



# 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](#)

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## Driving

### 43 Powers to carry out searches relating to driving licences

- (1) Schedule 2 to the Immigration Act 1971 (administrative provisions as to control of entry etc) is amended in accordance with subsections (2) and (3).
- (2) After paragraph 25C insert—

#### 25CA “Entry of premises to search for driving licence

- (1) An authorised officer may exercise the powers in this section if the officer has reasonable grounds for believing that a person—
  - (a) is in possession of a driving licence, and
  - (b) is not lawfully resident in the United Kingdom.
- (2) The authorised officer may enter and search any premises—
  - (a) occupied or controlled by the person, or
  - (b) in which the person was when the person was encountered by the officer,for the driving licence.
- (3) The power conferred by sub-paragraph (2) may be exercised—
  - (a) only if the authorised officer has reasonable grounds for believing that the driving licence is on the premises,
  - (b) only to the extent that it is reasonably required for the purpose of discovering the driving licence, and
  - (c) unless the authorised officer is a constable, only if a senior officer has authorised its exercise in writing.
- (4) Sub-paragraph (3)(c) does not apply where it is not reasonably practicable for the authorised officer to obtain the authorisation of a senior officer before exercising the power.
- (5) An authorised officer who has conducted a search in reliance on sub-paragraph (4) must inform a senior officer as soon as is practicable.
- (6) The senior officer authorising a search, or who is informed of one under sub-paragraph (5), must make a record in writing of the grounds for the search.
- (7) In this paragraph and paragraphs 25CB and 25CC—
  - “authorised officer” means—
    - (a) an immigration officer,
    - (b) a constable, or
    - (c) a person of a kind authorised for the purposes of this paragraph and paragraphs 25CB and 25CC by the Secretary of State;
  - “driving licence”—
    - (a) means a licence to drive a motor vehicle granted under Part 3 of the Road Traffic Act 1988 or Part II of the Road Traffic (Northern Ireland) Order 1981 (SI 1981/154 (NI 1)), and
    - (b) includes a licence of that kind which has been revoked;
  - “senior officer” means—

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- (a) in relation to an authorised officer who is an immigration officer, an immigration officer not below the rank of chief immigration officer;
  - (b) in relation to an authorised officer other than an immigration officer, a person of a kind designated by the Secretary of State for the purposes of this paragraph in relation to an authorised officer of that kind.
- (8) For the purposes of this paragraph and paragraphs 25CB and 25CC 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.

#### **25CB Searching persons for driving licences**

- (1) An authorised officer may exercise the powers in this section if the officer has reasonable grounds for believing that a person—
  - (a) is in possession of a driving licence, and
  - (b) is not lawfully resident in the United Kingdom.
- (2) The authorised officer may search the person for the driving licence.
- (3) The power conferred by sub-paragraph (2) may be exercised—
  - (a) only if the authorised officer has reasonable grounds for believing that the driving licence may be concealed on the person, and
  - (b) only to the extent that it is reasonably required for the purpose of discovering the driving licence.
- (4) An intimate search may not be carried out under sub-paragraph (2).
- (5) In sub-paragraph (4) “intimate search” has the same meaning as in section 28H(11).

#### **25CC Seizure and retention of driving licence**

- (1) If an authorised officer who is exercising a power to search a person or premises finds a driving licence to which this sub-paragraph applies in the course of the search, the officer may seize and retain the licence.
- (2) Sub-paragraph (1) applies to a driving licence if—
  - (a) the authorised officer finds the licence in the possession of a person who the authorised officer has reasonable grounds for believing is not lawfully resident in the United Kingdom, or
  - (b) the authorised officer has reasonable grounds for believing that the holder of the licence is not lawfully resident in the United Kingdom.
- (3) A driving licence seized under sub-paragraph (1) must, as soon as practicable, be given to—
  - (a) the Secretary of State, in the case of a licence granted by the Secretary of State, or
  - (b) the Department for Infrastructure for Northern Ireland, in the case of a licence granted by the Department.

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- (4) A person who is in possession of a driving licence by virtue of sub-paragraph (3) must retain it if—
    - (a) it has not been revoked,
    - (b) it has been revoked but the time limit for an appeal against revocation of the licence has not expired, or
    - (c) it has been revoked, such an appeal has been brought but the appeal has not been determined.
  - (5) A driving licence which is required to be retained under sub-paragraph (4) must be retained—
    - (a) until a decision is taken not to revoke it, or
    - (b) if it has been or is subsequently revoked—
      - (i) until the time limit for an appeal against revocation of the licence expires without an appeal being brought, or
      - (ii) until such an appeal is determined.
  - (6) A driving licence which is in the possession of a person by virtue of sub-paragraph (3) but which is not required to be retained under sub-paragraphs (4) and (5) must be returned to the holder if—
    - (a) a decision is taken not to revoke the licence, or
    - (b) an appeal against revocation of the licence is determined in favour of the holder.
  - (7) Otherwise the driving licence may be dealt with in such manner as that person thinks fit.
  - (8) Neither the Secretary of State nor the Department for Infrastructure for Northern Ireland is obliged to re-issue a licence which has been seized and retained under this paragraph.
  - (9) References in this paragraph to an appeal against the revocation of a licence are to—
    - (a) an appeal under section 100 of the Road Traffic Act 1988, in the case of a licence granted by the Secretary of State, or
    - (b) an appeal under Article 16 of the Road Traffic (Northern Ireland) Order 1981 (SI 1981/154 (NI 1)), in the case of a licence granted by the Department for Infrastructure for Northern Ireland.
  - (10) References in this paragraph to the holder of a driving licence, in relation to a licence that has been revoked, include the person who was the holder of the licence before it was revoked.”
- (3) In paragraph 25D(8) (access and copying: meaning of seized material) at the end insert “ other than a driving licence seized under paragraph 25CC. ”
  - (4) In section 146(2) of the Immigration and Asylum Act 1999 (use of reasonable force) after paragraph (a) insert—
    - “(aa) paragraph 25CA, 25CB or 25CC of Schedule 2 to the 1971 Act (powers to search for and seize driving licences),”.
  - (5) In the period (if any) between the coming into force of subsection (2) and the coming into force of the Departments Act (Northern Ireland) 2016, references to the Department for Infrastructure for Northern Ireland in paragraph 25CC(3)(b), (8) and

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(9)(b) of Schedule 2 to the Immigration Act 1971 (as inserted by subsection (2)) are to be read as references to the Department of the Environment for Northern Ireland.

#### Commencement Information

**I6** [S. 43](#) in force at 31.7.2017 for specified purposes by [S.I. 2017/799](#), [reg. 2](#)

PROSPECTIVE

#### 44 Offence of driving when unlawfully in the United Kingdom

- (1) The Immigration Act 1971 is amended in accordance with subsections (2) to (6).
- (2) Before section 25 insert—

##### “24C Driving when unlawfully in the United Kingdom

- (1) A person commits an offence if—
  - (a) the person drives a motor vehicle on a road or other public place at a time when the person is not lawfully resident in the United Kingdom, and
  - (b) at that time the person knows or has reasonable cause to believe that the person is not lawfully resident in the United Kingdom.
- (2) A person who is guilty of an offence under subsection (1) is liable on summary conviction—
  - (a) in England and Wales, to imprisonment for a term not exceeding 51 weeks, to a fine or to both;
  - (b) in Scotland or Northern Ireland, to imprisonment for a term not exceeding 6 months, to a fine not exceeding level 5 on the standard scale or to both.
- (3) In relation to an offence committed before section 281(5) of the Criminal Justice Act 2003 comes into force, the reference in subsection (2)(a) to 51 weeks is to be read as a reference to 6 months.
- (4) In this section “motor vehicle” and “road”—
  - (a) in relation to England and Wales and Scotland, have the same meanings as in the Road Traffic Act 1988;
  - (b) in relation to Northern Ireland, have the same meanings as in the Road Traffic (Northern Ireland) Order 1995 (SI 1995/2994 (NI 18)).
- (5) For the purposes of this section 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.

##### 24D Detention of motor vehicles

- (1) If a person (“P”) has been arrested for an offence under section 24C committed in England and Wales or Northern Ireland, a senior officer or a constable may detain a relevant vehicle.

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- (2) Subject to regulations under subsection (8), a vehicle detained under subsection (1) must be released—
  - (a) when a decision is taken not to charge P with the offence, or
  - (b) if P is charged with the offence—
    - (i) when P is acquitted, the charge against P is dismissed or the proceedings are discontinued, or
    - (ii) if P is convicted, when the court decides not to order forfeiture of the vehicle.
- (3) If a person (“P”) has been arrested for an offence under section 24C committed in Scotland, a senior officer or a constable may detain a relevant vehicle.
- (4) Subject to regulations under subsection (8) a vehicle detained under subsection (3) must be released—
  - (a) when a decision is taken not to institute criminal proceedings against P for the offence, or
  - (b) if criminal proceedings are instituted against P for the offence—
    - (i) when P is acquitted or, under section 147 of the Criminal Procedure (Scotland) Act 1995, liberated or the trial diet is deserted simpliciter, or
    - (ii) if P is convicted, when the court decides not to order forfeiture of the vehicle.
- (5) For the purposes of subsection (4) criminal proceedings are instituted against a person (“P”) at whichever is the earliest of P's first appearance before the sheriff or the service on P of a complaint.
- (6) A power in subsection (1) or (3) may be exercised by a senior officer or constable at any place at which the senior officer or constable is lawfully present.
- (7) A vehicle is a relevant vehicle in relation to P if the officer or constable concerned has reasonable grounds for believing it was used in the commission by P of an offence under section 24C.
- (8) The Secretary of State may by regulations make provision about the release of a vehicle detained under subsection (1) or (3).
- (9) Regulations under subsection (8) may in particular make provision—
  - (a) for the release of a vehicle before the time mentioned in subsection (2) or (4);
  - (b) about the procedure by which a person may seek to have a vehicle released before or after that time;
  - (c) about the persons to whom a vehicle may or must be released before or after that time;
  - (d) prescribing conditions to be met before a vehicle may be released before or after that time (including a condition requiring the payment of costs in relation to detention of the vehicle and any application for its release);
  - (e) as to the destination of payments made in compliance with such a condition;

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- (f) enabling a person specified in the regulations to waive compliance with such a condition;
  - (g) as to the disposal of a vehicle in a case where such a condition is not met;
  - (h) as to the destination of the proceeds arising from the disposal of a vehicle in such a case.
- (10) Regulations under subsection (8)—
- (a) are to be made by statutory instrument;
  - (b) may make different provision for different cases;
  - (c) may make incidental, supplementary, consequential, transitional, transitory or saving provision.
- (11) A statutory instrument containing regulations under subsection (8) is subject to annulment in pursuance of a resolution of either House of Parliament.
- (12) In this section “senior officer” means an immigration officer not below the rank of chief immigration officer.

#### **24E Powers to enter premises to detain motor vehicle**

- (1) A senior officer or a constable may enter and search any premises for the purposes of detaining a vehicle under section 24D.
- (2) The power in subsection (1) may be exercised—
  - (a) only to the extent that it is reasonably required for that purpose, and
  - (b) only if the senior officer or constable knows that a vehicle which may be detained under section 24D is to be found on the premises.
- (3) The power in subsection (1) may be exercised—
  - (a) by a senior officer (“S”) only if S produces identification showing that S is an immigration officer (whether or not S is asked to do so);
  - (b) by a constable (“C”) only if C produces identification showing that C is a constable (whether or not C is asked to do so).
- (4) Subsection (5) applies if, on an application by a senior officer or constable, a justice of the peace is satisfied that there are reasonable grounds for suspecting that a vehicle which may be detained under section 24D may be found on premises mentioned in subsection (6).
- (5) The justice of the peace may issue a warrant authorising any senior officer or constable to enter, if need be by force, the premises for the purpose of searching for and detaining the vehicle.
- (6) The premises referred to in subsection (4) are—
  - (a) one or more sets of premises specified in the application, or
  - (b) subject to subsection (10), any premises occupied or controlled by a person specified in the application, including such sets of premises as are so specified (in which case the application is for an “all premises warrant”).
- (7) If the application is for an all premises warrant, the justice of the peace must also be satisfied—



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- (a) that there are reasonable grounds for believing that it is necessary to search premises occupied or controlled by the person in question which are not specified in the application in order to find the vehicle, and
  - (b) that it is not reasonably practicable to specify in the application all the premises which the person occupies or controls and which might need to be searched.
- (8) Subject to subsection (10), the warrant may authorise entry to and search of premises on more than one occasion if, on the application, the justice of the peace is satisfied that it is necessary to authorise multiple entries in order to achieve the purpose for which the justice issues the warrant.
- (9) If it authorises multiple entries, the number of entries authorised may be unlimited, or limited to a maximum.
- (10) A justice of the peace in Scotland may not issue—
  - (a) an all premises warrant under this section, or
  - (b) a warrant under this section authorising multiple entries.
- (11) In the application of this section to Scotland, references to a justice of the peace are to be read as references to the sheriff or a justice of the peace.
- (12) In this section “senior officer” means an immigration officer not below the rank of chief immigration officer.

#### **24F Orders following conviction of offence under section 24C**

- (1) If a person is convicted of an offence under section 24C, the court may order the forfeiture of the vehicle used in the commission of the offence.
- (2) Where a person who claims to have an interest in the vehicle applies to the court to make representations on the question of forfeiture, the court may not make an order under this section in respect of the vehicle unless the person has been given an opportunity to make representations.
- (3) For the purposes of subsection (2) the persons who have an interest in a vehicle include—
  - (a) a person who owns it,
  - (b) the person in whose name the vehicle is registered under the Vehicle Excise and Registration Act 1994, and
  - (c) a person who is in possession of it under a hire purchase agreement (or, in the case of a detained vehicle, was in possession of it under a hire purchase agreement immediately before its detention).
- (4) The Secretary of State may by regulations make provision about—
  - (a) the disposal of a vehicle forfeited under this section;
  - (b) the destination of the proceeds arising from the disposal of such a vehicle.
- (5) Regulations under subsection (4)—
  - (a) are to be made by statutory instrument;
  - (b) may make different provision for different cases;

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- (c) may make incidental, supplementary, consequential, transitional, transitory or saving provision.
- (6) A statutory instrument containing regulations under subsection (4) is subject to annulment in pursuance of a resolution of either House of Parliament.”
- (3) In section 28A(3)(a) (arrest without warrant) before “25” insert “ 24C, ”.
- (4) In section 28B(5) (search and arrest by warrant: relevant offences) before “26A” insert “ 24C, ”.
- (5) In section 28CA(1) (business premises: entry to arrest) for the “or” at the end of paragraph (b) substitute—  
 “(bb) for an offence under section 24C, or”.
- (6) In section 28D(4) (entry and search of premises: relevant offences) before “25” insert “ 24C, ”.
- (7) In section 16(2A)(b) of the Police and Criminal Evidence Act 1984 (powers of persons accompanying constables in execution of warrants) after “seizure” insert “ or detention ”.
- (8) In Article 18(2A)(b) of the Police and Criminal Evidence (Northern Ireland) Order 1989 (SI 1989/1341 (NI 12)) (powers of persons accompanying constables in execution of warrants) after “seizure” insert “ or detention ”.
- (9) In section 146(2) of the Immigration and Asylum Act 1999 (use of reasonable force) before paragraph (a) insert—  
 “(za) section 24E(1) (powers to enter premises to detain motor vehicle) of the 1971 Act,”.

### Bank accounts

#### 45 Bank accounts

- (1) Schedule 7 (bank accounts) has effect.
- (2) Before the end of the period mentioned in subsection (3), the Secretary of State must—
  - (a) review the operation of sections 40A to 40G of the Immigration Act 2014 (inserted by Schedule 7),
  - (b) prepare a report of the review, and
  - (c) lay a copy of the report before Parliament.
- (3) The period referred to in subsection (2) is the period of 5 years beginning with the day on which Schedule 7 comes fully into force.

#### Commencement Information

- I7** S. 45 in force at 1.11.2016 for specified purposes by S.I. 2016/1037, reg. 2(c)
- I8** S. 45 in force at 30.10.2017 in so far as not already in force by S.I. 2017/929, reg. 2(a)

**Status:**

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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](#)