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Zoe Harper, ILPA Legal Officer zoe.harper@ilpa.org.uk

Immigration Law Practitioners' Association www.ilpa.org.uk 020-7251 8383 (t) 020-7251 8384 (f)

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IMMIGRATION ACT 2016: ILLEGAL WORKING

The Immigration Act 2016 introduced a new criminal offence of illegal working, aimed at individuals as workers, that came into force on 12 July 2016. The Act introduces other illegal working provisions for employers and the issue of certain licences for businesses.

Offence of illegal working

It is now a criminal offence for a person to work in the UK if they know or have reason to believe that they are disqualified from doing so because of their immigration status. The maximum sentence is 51 weeks imprisonment in England and Wales or six months imprisonment in Scotland as well as fines.

A person is disqualified from working in the UK if they do not have leave to enter or remain in the UK or if they have a condition on their stay that prevents them from working. People living in the UK under the new form of [immigration bail](#) (replacing current bail and temporary admission) will not be disqualified from working if they have been granted permission to work. As the new form of immigration bail is not yet in force, the Home Office has had to make provision for those who currently have temporary admission in the UK with permission to work. Transitional arrangements ensure that those given temporary admission with permission to work by the Immigration Service are not committing an offence if they work but the provisions do not properly cover those released from detention on bail by a court.

The kinds of work prohibited under the offence are very wide. It is not limited to a contract of employment but includes contracts to undertake work on a self-employed basis, contracts to provide goods or services and also apprenticeships. This means that people working on a self-employed basis when disqualified from working will be committing an offence in the same way as employees and apprentices. A contract does not need to be a formal written document. It may be a verbal agreement or simply an understanding.

A defence exists in the Modern Slavery Act 2015 for victims of trafficking or exploitation who commit offences because they are compelled to do so in their situation of exploitation.

It was already a criminal offence to enter the UK without leave, to become an overstayer or to breach a condition of leave (such as working where this was prohibited) so not a single person could be prosecuted under this provision who could not have already been prosecuted under existing immigration offences. The Government argued that a new criminal offence was necessary to address an inconsistency and allow earnings to be seized under the Proceeds of Crime Act 2002. The Proceeds of Crime Act 2002 is usually used for more serious crimes and sums less than £1000 may not be seized.

Offence of employing an illegal worker

Since 2006, it has been unlawful to employ a person who was disqualified from employment because of their immigration status. Employers therefore had to conduct checks to ensure that their employees had the right to work in the UK. They risked a fine if they were found to have employed someone who was disqualified from employment. An employer also committed a criminal offence if it was proved that they knew the person did not have the right to work.

The Immigration Act 2016 widens the nature of the criminal offence of employing an illegal worker and increases the penalties for doing so. The relevant provisions came into force on 12 July 2016. Now an employer may be prosecuted not only if they knew their employee was disqualified from working but also if they had reasonable cause to believe that the employee did not have the right to work. This means that an employer may be prosecuted if they ought to have known the person did not have the right to work as well as if they did actually know. The Government said that this change was meant to address the problem of employers deliberately not conducting right to work checks, so that they risked a fine but could not be prosecuted for the criminal offence where it was necessary to prove knowledge of the person's status. However, the provision may affect well-intentioned employers who do not conduct right to work checks properly.

The provisions also make significant changes to the criminal liability of organisations, and therefore the risk of prosecution of their directors, partners or trustees. They are treated as having reasonable cause to believe an employee did not have the right to work if the person within their organisation responsible for checking employment status ought to have known this through their checks.

The maximum term of imprisonment for the offence of employing an illegal worker is increased from two years to five years.

Illegal working notices and closure orders

The Immigration Act 2016 will give new powers, initially to Chief Immigration Officers, to close an employer's premises if they are employing an illegal worker and has either been required to pay a fine for employing an illegal worker in the last three years, have a fine for this that they have not yet paid or have been convicted of the offence of employing an illegal worker. These provisions come into force on 01 December 2016. The Officer will be able to close premises by issuing an illegal working closure notice which prohibits entry to the premises for a period of up to 48 hours. The Officer can then apply to the Magistrates' Court (or Sheriff's Court in Scotland) which can extend the period for up to 14 days to decide on an application for an illegal working compliance order. If the court is satisfied that it is more likely than not that an order is necessary to prevent an employer again employing someone without the right to work, it can prevent or limit access to the business premises for up to two years. Breach of the notice or order will be a criminal offence.

New licensing provisions

It will be a requirement of a personal or premises licence (for the sale of alcohol or for the sale of hot food or drink between 11pm and 5am) that the licence holder has the right to work in the UK. The Secretary of State is added to the list of responsible authorities that must be notified before a licence is issued or transferred, allowing her to intervene where the issue of a licence would give rise to a serious risk of illegal working. These provisions are not yet in force. Similar provisions are introduced in respect of licensing for taxi and private hire vehicles coming into force on 01 December 2016.