



Immigration Act 2016

2016 CHAPTER 19

PART 2

ACCESS TO SERVICES

Residential tenancies

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.

Changes to legislation: Immigration Act 2016, Section 41 is up to date with all changes known to be in force on or before 20 July 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

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.”

(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

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- (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.
 - (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.

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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.

Commencement Information

II [S. 41](#) in force at 1.12.2016 by [S.I. 2016/1037](#), [reg. 5\(e\)](#)

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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](#)