EXPLANATORY MEMORANDUM TO

THE IMMIGRATION (EMPLOYMENT OF ADULTS SUBJECT TO IMMIGRATION CONTROL) (MAXIMUM PENALTY) (AMENDMENT) ORDER 2024

2024 No. 82

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Home Office and is laid before Parliament by Command of His Majesty.

2. Purpose of the instrument

2.1 The Immigration (Employment of Adults Subject to Immigration Control) (Maximum Penalty) (Amendment) Order 2024 prescribes sixty thousand pounds (£60,000) as the maximum penalty that the Secretary of State may by notice require an employer to pay for employing a person who is disqualified from working by reason of their immigration status in the UK. The revised code of practice entitled 'Code of Practice on preventing illegal working: Right to Work Scheme for employers' (the Code of Practice) issued on 23 January 2024 provides for new penalty levels within the new maximum.

2.2 The revised Code will be brought into force on 13 February 2024 by virtue of the Immigration (Restrictions on Employment and Residential Accommodation) (Codes of Practice) (Amendment) Order 2024 and will come into force at the same time as this Order. The maximum penalty has not been increased since 2014.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is the United Kingdom.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is the United Kingdom.

5. European Convention on Human Rights

5.1 Robert Jenrick, the then Minister for Immigration, made the following statement regarding Human Rights:

"In my view, the provisions of the Immigration (Employment of Adults Subject to Immigration Control) (Maximum Penalty) (Amendment) Order 2023 are compatible with the Convention Rights."

6. Legislative Context

What did any law do before the changes to be made by this instrument?

6.1 The Immigration, Asylum and Nationality Act 2006 (2006 Act) introduced the Right to Work (Civil Penalty) Scheme. The Scheme allows the Secretary of State to serve an employer with a notice requiring the payment of a civil penalty of a specified amount where they have employed an individual who is disqualified from working on account of their immigration status.

6.2 Legislation setting out employer responsibilities to prevent illegal working has been in place since 1997. Since 2008, a system of civil and criminal sanctions for non-compliance has been in place, set out in the 2006 Act (sections 15-25).

6.3 The Immigration (Restrictions on Employment) Order 2007 (2007 Order) prescribes how an employer will be excused from paying a penalty where they conduct checks online (using the Home Office online right to work service on GOV.UK), use Identification Document Validation Technology (IDVT) service providers or undertake manual (checking of physical documents) right to work checks.

7. Policy background

What is being done and why?

7.1 The Home Office is the first line of enforcement against illegal migration and works across government to prevent individuals without lawful status in the UK from accessing work, services and benefits. Illegal working often results in abusive and exploitative behaviour, the mistreatment of unlawful migrant workers, revenue evasion and illegal housing conditions. It can also undercut legitimate businesses and have an adverse impact on the employment of people who are lawfully in the UK.

7.2 Employers have a role to play in ensuring that all their employees have the right to work in the UK. Since 2008, this has been underpinned by the Right to Work (Civil Penalty) Scheme under which employers are required to carry out prescribed checks on people before employing them to ensure they are lawfully allowed to work in the UK. If an employer employs someone who does not have the right to work in the UK, they may be liable for a civil penalty. Employers can avoid liability for a civil penalty if the correct right to work checks were carried out before the individual commenced employment.

Why is it being changed?

7.3 Civil penalties for non-compliance have remained the same since they were increased in 2014. The Government is concerned that they do not now provide a sufficient deterrent to those contemplating entering the UK illegally or reflect either the full economic advantage derived by those who profit from illegal labour or the wider costs to society. Accordingly, the Government intends to increase the level of the maximum penalty from £20,000 to £60,000 per illegal worker, acting as a deterrent in respect of those employers who employ illegal migrants and sending a clear message that only individuals with a right to work in the UK can secure employment. By so doing, the Government aims: to change the behaviour of rogue employers; to eliminate any financial gain or benefit from non-compliance; to tackle the harm caused by regulatory non-compliance, where appropriate; and to deter future non-compliance. As is the case now, the maximum penalty will only be levied on an employer who

breaches the Scheme on more than one occasion and where there are no mitigating factors.

What will it now do?

7.4 The Code will provide for a starting point of £45,000 per illegal worker for a first breach and £60,000 per illegal worker for repeat breaches within the last three years. The actual amount of a penalty may be reduced further where the specified mitigating factors apply. In the case of a first breach, employers who elect to pay the penalty via the Fast Payment Option will benefit from a further 30% reduction from the overall amount.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not trigger the statement requirements under the European Union (Withdrawal) Act 2018.

9. Consolidation

9.1 No consolidation issues arise as a result of this instrument.

10. Consultation outcome

10.1 The Home Office has not consulted on these proposals. However, the Home Office has engaged with employers and their representatives to support implementation of this instrument. This includes established Home Office-led fora such as the Home Office consultation groups, as part of engagement with other government departments, or upon invitation to other events including webinars.

11. Guidance

11.1 Guidance for employers will be updated to reflect these changes. It will be published in advance of the changes coming into force.

12. Impact

12.1 There is no impact on legitimate businesses. The cost of increased penalties falls only to non-compliant employers who choose not to comply with the Scheme.

12.2 There are direct impacts on the public sector if there is a change in the number of appeals against penalties. Further detail on the impact on business, charities, voluntary bodies as well as the public sector are set out in the full Economic Note which has been produced alongside this instrument and is published on legislation.gov.uk.

12.3 The Environmental impact has been considered in accordance with the duty imposed by section 19 of the Environmental Act 2021. No negative environmental impacts have been identified for this change.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 Small businesses can manage the potential impact of these proposals through compliance, thereby mitigating their risk of being issued with a civil penalty.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is kept under regular review by the Home Office.

14.2 We will review the impact of this Order in 12 months.

15. Contact

15.1 John Harrison at the Compliant Environment and Enforcement Unit, Home Office, email: john.harrison@homeoffice.gov.uk and Scott Bailey at the Compliant Environment and Enforcement Unit, Home Office, email: scott.bailey2@homeoffice.gov.uk can be contacted with any queries regarding the instrument.

15.2 Rebecca Nugent, Deputy Director for Compliant Environment and Enforcement Unit at the Home Office, can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Minister for Countering Illegal Migration, Michael Tomlinson MP at the Home Office, can confirm that this Explanatory Memorandum meets the required standard.