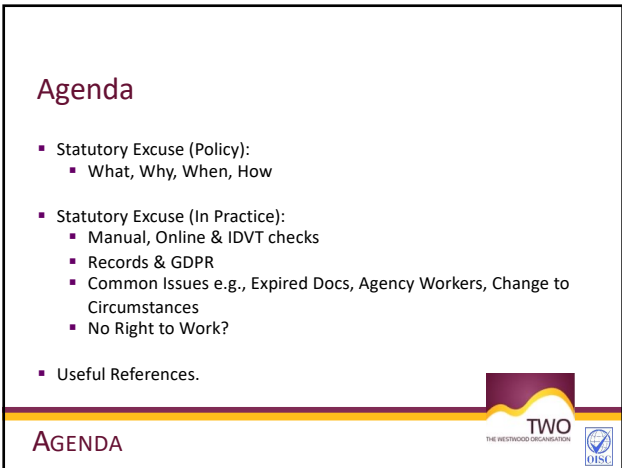
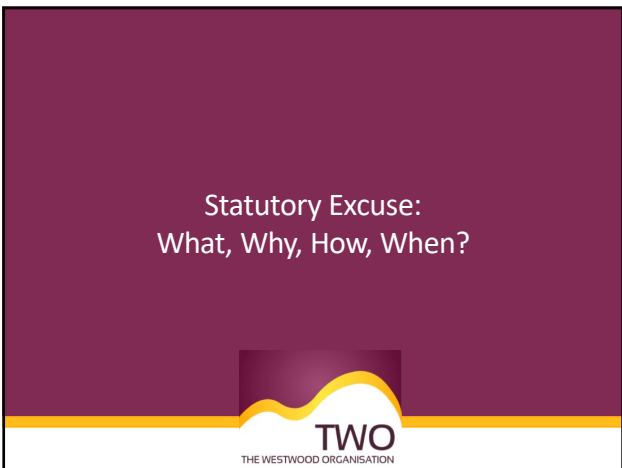


1



2



3

WHAT is the Statutory Excuse?

- Your defence, should an illegal worker be found
- Holding the statutory excuse is not a legal requirement, but it is your only method of defence against penalties
- Importance of employment start date:
 - Pre-January 1997 – no requirement to check
 - 16 May 2014 no expired non-EEA documents/ follow up check at visa expiry rather than annual check
 - 01 July 2021 new docs for EEA nationals
 - 06 April 2022 no BRPs.

STATUTORY EXCUSE: POLICY



4

WHY – Civil Penalty

Maximum of £20,000 per illegal worker

Factors in level of fine:

- Previous penalties or warnings
- Reported suspicion
- Co-operated with UKVI
- Effective checking practices (robust, thorough and appropriate to the company).

STATUTORY EXCUSE: POLICY



5

WHY – Criminal Penalty

- Immigration Act of 2016 changed the threshold and muddled the definitions
- Threshold is now “reasonable cause to believe”
- Also, Illegal working is a crime in its own right (worker can be prosecuted – prison / fine / wages are proceeds of crime)
- Power to close a business – for 48 hours to investigate.

STATUTORY EXCUSE: POLICY



6

WHY For Sponsors

Potential impact on sponsor licence:

- Revocation
 - Impact on existing sponsored staff
- Downgrade
 - Limit on new sponsorship
 - UKVI imposed improvement plan.

STATUTORY EXCUSE: POLICY



7

HOW – UKVI Expectations

- N.B. For ALL types of check (i.e., including online checks)
- Prior to employment commencing, must:
 - Confirm identity (imposter check)
 - Check immigration status allows work
 - Create a record
 - Know when permission expires
- For manual checks - not expected to be a forgery expert
- For online checks – the process must still be followed
- Tools are not required, but IDVT is available.

STATUTORY EXCUSE: POLICY



8

HOW – 3 Types of Check

N.B ALL 3 types include the requirement for an imposter check.

Manual Checks

- For physical documents such as passports & visas

Online Checks

- For electronic status (e.g. EU Settlement Scheme status)
- Mandatory for biometric residence permits (from 6 April 2022)
- Can be used to check some other physical documents

IDVT

- Immigration Document Verification Technology
- Optional, & only for current British & ROI passports.

STATUTORY EXCUSE: POLICY



9

WHEN – Pre-Employment

- Effective and consistent practice – how can you ensure this?
- “In person” checking of documents return from 01 October 2022
 - N.B. For manual check must have document in your hand
- Video calls are allowed (guidance 06 April 2022) - including for share code checks.
- Who does the check?
- Staff guidance and policy/process documents advisable.

STATUTORY EXCUSE: POLICY



10

WHEN – Follow Up

- Required if permission to work is time limited (i.e. an expiry date)
- Follow up checks can be either manual or online
- If manual - any List B document requires follow up
- Frequency of follow up check depends on group
 - List B Group 1 – follow up before visa expiry
 - List B Group 2 – follow up before PVN expires
- Grace period for visa expiry follow up checks.

STATUTORY EXCUSE: POLICY



11

Statutory Excuse:
Policy In Practice



12

Manual Checks

Genuine Document?

- Take all reasonable steps to check document is valid

Imposter Check

- Be satisfied the photograph is of the prospective employee
- Be satisfied the date of birth is consistent with the appearance of prospective employee
- Take all reasonable steps to ensure the prospective employee is the owner of the document.

STATUTORY EXCUSE: IN PRACTICE



13

What to Copy - Passports

- Front cover (*)
(*) Not specifically mentioned in guidance as from May 2014, but remains good practice
- Any page containing personal details including nationality
- Any page containing the holder's photo
- Any page with an expiry date
- Any relevant UK endorsements.

STATUTORY EXCUSE: IN PRACTICE



14

What to Copy – Other Docs

- Full copy - front and back

Common errors:

- Poor copy
- Partial image
- Missing relevant copy
- Copy of wrong document
- Inconsistencies not explained.

STATUTORY EXCUSE: IN PRACTICE



15

The Record

- This is proof of statutory excuse
- A good clear copy
- Date *
 - 'I certify original seen'
 - Prove when doc seen & copied
- Electronic copy – how prove when taken?
- Is it 'unalterable'.


This is certify that this is a true copy of the original document

Signed _____

Date _____

TWO
THE WESTWOOD ORGANISATION

STATUTORY EXCUSE: IN PRACTICE




16

Online Checks

Individual	Employer
<ul style="list-style-type: none"> ■ Logs in to UKVI record via https://www.gov.uk/prove-right-to-work ■ Provides share code & date of birth to you ■ Code valid 90 days ■ Code can be used multiple times in this period. 	<ul style="list-style-type: none"> ■ Receives code directly/ via UKVI email ■ Views record via https://www.gov.uk/view-right-to-work ■ Must use employer portal to obtain statutory excuse ■ UKVI audit use of portal ■ Also need to do imposter check (via video link or in person).

TWO
THE WESTWOOD ORGANISATION

STATUTORY EXCUSE



17


Online Checks

Check:

- Entitled to do work in question
- Check & record any expiry dates
- Print or save the form.


And Imposter Check:

- Confirm photo is of person presenting themselves to you (in person or via video link, _____)



TWO
THE WESTWOOD ORGANISATION

STATUTORY EXCUSE: IN PRACTICE



18

Employer Checking Service (ECS)

- When manual or online check not possible (i.e. there is a pending visa application)
- Require a Positive Verification Notice (PVN) to have statutory excuse
- Employee details & date of visa application
- Suggest wait 14 days from date of visa application before using ECS
- UKVI should respond within 5 working days with PVN.

STATUTORY EXCUSE: IN PRACTICE



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IDVT

- Identity Document Verification Technology
- IDSP – list of accredited providers
- Implications for employers
- Remember – optional. And current British & Irish docs only
- Beware of exclusion
- Statutory excuse duration of employment
- IDSP and employer requirements for statutory excuse.

STATUTORY EXCUSE: IN PRACTICE



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IDVT: Employer Requirements

- Carry out due diligence re. IDSP check
- Obtain output of identity check from IDSP, containing:
 - Copy of both the identity check & document checked
 - In clear format that cannot be altered
- Be satisfied photo & date of birth on output are consistent with individual presenting themselves for work (imposter check)
- Where names differ, establish why & only employ if docs relate to them.
- Retain record 2 years after employment ends.

STATUTORY EXCUSE




21

Keeping Records

All Employees For 2 years after employment ends	Sponsored Employees For 1 year after sponsorship ends
<ul style="list-style-type: none"> Proof of right to work Contact details (address & tel. no). 	<ul style="list-style-type: none"> Proof of right to work Appendix D Sponsor Guidance: <ul style="list-style-type: none"> History of contact details Sponsorship paperwork Justification for sponsorship Proof of pay.

STATUTORY EXCUSE: IN PRACTICE



23


GDPR

Right to work and sponsorship paperwork needs to be kept for a lawful purpose

But ...


- Ensure you are only processing what is relevant
- Special category data may include: racial / ethnic origin data, political opinion, Union membership, health, sexual and life style information and any offences
- Can you justify the record?

STATUTORY EXCUSE: IN PRACTICE



24

Common Issues: Expired Docs




- Where possible, British (and Republic of Ireland) documents should be current

BUT...

- You can accept expired ones, if you carry out the required checks.

STATUTORY EXCUSE: IN PRACTICE



25

Required Checks Reminder

- Take all reasonable steps to check document is valid (genuine)
- Retain copies for at least 2 years after employment ends
- Be satisfied the photograph is of the prospective employee
- Be satisfied the date of birth is consistent with the appearance of prospective employee
- Take all reasonable steps to ensure the prospective employee is the owner of the document.

STATUTORY EXCUSE: IN PRACTICE



26

Common Issues: Expired Non UK/ROI

Start date from 16 May 2014:

- Non-EEA nationals require current documentation
- This could be a BRP even if have an expired passport, but cannot be an expired passport containing a visa style sticker
- So, any EEA national could provide expired docs at this time.

Start date from 01 July 2021:

- EEA documents must now be current.

STATUTORY EXCUSE: IN PRACTICE



27

Common Issues: Not British

A passport that describes the holder as:

- a British National (Overseas);
- a British Dependent Territories Citizen;
- a British Overseas Territories citizen;
- a British Overseas citizen;
- a British subject; or
- a British protected person....



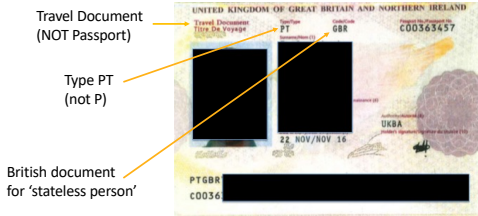
... requires a visa (or other entitlement)

STATUTORY EXCUSE: IN PRACTICE



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Common Issues: Travel Document



STATUTORY EXCUSE: IN PRACTICE



29

Common Issues: Treat as British

Certificate of the Entitlement to Right of Abode

- Found in non British passports where the holder would qualify for a British passport
- Rare to see these now
- If seen, passport must be valid.



STATUTORY EXCUSE: IN PRACTICE



30

Agency Workers

- Obligation is with the employer
- Must establish who is the employer
- Third party: ONLY accredited IDVPs can obtain statutory excuse for you.

Considerations:

- Same person turning up to work?
- Reputation damage is done at the workplace
- Double check on day one?


STATUTORY EXCUSE: IN PRACTICE



31

Common Issues: Change to Circ


- If circumstances change AFTER you have secured statutory excuse:
 - You still have statutory excuse against a civil penalty
 - BUT you may have reasonable cause to believe illegal working
 - Risk of criminal penalty
- Disciplinary procedure to prove right to work
- Reasonable timeframes.



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No Right to Work?

- At recruitment stage – do not employ.
- Retrospective checks = reassurance NOT statutory excuse
- If reasonable cause to believe there is an issue with right to work:
 - Ensure you have a fair process
 - Investigate & gather evidence (ECS & other resources)
 - Meet with employee
 - Offer short period to provide evidence (48 hours?)
 - Meet again, if insufficient evidence, then form grounds for dismissal (normally SOSR).



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Useful Resources



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Parting Thoughts

- Immigration compliance is for all employers
- 01 July 2021 rules changed for EEA nationals
- 06 April 2022 RTW checks changed for employers
- 30 Sept 2022 – COVID-19 concessions end
- Statutory excuse is your only defence against penalty
- Document checks – “reasonably apparent”
- ALL docs must be current (unless British or ROI passport)
- Importance of process
- Permission to work expiry dates must be tracked: follow up to maintain statutory excuse.



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UKVI Resources

Right to Work Checklist
<https://www.gov.uk/government/publications/right-to-work-checklist>

Employers Guide to RTW Checks (April 2022 version)
<https://www.gov.uk/government/publications/right-to-work-checks-employers-guide>

Employer Checking Service
<https://www.gov.uk/employee-immigration-employment-status>

Online BRP Checker 'View & Prove'
<https://www.gov.uk/view-right-to-work>



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Other Resources

Document Checking (PRADO)
<http://www.consilium.Europa.eu/prado/EN/homeIndex.html>

Document Verification
<https://passportproven.co.uk>

TWO Newsletter
<http://eepurl.com/cFragv>

TWO Frequently Asked Questions
<https://www.twolimited.co.uk/two-library/preventing-illegal-working/faqs-piw/>



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Registered with the OISC to give immigration advice:
F200300132



Working in partnership with Passport Proven –
the online document verification service

The information in this presentation is not intended to be a full
statement of the law, and should not be treated as such.
We recommend that you seek advice regarding the particular
circumstances of your situation.
