



**Briefing for Northern Ireland MPs:
Immigration Bill 2015**

November 2015

The 2015 Immigration Bill builds on the 2014 Immigration Act. The purpose of the Bill is to tackle illegal immigration by making it harder to live and work illegally in the UK. **The Bill is divided into 7 parts. Below is an overview of each part and, where known, comment as to how these provisions might impact in Northern Ireland.**

Part 1: Labour Market and Illegal Working

Overview

The Bill establishes a new statutory Director of Labour Market Enforcement, responsible for providing a central hub of intelligence and facilitating the flexible allocation of resources across the different regulators.

It creates a new offence of 'illegal working' for people subject to immigration control which will carry a penalty in Northern Ireland of imprisonment for up to 6 months, a fine, or both.

It makes it easier to prosecute employers by widening the interpretation of knowingly employing someone who doesn't have the right to work to include those who have 'reasonable cause to believe'. It provides powers for immigration officers to close premises for up to 48 hours.

Comment

NISMP agrees that the current decentralised approach to the enforcement of employment legislation weakens the overall impact. In our report into the effectiveness of employment rights legislation in Northern Ireland we recommend the establishment of an Employment Rights Authority¹. The envisaged functions of this Authority are similar to that of the proposed Director of Labour Market Enforcement. However, we have reservations with regard to the role of the Director as it has been developed in the related BIS/Home Office consultation on tackling exploitation in the labour market. We believe that the role of Director as envisaged will result in a lack of clarity with regard to the treatment of victims of exploitation and will undermine efforts to strengthen enforcement, including in the area of modern slavery and the implementation of the Northern Ireland Human Trafficking and Exploitation Act².

There is anecdotal evidence that in Northern Ireland the increase in penalties for employers of illegal workers in the 2014 Immigration Act has led to heightened concern among employers which has resulted in the threatened dismissal of entirely legal migrant workers. The London CBI also expresses this concern in its written submission to this current Bill, that employers 'wary of committing the offence...may be reluctant to offer employment to legal migrants, or that offering employment to migrants carries increased risk'³. They argue that this will deny businesses needed skills and disproportionately impact on small businesses and start ups.

¹ NISMP, 2013, 'Assessing the Effectiveness of Enforcement Mechanisms in Upholding the Employment Rights of Migrant Workers in NI' (see attachment to email)

² NISMP, Nov 2015, 'Response to Home Office/BIS consultation: Tackling Exploitation in the Labour Market' (see attachment to email)

³ www.publications.parliament.uk/pa/cm201516/cmpublic/immigration/memo/ib09.htm

Part 2: Access to Services

Overview

The current bill builds on the Immigration Act 2014 by increasing provisions in relation to residential tenancies, the right to driving licences and to bank accounts for people subject to immigration control.

The provisions relating to residential tenancies are only applicable to England but may be extended to Northern Ireland by the Secretary of State without conferring functions on Northern Ireland Ministers or a NI Department. The provisions include:

- Enabling landlords to obtain possession of their property where their tenant no longer has a right to rent under the 2014 Act
- Increasing sanctions for landlords and agents who fail to comply with the 2014 Act. A landlord or agent who is guilty of an offence under these provisions will be liable a fine and/or imprisonment of up to 5 years.

The provisions relating to driving licences will give powers to authorised officers (including immigration officers) to enter premises to search for driving licences which have been revoked under the 2014 Act. They create a new offence of driving when unlawfully in the UK and allow for custodial sentence and detention/forfeiture of vehicle.

The bill amends the 2014 Act by requiring banks to carry out immigration checks in relation to existing bank accounts (as well as for new accounts) and allows for freezing orders to be applied to any account held by anyone who is deemed to be in the UK illegally.

Comment

The 'Right to Rent' scheme which was introduced in the 2014 Immigration Act makes it compulsory for all private landlords to undertake immigration checks of new tenants. It was piloted in the West Midlands with a view to a subsequent roll subject to the findings of a clear assessment. In its written evidence to the Committee, the Immigration Law Practitioners Association states that both the Home Office Evaluation and the independent evaluation undertaken by the Joint Council for the Welfare of Immigrants show that the provisions have caused discrimination. NISMP believes that an independent review of the potential impact of these provisions on the Northern Ireland property and good relations landscape should be carried out before roll out of the pilot is considered.

Part 3: Enforcement

Overview

The Bill provides immigration officers with additional search and seizure powers including searching for evidence of illegal working/renting. The power may be exercised without a search warrant.

It gives the Secretary of State power to impose an electronic monitoring condition when the Tribunal grants bail but does not impose such a condition.

Comment

An inspection by the Independent Chief Inspector of Borders and Immigration, into the use of the power of immigration officers to enter business premises without a search warrant⁴ identified a number of 'serious failings' including that the power may have been used unlawfully in six cases:

- 59% of the cases examined lacked the required justification for the use of this power and in a further 12% there was insufficient evidence to allow an opinion to be formed either way.
- Management oversight regarding the use of this power was ineffective with senior managers having very limited knowledge about how the power was being used in practice.
- Inadequate staff training was apparent across all enforcement grades.

In its written submission to the Committee, the Immigration Law Practitioners Association states that they believe the further powers of search that would be granted to immigration officers are disproportionate. Under these provisions, powers of search and seize, similar to those held by the police would be conferred on immigration officers. We believe that clarification regarding oversight arrangements for the exercise of these powers would need to be agreed before implementation in Northern Ireland.

Part 4: Appeals

Overview

The 'deport first, appeal later' rule in the 2014 Act to be amended to remove the limitation that the power can only be applied in deportation cases.

Part 5: Support for certain categories of migrant

Overview

The bill removes automatic support for asylum seeking families who have had their claim refused and who have exhausted all appeal rights.

Comment

There is currently no automatic entitlement for refused asylum seekers. To be eligible for support (accommodation and/or £35.39 per week on a payment card to be spent only in certain shops) an asylum seeker will have to meet the following criteria: that they are taking all reasonable steps to leave the UK, unless there is a medical reason which impedes travel, or, in the opinion of the Secretary of State there is no viable route of return, or they have been granted permission for a judicial review.

The changes proposed appear to affect families with children who currently receive the £35.39 weekly payment per person as cash rather than on card. There have been recent cuts to asylum support for children and NISMP believes that further cuts will shift responsibility from the Home Office to the HSCTs in Northern Ireland who have responsibility to ensure that safeguarding duties towards children are met. Asylum claims made by families as a proportion of total asylum claims in

⁴ <http://icinspector.independent.gov.uk/wp-content/uploads/2014/03/AD-letters-report-Final-Version-for-Web.pdf>

Northern Ireland is more than double the national rate. This suggests that changes to support for asylum seeking families will disproportionately affect the devolved institutions in Northern Ireland⁵.

NISMP believes that an independent review of current asylum support rates and the effectiveness of these on safeguarding and promoting the welfare of children in Northern Ireland is required before any further reductions in payment, or change in mode of payment is considered.

Part 6: Border Security

The Bill provides provision for a civil penalty regime that can be applied to airlines and port operators who fail to take all reasonable steps to ensure that all passengers disembark through immigration control.

Part 7: Language requirement for public sector workers

Overview

That every public sector worker operating in a customer-facing role must speak fluent English.

Comment

This part of the bill does not extend to Northern Ireland.

Part 8: Fees and charges

Overview

The Bill contains provision to collect an immigration skills charge from employers who sponsor non EEA migrants. The proceeds of this fund would sponsor apprenticeships in the UK.

Comment

Employers in Northern Ireland are already disproportionately disadvantaged by employment criteria for non-EEA workers. Employers from the IT, pharmaceutical and health care sectors have told NISMP that these criteria have created an internal market within the UK which has resulted in them losing staff to employers (at times direct competitors) located elsewhere in the UK due to their inability to meet Home Office salary requirements. Other evidence regarding the impact of Tier 2 criteria on local employers was included in the NISMP response to the recent consultation on Tier 2 salary thresholds⁶. We believe that imposition of a skills levy would further impede NI employers from recruiting and retaining necessary skilled labour from outside the EU.

⁵ NISMP, Sept 2015, 'Home Office consultation response: Reforming support for failed asylum seekers and other illegal migrants' (see attachment to email)

⁶NISMP, July 2015, 'Consultation response: Migration Advisory Committee Call for Evidence on Minimum Salary Thresholds for Tier 2' (see attachment to email)