

MACFARLANES

THE IMMIGRATION BILL 2015/2016

The Immigration Bill 2015/2016 (the Bill) is currently going through Parliament and will likely become law by the end of this year. The Bill 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, among other measures, imposed obligations on landlords to conduct right to rent checks on tenants and obligations on banks to check prospective clients' immigration status prior to opening a 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 Bill looks to further enforce these requirements by introducing 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 being driven by illegal migrants.

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

LABOUR MARKET AND ILLEGAL WORKING

Illegal working will become a criminal offence

The Bill will make illegal working a criminal offence in its own right, with a maximum custodial sentence of six months and/or a fine up to the statutory maximum (unlimited in England and Wales). The new offence will cover any worker, whether self-employed or employed. Furthermore, wages paid to illegal workers will be recoverable under the Proceeds of Crime Act 2002.

The Bill will also make 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 will also increase from two years to five years. These powers will 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.

Immigration officers will have the powers to close business premises

The Bill will give immigration officers powers to close business premises for an initial 48 hours where illegal working is suspected. Unless the closure notice is cancelled, the immigration officer will make an application to the court for an illegal working compliance order. The compliance order may extend the closure of the premises or direct the employer to perform certain steps to ensure that illegal workers are not employed.

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. 'Landlords' 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 Bill proposes 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 but does not notify the Secretary of State as soon as reasonably practicable.

Landlords or agents found guilty of a criminal offence may face fines, up to five years imprisonment and/or further sanctions under the Proceeds of Crime Act.

Furthermore, the Bill will also enable landlords to evict illegal occupiers more easily, and in some circumstances without a court order.

UK Driving Licence

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

The Bill will provide 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.
2. Create a new criminal offence for driving whilst unlawfully present in the UK, which will carry a custodial sentence of up to six months and/or a fine. The vehicle may be impounded and, upon conviction, the court may order its forfeiture.

If a police officer stops a motorist for a driving offence, they can check the immigration status of that individual. If the individual is in the UK illegally, the police officer will be able to search for and seize their UK driving licence, arrest them for the 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.

Bank accounts

The 2014 Act prohibited banks and building societies from opening current accounts for individuals who are not lawfully in the UK.

The new Bill will go further and propose 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 this Bill, banks and building societies will be required to regularly check the immigration status of their account holders. If a bank establishes that a customer is an illegal migrant, they 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; and
2. apply to the courts to freeze the account until the illegal migrant leaves the UK.

If the bank or building society conducted the checks required by legislation, there would be no repercussions. Therefore, they will need to undertake reasonable steps to check the on-going immigration status of existing clients.

ENFORCEMENT

Employers must be aware that the Bill will give immigration officers powers to seize and pass on evidence. Immigration officers will no longer be required to defer to the police. Therefore, the Bill will create 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 (tenancy agreements and letting paperwork).

FEES AND CHARGES

The UK Government aims to encourage the recruitment of UK workers who can acquire new skills through training. The Bill will introduce the Immigration Skills Charge (ISC) which will fund training for UK workers in occupations where there are skill shortages. The charge applies where employers recruit skilled workers from outside of the EEA and Switzerland (unless they are British citizens).

From April 2017, the 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 (Student) to Tier 2 (General/Intra-company Transfer) switchers will be exempt.

CONCLUSION

Although the Bill is not yet law and is currently being considered by Parliament, it is likely that the provisions set out above will come into effect once the Bill has received Royal Assent later this year. The UK Government will publish further guidance on how these provisions will be implemented and enforced once the Bill becomes law.

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

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

CONTACT DETAILS

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This note is intended to provide general information about some recent and anticipated developments which may be of interest. It is not intended to be comprehensive nor to provide any specific legal advice and should not be acted or relied upon as doing so. Professional advice appropriate to the specific situation should always be obtained.

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