

# IMMIGRATION ACT 2014

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 3: Access to Services etc**

#### **Chapter 1: Residential tenancies**

#### **Section 20: Residential tenancy agreement**

107. This section identifies the type of arrangements to which the restriction on letting applies.
108. *Subsections (2), (3) and (4)* provide that all arrangements where a person is permitted to occupy a property as their only or main residence in return for the payment of rent are residential tenancy agreements, unless the arrangement falls into one of the exclusions set out in Schedule 3. Accommodation for which no rent is paid, such as convents or monasteries, does not fall within this definition, and so is not subject to the restriction on letting, nor is accommodation which is not used by a person as their only or main home. So, for example, holiday accommodation will not ordinarily be captured, as for most people it will not provide their only or main home, but if somebody chooses to live in a hotel, the arrangements for that person will be captured. Subsection (2) and subsection (3) also identify the range of agreements that will be considered to be a “residential tenancy agreement” for the purposes of the Chapter and who the landlord will be in the various cases. The effect is that where a landlord (L1) grants a tenancy to a tenant (T1) who then grants a licence to a lodger (T2), L1 will be the landlord in respect of T1 and T1 will be the landlord in respect of T2.
109. Certain occupancy agreements are excluded from the scheme and the landlord will be exempt from the requirement to conduct checks. These are listed in Schedule 3.
110. *Subsection (7)* creates a power to amend Schedule 3, in case further categories of agreement need to be excluded from these provisions, or some should be brought within the scope of the restriction. The order is subject to the affirmative resolution procedure (see section 74(2)).

#### **Schedule 3: Excluded residential tenancy agreements**

111. *Paragraphs 1 and 2* exclude agreements which grant a right of occupation in social housing, where the landlord or a local authority is already subject to an obligation to check the immigration status of prospective occupants, or the tenant has an existing tenancy and is seeking to exchange their home for an alternative tenancy.
112. *Paragraph 3* excludes agreements which grant a right of occupation in a care home.
113. *Paragraph 4* excludes agreements which grant a right of occupation in a hospital or hospice. In most cases, a hospital or hospice will not provide an individual’s only or main residence, nor will the occupant be expected to pay rent. However, in some circumstances it may be that a hospital or hospice does provide the

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patient's only or main residence and they may be expected to make a contribution towards their board, such that the arrangement would fall within the definition of a residential tenancy agreement as set out in section 20. This paragraph excludes this type of accommodation.

114. *Paragraph 5* excludes agreements which grant a right of occupation in any circumstances where the accommodation is arranged by a relevant National Health Service body which is acting in response to a statutory duty owed to an individual. In some circumstances, continuing health care provision may include the provision of accommodation.
115. *Paragraph 6* excludes agreements which grant a right of occupation in a hostel or refuge. Hostels and refuges which are managed by social landlords, voluntary organisations or charities, or which are not operated on a commercial basis and whose operating costs are provided either wholly or in part by a government department or agency or a local authority are exempt. A hostel is defined as a building, or part of a building which is used to provide residential accommodation otherwise than in separate and self contained premises and board or facilities for food preparation, for persons generally or a class of persons, for example people who are street homeless. A refuge means a building which is used wholly or mainly to provide accommodation for persons who are seeking protection from abuse, such as a refuge for those who have fled domestic abuse or the victims of trafficking.
116. *Paragraph 7* excludes agreements which grant a right of occupation in any circumstances where the accommodation is arranged by a local authority which is acting in response to a statutory duty owed to an individual, or is exercising a relevant power with the intention of providing accommodation to a person who is homeless or is threatened with homelessness. This provision ensures that where a local authority is subject to a statutory duty to provide assistance to an individual, it is not prevented from fulfilling its obligations and that where a local authority considers it appropriate to exercise a power to provide assistance to an individual for the relevant purpose, they are able to do so.
117. *Paragraph 8* excludes agreements which grant a right of occupation that is provided to an individual by virtue of any of the specified provisions of the 1999 Act. The specified provisions empower the Secretary of State to provide accommodation for certain asylum seekers, failed asylum seekers and persons who have been granted temporary admission to the UK under paragraph 21 of Schedule 2 to the 1971 Act, or temporary release under that paragraph. The persons who qualify for this support will fall within the definition of a disqualified person in section 21. The provision ensures that the Secretary of State is not frustrated from exercising the specified statutory powers. It also allows the Secretary of State to secure accommodation to be used for this purpose.
118. *Paragraph 9* excludes agreements to which the Mobile Homes Act 1983 applies.
119. *Paragraph 10* excludes agreements that grant a right of occupation in accommodation that is provided by an employer to an employee, or by a body providing training to an individual in connection with that training. This avoids duplication of the checks the landlord must conduct before offering employment or a place on a course of study.
120. *Paragraph 11* excludes agreements that grant a right of occupation in a building which is used wholly or mainly for the accommodation of students and is either a hall of residence or is a building owned or managed by a higher educational institution or a body established for charitable purposes only. All halls of residence are therefore exempt, as is any accommodation provided for students directly by a higher educational institution. This avoids duplication of checks which will already be undertaken by the educational institution before offering a student a place on a course of study.

121. *Paragraph 12* excludes residential tenancy agreements where a student has been nominated to occupy it by an educational institution. Such a nomination could take a variety of forms but will require communication between the institute and the landlord regarding the student who will take up occupation under the residential tenancy agreement.
122. *Paragraph 13* provides an exclusion for leases where the lease agreement grants a right of occupation for a term of seven years or more. This type of arrangement is more akin to one of home ownership than a traditional landlord tenant arrangement.
123. Sub-paragraph 3 provides that such an agreement does not grant a right of occupation for a term of seven years or more if the agreement can be terminated at the option of a party before the end of seven years from the commencement of the term. This is an anti-avoidance measure to ensure that leases are not agreed on the basis that they purport to be for a term of seven years or more when the parties intend to terminate them sooner. A lease containing a break clause will include an option to terminate and will not therefore benefit from the exemption. A lease which contains a forfeiture or right of re-entry for the landlord will benefit from the exemption.
124. *Paragraph 14* defines terms used in Schedule 3.

***Section 21: Persons disqualified by immigration status or with limited right to rent***

125. This section sets out those persons who may not occupy privately rented property as their only or main home as a result of their immigration status; these are “disqualified persons.” It also sets out those persons who have a “limited right to rent property” because of their immigration status. In general, those who entered the UK unlawfully, or have overstayed their leave to enter or remain in the UK, will be disqualified and those persons who have a limited right to enter or remain in the UK have a limited right to rent.
126. *Subsection (1)* sets out those persons who are disqualified from occupying property. It makes it clear that relevant nationals, namely British citizens, EEA nationals and Swiss nationals, have the right to rent property, as they are all relevant nationals as defined in *subsection (5)*. A person is disqualified from occupying property under a residential tenancy agreement (they do not have a “right to rent”) if they are a person who needs leave to enter or remain to be lawfully in the UK but does not have leave (*subsection (2)*) or their leave is subject to a condition that would prevent them from taking up occupation at the premises. A person whose leave to enter or remain in the UK is invalid, has ceased to have effect (whether by reason of curtailment, revocation, cancellation, passage of time or otherwise) will not have leave to enter or remain in the UK and so will not have a right to rent. A person who has leave subject to a condition that they reside at a specific address, which is not the address of the premises which are the subject of the agreement, will not have a right to rent that property.
127. *Subsection (3)* gives the Secretary of State the discretion to grant a person the right to rent even though they would otherwise be disqualified as a result of their immigration status.
128. *Subsection (4)* defines the persons who have a “limited right to rent”. These are persons who have been granted leave to enter or remain in the UK for a limited period of time, those persons who do not require leave to enter or remain as the qualifying family members of EEA nationals, or persons who enjoy a right to reside in the UK which derives from the EU Treaties.

***Section 22: Persons disqualified by immigration status not to be leased premises***

129. This section provides that a landlord must not allow an adult to occupy property under a residential tenancy agreement if they are a disqualified person.

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130. *Subsection (2)* provides that the restriction in *subsection (1)* will only be contravened where the circumstances set out at *subsection (4)* or *subsection (5)* apply.
131. *Subsections (4) and (5)* set out the two different circumstances in which a contravention of this restriction may occur. In the first scenario a landlord enters into an agreement which allows a disqualified person to occupy the property. In the second scenario, while at the time the landlord enters into the agreement the person who will occupy the premises has the right to rent, that right comes to an end while they remain in the property.
132. *Subsection (6)*, read in conjunction with *subsection (4)* makes it clear that a person does not have to be named in a tenancy agreement for these provisions to apply. A landlord is expected to make reasonable enquiries regarding the persons who will take up residence under an arrangement before entering into an agreement and even if the individual is not specifically named in any written agreement, the landlord will be responsible for them if they have authorised their occupation or should have been aware of their occupation, from the making of reasonable enquiries.
133. *Subsection (7)* is an anti-avoidance provision. A landlord cannot attempt to avoid liability for a penalty by relying on a provision in a residential tenancy agreement which states that a disqualified person is not permitted to occupy the premises if they subsequently enter into a side agreement which allows a disqualified person to take up residence without undertaking the required checks or if they otherwise waive a breach of such a provision.
134. *Subsection (9)* confirms that the restriction set out in the section is not intended to affect the validity or enforceability of any provisions of a residential tenancy agreement. A breach of the restriction will not impact on a landlord or tenant's ability to enforce any provision in the agreement that they have entered into.

**Section 23: Penalty notices: landlords**

135. This section sets out the penalty for landlords who allow disqualified persons to take up residence in a property as their only or main home.
136. *Subsections (1) and (2)* empower the Secretary of State to impose a penalty of up to £3,000 on a landlord for each disqualified adult that they allow to occupy property.
137. *Subsection (3)* determines which landlord is responsible for a penalty. Where liability for a penalty arises because the landlord entered into the agreement which allowed occupation by a disqualified person, then the landlord who entered that agreement will always be responsible. This is to stop landlords who sell property with sitting tenants from passing the burden of a penalty onto the new owner who had no involvement in selecting or checking the occupants.
138. Where liability for a penalty arises because a person was allowed to occupy premises at a time that they had a right to rent, but that person has subsequently become a disqualified person who remains in occupation, the landlord at the time of the contravention will be responsible. This means that where a landlord acquires the freehold of a property with sitting tenants, they will take on responsibility for ensuring that any checks are undertaken in respect of occupants who have a limited right to rent at the required intervals and taking the prescribed steps should those occupants subsequently become disqualified persons.
139. *Subsections (4) and (5)* make provision regarding the transfer of responsibility from an immediate to the superior landlord. *Subsection (5)* allows a landlord to pass responsibility for a breach to a superior landlord, where the superior landlord is willing to accept that responsibility. To take the example of a landlord (L1) who grants a tenancy to a tenant (T1) who then grants a licence to a lodger (T2), if T2 is a disqualified person, T1 will be the responsible landlord, unless L1 and T1 have agreed between them in writing that L1 will accept responsibility for T2 for the purposes of this scheme. L1

and T1 may determine the extent to which L1 will accept responsibility; for instance, L1 could agree to undertake responsibility only for specifically named occupants, or only for pre-grant, and not post-grant, contraventions. Subsection (4) provides that where such an agreement has been made between the landlords regarding the transfer of responsibility, the superior landlord will be the responsible landlord for the purposes of the scheme, and references in the Chapter to the landlord should be read as referring to the superior landlord.

140. *Subsection (6)* enables the Secretary of State to amend by order the amount of the penalty referred to in subsection (2). This order is subject to the affirmative resolution procedure (see section 74(2)).

#### ***Section 24: Excuses available to landlords***

141. This section sets out the statutory excuses available to landlords to avoid a penalty for renting to someone who is disqualified. A landlord can establish an excuse if he carries out checks according to the prescribed requirements and the carrying out of those requirements did not show that the prospective occupant was disqualified. A landlord, including a superior landlord who accepts responsibility on behalf of an immediate landlord under section 23(5), also has an excuse if he arranges for an agent to do the checks for him (*subsection (2)*).
142. *Subsections (3) and (4)* set out the duration before a tenancy commences within which the checks must be carried out. In the case of those with permanent status in the UK, the checks may be carried out at any time before the tenancy is entered into. For those subject to immigration control and/or who have a limited right to rent the checks must be carried out within a set period prior to the commencement of the tenancy. This period will be specified by order. This is to prevent a perverse scenario whereby checks reveal a person's leave will expire prior to the commencement of the tenancy but a landlord is nevertheless able to rent to them because they had valid leave at the time the check was carried out.
143. *Subsection (6)* sets out that if an occupant's leave expires during a tenancy the landlord can establish an excuse by carrying out repeat checks at the specified intervals, (or arranging for an agent to do so), and by then telling the Secretary of State that a disqualified person is in their property if the repeat check identifies that the person's limited right to rent is no longer valid. They must make this report as soon as reasonably practicable after making the repeat check.
144. *Subsection (7)* sets out how a landlord can be said to have notified the Secretary of State "as soon as reasonably practicable."
145. *Subsection (8)* requires notification to the Secretary of State to be made in the prescribed form and manner. This will be specified by order.
146. *Subsection (9)* defines "limited right occupier" to mean an occupier who had a limited right to rent when first granted a right to occupy the premises.

#### ***Section 25: Penalty notices: agents***

147. This section sets out the circumstances where an agent contracted by a landlord to carry out checks on an occupant's right to rent can be held liable for any breach of the restriction on renting to disqualified persons. An agent may be liable where they act in the course of a business, so for instance letting agents who make status checks on tenants (*subsection (2)*); the landlord cannot simply pass the checking burden on by asking a friend to carry out the checks for them. The agreement with the agent must be made in writing.
148. *Subsections (3) and (4)* empower the Secretary of State to impose a penalty of up to £3,000 on an agent for each disqualified adult that is allowed to occupy property.

149. *Subsection (5)* provides for the maximum amount of the penalty specified in subsection (4) to be varied by order. This order is subject to the affirmative resolution procedure (see section 74(2)).

### ***Section 26: Excuses available to agents***

150. This section sets out the statutory excuses available to agents where they are engaged to check an occupant's right to rent, but a disqualified person is allowed to occupy a property. The agent has an excuse either where they can demonstrate that they carried out relevant checks, but the checks did not reveal that a person was disqualified (*subsection (2)*), or where they informed the landlord that the occupant was disqualified before the tenancy began (*subsection (5)*). In the latter eventuality the specific arrangements set out in the agency agreement may determine which relevant landlord the agent must report to. If the agent has been instructed by a superior landlord who has accepted responsibility for compliance with the scheme under section 23(5), they may be instructed to make report to the immediate landlord as well as the superior landlord in order to ensure that a residential tenancy agreement which breaches the prohibition in section 21 is not granted.
151. *Subsections (3) and (4)* set out the duration before a tenancy commences within which the checks must be carried out, applying the same rules as in section 24.
152. Under *subsection (6)*, in the case of an occupant who became disqualified during the tenancy, the agent has an excuse if they have carried out repeat checks in respect of the individual at the specified intervals, and informed the Secretary of State that a disqualified person is in the property if the repeat check identifies that the person's limited right to rent is no longer valid. They must make this report as soon as reasonably practicable after making the repeat check.
153. *Subsection (7)* sets out how an agent can be said to have notified the Secretary of State "as soon as reasonably practicable."
154. *Subsection (8)* requires notification to the Secretary of State to be made in the prescribed form and manner. This will be specified by order.

### ***Section 27: Eligibility period***

155. This section sets out the times at which a landlord or agent must undertake repeat checks of those persons with a limited right to rent if they are to rely on the excuses provided for in sections 24 or 26. A landlord letting to someone who has limited leave in the UK should check that they have not become disqualified from renting either before their leave is due to expire, or one year after the tenancy begins, whichever is the longer period. To take some practical examples, if a landlord grants an agreement allowing use of a room to a visitor who has six months' leave to remain in July 2015, the landlord will not need to undertake a repeat status check until July 2016 to maintain a statutory excuse against a penalty. If, at the same time, the landlord rents a property to a student with four years' leave, he need not undertake a repeat status check until July 2019. Where the occupant has indefinite leave to remain, the landlord will not need to undertake a repeat check; while their biometric residence permit may need to be renewed within a period of 10 years, the landlord can rely on the fact that the leave they have been granted is indefinite and no further check is required.

### ***Section 28: Penalty notices: general***

156. This section provides for the issuing of a penalty notice by the Secretary of State to a landlord or agent. *Subsection (1)* provides that as a matter of law, the Secretary of State does not have to establish whether the landlord or agent can establish an excuse before serving a penalty notice. The reference to landlord will include a superior landlord who has accepted responsibility for compliance with the scheme under section 23(5),

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following the glossing provision at section 23(4). *Subsection (3)* provides that a separate penalty notice can be given for each disqualified adult occupying the premises.

157. *Subsection (2)* sets out what a notice should contain. The notice must say why the Secretary of State thinks the landlord or agent is liable and give details of how large the penalty is, how it should be paid and give a deadline for payment that is more than four weeks away. The notice must also say how the landlord or agent can go about lodging an objection to the penalty. A notice cannot be given if a year or more has passed since a disqualified person occupied a property, unless a new notice is being issued under section 29(6) following consideration of an objection made by a landlord or agent and the original notice was given within that 1 year period (*subsection (5)*).
158. *Subsection (4)* provides that where a penalty notice is given to two or more persons who jointly constitute the landlord or agent, then those persons are liable for the penalty on a joint and several basis.

### **Section 29: Objection**

159. This section establishes the process by which a landlord or agent may object to a penalty they have been given by the Secretary of State for renting property for use by a disqualified person and by which the Secretary of State must consider objections.
160. *Subsections (1) and (2)* provide that a landlord or agent may object to his liability to the imposition of a penalty and to the amount. He may also object on the basis that he is not the liable party, is excused payment because he has complied with the requirements set out in section 24 for landlords, or section 26 for agents, or that the penalty given is too high in the circumstances.
161. *Subsection (3)* sets out that an objection must be made in writing to the Secretary of State within a timeframe that will be set out in an order and must give the reasons.
162. The Secretary of State must consider the objection, with regard to the Code of Practice issued under section 32; and may decide to cancel the penalty, change the amount which must be paid as a result of the objection either by reducing or increasing it, or take no action and leave the penalty notice as it stands. The Secretary of State must notify the agent or landlord of the decision within a set period that will be set out by order (*subsections (4), (5) and (6)*).

### **Section 30: Appeals**

163. This section sets out the right of appeal where the landlord or agent wishes to challenge the Secretary of State's decision on their objection to a penalty, and ensures a right of appeal should the Secretary of State fail to respond to an objection within the required timeframe.
164. *Subsection (1)* provides that a landlord or agent on whom a penalty is served may appeal to a court on the grounds that he or she is not liable to the penalty, the amount is too high, or he or she is excused payment having complied with the specified requirements.
165. *Subsection (2)* covers the actions that may be taken by the court.
166. *Subsection (3)* sets out the nature of the appeal and the matters to which the court must have regard in determining the case. This may include matters of which the Secretary of State was unaware.
167. *Subsection (5)* requires that a landlord or agent must already have made an objection under section 29 before an appeal may be brought.
168. *Subsections (6) to (9)* provide for the time limits within which an appeal must be brought.

### **Section 31: Enforcement**

169. This section provides that a penalty due to the Secretary of State may be recovered as though it were due under an order of a court. This means that the Secretary of State may take action to recover money owed under a penalty notice without first issuing a substantive claim with a court. Instead the debt may be registered with the court, and enforcement action pursued without further order.

### **Section 32: General matters**

170. This section imposes a requirement on the Secretary of State to issue a code of practice in relation to the residential tenancy provisions. The code of practice must set out:
- the criteria to be applied in deciding whether to impose a penalty and the amount of that penalty;
  - guidance regarding when a person will be considered to be using premises as their ‘only or main residence’ for the purposes of these provisions, with particular emphasis on holiday lets and lets made in connection with business travel;
  - details of the steps landlords (including superior landlords who accept responsibility for compliance with the scheme under section 23(5), following the glossing provision at section 23(4)), and agents will reasonably be expected to take to determine who will be occupying the premises under the terms of a residential tenancy agreement.
171. *Subsection (5)* requires that the code of practice is reviewed from time to time.
172. *Subsection (6)* requires that the code of practice, and any revisions that are made to it, may not be issued unless a draft has been laid before Parliament and comes into force by order of the Secretary of State.
173. The Government has published a draft code of practice.<sup>1</sup>

### **Section 33: Discrimination**

174. This section requires the Secretary of State to issue a code of practice to landlords and agents specifying how to avoid contravening the Equality Act 2010 or the Race Relations (Northern Ireland) Order 1997 while avoiding liability for a civil penalty. The Secretary of State must review that code of practice from time to time and any revisions that are made to it must be laid before Parliament.
175. *Subsections (3) and (4)* provide that before issuing the code of practice, the Secretary of State must consult with the Commission for Equality and Human Rights, the Equality Commission for Northern Ireland and persons representing the interests of landlords and tenants as considered appropriate before issuing or reissuing the code. A draft code must be laid before Parliament following consultation and consideration of representations made under subsection (4)(b), with or without modifications to reflect the representations, and will come into force by order of the Secretary of State. A breach of this code will not make a person liable to civil or criminal proceedings, but may be taken into account by a court or tribunal (subsection (6)).
176. The Government has published a prototype code of practice on discrimination.<sup>2</sup>

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<sup>1</sup> *Code of Practice: Civil Penalties for landlords and their agents*, published 31 October 2013, <https://www.gov.uk/government/publications/immigration-bill-part-3-access-to-services>.

<sup>2</sup> *Prototype Anti-Discrimination Code*, published 31 October 2013, <https://www.gov.uk/government/publications/immigration-bill-part-3-access-to-services>.



### **Section 34: Orders**

177. This section elaborates on the Secretary of State's order-making powers under this Chapter and in particular sets out the types of action which the Secretary of State may prescribe that must be carried out by landlords and agents to enable them to establish a statutory excuse against a penalty.
178. *Subsection (2)* makes provision so that any draft statutory instrument made under or in connection with this Chapter which would be a hybrid instrument for the purposes of the standing orders of either House of Parliament will proceed as if it were not a hybrid instrument. This could arise, for example, if an instrument were laid under section 20(7) that made provision which would apply in respect of one geographical area alone. In that situation, the instrument would be treated as though it were not a hybrid instrument for the purposes of the standing orders of either House of Parliament and so would not be subject to any special procedure for hybrid instruments.

### **Section 35: Transitional provision**

179. *Subsections (1) and (2)* provide that landlords who allowed people to occupy their premises before these provisions come into force do not need to make checks regarding the immigration status of those occupants. Any new arrangements made between landlords and tenants where they were previously parties to another agreement and the tenant has enjoyed a continuing right of occupation of the premises will also not be subject to the restrictions.
180. *Subsection (3)* enables the Secretary of State to appoint the commencement day for the purposes of this section by order, and allows different days to be appointed for different purposes or areas. The section is subject to the general commencement powers set out in section 75(3) and so will be brought into force by an order made under the procedure specified for that provision. But as the new regime under the Chapter may be commenced at different times in relation to different areas, it follows that different commencement days may also be required for different areas for the purposes of the transitional provisions under this section. This provision provides the flexibility to appoint those different commencement days.
181. Implementation of the provisions in Chapter 1 of Part 3 relating to residential tenancies will be rolled out on a phased geographical basis across the United Kingdom. Commencement of the initial implementation will be by order which is not subject to any parliamentary procedure. Section 74(7) provides that any subsequent order made under section 75(3) bringing into force those provisions is subject to the negative resolution procedure.

### **Section 36: Crown Application**

182. This section provides that the restrictions on letting apply to residential tenancy agreements made in respect of premises which are on Crown lands, except where the Crown is itself the responsible landlord. If property on Crown land is let out to a tenant who is not a Crown body, the tenant will be bound by the scheme should they sub-let the property.

### **Section 37: Interpretation**

183. This section sets out the definitions given to terms within these provisions.
184. *Subsection (6)* enables the Secretary of State to prescribe situations which will or will not be treated as entering into a residential tenancy agreement and circumstances where a person will or will not be considered to be occupying premises as their only or main residence for the purposes of these provisions. This will allow the Secretary of State to make provision in relation to a range of different circumstances that may occur in relation to a residential tenancy agreement – for example, the variation and renewal of

agreements. The power will enable the Secretary of State to specify how such matters are to be dealt with for the purposes of these provisions. The power will also allow the Secretary of State to put in place anti-avoidance measures should this prove necessary in relation to the premises which should be considered to be a person's only or main residence, for instance by ensuring that illegal migrants are not able to escape the provisions by claiming that their only or main residence is overseas. The order is subject to the negative resolution procedure (see section 74).

## Chapter 2: Other Services etc

### *National Health Service*

#### *Section 38: Immigration health charge*

185. This section provides the Secretary of State with a power, by order, to require certain migrants to pay an immigration health charge. Affected migrants would be required to pay the charge when applying for leave to enter or remain in the UK or when applying for entry clearance. The order may include provision about the amount, method of payment and consequences of non-payment of the charge and for exemptions from the charge. The order may also provide for a reduction, waiver or refund of all or part of the charge. In specifying the amount of the charge, the Secretary of State must have regard to the range of health services likely to be available free of charge for persons who have paid the charge.
186. *Subsection (5)* provides that any funds collected under this power must be paid to either the Consolidated Fund or applied as specified in the order. The order is subject to the affirmative resolution procedure (see section 74(2)).

#### *Section 39: Related provision: charges for health services*

187. Persons who are ordinarily resident in the UK are not chargeable for health services under the legislation specified in section 39(2). Section 39 states that for the purpose of the charging provisions those who require leave to enter or remain and do not have it and those who have limited leave to enter or remain are not to be treated as ordinarily resident, so ensuring they can potentially be charged for health services throughout the UK.
188. *Subsection (2)* sets out the specific health service charging provisions in each of the constituent parts of the UK in respect of which the definition of not ordinarily resident in *subsection (1)* applies.

### **Bank accounts**

#### *Section 40: Prohibition on opening current accounts for disqualified persons*

189. *Subsection (1)* provides that a bank or building society must not open a current account for a person who falls within *subsection (2)* unless one of two conditions has been satisfied.
190. The first condition is that the bank or building society has carried out a "status check" in respect of the applicant, that is a check in relation to their immigration status, and this has indicated the person is not a "disqualified person" for whom an account should not be opened. The second condition is that the bank or building society has been unable to carry out a status check because of circumstances that cannot reasonably be regarded as within its control. This might occur, for example, if it were unable to perform a check because of operational difficulties being encountered by the checking service for an extended period.
191. *Subsection (2)* sets out the persons who may be disqualified from opening a bank account. A person may be disqualified from opening a current account if they are

physically present in the UK and require leave to enter or remain in the UK but do not have it.

192. *Subsection (3)* defines what constitutes a “status check” and a “disqualified person” for the purposes of these provisions. A status check means a check with a specified anti-fraud organisation or a specified data-matching authority. A disqualified person is a person who falls within subsection (2) and in respect of whom the Secretary of State considers a current account should not be opened. The Secretary of State therefore has discretion as to who should be barred from opening current accounts. This is because there will be some individuals who face legitimate barriers which prevent them from leaving the UK, even though they do not have leave. The Secretary of State may enable these persons to open a current account. Subsection (3) provides that the prohibition on opening an account for a disqualified person extends to instances where the disqualified person is applying for a joint account, an account to which that person is to be a signatory or a named beneficiary, and also to instances where the disqualified person is to be added to an existing account as an account holder, signatory or named beneficiary.
193. *Subsection (4)* provides that an anti-fraud organisation specified for the purposes of subsection (3)(a) must be an anti-fraud organisation within the meaning set out in section 68 of the Serious Crime Act 2007 and that a data-matching authority specified must be a person or body conducting data matching exercises within the meaning of Schedule 9 to the Local Audit and Accountability Act 2014, under or by virtue of that or any other Act. The Government has published a statement of intent that CIFAS will be the organisation specified to be the data-matching authority for the purposes of this section.<sup>3</sup>
194. *Subsection (5)* has the effect that where a bank or building society is unable to carry out a status check because it has not paid a reasonable fee for the status check to be carried out when required to do so, and it opens an account for a disqualified person, it will breach the prohibition on opening current accounts for disqualified persons.
195. *Subsection (6)* provides that where a bank or building society refuses to open a current account in accordance with the requirements of this section, the bank or building society must tell the person of the reason for refusal, if it can do so lawfully. The duty to inform the person of the reason for refusal is to enable the person, if relevant, to contact the immigration authorities if they consider that they are not, or should not be, disqualified from opening an account. However, the duty to inform is subject to any other provision that would prevent a bank or building society from communicating information to the person. For instance, if informing the person would amount to an offence under section 333A of the Proceeds of Crime Act 2002 (tipping off: regulated sector), the bank or building society could not tell them.

#### ***Section 41: Regulation by Financial Conduct Authority***

196. *Subsection (1)* provides that the Treasury may make regulations to enable the Financial Conduct Authority (FCA) to make arrangements for monitoring and enforcing compliance with the prohibition imposed on banks and building societies by section 40. The regulations are subject to the affirmative resolution procedure (see section 74(2)).
197. The regulations may make provisions for the FCA to be given free access to the information held by the anti-fraud organisation or data-matching authority specified for the purposes of section 40 which is accessed by banks and building societies (*subsection (2)(a)*). Such access may be necessary to ensure effective regulation and enforcement by the FCA. *Subsection (2)(b)* provides any regulations may correspond to any provisions of the Financial Services and Markets Act 2000, in particular those listed in *subsection (3)*, with or without modification.

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<sup>3</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/283962/statement\\_of\\_intent\\_bank\\_accounts.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/283962/statement_of_intent_bank_accounts.pdf)

*These notes refer to the Immigration Act 2014 (c.22)  
which received Royal Assent on 14 May 2014*

198. Subsection (3) sets out specific matters that the regulations may cover in order to ensure the FCA can take such steps as necessary to put in place appropriate arrangements to combat and deter breaches of the obligations under section 40 by banks and building societies. The reference to “criminal offences” at subsection (3)(a) will, for example, enable the regulations to make it an offence for banks and building societies to mislead the FCA.

**Section 42: “Bank” and “building society”**

199. This section defines what is meant in these provisions by the terms “bank” and “building society”.
200. *Subsection (1)* provides that for the purposes of these provisions, a “bank” is an “authorised deposit-taker” that has its head office or a branch in the UK. This is subject to the exclusions set out at *subsection (4)*.
201. *Subsection (2)* defines an “authorised deposit-taker,” consistent with the relevant provisions of the Financial Services and Markets Act 2000, while *subsection (3)* provides that this definition does not include bodies that have permission to accept deposits only for the purposes of or in the course of another form of activity (for example insurance companies).
202. *Subsection (5)* defines a building society for the purposes of these provisions.

**Section 43: Power to amend**

203. In *subsection (1)*, paragraph (a) provides that the Treasury may, by order, amend sections 40 to 42 to alter the categories of financial institutions to which those sections apply. This is an anti-avoidance measure, in case in future it becomes necessary to extend the prohibition set out in section 40 to institutions such as credit unions.
204. *Paragraphs (b), (c) and (d) of subsection (1)* allow the Treasury, by order, to amend section 40 to make the prohibition apply to different kinds of accounts (including other financial products by means of which a payment can be made), beyond or instead of current accounts, to define such categories of accounts and to further define accounts operated or to be operated by or for a person or body of a description that will be specified in the order. This is largely an anti-avoidance measure, in case in future it becomes necessary to alter the ambit of the prohibition to cover financial products other than current accounts (for example savings accounts, or to clarify the types of accounts that are covered).
205. *Subsection (2)* provides that such an order may amend sections 40 to 42 to confer order making powers upon the Treasury itself so that, for example, details of persons or bodies to whose accounts the prohibition in section 40(1) will not apply can be specified in secondary legislation.
206. Orders under this section are subject to the affirmative resolution procedure (see section 74(2)).

**Work**

**Section 44: Appeals against penalty notices**

207. This section amends section 17 of the 2006 Act. It substitutes for subsections (4) and (5) new subsections (4A) to (4E). The effect is to require an employer to exercise their right to object to a penalty notice for a breach of the illegal working provisions in that Act to the Secretary of State before they appeal to the civil court against the penalty.

***Section 45: Recovery of sums payable under penalty notices***

208. This section amends section 18 of the 2006 Act. It substitutes subsections (1) and (2) with new subsections (1) to (1D). The effect is to allow the Secretary of State to enforce a penalty as if it were a debt due under a court order. The amendment will allow an outstanding penalty to be registered with the civil court, after which enforcement action may be commenced immediately. It will eliminate the need for the Secretary of State to first make an application to the court for a substantive order for payment.
209. Currently the penalty ‘may be recovered by the Secretary of State as a debt due to him.’ This requires the issue of a substantive claim which gives the employer the opportunity to raise a defence before the matter is determined and judgment is given. At this point in proceedings, the Secretary of State can seek to rely on subsection (2) of section 18 which states that in proceedings for the enforcement of a penalty, no question may be raised regarding liability to the penalty, application of an excuse in section 15(3) or the amount of the penalty. The amendment will remove the need for these proceedings entirely and allow the Secretary of State to register the penalty with the court and then move to enforcement proceedings.
210. Subsection (1D) provides that where action is taken under this section for the recovery of a sum payable as a penalty, the penalty is to be treated as if it were a judgment entered in the county court in England and Wales for the purposes of section 98 of the Courts Act 2003, and as a judgment in Northern Ireland in respect of which an application for enforcement has been entered for the purposes of Article 116 of the Judgments Enforcement (Northern Ireland) Order 1981. This will allow penalty notices where enforcement action is taken to be entered on the registers of judgments in England and Wales and in Northern Ireland as though a substantive order for the sum payable had been made by a court in those jurisdictions.

**Driving licences**

***Section 46: Grant of driving licences: residence requirement***

211. Section 97 of the Road Traffic Act 1988 (“the 1988 Act”) and Article 13 of the Road Traffic (Northern Ireland) Order 1981<sup>4</sup> (“the 1981 Order”) set out the circumstances in which the Secretary of State and Department of the Environment must grant Great Britain and Northern Ireland driving licences respectively.
212. *Subsection (1)* amends section 97(1) of the 1988 Act to provide that one of the conditions for the grant of a driving licence is that the person must meet the relevant residence requirement.
213. *Subsection (2)* inserts new section 97A after section 97 of the 1988 Act to define the residence requirement and provides, in particular, that a person will not meet this requirement where they require leave to enter or remain in the UK but do not have it.
214. *Subsections (3) and (4)* make corresponding provision to the 1981 Order in respect of the grant of driving licences in Northern Ireland.

***Section 47: Revocation of driving licences on grounds of immigration status***

215. *Subsection (1)* inserts into section 99 of the 1988 Act a power to revoke a driving licence where it appears to the Secretary of State that a licence holder is not lawfully resident in the UK (defined as where a person requires leave to enter or remain in the UK but does not have it). Provision is also made for persons who fail to surrender a driving licence that has been revoked on grounds of immigration status, without reasonable excuse, to be guilty of a criminal offence.

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which received Royal Assent on 14 May 2014*

216. *Subsection (2)* makes provision for a person who is aggrieved by the Secretary of State's decision to revoke their driving licence on the grounds that they were not lawfully resident in the UK to appeal to a magistrates' court or, in Scotland, to the sheriff within whose jurisdiction he resides. In any appeal against the revocation of a driving licence, the court or sheriff is not entitled to entertain any questions as to whether the appellant should be, or should have been, granted leave to enter or remain in the UK or whether the appellant has been granted leave to enter or remain after the date that the Secretary of State served a revocation notice.
217. *Subsections (3) and (4)* make corresponding provision to the 1981 Order in relation to the revocation of driving licences in Northern Ireland.