



Immigration Act 2016

2016 CHAPTER 19

PART 2

ACCESS TO SERVICES

Residential tenancies

39 Offence of leasing premises

- (1) The Immigration Act 2014 is amended in accordance with subsections (2) to (5).
- (2) After section 33 insert—

“Offences

33A Offences: landlords

- (1) The landlord under a residential tenancy agreement which relates to premises in England commits an offence if the first and second conditions are met.
- (2) The first condition is that the premises are occupied by an adult who is disqualified as a result of their immigration status from occupying premises under a residential tenancy agreement.
- (3) The second condition is that the landlord knows or has reasonable cause to believe that the premises are occupied by an adult who is disqualified as a result of their immigration status from occupying premises under a residential tenancy agreement.
- (4) But unless subsection (5) applies the landlord does not commit an offence under subsection (1) if—
 - (a) the premises are located in an area in relation to which section 22 is in force,

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- (b) the adult mentioned in subsections (2) and (3) is a limited right occupier, and
 - (c) the eligibility period in relation to that occupier has not expired.
- (5) This subsection applies if the Secretary of State has given a notice in writing to the landlord which—
- (a) identifies the adult mentioned in subsections (2) and (3), and
 - (b) states that the adult is disqualified as a result of their immigration status from occupying premises under a residential tenancy agreement.
- (6) It is a defence for a person charged with an offence under subsection (1) to prove that—
- (a) the person has taken reasonable steps to terminate the residential tenancy agreement, and
 - (b) the person has taken such steps within a reasonable period beginning with the time when the person first knew or had reasonable cause to believe that the premises were occupied by the adult mentioned in subsections (2) and (3).
- (7) In determining whether subsection (6)(a) or (b) applies to a person, the court must have regard to any guidance which, at the time in question, had been issued by the Secretary of State for the purposes of that subsection and was in force at that time.
- (8) Guidance issued for the purposes of subsection (6)—
- (a) must be laid before Parliament in draft before being issued, and
 - (b) comes into force in accordance with regulations made by the Secretary of State.
- (9) Section 22(9) applies for the purposes of subsection (1) as it applies for the purposes of that section.
- (10) A person commits an offence if—
- (a) there has been a post-grant contravention in relation to a residential tenancy agreement which relates to premises in England,
 - (b) the person is the responsible landlord in relation to the post-grant contravention,
 - (c) the person knows or has reasonable cause to believe that there has been a post-grant contravention in relation to the agreement, and
 - (d) none of paragraphs (a), (b) and (c) of section 24(6) applies in relation to the post-grant contravention.
- (11) Subsection (10) applies whether or not the landlord is given a notice under section 23 in respect of the contravention.

33B Offences: agents

- (1) Subsection (2) applies to an agent who is responsible for a landlord's contravention of section 22 in relation to premises in England.
- (2) The agent commits an offence if the agent—

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- (a) knew or had reasonable cause to believe that the landlord would contravene section 22 by entering into the residential tenancy agreement in question,
 - (b) had sufficient opportunity to notify the landlord of that fact before the landlord entered into the agreement, but
 - (c) did not do so.
- (3) Subsection (4) applies where—
- (a) a landlord contravenes section 22 in relation to a residential tenancy agreement relating to premises in England,
 - (b) the contravention is a post-grant contravention, and
 - (c) a person acting as the landlord's agent (“the agent”) is responsible for the post-grant contravention.
- (4) The agent commits an offence if—
- (a) the agent knows or has reasonable cause to believe that there has been a post-grant contravention in relation to the agreement, and
 - (b) neither of paragraphs (a) and (b) of section 26(6) applies in relation to the post-grant contravention.
- (5) Subsection (4) applies whether or not the agent is given a notice under section 25 in respect of the contravention.

33C Offences: penalties etc

- (1) A person who is guilty of an offence under section 33A or 33B is liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding five years, to a fine or to both;
 - (b) on summary conviction, to imprisonment for a term not exceeding 12 months, to a fine or to both.
- (2) In the application of this section in relation to an offence committed before the coming into force of section 154(1) of the Criminal Justice Act 2003 the reference in subsection (1)(b) to 12 months is to be read as a reference to 6 months.
- (3) If an offence under section 33A or 33B is committed by a body corporate with the consent or connivance of an officer of the body, the officer, as well as the body, is to be treated as having committed the offence.
- (4) In subsection (3) a reference to an officer of a body includes a reference to—
- (a) a director, manager or secretary,
 - (b) a person purporting to act as a director, manager or secretary, and
 - (c) if the affairs of the body are managed by its members, a member.
- (5) Where an offence under section 33A or 33B is committed by a partnership (whether or not a limited partnership) subsection (3) has effect, but as if a reference to an officer of the body were a reference to—
- (a) a partner, and
 - (b) a person purporting to act as a partner.
- (6) An offence under section 33A or 33B is to be treated as—

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- (a) a relevant offence for the purposes of sections 28B and 28D of the Immigration Act 1971 (search, entry and arrest), and
 - (b) an offence under Part 3 of that Act (criminal proceedings) for the purposes of sections 28E, 28G and 28H of that Act (search after arrest).”
- (3) In section 35 (transitional provision) after subsection (3) insert—
- “(4) References in this section to this Chapter do not include sections 33A to 33E (offences and eviction).
 - (5) Sections 33A to 33C apply in relation to a residential tenancy agreement entered into before or after the coming into force of section 39 of the Immigration Act 2016 (which inserted those sections into this Act).
 - (6) But sections 33A(10) and (11) and 33B apply only in relation to a contravention of section 22 which occurs after the coming into force of section 39 of the Immigration Act 2016.”
- (4) In section 36 (Crown application) at the end insert “ or the landlord for the purposes of section 33A. ”
- (5) In section 37(4)(a) (provisions in which references to the landlord are to any of them)
- (a) omit the “and” at the end of sub-paragraph (ii), and
 - (b) at the end of sub-paragraph (iii) insert—
“ (iv) section 33A, ”.
- (6) In section 28A of the Immigration Act 1971 (arrest without warrant)—
- (a) after subsection (9B) insert—
“(9C) An immigration officer may arrest without warrant a person who, or whom the immigration officer has reasonable grounds for suspecting—
(a) has committed or attempted to commit an offence under section 33A or 33B of the Immigration Act 2014 (offences relating to residential tenancies), or
(b) is committing or attempting to commit that offence.”,
 - (b) in subsection (10) for “and (9B)” substitute “, (9B) and (9C)”, and
 - (c) in subsection (11) for “and (9B)” substitute “, (9B) and (9C)”.

Commencement Information

- I1** S. 39 in force at 1.11.2016 for specified purposes by [S.I. 2016/1037, reg. 2\(a\)](#)
- I2** S. 39 in force at 1.12.2016 in so far as not already in force by [S.I. 2016/1037, reg. 5\(c\)](#)

40 Eviction

- (1) The Immigration Act 2014 is amended in accordance with subsections (2) to (4).
- (2) After section 33C (inserted by section 39) insert—

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“Eviction

33D Termination of agreement where all occupiers disqualified

- (1) The landlord under a residential tenancy agreement relating to premises in England may terminate the agreement in accordance with this section if the condition in subsection (2) is met.
- (2) The condition is that the Secretary of State has given one or more notices in writing to the landlord which, taken together,—
 - (a) identify the occupier of the premises or (if there is more than one occupier) all of them, and
 - (b) state that the occupier or occupiers are disqualified as a result of their immigration status from occupying premises under a residential tenancy agreement.
- (3) The landlord may terminate the residential tenancy agreement by giving notice in writing and in the prescribed form to the tenant or, in the case of a joint tenancy, all of the tenants specifying the date on which the agreement comes to an end.
- (4) That date must not be earlier than the end of the period of 28 days beginning with the day specified in the notice as the day on which it is given.
- (5) The notice may be given—
 - (a) by delivering it to the tenant or tenants,
 - (b) by leaving it at the premises,
 - (c) by sending it by post to the tenant or tenants at the address of the premises, or
 - (d) in any other prescribed manner.
- (6) The notice is to be treated as a notice to quit in a case where a notice to quit would otherwise be required to bring the residential tenancy agreement to an end.
- (7) The notice is enforceable as if it were an order of the High Court.
- (8) In this section “occupier”, in relation to premises to which a residential tenancy agreement applies, means—
 - (a) a tenant,
 - (b) a person who, under the agreement, otherwise has the right to occupy the premises and is named in the agreement, and
 - (c) any other person who the landlord knows is occupying the premises.

33E Other procedures for ending agreement

- (1) It is an implied term of a residential tenancy agreement to which this subsection applies that the landlord may terminate the tenancy if the premises to which it relates are occupied by an adult who is disqualified as a result of their immigration status from occupying premises under a residential tenancy agreement.

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- (2) Subsection (1) applies to a residential tenancy agreement relating to premises in England if—
- (a) it is a tenancy or sub-tenancy or an agreement for a tenancy or sub-tenancy, but
 - (b) it is not a protected or statutory tenancy within the meaning of the Rent Act 1977 or an assured tenancy within the meaning of the Housing Act 1988.
- (3) For provision relating to a residential tenancy agreement which is a protected or statutory tenancy where a tenant or occupier is disqualified as a result of their immigration status from occupying premises under a residential tenancy agreement, see Case 10A in Part 1 of Schedule 15 to the Rent Act 1977.
- (4) For provision relating to a residential tenancy agreement which is an assured tenancy where a tenant or occupier is disqualified as a result of their immigration status from occupying premises under a residential tenancy agreement, see Ground 7B in Part 1 of Schedule 2 to the Housing Act 1988.”
- (3) In section 35 (transitional provision) after subsection (6) (inserted by section 39(3)) insert—
- “(7) Sections 33D and 33E apply in relation to a residential tenancy agreement entered into before or after the coming into force of section 40 of the Immigration Act 2016 (which inserted those sections into this Act).”
- (4) In section 37(4)(a) (provisions in which references to the landlord are to any of them) after sub-paragraph (iv) (inserted by section 39(5)(b)) insert—
- “(v) section 33D, and
 - (vi) section 33E,”.
- (5) In section 3A of the Protection from Eviction Act 1977 (excluded tenancies and licences) after subsection (7C) insert—
- “(7D) A tenancy or licence is excluded if—
- (a) it is a residential tenancy agreement within the meaning of Chapter 1 of Part 3 of the Immigration Act 2014, and
 - (b) the condition in section 33D(2) of that Act is met in relation to that agreement.”
- (6) In section 5 of the Housing Act 1988 (security of tenure)—
- (a) in subsection (1) omit the “or” at the end of paragraph (b) and at the end of paragraph (c) insert “, or
 - (d) in the case of an assured tenancy—
 - (i) which is a residential tenancy agreement within the meaning of Chapter 1 of Part 3 of the Immigration Act 2014, and
 - (ii) in relation to which the condition in section 33D(2) of that Act is met,
 giving a notice in accordance with that section,” and
 - (b) in subsection (2) omit the “or” at the end of paragraph (a) and at the end of paragraph (b) insert “, or
 - (c) the giving of a notice under section 33D of the Immigration Act 2014,”.

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- (7) The amendments made by subsections (5) and (6) apply in relation to a tenancy or (in the case of subsection (5)) a licence entered into before or after the coming into force of this section.

Commencement Information

- I3** S. 40 in force at 1.11.2016 for specified purposes by S.I. 2016/1037, reg. 2(b)
I4 S. 40 in force at 1.12.2016 in so far as not already in force by S.I. 2016/1037, reg. 5(d)

41 Order for possession of dwelling-house

- (1) The Housing Act 1988 is amended in accordance with subsections (2) to (5).
(2) In Part 1 of Schedule 2 (assured tenancies: grounds on which court must order possession) after Ground 7A insert—

“Ground 7B

Both of the following conditions are met in relation to a dwelling-house in England.

Condition 1 is that the Secretary of State has given a notice in writing to the landlord or, in the case of joint landlords, one or more of them which identifies—

- (a) the tenant or, in the case of joint tenants, one or more of them, or
(b) one or more other persons aged 18 or over who are occupying the dwelling-house,

as a person or persons disqualified as a result of their immigration status from occupying the dwelling-house under the tenancy.

Condition 2 is that the person or persons named in the notice—

- (a) fall within paragraph (a) or (b) of condition 1, and
(b) are disqualified as a result of their immigration status from occupying the dwelling-house under the tenancy.

For the purposes of this ground a person (“P”) is disqualified as a result of their immigration status from occupying the dwelling-house under the tenancy if—

- (a) P is not a relevant national, and
(b) P does not have a right to rent in relation to the dwelling-house.

P does not have a right to rent in relation to the dwelling-house 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 dwelling-house.

But P is to be treated as having a right to rent in relation to a dwelling-house if the Secretary of State has granted P permission for the purposes of this ground to occupy a dwelling-house under an assured tenancy.

In this ground “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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- (3) In section 7 (orders for possession)—
- (a) in subsection (3) after “subsections (5A) and (6)” insert “ and section 10A ”,
 - (b) in subsection (5A)(a) for “and 7A” substitute “ , 7A and 7B ”,
 - (c) in subsection (6)(a) after “Ground 7A” insert “ , Ground 7B ”, and
 - (d) after subsection (6A) insert—

“(6B) The requirement in subsection (6)(b) that would otherwise apply to an order for possession of a dwelling-house let on an assured fixed term tenancy does not apply where the ground for possession is Ground 7B in Part 1 of Schedule 2 to this Act.”
- (4) In section 8(5) (cases where court may not dispense with notice of proceedings for possession) after “Ground 7A” insert “ , 7B ”.
- (5) After section 10 insert—

“10A Power to order transfer of tenancy in certain cases

- (1) This section applies on an application for an order for possession of a dwelling-house let on an assured tenancy if the court is satisfied that—
 - (a) Ground 7B in Schedule 2 is established,
 - (b) no other ground in that Schedule is established, or one or more grounds in Part 2 of that Schedule are established but it is not reasonable to make an order for possession on that ground or those grounds,
 - (c) the tenancy is a joint tenancy, and
 - (d) one or more of the tenants is a qualifying tenant.
- (2) In subsection (1)(d) “qualifying tenant” means a person who (within the meaning of Ground 7B) is not disqualified as a result of the person's immigration status from occupying the dwelling-house under the tenancy.
- (3) The court may, instead of making an order for possession, order that the tenant's interest under the tenancy is to be transferred so that it is held—
 - (a) if there is one qualifying tenant, by the qualifying tenant as sole tenant, or
 - (b) if there is more than one qualifying tenant, by all of them as joint tenants.
- (4) The effect of an order under this section is that, from the time the order takes effect, the qualifying tenant or tenants—
 - (a) are entitled to performance of the landlord's covenants under the tenancy, and
 - (b) are liable to perform the tenant's covenants under the tenancy.
- (5) The effect of an order under this section is that, from the time it takes effect, any other person who was a tenant under the tenancy before the order took effect—
 - (a) ceases to be entitled to performance of the landlord's covenants under the tenancy, or
 - (b) ceases to be liable to perform the tenant's covenants under the tenancy.

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- (6) Subsection (5) does not remove any right or liability of the person which accrued before the order took effect.
- (7) An order under this section does not operate to create a new tenancy as between the landlord and the qualifying tenant or tenants.
- (8) In particular, if the tenancy is a fixed term tenancy, the term comes to an end at the same time as if the order had not been made.”

- (6) In Part 1 of Schedule 15 to the Rent Act 1977 (grounds for possession of dwelling-houses let on or subject to protected or statutory tenancies) after Case 10 insert—
“**Case 10A**

Both of the following conditions are met in relation to a dwelling-house in England.

Condition 1 is that the Secretary of State has given a notice in writing to the landlord or, in the case of joint landlords, one or more of them which identifies—

- (a) the tenant or, in the case of joint tenants, one or more of them, or
- (b) one or more other persons aged 18 or over who are occupying the dwelling-house,

as a person or persons disqualified as a result of their immigration status from occupying the dwelling-house under the tenancy.

Condition 2 is that the person or persons named in the notice—

- (a) fall within paragraph (a) or (b) of condition 1, and
- (b) are disqualified as a result of their immigration status from occupying the dwelling-house under the tenancy.

For the purposes of this case a person (“P”) is disqualified as a result of their immigration status from occupying the dwelling-house under the tenancy if—

- (a) P is not a relevant national, and
- (b) P does not have a right to rent in relation to the dwelling-house.

P does not have a right to rent in relation to the dwelling-house 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 dwelling-house.

But P is to be treated as having a right to rent in relation to a dwelling-house if the Secretary of State has granted P permission for the purposes of this case to occupy a dwelling-house which is for the time being let on a protected tenancy or subject to a statutory tenancy.

In this case “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.”

- (7) The amendments made by this section apply in relation to a tenancy entered into before or after the coming into force of this section.

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Commencement Information

I5 S. 41 in force at 1.12.2016 by S.I. 2016/1037, reg. 5(e)

PROSPECTIVE

42 Extension to Wales, Scotland and Northern Ireland

- (1) The Secretary of State may by regulations make such provision as the Secretary of State considers appropriate for enabling any of the residential tenancies provisions to apply in relation to Wales, Scotland or Northern Ireland.
- (2) The Secretary of State may by regulations make provision which—
 - (a) has a similar effect to any of the residential tenancies provisions, and
 - (b) applies in relation to Wales, Scotland or Northern Ireland.
- (3) Regulations under subsection (1) or (2) may—
 - (a) amend, repeal or revoke any enactment;
 - (b) confer functions on any person.
- (4) Regulations under subsection (1) or (2) may not confer functions on—
 - (a) the Welsh Ministers,
 - (b) the Scottish Ministers,
 - (c) the First Minister and deputy First Minister in Northern Ireland,
 - (d) a Northern Ireland Minister, or
 - (e) a Northern Ireland department.
- (5) In this section—

“enactment” includes—

 - (a) an enactment contained in subordinate legislation within the meaning of the Interpretation Act 1978;
 - (b) an enactment contained in, or in an instrument made under, an Act or Measure of the National Assembly for Wales;
 - (c) an enactment contained in, or in an instrument made under, an Act of the Scottish Parliament;
 - (d) an enactment contained in, or in an instrument made under, Northern Ireland legislation;

“the residential tenancies provisions” means sections 39 to 41 and the amendments made by those sections.

Modifications etc. (not altering text)

C1 S. 42(5) modified (31.12.2020) by [The Immigration and Social Security Co-ordination \(EU Withdrawal\) Act 2020 \(Consequential, Saving, Transitional and Transitory Provisions\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1309\)](#), reg. 1(2), [Sch. 1 para. 2](#)

Status:

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