

Immigration Act 2016 – More harm than good?

Executive Summary

The 2016 Immigration Act is aimed at curbing illegal immigration, while also stimulating the domestic job market. However, this act has faced criticism from many quarters focusing on the law's potential implications and unintended consequences. Concerns have been raised that the Act is in breach of international human rights law and will drive segregation further in British society, and that some of its provisions, when extended to Scotland, Wales and Northern Ireland, will infringe on devolved powers.

Introduction

The issue of migration has been a contemporary hot topic in UK political and media debates, and is now seen as a driving factor in the recent Brexit vote to leave the European Union. In light of this decision it is increasingly important to understand what the current UK Government policy towards migration (both legal and illegal) is. This policy brief presents the majority of changes the 2016 Immigration Act introduced and discusses the potential implications for a variety of stakeholders. In particular, it highlights the negative impacts the law could have on British citizens and businesses. Attention is also drawn to the different mechanisms through which the UK Government is devolving the responsibility of policing its internal borders to both the private sector and individual British citizens.

Background

The Immigration Bill 2015-2016 was first announced in May 2015; it was then introduced to the House of Commons in September and to the House of Lords in December. After three readings it received Royal Assent on May 12, 2016, thus becoming the 2016 Immigration Act. The new Act is targeted at undocumented migrants, creating a 'hostile environment' through denying them certain rights and services, and in effect blocking migrants' attempts to integrate themselves into UK society. The new law builds on the 2014 Immigration Act by expanding some of its policies, increasing penalties for others, and introducing new ones. Although aimed at those illegally residing in the UK, the new Act has the potential to affect British citizens and legal migrants who appear or sound non-British; and can possibly lead to social division, discrimination and racial profiling. The following sections present the changes to the new law, with the last section focused on the effects the 2016 Immigration Act might have when coupled with Brexit.

Labour market and illegal working

It is now a criminal offence for undocumented migrants to work in the UK and if found guilty on a summary conviction they are subject to a fine and/or imprisonment of up to 51 weeks in England and Wales and up to 6 months in Scotland and Northern Ireland. Immigration officers can arrest those guilty of working illegally without a warrant and their paid wages can be confiscated as the proceeds of a crime. All the above-mentioned changes came into effect on 12 July 2016. Under the 2014 Immigration Act the penalty for employing undocumented migrants was a £20 000 fine per employee and/or a maximum sentence of 2 years. The penalty for this crime now increases to 5

years and the offence expands to cover those employers who have ‘reasonable cause’ to believe they are hiring undocumented migrants. Authorised officers have the power to arrest without a warrant, if they have ‘reasonable cause’ to believe a person has committed or attempted to commit the crime. Additionally, sanctioned officers now have the authority to search business premises and order a closure notice for a maximum of 48 hours.

Part 1 of the 2016 Immigration Act serves to intimidate employers, preventing them from hiring ‘illegal’ migrants and cracking down on those employers who exploit undocumented migrants. However, these measures may increase the likelihood of this happening. By making working in the UK while undocumented a criminal offence, immigrants subject to exploitation would be less likely to come forward out of fear for prosecution. Furthermore, the new rules disproportionately target small businesses, employing migrants, which could now be more often subject to intrusive raids. Additionally, the agreed measures could have a negative effect on both British citizens and legal migrants. In order to avoid any trouble with authorities and out of poor understanding of the changes, employers might avoid hiring people who appear or sound non-British national altogether. The unintended consequences of these new measures are racial discrimination and social division

Access to services

The Right to Rent

Four new offences have been introduced for landlords and letting agents who rent out property to people they know or suspect of residing in the UK illegally. Those found guilty are subject to a maximum sentence of 5 years and/or a fine and can be arrested without a warrant. Additionally, landlords in England now have the power to evict tenants with irregular immigration status without possessing a court order, upon receiving a notice from the Secretary of State. These measures build on the ‘The Right to Rent’ scheme (RTR), first introduced in the 2014 Immigration Act. Since its initial roll-out in December 2014, two evaluations have been conducted – one by the Home Office and one by the Joint Council for the Welfare of Immigrants (JCWI) – both highlighting racial disparities and discrimination against black and minority ethnic (BME) prospective tenants.

The majority of letting agents and landlords perceived the RTR scheme as ineffective; more than half of landlords expressed concern and disagreed with its main principles. The Residential Landlords Association (RLA) stressed that ‘untrained British civilians’ cannot act as immigration officers. According to the RLA over 90% of 1500 surveyed landlords had not been provided with any information from the Government regarding their new responsibilities, and 72% did not comprehend their increased duties. Concerns were raised that only responsible landlords will comply with the scheme, thus reinforcing the corrupt part of the sector by driving migrants to use those mediums.

Proof that the RTR policy disproportionately targets BME people comes from both reports. According to the government report, predominantly BME people were asked to register and 44% of landlords stated they would only accept documents well known to them. While the JCWI report concluded that 42% of landlords are less likely to rent out to people without a British passport and a third of them would avoid renting out to people who appear non-British national. Based on the information gathered so far it appears the RTR scheme, although targeted at undocumented migrants, has a negative effect on the BME community by denying British citizens and legal migrants the right to rent simply based on their appearance. Furthermore, evidence suggests that the scheme has not been effective in identifying many ‘rouge’ landlords and undocumented migrants, as few notices have been issued. JCWI’s data shows that two thirds of undocumented migrants either stay with friends or sofa surf, further proving the scheme cannot achieve its stated goals.

Driving Licences

It is now an offence to drive while unlawfully in the UK, and if found guilty a person is subject to a fine and/or imprisonment of up to 51 weeks in England and Wales and up to 6 months in Scotland and Northern Ireland. If a person has been arrested for the above crime, authorities have the power to detain any motor vehicles they have reasonable grounds to suspect were involved in the crime. Authorized officers now have the power to search people, if they have reasonable cause to believe the person is an undocumented migrant in possession of a license, and seize it. Furthermore, officers have the authority to search premises, occupied or controlled by the suspect, if they have reasonable cause to believe the driving licence is on the premises. These measures, once again lead to racial profiling and discrimination against people who appear non-British national. As it is not stated what a 'reasonable cause' consists of, these new powers can be abused by law enforcement and used as an intimidation tactic.

Bank Accounts

Banks and building societies are now obligated to conduct regular immigration checks on current account holders. If a disqualified account is found, the Secretary of State must be notified and the account is either closed or frozen. This process imposes a financial burden on banks and building societies, which is expected to be passed down to customers. With this measure the Government is in effect outsourcing its border policing duties to the private sector and the cost is borne by the end consumer.

Enforcement

Authorised officers, already legally on the premises, have the power to search for and seize any evidence that will aid in deporting a person or charging them with a civil fine, given officers have reasonable cause to believe such proof is present. This is yet another power subject to abuse by the State and its representatives. Parts 1 and 2 of the Act provide officers with the opportunity to enter premises without a warrant and Part 3 further extends their authority while on the premises, thus, reinforcing all the concerns raised in the previous sections.

One step forward, two steps back

The Secretary of State now has the power to determine whether the temporary removal of a person, liable to deportation, would violate international human rights laws. Therefore, the UK's scheme of 'deport first, appeal later' is broadened to all immigration trials where human rights-based disputes are voiced, allowing appeals of only asylum cases and few human rights cases.

Human rights organisations have heavily criticised the 2016 Immigration Act, managing to achieve limited small gains. Judicial oversight of immigration detention is now a legal requirement, meaning, if a person has not applied for a bail hearing within 4 months of detention, an automatic one is scheduled. Furthermore, detention of pregnant women is limited to 72 hours and can only be prolonged with Ministerial approval. Lastly, the Government pledged to take in several thousand unaccompanied vulnerable child refugees. The Dubs amendment, as the last of the measures is also known, allows for unaccompanied child refugees, registered in Italy, Greece or France before March 20th 2016, to apply for asylum in Britain. Human rights organisations urged the Government to act on its legislation and bring children in time for the start of the new school year. Yet, 3 months after the Act was passed only 20 children have arrived under the scheme. Charities regularly speak out against the lack of urgency in the Home Office and the incredibly inefficient and slow implementation process.

Driving business up or dragging it down?

The new Act introduces an immigration skills charge for employers of non-EEA/non-Swiss workers aimed at reducing the number of non-British national employees, while simultaneously encouraging the training of British staff for the same positions. The fee is set at £1000 per employee per year and £364 respectively for small or charitable organisations (including universities). The new charge will cover migrants on Tier 2 working visas with the exemption of PhD staff and students switching from Tier 4 to Tier 2 visas. These changes have been criticised by businesses, as it is now more difficult and costly to hire employees with the required skillset within a reasonable period of time. The new measures came into force in July 2016, however, the Government has declared, they will start in April 2017.

The Immigration Act and Brexit

The result from the recent UK Brexit referendum has created great uncertainty among EU nationals currently living in the UK. The British exit from the EU is likely to be set in motion in early 2017 and the process must be completed within 2 years of the start date. Until the process is finalised, EU nationals' residential rights will remain intact. Yet, how the 3 million-strong EU citizenry will be affected when Britain leaves the EU is still unknown. EU nationals with permanent UK residency acquired prior to the referendum are expected to be allowed to remain in the country. However, the Government has not ruled out future deportations of other EU citizens. Based on what Britain and the EU negotiate, EU citizens without permanent UK residency may be stripped of their current rights and privileges over non-EEA migrants, thus becoming subject to the 2016 Immigration Act. This would likely lead to further strain on businesses, banks, landlords and letting agents, and the individual themselves.

Conclusions

The 2016 Immigration Act, while further stripping undocumented migrants of their rights, also negatively impacts BME British citizens, legal migrants, international students, asylum seekers, employers, landlords and letting agents, and banks and building societies among others. It forces some people into destitution and disproportionately affects vulnerable people. A little over a month after this polarising law was passed, 52% of British citizens voted to leave the EU. Regardless of the reasons that led to this vote, both events paint a picture of an increasingly divided, protectionist, self-monitoring society, over sensitised to migration.

Further Information

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Please consult the following links for more information on how the 2016 Immigration Act:

- could violate international human rights - The Immigration Act 2016 In Plain English - <http://rightsinfo.org/immigration-act-2016-plain-english/>
- could affect international students - UK Council for International Student Affairs- <http://institutions.ukcisa.org.uk/Info-for-universities-colleges--schools/Info--guidance/Immigration/Immigration-Act-2016-/>
- and The Right To Rent in particular, could drive social division - Right to Rent: private landlords' duty to carry out immigration status checks - <http://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN07025>
- and Crawford, J., Leahy, S. and McKee, K., 2016. The Immigration Act and the 'Right to Rent': exploring governing tensions within and beyond the state. *People Place and Policy Online*. 10 (2) pp 114-125
<http://extra.shu.ac.uk/ppp-online/wp-content/uploads/2016/07/immigration-act-right-to-rent.pdf>

