



Immigration Act 2014

2014 CHAPTER 22

PART 3

ACCESS TO SERVICES ETC

CHAPTER 1

RESIDENTIAL TENANCIES

VALID FROM 01/12/2014

Key interpretation

20 Residential tenancy agreement

- (1) This section applies for the purposes of this Chapter.
- (2) “Residential tenancy agreement” means a tenancy which—
 - (a) grants a right of occupation of premises for residential use,
 - (b) provides for payment of rent (whether or not a market rent), and
 - (c) is not an excluded agreement.
- (3) In subsection (2), “tenancy” includes—
 - (a) any lease, licence, sub-lease or sub-tenancy, and
 - (b) an agreement for any of those things,and in this Chapter references to “landlord” and “tenant”, and references to premises being “leased”, are to be read accordingly.
- (4) For the purposes of subsection (2)(a), an agreement grants a right of occupation of premises “for residential use” if, under the agreement, one or more adults have the

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right to occupy the premises as their only or main residence (whether or not the premises may also be used for other purposes).

- (5) In subsection (2)(b) “rent” includes any sum paid in the nature of rent.
- (6) In subsection (2)(c) “excluded agreement” means any agreement of a description for the time being specified in Schedule 3.
- (7) The Secretary of State may by order amend Schedule 3 so as to—
 - (a) add a new description of excluded agreement,
 - (b) remove any description, or
 - (c) amend any description.

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

- (1) For the purposes of this Chapter, a person (“P”) is disqualified as a result of their immigration status from occupying premises under a residential tenancy agreement if—
 - (a) P is not a relevant national, and
 - (b) P does not have a right to rent in relation to the premises.
- (2) P does not have a “right to rent” in relation to premises if—
 - (a) P requires leave to enter or remain in the United Kingdom but does not have it, or
 - (b) P's leave to enter or remain in the United Kingdom is subject to a condition preventing P from occupying the premises.
- (3) But P is to be treated as having a right to rent in relation to premises (in spite of subsection (2)) if the Secretary of State has granted P permission for the purposes of this Chapter to occupy premises under a residential tenancy agreement.
- (4) References in this Chapter to a person with a “limited right to rent” are references to—
 - (a) a person who has been granted leave to enter or remain in the United Kingdom for a limited period, or
 - (b) a person who—
 - (i) is not a relevant national, and
 - (ii) is entitled to enter or remain in the United Kingdom by virtue of an enforceable EU right or of any provision made under section 2(2) of the European Communities Act 1972.
- (5) In this section “relevant national” means—
 - (a) a British citizen,
 - (b) a national of an EEA State other than the United Kingdom, or
 - (c) a national of Switzerland.

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Penalty notices

22 Persons disqualified by immigration status not to be leased premises

- (1) A landlord must not authorise an adult to occupy premises under a residential tenancy agreement if the adult is disqualified as a result of their immigration status.
- (2) A landlord is to be taken to “authorise” an adult to occupy premises in the circumstances mentioned in subsection (1) if (and only if) there is a contravention of this section.
- (3) There is a contravention of this section in either of the following cases.
- (4) The first case is where a residential tenancy agreement is entered into that, at the time of entry, grants a right to occupy premises to—
 - (a) a tenant who is disqualified as a result of their immigration status,
 - (b) another adult named in the agreement who is disqualified as a result of their immigration status, or
 - (c) another adult not named in the agreement who is disqualified as a result of their immigration status (subject to subsection (6)).
- (5) The second case is where—
 - (a) a residential tenancy agreement is entered into that grants a right to occupy premises on an adult with a limited right to rent,
 - (b) the adult later becomes a person disqualified as a result of their immigration status, and
 - (c) the adult continues to occupy the premises after becoming disqualified.
- (6) There is a contravention as a result of subsection (4)(c) only if—
 - (a) reasonable enquiries were not made of the tenant before entering into the agreement as to the relevant occupiers, or
 - (b) reasonable enquiries were so made and it was, or should have been, apparent from the enquiries that the adult in question was likely to be a relevant occupier.
- (7) Any term of a residential tenancy agreement that prohibits occupation of premises by a person disqualified by their immigration status is to be ignored for the purposes of determining whether there has been a contravention of this section if—
 - (a) the landlord knew when entering into the agreement that the term would be breached, or
 - (b) the prescribed requirements were not complied with before entering into the agreement.
- (8) It does not matter for the purposes of this section whether or not—
 - (a) a right of occupation is exercisable on entering into an agreement or from a later date;
 - (b) a right of occupation is granted unconditionally or on satisfaction of a condition.

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(9) A contravention of this section does not affect the validity or enforceability of any provision of a residential tenancy agreement by virtue of any rule of law relating to the validity or enforceability of contracts in circumstances involving illegality.

(10) In this Chapter—

“post-grant contravention” means a contravention in the second case mentioned in subsection (5);

“pre-grant contravention” means a contravention in the first case mentioned in subsection (4);

“relevant occupier”, in relation to a residential tenancy agreement, means any adult who occupies premises under the agreement (whether or not named in the agreement).

23 Penalty notices: landlords

(1) If there is a contravention of section 22, the Secretary of State may give the responsible landlord a notice requiring the payment of a penalty.

(2) The amount of the penalty is such an amount as the Secretary of State considers appropriate, but the amount must not exceed £3,000.

(3) “Responsible landlord” means—

(a) in relation to a pre-grant contravention, the landlord who entered into the residential tenancy agreement;

(b) in relation to a post-grant contravention, the person who is the landlord under the agreement at the time of the contravention.

(4) But if there is a superior landlord in relation to the residential tenancy agreement who is responsible for the purposes of this section, the “responsible landlord” means that superior landlord (and references to the landlord in the following provisions of this Chapter are to be read accordingly).

(5) A superior landlord is “responsible for the purposes of this section” if arrangements in writing have been made in relation to the residential tenancy agreement between the landlord and the superior landlord under which the superior landlord accepts responsibility for—

(a) contraventions of section 22 generally, or

(b) contraventions of a particular description and the contravention in question is of that description.

(6) The Secretary of State may by order amend the amount for the time being specified in subsection (2).

24 Excuses available to landlords

(1) This section applies where a landlord is given a notice under section 23 requiring payment of a penalty.

(2) Where the notice is given for a pre-grant contravention, the landlord is excused from paying the penalty if the landlord shows that—

(a) the prescribed requirements were complied with before the residential tenancy agreement was entered into, or

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- (b) a person acting as the landlord's agent is responsible for the contravention (see section 25(2)).
- (3) The prescribed requirements may be complied with for the purposes of subsection (2) (a) at any time before the residential tenancy agreement is entered into.
- (4) But where compliance with the prescribed requirements discloses that a relevant occupier is a person with a limited right to rent, the landlord is excused under subsection (2)(a) only if the requirements are complied with in relation to that occupier within such period as may be prescribed.
- (5) The excuse under subsection (2)(a) or (b) is not available if the landlord knew that entering into the agreement would contravene section 22.
- (6) Where the notice is given for a post-grant contravention, the landlord is excused from paying the penalty if any of the following applies—
 - (a) the landlord has notified the Secretary of State of the contravention as soon as reasonably practicable;
 - (b) a person acting as the landlord's agent is responsible for the contravention;
 - (c) the eligibility period in relation to the limited right occupier whose occupation caused the contravention has not expired.
- (7) For the purposes of subsection (6)(a), the landlord is to be taken to have notified the Secretary of State of the contravention “as soon as reasonably practicable” if the landlord—
 - (a) complied with the prescribed requirements in relation to each limited right occupier at the end of the eligibility period, and
 - (b) notified the Secretary of State of the contravention without delay on it first becoming apparent that the contravention had occurred.
- (8) Notification under subsection (6)(a) must be in the prescribed form and manner.
- (9) In this Chapter “limited right occupier”, in relation to a residential tenancy agreement, means a relevant occupier who had a limited right to rent at the time when the occupier was first granted a right to occupy the premises under the agreement.

25 Penalty notices: agents

- (1) Subsection (3) applies where—
 - (a) a landlord contravenes section 22, and
 - (b) a person acting as the landlord's agent (“the agent”) is responsible for the contravention.
- (2) For the purposes of this Chapter, an agent is responsible for a landlord's contravention of section 22 if (and only if)—
 - (a) the agent acts in the course of a business, and
 - (b) under arrangements made with the landlord in writing, the agent was under an obligation for the purposes of this Chapter to comply with the prescribed requirements on behalf of the landlord.
- (3) The Secretary of State may give the agent a notice requiring the agent to pay a penalty.
- (4) The amount of the penalty is such an amount as the Secretary of State considers appropriate, but the amount must not exceed £3,000.

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- (5) The Secretary of State may by order amend the amount for the time being specified in subsection (4).

26 Excuses available to agents

- (1) This section applies where an agent is given a notice under section 25 requiring payment of a penalty.
- (2) Where the notice is given for a pre-grant contravention, the agent is excused from paying the penalty if the agent shows that the prescribed requirements were complied with before the residential tenancy agreement was entered into.
- (3) The prescribed requirements may be complied with for the purposes of subsection (2) at any time before the residential tenancy agreement is entered into.
- (4) But where compliance with the prescribed requirements discloses that a relevant occupier is a person with a limited right to rent, the agent is excused under subsection (2) only if the requirements are complied with in relation to that occupier within such period as may be prescribed.
- (5) The excuse under subsection (2) is not available if the agent—
- (a) knew that the landlord would contravene section 22 by entering into the agreement,
 - (b) had sufficient opportunity to notify the landlord of that fact before the landlord entered into the agreement, but
 - (c) did not do so.
- (6) Where the notice is given for a post-grant contravention, the agent is excused from paying the penalty if either of the following applies—
- (a) the agent has notified the Secretary of State and the landlord of the contravention as soon as reasonably practicable;
 - (b) the eligibility period in relation to the limited right occupier whose occupation caused the contravention has not expired.
- (7) For the purposes of subsection (6)(a), the agent is to be taken to have notified the Secretary of State and the landlord of the contravention “as soon as reasonably practicable” if the agent—
- (a) complied with the prescribed requirements in relation to each limited right occupier at the end of the eligibility period, and
 - (b) notified the Secretary of State and the landlord of the contravention without delay on it first becoming apparent that the contravention had occurred.
- (8) Notification under subsection (6)(a) must be in the prescribed form and manner.

27 Eligibility period

- (1) An eligibility period in relation to a limited right occupier is established if the prescribed requirements are complied with in relation to the occupier.
- (2) An eligibility period established under subsection (1) may be renewed (on one or more occasions) by complying with the prescribed requirements again.
- (3) But an eligibility period in relation to a limited right occupier is only established or renewed under this section at any time if it reasonably appears from the information

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obtained in complying with the prescribed requirements at that time that the occupier is a person with a limited right to rent.

(4) The length of an eligibility period established or renewed under this section in relation to a limited right occupier is the longest of the following periods—

- (a) the period of one year beginning with the time when the prescribed requirements were last complied with in relation to the occupier;
- (b) so much of any leave period as remains at that time;
- (c) so much of any validity period as remains at that time.

(5) In subsection (4)—

“leave period” means a period for which the limited right occupier was granted leave to enter or remain in the United Kingdom;

“validity period” means the period for which an immigration document issued to the limited right occupier by or on behalf of the Secretary of State is valid.

(6) In subsection (5) “immigration document” means a document of a prescribed description which—

- (a) is issued as evidence that a person who is not a national of an EEA state or Switzerland is entitled to enter or remain in the United Kingdom by virtue of an enforceable EU right or of any provision made under section 2(2) of the European Communities Act 1972, or
- (b) grants to the holder a right to enter or remain in the United Kingdom for such period as the document may authorise.

28 Penalty notices: general

(1) The Secretary of State may give a penalty notice—

- (a) to a landlord under section 23 without having established whether the landlord is excused from paying the penalty under section 24;
- (b) to an agent under section 25 without having established whether the agent is excused from paying the penalty under section 26.

(2) A penalty notice must—

- (a) be in writing,
- (b) state why the Secretary of State thinks the recipient is liable to the penalty,
- (c) state the amount of the penalty,
- (d) specify a date, at least 28 days after the date specified in the notice as the date on which it is given, before which the penalty must be paid,
- (e) specify how a penalty must be paid,
- (f) explain how the recipient may object to the penalty or make an appeal against it, and
- (g) explain how the Secretary of State may enforce the penalty.

(3) A separate penalty notice may be given in respect of each adult disqualified by their immigration status in relation to whom there is a contravention of section 22.

(4) Where a penalty notice is given to two or more persons who jointly constitute the landlord or agent in relation to a residential tenancy agreement, those persons are jointly and severally liable for any sum payable to the Secretary of State as a penalty imposed by the notice.

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- (5) A penalty notice may not be given in respect of any adult if—
- (a) the adult has ceased to occupy the premises concerned, and
 - (b) a period of 12 months or more has passed since the time when the adult last occupied the premises,
- but this subsection is not to be taken as affecting the validity of a penalty notice given before the end of that period.
- (6) Subsection (5) does not apply to a penalty notice given after the end of the 12 month period mentioned in that subsection if—
- (a) it is a new penalty notice given by virtue of section 29(6)(b) on the determination of an objection to another penalty notice, and
 - (b) that other penalty notice was given before the end of the period.

VALID FROM 01/12/2014

Objections, appeals and enforcement

29 Objection

- (1) The recipient of a penalty notice (“the recipient”) may object on the ground that—
 - (a) the recipient is not liable to the imposition of the penalty,
 - (b) the recipient is excused by virtue of section 24 or 26, or
 - (c) the amount of the penalty is too high.
- (2) An objection must be made by giving a notice of objection to the Secretary of State.
- (3) A notice of objection must—
 - (a) be in writing,
 - (b) give the reasons for the objection,
 - (c) be given in the prescribed manner, and
 - (d) be given before the end of the prescribed period.
- (4) In considering a notice of objection to a penalty the Secretary of State must have regard to the code of practice under section 32.
- (5) On considering a notice of objection the Secretary of State may—
 - (a) cancel the penalty,
 - (b) reduce the penalty,
 - (c) increase the penalty, or
 - (d) determine to take no action.
- (6) After reaching a decision as to how to proceed under subsection (5) the Secretary of State must—
 - (a) notify the recipient of the decision (including the amount of any increased or reduced penalty) before the end of the prescribed period or such longer period as the Secretary of State may agree with the recipient, and
 - (b) if the penalty is increased, issue a new penalty notice under section 23 or (as the case may be) section 25.

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30 Appeals

- (1) The recipient may appeal to the court on the ground that—
 - (a) the recipient is not liable to the imposition of a penalty,
 - (b) the recipient is excused payment as a result of section 24 or 26, or
 - (c) the amount of the penalty is too high.
- (2) The court may—
 - (a) allow the appeal and cancel the penalty,
 - (b) allow the appeal and reduce the penalty, or
 - (c) dismiss the appeal.
- (3) An appeal is to be a re-hearing of the Secretary of State's decision to impose a penalty and is to be determined having regard to—
 - (a) the code of practice under section 32 that has effect at the time of the appeal, and
 - (b) any other matters which the court thinks relevant (which may include matters of which the Secretary of State was unaware).
- (4) Subsection (3) has effect despite any provisions of rules of court.
- (5) An appeal may be brought only if the recipient has given a notice of objection under section 29 and the Secretary of State—
 - (a) has determined the objection by issuing to the recipient the penalty notice (as a result of increasing the penalty under section 29(5)(c)),
 - (b) has determined the objection by—
 - (i) reducing the penalty under section 29(5)(b), or
 - (ii) taking no action under section 29(5)(d), or
 - (c) has not informed the recipient of a decision before the end of the period that applies for the purposes of section 29(6)(a).
- (6) An appeal must be brought within the period of 28 days beginning with the relevant date.
- (7) Where the appeal is brought under subsection (5)(a), the relevant date is the date specified in the penalty notice issued in accordance with section 29(6)(b) as the date on which it is given.
- (8) Where the appeal is brought under subsection (5)(b), the relevant date is the date specified in the notice informing the recipient of the decision for the purposes of section 29(6)(a) as the date on which it is given.
- (9) Where the appeal is brought under subsection (5)(c), the relevant date is the date on which the period that applies for the purposes of section 29(6)(a) ends.
- (10) In this section “the court” means—
 - (a) the county court, if the appeal relates to a residential tenancy agreement in relation to premises in England and Wales;
 - (b) the sheriff, if the appeal relates to a residential tenancy agreement in relation to premises in Scotland;
 - (c) a county court in Northern Ireland, if the appeal relates to a residential tenancy agreement in relation to premises in Northern Ireland.

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31 Enforcement

- (1) This section applies where a sum is payable to the Secretary of State as a penalty under this Chapter.
- (2) In England and Wales the penalty is recoverable as if it were payable under an order of the county court in England and Wales.
- (3) In Scotland the penalty may be enforced in the same manner as an extract registered decree arbitral bearing a warrant for execution issued by the sheriff court of any sheriffdom in Scotland.
- (4) In Northern Ireland the penalty is recoverable as if it were payable under an order of a county court in Northern Ireland.
- (5) Where action is taken under this section for the recovery of a sum payable as a penalty under this Chapter, the penalty is—
 - (a) in relation to England and Wales, to be treated for the purposes of section 98 of the Courts Act 2003 (register of judgments and orders etc) as if it were a judgment entered in the county court;
 - (b) in relation to Northern Ireland, to be treated for the purposes of Article 116 of the Judgments Enforcement (Northern Ireland) Order 1981 (S.I. 1981/226 (N.I. 6)) (register of judgments) as if it were a judgment in respect of which an application has been accepted under Article 22 or 23(1) of that Order.
- (6) Money paid to the Secretary of State by way of a penalty must be paid into the Consolidated Fund.

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Codes of practice

32 General matters

- (1) The Secretary of State must issue a code of practice for the purposes of this Chapter.
- (2) The code must specify factors that the Secretary of State will consider when determining the amount of a penalty imposed under this Chapter.
- (3) The code may contain guidance about—
 - (a) factors that the Secretary of State will consider when determining whether—
 - (i) a residential tenancy agreement grants a right of occupation of premises for residential use, or
 - (ii) a person is occupying premises as an only or main residence;
 - (b) the reasonable enquiries that a landlord should make to determine the identity of relevant occupiers in relation to a residential tenancy agreement (so far as they are not named in the agreement);
 - (c) any other matters in connection with this Chapter that the Secretary of State considers appropriate.

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- (4) Guidance under subsection (3)(a) may in particular relate to the treatment for the purposes of this Chapter of arrangements that are made in connection with holiday lettings or lettings for purposes connected with business travel.
- (5) The Secretary of State must from time to time review the code and may revise and re-issue it following a review.
- (6) The code (or revised code)—
 - (a) may not be issued unless a draft has been laid before Parliament, and
 - (b) comes into force in accordance with provision made by order of the Secretary of State.

33 Discrimination

- (1) The Secretary of State must issue a code of practice specifying what a landlord or agent should or should not do to ensure that, while avoiding liability to pay a penalty under this Chapter, the landlord or agent also avoids contravening—
 - (a) the Equality Act 2010, so far as relating to race, or
 - (b) the Race Relations (Northern Ireland) Order 1997 (S.I. 1997/869 (N.I. 6)).
- (2) The Secretary of State must from time to time review the code and may revise and re-issue it following a review.
- (3) Before issuing the code (or a revised code) the Secretary of State must consult—
 - (a) the Commission for Equality and Human Rights,
 - (b) the Equality Commission for Northern Ireland, and
 - (c) such persons representing the interests of landlords and tenants as the Secretary of State considers appropriate.
- (4) After consulting under subsection (3) the Secretary of State must—
 - (a) publish a draft code, and
 - (b) consider any representations made about the published draft.
- (5) The code (or revised code)—
 - (a) may not be issued unless a draft has been laid before Parliament (prepared after considering representations under subsection (4)(b) and with or without modifications to reflect the representations), and
 - (b) comes into force in accordance with provision made by order of the Secretary of State.
- (6) A breach of the code—
 - (a) does not make a person liable to civil or criminal proceedings, but
 - (b) may be taken into account by a court or tribunal.

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General

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34 Orders

- (1) An order prescribing requirements for the purposes of this Chapter may, in particular, require a landlord or agent to—
 - (a) obtain a document of a prescribed description from relevant occupiers before or during the course of a residential tenancy agreement;
 - (b) obtain one document of each of a number of prescribed descriptions from relevant occupiers before or during the course of a residential tenancy agreement;
 - (c) take steps to verify, retain, copy or record the content of a document obtained in accordance with the order;
 - (d) take such other steps before or during the course of a residential tenancy agreement as the order may specify.
- (2) If the draft of an instrument containing an order under or in connection with this Chapter would, apart from this subsection, be a hybrid instrument for the purposes of the standing orders of either House of Parliament, it is to proceed in that House as if it were not a hybrid instrument.

35 Transitional provision

- (1) This Chapter does not apply in relation to a residential tenancy agreement entered into before the commencement day.
- (2) This Chapter does not apply in relation to a residential tenancy agreement entered into on or after the commencement day (“the renewed agreement”) if—
 - (a) another residential tenancy agreement was entered into before the commencement day between the same parties (“the original agreement”), and
 - (b) the tenant has always had a right of occupation of the premises leased under the renewed agreement since entering into the original agreement.
- (3) In this section “the commencement day” means such day as the Secretary of State may by order appoint; and different days may be appointed for different purposes or areas.

Modifications etc. (not altering text)

C1 S. 35(3): 1.12.2014 appointed as "the commencement day" by [S.I. 2014/2771](#), art. 12

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36 Crown application

This Chapter binds the Crown, except where the Crown is the responsible landlord for the purposes of section 23.

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37 Interpretation

(1) In this Chapter—

“adult” means a person who has attained the age of 18;

“agreement” includes an agreement in any form (whether or not in writing);

“eligibility period”, in relation to a limited right occupier, is to be read in accordance with section 27;

“limited right occupier” has the meaning given in section 24(9);

“occupy” means occupy as an only or main residence;

“penalty notice” means a penalty notice given under this Chapter;

“person with a limited right to rent” has the meaning given in section 21(4);

“post-grant contravention” has the meaning given in section 22(10);

“pre-grant contravention” has the meaning given in section 22(10);

“premises” includes land, buildings, moveable structures, vehicles and vessels;

“prescribed” means prescribed in an order made by the Secretary of State;

“recipient” means the recipient of a penalty notice;

“relevant occupier” has the meaning given in section 22(10);

“residential tenancy agreement” has the meaning given in section 20(2).

(2) For the purposes of this Chapter a residential tenancy agreement grants a person a right to occupy premises if—

(a) the agreement expressly grants that person the right (whether or not by naming the person), or

(b) the person is permitted to occupy the premises by virtue of an express grant given to another person,

and references to a person occupying premises under an agreement are to be read accordingly.

(3) A reference in this Chapter to the “prescribed requirements”, in connection with compliance with the requirements at a particular time, is a reference only to such of the requirements as are capable of being complied with at that time.

(4) Where two or more persons jointly constitute the landlord in relation to a residential tenancy agreement—

(a) the references to the landlord in—

(i) section 22(7)(a),

(ii) section 24(5), (6)(a) and (7), and

(iii) section 26(6)(a) and (7)(b),

are to be taken as references to any of those persons;

(b) any other references to the landlord in this Chapter are to be taken as references to all of those persons.

(5) Where two or more persons jointly constitute the agent in relation to a residential tenancy agreement—

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- (a) the references to the agent in section 26(5), (6)(a) and (7) are to be taken as references to any of those persons;
 - (b) any other references to the agent in this Chapter are to be taken as references to all of those persons.
- (6) The Secretary of State may by order prescribe cases in which—
- (a) a residential tenancy agreement is, or is not, to be treated as being entered into for the purposes of this Chapter;
 - (b) a person is, or is not, to be treated as occupying premises as an only or main residence for the purposes of this Chapter.
- (7) An order under subsection (6) prescribing a case may modify the application of this Chapter in relation to that case.
- (8) The cases mentioned in subsection (6)(a) include, in particular, cases where—
- (a) an option to renew an agreement is exercised;
 - (b) rights of occupation under an agreement are varied;
 - (c) an agreement is assigned (whether by the landlord or the tenant);
 - (d) a periodic tenancy arises at the end of a fixed term;
 - (e) an agreement grants a right of occupation on satisfaction of a condition;
 - (f) there is a change in the persons in occupation of the premises leased under an agreement or in the circumstances of any such person.

CHAPTER 2

OTHER SERVICES ETC

VALID FROM 20/10/2014

National Health Service

38 Immigration health charge

- (1) The Secretary of State may by order provide for a charge to be imposed on—
- (a) persons who apply for immigration permission, or
 - (b) any description of such persons.
- (2) “Immigration permission” means—
- (a) leave to enter or remain in the United Kingdom for a limited period,
 - (b) entry clearance which, by virtue of provision made under section 3A(3) of the Immigration Act 1971, has effect as leave to enter the United Kingdom for a limited period, or
 - (c) any other entry clearance which may be taken as evidence of a person's eligibility for entry into the United Kingdom for a limited period.
- (3) An order under this section may in particular—
- (a) impose a separate charge on a person in respect of each application made by that person;

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- (b) specify the amount of any charge (and different amounts may be specified for different purposes);
 - (c) make provision about when or how a charge may or must be paid to the Secretary of State;
 - (d) make provision about the consequences of a person failing to pay a charge (including provision for the person's application to be refused);
 - (e) provide for exemptions from a charge;
 - (f) provide for the reduction, waiver or refund of part or all of a charge (whether by conferring a discretion or otherwise).
- (4) In specifying the amount of a charge under subsection (3)(b) the Secretary of State must (among other matters) have regard to the range of health services that are likely to be available free of charge to persons who have been given immigration permission.
- (5) Sums paid by virtue of an order under this section must—
- (a) be paid into the Consolidated Fund, or
 - (b) be applied in such other way as the order may specify.
- (6) In this section—
- “entry clearance” has the meaning given by section 33(1) of the Immigration Act 1971;
 - “health services” means services provided as part of the health service in England, Wales, Scotland and Northern Ireland;
- and the references to applying for leave to enter or remain for a limited period include references to applying for a variation of leave to enter or remain which would result in leave to enter or remain for a limited period.

VALID FROM 06/04/2015

39 Related provision: charges for health services

- (1) A reference in the NHS charging provisions to persons not ordinarily resident in Great Britain or persons not ordinarily resident in Northern Ireland includes (without prejudice to the generality of that reference) a reference to—
- (a) persons who require leave to enter or remain in the United Kingdom but do not have it, and
 - (b) persons who have leave to enter or remain in the United Kingdom for a limited period.
- (2) The “NHS charging provisions” are—
- (a) section 175 of the National Health Service Act 2006 (charges in respect of persons not ordinarily resident in Great Britain);
 - (b) section 124 of the National Health Service (Wales) Act 2006 (charges in respect of persons not ordinarily resident in Great Britain);
 - (c) section 98 of the National Health Service (Scotland) Act 1978 (charges in respect of persons not ordinarily resident in Great Britain);

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- (d) Article 42 of the Health and Personal Social Services (Northern Ireland) Order 1972 (S.I. 1972/1265 (N.I. 14)) (provision of services to persons not ordinarily resident in Northern Ireland).

Bank accounts

VALID FROM 12/12/2014

40 Prohibition on opening current accounts for disqualified persons

- (1) A bank or building society (B) must not open a current account for a person (P) who is within subsection (2) unless—
- (a) B has carried out a status check which indicates that P is not a disqualified person, or
 - (b) at the time when the account is opened B is unable, because of circumstances that cannot reasonably be regarded as within its control, to carry out a status check in relation to P.
- (2) A person is within this subsection if he or she—
- (a) is in the United Kingdom, and
 - (b) requires leave to enter or remain in the United Kingdom but does not have it.
- (3) For the purposes of this section—
- (a) carrying out a “status check” in relation to P means checking with a specified anti-fraud organisation or a specified data-matching authority whether, according to information supplied to that organisation or authority by the Secretary of State, P is a disqualified person;
 - (b) a “disqualified person” is a person within subsection (2) for whom the Secretary of State considers that a current account should not be opened by a bank or building society;
 - (c) opening an account for P includes—
 - (i) opening a joint account for P and others;
 - (ii) opening an account in relation to which P is a signatory or is identified as a beneficiary;
 - (iii) adding P as an account holder or as a signatory or identified beneficiary in relation to an account.
- (4) In subsection (3)(a)—
- “anti-fraud organisation” has the same meaning as in section 68 of the Serious Crime Act 2007;
- “data-matching authority” means 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;
- “specified” means specified by an order made by the Secretary of State for the purposes of this section.
- (5) Subsection (1)(b) does not apply where—
- (a) a bank or building society is required to pay a reasonable fee for carrying out status checks, and

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- (b) its inability to carry out a status check is due to its failure to pay the fee.
- (6) A bank or building society that refuses to open a current account for someone on the ground that he or she is a disqualified person must tell the person, if it may lawfully do so, that that is the reason for its refusal.

41 Regulation by Financial Conduct Authority

- (1) The Treasury may make regulations to enable the Financial Conduct Authority to make arrangements for monitoring and enforcing compliance with the prohibition imposed on banks and building societies by section 40.
- (2) The regulations may (in particular)—
 - (a) provide for the Financial Conduct Authority to be given free access to the information to which banks and building societies are given access when carrying out status checks under section 40;
 - (b) apply, or make provision corresponding to, any of the provisions of the Financial Services and Markets Act 2000, including in particular those mentioned in subsection (3), with or without modification.
- (3) The provisions are—
 - (a) provisions about investigations, including powers of entry and search and criminal offences;
 - (b) provisions for the grant of an injunction (or, in Scotland, an interdict) in relation to a contravention or anticipated contravention;
 - (c) provisions giving the Financial Conduct Authority powers to impose disciplinary measures (including financial penalties) or to give directions;
 - (d) provisions giving a Minister of the Crown (within the meaning of the Ministers of the Crown Act 1975) or the Financial Conduct Authority powers to make subordinate legislation;
 - (e) provisions for the Financial Conduct Authority to charge fees.

Commencement Information

II S. 41 in force at 14.7.2014 by S.I. 2014/1820, art. 2(a)

42 “Bank” and “building society”

- (1) In sections 40 and 41 “bank” means an authorised deposit-taker that has its head office or a branch in the United Kingdom.

This is subject to subsection (4).
- (2) In subsection (1) “authorised deposit-taker” means—
 - (a) a person who under Part 4A of the Financial Services and Markets Act 2000 has permission to accept deposits;
 - (b) an EEA firm of the kind mentioned in paragraph 5(b) of Schedule 3 to that Act that has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12(1) of that Schedule) to accept deposits.

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- (3) A reference in subsection (2) to a person or firm with permission to accept deposits does not include a person or firm with permission to do so only for the purposes of, or in the course of, an activity other than accepting deposits.
- (4) “Bank” does not include—
- (a) a building society;
 - (b) a person who is specified, or is within a class of persons specified, by an order under section 38 of the Financial Services and Markets Act 2000 (exemption orders);
 - (c) a credit union within the meaning given by section 31(1) of the Credit Unions Act 1979 or by Article 2(2) of the Credit Unions (Northern Ireland) Order 1985;
 - (d) a friendly society within the meaning given by section 116 of the Friendly Societies Act 1992.
- (5) In sections 40 and 41, and in subsection (4), “building society” means a building society incorporated (or deemed to be incorporated) under the Building Societies Act 1986.

Commencement Information

I2 S. 42 in force at 14.7.2014 by S.I. 2014/1820, art. 2(b)

43 Power to amend

- (1) The Treasury may by order amend any of sections 40 to 42 so as—
- (a) to alter the categories of financial institution to which those sections apply;
 - (b) to alter the categories of account to which the prohibition in section 40(1) applies;
 - (c) to include provision defining a category of account specified in that section;
 - (d) to provide for the prohibition in section 40(1) not to apply in the case of an account to be operated (or an account that is operated) by or for a person or body of a specified description.
- (2) An order under subsection (1) may amend a section so that it provides for a matter to be specified in a further order to be made by the Treasury.
- (3) In subsection (1) “account” includes a financial product by means of which a payment may be made.

Commencement Information

I3 S. 43 in force at 14.7.2014 by S.I. 2014/1820, art. 2(c)

Work

44 Appeals against penalty notices

In section 17 of the Immigration, Asylum and Nationality Act 2006 (appeal), for subsections (4) and (5) substitute—

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- “(4A) An appeal may be brought only if the employer has given a notice of objection under section 16 and the Secretary of State—
- (a) has determined the objection by issuing to the employer the penalty notice (as a result of increasing the penalty under section 16(4)(c)),
 - (b) has determined the objection by—
 - (i) reducing the penalty under section 16(4)(b), or
 - (ii) taking no action under section 16(4)(d), or
 - (c) has not informed the employer of a decision before the end of the period that applies for the purposes of section 16(5)(b).
- (4B) An appeal must be brought within the period of 28 days beginning with the relevant date.
- (4C) Where the appeal is brought under subsection (4A)(a), the relevant date is the date specified in the penalty notice issued in accordance with section 16(5)(c) as the date on which it is given.
- (4D) Where the appeal is brought under subsection (4A)(b), the relevant date is the date specified in the notice informing the employer of the decision for the purposes of section 16(5)(b) as the date on which it is given.
- (4E) Where the appeal is brought under subsection (4A)(c), the relevant date is the date on which the period that applies for the purposes of section 16(5)(b) ends.”

Commencement Information

I4 S. 44 in force at 28.7.2014 by S.I. 2014/1820, art. 3(p) (with art. 5)

45 Recovery of sums payable under penalty notices

In section 18 of the Immigration, Asylum and Nationality Act 2006 (enforcement), for subsections (1) and (2) substitute—

- “(1) This section applies where a sum is payable to the Secretary of State as a penalty under section 15.
- (1A) In England and Wales the penalty is recoverable as if it were payable under an order of the county court.
- (1B) In Scotland, the penalty may be enforced in the same manner as an extract registered decree arbitral bearing a warrant for execution issued by the sheriff court of any sheriffdom in Scotland.
- (1C) In Northern Ireland the penalty is recoverable as if it were payable under an order of a county court in Northern Ireland.
- (1D) Where action is taken under this section for the recovery of a sum payable as a penalty under section 15, the penalty is—
- (a) in relation to England and Wales, to be treated for the purposes of section 98 of the Courts Act 2003 (register of judgments and orders etc) as if it were a judgment entered in the county court;
 - (b) in relation to Northern Ireland, to be treated for the purposes of Article 116 of the Judgments Enforcement (Northern Ireland) Order 1981 (S.I.

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1981/226 (N.I. 6)) (register of judgments) as if it were a judgment in respect of which an application has been accepted under Article 22 or 23(1) of that Order.”

Commencement Information

I5 S. 45 in force at 28.7.2014 by S.I. 2014/1820, art. 3(q) (with art. 6)

Driving licences

46 Grant of driving licences: residence requirement

- (1) In section 97 of the Road Traffic Act 1988 (grant of licences), in the opening words of subsection (1), after “who” insert “ meets the relevant residence requirement (see section 97A) and ”.
- (2) After that section insert—

“97A Residence requirement

- (1) For the purposes of an application under section 97, a person meets the relevant residence requirement if, on the date the application is made—
 - (a) in the case of an application that is made by virtue of section 89(1)(ea) (application by holder of Community licence), the applicant is lawfully resident in the United Kingdom and—
 - (i) is also normally resident in the United Kingdom, or
 - (ii) has been attending a course of study in the United Kingdom during the period of six months ending on that date;
 - (b) in the case of an application that is made by virtue of section 89(1)(f) (application by holder of exchangeable licence), the applicant is normally and lawfully resident in Great Britain but has not been so resident for more than the prescribed period;
 - (c) in the case of an application that is made by virtue of section 97(2) (application for provisional licence), the applicant is lawfully resident in Great Britain and the Secretary of State is satisfied that the applicant will remain so for not less than 185 days; and
 - (d) in any other case, the applicant is normally and lawfully resident in Great Britain.
- (2) For the purposes of subsection (1) a person is not lawfully resident in Great Britain or the United Kingdom if the person requires leave to enter or remain in the United Kingdom but does not have it.”
- (3) In Article 13 of the Road Traffic (Northern Ireland) Order 1981 (S.I. 1981/154 (N.I. 1)) (grant of licences), in the opening words of paragraph (1), after “who” insert “ meets the relevant residence requirement (see Article 13A) and ”.
- (4) After that Article insert—

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“13A Residence requirement

- (1) For the purposes of an application under Article 13, a person meets the relevant residence requirement if, on the date the application is made—
 - (a) in the case of an application that is made by virtue of Article 5(1)(ea) (application by holder of Community licence), the applicant is lawfully resident in the United Kingdom and—
 - (i) is also normally resident in the United Kingdom, or
 - (ii) has been attending a course of study in the United Kingdom during the period of six months ending on that date;
 - (b) in the case of an application that is made by virtue of Article 5(1)(f) (application by holder of exchangeable licence), the applicant is normally and lawfully resident in Northern Ireland but has not been so resident for more than the prescribed period;
 - (c) in the case of an application that is made by virtue of Article 13(2) (application for provisional licence), the applicant is lawfully resident in Northern Ireland and the Department is satisfied that the applicant will remain so for not less than 185 days; and
 - (d) in any other case, the applicant is normally and lawfully resident in Northern Ireland.
- (2) For the purposes of paragraph (1) a person is not lawfully resident in Northern Ireland or the United Kingdom if the person requires leave to enter or remain in the United Kingdom but does not have it.”

Commencement Information

16 S. 46 in force at 14.7.2014 by S.I. 2014/1820, art. 2(d)

47 Revocation of driving licences on grounds of immigration status

- (1) In section 99 of the Road Traffic Act 1988 (duration of licences)—
 - (a) after subsection (3) insert—

“(3ZA) Where it appears to the Secretary of State that a licence holder is not lawfully resident in the United Kingdom, the Secretary of State may serve notice in writing on that person revoking the licence and requiring the person to surrender the licence and its counterpart forthwith to the Secretary of State, and it is the duty of that person to comply with the requirement.

(3ZB) For the purposes of subsection (3ZA) a person is not lawfully resident in the United Kingdom if the person requires leave to enter or remain in the United Kingdom but does not have it.”;
 - (b) in subsection (5), after “(3)” insert “ , (3ZA) ”;
 - (c) in subsection (7ZZA)—
 - (i) after “(3)” insert “ , (3ZA) ”;
 - (ii) after “subsections and” insert “ , except in the case of a licence and counterpart surrendered in pursuance of subsection (3ZA), ”.

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- (2) In section 100 of that Act (appeals)—
- (a) in subsection (1)(c), after “99(3)” insert “, (3ZA)”;
 - (b) at the end insert—
 - “(4) In any proceedings under this section about the revocation of a licence in pursuance of section 99(3ZA) (revocation on grounds of immigration status), the court or sheriff is not entitled to entertain any question as to whether—
 - (a) the appellant should be, or should have been, granted leave to enter or remain in the United Kingdom, or
 - (b) the appellant has, after the date that the Secretary of State served notice under section 99(3ZA), been granted leave to enter or remain in the United Kingdom.”
- (3) In Article 15 of the Road Traffic (Northern Ireland) Order 1981 (S.I. 1981/154 (N.I. 1)) (duration of licences)—
- (a) after paragraph (5) insert—
 - “(5ZA) Where it appears to the Department that a licence holder is not lawfully resident in the United Kingdom, the Department may serve notice in writing on that person revoking the licence and requiring the person to surrender the licence and its counterpart forthwith to the Department, and it is the duty of that person to comply with the requirement.
 - (5ZB) For the purposes of paragraph (5ZA) a person is not lawfully resident in the United Kingdom if the person requires leave to enter or remain in the United Kingdom but does not have it.”;
 - (b) in paragraph (7), after “(5)” insert “, (5ZA)”.
- (4) In Article 16 of that Order (appeals)—
- (a) in paragraph (1)(c), after “15(5)” insert “, (5ZA)”;
 - (b) at the end insert—
 - “(4) In any proceedings under this Article about the revocation of a licence in pursuance of Article 15(5ZA) (revocation on grounds of immigration status), the court is not entitled to entertain any question as to whether—
 - (a) the appellant should be, or should have been, granted leave to enter or remain in the United Kingdom, or
 - (b) the appellant has, after the date that the Department served notice under Article 15(5ZA), been granted leave to enter or remain in the United Kingdom.”

Commencement Information

I7 S. 47 in force at 14.7.2014 by S.I. 2014/1820, art. 2(e)

Status:

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Changes to legislation:

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