

## Immigration Act 2016—inspection and enforcement powers

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**Immigration analysis: What will the Immigration Act 2016 (IA 2016) mean in practice? Dan Bunting, barrister at 2 Dr Johnson's Buildings, considers the key provisions relating to inspection and enforcement powers.**

### **What are the key provisions relating to inspection and enforcement powers? How do they build upon the Immigration Act 2014 (IA 2014) or other recent changes?**

#### **Main provisions**

In the main, IA 2016 allows for greater powers for immigration officers (IOs) in the following areas:

- a power for an IO who is lawfully present on a premises to search for evidence that may assist in determining whether a person is liable to a civil penalty either under the Immigration, Asylum and Nationality Act 2006 relating to illegal working, or under IA 2014 relating to leasing premises
- a catch-all power for an IO to seize anything that may relate to an offence while exercising their powers under the Immigration Acts:
  - if the material seized relates to a non-immigration offence, then the IO should seize it and pass it on to a police officer or other representative from an investigative body
  - if the material relates to an immigration offence, then the IO can seize and retain it as long as is necessary through the currency of the investigation
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- a power to search immigration detainees for nationality documents, and seize any that are found—the offences under the Immigration and Asylum Act 1999 (IAA 1999) relating to assaulting and obstructing a custody officer are extended to cover someone who is exercising these functions
- a power for an IO to examine a passenger with existing leave to see if that leave should be curtailed
- a power to search certain premises for documents or evidence that a person's leave may be curtailed

In all these cases, there are protections for documents that are subject to legal professional privilege. In addition, an IO can require any document stored on a computer to be produced in a format that can be taken away (ie to be printed out and a hard copy given).

In addition, there are changes to the powers in IAA 1999, s 20 in relation to the swapping of information between the immigration authorities and the police and other bodies. There are also changes to the fingerprinting provisions of IAA 1999.

In relation to detention, the Home Secretary is required to issue guidance on when people who are defined as 'vulnerable' should be detained. There are separate and distinct limitations placed upon when a pregnant women should be detained. IA 2016, Sch 10 (no date for implementation yet set) contains a new set of provisions for bail.

#### **Overview of implementation**

The provisions relating to enforcement are contained in IA 2016, Pt 3 (IA 2016, ss 46–58), as well as IA 2016, Sch 8 (search warrants). In the main, they build on previous legislation. The main purpose of the legislation appears to be to 'beef up' the powers of IOs, and to integrate the powers of IOs with other governmental agencies.

The changes are made by amending section 28 and Schedule 2 of the Immigration Act 1971, as well as by making changes to IAA 1999.

In addition, IA 2016, ss 59–61, and IA 2016, Sch 10, make provisions in relation to bail and detention.

#### **If relevant, how much will be left to secondary legislation?**

Almost all of the changes are to be achieved through primary legislation, without the need for delegated powers to be used.

The guidance on detaining vulnerable people will have to be laid before Parliament before coming into force.

### **When will the changes take effect?**

All of IA 2016, Pt 3 concerning enforcement will commence on 12 July 2016 (Immigration Act 2016 (Commencement No 1) Regulations 2016, SI 2016/603), with the exception of IA 2016, s 54 (which implements the changes to search warrants as detailed at IA 2016, Sch 8). There is no indication of when IA 2016, s 54 will come in to force, or why its implementation has been delayed.

Also being implemented on 12 July is IA 2016, s 60 which places limits on the detention of pregnant women. There is no information as to when the remaining sections of IA 2016, Pt 3 and IA 2016, Sch 10, relating to bail and detention, will be implemented.

### **Are any of these changes welcome?**

The limitations on detention for pregnant women are welcome, albeit it is unclear to what extent it will make much of a difference in practical terms. A similar observation can be made with regard to the guidance on detention of vulnerable people.

Other than that, there is not much in IA 2016 that could be seen to help individuals in their dealings with the Home Office, etc.

### **What are the main concerns?**

The main concern is the extent to which there is an ever-decreasing level of protection for individuals who are subject to the attention of the immigration authorities, for reasons good or bad.

IA 2016 gives wider powers to IOs to search individuals and premises, and removes some of the 'red tape' that places restrictions on IOs during searches.

### **What are the implications for clients?**

There will be fewer opportunities to challenge any exercise of search powers by IOs. In addition, there will be less scope to retain material which an individual may not wish to be disclosed.

Other than that, it is not anticipated that this part of IA 2016 will make much of a practical difference to most people.

### **What should immigration advisers be doing to prepare for the changes?**

It is unlikely to require wide-ranging changes to current practice, but all advisers should check any fact sheets, checklists, standard letters, etc that are designed for clients who may be subject to an immigration search, to ensure that they have kept pace with the law as it will be in July 2016.

### **What predictions are likely for the future?**

The only safe prediction about immigration legislation is that it will become ever more draconian.

It is likely that IOs will, in due course, have powers equivalent to those of police officers, and that the regimes relating to search powers governing the two will be elided.

*Interviewed by Kate Beaumont.*

*The views expressed by our Legal Analysis interviewees are not necessarily those of the proprietor*



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