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SCHEDULES

PROSPECTIVE

SCHEDULE 13

Section 74

PENALTIES RELATING TO AIRPORT CONTROL AREAS

This is the Part 1A of Schedule 2 to the Immigration Act 1971 referred to in section 74(2)—

“PART 1A

PENALTY FOR BREACH OF PARAGRAPH 26(2) OR (3)

Penalty for breach of paragraph 26(2) or (3)

- (1) Sub-paragraph (2) applies where the Secretary of State has given written notice under paragraph 26(2) to the owner or agent of an aircraft—
 - (a) designating a control area for the embarkation or disembarkation of passengers in an airport in the United Kingdom, and
 - (b) specifying conditions or restrictions to be observed in the control area.
- (2) The Secretary of State may impose a penalty on the owner or agent if the owner or agent fails to take all reasonable steps to secure that—
 - (a) passengers embarking on or disembarking from the aircraft at the airport do not embark or disembark at the airport outside the control area, or
 - (b) the conditions or restrictions specified in the notice are observed.
- (3) Sub-paragraph (4) applies where the Secretary of State has given written notice under paragraph 26(3) to a person concerned with the management of an airport in the United Kingdom—
 - (a) designating a control area in the airport, and
 - (b) specifying conditions or restrictions to be observed in the control area.
- (4) The Secretary of State may impose a penalty on the person if the person fails to take all reasonable steps to secure that the conditions or restrictions specified in the notice are observed.
- (5) The Secretary of State may impose a separate penalty under sub-paragraph (2) or (4) in respect of each failure of the kind mentioned in that sub-paragraph.
- (6) The amount of a penalty imposed under sub-paragraph (2) or (4) may be such an amount as the Secretary of State considers appropriate; but the amount of each penalty must not exceed the prescribed maximum.

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Codes of practice

- (1) The Secretary of State must issue a code of practice to be followed by—
 - (a) agents and operators of aircraft to whom notices under paragraph 26(2) have been given, and
 - (b) persons concerned with the management of airports in the United Kingdom to whom notices under paragraph 26(3) have been given.
- (2) The Secretary of State must have regard to the code (in addition to any other matters the Secretary of State thinks relevant)—
 - (a) when deciding whether to impose a penalty under paragraph 28, and
 - (b) when considering a notice of objection under paragraph 28C.
- (3) The Secretary of State must issue a code of practice specifying matters to be considered in determining the amount of a penalty under paragraph 28.
- (4) The Secretary of State must have regard to the code (in addition to any other matters the Secretary of State thinks relevant)—
 - (a) when imposing a penalty under paragraph 28, and
 - (b) when considering a notice of objection under paragraph 28C.
- (5) Before issuing a code under this paragraph the Secretary of State must lay the code before Parliament.
- (6) A code under this paragraph comes into force in accordance with provision made by regulations made by the Secretary of State.
- (7) The Secretary of State may from time to time review a code under this paragraph and may revise and re-issue it following a review.
- (8) References in sub-paragraphs (5) and (6) to a code include a revised code.

Penalty notices

- (1) If the Secretary of State decides that a person is liable to a penalty under paragraph 28, the Secretary of State must notify the person of that decision.
- (2) A notice under sub-paragraph (1) (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 the date on which the penalty notice is given,
 - (e) specify the 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,
 - (f) specify how the penalty must be paid,
 - (g) include an explanation of the steps that the person may take if the person objects to the penalty (including specifying the manner and form in which any notice of objection must be given to the Secretary of State), and
 - (h) include an explanation of the steps the Secretary of State may take to recover any unpaid penalty.

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Objections

- (1) The recipient of a penalty notice (“the recipient”) may object to the penalty notice by giving a notice of objection to the Secretary of State.
- (2) A notice of objection must—
 - (a) be in writing,
 - (b) give the reasons for the objection,
 - (c) be given in the manner and form specified in the penalty notice, and
 - (d) be given before the end of the period of 28 days beginning with the date specified in the penalty notice as the date on which it is given.
- (3) Where the Secretary of State receives a notice of objection, the Secretary of State must consider it and—
 - (a) cancel the penalty,
 - (b) reduce the penalty,
 - (c) increase the penalty, or
 - (d) determine not to alter the penalty.
- (4) After reaching a decision as to how to proceed under sub-paragraph (3), the Secretary of State must notify the recipient of the decision in writing.
- (5) A notification under sub-paragraph (4) must be given before the end of the period of 70 days beginning with the date specified in the penalty notice as the date on which it is given, or such longer period as the Secretary of State may agree with the recipient.
- (6) A notification under sub-paragraph (4), other than one notifying the recipient that the Secretary of State has decided to cancel the penalty, must—
 - (a) state the amount of the penalty following the Secretary of State's consideration of the notice of objection,
 - (b) state the Secretary of State's reasons for the decision under sub-paragraph (3),
 - (c) specify the date, at least 28 days after the date on which the notification is given, before which the penalty must be paid,
 - (d) specify how the penalty must be paid,
 - (e) include an explanation of the recipient's rights of appeal, and
 - (f) include an explanation of the steps the Secretary of State may take to recover any unpaid penalty.

Appeals

- (1) A person (“the appellant”) may appeal to the court against a decision to require the person to pay a penalty under paragraph 28.
- (2) An appeal may be brought only if the appellant has given a notice of objection and the Secretary of State has—
 - (a) reduced the penalty under paragraph 28C(3)(b),
 - (b) increased the penalty under paragraph 28C(3)(c), or
 - (c) determined not to alter the penalty under paragraph 28C(3)(d).
- (3) An appeal must be brought within the period of 28 days beginning with the date on which the appellant is notified of the Secretary of State's decision on the notice of objection under paragraph 28C(4).

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- (4) On appeal, the court may—
 - (a) allow the appeal and cancel the penalty,
 - (b) allow the appeal and reduce the penalty, or
 - (c) dismiss the appeal.
- (5) 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) any code of practice under paragraph 28A(1) which had effect at the time of the events to which the penalty relates,
 - (b) any code of practice under paragraph 28A(3) which has effect at the time of the appeal, and
 - (c) any other matters which the court thinks relevant (which may include matters of which the Secretary of State was unaware).
- (6) Sub-paragraph (5) has effect despite any provision of rules of court.
- (7) In this paragraph “the court” means—
 - (a) the county court, if the appeal relates to a penalty imposed under paragraph 28 in relation to an airport in England and Wales;
 - (b) the sheriff, if the appeal relates to a penalty imposed under paragraph 28 in relation to an airport in Scotland;
 - (c) a county court in Northern Ireland, if the appeal relates to a penalty imposed under paragraph 28 in relation to an airport in Northern Ireland.
- (8) But—
 - (a) the county court in England and Wales, or a county court in Northern Ireland, may transfer proceedings under this paragraph to the High Court, and
 - (b) the sheriff may transfer proceedings under this paragraph to the Court of Session.

Enforcement

- (1) This section applies where a sum is payable to the Secretary of State as a penalty under paragraph 28.
- (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 paragraph 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

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(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 under paragraph 28 must be paid into the Consolidated Fund.

Service of documents

- (1) A document which is to be issued or served on a person outside the United Kingdom for the purposes of paragraph 28B or 28C or in the course of proceedings under paragraph 28E may be issued or served—
- (a) in person,
 - (b) by post,
 - (c) by facsimile transmission,
 - (d) by e-mail, or
 - (e) in any other prescribed manner.
- (2) The Secretary of State may by regulations provide that a document issued or served in a manner listed in sub-paragraph (1) in accordance with the regulations is to be taken to have been received at a time specified by or determined in accordance with the regulations.

Interpretation of this Part of this Schedule

In this Part of this Schedule—

“penalty notice” has the meaning given by paragraph 28B(2);

“prescribed” means prescribed by regulations made by the Secretary of State.

Regulations under this Part of this Schedule

- (1) Regulations under this Part of this Schedule are to be made by statutory instrument.
- (2) A statutory instrument containing (whether alone or with other provision) regulations under paragraph 28(6) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (3) A statutory instrument containing any other regulations under this Part of this Schedule and to which sub-paragraph (2) does not apply is subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) Regulations under this Part of this Schedule—
- (a) may make different provision for different purposes;
 - (b) may make incidental, supplementary, consequential, transitional, transitory or saving provision.”

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Changes and effects yet to be applied to :

- specified provision(s) amendment to earlier commencing S.I. 2017/1241, Sch. by [S.I. 2018/31 reg. 2](#)

Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 69(9)(d) and word inserted by [2023 c. 37 s. 21\(2\)\(b\)](#)
- Sch. 10 para. 3(2)(eza) inserted by [2023 c. 37 s. 13\(3\)\(a\)](#)
- Sch. 10 para. 3(3A)-(3C) inserted by [2023 c. 37 s. 13\(3\)\(b\)](#)
- Sch. 10 para. 3A and cross-heading inserted by [2023 c. 37 s. 13\(4\)](#)