



**'Spotlight on...'** learning toolkits aim to raise awareness and drive change. The toolkits provide resources including guidance, case studies and best practice examples from across the industry and beyond to help the construction industry to address these issues and raise their standards in these important areas of concern.

## CONSIDERATE CONSTRUCTORS SCHEME



# Spotlight on... illegal workers

BEST PRACTICE  
HUB





## 'Spotlight on... illegal workers' aims to increase understanding of the risk posed by illegal construction workers and identify what can be done to tackle the problem.

In recent years, the construction industry has become increasingly associated with efforts to reduce illegal working and the exploitation of unlawful labour in the United Kingdom (UK). The issue of illegal workers is a difficult one, but it is essential that everyone involved in the construction industry is aware of the risks posed by such workers, the potential exploitation of illegal workers and how we can remedy the problem.

### INTRODUCTION

Illegal working is undertaken by individuals who are subject to UK immigration control and have either entered the UK unlawfully, overstayed their permission to be here, or have permission to be in the UK but are subject to a condition preventing them from working.

The Government is focused on reducing the number of people who are illegally working in the UK, and employers in the construction sector have a role to play in this. Since 1997, all employers have had a responsibility to prevent illegal working. They do this by carrying out simple 'Right to Work' checks before employing someone, to make sure the individual is not disqualified from carrying out the work in question by reason of their immigration status. The checks have been underpinned by civil and criminal sanctions for non-compliance since 2008, including a civil penalty of up to £60,000 for each illegal worker employed. If prosecuted, employers can now face up to five years in prison.

Using illegal labour is not a victimless crime. If illegal workers are found in a business, it can disrupt operations and result in reputational damage. It can cause health and safety risks for everyone involved with a construction site, as well as the potential invalidation of insurance if the identity, qualifications and skill levels of workers are not as claimed. Illegal working negatively impacts on the wages of lawful workers and is linked to other labour market abuses such as tax evasion, breach of the national minimum

wage and exploitative working conditions, including modern slavery in the most serious cases. Illegal working results in businesses that are not playing by the rules, undercutting legitimate businesses that are.

Construction is a particular target because it is an industry with a high demand for labour and where self-employment is prevalent. There is currently a skills shortage, and the negative perception of the industry can deter people from pursuing a career in the sector. In some cases, employing illegal workers may seem like a short-term fix for pressures on wages and filling the skills shortage, but the potential safety risks far outweigh any perceived benefit.

There are other remedies to the construction industry's challenges; the skills shortage could be addressed by improving the image of the industry and further collaboration, thereby attracting new talent. However, the presence of illegal workers undermines efforts to improve the image of construction.

### THE CONSIDERATE CONSTRUCTORS SCHEME

The Considerate Constructors Scheme covers the topic of illegal working in its Code of Considerate Practice under the 'Value their Workforce' section.

The Checklist used by Scheme Monitors asks the following question in relation to illegal working:

- **Question 3.1.1 – How is the Registered Activity ensuring the competency and legitimacy of the workforce?**

This is followed by guidance detailing that Registered Activity must have a documented competency matrix for the workforce, including the verification of workforce conformance prior to starting work.

Right to Work vetting must be in place for the employed workforce. For all sub-contractors, there must be a verification and assurance process in place.

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Modern Slavery training must also be provided to the workforce and a 'whistle blower/speak-up' process available to report concerns.

Within Checklist Question 3.1.1, there are several prompts related to illegal working which include workforce vetting, and Right to Work checks (including a process for contracted workforce and workforce modern slavery training, and observation for indicators of concern and investigation as appropriate).

Despite this, there is still a perception in the industry that not enough is being done. In order to gain a more up-to-date and direct representation of industry opinions on the issue of illegal working, the Scheme gathered information through an industry survey. Over 550 participants responded, further evidence that the subject is a pressing issue. The following results were identified:

- **93%** agreed illegal working could be better tackled in the construction industry
- **81%** would say illegal working has been on the rise over the past 15 years
- **61%** admitted they have not received – or rarely receive – information on illegal working
- **33%** suspected a chance that illegal working had been present at a previous or current employer
- **30%** believed that health and safety was placed at greatest risk as a result of illegal working (mostly due to the potential language barrier).

The Scheme followed the survey with this 'Spotlight on...' learning toolkit to raise awareness of illegal working.

Illegal working continues to be a key priority for the Government, along with tackling the harm caused by illegal labour. The Home Office remains committed to ensuring employers meet their statutory duty to prevent illegal working and conduct the correct Right to Work checks.

The Scheme has since partnered with the Home Office to provide guidance to construction professionals on how to stamp out illegal working.

#### The Home Office and CCS working together to tackle illegal working:

The Government is committed to tackling the economic motivation behind illegal immigration. A key one among such economic motivations is the ability to work illegally. Employers have an important role in preventing illegal working, and Home Office Immigration Enforcement is committed to engaging and supporting construction industry partners who want to ensure compliance.

As such, Immigration Enforcement is working with the Considerate Constructors Scheme (CCS) to encourage greater compliance in tackling illegal working across the construction industry.

An important part of this successful collaboration was the introduction of a question relating to Right to Work checks in the CCS Monitors' Checklist. The Checklist is used by Scheme Monitors to assess and score Registered Activity against the Code of Considerate Practice. The Home Office provided material to support this toolkit, highlighting key facts and legislation around the topic of illegal working.

#### EMPLOYERS' DUTIES TO PREVENT ILLEGAL WORKING:

Employers have an important role to play in ensuring that their employees have the right to work in the UK. They do this by undertaking the simple 3 step Right to Work check. These steps are:

- **Obtain** original document(s) specified in the Home Office's published acceptable documents list
- **Check** the validity of the documents against the holder; and
- **Retain** copies of the documents and note the date on which the check was made.



In addition to manual Right to Work checks, employers can use the following online services. Since January 2019, these can be used to obtain a statutory excuse against a civil penalty in the event of illegal working involving the subject of the check.

- Using Identity Document Validation Technology (IDVT) via the services of an IDSP (British and Irish citizens only)
- Home Office online Right to Work check (non-British and non-Irish citizens).

Employers can also use the Employer Checking Service where an individual has an outstanding application, administrative review or appeal and their digital profile is not yet enabled to evidence this, or if their immigration status requires verification by the Home Office, for example in the case of Crown Dependencies.

## EUROPEAN ECONOMIC AREA (EEA) CITIZENS:

The UK has left the European Union (EU) and the Immigration and Social Security Coordination (EU Withdrawal) Act 2020 ended free movement law in the UK on 31 December 2020. A grace period of six-months followed, during which relevant aspects of free movement law were saved to allow eligible EEA citizens and their family members resident in the UK by 31 December 2020 to apply to the EU Settlement Scheme (EUSS). This period ended on 30 June 2021.

## RIGHT TO WORK CHECKS FOR EEA CITIZENS FROM 1 JULY 2021

Since 1 July 2021, EEA citizens and their family members are required to have valid immigration status in the UK. They can no longer rely on an EEA passport or national identity card, which only confirm their nationality.

To prove their right to work, they are now required to provide evidence of lawful immigration status in the UK in the same way as other foreign nationals. There is no requirement for a retrospective check to be undertaken on EEA citizens who entered into employment up to and including 30 June 2021.

You will maintain a continuous statutory excuse against liability for a civil penalty if the initial checks were undertaken in line with the guidance that applied at the time you made the check. If you choose to carry out retrospective checks, you must ensure that you do so in a non-discriminatory manner. The **"Code of practice for employers: avoiding unlawful discrimination while preventing illegal working"** provides practical guidance on how to avoid unlawful discrimination when conducting Right to Work checks.

## IRISH CITIZENS

Irish citizens continue to have unrestricted access to work in the UK. They can prove their right to work using their Irish passport or Irish passport card (in both cases, whether current or expired), or their Irish birth or adoption certificate together with an official document showing the person's permanent National Insurance Number (NINo) and their name issued by a Government agency or a previous employer.

## WHAT ARE THE CONSEQUENCES OF EMPLOYING ILLEGAL WORKERS?

Those who employ illegal workers without conducting the required checks will be subject to robust sanctions which include:

- A civil penalty of up to £60,000 per illegal worker
- In serious cases, a criminal conviction carrying a prison sentence of up to five years and an unlimited fine
- Closure of the business and a compliance order issued by the courts
- Disqualification as a director
- Seizure of earnings made as a result of illegal working.
- Illegal workers also face having their wages seized and possible prosecution.

## Law and legislation

The topic of illegal working is comprehensively covered by the law, and Government guidance is available for complying with these regulations.

### IMMIGRATION, ASYLUM AND NATIONALITY ACT 2006

The Act states employers may be liable for a civil penalty if they employ someone who does not have the right to undertake the work in question. Employers can avoid liability (and obtain a 'statutory excuse') by carrying out prescribed checks on people before employing them to ensure they are lawfully allowed to work. These checks should be repeated in respect of those who have time-limited permission to work in the UK.

The Government's full guide for employers on preventing illegal working in the UK can be found here:

<https://www.gov.uk/government/publications/right-to-work-checks-employers-guide>

### MODERN SLAVERY ACT 2015

The Act deals with matters relating to slavery, servitude and forced or compulsory labour and human trafficking. Section 54 of the Act requires every commercial organisation carrying out business in the UK, with a total annual turnover of £36m or more, to produce a slavery and human trafficking statement for each financial year of the organisation. This statement must set out the steps the organisation has taken to ensure that slavery and human trafficking is not taking place in their own business and supply chains.

The Government's practical guide on producing this statement can be found here:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/471996/Transparency\\_in\\_Supply\\_Chains\\_etc\\_\\_A\\_practical\\_guide\\_\\_final\\_.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/471996/Transparency_in_Supply_Chains_etc__A_practical_guide__final_.pdf)

### IMMIGRATION ACT 2016

The Act introduces new sanctions on illegal workers and rogue employers and prevents illegal migrants accessing services.

The Immigration Act 2016 was also used to tackle labour market exploitation. It created a new role of Director of Labour Market Enforcement (LME) to bring better strategic focus, priority setting and co-ordination to the enforcement of labour market legislation undertaken by the Employment Agency Standards Inspectorate, National Minimum Wage enforcement and the Gangmasters and Labour Abuse Authority.

The Government's Immigration Act 2016 fact and FAQ sheet can be found here:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/537205/Immigration\\_Act\\_-\\_Part\\_1\\_-\\_Illegal\\_Working.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/537205/Immigration_Act_-_Part_1_-_Illegal_Working.pdf)





## External resources

There are a number of resources available and initiatives underway to tackle illegal working.

### HOME OFFICE RESOURCES

The Home Office provides a number of free online resources to help employers conduct a right to work check on all new employees. Below is a selection of guidance on the right to work procedure:

**An employer's guide to Right to Work checks**

**How to make a Right to Work check video**

**Use the Employer Checking Service**

**Identity Document Validation Technology**

**A questionnaire for employers to ascertain if an employee's document(s) enables employment in the UK**

**Full guidance notes on Right to Work checks**

**Guidance on examining identity documents**

**Illegal working Q+A for employers**

**Demolish slavery in construction' poster highlights the presence of modern slavery on construction sites**

**A questionnaire for employers that determines if the Home Office need to check an employee's or potential employee's immigration status.**

### WHAT IS THE INDUSTRY DOING?

The **Considerate Constructors Scheme's** Code of Considerate Practice consists of three sections. The 'Value their Workforce' section emphasises that constructors should provide a supportive and caring working environment and Scheme Monitors assess how well a site ensures the legitimacy of their workforce

<http://www.ccscheme.org.uk/index.php/ccs-ltd/what-is-the-ccs/code-of-considerate-practice>

The **Chartered Institute of Building (CIOB)** has produced a toolkit for tackling modern slavery in construction, in conjunction with Stronger Together (a nationwide initiative that provides training, resources and support for businesses that are looking to better tackle illegal working).

<https://www.stronger2gether.org/construction/>

The **Chartered Institute of Building (CIOB)** has produced a study that explores the issue of illegal working, modern slavery and human rights within the construction industry. "Modern Slavery: The Dark Side of Construction" examines the problems associated with cheap migrant labour workforces through case studies in Abu Dhabi, New York and Qatar.

<https://ccsbestpractice.org.uk/wp-content/uploads/2017/01/Modern-Slavery-The-Darkside-of-Construction.pdf>

## Spotlight on...

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**Construction News** have created an article in collaboration with immigration specialists on the issue of illegal working, what the risks of this are, how to mitigate them and what this means for the construction industry.

<https://www.constructionnews.co.uk/legal/home-office-breaks-record-with-crackdown-on-illegal-working-05-07-2023/>

**Chartered Institute of Building (CIOB)** has also written an article focusing on the Government's recent approach to combating illegal working on construction sites: "Operation Magnify".

<https://ccsbestpractice.org.uk/wp-content/uploads/2017/01/Stamping-out-illegal-working-on-every-site.pdf>

An article from **Barratt Homes** outlines how they are confronting illegal working and modern slavery through the introduction of a dedicated whistleblower hotline for their workforce.

<http://www.constructionmanagemagazine.com/news/barratt-tak3es-action-aga7inst-mo9dern-slavery/>

The **Construction Industry Council (CIC)** is the representative forum for the professional bodies, research organisations and specialist business associations in the construction industry. The CIC outlines the **Immigration Act 2016's** illegal working provisions and provides links to the legislation and illegal working penalties in this article.

<http://cic.org.uk/news/article.php?s=2016-11-22-immigration-act-2016-illegal-working-provisions>

The **National Building Specification (NBS)** has produced an article which explores the issue of illegal workers in construction: "Human trafficking, Operation Magnify, and the skills shortage".

<https://www.thenbs.com/knowledge/human-trafficking-operation-magnify-and-the-skills-shortage>

**Build UK** has issued a guidance note for preventing illegal working in the construction industry.

<http://builduk.org/wp-content/uploads/2017/02/Build-UK-Illegal-Workers-Guidance-Note-February-2017.pdf>

The **Supply Chain Sustainability School** has produced a guidance document for how companies should map their supply chain to prevent modern slavery in the construction industry: "Supply Chain Sustainability Procurement Guidance – How to embed best practice in your procurement when combating modern slavery".

<https://ccsbestpractice.org.uk/wp-content/uploads/2017/03/DocGo.Net-Supply-Chain-Sustainability-Procurement-Guidance-How-to-embed-best-practice-in-your-procurement-when-combating-modern-slavery.pdf>

## OTHER USEFUL RESOURCES

**Acas (Advisory, Conciliation and Arbitration Service)** provides advice on employing migrant workers and helps employers keep on the right side of both immigration regulations and employment law. Acas holds regular training events giving a practical introduction to employing people.

<http://www.acas.org.uk/index.aspx?articleid=2031>

**Rightcheck** is an app-based solution to ensuring compliance with Right to Work checks. The app validates supporting documentation and securely stores digital copies of said documentation.

<https://ccsbestpractice.org.uk/wp-content/uploads/2017/03/Right-Check-Information.pdf>



## Examples of best practice

The Scheme aims to improve the image of construction through sharing best practice with the industry. Below are a number of best practice examples that have been either witnessed by the Scheme's Monitors on their site visits or submitted by members of the industry themselves.

- The contractor conducted spot checks at induction to ensure all employees had a right to work in the UK.
- Produced training videos to help relevant employees understand the right to work check process.
- The contractor worked with an external company to train those responsible for right to work checks on how to spot fraudulent documentation.
- Held a toolbox talk on site focused on human trafficking to help employees identify and report modern slavery.
- The company invited government authorities to visit the site and check their right to work system was compliant.
- Used an online passport/document checking system to identify potential forgeries and securely store copies of the documentation.
- The company held 'Sustainability Moments' at the start of meetings to remind colleagues of important topics like illegal working and modern slavery.
- Conducted regular spot checks, on average three times a year, to ensure the company or appropriate subcontractor held current and legitimate right to work documentation in respect of all those who worked on the site.
- The company adhered to the BRE Ethical Labour Sourcing Standard, which addresses how to eliminate illegal working and modern slavery in all elements of a business.

To view all Best Practice Hub entries relating to the 'Spotlight on... illegal workers' learning toolkit visit: <https://ccsbestpractice.org.uk/tag/illegal-workers/>





## Case Studies

The industry has acknowledged and reacted to the issue of drugs and alcohol for some time now. However, as the environment changes the industry is also changing its approach to tackling the issue.



**Crossrail** aims to recruit and retain the best in global talent and to help achieve this they ensure their recruitment process is consistent, fair, efficient and inclusive.

<https://ccsbestpractice.org.uk/wp-content/uploads/2022/11/Crossrail.pdf>



**Northern Gas Networks** explains how its sites are taking a proactive approach to dealing with the issue of illegal workers by making robust checks to verify workers' legitimacy.

<https://ccsbestpractice.org.uk/wp-content/uploads/2022/11/Northern-Gas-Networks-1.pdf>



**Willmott Dixon** outlines how they ensure the correct right to work checks are conducted, and explain their CITB-funded training videos on the issue of illegal workers.

<https://ccsbestpractice.org.uk/wp-content/uploads/2022/11/Willmott-Dixon.pdf>





## What can you do?

It is essential that, when hiring a new employee, you conduct the correct Right to Work checks. It is the responsibility of the direct employer, which is often a subcontractor, to undertake these checks, but it is in the interests of the entire supply chain to ensure the legitimacy of the workforce.

This 'Spotlight on...' learning toolkit has already outlined the risks posed by illegal workers, the severe sanctions that can be brought against employers, as well as the consequences for site operations and the wider industry. The toolkit has also provided links to useful resources to help registered activity end illegal working. Below is a summary of what you can do to tackle illegal working, drawing on advice provided to the Scheme by the Home Office.

### THE HOME OFFICE HAS PROVIDED THIS SUMMARY OF A CORRECT RIGHT TO WORK CHECK:

By conducting the correct Right to Work checks, as prescribed by the Home Office, an employer gets a defence, called a statutory excuse, against liability for a civil penalty. The employer conducts a 3-step check:

- **Obtain** original documents specified in the Home Office's acceptable documents list
- **Check** the validity of the documents against the holder; and
- **Retain** copies of the documents and note the date on which the check was made.

In addition to manual Right to Work checks, employers can use the following online services and have been able to do so to obtain a statutory excuse against a civil penalty in the event of illegal working involving the subject of the check since January 2019:

- Using Identity Document Validation Technology via the services of an IDSP (British and Irish citizens only)
- A Home Office online Right to Work check (non-British and non-Irish citizens).

The checks must be undertaken before their employee starts work, and if their immigration permission is time-limited, they must check again when the permission comes to an end.

### WHO IS RESPONSIBLE FOR CONDUCTING RIGHT TO WORK CHECKS?

Construction is particularly vulnerable to illegal working due to the fragmentation of the supply chain, leading to uncertainty over who is responsible for ensuring the legitimacy of the workforce.

If you, as the employer, are contracting out specific jobs or services to individuals (contractors and sub-contractors), there is no requirement for you to conduct a Right to Work check because you are not the employer of those individuals.

However, there are good reasons for you to establish that a Right to Work check has been conducted. It can cause disruption to your business operations and reputational damage when illegal workers are apprehended, as well as concerns about whether those workers have the knowledge and skills, they said they have, and possible invalidation of your insurance.



It is therefore the responsibility of the direct employer to conduct the correct Right to Work checks. The liable party for any civil penalty is the individual/company/partnership etc. who is identified as employing the worker. The definition of employment under the law states that employment is a "contract of service (employment) or apprenticeship". Therefore, the party who engaged the illegal worker in a contract of employment would be liable for a penalty; you would not get multiple liable parties for an individual breach.

However, contractors should send pre-contract questionnaires to their subcontractors to confirm that they are ensuring the legitimacy of the workforce. The principal contractor may ask for copies of employees' Right to Work documents and store them securely.

The fact that Right to Work checks are not the direct responsibility of principal contractors does not mean they are immune to the dangers of illegal working. The presence of illegal working on a contractor's site could disrupt the project and damage reputation, curtailing their chances of securing contracts, as well as having a detrimental effect on the image of the industry.

The Considerate Constructors Scheme expects site managers to be able to explain the process involved in checking the legitimacy of their workforce.

### ACCEPTABLE RIGHT TO WORK DOCUMENTS (EXCLUDING NATIONAL INSURANCE OR CSCS CARDS)

A full guide to acceptable Right to Work documents can be found in the "External resources" section of this toolkit. Crucially, all construction professionals must be aware that NINOs by themselves, and CSCS cards are **not** evidence of Right to Work.

#### Regarding National Insurance Numbers (NINo), the Home Office says:

A NINo will not by itself demonstrate a Right to Work. Not all NINo holders will be allowed to work in the UK and if they can work, they may be subject to conditions. You must check acceptable documents showing the NINo and name of the holder **together with** one of the combinations specified in the acceptable document lists.

#### On CSCS cards, the Home Office states:

A card issued under the Construction Skills Certification Scheme (CSCS) will not demonstrate an individual's right to work. Nor does it confirm whether an immigration check has been undertaken on the individual. CSCS cards issued since August 2016 carry the statement "Cards issued by CSCS do not confirm the holder's right to work in the UK".

Evidence that someone has had a criminal record check conducted by the Government's Disclosure and Barring Service (DBS) is also **not** adequate evidence of right to work. A DBS check is solely in relation to an individual's conduct and does not provide information of immigration status.

### CONDUCTING SPOT CHECKS

On larger sites of longer duration, contractors should ask subcontractors to check that the right to work information they hold is still current. Many workers have time-limited eligibility to work in the UK and employers are required to carry out follow-up checks at the end of the worker's period of leave.

If the Home Office identifies a worker whose right to work has expired, employers face a civil penalty of up to £60,000 per illegal worker, or prosecution if they know or have reasonable cause to believe that the person is not eligible to work.

### EMPLOYER'S STATUTORY EXCUSE

Conducting correct Right to Work checks and abiding by Home Office guidelines provide an employer with a legal defence (statutory excuse) against liability for a civil penalty.



**The Home Office outlines when an employer does *not* have a statutory excuse:**

- You have not conducted the prescribed Right to Work checks before employment commenced
- You have accepted a document which clearly does not belong to the holder
- You have accepted a document which clearly shows the person does not have the right to work/stay in the UK and/or do the job in question, for example a student who has restrictions on the number of hours that they are allowed to work in term time, and they are working in excess of these hours
- You know you are employing someone who is not allowed to work in the UK, regardless of whether you have carried out checks
- Your statutory excuse has expired; or
- You have not detected a "reasonably" apparent imposter, counterfeit, or forged document(s).

## WHAT OPERATIVES CAN DO

The majority of guidance in this toolkit is aimed at site management, but operatives must also remain vigilant against illegal working to end this harmful practice. We do not seek to create a climate of suspicion and policing on site, but only ask that all construction professionals be aware of the issue of illegal working.

Sites should encourage operatives to raise any concerns they have about illegal workers during the induction process. By implementing an open-door policy and conducting toolbox talks on the issue, sites will create an environment where operatives feel comfortable discussing the issue of illegal workers.

## HOME OFFICE CONTACTS:

To notify the Home Office of your suspicions about illegal workers within your workforce, you should contact the Home Office's UK Visas and Immigration helpline on **0300 790 6268** and select the employers' option (Monday to Friday (excluding bank holidays), 8am to 8pm Saturday and Sunday, 9:30am to 4:30pm). You must state that you are reporting illegal working in your workforce and request a Unique Reference Number (URN). The URN may assist as a statutory excuse in the event you are liable for a civil penalty.

Additionally, if you identify illegal workers or workers who do not have a right to work in the UK during the recruitment process, tell the Home Office about them using the "report an immigration crime" mechanism on gov.uk by **clicking here**.

**To complement the free support already available, the Home Office's Immigration Enforcement Checking and Advice Service offers on-line training courses on a charged for basis. Courses available are:**

- Introduction to Immigration
- Right to Work
- Document Fraud
- Right to Rent

Further enquiries can be made at **IE-CAS@homeoffice.gov.uk**.

As well as the information provided above, it is also advised to visit the "External resources" section of this toolkit, which offers guidance from other organisations that cover the full spectrum of the topic.

The Scheme will continue to update this toolkit as new examples and case studies of how the industry is tackling illegal workers are identified. If you would like to share how you are addressing this issue, please contact the Scheme by emailing **enquiries@ccsbestpractice.org.uk**.