

**CHAPTER 24
SECTION 13****COERCIVE INFORMATION
GATHERING POWERS****1. GENERAL**

Sections 134-139 on the Nationality, Immigration and Asylum Act 2002 give UKBA new powers to require employers and financial institutions to supply relevant information in clearly defined circumstances. They reflect other very similar powers already provided in the sphere of social security legislation and elsewhere. These powers will help the UK Border Agency to tackle two important objectives:

- to locate persons working here who have no lawful basis of stay in the United Kingdom, including failed asylum seekers; and
- to detect those defrauding the national asylum support arrangements by falsely claiming to be destitute.

1.1. Section 134 - employers

Section 134 gives the UK Border Agency (caseworkers and immigration officers) the power to require an employer to provide information about a specified employee or former employee whom the immigration authorities reasonably suspect has committed one of the following offences:

a. Immigration offences:

- knowingly entering the United Kingdom without leave or in breach of a deportation order;
- knowingly overstaying a period of limited leave or failing to observe a condition of that leave;
- remaining beyond a period exempt from leave as a crew member of a ship or aircraft;
- without reasonable excuse failing to observe any restriction imposed by an immigration officer as to residence or reporting arrangements;
- disembarking in the United Kingdom after being placed on board a ship, aircraft or train for removal;
- obtaining leave to enter or remain by deception;
- deliberate verbal or documentary deception;

b. Asylum support offences:

- knowingly making a materially false statement or representation with a view to obtaining asylum support;
- knowingly producing any materially false document or information with a view to obtaining asylum support;
- failing without reasonable excuse to notify a change of circumstances as required with a view to obtaining asylum support;
- dishonestly making a materially false statement or representation with a view to obtaining any benefit, payment or other advantage under part 6 of the Immigration and Asylum Act 1999;
- dishonestly producing any materially false document or information with a view to obtaining any benefit, payment or other advantage under part 6 of the 1999 Act;
- dishonestly failing to notify a change in circumstances as required with a view to obtaining any benefit, payment or other advantage under part 6 of the 1999 Act.

The power may only be used to require information if it relates to the person's earnings or employment history, or is required for the purpose of establishing where the person is. It applies to employment agencies as employers where they have arranged for the person in question to provide services to a client and the person is not employed by the client.

1.2. **Section 135**

Section 135 provides the UK Border Agency with the power to require financial institutions to supply information about a specified person whom the immigration authorities reasonably suspect has committed an asylum support offence under the Immigration and Asylum Act 1999. These are listed at **paragraph b** above. The power applies where the UK Border Agency reasonably suspects the information required is relevant to the offence **and** the institution has the information. The legal requirement to supply information will enable financial institutions to comply despite any contractual duty of confidence that may be owed to the account-holder.

1.3. **Enforcement**

The requirement to supply information in each case takes the form of a written notice to be served by the UK Border Agency under section 136 of the Act on the employer or financial institution in question. The notice must specify the

information required, the manner in which it is to be provided, and the period of time within which it must be provided. It is an offence to fail to comply with a notice without reasonable excuse. The offence covers both simple failure to comply and the deliberate supply of false information in response to a notice. The penalty on summary conviction for this offence is a term of imprisonment not exceeding three months, a fine not exceeding level 5 on the standard scale (currently £5,000) or both. Information obtained under sections 134 and 135 may not be used in criminal proceedings against the employer or financial institution in question, except in proceedings for non-compliance with the requirement to provide the information specified in the written notice.

1.4. **Specified person**

As much information as necessary should be provided to the employer or financial institution to enable them to effectively search their files for a record of the individual(s) concerned. An individual can be specified by the use of a photograph of the suspect or by any other identifying feature such as name, nationality, date of birth, address etc. Prior authorisation at HEO/CIO level is required before a request for information under sections 134 or 135 may be made. There will of course be circumstances, particularly in relation to employers, where information will be sought on a voluntary basis by the UK Border Agency (usually within the terms of section 29 of the Data Protection Act 1998) in preference to using the formal powers detailed above to require its provision.

For more guidance on the use of these powers, including templates for forms, contact NAM Policy and Enforcement & Compliance Policy.