

Continuing Professional Development Operation Magnify

- Site visits target immigration compliance
- Right to Work checks carried out on all employees
- New Immigration Bill to create offence of “illegal working”

Stamping out illegal working on every site

As the government gets tough on illegal labour, industry professionals need to make sure they're familiar with the requirements of its Operation Magnify campaign. **Construction Manager** explains

GOVERNMENT AGENCIES led by the Home Office have launched Operation Magnify, a campaign supported by the CIOB. Operation Magnify is a rolling programme of site enforcement visits targeting illegal working in the construction industry, and raising the issue on the industry's agenda. Construction is an area of focus in efforts to reduce illegal immigration and the exploitation of illegal labour in the UK, as it typically employs a high volume of non-English speaking and/or lower-skilled individuals.

Other areas where illegal employment is a problem include the cleaning sector, care homes, food and hospitality, and agriculture. Viewed together, the government is concerned that the existence of relatively accessible illegal employment in various employment sectors in the UK acts as a “pull factor” for illegal migration - which in turn denies opportunities and prospects for UK citizens and legal migrants.

From the industry's point of view, there are compelling reasons to address the issue. Individuals working illegally in this country due to their immigration status will often be victims of abuse and exploitation, or caught in a situation we now define as “modern slavery”.

As Chris Blythe, chief executive at the CIOB, comments: “We welcome the government's commitment to help tackle illegal working in the construction industry. Migrants without the right to work become vulnerable and, as our industry tells us, are at serious risk of injury, exploitation and human rights abuses.”

Businesses that knowingly hire illegal workers - or supply them to other contractors up the supply chain - are likely to be paying below the national minimum wage, undercutting their law-abiding competitors. And a business that's willing to exploit underpaid, under-trained labour is also likely to cut corners in other areas, such as health and safety, employment legislation or tax and National Insurance. The presence of exploitation and illegal employment in the industry therefore leads to downward pressure on safety standards and overall quality of output.

The Home Office believes that the construction industry has the management capability, resources and “corporate know-how” necessary to tackle the issue, and it hopes that the challenges it faces and solutions it devises could then be applied to other industries.

The legal position

Employers have had a duty to prevent illegal working since 1997 by carrying out specified document checks on people before they employ them. Since 2008, this duty has been underpinned by a civil penalty scheme.

The Immigration Act 2014 doubled the civil penalty for employers that employ an illegal worker either knowingly, or with reasonable grounds for suspicion. An employer can now be fined up to £20,000 for each illegal worker employed, with the new maximum penalty better reflecting the harm caused by employing illegal workers, including the costs to wider society and the unfair economic advantage derived from the activity.



But measures in the Act also made it simpler to check the immigration status of potential employees, reducing the number of acceptable documents they may have to check, as well as the frequency with which checks have to occur (see below).

Additionally, through the Immigration Bill currently going through parliament, construction employers should be aware of new proposed future powers including:

- creating a new offence of “illegal working”, which means wages can be seized as proceeds of crime. Anyone prosecuted for this new offence will face a prison sentence of up to six months and an unlimited fine in England and Wales.
- making it easier to prosecute an employer who knows, or reasonably suspects, that the person they employ



The CIOB strongly encourages members to study this CPD topic and take the accompanying online multiple choice test (see p36 for questions and details).

Illegal working is closely linked to labour exploitation and human rights abuses, whether overseas or in the UK, which has been a policy focus at the CIOB for some time. Its July 2015 report, *The Dark Side of Construction*, focused attention on the issue and its implications for the industry.

The CIOB is working with other agencies, including the Home Office, to ensure labour exploitation has no place in the industry, and hopes members will take this opportunity to fully inform themselves on this issue.



has no permission to work in the UK. The existing evidence requirement to prove this offence will be changed in order to boost prosecutions and the current maximum sentence will be increased from two to five years.

- closing for up to 48 hours the business of employers who continue to disregard the law and do not comply with sanctions while they prove "Right to Work" checks have been conducted on staff.

Checking documents

An employer who hires an illegal worker can avoid fines under the Immigration

An employer can now be fined up to £20,000 for each illegal worker employed

Act 2014 if they have carried out the Home Office's recommended Right to Work checks - this is known as the "statutory excuse". The Right to

Work check process is straightforward and specifies that employers should:

- see the applicant's original documents
- check that the documents are valid with the applicant present, either in person or a via an online platform such as Skype
- make and keep copies of the documents and record the date you made the check.

But what steps should employers take to ensure that "documents are valid"? Invalid documents are often created with high degrees of accuracy by organised criminal gangs (OCGs) equipped with

sophisticated printers and scanners.

Illegitimate documents can include:

- a look-alike using someone else's passport, known as impersonation;
- counterfeit documents, created from scratch to resemble an official document forgeries;
- a genuine document that has been altered in some way, for instance by adding fake visa stamps or other Home Office endorsements.

Hard-to-detect scams abound. For instance, an illegal worker might present a legitimate National Insurance card and number. But a single NI card could be shared by five or six illegal workers, with all their employers' NI contributions being channelled into a single account. That original legitimate NI card could then be used to support a number of different identities, using different individuals' photos and documents. The original NI card might have been stolen, or even sold to criminal gangs by a genuine UK citizen.

In addition, construction workers who don't have the right to work in the UK can also present legitimate documents - such as CSCS cards, training certificates and company ID cards - which were >

Exposing hidden exploitation

Under Operation Magnify, October 2015 saw a week of interventions that targeted 153 construction sites across England and Wales, which resulted in over 250 arrests and nine ongoing investigations. Any of these investigations could result in substantial fines for the employers concerned.

According to the Home Office, the initiative deliberately targeted a mix of projects. The majority were small-scale sites run by local SMEs, such as residential conversions, high street shop fit-outs, and domestic extensions. As the campaign also intersected with efforts to uncover exploited labour, often linked

to the phenomenon of “beds in sheds” and rogue landlords, the campaign targeted sites in affected communities, such as Slough, Berkshire; Hounslow, west London; and Newham, east London.

But the Home Office says that around 40 of the projects visited were larger multi-million-pound projects behind the hoardings of major contractors, ranging across new build and refurbishment projects, and the commercial sector and publicly funded works. The scale of the programme was therefore designed to put the issue firmly on the industry’s agenda and prompt senior management to review their processes.



Sheds in the back gardens in Southall, west London, often house illegal workers

Considerate Contractors Scheme sites will be asked about illegal working

- that the dates for the applicant’s right to work in the UK haven’t expired
- photos are the same across all documents and look like the applicant
- dates of birth are the same across all documents
- the applicant has permission to do the type of work you’re offering (including any limit on the number of hours they can work)
- evidence of students’ study and vacation times
- if two documents give different names, that the applicant has supporting documents showing why they’re different, such as a marriage certificate or divorce decree.

If employers have doubts about a worker’s legitimacy, they can call the Home Office Sponsorship, Employer and Education helpline (0300 123 4699) to ask if there is an official record of the individual.

Site realities

But the typical construction site is a complex place, where a main contractor with overall responsibility works with multiple sub-contractors, sub-sub-contractors and labour supply agencies. Operation Magnify recognises this complexity, but the Home Office believes that Tier 1 contractors in charge of overall project governance need to address this issue, in order to analyse and minimise risks to projects and – by extension – the wider industry.

The CIOB’s Chris Blythe agrees that the industry’s major employers need to step up on this issue: “The global trend towards outsourcing and cut-price contracting has made it too convenient for main contractors to duck out of their responsibilities by blaming the subcontractor. Contractors who take that line risk reputational damage and are liable to incur significant financial penalties, delays and site shutdowns.

acquired by presenting faked documents or personal history in the first place. Major construction institutions and businesses might therefore be giving their legitimacy to illegal workers, and even offering access to sensitive sites.

And it is worth noting that when illegal workers turn to OCGs to source illegitimate ID documents, they will then have a network of criminal associates, which raises both reputational and

security issues for employers.

The Home Office recognises that employers are not necessarily going to have the skills and procedures in place to weed out every false document. However, guidance available on its website suggests that employers should check:

- if the documents are genuine, original and unchanged, and belong to the person who has given them to you

THE SUN / NEWS SYNDICATION



"The uncertainty amongst clients which stems from reports of modern slavery also risks the image and success of the entire industry. So it is clear that we all have a responsibility to come together and increase transparency at every level of the supply chain if we are to eradicate the exploitation of illegal workers."

In effect, the Home Office is asking the industry to view illegal working as an issue that should be bracketed with health and safety as a key area for compliance and improvement. Main contractors should check their Tier 2 and 3 sub-contractors' compliance with Right to Work checks in the same way that they would check contractual compliance on health and safety accreditation, employing local labour or checking the provenance of materials.

When appointing and assessing subcontractors, having effective Right to Work controls in place could also be viewed as a measure of competence in other areas of project compliance.

According to the Home Office, it is impossible to offer a how-to template on Right to Work compliance, as there will be many different contractual situations, and employers must implement the systems that best correspond to their working practices. However, it stresses that compliance systems should be in place at various levels of a construction business, from site to boardroom, and that checks should be reviewed at appropriate intervals. On projects where there is a high turnover of site staff that could mean every two to three weeks.

Considerate Constructors

The issue of illegal working is also being addressed by the Considerate Constructors Scheme, which is also supporting the Operation Magnify initiative. As the scheme makes around 17,000 monitoring visits a year to registered sites and companies throughout the UK, it is taking the lead to help raise awareness and provide support and guidance on the issue.

From the start of 2016, the scheme is including a question and a prompt within its monitoring checklist specifically addressing illegal working on sites. This means that all registered sites and companies will have to be able to provide a positive answer to scheme monitors about how they are dealing with this issue.

In addition, the scheme's Best Practice Hub - an online resource sharing best practice, tips, guidance and case studies across the industry - will gather examples of best practice from sites on this matter. This will provide a useful resource for the industry and show how it is possible to ensure that no illegal workers are engaged in supply chains of sites or companies registered with the Considerate Constructors Scheme.

Illegal working is not a victimless crime. It defrauds the taxpayer, undercuts honest employers and cheats legitimate job-seekers out of employment opportunities. Making sure that construction sites are staffed only by legitimate workers, employed by firms that pay fairly and legally, is likely to contribute to better outcomes for the industry as a whole. **CM**



CPD test paper Implementing Operation Magnify

1. Under the Immigration Act 2014, what is the maximum penalty for each illegal worker employed?

- £1,000 £5,000
 £10,000 £20,000

2. Which action is not part of the Home Office's recommended Right to Work check process?

- See the applicant's original documents
 Check the documents are valid with the applicant present
 Check them with the employee's previous employer
 Make and keep copies of the documents

3. What will be the maximum sentence under the proposed Immigration Bill for an employer who knows, or reasonably suspects, that the person they employ has no permission to work in the UK?

- Six months Two years
 Three years Five years

4. When will the Considerate Constructors Scheme include illegal working within its monitoring checklist?

- 2016 2017
 2018 2020

5. If employers doubt a worker's legitimacy, who should they call?

- Call the subcontractor
 Call the Considerate Constructors Scheme
 Call the Home Office helpline
 Call the police

Take the test now

Demonstrate your knowledge of this subject by undertaking this CPD test digitally on the CIOB's CPD Portal.

Members can register now to join more than 11,000 professionals using the online CPD portal, which hosts around 100 modules in formats including video and Powerpoint.

This is hosted on the *Construction Manager* website, but is a separate system, for which users need to register and create a password.

To take the test (right), follow the link in the online version of this article, or click on the "CPD" tab in the top menu bar on the *CM* website.

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