

Hogan
Lovells



ATLEU
ANTI TRAFFICKING AND
LABOUR EXPLOITATION UNIT

The Immigration Act 2016

The Implications for Victims of Trafficking

Rachael Despicht

4 July 2017



The Immigration Act 2016: An Overview

- Royal Assent 12 May 2016
- Theresa May's "hostile environment"
- Introductory text
- *"An Act to make provision about the law on immigration and asylum; to make provision about access to services, facilities, licences and work by reference to immigration status; to make provision about the enforcement of certain legislation relating to the labour market; to make provision about language requirements for public sector workers; to make provision about fees for passports and civil registration; and for connected purposes."*
- Explanatory notes to the Immigration Bill, Overview of the Bill
- *1 This Bill implements a number of policies outlined in the Conservative Party Manifesto. The Bill contains measures to tackle illegal working, enhance the enforcement of labour market rules, deny illegal migrants access to services including housing and banking, provide new powers for immigration officers, as well as other measures to improve the security and operation of the immigration system.*
- *2 The purpose of the Bill is to tackle illegal immigration by making it harder to live and work illegally in the United Kingdom. The intention is that without access to work, illegal migrants will depart voluntarily, but where they do not, the Bill contains other measures to support enforced removals.*

LAYOUT OF THE ACT

- PART 1: LABOUR MARKET AND ILLEGAL WORKING
- PART 2: ACCESS TO SERVICES
- PART 3: ENFORCEMENT
- PART 4: APPEALS
- PART 5: SUPPORT FOR CERTAIN CATEGORIES OF MIGRANT
- PART 6: BORDER SECURITY
- PART 7: LANGUAGE REQUIREMENT FOR PUBLIC SECTOR WORKERS
- PART 8: FEE AND CHARGES
- PART 9: MISC AND GENERAL
- 15 Schedules

Schedules

- Schedule 1 — Persons to whom Director etc may disclose information
- Schedule 2 — Functions in relation to labour market
- Schedule 3 — Consequential and related amendments
- Schedule 4 — Licensing Act 2003: amendments relating to illegal working
- Schedule 5 — Private hire vehicles etc
- Schedule 6 — Illegal working closure notices and illegal working compliance orders
- Schedule 7 — Bank accounts
- Schedule 8 — Amendments to search warrant provisions
- Schedule 9 — Duty to supply nationality documents to Secretary of State: persons to whom duty applies
- Schedule 10 — Immigration bail Part 1 — Main provisions Part 2 — Amendments to other Acts
- Schedule 11 — Support for certain categories of migrant
- Schedule 12 — Availability of local authority support
- Schedule 13 — Penalties relating to airport control areas
- Schedule 14 — Maritime enforcement
- Schedule 15 — Civil registration fees

PART 1: LABOUR MARKET AND ILLEGAL WORKING

CHAPTER 1: LABOUR MARKET

Director of Labour Market Enforcement (Director) established: Into force 12 July 2016

- 5 January 2017 **Sir David Metcalf** named as the first Director

Aim of Role

- **Address labour market offences**, failure to comply with minimum wage legislation and breaching conditions of gangmaster licenses.
- The Director will provide **strategic direction** for organisations ‘policing’ and regulating the UK labour market:
 - Gangmasters and Labour Abuse Authority (GLAA)
 - Employment Agency Standards Inspectorate (EASI)
 - HMRC’s National Minimum Wage enforcement team (HMRC-NMW)
- Part of remit is to work alongside the Independent Anti-Slavery Commissioner to tackle exploitation and slavery in the labour market.

Role of the Director

- Prepare a Labour Market Enforcement strategy
- Submit annual report
- Information gateway and Information hub
- The Director cannot make recommendations in individual cases

Gangmasters and Labour Abuse Authority

Section 10: Change of name: Into force 12 July 2016

- Renaming Gangmasters Licensing Authority to The Gangmasters and Labour Abuse Authority (GLAA).
- Additional Powers: including PACE powers and Slavery and Trafficking Orders
- Specialist Officers: Labour Abuse Prevention Officers
- Remit to cover entire labour market.

Labour Market Enforcement (LME) Undertakings

Sections 14 to 17: into force 25 November 2016

- Purpose to prevent the risk of further offences being committed/ continuing an offence
- Enforcing authorities: EAS, HMRC-NMW and GLAA
- Enforcing authorities can give notice to a person identifying a trigger offence which the authority believes has been or is being committed and invite the person to give an LME undertaking to comply with any prohibitions, restrictions or requirements set out in the undertaking.
- Trigger offences: section 14 (4)
- Undertaking can be effective for a period of up to 2 years

Labour Market Enforcement (LME) Orders

Sections 18 to 24: Into force 25 November 2016

- If a subject fails to comply with the LME Undertaking then an LME Order can be made by a Court upon an application by an enforcing authority
- LME Order can be effective for a period of up to of 2 years
- Right of appeal Section 24
- An Offence is committed if the subject fails to comply with the Order
- If convicted up to 2 years imprisonment and/ or fine
- A Code of Practice was published in accordance with the Act on 29 November 2016 on gov.uk

Report Abuse to Enforcing Authorities

EAS, HMRC-NMW and GLAA

- GLAA <http://www.gla.gov.uk/> To report abuse **0800 432 0804** or **0115 959 7052** or by email [**intelligence@gla.gsi.gov.uk**](mailto:intelligence@gla.gsi.gov.uk)
- Gov.uk: Anyone with a complaint about an employment agency or business or not being paid the National Minimum Wage can call the Pay and Work Rights Helpline on 0800 917 2368.
- Complaint form for reporting information relating to the national minimum wage, employment agencies, gangmasters or working hours: [**https://www.gov.uk/government/publications/pay-and-work-rights-complaints**](https://www.gov.uk/government/publications/pay-and-work-rights-complaints)
- **Acas helpline** Telephone: 0300 123 1100

CHAPTER 2: ILLEGAL WORKING

Section 34 Offence of illegal working: Into force 12 July 2016

- Illegal working a criminal offence in its own right.
- Offence: where a person subject to immigration control works at a time when that person *knows* or *has reasonable cause to believe* that they are disqualified from working due to their immigration status.
- Liable to imprisonment not exceeding 51 weeks or a fine or both.
- Definition of “*working*” goes further than employment eg includes “*under a contract personally to do work*” eg odd cleaning job etc
- Wages paid to illegal migrants can be seized as the proceeds of crime.

Section 35: Offence of employing illegal worker: Into force 12 July 2016

- Amends the offence set out in Section 21 of Immigration Asylum Nationality Act 2006 to reflect the wording of the offence above.
- An offence for an employer employing a person disqualified from working due to their immigration status with the *knowledge* of the employer or where the employer has *reasonable cause to believe* the employee is disqualified.
- Increases maximum term of imprisonment from two to five years.

Defence to illegal working?

- Karen Bradley,

*“The intent of the offence of illegal working is clear; it is **not aimed at the victims of modern slavery**. Anyone who is a victim of modern slavery can at any time report their captors, and last week the home secretary announced a specific [helpline](#) for victims to ring or text for help.”*

- Rt Hon James Brokenshire MP,

*“The Government would not want to prosecute those who have been forced to travel here and exploited for the profit of others, which goes to the heart of the matter. That is why **the offence is not aimed at the victims of modern slavery**. The statutory defence in section 45 of the Modern Slavery Act 2015 will apply.”*

- Statutory defence under section 45 of The Modern Slavery Act
- CPS Guidance, Public interest

Implications of Illegal working offence

- Hostile environment
- Tool of control for traffickers
- Risk of further exploitation
- VoTs treated as illegal workers rather than victims of crime
- Expectation of more prosecutions
- Enduring criminal record for VoTs
- Will deter VoTs from coming forward
- Fear of having earnings confiscated
- Risk of self incrimination
- Risk and fear of imprisonment
- Fear of being removed
- Impact on seeking asylum
- Implications for immigration status
- Impact on seeking NASS support
ASAP Advice line

PART 2: ACCESS TO SERVICES

Residential tenancies: Into force 1 November 2016

- The ‘right to rent’ scheme brought in by the **Immigration Act 2014** requires landlords and landladies to check immigration status documents and not rent property to those without a right to rent. **Civil penalty up to £3000 per tenant.**
- The **Immigration Act 2016** brings in a **new criminal offence** for landlords, landladies and agents for breaching the right to rent scheme, of renting property to an adult whom they *know* or *have reasonable cause to believe* is disqualified from renting as a result of their immigration status.
- If convicted they could be sentenced to **up to five years in prison**, and a fine.

Section 40 Eviction: Into Force 1 November 2016

- The Act creates new powers for landlords and landladies to evict persons who are disqualified from renting property as a result of their immigration status if notified by the SSHD that the person is disqualified from renting.
- Excluded from the safeguards of the Protection from Eviction Act 1977.
- Landlords and Landladies will be able to evict a person **without having to obtain a court order.**

Implications of right to rent provisions

- Hostile environment
- Increased discrimination to ethnic minorities and those with complicated immigration status
- Increased vulnerability to exploitation from landlords/traffickers
- Increased homelessness (including vulnerable VoTs/children)

Section 45: Bank accounts: into force 1 November 2016

- **Requirement for banks** and building societies **to carry out periodic immigration checks** in relation to current accounts, to check whether the account is operated by a “disqualified person”.
- Requirement for the bank or building society to notify the SSHD as soon as reasonably practical.
- Then the SSHD must check if the person is disqualified and if so then the SSHD may apply for a **freezing order** in respect of the account
- Or require the bank/building society to **close the account**.
- Checks will start 1 January 2018

Implications

- Hostile environment
- Increases risk of exploitation of undocumented migrants who will be driven to use cash/ borrow bank accounts/ easier to withhold wages
- Risk of error from SSHD likely to affect those who are lawfully here

Section 44: Offence of driving when unlawfully in the UK

Section 43: Powers to carry out searches relating to driving licences

- Not yet in force
- Immigration officials given powers to enter and search premises and to retain driving licences.
- Stop and search powers where police have “*reasonable grounds*” for believing that someone is not lawfully resident in the UK and is in possession of a driving licence.

Implications

- Hostile environment
- Increased discrimination in the use of 'stop and search'

PART 3: ENFORCEMENT

Powers of Immigration Officers: Into force 12 July 2016

- Powers for officers lawfully on premises to search for, seize and retain documents without a warrant
- Power to perform strip search in detention in order to search for documents with a new criminal offence for obstructing the officer .

Section 59: Guidance on detention of vulnerable persons

Into force 12 July 2016

- Duty on the Secretary of State to issue guidance
- The Immigration Act 2016: Guidance on adults at risk in immigration detention was published August 2016.
- https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/547519/Adults_at_Risk_August_2016.pdf

PART 4: APPEALS

Section 63: Appeals within the United Kingdom: certification of human rights claims

- Asylum claimants and protection claims brought under Articles 2 or 3 of the ECHR will continue to receive an in-country right of appeal (unless their claim is certified as clearly unfounded),
- but people who have made non-asylum human rights claims (likely article 8 private/family life and article 4 forced labour servitude) are most likely to be refused without an in-country right of appeal and will only be able to appeal once they have left the UK unless there is a real risk of *serious irreversible harm* if they are removed from the UK before any appeal is concluded.
- Previously only applied to foreign national offenders in deportation cases.

Implications

- Increase in unsuccessful appeals
- Harder to access to legal aid

PART 5: SUPPORT ETC FOR CERTAIN CATEGORIES OF MIGRANT

Section 66: Support for certain categories of migrant: not in force

- Section 66 and Schedule 11 of the Immigration Act 2016 make changes to the criteria for accessing support and accommodation from the Home Office. Much of the detail has been left to regulations.
- Section 4 of the Immigration and Asylum Act 1999 for asylum seekers at the end of the process will be repealed.
- People who make ‘further qualifying submissions’ on protection grounds will be supported under section 95 of the Immigration and Asylum Act 1999 in the same way as asylum applicants making an initial claim.
- Asylum seekers who reach the end of the process but face a ‘genuine obstacle’ to leaving the UK may be supported under a new provision, section 95A of the Immigration and Asylum Act 1999, which may be provided in cash and at the same level as section 95 support.

Section 67: Unaccompanied refugee children: relocation and support

- Into force 31 May 2016
- SSHD must make arrangements to relocate to the UK and support a specified number of unaccompanied refugee children from Europe in consultation with local authorities

Sections to 69 to 72: into force 31 May 2016

- These sections create a mechanism under which responsibility for unaccompanied children may be transferred from one local authority to another, either on a voluntary basis or under an enforced scheme.

PART 6: BORDER SECURITY

- New maritime enforcement powers
- See Schedule 14

PART 7: LANGUAGE REQUIREMENTS FOR PUBLIC SECTOR WORKERS

Section 77: Into force 21 November 2016

- This places a duty on public authorities to ensure that each person who works in a ‘customer-facing’ role speaks fluent English - defined as a command of spoken English sufficient to enable effective performance of their role.

PART 8: FEES AND CHARGES

Section 85: Into force 12 July 2016

- Section makes provision for an Immigration Skills Charge to be levied on those hiring third country nationals as skilled workers.
- Employers sponsoring a skilled worker from outside the European Economic Area under the Points Based System will be required to pay an additional charge which may then be used by the Government to fund apprenticeships, although not with the same employer.
- Introduced on 6 April 2017 and set at £1000 per employee per year with a reduced rate of £364 for small or charitable organisations, including universities⁷⁴. The charge will not apply to PhD level jobs or international students switching.