008 onwards</td><td>S15 / S21 2006 Act</td><td>S21 to CFI S15 to CPCT (Manchester)</td></tr><tr><td>Mix of offenders employed both before and after 29 February 2008</td><td>S8 1996 Act S15/S21 2006 Act</td><td>S8 and S21 to CFI S15 to CPCT (Manchester)</td></tr><tr><td>Dates not known or verified</td><td>S8 1996 Act and/or S15/S21 2006 Act</td><td>S8 and S21 to CFI S15 to CPCT (Manchester)</td></tr><tr><td>For A2 nationals fixed penalty notice (FPN): From 1 January 2007 onwards</td><td>S13 A2 Regulations 2006</td><td>Fixed penalty coordinator CPCT (Manchester)</td></tr><tr><td>For A2 nationals (prosecution): From 1 January 2007 onwards</td><td>S14 A2 Regulations 2006</td><td>Local CFI (Prosecution cases only)</td></tr><tr><td>For Croatian nationals fixed penalty notice (FPN): From 1 July 2013 onwards</td><td>Regulation 16 (Accession of Croatia Regulations 2013)</td><td>Fixed penalty coordinator CPCT (Manchester)</td></tr></table>	Date employment began:	Applicable legislation:	Refer case to:	From 27 January 1997 to 28 February 2008	S8 1996 Act	Local CFI	From 29 February 2008 onwards	S15 / S21 2006 Act	S21 to CFI S15 to CPCT (Manchester)	Mix of offenders employed both before and after 29 February 2008	S8 1996 Act S15/S21 2006 Act	S8 and S21 to CFI S15 to CPCT (Manchester)	Dates not known or verified	S8 1996 Act and/or S15/S21 2006 Act	S8 and S21 to CFI S15 to CPCT (Manchester)	For A2 nationals fixed penalty notice (FPN): From 1 January 2007 onwards	S13 A2 Regulations 2006	Fixed penalty coordinator CPCT (Manchester)	For A2 nationals (prosecution): From 1 January 2007 onwards	S14 A2 Regulations 2006	Local CFI (Prosecution cases only)	For Croatian nationals fixed penalty notice (FPN): From 1 July 2013 onwards	Regulation 16 (Accession of Croatia Regulations 2013)	Fixed penalty coordinator CPCT (Manchester)	<p>In this section</p> <p>Post-visit actions</p> <p>Recording information</p> <p>Written debrief</p> <p>Witness statements</p> <p>Checklist for referrals sent to the civil penalty compliance team (CPCT)</p> <p>National operations database (NOD)</p> <p>Links to staff intranet removed</p>
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	For Croatian nationals (prosecution): From 1 July 2013 onwards	Regulations 16 and 17 (Accession of Croatia Regulations 2013)	Local CFI (Prosecution cases only)	
	For Croatian nationals (employer civil penalty): From 1 July 2013 onwards	Regulation 11 (Accession of Croatia Regulations 2013)	CPCT (Manchester)	
	A referral that includes a mix of offenders can be split up so relevant cases and individuals are dealt with by the appropriate unit. For example, Section 8 cases would go to the local CFI and Section 15 to the CPCT.			

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Preventing illegal working

Checklist for referrals sent to the civil penalty compliance team (CPCT)

About this guidance Powers of a Home Office officer A2 nationals Croatian nationals Definition of employer Pre-visit actions Actions during an illegal working operation Asylum seekers and failed asylum seekers Post-visit actions Relevant regulations Contact from employers	<p>This page tells you which documents must be included in the referral packs sent to the civil penalty compliance team (CPCT).</p> <p>The following must be included in the referral pack:</p> <ul style="list-style-type: none">• Copies of the power of entry documents.• Copies of any evidence that is obtained by the end of the illegal working visit.• Witness statements (MG11 or Scottish equivalent) from all Home Office and police staff who are actively or directly involved, in the illegal working operation or visit.• A copy of the premise search book.• A copy of the written debrief national operations database (NOD) version for staff with NOD access.• A copy of the notification of potential liability (NOPL) served.• A copy of any fixed penalty notices (FPNs) issued to illegally employed Croatian nationals for an offence under Regulation 16(1) of the 2013 regulations.• A copy of the pocket note book (PNB) entries for all officers present on the visit.• A copy of the sanitised intelligence log - this is a log of the initial intelligence received but without the sensitive information regarding the informant.• A copy of the operational order or briefing.• A copy of the employers details including if the employer is:<ul style="list-style-type: none">○ a sole trader○ limited company○ partnership○ franchise, or○ another entity. <p>Referral packs must be securely packaged and sent by recorded delivery to the CPCT. To contact CPCT, see related link Email: Home Office civil penalty compliance team.</p>	<p>In this section</p> <p>Post-visit actions</p> <p>Recording information</p> <p>Written debrief</p> <p>Witness statements</p> <p>Referring illegal working cases</p> <p>National operations database (NOD)</p> <p>Links to staff intranet removed</p>
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Preventing illegal working

National operations database (NOD)

About this guidance Powers of a Home Office officer A2 nationals Croatian nationals Definition of employer Pre-visit actions Actions during an illegal working operation Asylum seekers and failed asylum seekers Post-visit actions Relevant regulations Contact from employers	<p>This page explains how to add information to the national operations database (NOD) following an illegal working operation.</p> <p>Complete nodMMX (MMX refers to the version of NOD currently in use) before sending a referral to the civil penalty compliance team (CPCT).</p> <p>The following screens must be updated:</p> <ul style="list-style-type: none">• Notice of potential liability (NOPL) details screen• Visit debrief screen:<ul style="list-style-type: none">○ 'Notification served' - tick the box○ 'Liability notice served' – tick the box. <p>For more information on how to access the nodMMX database and the range of guidance and training available to you, see related link: National operations database (nodMMX).</p>	<p>In this section</p> <p>Post-visit actions</p> <p>Recording information</p> <p>Written debrief</p> <p>Witness statements</p> <p>Referring illegal working cases</p> <p>Checklist for referrals sent to the civil penalty compliance team (CPCT)</p> <p>Links to staff intranet removed</p>
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Relevant regulations

About this guidance Powers of a Home Office officer A2 nationals Croatian nationals Definition of employer Pre-visit actions Actions during an illegal working operation Asylum seekers and failed asylum seekers Post-visit actions Relevant regulations Contact from employers	This section details the regulations or acts that apply to those found working illegally in the UK.	In this section Relevant regulations – non European Union Relevant regulations – European Union (EU) Facilitation or trafficking
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Preventing illegal working

Relevant regulations – non European Union

About this guidance Powers of a Home Office officer A2 nationals Croatian nationals Definition of employer Pre-visit actions Actions during an illegal working operation Asylum seekers and failed asylum seekers Post-visit actions Relevant regulations Contact from employers	<p>This page explains the regulations relevant to non European Union (EU) migrants found working illegally in the UK.</p> <table><tr><th>Regulation or Act:</th><th>Who does it cover:</th><th>Sanction:</th></tr><tr><td>Section 8 - Asylum and Immigration Act 1996</td><td>Workers over 16, who have no right to work in the UK and are employed between 27 January 1997 - 28 February 2008</td><td>Criminal offence: Section 8(4)</td></tr><tr><td>Section 15 and 21 - Immigration, Asylum and Nationality Act 2006</td><td>Workers who are from outside the EU, who started work in the UK on, or after 29 February 2008.</td><td>Penalty notice: Section 15(2) Criminal offence: see Section 21(2)</td></tr></table>	Regulation or Act:	Who does it cover:	Sanction:	Section 8 - Asylum and Immigration Act 1996	Workers over 16, who have no right to work in the UK and are employed between 27 January 1997 - 28 February 2008	Criminal offence: Section 8(4)	Section 15 and 21 - Immigration, Asylum and Nationality Act 2006	Workers who are from outside the EU, who started work in the UK on, or after 29 February 2008.	Penalty notice: Section 15(2) Criminal offence: see Section 21(2)	<p>In this section</p> <p>Relevant regulations</p> <p>Relevant regulations – European Union (EU)</p> <p>Facilitation or trafficking</p> <p>Links to staff intranet removed</p>
Regulation or Act:	Who does it cover:	Sanction:									
Section 8 - Asylum and Immigration Act 1996	Workers over 16, who have no right to work in the UK and are employed between 27 January 1997 - 28 February 2008	Criminal offence: Section 8(4)									
Section 15 and 21 - Immigration, Asylum and Nationality Act 2006	Workers who are from outside the EU, who started work in the UK on, or after 29 February 2008.	Penalty notice: Section 15(2) Criminal offence: see Section 21(2)									

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Relevant regulations – European Union (EU)

About this guidance Powers of a Home Office officer A2 nationals Croatian nationals Definition of employer Pre-visit actions Actions during an illegal working operation Asylum seekers and failed asylum seekers Post-visit actions Relevant regulations Contact from employers	This page tells you the regulations relevant to European Union members (A2 nationals).			In this section Relevant regulations Relevant regulations – non European Union Facilitation or trafficking Links to staff intranet removed
	Regulation or Act:	Who does it cover:	Sanction:	
	The Accession (Immigration and Worker Registration) Regulations 2006	Workers who are from Romania or Bulgaria who started work in the UK on or after 1 January 2007	Criminal offence: Regulation 12(5) Criminal offence: Regulation 13(2) and (4) Criminal offence: Regulation 14(2)	
	The Accession of Croatia (Immigration and Worker Authorisation) Regulations 2013	Workers who are from Croatia who started work in the UK on or after 1 July 2013.	Employer civil offence: Regulation 11(1) Employer criminal offence: Regulation 15(1) Employee criminal offence: Regulation 16(1) Employee criminal offence: Regulation 17(1)	

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Facilitation or trafficking

About this guidance Powers of a Home Office officer A2 nationals Croatian nationals Definition of employer Pre-visit actions Actions during an illegal working operation Asylum seekers and failed asylum seekers Post-visit actions Relevant regulations Contact from employers	<p>This page tells you where to find further guidance on facilitation and human trafficking.</p> <p>Human trafficking is the practice of tricking, luring or otherwise removing someone from their home or country, then forcing them to work for no or low payment or on terms which are highly exploitative.</p> <p>The victims of human trafficking are used in a variety of situations, including prostitution, forced labour and other forms of involuntary servitude.</p> <p>Facilitation describes people involved in the illegal trafficking of people across international borders.</p> <p>For more guidance on what to do if you suspect a person is involved in the facilitation or trafficking of another person, following an illegal working visit, see related link: Human trafficking.</p> <p>For more information on the powers used by Home Office officers who deal with offences relating to facilitation see link on left: Powers of a Home Office officer.</p>	<p>In this section</p> <p>Relevant regulations</p> <p>Relevant regulations – non European Union</p> <p>Relevant regulations – European Union (EU)</p> <p>Links to staff intranet removed</p>
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Contact from employers

About this guidance Powers of a Home Office officer A2 nationals Croatian nationals Definition of employer Pre-visit actions Actions during an illegal working operation Asylum seekers and failed asylum seekers Post-visit actions Relevant regulations Contact from employers	<p>This section gives guidance to Home Office staff dealing with employers who contact the Home Office about preventing illegal working.</p> <p>The majority of referrals about preventing illegal working come from employers.</p> <p>Because the referral may lead to enforcement action being taken against the employer, it is essential a clear and transparent system is followed. Advice given to employers must be consistent across the Home Office.</p> <p>A compliant employer may not automatically avoid liability from prosecution or civil penalty action. Their cooperation and any other factors will be considered in the assessment of the penalty to be imposed.</p>	<p>In this section</p> <p>Employer asks for general advice</p> <p>Employer requests check on immigration status of individuals</p> <p>Employer requests document check</p> <p>Allegation handling</p> <p>Educational visits</p>
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This guidance is based on the Immigration Acts

Preventing illegal working

Employer asks for general advice

About this guidance Powers of a Home Office officer A2 nationals Croatian nationals Definition of employer Pre-visit actions Actions during an illegal working operation Asylum seekers and failed asylum seekers Post-visit actions Relevant regulations Contact from employers	<p>This page tells you how to handle a request for general advice on preventing illegal working from an employer.</p> <p>You must refer them to either:</p> <ul style="list-style-type: none">• the sponsorship and employers helpline (0300 123 4699). This is a dedicated contact centre for employers who need advice and answers to general questions on preventing illegal working, or• the Home Office website. This provides access to guidance on preventing illegal working. The employer can check a person's permissions to work in the UK. <p>The employer's helpline logs allegations from employers if they suspect someone has been employed illegally after 29 February 2008. The employer is issued with a unique reference number (URN) and given contact details for their local immigration compliance and engagement (ICE) team.</p> <p>The ICE team must contact the employer to decide what further action is appropriate. A URN is not provided for any other type of call.</p>	<p>In this section</p> <p>Contact from employers</p> <p>Employer requests check on immigration status of individuals</p> <p>Employer requests document check</p> <p>Allegation handling</p> <p>Educational visits</p> <p>Links to staff intranet removed</p>
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Employer requests check on immigration status of individuals

About this guidance Powers of a Home Office officer A2 nationals Croatian nationals Definition of employer Pre-visit actions Actions during an illegal working operation Asylum seekers and failed asylum seekers Post-visit actions Relevant regulations Contact from employers	<p>This page tells you how to handle a request from an employer for checks on the immigration status of individuals.</p> <p>Employers who want to establish if an employee or prospective employee has permission to work must be directed to the sponsorship and employers helpline on 0300 123 4699.</p> <p>If an employer is not satisfied the job applicant has provided original documentation to prove their identity and work permissions, you can advise them to ask for:</p> <ul style="list-style-type: none">• further clarification from the job applicant, who must provide further evidence of identity and work permission to the employer. The job applicant can contact the Croydon contact centre on 0870 606 7766 if clarification of their immigration status is required, or• a check on the permission to work of all migrants with outstanding applications or appeals with the Employer Checking Service. <p>If one of the List B documents below is provided, it must be checked through the employer checking service:</p> <ul style="list-style-type: none">• Certificate of Application (for Non European Economic Area (EEA) dependants and spouses)• Application Registration Cards (ARC). <p>List B can be found on the Home Office website, see related link: Home Office website - guidance for employers.</p> <p>You can direct the employer to the website which provides employers with supporting information, as well as the form needed to request the check, such as:</p> <ul style="list-style-type: none">• full guidance on the civil penalty regulations	<p>In this section</p> <p>Contact from employers</p> <p>Employer asks for general advice</p> <p>Employer requests document check</p> <p>Allegation handling</p> <p>Educational visits</p> <p>Links to staff intranet removed</p>
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	<ul style="list-style-type: none">• online access to the updated comprehensive guide• interactive guide through Business Link (practical advice for businesses)• link to the European Union (EU) website PRADO which contains information on all EU documentation• links to other country websites offering lost and stolen passport information. <p>Please see related link: Home Office website – guidance for employers.</p> <p>The employer must inform the job applicant when they are making checks to verify the information the applicant has provided.</p> <p>To use the employer checking service the employer must complete all the relevant sections on the checking service request form. For a copy of the form see related link: Home Office website – Employer checking service form.</p>	
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Employer requests document check

About this guidance Powers of a Home Office officer A2 nationals Croatian nationals Definition of employer Pre-visit actions Actions during an illegal working operation Asylum seekers and failed asylum seekers Post-visit actions Relevant regulations Contact from employers	<p>This page tells you how to handle requests for checks on documents from employers.</p> <p>Working with employers is encouraged but you must make sure a clear and transparent system, that is fully auditable, is maintained. This makes sure there is a consistent and fair approach to all employers.</p> <p>You must not give employers employment advice or advise them to dismiss someone. Staff can only comment on the validity of the documents provided.</p> <p>The employer must fax copies of documents for checking to the regional intelligence unit (RIU) who must keep a written record of all contact and advice given.</p>	In this section Contact from employers Employer asks for general advice Employer requests check on immigration status of individuals Allegation handling Educational visits
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Preventing illegal working

Allegation handling

About this guidance Powers of a Home Office officer A2 nationals Croatian nationals Definition of employer Pre-visit actions Actions during an illegal working operation Asylum seekers and failed asylum seekers Post-visit actions Relevant regulations Contact from employers	<p>This page explains how to manage allegations of illegal working received by phone, letter or face to face contact.</p> <p>If you receive an allegation, you must immediately pass the information on to the appropriate intelligence unit for processing.</p> <p>For more information on managing allegations received and the action taken by the intelligence unit see related link: 32 Intelligence.</p> <p>An employer who wishes to report any suspicions of illegal working within their own workforce must report it to the sponsorship and employers helpline (0300 123 4699). This may reduce the potential liability of a civil penalty.</p> <p>The helpline is responsible for referring the information to the relevant intelligence unit who then make contact with the employer.</p>	In this section Contact from employers Employer asks for general advice Employer requests check on immigration status of individuals Employer requests document check Educational visits Links to staff intranet removed
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Educational visits

About this guidance Powers of a Home Office officer A2 nationals Croatian nationals Definition of employer Pre-visit actions Actions during an illegal working operation Asylum seekers and failed asylum seekers Post-visit actions Relevant regulations Contact from employers	<p>This page provides information on the purpose of educational visits to employers to help them understand illegal working.</p> <p>Educational visits are for helping employers to gain awareness of the illegal working legislation and to offer guidance on complying with the requirements.</p> <p>Educational visits are for a variety of reasons. For example:</p> <ul style="list-style-type: none">• To provide advice on how to avoid recruiting immigration offenders in the future, following the detection of illegal migrant workers. These can be at the request of an employer, intelligence unit or an officer in charge of an operation.• Following proactive activity by Home Office officers offering the service to local employers, particularly in sectors with a history of illegal working. These can be at the request of an intelligence unit or the officer in charge of an operation.• When requested by local employer organisations. <p>An educational visit must cover the following areas:</p> <ul style="list-style-type: none">• An employer's responsibility to prevent illegal migrant working.• Guidance on how an employer might establish a statutory excuse against liability to pay a civil penalty or face prosecution.• Specified checks pointing employers to the available sources of information on the Home Office website.• Advising employers on the next steps if they are concerned about the immigration status of particular individuals within their workforce. <p>An educational visit must be carried out by at least two enforcement officers who are familiar with the illegal migrant working regulations and can provide an employer with advice on how to comply with the legislation.</p>	<p>In this section</p> <p>Contact from employers</p> <p>Employer asks for general advice</p> <p>Employer requests check on immigration status of individuals</p> <p>Employer requests document check</p> <p>Allegation handling</p> <p>Links to staff intranet removed</p>
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	<p>Officers conducting such a visit must set clear objectives agreed with the employer. A record of the outcome reached and any recommended follow up actions must be kept.</p> <p>Officers who suspect illegal working whilst on an educational visit must document any available evidence and refer it to the relevant intelligence unit for consideration.</p> <p>The civil penalty compliance team (CPCT) can provide further guidance about educational visits, see related link: Email Home Office civil penalty compliance team.</p>	
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Contact

About this guidance Powers of a Home Office officer A2 nationals Croatian nationals Definition of employer Pre-visit actions Actions during an illegal working operation Asylum seekers and failed asylum seekers Post-visit actions Relevant regulations Contact from employers	<p>This page explains who to contact for more help with any illegal working questions.</p> <p>If you have read the relevant Immigration Rules and this guidance and still need more help with this category, you must first ask your line manager.</p> <p>If the question cannot be answered at that level, you may email:</p> <ul style="list-style-type: none">• illegal working operational policy or• the Home Office civil penalty compliance team using the related links. <p>General enquiries about illegal working can be directed to the sponsorship and employers' helpline on 0300 123 4699.</p> <p>Changes to this guidance can only be made by the modernised guidance team (MGT). If you think the policy content needs amending you must contact the illegal working operational policy team, who will commission the MGT to update the guidance, if appropriate.</p> <p>The MGT will accept direct feedback on broken links, missing information or the format, style and navigability. You can send these using the link: Email: Modernised guidance team.</p>	<p>In this section</p> <p>Changes to this guidance</p> <p>Information owner</p> <p>Links to staff intranet removed</p>
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Information owner

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This page details the information owners for the preventing illegal working guidance.

Version	8.0
Valid from date	1 July 2013
Policy owner	Work operational policy team
Cleared by director	Sonia Dower
Director's role	Director, operational policy and rules
Clearance date	14 December 2012
This version approved for publication by	Lynne Spiers
Approver's role	Acting director, operational policy and rules
Approval date	20 June 2013

Changes to this guidance can only be made by the modernised guidance team (MGT). If you think the policy content needs amending you must contact illegal working operational policy, who will commission the MGT to update the guidance, if appropriate.

The MGT will accept direct feedback on broken links, missing information or the format, style and navigability of this guidance. You can send these using the link: Email: Modernised guidance team.

In this section

[Changes to this guidance](#)

[Contact](#)

Links to staff intranet removed