

Tougher action against those who flout immigration laws

David Clifton, director of **Clifton Davies Consultancy Limited**, summarises the effect of the **Immigration Act 2016** on the pub and bar industry

Suzanne Davies wrote in issue 103 of *Pub & Bar* an article entitled 'Immigration clampdown could lead to loss of licences'. It concerned the proposals then set out in the Immigration Bill and recommended practical measures to be taken by pub and bar operators to avoid penalties for breaking immigration laws.

That Bill has now become the Immigration Act 2016 and, although no date for implementation has yet been set, it is thought likely that it will come into force in Spring 2017. According to the gov.uk website, it will:

- Introduce new sanctions on illegal workers and rogue employers.
- Provide better co-ordination of regulators that enforce workers' rights.
- Prevent illegal migrants in the UK from accessing housing, driving licences and bank accounts.
- Introduce new measures to make it easier to enforce immigration laws and remove illegal migrants.

However, of direct relevance to the pub and bar industry are the following amendments to the Licensing Act 2003 that will apply to licensed premises in England and Wales. It is anticipated that similar requirements will apply in Scotland.

Bearing in mind that the new Act introduces an offence of illegal working, it is hardly surprising that only an individual entitled to work in the UK will be able to apply in future for a personal licence or apply for or seek a transfer of a premises licence. In addition, both a premises licence and a personal licence will lapse if the holder ceases to be entitled to work in the UK. Immigration offences are to be added to the list of grounds on which a licensing authority can

revoke a licence and immigration officers are to be given rights of entry to licensed premises. Personal licence holders will be obliged to inform their licensing authority if they are required to pay an immigration penalty.

In addition, the home secretary will become a 'responsible authority' and will have the right to give notice objecting to transfer applications if satisfied that the exceptional circumstances of the case are such that granting the application would be prejudicial to the prevention of illegal working in licensed premises. When such a notice is given, the licensing authority will have to reject the transfer application if it considers it appropriate for the prevention of illegal working in licensed premises to do so.

Under the Immigration Act:

- A worker found to be working illegally could be imprisoned, as too could an employer who has "reasonable cause to believe" that the person concerned was an illegal worker.
- All wages earned by the illegal worker will be liable to seizure pursuant to the Proceeds of Crime Act.

Furthermore, a new power will be introduced enabling closure of business premises for up to 48 hours in circumstances where an employer continues to flout the law by employing illegal workers and evading sanctions. If such an employer can prove that right to work checks have been conducted, the closure notice may be cancelled, but in the absence of such proof, the business may be placed under special compliance requirements, as directed by the court. This can include continued closure for a period, followed by reopening subject to compliance inspections and the requirement to conduct right to work checks. Employers, take note!



Clifton Davies Consultancy Ltd



Clifton Davies Consultancy Limited is a consultancy business (not a law firm) which specialises in all licensing, gambling and regulatory issues affecting the pub and bar industry. David Clifton and Suzanne Davies are also consultants to Joelson JD LLP. The views expressed are given without any assumption of responsibility on their part. If you have any questions, do get in touch and they will be pleased to provide answers, either via this page or direct.

E-mail: dc@cliftondavies.com

sd@cliftondavies.com

Web: cliftondavies.com

Questions & Answers



Q: I am looking to take a lease of a tied pub. Where can I get advice on the sort of costs associated with doing this?

A: The BBPA has recently published a helpful guide that provides the latest data for tenants and lessees on typical operating costs in the UK pub industry. It shows the average and range of costs in running a pub over a variety of pub models based on turnover and business types, including food and wet led models. See beerandpub.com for more details.

Q: Who benefits from the change of copyright law, pubs or the Premier League?

A: You are referring to the amendment to section 72 of the Copyright, Designs and Patents Act 1988 that had previously been found by the Court of Appeal to be incompatible with EU law. The effect of the change is that there will be a breach of copyright by any pub that shows unauthorised foreign broadcasts of Premier League football matches, even if logos and accompanying music are blocked from the screen. To that extent, the Premier League is the winner, together with Sky Sports and BT Sport (the only UK TV channels currently authorised to broadcast live Premier League football).

Pubs Code update

In the last edition of *Pub & Bar*, we wrote about the delay in implementation of the Pubs Code due to drafting errors in the regulations designed to bring it into force. Those errors have now been addressed in revised draft regulations, although a firm date for implementation of the Code has still to be confirmed. The government has promised that this will be as close to the original 26 May 2016 date as possible "to offer the protection of the Code to tied tenants". It is thought that implementation will occur before 21 July but, at the time of writing, no indication has been given that the Code will apply retrospectively back to 26 May.