



Immigration, Asylum and Nationality Act 2006

2006 CHAPTER 13

Employment

15 Penalty

- (1) It is contrary to this section to employ an adult subject to immigration control if—
 - (a) he has not been granted leave to enter or remain in the United Kingdom, or
 - (b) his leave to enter or remain in the United Kingdom—
 - (i) is invalid,
 - (ii) has ceased to have effect (whether by reason of curtailment, revocation, cancellation, passage of time or otherwise), or
 - (iii) is subject to a condition preventing him from accepting the employment.
- (2) The Secretary of State may give an employer who acts contrary to this section a notice requiring him to pay a penalty of a specified amount not exceeding the prescribed maximum.
- (3) An employer is excused from paying a penalty if he shows that he complied with any prescribed requirements in relation to the employment.
- (4) But the excuse in subsection (3) shall not apply to an employer who knew, at any time during the period of the employment, that it was contrary to this section.
- (5) The Secretary of State may give a penalty notice without having established whether subsection (3) applies.
- (6) A penalty notice must—
 - (a) state why the Secretary of State thinks the employer is liable to the penalty,
 - (b) state the amount of the penalty,
 - (c) specify a 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,

Status: This is the original version (as it was originally enacted).

- (d) specify how the penalty must be paid,
 - (e) explain how the employer may object to the penalty, and
 - (f) explain how the Secretary of State may enforce the penalty.
- (7) An order prescribing requirements for the purposes of subsection (3) may, in particular—
- (a) require the production to an employer of a document of a specified description;
 - (b) require the production to an employer of one document of each of a number of specified descriptions;
 - (c) require an employer to take specified steps to verify, retain, copy or record the content of a document produced to him in accordance with the order;
 - (d) require action to be taken before employment begins;
 - (e) require action to be taken at specified intervals or on specified occasions during the course of employment.

16 Objection

- (1) This section applies where an employer to whom a penalty notice is given objects on the ground that—
- (a) he is not liable to the imposition of a penalty,
 - (b) he is excused payment by virtue of section 15(3), or
 - (c) the amount of the penalty is too high.
- (2) The employer may give a notice of objection to the Secretary of State.
- (3) A notice of objection must—
- (a) be in writing,
 - (b) give the objector's reasons,
 - (c) be given in the prescribed manner, and
 - (d) be given before the end of the prescribed period.
- (4) Where the Secretary of State receives a notice of objection to a penalty he shall consider it and—
- (a) cancel the penalty,
 - (b) reduce the penalty,
 - (c) increase the penalty, or
 - (d) determine to take no action.
- (5) Where the Secretary of State considers a notice of objection he shall—
- (a) have regard to the code of practice under section 19 (in so far as the objection relates to the amount of the penalty),
 - (b) inform the objector of his decision before the end of the prescribed period or such longer period as he may agree with the objector,
 - (c) if he increases the penalty, issue a new penalty notice under section 15, and
 - (d) if he reduces the penalty, notify the objector of the reduced amount.

17 Appeal

- (1) An employer to whom a penalty notice is given may appeal to the court on the ground that—
 - (a) he is not liable to the imposition of a penalty,
 - (b) he is excused payment by virtue of section 15(3), or
 - (c) the amount of the penalty is too high.
- (2) The court may—
 - (a) allow the appeal and cancel the penalty,
 - (b) allow the appeal and reduce the penalty, or
 - (c) dismiss the appeal.
- (3) An appeal shall be a re-hearing of the Secretary of State's decision to impose a penalty and shall be determined having regard to—
 - (a) the code of practice under section 19 that has effect at the time of the appeal (in so far as the appeal relates to the amount of the penalty), and
 - (b) any other matters which the court thinks relevant (which may include matters of which the Secretary of State was unaware);and this subsection has effect despite any provision of rules of court.
- (4) An appeal must be brought within the period of 28 days beginning with—
 - (a) the date specified in the penalty notice as the date upon which it is given, or
 - (b) if the employer gives a notice of objection and the Secretary of State reduces the penalty, the date specified in the notice of reduction as the date upon which it is given, or
 - (c) if the employer gives a notice of objection and the Secretary of State determines to take no action, the date specified in the notice of that determination as the date upon which it is given.
- (5) An appeal may be brought by an employer whether or not—
 - (a) he has given a notice of objection under section 16;
 - (b) the penalty has been increased or reduced under that section.
- (6) In this section “the court” means—
 - (a) where the employer has his principal place of business in England and Wales, a county court,
 - (b) where the employer has his principal place of business in Scotland, the sheriff, and
 - (c) where the employer has his principal place of business in Northern Ireland, a county court.

18 Enforcement

- (1) A sum payable to the Secretary of State as a penalty under section 15 may be recovered by the Secretary of State as a debt due to him.
- (2) In proceedings for the enforcement of a penalty no question may be raised as to—
 - (a) liability to the imposition of the penalty,
 - (b) the application of the excuse in section 15(3), or
 - (c) the amount of the penalty.

- (3) Money paid to the Secretary of State by way of penalty shall be paid into the Consolidated Fund.

19 Code of practice

- (1) The Secretary of State shall issue a code of practice specifying factors to be considered by him in determining the amount of a penalty imposed under section 15.
- (2) The code—
- (a) shall not be issued unless a draft has been laid before Parliament, and
 - (b) shall come into force in accordance with provision made by order of the Secretary of State.
- (3) The Secretary of State shall from time to time review the code and may revise and re-issue it following a review; and a reference in this section to the code includes a reference to the code as revised.

20 Orders

- (1) An order of the Secretary of State under section 15, 16 or 19—
- (a) may make provision which applies generally or only in specified circumstances,
 - (b) may make different provision for different circumstances,
 - (c) may include transitional or incidental provision, and
 - (d) shall be made by statutory instrument.
- (2) An order under section 15(2) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.
- (3) Any other order shall be subject to annulment in pursuance of a resolution of either House of Parliament.

21 Offence

- (1) A person commits an offence if he employs another (“the employee”) knowing that the employee is an adult subject to immigration control and that—
- (a) he has not been granted leave to enter or remain in the United Kingdom, or
 - (b) his leave to enter or remain in the United Kingdom—
 - (i) is invalid,
 - (ii) has ceased to have effect (whether by reason of curtailment, revocation, cancellation, passage of time or otherwise), or
 - (iii) is subject to a condition preventing him from accepting the employment.
- (2) A person guilty of an offence under this section shall be liable—
- (a) on conviction on indictment—
 - (i) to imprisonment for a term not exceeding two years,
 - (ii) to a fine, or
 - (iii) to both, or
 - (b) on summary conviction—

- (i) to imprisonment for a term not exceeding 12 months in England and Wales or 6 months in Scotland or Northern Ireland,
- (ii) to a fine not exceeding the statutory maximum, or
- (iii) to both.

- (3) An offence under this section shall be treated as—
 - (a) a relevant offence for the purpose of sections 28B and 28D of the Immigration Act 1971 (c. 77) (search, entry and arrest), and
 - (b) an offence under Part III of that Act (criminal proceedings) for the purposes of sections 28E, 28G and 28H (search after arrest).
- (4) In relation to a conviction occurring before the commencement of section 154(1) of the Criminal Justice Act 2003 (c. 44) (general limit on magistrates' powers to imprison) the reference to 12 months in subsection (2)(b)(i) shall be taken as a reference to 6 months.

22 Offence: bodies corporate, &c.

- (1) For the purposes of section 21(1) a body (whether corporate or not) shall be treated as knowing a fact about an employee if a person who has responsibility within the body for an aspect of the employment knows the fact.
- (2) If an offence under section 21(1) is committed by a body corporate with the consent or connivance of an officer of the body, the officer, as well as the body, shall be treated as having committed the offence.
- (3) In subsection (2) 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.
- (4) Where an offence under section 21(1) is committed by a partnership (whether or not a limited partnership) subsection (2) above shall have 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.

23 Discrimination: code of practice

- (1) The Secretary of State shall issue a code of practice specifying what an employer should or should not do in order to ensure that, while avoiding liability to a penalty under section 15 and while avoiding the commission of an offence under section 21, he also avoids contravening—
 - (a) the Race Relations Act 1976 (c. 74), or
 - (b) the Race Relations (Northern Ireland) Order 1997 (S.I. 869 (N.I. 6)).
- (2) Before issuing the code the Secretary of State shall—
 - (a) consult—
 - (i) the Commission for Equality and Human Rights,
 - (ii) the Equality Commission for Northern Ireland,
 - (iii) such bodies representing employers as he thinks appropriate, and
 - (iv) such bodies representing workers as he thinks appropriate,

- (b) publish a draft code (after that consultation),
 - (c) consider any representations made about the published draft, and
 - (d) lay a draft code before Parliament (after considering representations under paragraph (c) and with or without modifications to reflect the representations).
- (3) The code shall come into force in accordance with provision made by order of the Secretary of State; and an order—
- (a) may include transitional provision,
 - (b) shall be made by statutory instrument, and
 - (c) shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) A breach of the code—
- (a) shall not make a person liable to civil or criminal proceedings, but
 - (b) may be taken into account by a court or tribunal.
- (5) The Secretary of State shall from time to time review the code and may revise and re-issue it following a review; and a reference in this section to the code includes a reference to the code as revised.
- (6) Until the dissolution of the Commission for Racial Equality, the reference in subsection (2)(a)(i) to the Commission for Equality and Human Rights shall be treated as a reference to the Commission for Racial Equality.

24 Temporary admission, &c.

Where a person is at large in the United Kingdom by virtue of paragraph 21(1) of Schedule 2 to the Immigration Act 1971 (c. 77) (temporary admission or release from detention)—

- (a) he shall be treated for the purposes of sections 15(1) and 21(1) as if he had been granted leave to enter the United Kingdom, and
- (b) any restriction as to employment imposed under paragraph 21(2) shall be treated for those purposes as a condition of leave.

25 Interpretation

In sections 15 to 24—

- (a) “adult” means a person who has attained the age of 16,
- (b) a reference to employment is to employment under a contract of service or apprenticeship, whether express or implied and whether oral or written,
- (c) a person is subject to immigration control if under the Immigration Act 1971 he requires leave to enter or remain in the United Kingdom, and
- (d) “prescribed” means prescribed by order of the Secretary of State.

26 Repeal

Sections 8 and 8A of the Asylum and Immigration Act 1996 (c. 49) (restrictions on employment) shall cease to have effect.