



# Preventing Illegal Working in Construction

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Guidance Note

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## Background

Under the Immigration, Asylum and Nationality Act 2006, it is illegal to employ an individual who does not have the right to work in the UK. It is the responsibility of every employer to prevent illegal working by carrying out documentary checks on people before employing them. This guidance explains the documentary checks employers carry out, and best practice companies can follow to further safeguard against illegal working.

## Why should I carry out right to work checks?

If you employ a worker who you know, or have reasonable cause to believe has no permission to do the work in question, you are committing a criminal offence. This is punishable by a prison term of up to five years and/or an unlimited fine.

Working illegally is also a criminal offence and workers can have their earnings seized as proceeds of crime. This applies to self employment, work under a contract of employment, and both informal and formal arrangements.

An employer found to be employing an illegal worker who has not carried out the correct documentary checks could face a civil penalty of up to £20,000 per individual.

However, if an employer can demonstrate the correct checks were conducted, they can establish a 'statutory excuse', which means they may avoid a penalty even if an employee is subsequently found to be an illegal worker<sup>1</sup>.

In serious cases of illegal working, where previous penalties and/or convictions have not stopped non-compliance, the business may be closed temporarily and a court requested to impose a compliance order to prevent further illegal working.

In addition to these sanctions for illegal working, the risks to an employer include:

- ❖ To Health & Safety as illegal workers are unlikely to have valid Health and Safety training;
- ❖ Invalidating insurance and liability cover;
- ❖ Significant disruption to a project as a result of an investigation; and
- ❖ Reputational damage.

## Who is responsible for carrying out checks?

Liability for illegal working lies with employers who have a duty to carry out the correct documentary checks on their direct employees, including employment agencies who employ the worker concerned.

For those genuinely self-employed, it is the worker who may be liable to be prosecuted for working illegally, along with any contractor or agency that engaged the worker. However, given the complexities around the status of self-employed workers, it is recommended to carry out a Right to Work check.

It is not the legal responsibility of Clients or Main Contractors to carry out documentary checks on workers employed by others who are working on their sites. However, they should have a system in place to ensure that those with responsibility to carry out the checks, have met their responsibilities, in view of the additional risks set out above.

## Who do I carry out checks on?

- ❖ Employers are required to carry out a right to work check on **all** people they intend to employ, **before** they employ them to establish the statutory excuse.
- ❖ If a person provides documents to show they have a **permanent right** to work in the UK, the

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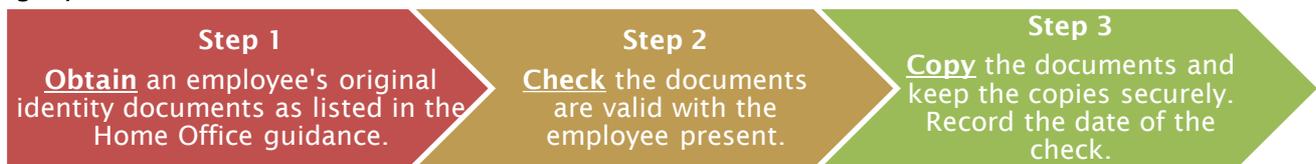
<sup>1</sup> An employer does not have a statutory excuse if it can be shown they knew or had reasonable cause to believe the employee was working illegally

- employer only needs to check their documents before employing them.
- ❖ If a person provides documents to show they have a **temporary right** to work in the UK, then the employer will need to carry out additional checks when their immigration permission is due to expire and check it has been renewed.
  - ❖ The employer should check the potential employee is not subject to an immigration restriction that prevents them from doing the work in question.

The Government has provided an online tool for employers to [check if someone can work in the UK](#).

### How do I conduct right to work checks?

The Home Office has set-out a three step 'Obtain, Check and Copy' process employers should follow when checking a person's documentation and this is summarised below.



The Home Office has published a useful employers' [Right to Work Checklist](#) which includes the different types of identity documents employers may accept when performing the check.

### Best Practice on Preventing Illegal Working

In addition to the legal responsibilities to carry out documentary checks, the following actions should also be considered to prevent illegal working on construction sites, even if there is no employment relationship.

Companies may wish to consider using commercially available document scanner technology to verify an individual's right to work document(s).

Organisation	Best Practice
<b>Clients</b>	<ul style="list-style-type: none"> <li>❖ Require all employers on your projects to carry out documentary checks on their employees.</li> </ul>
<b>Main Contractors</b>	<ul style="list-style-type: none"> <li>❖ Ensure those carrying out documentary checks within your organisation have had appropriate training on how to do so.</li> <li>❖ Ensure suppliers and sub contractors exercise due diligence and encourage them to stipulate in their contracts that right to work checks must be conducted on workers.</li> <li>❖ Check the card carrying the CSCS logo for everyone undertaking a construction occupation on your site.               <ul style="list-style-type: none"> <li>○ While the new smart cards are harder to forge, the cards themselves do not provide evidence that the holder has the right to work.</li> <li>○ However, the majority of cards carrying the CSCS logo can be read electronically. When read electronically, an invalid reading could serve as an indicator that the card is fake and the individual might not have the right to work in the UK. This should be investigated further.</li> </ul> </li> <li>❖ Consider auditing a sample of your supply chain and self employed workers to check that right to work checks are being performed.</li> <li>❖ Target communications at sites (through posters, toolbox talks etc.) on the risks of illegal working and how individuals can raise any concerns.</li> <li>❖ Promote the Home Office Immigration Enforcement hotline or email where companies or individuals can anonymously report any suspected instances of illegal working - on <b>0300 123 7000</b>; <a href="http://www.gov.uk/report-immigration-crime">www.gov.uk/report-immigration-crime</a>.</li> </ul>
<b>Sub Contractors</b>	<ul style="list-style-type: none"> <li>❖ Ensure those carrying out documentary checks within your organisation have had appropriate training on how to do so.</li> <li>❖ Consider auditing a sample of your supply chain and self employed workers to check that right to work checks are being performed.</li> <li>❖ Promote the Home Office Immigration Enforcement hotline or email where companies or individuals can anonymously report any suspected instances of illegal working - on <b>0300 123 7000</b>; <a href="http://www.gov.uk/report-immigration-crime">www.gov.uk/report-immigration-crime</a>.</li> </ul>