

Immigration Act 2016: Implications for owners and operators of licensed premises

Introduction

This Briefing follows on from our October note on the Immigration Bill 2015.

The Bill received Royal Assent and became the Immigration Act 2016 ("the 2016 Act") on 12th May 2016.

The general purpose of the 2016 Act is to make it more difficult to live and work illegally in the United Kingdom.

The 2016 Act builds on the measures set out in the Immigration Act 2014 ("the 2014 Act") and introduces a number of changes, particularly with respect to illegal working on licensed premises.

Changes to the Licensing Act

Amendments made to the Licensing Act 2003 ("the 2003 Act") are as follows:

- The Secretary of State is a responsible authority
- A premises or a personal licence holder must be entitled to work in the United Kingdom
- An immigration offence is considered a 'relevant offence' in relation to personal licences
- An immigration officer has a right to enter a licensed premises

- An immigration officer has the power to issue illegal working closure notices and apply for compliance orders

Premises Licence Applications

The Secretary of State is a responsible authority within the definition of the 2003 Act. This allows the Immigration Service to make representations against the grant or variation of a premises licence application.

An applicant applying for a new premises licence, transfer of an existing licence or service of an interim notice not only has to be over the age of 18, but will also have leave to work in the United Kingdom.

Personal Licences

An applicant will not be able to apply for a personal licence if he or she is not entitled to live and work in the United Kingdom; an existing personal licence will lapse if an individual ceases to be entitled as such.

Therefore, if the personal licence of a designated premises supervisor was to lapse, the sale of alcohol on the premises would automatically become unlawful.

Premises licence holders could then face prosecution for unlawful sales of alcohol and/or licence reviews.

The list of 'relevant and foreign offences' in relation to personal licences has been expanded to include 'an offence under any of the Immigration Acts'.

Right of Entry to Licensed Premises

Where a constable or authorised person has reason to believe that offences under the 2014 Act are being committed, they have a right to enter licensed premises to investigate. Now, under the 2016 Act, an immigration officer is given the same power of entry. We have already seen the police and immigration officers working together to enter licensed premises in some areas.

Illegal Working Closure Notices and Compliance Orders

An immigration officer will be able to issue an “illegal working closure notice” for up to 48 hours if he or she is satisfied, on reasonable grounds, that an employer operating at the premises has:

- Been convicted of an offence under section 21 of the Immigration, Asylum and Nationality Act 2006 (“the 2006 Act”).
- During the period of three years ending with the date on which the illegal working closure notice is issued, been required to pay a penalty under section 15 of the 2006 Act
- At any time been required to pay a penalty under the 2006 Act and failed to pay it

and is employing a person who does not have the correct work status.

A closure notice may only be issued if reasonable efforts have been made to inform any person who has an interest in the premises that the notice is to be issued. Additionally, the immigration officer is required to consult any person he believes is appropriate.

The effect of a closure notice is to prohibit access to the premises unless authorised in writing by the immigration officer. No paid or voluntary work may be performed at the premises unless authorised in writing by the immigration officer.

The closure notice may apply to any outbuildings if they are used as part of the premises. This is important to take note of, particularly where the premises are made up of separate areas, such as in a petrol station, as the notice may concern one area, for example, a car wash, but impact on the rest of the premises.

If the employer or a connected person in relation to the employer can show that they have complied with the employment requirements in relation to the employment, the immigration officer may cancel the notice. If the employer is unable to demonstrate their compliance with these requirements, an application for a compliance order must be made by the immigration officer and heard by the Court within 48 hours after service of the closure notice.

The Court may issue the compliance order if satisfied, on the balance of probabilities, that an illegal worker was working on the premises and that it is necessary to make the order to prevent the employer at the premises from employing illegal workers.

The Court can make any such order that it deems appropriate. This can include prohibiting access to the premises; requiring right to work checks to be carried out; requiring right to work documents to be produced and specifying times for an immigration officer to enter the premises. A compliance order can have effect for a maximum of 12 months, but the immigration officer may apply for this to be extended.

The Court will notify the licensing authority of the order and the licensing authority must then review the premises licence.

If an offence is committed in relation to the compliance order, the Court can impose a prison sentence for up to 51 weeks or a fine.

Steps to take upon receipt of knowledge of a notice or order

If you become aware of a closure notice or compliance order affecting your premises, you may apply to the Court to adjourn proceedings for up to 14 days.

If the order has already been granted, you may apply for the order to be varied or discharged. The Court will discharge the order if it is satisfied, on the balance of probabilities, that it is no longer necessary to prevent an employer operating at the premises from employing an illegal worker.

Timetable for change

The provisions relating to illegal working closure notices and compliance orders came into force on 1st December 2016.

The offences of illegal working and employing illegal workers came into force on 12th July 2016.

The rest of the licensing provisions will come into force on 6th April 2017.

Conclusion

The passing of the 2016 Act should be of immediate concern to all owners and operators of licensed premises.

Officers are likely to target those industries where they suspect that illegal workers are prevalent. Whether it is fair to put the licensed trade as a whole into this category is a moot point.

It will be vitally important for all businesses to have a robust checking process whether they are the direct employer or not. Some sectors of the licensed trade, including petrol stations, often work on a commission operator basis where the operator, rather than property owner/premises licence holder takes responsibility for employees. It is therefore crucial that owners take steps now to protect their position should a closure notice be served on an operator.

Please contact us if you would like further information on how the changes may affect your business or if you wish to know more about the 2016 Act. We will keep you informed of developments.

For further information, please contact:



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