

## **Prime Ministers' speech on immigration**

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The last government passed a significant amount of legislation touching persons under immigration control but, in stark contrast to its predecessor, only one dedicated piece of primary legislation, the Immigration Act 2014. It appears that this government has already been bitten by the immigration bill bug; a bill has been announced without even the courtesy of waiting for the Queen's speech.

The proposals include, but are not limited to:

That working without leave will become a criminal offence, whereas heretofore criminal sanctions have been reserved for the employers knowingly employing a person without permission to work, the criminal regime running in parallel with a strict liability civil penalty scheme. Is the focus on employees intended to take the heat off employers, or will there be a pincer movement with both parties to the employment contract under attack? What effect will the proposals have on the balance of power between employer and employee, particularly in cases of exploitation? Imposing criminal penalties on the employee is not a new idea; it has been done for accession state nationals subject to worker registration schemes. Croatian nationals who are supposed to hold a valid accession worker authorisation document and do not, already face fines or terms of imprisonment of up to three months.

There are proposals to make it easier to evict persons without leave, including a consultation on cancelling tenancies when leave expires. The suggestion that this is akin to what happens in jobs ignores the protections of employment law in that field.

In the Immigration Act 2014 the government made provision for persons facing deportation following criminal conviction or on the grounds of their character and conduct to be removed from the UK for the duration of appeal proceedings, provided that this would not breach their human rights, with the government paying to bring them back if the appeal succeeded. The thinking was that while an immigration judge might conclude that permanent separation would breach a person's human rights, temporary separation for the duration of the appeal would not do so. Asylum and international protection cases were exempt for in such cases the question of the position for the duration of the appeal and permanently are not separate questions. There were already provisions to require those whose protection cases are deemed "clearly unfounded" to leave the UK and appeal from overseas.

The government now intends to extend the regime beyond deportation cases, where character, conduct and convictions are at issue, to a broader swathe of appeals, again, excluding protection cases. It is assumed that only those without leave to be in the UK at the time of appealing would be at risk so that, for example, a person who makes an application to extend their leave, who then sees their leave continue on the same terms and conditions until the appeal is finally determined, would be able to remain. The logistics of the enlarged operation are formidable for a department that is already criticised for not removing enough people permanently, let alone temporarily.

Like the Conservative manifesto, the part of the speech concerned with EU free movement blurs the distinction between that which is within the UK government's gift and that which must be renegotiated and agreed between all the member States of the European Union to change.

The "whole government approach" that the Prime Minister describes is predicated upon a formidable level of data collection and data sharing on persons under immigration control and those who have anything to do with them: as spouses, partners, employers etc. The Immigration Act 2014 greatly increased the government's data gathering and sharing powers and it appears that it is now intended to turn this to account. It is no less than an identity card system for foreign nationals, however it is dressed up.

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