

2014 No. 1183

IMMIGRATION

The Immigration (Restrictions on Employment) (Codes of Practice and Amendment) Order 2014

<i>Made</i>	- - - -	<i>6th May 2014</i>
<i>Laid before Parliament</i>		<i>8th May 2014</i>
<i>Coming into force</i>	- -	<i>16th May 2014</i>

The Secretary of State makes the following Order in exercise of the powers conferred by sections 15(3), 15(7), 19(2), 20(1), 23(3) and 25(d) of the Immigration, Asylum and Nationality Act 2006(a).

In accordance with section 19(2) and (3) of that Act a draft revised code of practice specifying factors to be considered by the Secretary of State in determining the amount of a penalty imposed under section 15 has been laid before Parliament.

In accordance with section 23(2) and (5) of that Act the Secretary of State has consulted those bodies specified in section 23(2)(a) about a revised code specifying what an employer should or should not do to avoid contravention of the Equality Act 2010, so far as relating to race, or the Race Relations (Northern Ireland) Order 1997(b), published a draft revised code, considered representations made about the draft revised code and has laid a draft revised code before Parliament, after modifying the code to reflect the representations.

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Immigration (Restrictions on Employment) (Codes of Practice and Amendment) Order 2014 and shall come into force on 16th May 2014.

(2) In this Order—

“the 2006 Act” means the Immigration, Asylum and Nationality Act 2006;

“the 2007 Order” means the Immigration (Restrictions on Employment) Order 2007(c).

Amendments to the Immigration (Restrictions on Employment) Order 2007

2. The 2007 Order is amended as follows.

3. For article 4 (excuse from paying civil penalty) substitute—

(a) 2006 c. 13; section 23 was amended by paragraph 86 of Schedule 26 to the Equality Act 2010 (c.15), as inserted by S.I. 2010/2279.

(b) S.I. 869 (N.I. 6).

(c) S.I. 2007/3290 as amended by S.I. 2009/2908 and S.I. 2012/1547.

“4.—(1) To the extent provided for by paragraphs (2) and (3) an employer is excused from paying a penalty under section 15 of the 2006 Act if—

- (a) the employee or prospective employee produces to the employer any of the documents or combination of documents described in part 1 of list B in the Schedule to this Order; and
- (b) the employer complies with the requirements set out in article 6 of this Order.

(2) Subject to article 5 an employer will be excused under this article from paying a penalty under section 15 of the 2006 Act for the period for which a document produced under paragraph (1)(a) provides that the employment is permitted.

(3) If, on the date on which the period specified in paragraph (2) expires, the employer is reasonably satisfied that the employee has an outstanding application to vary his leave to enter or remain in the United Kingdom or the employee has an appeal pending against a decision on that application, the employer will be excused from paying that penalty for a further period beginning with the date on which the period specified in paragraph (2) expires and ending—

- (a) after 28 days, or
- (b) if earlier, on the date on which the Secretary of State gives the employer written notice that the employee does not have the right to undertake the employment in question.

4A.—(1) To the extent provided for by paragraph (2) an employer is excused from paying a penalty under section 15 of the 2006 Act if—

- (a) either—
 - (i) the employee or prospective employee produces to the employer a document described in paragraph 1 or 2 of part 2 of list B in the Schedule to this Order and the employer obtains a Positive Verification Notice issued by the Home Office Employer Checking Service which indicates that the person named in it is allowed to stay in the United Kingdom and is allowed to do the work in question; or
 - (ii) the employer obtains a Positive Verification Notice issued by the Home Office Employer Checking Service which indicates that the person named in it is allowed to stay in the United Kingdom and is allowed to do the work in question; and
- (b) the employer complies with the requirements set out in article 6 of this Order.

(2) Subject to article 5 an employer will be excused under this article from paying a penalty under section 15 of the 2006 Act for a period of six months, beginning with the date of the Positive Verification Notice obtained under paragraph (1)(a).”.

4. In article 5—

- (a) for “and article 4(2)” substitute “, article 4(2) or article 4A(2)”;
- (b) for “only if prior to the commencement of employment the employee produced to the employer any of the documents or combination of documents described in the Schedule to this Order” substitute “only if the employee produces the relevant documents to the employer prior to the commencement of employment”.

5.—(1) Article 6 is renumbered as 6(1).

(2) In article 6—

- (a) for “articles 3 or 4” substitute “article 3, 4 or 4A”;
- (b) in sub-paragraph (a) after “document” insert “and retains a record of the date on which any check was made”;
- (c) in sub-paragraph (f) after “passport” omit “or other travel document”;

- (d) in sub-paragraph (g) after “passport” omit “or other travel document (which is not in the form of a card)”;
- (e) omit sub-paragraph (g)(i);
- (f) omit sub-paragraph (h);
- (g) at the end, insert—

“(2) A further requirement, if the employee or prospective employee is a student who has permission to work for a limited number of hours per week during term time whilst studying in the United Kingdom, is that the employer must obtain and retain details of the term and vacation dates of the course that the employee or prospective employee is undertaking.”.

6. In article 7, for “articles 3 or 4” substitute “article 3, 4 or 4A”.

7. In the Schedule omit the words “or the Border and Immigration Agency” and “by the Border and Immigration Agency” in each place where they appear.

8. In List A in the Schedule—

- (a) in paragraph 1 omit “An ID Card (issued to the holder under the Identity Cards Act 2006) or”;
- (b) for paragraph 2 substitute “A passport or national identity card showing that the holder, or a person named in the passport as the child of the holder, is a national of a European Economic Area country or Switzerland.”;
- (c) in paragraph 3—
 - (i) omit “residence permit.”;
 - (ii) after “certifying” omit “or indicating”;
- (d) in paragraph 5 for “A Biometric Immigration Document issued by the Border and Immigration Agency” substitute “A current biometric immigration document issued by the Home Office”;
- (e) in paragraph 6 for “A passport or other travel document” substitute “A current passport”;
- (f) in paragraph 7 for “An Immigration Status Document” substitute “A current immigration status document”; and
- (g) omit paragraph 13.

9. In the Schedule for List B substitute—

“LIST B - Part 1

1. A current passport endorsed to show that the holder is allowed to stay in the United Kingdom and is allowed to do the type of work in question.

2. A current biometric immigration document issued by the Home Office to the holder which indicates that the person named in it is allowed to stay in the United Kingdom and is allowed to do the work in question.

3. A current residence card (including an accession residence card or a derivative residence card) issued by the Home Office to a non-European Economic Area national who is a family member of a national of a European Economic Area country or Switzerland or who has a derivative right of residence.

4. A current immigration status document containing a photograph issued by the Home Office to the holder with an endorsement indicating that the person named in it is allowed to stay in the United Kingdom and is allowed to do the work in question, when produced in combination with an official document giving the person’s permanent National Insurance Number and their name issued by a Government agency or previous employer.

LIST B – Part 2

1. A certificate of application issued by the Home Office under regulation 17(3) or 18A(2) of the Immigration (European Economic Area) Regulations 2006(a), to a family member of a national of a European Economic Area country or Switzerland stating that the holder is permitted to take employment which is less than 6 months old.

2. An application registration card issued by the Home Office stating that the holder is permitted to take the employment in question.”.

Codes of Practice

10. The revised code of practice entitled “Code of practice on preventing illegal working: Civil penalty scheme for employers”, issued by the Secretary of State under section 19(1) of the 2006 Act, shall come into force on 16th May 2014.

11. The revised code of practice entitled “Code of practice for employers: Avoiding unlawful discrimination while preventing illegal working”, issued by the Secretary of State under section 23(1) of the 2006 Act, shall come into force on 16th May 2014.

Home Office
6th May 2014

James Brokenshire
Minister of State

EXPLANATORY NOTE

(This note is not part of the Order)

An employer is excused from paying a penalty under section 15 of the 2006 Act if the employee produces to the employer any of the documents described in the Schedule to the Immigration (Restrictions on Employment) Order 2007 (“the 2007 Order”) and the employer complies with the requirements prescribed in article 6 of the 2007 Order in relation to verification, copying and recording of any documents produced by an employee.

This Order amends the 2007 Order to update the list of documents, divided into List A and List B, that may be produced to an employer for these purposes and the period of time for which they provide the employer with an excuse from paying a penalty.

Article 4 of the 2007 Order together with the Schedule is amended to modify how an employer will be excused from paying a penalty under section 15(1) of the Act for limited periods.

Article 6 of the 2007 Order is amended to require details about course dates to be produced if an employee is a student who can only work a limited number of hours during term-time. The requirement on the employer to copy the front cover of a passport produced by an employee is removed.

List A is amended to reduce the number of acceptable documents and to require certain documents to be current at the time they are produced to the employer.

List B is replaced with a new List B which is in two parts.

Article 10 of this Order brings into force a revised code of practice specifying factors to be considered by the Secretary of State in determining the amount of a penalty.

Article 11 of this Order brings into force a revised code of practice specifying what an employer should or should not do in order to ensure that, while avoiding liability to a penalty, and while avoiding committing an offence, the employer also avoids contravening race relations legislation.

(a) S.I. 2006/1003. Regulation 18A was inserted by S.I. 2012/1547; there are other amending instruments but none is relevant.

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