

Creating a “Compliant Environment”: The Immigration Acts’ impact on service provision in the UK

Executive Summary

The Immigration Act 2016 aims to constrain illegal immigration by relying on collaboration from employers, service providers, and workers in the public and private sector, as well as from members of the general public. In this way, the government is fostering a culture of enforced cooperation towards the policing of undocumented migrants; to collectively create a ‘hostile’ environment, or more recently, what the current UK Government calls a ‘compliant’ environment. However, this Act is controversial as the implementation of its measures has had unintended consequences, with potential for further negative implications.

Introduction

The growing social, economic, and cultural interconnectedness characterised by globalisation has led to freer movement of people worldwide. Migration is a contemporary and often controversial topic. This is especially true in the UK where the Conservative Party is determined to increase restrictions around migration since they regained power in 2010, and where migration was seen as a driving factor in the recent Brexit vote. It is therefore important to better understand the current UK Government’s migration policies. We have previously reviewed the Right-to-Rent facets of the 2014 and 2016 Immigration Acts (see CHR Policy Brief 5). This policy brief presents three of the major changes to service provision beyond housing, which have a direct impact on people’s capacity to live here, namely the measures surrounding the DVLA, Banks and Building Societies, and Wedding ceremonies, and discusses the Acts’ current and potential implications. It further highlights the ways in which the UK Government is placing the responsibility of border policing on citizen-on-citizen immigration checks, and making processes of paper checking an everyday activity.

Background Information

On May 12th 2016, the Immigration Bill 2015-2016 received Royal Assent and became the Immigration Act 2016 (‘2016 Act’). The 2016 Act introduces and expands on policies from the Immigration Act 2014 (‘2014 Act’), which aims to further augment a ‘hostile environment’ by denying undocumented migrants certain rights and services. It not only affects undocumented migrants, but British citizens and legal migrants, and leads to discrimination, prejudice, and social division. The 2016 Act continues a pattern of amplified Government intervention into day-to-day life

by placing increased responsibility for border protection on UK citizens, focusing on citizen-on-citizen immigration checks.

The Hostile Environment

In 2012, the then Home Secretary and now UK Prime Minister, Theresa May told the Telegraph of her aim to create a hostile environment for irregular migration. The purpose of the hostile environment is to contribute to reducing net migration and punishing irregular migrants by marginalising, isolating, and further criminalising them until they voluntarily leave the UK. The hostile environment was translated into law through the Immigration Act, where new measures were introduced to prevent irregular migrants from accessing housing, healthcare, employment, education, banking, and other basic services and rights. This extends immigration control beyond the outer border of the State to internal controls, where all people must prove their right to reside in the UK. Employees are expected to check people's immigration status when they seek medical care, rent a home, apply to get married, apply for or maintain a driver's license, and apply for or keep a bank account.

In 2018, political public discourse started to herald the term 'compliant environment,' substituting it for the more negative sounding 'hostile environment.' The 2018 Windrush Scandal was pivotal to this change of terminology, as Amber Rudd's resignation as Home Secretary allowed for the appointment of Sajid Javid. Javid stated in early May 2018 "I don't like the phrase 'hostile' so I think the terminology is incorrect. I think it is a phrase that is unhelpful, and it does not represent our values as a country." The term 'compliant' serves to normalise the policies enacted through the Immigration Acts, embedding them in the everyday practices of society. It is vital to understand the measures that facilitate this normalisation, as such the following section outlines the measures in relation to the DVLA, Banks and Building Societies, and Marriage Certification, how they have been enacted, and their impact.

Access to Services

DVLA

The 2016 Act enforces two new measures that build on the 2014 Act. Firstly, under Section 43 of the 2016 Act, an authorised officer who has 'reasonable grounds' to believe an individual owns a driving license, while unlawfully in the UK, will now have the right to search premises, occupied or controlled by the suspect, to seize and retain their driving license. An authorised officer is clarified as either an immigration officer, constable, or person authorised by the Secretary of State. The 2016 Act does not clarify under which 'reasonable grounds' authorised officers can revoke existing licenses.

Secondly, Section 44 of the 2016 Act creates an offence of driving when unlawfully in the UK. If found guilty, the individual 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. The police may encounter undocumented migrants driving on UK roads when stopping individuals for a driving offence. When stopped, the police can check the immigration status of the individual by contacting a specialist Home Office Unit operating 24/7. If the individual is driving unlawfully, the police officer is entitled to search and seize their UK driving license, arrest them for the driving offence, and detain the vehicle, regardless of the registered keeper. The court might also order repossession of the vehicle.

The two new measures of seizing driving licenses further buttresses the hostile environment, which has the potential to lead to profiling and discrimination against people of various ethnic origin. The

Home Office states that these decisions were made to ensure that licenses are removed from circulation and to make it harder for the individual to use a UK driving license as a form of identification to access UK services. There are currently no data that states the number of individuals that the new measures have impacted. However, the Independent Chief Inspector of Borders and Immigration from the Home Office, David Bolt, released an inspection report examining the efficacy of the measures of the 2014 Act. This report indicated that the Home Office made 9,732 revocation requests to the DVLA in 2015. Of those, it found that hundreds of driving licenses had been wrongly revoked; the exact number remains unreported (Bolt, 2016).

In May 2018, Sajid Javid suspended the controversial immigration checks in wake of the Windrush Scandal for a period of 3 months, to prevent the Windrush Generation from being wrongly impacted by the Immigration Acts. Javid's letter to Rt Hon Yvette Cooper MP, Chair, Home Affairs Select Committee, with respect to the update on the work of the Home Office in relation to Windrush, on August 21st 2018 stated that "...following our May notice to the financial sector asking them to await Home Office instructions, we issued a further notice on 8 August detailing the course of action banks and building societies must now take in relation to fulfilling legal obligations under the Immigration Act 2014 banking measures". No further details have been provided as yet.

Banks and Building Societies

In 2012 Theresa May stated that the restriction of financial services had a key role to play in the creation of a hostile environment for undocumented migrants. The 2014 Act prohibited banks and building societies from opening current accounts for undocumented migrants in the UK. The 2016 Act goes further to include measures that prevent known undocumented migrants from continuing to operate existing bank accounts. This requires banks and building societies to conduct regular immigration status checks of current account holders. If a 'disqualified person' is found, the Secretary of State must be notified, and the account must either be closed or frozen. The list of 'disqualified persons' is maintained by a private anti-fraud organisation called Cifas; banks and building societies are required to check their customer data against details of this list. They must freeze accounts if there is a three point or 'best practice match' of name, address, and date of birth against the database. If there is only a 'Same Individual at Address' (SIAA) match, then the individual has discretion. It is estimated that there are approximately 70 million current accounts in the UK; to routinely check the individual sets of details to Cifas creates a burden the government denies.

If an existing account is frozen following a positive database match then the account holder is prohibited from making withdrawals or payments from the account, until such time as the freezing order is discharged. If an application for a new account is declined, or existing accounts are frozen or closed, then the individual must be informed. The Home Office provides the banks and building societies with leaflets they may choose to directly use or re-word for their own refusal letter. If an individual has documentary evidence indicating they have been wrongly matched then the Bank or Building Society can contact the Home Office, however it is not clarified what documentary evidence is required. It is indicated that reasons to believe an error has occurred happens in exceptional circumstances, which may make it harder to appeal such mistakes and impact people who have the right to lawfully live in the UK.

The Home Office has repeatedly provided incorrect or out-of-date information about an individual's immigration status. David Bolt's (2016) inspection report revealed that there is an approximate 10% error rate when individuals are refused a new account due to mistakes in Home Office records; the exact number is unknown. The new measures of the 2016 Act were enforced in January 2018, when they began immigration checks on 70 million current accounts. Javid's suspension of immigration

checks in May 2018 also impacted banks and building societies; these immigration checks were interrupted until August 2018.

Sham Marriages and Civil Partnerships

Part 4 of the 2014 Act addresses sham marriages and civil partnerships; no further measures are added under the 2016 Act. The Home Office considers a sham marriage or civil partnership one that is entered into by a non-EEA national for the purpose of gaining an immigration advantage; their EEA partner may or may not be complicit. This applies to non-EEA nationals who do not have settled status or the right of permanent residence in the UK. The 2014 Act introduced measures aimed at creating a 'hostile environment' whereby marriage registrars were required to report suspected sham marriages and extended the notice period for all marriages from 15 to 28 days, both of which came into force on 2 March 2015. Increasing the notice period provides more time for the Home Office to investigate the authenticity of a relationship. The administration of marriage is being used as a tool to carry out deportation, with such measures leading to racial profiling and marginalisation.

All notices are referred to the Home Office where they are assessed against intelligence-based risk profiles and compared to suspected sham cases with the registration officials. In the case that the Home Office has 'reasonable grounds' to suspect that a marriage or civil partnership is a sham, the 28-day notice period will extend to 70 days to initiate investigation into the couple's relationship. It is not specified under which 'reasonable grounds' decisions are made by the Marriage Referral Assessment Unit (MRAU); a specialist team based in Liverpool established by the Home Office. The investigation may involve the couple providing information about themselves, their relationship, their living arrangements, and their future plans. A couple is not permitted to get married or to enter a civil partnership if they do not comply with the investigation. If, after the investigation, the relationship is considered a sham, then the Home Office has the option to either take an enforcement decision (e.g. curtailment or removal) against both parties of the relationship, refuse any future application under the Immigration Regulations 2006 of the non-EEA national, and/or charge the EEA national with a criminal offence (e.g. perjury or facilitation of illegal immigration).

David Bolt also released an inspection report that examined the efficacy of the 2014 Act measures implemented to tackle sham marriages and civil partnerships. It stated that the process was problematic as the Home Office did not communicate with the registrars effectively and the new processes were weakened by MRAU's reliance on fragmented IT, resulting in cases not being determined within 70 days (Bolt, 2016). Therefore, a new process named Operation Equal was created, placing Immigration Compliance and Enforcement (ICE) teams with full responsibility for investigations to ensure cases were completed to time. Operation Equal was piloted in January 2016 and came into full effect nationally from 20 June 2016.

Furthermore, the inspection report revealed that from period March to August 2016 inclusive, 23,948 marriage notices were referred to the Home Office's MRAU. 17,818 of those couples were permitted to marry within the 28 days, while the remaining 6,130 were extended to 70 days for ICE teams to undertake investigations. After the investigations it was found that the number of 'non-sham' marriages varied across the country. It found that in Scotland (60.4%) and the West Midlands (52.3%) more than half of couples were wrongly determined by the MRAU. The same investigation found that the number of 'non-sham' marriages were lower in London, with 28.85% (Bolt, 2016).

Conclusion

The 2014 and 2016 Immigration Acts create chronic uncertainty and instability for not only those who are undocumented in the UK, it has been shown to negatively impact stakeholders from many different corners of society. These include, but are not limited to, UK citizens, legal migrants, international students, police officers, banks and building societies, and the church. On 3 June 2018, Sajid Javid stated that many of the 'compliant environment' policy measures are being reviewed, which may impact this protectionist and increasingly divided society. However, with March 29th 2019 fast approaching, the day the UK is scheduled to leave the EU, it is difficult to predict how the future may unfold.

References

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Further Information

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