

THE IMMIGRATION ACT 2016

The Immigration Bill 2015/2016 (the Bill) received royal assent on 12 May 2016 and is now the Immigration Act 2016 (the 2016 Act). The 2016 Act builds on the measures introduced by the Immigration Act 2014 (the 2014 Act) and will make it more difficult for those living illegally in the UK to access services such as bank accounts, rental accommodation and employment.

The 2014 Act was introduced to tackle illegal immigration and, amongst other measures, imposed obligations on landlords to conduct right to rent checks on tenants and obligations on banks to check a prospective client's immigration status prior to opening a UK bank account. It also increased the maximum civil penalty for employers found to be employing illegal workers and restricted access to UK driving licences.

The 2016 Act further enforces these measures by imposing criminal sanctions on landlords and employers who deliberately do not undertake the necessary immigration checks. It also increases the obligations on banks to check and monitor the immigration status of current and potential account holders and provides immigration and police officers with greater powers to search and seize driving licences and vehicles driven by illegal migrants.

We set out below details of the 2016 Act's provisions which would most likely impact high-net-worth individuals, employers and those providing services to migrants.

LABOUR MARKET AND ILLEGAL WORKING

Illegal working is now a criminal offence

The 2016 Act makes illegal working a criminal offence in its own right, with a maximum custodial sentence of six months and/or an unlimited fine in England and Wales. This new offence covers all workers, whether self-employed or employed. Furthermore, wages paid to illegal workers may be recoverable under the Proceeds of Crime Act 2002.

The 2016 Act also makes it a criminal offence for employers to employ someone who they 'know or have reasonable cause to believe' is an illegal worker. The maximum custodial sentence for employing an illegal worker is also increased from two years to five years. These powers operate alongside and reinforce the existing system of heavy financial penalties for businesses that negligently employ illegal workers. It is therefore critical that businesses and any private individuals who act as employers have systems in place to check and monitor the immigration status of all employees. Failure to put these processes in place could lead to employers facing criminal charges.

The above provisions regarding illegal working and employing illegal workers will come into force on 12 July 2016.

ACCESS TO SERVICES

Residential Tenancies

The 2014 Act introduced the Right to Rent Scheme, which prohibited landlords from allowing adults to occupy property as their only or main home under a residential tenancy agreement unless they have immigration permission or a right to be in the UK. "Landlord" is defined widely and includes individuals or companies who let or license accommodation, individuals who take in lodgers and tenants who sublet their rented property.

Landlords are required to check the immigration status of all adult occupiers and failure to do so could result in a civil penalty of up to £3,000 per illegal occupier.

The 2016 Act introduces the following criminal offences relating to landlords and/or their agents:

1. The first offence is committed if a landlord/agent under a residential tenancy agreement knows or has reasonable grounds to believe that the premises are occupied by an adult without immigration permission. This applies where any adult is occupying the premises regardless of whether the adult is a tenant under or named in the tenancy agreement.
2. The second offence is committed if a tenant's leave to remain in the UK expires during the course of the tenancy (having been valid when the tenancy was entered into) but continues to occupy the property and the landlord/agent knows or has reasonable cause to believe this has happened and does not take reasonable steps to terminate the residential tenancy agreement.

Landlords or agents found guilty of the above criminal offences may be subject to fines and/or a maximum of five years' imprisonment.

Furthermore, the 2016 Act enables landlords to evict illegal occupiers more easily. The Secretary of State will have the power to serve a notice on a landlord informing him that an occupier does not have immigration permission to be in the UK. The landlord will then be able to serve a notice to terminate the tenancy by providing a minimum notice period of 28 days.

The landlord's notice will be enforceable as if it were an order of the High Court.

The above provisions are not currently in force and the enforcement date is yet to be announced.

UK Driving Licences

The 2014 Act provided the UK Government with the power to revoke UK driving licences held by illegal migrants. However, immigration officers did not have the power to seize revoked UK driving licences as it was the responsibility of the licence holder to return the revoked licence to DVLA and failure to do so is a criminal offence.

The 2016 Act provides two new measures:

1. power for police and immigration officers to search people and premises, in order to seize revoked or unrevoked UK driving licences of illegal migrants; and
2. creates a new criminal offence of driving whilst unlawfully present in the UK, which can carry a custodial sentence of up to six months and/or a fine. The vehicle involved can also be impounded and, upon conviction, the court may order its forfeiture, even if it does not belong to the person found guilty of the offence.

Therefore, if an immigration officer has reasonable grounds to believe an individual is in possession of a UK driving licence and is not lawfully resident in the UK, he may enter and search the premises and the individual in order to seize his UK driving licence. If the individual is driving or the immigration officer has reasonable grounds for suspecting the individual to have been driving whilst in the UK without immigration permission, the immigration officer may arrest him for a driving offence and seize the vehicle. If the migrant is convicted of the offence, the court may order forfeiture of that vehicle, regardless of whether it is owned by the illegal migrant. Therefore, vehicle owners should seek confirmation of the immigration status of all potential drivers.

The above provisions are not yet in force and the enforcement date has not been announced.

Bank Accounts

The 2014 Act prohibited banks and building societies from opening current accounts for individuals who do not have immigration permission or a right to be in the UK.

The 2016 Act goes further and introduces measures to prevent illegal migrants from continuing to operate existing bank accounts. This will include accounts opened before the 2014 Act came into force and accounts which were opened during a period of lawful stay which has now ended.

Under the 2016 Act, banks and building societies will be required to regularly check the immigration status of its account holders. If it establishes that a client is an illegal migrant, it will have a duty to report this to the Home Office.

If the account holder is confirmed to be in the UK illegally, the Home Office will have the power to:

1. require banks and building societies to close the account as soon as reasonably practicable; or
2. apply to the courts to freeze the account until the illegal migrant leaves the UK.

If the bank or building society conducts the checks required by legislation, there will be no repercussions. It must make arrangements with specified anti-fraud organisations or a specified data-matching authority for the purpose of enabling it to carry out immigration checks and it would have to bear the costs for conducting these checks. Therefore, banks and building societies must undertake reasonable steps to check the on-going immigration status of its existing clients.

The above provisions are not yet in force and the enforcement date is yet to be announced. The UK Government will publish guidance for banks and building societies regarding how it can carry out the new responsibilities imposed by the above provisions. It is yet to be confirmed whether these provisions will be limited to banks and building societies providing current accounts or whether it will apply to institutions providing other types of accounts, such as wealth managers who provide investment accounts.

ENFORCEMENT

Employers must be aware that the 2016 Act gives immigration officers powers to seize and pass on evidence. They can do so where there are reasonable grounds to believe the item or information concerned has been obtained through, or is evidence of, an immigration offence and where it is necessary to prevent it being hidden, or destroyed. Immigration officers will no longer be required to defer to the police. Therefore, the 2016 Act creates new powers to allow immigration officers to search for and seize evidence of illegal working (such as payslips or time sheets) or of illegal renting (such as tenancy agreements and lettings paperwork).

The provisions containing these new powers will come into force on 12 July 2016.

FEES AND CHARGES

The UK Government aims to encourage the recruitment of UK workers who can acquire new skills through training. The 2016 Act introduces the Immigration Skills Charge (ISC) which will fund skill shortages for UK workers. The charge applies where employers sponsor skilled workers under Tier 2 of the Points Based System who are not UK nationals or those settled in the UK, EEA nationals or nationals of Switzerland.

The above provisions will be coming into force on 12 July 2016 and from April 2017, an ISC will be levied on Tier 2 employers at a rate of £1,000 (£364 for small and charitable sponsors) per person per year. However, PhD roles, Tier 2 (Intra-company Transfer) Graduate Trainees and Tier 4 (General) students switching to a Tier 2 route will be exempt.

CONCLUSION

The Bill became the 2016 Act on 12 May 2016. Although a few provisions will come into force on 12 July 2016 as stipulated in The Immigration Act 2016 (Commencement No. 1) Regulations 2016, we await further details of the dates on which the provisions regarding access to services, such as rental accommodation, driving licences and bank accounts, will come into force. We also await published guidance on how these provisions will be implemented and enforced.

Macfarlanes continues to monitor the progress of the 2016 Act and will keep you up to date with any further developments. In addition, once further guidance has been published, we will provide additional information in relation to how the provisions will work in practice.

If you would like to discuss the potential implications of any of the 2016 Act's provisions in more detail, please contact James Perrott.

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