

# Your immigration newsletter

July 2014

## **Code of Practice and Guidance on Preventing Illegal Working**

On 16 May 2014, the new Code of Practice on preventing illegal working came into force. The new Code has changed the way civil penalties are calculated for employers found to be employing illegal workers, and has amended the document checking process employers are required to undertake to prevent illegal working, also known as 'right to work checks'.

This Code sets out how an employer can establish a statutory excuse against civil liability and the potential penalty if the employer is found to be liable for employing an illegal worker. The new Code applies in relation to liability for all right to work checks undertaken after 16 May 2014, where the employment commenced from 29 February 2008.

### **Right to work checks**

The main change implemented by the Code is in relation to employees who have time-limited immigration permission. Under the previous regime, employers were required to undertake right to work checks on an annual basis in order to retain their statutory excuse against civil liability. Under the new regime, employers only have to undertake right to work checks upon expiry of the employee's immigration permission in order to retain their statutory excuse.

It is important to note that where a right to work check was undertaken before 16 May 2014, the employee will remain under the old regime and will therefore need to be re-checked one year after their previous check. Once the employee has been re-checked, they will fall within the new regime and the employer will retain their statutory excuse until expiry of the employee's immigration permission.

## **Transfer of Undertakings**

Employers who acquire staff as a result of the Transfer of Undertakings (Protection of Employment) transfer are provided with a period of 60 days from the date of the transfer of the business to carry out their first statutory document checks of the new workers. This has been increased from the existing 28 day grace period as specified under the 2008 Code. There is no grace period for follow-up checks.

## **Employing International Students**

International students (those from outside the European Economic Area (EEA)) are allowed to work in the UK during term times (up to a maximum of 20 hours) and full time during vacations, provided this is permitted by the conditions pertaining to the UK immigration permission held. In order to ensure an employer is not employing a student on a full time basis during term time, employers must now obtain evidence of academic term and vacation dates.

## **Civil Penalties**

If an employer is found employing an illegal worker they will be liable to pay a civil penalty unless a statutory excuse is established. The new Code has introduced a revised method for calculating civil penalty levels and additional options for payment.

The existing maximum penalty has been raised from £10,000 to £15,000 for Level 1 penalties (where an employer has not been found to be employing illegal workers within the previous 3 years) and £20,000 for Level 2 penalties (where an employer has been found to be employing illegal workers within the previous 3 years).

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### **Immigration Bill 2014 receives Royal Assent**

On 14 May 2014, the Immigration Bill received Royal Assent, bringing into force changes to UK immigration laws. The Bill is now an Act of Parliament and will be known as the Immigration Act 2014. The Act aims to make our immigration system tougher on illegal immigrants whilst ensuring the system is fairer to legal migrants. The provisions that are most relevant to businesses are set out below.

#### **Reducing the number of appeals**

The Act makes a number of amendments to the appeals system for illegal immigrants, with the aim of making removal and deportation easier:

- the grounds on which a migrant can appeal against a decision have been significantly reduced;
- an administrative review process to address case-working errors has been introduced; and
- a new power requires migrant offenders being deported to leave the UK first, before appealing, unless there is a risk of serious irreversible harm.

#### **NHS surcharge for temporary migrants**

The Act gives the Secretary of State the power to make an order requiring non-EEA migrants applying for immigration permission of more than six months to pay a fee towards the cost of using the NHS. If introduced, this fee will be paid at the time the migrant applies for immigration permission and will entitle the migrant to free NHS care to the same extent as a permanent resident, subject to some exceptions.

#### **Article 8 and regard to public interest**

The Act states that Article 8 of the European Convention on Human Rights (ECHR) (right to respect for private and family life) is not an absolute right and must be weighed

against the public interest, including the need to have effective immigration controls and protect the public. The Act confirms that the Immigration Rules provide a complete code for considering Article 8 (although accepts that it cannot cover every eventuality), and that it is only in exceptional circumstances that Article 8 will prevent deportation.

#### **Biometric information**

The Act introduces the requirement for individuals applying in the following categories to provide biometric data before they travel to the UK: those applying for transit visas; non-EEA family member of EEA nationals; non-EEA nationals when applying for evidence of right to enter or remain in the UK; and those applying for British citizenship.

The Act also allows biometric checks to be undertaken on those suspected of being in breach of immigration laws

#### **Powers to implement Embarkation Controls**

The Act introduces the ability for exit checks to be carried out on any person leaving the UK, and is intended to come into force by 2015. The Act enables individuals already involved in outbound passenger processes, eg carrier and port operator staff to play a part in exit checks, eg by conducting searches, interviews and requesting sight of relevant documentation or biometric information. The Act also introduces a power to compel them to do so if necessary.

#### **Other changes**

The Act also introduces the following changes:

- Private landlords will be required to check that their tenants have the appropriate immigration permission to remain in the UK. The checks will only apply to new tenants from the expected implementation date of October 2014.
- The Home Office will be given new powers to investigate suspected sham marriages and civil partnerships, and existing powers for information to be shared by, and with registration officials, have been extended

- The DVLA will refuse a driving licence application for individuals who do not hold valid permission to be in the UK, and can revoke a licence where the migrant no longer has UK immigration status;
- Banks and building societies will not be able to open an account for a person who does not hold valid immigration permission for the UK; and
- A naturalised individual can be deprived of their British citizenship if their actions have been seriously prejudicial to the interests of the UK, and the Home Secretary has reasonable grounds for believing the person is able to become a national of another country.

#### **Expiry of Educational Testing Service Licence**

From 1 July 2014 the Educational Testing Service (ETS) will no longer be a Home Office approved test provider. Individuals who have an English language test certificate provided by ETS (eg TOEFL, TOEIC etc) will no longer be able to rely upon this certificate for UK immigration applications.

#### **European Directive on Intra-Corporate Transferees**

On 13 May 2014, the Council of the European Union (EU) adopted the Directive on Intra-Corporate Transferees. The Directive introduces a common set of rules to make it easier for companies outside of Europe to send key staff to their subsidiaries within the EU.

Previously, entry into each Member State was governed by a different set of rules. Workers had to make separate visa applications for each country, even where the worker was being transferred within the EU. Under the new Directive, once a worker is granted a work permit to an EU Member State, s/he can be transferred almost freely inside the EU. Foreign workers are now entitled to equal treatment with posted workers, and are granted the same protection as EU workers.

The ICT permit will allow the individual to work freely for entities of the same multinational company in other EU states for up to 90 days within a 6 month period. For intra-EU work exceeding the 90 day limit, Member States may require a separate ICT permit application. The Directive now also allows family members of ICT migrants to work whilst accompanying the main applicant on their assignment.

Member States have two and a half years to adapt their national laws to the EU directive. As with other EU policies, the UK, Denmark and Ireland are opting out of this Directive. The UK and Denmark already allow family members of ICTs to work freely during an assignment.

#### **Passport and BRP return service for ILR applications**

On 6 May 2014, a pilot service was introduced for Indefinite Leave to Remain (ILR) applications made under Tier 2 of the Points-Based System in the UK. Applicants will now receive their passports and their Biometric Residence Permits (BRP) back within 7-10 days of their application being created by the Home Office. Applicants will not need to request the return as it will be done automatically. This is a positive introduction by the Home Office as it will allow applicants to travel whilst their applications are being considered.

#### **Global Update**

Please find a brief selection of recent global immigration updates. Should you wish to follow our regular global newsletter, with detailed information on immigration changes around the world, please do not hesitate to email [stephanie.odumusu@pwclegal.co.uk](mailto:stephanie.odumusu@pwclegal.co.uk).

#### **Netherlands**

On 1 April 2014, the Single Permit Act (the "GVVA") came into force in the Netherlands. The main purpose of the GVVA is to simplify the application procedure for work and residence permits by enabling employers of third country nationals (i.e. nationals from outside the EU, EEA or Switzerland) to file a single application for a combined permit for

residence and work. To qualify for this route, non-EU nationals must work and reside in the Netherlands for at least three months and there could also be a labour market test element conducted by the Labour Authorities. Despite the process having been simplified, we are not expecting the timeframe of the new combined applications to be reduced.

### **Poland** **Implementation of Combined Work and Residence Permits**

As of 1 May 2014, a new combined work and residence permit was introduced for foreign nationals under local employment contracts in Poland. This new combined permit now requires in-person submission of fingerprints and although expected to result in processing delays for several weeks, the change should eventually improve the efficiency of the work permit process for employers and foreign workers.

### **Canada** **“Express Entry” for qualified economic immigrants**

On April 8, 2014, Citizenship and Immigration Canada (CIC) announced that Canada’s active recruitment model for economic permanent residence immigration will officially be called “Express Entry”. It is not set to launch until January 2015, however the “Express Entry” will allow for greater flexibility and better responsiveness to deal with regional labour shortages, and help fill open jobs for which there are no available Canadian workers.

### **Contacts**



**Julia Onslow-Cole**  
Partner  
020 7804 7252  
julia.onslow-cole@pwclegal.co.uk



**Jurga McCluskey**  
Partner  
020 7804 4777  
jurga.mccluskey@pwclegal.co.uk



**Anjali Greenwell**  
Partner  
020 7212 3357  
anjali.greenwell@pwclegal.co.uk



**Stephan Judge**  
Senior Manager  
020 7212 1094  
stephan.judge@pwclegal.co.uk



**Frederique Montalti**  
Senior Manager  
020 7212 4340  
frederique.montalti@pwclegal.co.uk



**Sapna Patel**  
Senior Manager  
020 7804 7077  
sapna.s.patel@pwclegal.co.uk



**James Perrott**  
Senior Manager  
020 7213 2681  
james.perrott@pwclegal.co.uk

[www.pwclegal.co.uk](http://www.pwclegal.co.uk)

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