



Immigration Act 2016

2016 CHAPTER 19

PART 1

LABOUR MARKET AND ILLEGAL WORKING

CHAPTER 2

ILLEGAL WORKING

Offences

34 Offence of illegal working

- (1) The Immigration Act 1971 is amended as follows.
- (2) In section 3(1)(c)(i) (power to grant limited leave to enter or remain in the United Kingdom subject to condition restricting employment or occupation) for “employment” substitute “work”.
- (3) After section 24A insert—

“24B Illegal working

- (1) A person (“P”) who is subject to immigration control commits an offence if—
 - (a) P works at a time when P is disqualified from working by reason of P’s immigration status, and
 - (b) at that time P knows or has reasonable cause to believe that P is disqualified from working by reason of P’s immigration status.
- (2) For the purposes of subsection (1) a person is disqualified from working by reason of the person’s immigration status if—
 - (a) the person has not been granted leave to enter or remain in the United Kingdom, or

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- (b) the person's leave to enter or remain in the United Kingdom—
 - (i) is invalid,
 - (ii) has ceased to have effect (whether by reason of curtailment, revocation, cancellation, passage of time or otherwise), or
 - (iii) is subject to a condition preventing the person from doing work of that kind.
- (3) A person who is guilty of an offence under subsection (1) is liable on summary conviction—
 - (a) in England and Wales, to imprisonment for a term not exceeding 51 weeks or a fine, or both,
 - (b) in Scotland or Northern Ireland, to imprisonment for a term not exceeding 6 months or a fine not exceeding level 5 on the standard scale, or both.
- (4) In relation to an offence committed before section 281(5) of the Criminal Justice Act 2003 comes into force, the reference in subsection (3)(a) to 51 weeks is to be read as a reference to 6 months.
- (5) If a person is convicted of an offence under subsection (1) in England and Wales, the prosecutor must consider whether to ask the court to commit the person to the Crown Court under section 70 of the Proceeds of Crime Act 2002 (committal with view to confiscation order being considered).
- (6) If a person is convicted of an offence under subsection (1) in Scotland, the prosecutor must consider whether to ask the court to act under section 92 of the Proceeds of Crime Act 2002 (making of confiscation order).
- (7) If a person is convicted of an offence under subsection (1) in Northern Ireland, the prosecutor must consider whether to ask the court to commit the person to the Crown Court under section 218 of the Proceeds of Crime Act 2002 (committal with view to confiscation order being considered).
- (8) The reference in subsection (1) to a person who is subject to immigration control is to a person who under this Act requires leave to enter or remain in the United Kingdom.
- (9) Where a person is on immigration bail within the meaning of Part 1 of Schedule 10 to the Immigration Act 2016—
 - (a) the person is to be treated for the purposes of subsection (2) as if the person had been granted leave to enter the United Kingdom, but
 - (b) any condition as to the person's work in the United Kingdom to which the person's immigration bail is subject is to be treated for those purposes as a condition of leave.
- (10) The reference in subsection (1) to a person working is to that person working—
 - (a) under a contract of employment,
 - (b) under a contract of apprenticeship,
 - (c) under a contract personally to do work,
 - (d) under or for the purposes of a contract for services,
 - (e) for a purpose related to a contract to sell goods,
 - (f) as a constable,

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- (g) in the course of Crown employment,
- (h) as a relevant member of the House of Commons staff, or
- (i) as a relevant member of the House of Lords staff.

(11) In subsection (10)—

“contract to sell goods” means a contract by which a person acting in the course of a trade, business, craft or profession transfers or agrees to transfer the property in goods to another person (and for this purpose “goods” means any tangible moveable items);

“Crown employment”—

- (a) in relation to England and Wales and Scotland, has the meaning given by section 191(3) of the Employment Rights Act 1996;
- (b) in relation to Northern Ireland, has the meaning given by Article 236(3) of the Employment Rights (Northern Ireland) Order 1996 (SI 1996/1919 (NI 16));

“relevant member of the House of Commons staff” has the meaning given by section 195(5) of the Employment Rights Act 1996;

“relevant member of the House of Lords staff” has the meaning given by section 194(6) of the Employment Rights Act 1996.

(12) Subsection (1) does not apply to—

- (a) service as a member of the naval, military or air forces of the Crown, or
- (b) employment by an association established for the purposes of Part 11 of the Reserve Forces Act 1996.

(13) In this section “contract” means a contract whether express or implied and, if express, whether oral or in writing.”

(4) In section 28A(3)(a) (arrest without warrant) after “section” insert “24B,”.

(5) In section 28B(5) (search and arrest by warrant: relevant offences) after “24A,” insert “24B,”.

(6) In section 28CA(1) (business premises: entry to arrest) after paragraph (b) insert—
“(ba) for an offence under section 24B,”.

(7) In section 28D(4) (entry and search of premises: relevant offences) after “24A,” insert “24B,”.

(8) In section 28FA(1)(a) (search for personnel records: offences to which section applies) for “or 24A(1)” substitute “, 24A(1) or 24B(1)”.

35 Offence of employing illegal worker

(1) Section 21 of the Immigration, Asylum and Nationality Act 2006 (offence of knowingly employing illegal worker) is amended in accordance with subsections (2) to (4).

(2) In subsection (1) for the words from “an adult” to the end of the subsection substitute “disqualified from employment by reason of the employee’s immigration status.”

(3) After subsection (1) insert—

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- “(1A) A person commits an offence if the person—
- (a) employs another person (“the employee”) who is disqualified from employment by reason of the employee’s immigration status, and
 - (b) has reasonable cause to believe that the employee is disqualified from employment by reason of the employee’s immigration status.
- (1B) For the purposes of subsections (1) and (1A) a person is disqualified from employment by reason of the person’s immigration status if the person is an adult subject to immigration control and—
- (a) the person has not been granted leave to enter or remain in the United Kingdom, or
 - (b) the person’s leave to enter or remain in the United Kingdom—
 - (i) is invalid,
 - (ii) has ceased to have effect (whether by reason of curtailment, revocation, cancellation, passage of time or otherwise), or
 - (iii) is subject to a condition preventing the person from accepting the employment.”
- (4) In subsection (2)(a)(i) (maximum term of imprisonment for conviction of offence on indictment) for “two” substitute “five”.
- (5) Section 22 of the Immigration, Asylum and Nationality Act 2006 (offences by bodies corporate etc) is amended in accordance with subsections (6) and (7).
- (6) After subsection (1) insert—
- “(1A) For the purposes of section 21(1A) a body (whether corporate or not) shall be treated as having reasonable cause to believe a fact about an employee if a person who has responsibility within the body for an aspect of the employment has reasonable cause to believe that fact.”
- (7) In each of subsections (2) and (4) after “21(1)” insert “or (1A)”.
- (8) In section 24(a) of the Immigration, Asylum and Nationality Act 2006 (immigration bail) for “21(1)” substitute “21(1B)”.
- (9) In section 28A of the Immigration Act 1971 (arrest without warrant)—
- (a) after subsection (9A) insert—

“(9B) An immigration officer may arrest without warrant a person who, or whom the immigration officer has reasonable grounds for suspecting—

 - (a) has committed or attempted to commit an offence under section 21(1) or (1A) of the Immigration, Asylum and Nationality Act 2006 (employment of illegal worker etc), or
 - (b) is committing or attempting to commit that offence.”,
 - (b) in subsection (10) for “and (5)” substitute “, (5) and (9B)”, and
 - (c) in subsection (11) for “and (5)” substitute “, (5) and (9B)”.
- (10) In section 28AA(1) of that Act (arrest with warrant) for paragraphs (a) and (b) substitute “section 24(1)(d)”.