
DRAFT STATUTORY INSTRUMENTS

2013 No.

**The Accession of Croatia (Immigration and
Worker Authorisation) Regulations 2013**

PART 4

PENALTIES AND OFFENCES

Unauthorised employment of accession State national - penalty for employer

11.—(1) It is contrary to this regulation to employ an accession State national subject to worker authorisation during the accession period if that person is not the holder of a valid accession worker authorisation document or, where that person holds such a document, the person would be in breach of a condition of that document in undertaking the employment.

(2) The Secretary of State may give an employer who acts contrary to this regulation a notice requiring him to pay a penalty of a specified amount not exceeding £5,000.

(3) The Secretary of State may give a penalty notice without having established whether the employer is excused under paragraph (5).

(4) 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;
- (d) specify how the penalty must be paid;
- (e) provide a reference number;
- (f) explain how the employer may object to the penalty; and
- (g) explain how the Secretary of State may enforce the penalty.

(5) Subject to paragraph (7), an employer is excused from paying a penalty under this regulation if—

- (a) before the commencement of the employment, the employee or prospective employee produces to the employer any of the following documents—
 - (i) an accession worker authorisation document that authorises the employee or prospective employee to take the employment in question;
 - (ii) an EEA registration certificate which includes a statement that the holder has unconditional access to the United Kingdom labour market; or
 - (iii) one of the following documents confirming that the document holder is not an accession State national subject to worker authorisation by virtue of regulation 2(6)

—
(aa) a passport;

- (bb) a national identity card; or
- (cc) other travel document as defined by regulation 8(5); and
- (b) the employer complies with the requirements set out in paragraph (6) of this regulation.
- (6) The requirements are that—
 - (a) the employer takes all reasonable steps to check the validity of the document;
 - (b) the employer has satisfied himself that the photograph on the document is of the employee or prospective employee;
 - (c) the employer has satisfied himself that the date of birth on the document is consistent with the appearance of the employee or prospective employee;
 - (d) the employer takes all other reasonable steps to check that the employee or prospective employee is the rightful holder of the document; and
 - (e) the employer securely retains a dated copy of the whole of the document in a format which cannot be subsequently altered for a period of not less than two years after the employment has come to an end.
- (7) An employer is not excused from paying a penalty if the employer knew, at any time during the period of the employment, that the employment was contrary to this regulation.
- (8) Nothing in these regulations permits an employer to retain documents produced by an employee or prospective employee for the purposes of paragraph (5) for any period longer than is necessary for the purposes of ensuring compliance with paragraph (6).
- (9) The Secretary of State may issue a code of practice specifying factors to be considered by her in determining the amount of a penalty imposed under paragraph (2) of this regulation.
- (10) The Secretary of State shall lay a code issued under paragraph (9) before Parliament and publish it.
- (11) The Secretary of State may from time to time review the code and may revoke, or 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.

Unauthorised employment of accession State national - penalty for employer - objection

- 12.**—(1) This regulation 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 regulation 11(5); 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 shall—
- (a) be in writing;
 - (b) give the full grounds of objection;
 - (c) give the reference number of the notice given under regulation 11(4);
 - (d) give the name and address of the head or main office of the employer;
 - (e) give the name and address of the employee in respect of whom the penalty was issued;
 - (f) contain details of any appeal made by the employer under regulation 13; and
 - (g) be given within 28 days, beginning with the date specified in the penalty notice as the date on which it was given.

(4) Where the Secretary of State receives a notice of objection to a penalty she 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 she shall—

- (a) have regard to any code of practice issued under regulation 11(9) (in so far as the objection relates to the amount of the penalty);
- (b) inform the objector in writing of her decision within 28 days, beginning with the date on which the notice of objection was given to the Secretary of State, or such longer period as she may agree with the objector;
- (c) if she increases the penalty, issue a new penalty notice under regulation 11; and
- (d) if she reduces the penalty, notify the objector of the reduced amount.

Unauthorised employment of accession State national - penalty for employer - appeal

13.—(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 regulation 11(5); 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) any code of practice issued under regulation 11(9) 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 paragraph 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 regulation 12; or
- (b) the penalty has been increased or reduced under that regulation.

(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 sheriff court; and
- (c) where the employer has his principal place of business in Northern Ireland, a county court.

Unauthorised employment of accession State national - penalty for employer - enforcement

14.—(1) A sum payable to the Secretary of State as a penalty under regulation 11 may be recoverable as if payable under a court order.

(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 regulation 11(5); 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.

Unauthorised employment of accession State national - employer offence

15.—(1) A person commits an offence if he employs another (“the employee”) knowing that the employee is an accession State national subject to worker authorisation and that—

- (a) the employee is not the holder of a valid accession worker authorisation document; or
- (b) the employee is prohibited from undertaking the employment because of a condition in his accession worker authorisation document.

(2) A person guilty of an offence under this section shall be liable on summary conviction—

- (a) to imprisonment for a term not exceeding 51 weeks in England and Wales or 6 months in Scotland or Northern Ireland;
- (b) to a fine not exceeding level 5 on the standard scale; or
- (c) to both.

(3) An offence under this regulation shall be treated as—

- (a) a relevant offence for the purpose of sections 28B (search and arrest by warrant)(1) and 28D (entry and search of premises)(2) of the 1971 Act; and
- (b) an offence under Part 3 of that Act (criminal proceedings) for the purposes of sections 28E (entry and search of premises following arrest), 28G (searching arrested persons) and 28H (searching persons in police custody)(3).

(4) In relation to an offence committed before the commencement of section 281(5) (alteration of penalties for other summary offences)(4) of the Criminal Justice Act 2003, the reference to 51 weeks in paragraph (2)(a) shall be read as a reference to 6 months.

(5) For the purposes of paragraph (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.

(1) Section 28B was inserted by section 129 of the Immigration and Asylum Act 1999 and amended by sections 144 and 150 of the Nationality, Immigration and Asylum Act 2002.

(2) Section 28D was inserted by section 131 of the Immigration and Asylum Act 1999 and amended by sections 144 and 150 of the Nationality, Immigration and Asylum Act 2002.

(3) Sections 28E, 28G and 28H were inserted by sections 132, 134 and 135 of the Immigration and Asylum Act 1999 respectively.

(4) 2003 c.44.

Unauthorised working by accession State national - employee offence and penalty

16.—(1) Subject to paragraph (2), an accession State national subject to worker authorisation who works in the United Kingdom during the accession period shall be guilty of an offence if he does not hold a valid accession worker authorisation document.

(2) A person guilty of an offence under this regulation shall be liable on summary conviction—

- (a) to imprisonment for a term not exceeding more than three months;
- (b) to a fine not exceeding level 5 on the standard scale; or
- (c) to both.

(3) A constable or immigration officer who has reason to believe that a person has committed an offence under this regulation may give that person a notice offering him the opportunity of discharging any liability to conviction for that offence by payment of a penalty of £1000 in accordance with the notice.

(4) Where a person is given a notice under paragraph (3) in respect of an offence under this regulation—

- (a) no proceedings may be instituted for that offence before the expiration of the period of 21 days beginning with the day after the date of the notice; and
- (b) he may not be convicted of that offence if, before the expiration of that period, he pays the penalty in accordance with the notice.

(5) A notice under paragraph (3) must give such particulars of the circumstances alleged to constitute the offence as are necessary for giving reasonable information of the offence.

(6) A notice under paragraph (3) must also state—

- (a) the period during which, by virtue of paragraph (4), proceedings will not be instituted for the offence;
- (b) the amount of the penalty; and
- (c) that the penalty is payable to the Secretary of State at the address specified in the notice.

(7) Without prejudice to payment by any other method, payment of a penalty in pursuance of a notice under paragraph (3) may be made by pre-paying and posting a letter by registered post or the recorded delivery service containing the amount of the penalty (in cash or otherwise) to the Secretary of State at the address specified in the notice.

(8) Where a letter is sent in accordance with paragraph (7) payment is to be regarded as having been made at the time at which that letter would be delivered in the ordinary course of registered post or the recorded delivery service.

(9) A constable or immigration officer may withdraw a penalty notice given under paragraph (3) if the constable or immigration officer decides that—

- (a) the notice was issued in error;
- (b) the notice contains material errors; or
- (c) he has reasonable grounds to believe that the employee has committed an offence under regulation 17.

(10) A penalty notice may be withdrawn—

- (a) whether or not the period specified in paragraph (4)(a) has expired;
- (b) under paragraph (9)(a) and (b), whether or not the penalty has been paid; and
- (c) under paragraph (9)(c), only where the penalty has not yet been paid.

(11) Where a penalty notice has been withdrawn under paragraph (9)—

- (a) notice of the withdrawal must be given to the recipient; and

(b) any amount paid by way of penalty in pursuance of that notice must be repaid to the person who paid it.

(12) Subject to paragraph (13), proceedings shall not be continued or instituted against an employee for an offence under paragraph (1) in connection with which a withdrawal notice was issued.

(13) Proceedings may be continued or instituted for an offence in connection with which a withdrawal notice was issued if—

- (a) where the withdrawal notice was withdrawn pursuant to paragraph (9)(b)—
 - (i) a further penalty notice in respect of the offence was issued at the same time as the penalty notice was withdrawn; and
 - (ii) the penalty has not been paid pursuant to that further penalty notice in accordance with paragraph (4)(a); or
- (b) the withdrawal notice was withdrawn pursuant to paragraph (9)(c).

Deception - employee offence

17.—(1) A person is guilty of an offence if, by means which include deception by him, he obtains or seeks to obtain a worker authorisation registration certificate.

(2) A person guilty of an offence under this regulation shall be liable on summary conviction—

- (a) to imprisonment for a term not exceeding three months;
- (b) to a fine not exceeding level 5 on the standard scale; or
- (c) to both.

Offences under regulations 16 and 17 - search, entry and arrest

18. An offence under regulation 16 or 17 shall be treated as—

- (a) a relevant offence for the purposes of sections 28B (search and arrest by warrant)⁽⁵⁾ and 28D (entry and search of premises)⁽⁶⁾ of the 1971 Act;
- (b) an offence under Part 3 of the 1971 Act (criminal proceedings) for the purposes of sections 28E (entry and search of premises following arrest), 28G (searching arrested persons) and 28H (searching persons in police custody)⁽⁷⁾ of that Act; and
- (c) an offence under section 24(1)(b) of the 1971 Act for the purposes of sections 28A(1) (arrest without warrant), 28CA (business premises: entry to arrest) and 28FA (search for personnel records: warrant unnecessary)⁽⁸⁾ of that Act.

⁽⁵⁾ Section 28B was inserted by section 129 of the Immigration and Asylum Act 1999 and amended by sections 144 and 150 of the Nationality, Immigration and Asylum Act 2002.

⁽⁶⁾ Section 28D was inserted by section 131 of the Immigration and Asylum Act 1999 and amended by sections 144 and 150 of the Nationality, Immigration and Asylum Act 2002.

⁽⁷⁾ Sections 28E, 28G and 28H were inserted by sections 132, 134 and 135 of the Immigration and Asylum Act 1999 respectively.

⁽⁸⁾ Section 28A was inserted by section 128 of the Immigration and Asylum Act 1999 and subsection (1) was amended by section 111 of, and Schedule 7 to, the Serious Organised Crime and Police Act 2005 (c.15); sections 28CA and 28FA were inserted by sections 153 and 154 of the Nationality, Immigration and Asylum Act 2002 respectively and section 28FA was amended by section 28 of the UK Borders Act 2007 (c.30).