



## **Proceeds of Crime Act Successfully Used Against an Employer of Illegal Immigrants**

Section 15 of the Immigration, Asylum and Nationality Act 2006 prescribes civil penalties which may be imposed by the Home office on employers found to have been employing illegal immigrants, i.e. people who have no leave to remain in the UK, whose leave has expired or who have leave but whose leave is subject to a condition precluding them from accepting employment. Detailed provisions relating to objections, appeals, enforcement and code of practice to be followed in determining the amount of penalties are contained in sections 16-19. At present the maximum penalty is £10,000 per illegal immigrant found to have been so employed.

Section 21 of the same Act makes it an offence for an employer to employ an illegal immigrant, using exactly the same words to define the offence as are used in section 15 to describe the conduct which gives rise to liability for a civil penalty. Prosecutions for the offence may be brought in England and Wales in either the Crown Courts ("on conviction on indictment") or Magistrates' Courts ("on summary conviction") or the equivalent courts in Scotland or Northern Ireland, depending on the seriousness of the offence. A person convicted of the offence on indictment may be sentenced to imprisonment for a maximum of two years, an unlimited fine or both. A person summarily convicted may be sentenced to imprisonment to a maximum of 12 months in England and Wales or 6 months in Scotland or Northern Ireland. I do not know the reasons for the differences in penalties. He may in the alternative be sentenced to a fine not exceeding the statutory maximum (currently £5000) or to both a fine and imprisonment.

Civil penalties are obviously the preferred sanction in less serious cases as they avoid the costs, troubles and delays involved in prosecutions, though there have been criticisms of laxity in actually collecting penalties which have been imposed. There is the added advantage that such penalties in less serious cases can be up to £10,000 per illegal immigrant employed as against a maximum fine of £5000 on summary conviction. However, a recent case in the Glasgow Sheriff Court may encourage the Home Office to prosecute under section 21 more often in appropriate cases. A woman who owned and ran several Chinese restaurants was fined £6000 in June 2011 for two offences of employing illegal immigrants. After she was convicted the Scottish Crown Office, Serious Organised Crime Agency and Home Office jointly initiated confiscation proceedings under the Proceeds of Crime Act 2002. This is a statute running to 462 sections and 12 schedules applying to all parts of the UK, with which I am wholly unfamiliar. However, the purpose of it is to make it possible for a court after convicting a criminal to investigate the extent to which his lifestyle has made it possible to amass wealth in money or goods and if appropriate to make a confiscation order. Such a criminal may now be required to account for unexplained income for a full six years before arrest. In this case the results of surveillance and detailed investigation of the woman's businesses led to the making of a confiscation order for £722,956 of cash and jewellery.

So far as I am aware, this is the first time that conviction for an immigration offence has led to a confiscation order. Discoveries of illegal immigrants working in Indian or Chinese restaurants are frequent and mostly result in the imposition of civil penalties. Such penalties cannot lead to confiscation orders under the Proceeds of Crime Act as they do not constitute conviction for a criminal offence. However, the case may encourage the Home Office to resort more readily to prosecutions in appropriate instances and may deter restaurant owners from employing illegal immigrants or committing other immigration offences.

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