STATUTORY INSTRUMENTS

2016 No. 1058

IMMIGRATION

The Illegal Working Compliance Orders Regulations 2016

Made - - - -	*2nd November 2016*
Laid before Parliament	*4th November 2016*
Coming into force - -	*1st December 2016*

The Secretary of State, in exercise of the powers conferred by paragraph 5(6) of Schedule 6 to the Immigration Act 2016(**1**), makes the following Regulations.

Citation and commencement

1.—(1) These Regulations may be cited as the Illegal Working Compliance Orders Regulations 2016.

(2) These Regulations come into force on 1st December 2016.

Interpretation

2. In these Regulations—

"administrative review" means review conducted under the immigration rules;

"biometric immigration document" has the same meaning as in section 5 of the UK Borders Act 2007(**2**);

"derivative right of residence" has the same meaning as in regulation 15A of the Immigration (European Economic Area) Regulations 2006(**3**);

"document" means an original document;

"employee", except in regulation 4(2) and (3), includes a reference to a prospective employee;

"immigration rules" has the same meaning as in section 33 of the Immigration Act 1971(**4**);

"Positive Verification Notice" means a document issued by the Home Office Employer Checking Service which indicates that the person named in it is allowed to stay in the United Kingdom and is allowed to do the work in question;

(**1**) 2016 c. 19.
(**2**) 2007 c. 30.
(**3**) S.I. 2006/1003. Regulation 15A was inserted by S.I. 2012/1547 and was amended by S.I. 2012/2560, S.I. 2013/3032 and S.I. 2015/694.
(**4**) 1971 c. 77.

"registration certificate" means a certificate issued to a national of an EEA state or Switzerland as proof of the holder's right of residence in the United Kingdom as at the date of issue;

"relevant person" means a person required to comply with these Regulations by virtue of an illegal working compliance order;

"residence card" means a card issued to a person who is not a national of an EEA state or Switzerland as proof of the holder's right of residence in the United Kingdom as at the date of issue.

Obligation to conduct right to work checks

3. Where an illegal working compliance order requires a person to carry out checks relating to the right to work in accordance with these Regulations, the person must comply with either regulation 4 or 5 in respect of each of their employees within the scope of the order.

Right to work checks: prescribed documents

4.—(1) A relevant person must—

(a) require the employee to produce to them a document or combination of documents relating to the employee described in Schedule 1 or 2; and

(b) comply with the requirements in regulation 6.

(2) Where a document or combination of documents described in Schedule 2 provides that the employment is permitted for a limited period, a relevant person is deemed to comply with this regulation for a further period if the relevant person is satisfied on reasonable grounds that—

(a) the employee has an outstanding application to vary his or her leave to enter or remain in the United Kingdom; or

(b) the employee has an appeal or administrative review pending against a decision on that application.

(3) In paragraph (2), the further period begins on the date on which the limited period expires and ends—

(a) after 28 days; or

(b) if earlier, on the date on which the Secretary of State gives the relevant person written notice that the employee does not have the right to undertake the employment in question.

Right to work checks: Positive Verification Notice

5.—(1) A relevant person must—

(a) obtain a Positive Verification Notice in respect of the employee (subject to paragraph (2)); and

(b) comply, if applicable, with the requirement in regulation 6(2).

(2) A relevant person does not comply with this regulation if a period of more than six months has elapsed beginning with the date the Positive Verification Notice was obtained under paragraph (1)(a).

Right to work checks: general requirements

6.—(1) The requirements of this regulation are that—

(a) the relevant person takes all reasonable steps to check the validity of the document and retains a record of the date on which any check was made;

(b) a copy of that document or combination of documents is retained securely by the relevant person for the period during which the illegal working compliance order is in force;

(c) if a document contains a photograph purporting to be of the employee, the relevant person has satisfied himself that the photograph is of the employee;

(d) if a document contains a date of birth purporting to relate to the employee, the relevant person has satisfied himself that the date of birth is consistent with the appearance of the employee;

(e) the relevant person takes all other reasonable steps to verify that the employee is the rightful holder of the document;

(f) if the document is not a passport, the relevant person retains a copy of the whole of the document;

(g) if the document is a passport, the relevant person retains a copy of the following pages of that document—

(i) any page containing the holder's personal details including nationality;

(ii) any page containing the holder's photograph;

(iii) any page containing the holder's signature;

(iv) any page containing the date of expiry; and

(v) any page containing information indicating the holder has an entitlement to enter or remain in the United Kingdom and undertake the work in question.

(2) A further requirement, if the employee is a student who has permission to work for a limited number of hours per week during term time whilst studying in the United Kingdom, is that the relevant person must—

(a) require the employee to provide details of the term and vacation dates of the course that the employee is undertaking; and

(b) retain a record of these details.

Obligation to produce documents to an immigration officer

7. Where an illegal working compliance order requires a person to produce documents relating to the right to work to an immigration officer in accordance with these Regulations, the person must comply with either regulation 8 or 9 in respect each of their employees within the scope of the order.

Documents to be produced to an immigration officer: general

8.—(1) A relevant person must produce—

(a) a copy of a document or a copy of a combination of documents relating to the employee described in Schedule 1 or 2 in accordance with paragraphs (2) and (3); and

(b) if the employee is a student who has permission to work for a limited number of hours per week during term time whilst studying in the United Kingdom, a document or copy of a document which records the details of the term and vacation dates of the course that the employee is undertaking.

(2) In respect of a passport, the relevant person must produce a copy of the following pages of that document—

(a) any page containing the holder's personal details including nationality;

(b) any page containing the holder's photograph;

(c) any page containing the holder's signature;