

**EXPLANATORY MEMORANDUM TO**  
**THE ILLEGAL WORKING COMPLIANCE ORDERS REGULATIONS 2016**  
**2016 No. 1058**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by The Home Office and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the instrument**

- 2.1 The purpose of the instrument is to enable courts to impose easily right to work checks or to require the production of right to work documentation as part of an illegal working compliance order. Rather than set out the detail of the checks or documents in the court order itself, courts will be able to impose the checks and require the production of documentation simply by referring to the instrument.

**3. Matters of special interest to Parliament**

*Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 None.

*Other matters of interest to the House of Commons*

- 3.2 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

**4. Legislative Context**

- 4.1 The instrument is being made as part of the implementation of the measures in the Immigration Act 2016, specifically, illegal working compliance orders. This is the first time that the enabling powers for the instrument have been exercised.

**5. Extent and Territorial Application**

- 5.1 The instrument extends to the United Kingdom.  
5.2 The instrument applies to the United Kingdom.

**6. European Convention on Human Rights**

- 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

**7. Policy background**

*What is being done and why*

- 7.1 The regime for illegal working closure notices and compliance orders is set out in Schedule 6 to the Immigration Act 2016. It provides new powers to deal with businesses that repeatedly flout the law by employing illegal workers. The intention is

to use these powers in the most serious cases, where previous civil or criminal sanctions have failed to change employer behaviour.

- 7.2 These provisions create a new power for immigration officers to close premises for up to 48 hours in certain cases where the employer, or a connected person in relation to the employer, has previously faced sanctions for employing illegal workers. Once a closure notice has been issued, an application will be made to the court for an illegal working compliance order, unless the closure notice is cancelled.
- 7.3 The compliance order may extend the period of prohibited or restricted access to the premises or make any order the court considers appropriate to prevent an employer operating at the premises from employing an illegal worker. This might include ordering the business to perform right to work checks to ensure that illegal workers are not employed, requiring the employer to produce evidence of right to work documentation to immigration officers at such places and times as may be specified, or permitting immigration officers to enter the premises to ensure the employer is complying with illegal working rules.
- 7.4 Paragraph 5(6) of Schedule 6 to the Immigration Act 2016 enables the Secretary of State to prescribe the right to work checks which must be conducted and the documents which must be produced to an immigration officer where this is ordered by the court. Although it would be possible for such checks and documents to be set out on the face of a compliance order, this would be an onerous task for magistrates and sheriffs. By listing the right to work checks and documents in secondary legislation, it should save valuable court time by allowing compliance orders to be drafted more quickly; ensure a consistent approach to compliance orders between courts; and enable the checks and documents specified to be aligned with those which would give employers a statutory excuse from paying a civil penalty if they are found to have employed illegal workers. (These checks and documents are set out in the Immigration (Restrictions on Employment) Order 2007, as amended by the Immigration (Restrictions on Employment) (Codes of Practice and Amendment) Order 2014. The alignment of the checks and documents with that of the 2007 Order means that existing detailed guidance to employers on right to work checks should assist an employer to comply with the terms of a compliance order).

### ***Consolidation***

- 7.5 As this is the first instrument made under the enabling power, the issue of consolidation does not arise.

## **8. Consultation outcome**

- 8.1 This instrument has not been the subject of consultation.

## **9. Guidance**

- 9.1 Under paragraph 16 of Schedule 6 to the Immigration Act 2016, the Secretary of State may issue and revise guidance on the exercise of these provisions. The Department will consult stakeholders before publishing this guidance to coincide with the commencement of the provisions. The Department has not submitted the guidance with this memorandum as it is not essential to understanding how the instrument will operate.

## **10. Impact**

- 10.1 The impact on business, charities or voluntary bodies is indirect as it only arises where a court makes an illegal working compliance order. Therefore any impact on business, charities or voluntary bodies arises by virtue of an order of the court and not the instrument. A court may only make such an order where the business, charity or voluntary body is found to be in breach of existing illegal working legislation.
- 10.2 There is no impact on the public sector.
- 10.3 An Impact Assessment has not been prepared for this instrument.

## **11. Regulating small business**

- 11.1 The legislation does not apply to activities that are undertaken by small businesses.

## **12. Monitoring & review**

- 12.1 The provisions of the Immigration Act 2016, and by extension this instrument, will be subject to the normal period of post-legislative review three to five years after Royal Assent.

## **13. Contact**

- 13.1 Sam Murray at the Home Office Telephone: 020 7035 6918 or email: [Sam.Murray@homeoffice.gsi.gov.uk](mailto:Sam.Murray@homeoffice.gsi.gov.uk) can answer any queries regarding the instrument.