

Immigration Act 2016

Factsheet – Illegal Working (Sections 34 -38)

What are we going to do?

- Make it harder for people to live and work illegally in the UK.
- Impose tougher penalties and sanctions on rogue employers who exploit illegal migrants for their own gain.

How are we going to do it?

- Make it a criminal offence to work illegally and seize wages from illegal working as the proceeds of crime.
- Prosecute employers who ‘turn a blind eye’ to employing illegal migrants, and increase custodial sentences.
- Close businesses that continue to flout the law through the use of illegal labour.
- Ensure that licences for drivers and operators of taxis and private hire vehicles, and licences for the sale of alcohol and late night refreshment, are held by those who have the right to work in the UK and comply with immigration laws.

Background

- Illegal workers are those who are subject to immigration control and either do not have leave to enter or remain in the UK, or who are in breach of a condition preventing them from taking up the work in question.
- The new measures build on legislation in 2014, to strengthen punishments for employers, including doubling the maximum civil penalty to £20,000 per illegal worker.
- In the financial year 2015/16 Immigration Enforcement issued 2,594 civil penalties to businesses employing illegal workers.
- The Act will make illegal working a criminal offence in its own right, with a maximum custodial sentence of six months and/or a fine of the statutory maximum (unlimited in England and Wales). This will allow wages paid to all illegal workers to be recoverable under the Proceeds of Crime Act 2002.

Immigration Minister James Brokenshire said:

"Illegal labour exploits workers, denies work to UK citizens and legal migrants and drives down wages.

"Through our new Immigration Bill, illegal workers will face the prospect of having their earnings seized and rogue employers could have their businesses closed, their licences removed, or face prosecution if they continue to flout the law."

- We will also make it an offence for an employer to employ someone whom they know, or have reasonable cause to believe, is an illegal worker and we are increasing the maximum custodial sentence on indictment from two years to five years.
- To deal with those employers who continue to flout the law by employing illegal workers and evading sanctions, the Act introduces a power to close premises for up to 48 hours. If the employer can prove they have conducted right to work checks, the closure notice may be cancelled. Where they cannot, the business may be placed under special compliance requirements, as directed by the courts. This can include continued closure for a period, followed by re-opening subject to compliance inspections and the requirement to conduct right to work checks.
- Immigration Enforcement often encounters illegal working in premises which hold an alcohol licence or late night refreshment establishments. Applying for, and holding, a licence to sell alcohol or late night refreshment will be conditional on not breaching immigration laws, including employing illegal workers.
- The majority of drivers of taxis and private hire vehicles are self employed. This means they are not subject to existing right to work checks undertaken by employers. The new provisions will make immigration checks compulsory and embed immigration safeguards into the existing licensing regimes.
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Key Questions and Answers

➤ **Why don't we use existing powers to prosecute employers of illegal workers more?**

The primary sanction against employers is a large financial civil penalty which we have made easier to enforce in the courts through the Immigration Act 2014. However, where necessary we will prosecute employers. By making the test more objective, we are making it easier to prove the offence, as well as increasing the maximum custodial sentence to five years.

➤ **When will an immigration officer be able to close a business?**

An immigration officer will be able to close premises, for up to 48 hours, where illegal working is suspected, and the employer cannot provide evidence that right to work checks have been conducted, and:

- i) the employer has received one or more civil penalties for employing illegal workers in the last three years,
- ii) the employer has failed to pay a previous civil penalty, the period of 28 days to appeal has expired and there is no live appeal pending determination, or
- iii) the employer has an unspent conviction for employing illegal workers.

During this period, it is up the employer to produce evidence of compliance that they were unable to provide during the visit. If the employer can do this earlier, the closure

notice may be cancelled. If not, an application is then made to the courts to place the business under special compliance measures.

- **Will licensed premises lose their licence if caught employing an illegal worker?** Immigration offences and penalties, including illegal working, will be material factors in the application process and also a ground for seeking revocation of a premises licence. The licensing authority will review licences on a case by case basis, taking into account the behaviour of the business and all other relevant circumstances.
- **Don't licensing authorities already conduct checks on applicants for taxi and private hire driver and operator licences?** Yes, licensing authorities conduct checks as part of the licence application process to determine that someone is 'fit and proper' to hold a licence. The licensing authority has discretion in the determination of 'fit and proper', but typically this will include undertaking checks on the applicant's criminal record, medical fitness and driving record. They may also check immigration status, but this is currently advisory only. Whilst many licensing authorities currently have regard to someone's immigration status as part of the application process, we are now ensuring that they all do, and that a licence is not issued to someone who does not have the right to live and work in the UK.

Home Office

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