



Asylum and Immigration Act 1996

1996 CHAPTER 49

Persons subject to immigration control

8 Restrictions on employment.

- (1) Subject to subsection (2) below, if any person (“the employer”) employs a person subject to immigration control (“the employee”) who has attained the age of 16, the employer shall be guilty of an offence if—
 - (a) the employee has not been granted leave to enter or remain in the United Kingdom; or
 - (b) the employee’s leave is not valid and subsisting, or is subject to a condition precluding him from taking up the employment,and (in either case) the employee does not satisfy such conditions as may be specified in an order made by the Secretary of State.
- (2) Subject to subsection (3) below, in proceedings under this section, it shall be a defence to prove that—
 - (a) before the employment began, there was produced to the employer a document which appeared to him to relate to the employee and to be of a description specified in an order made by the Secretary of State; and
 - (b) either the document was retained by the employer, or a copy or other record of it was made by the employer in a manner specified in the order in relation to documents of that description.
- (3) The defence afforded by subsection (2) above shall not be available in any case where the employer knew that his employment of the employee would constitute an offence under this section.
- (4) A person guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (5) Where an offence under this section committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—

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- (a) any director, manager, secretary or other similar officer of the body corporate; or
 - (b) any person who was purporting to act in any such capacity,
- he as well as the body corporate shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.
- (6) Where the affairs of a body corporate are managed by its members, subsection (5) above shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.
- (7) An order under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (8) In this section—
- “contract of employment” means a contract of service or apprenticeship, whether express or implied, and (if it is express) whether it is oral or in writing;
 - “employ” means employ under a contract of employment and
 - “employment” shall be construed accordingly.

Commencement Information

- II** S. 8 wholly in force at 27.1.1997; s. 8 not in force at Royal Assent see s. 13(3); s. 8 in force for certain purposes at 1.12.1996 and wholly in force at 27.1.1997 by S.I. 1996/2127, art. 2

VALID FROM 19/02/2001

[^{F1}8A Code of practice.

- (1) The Secretary of State must issue a code of practice as to the measures which an employer is to be expected to take, or not to take, with a view to securing that, while avoiding the commission of an offence under section 8, he also avoids unlawful discrimination.
- (2) “Unlawful discrimination” means—
 - (a) discrimination in contravention of section 4(1) of the ^{M1}Race Relations Act 1976 (“the 1976 Act”); or
 - (b) in relation to Northern Ireland, discrimination in contravention of Article 6(1) of the ^{M2}Race Relations (Northern Ireland) Order 1997 (“the 1997 Order”).
- (3) Before issuing the code, the Secretary of State must—
 - (a) prepare and publish a draft of the proposed code; and
 - (b) consider any representations about it which are made to him.
- (4) In preparing the draft, the Secretary of State must consult—
 - (a) the Commission for Racial Equality;
 - (b) the Equality Commission for Northern Ireland; and
 - (c) such organisations and bodies (including organisations or associations of organisations representative of employers or of workers) as he considers appropriate.

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- (5) If the Secretary of State decides to proceed with the code, he must lay a draft of the code before both Houses of Parliament.
- (6) The draft code may contain modifications to the original proposals made in the light of representations to the Secretary of State.
- (7) After laying the draft code before Parliament, the Secretary of State may bring the code into operation by an order made by statutory instrument.
- (8) An order under subsection (7)—
 - (a) shall be subject to annulment in pursuance of a resolution of either House of Parliament;
 - (b) may contain such transitional provisions or savings as appear to the Secretary of State to be necessary or expedient in connection with the code.
- (9) A failure on the part of any person to observe a provision of the code does not of itself make him liable to any proceedings.
- (10) But the code is admissible in evidence—
 - (a) in proceedings under the 1976 Act before an employment tribunal;
 - (b) in proceedings under the 1997 Order before an industrial tribunal.
- (11) If any provision of the code appears to the tribunal to be relevant to any question arising in such proceedings, that provision is to be taken into account in determining the question.
- (12) The Secretary of State may from time to time revise the whole or any part of the code and issue the code as revised.
- (13) The provisions of this section also apply (with appropriate modifications) to any revision, or proposed revision, of the code.]

Textual Amendments

- F1** S. 8A inserted (19.2.2001 for specified purposes and otherwise 2.5.2001) by [1999 c. 33, s. 22](#); [S.I. 2001/239, art. 2, Sch.](#); [S.I. 2001/1394, art. 2, Sch.](#)

Marginal Citations

- M1** [1976 c. 74.](#)
M2 [S.I. 1997/869 \(N.I. 6\).](#)

VALID FROM 26/07/1996

9 Entitlement to housing accommodation and assistance.

- (1) Each housing authority shall secure that, so far as practicable, no tenancy of, or licence to occupy, housing accommodation provided under the accommodation Part is granted to a person subject to immigration control unless he is of a class specified in an order made by the Secretary of State.
- (2) A person subject to immigration control—

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- (a) shall not be eligible for accommodation or assistance under the homelessness Part; and
- (b) shall be disregarded in determining, for the purposes of that Part, whether another person—
- (i) is homeless or is threatened with homelessness; or
 - (ii) has a priority need for accommodation,
- unless he is of a class specified in an order made by the Secretary of State.
- (3) An order under this section—
- (a) may make different provision for different circumstances or for accommodation or assistance of different descriptions; and
 - (b) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) In this section—
- “the accommodation Part” and “the homelessness Part” mean respectively—
- (a) in relation to England and Wales, Parts II and III of the ^{M3}Housing Act 1985;
 - (b) in relation to Scotland, Parts I and II of the ^{M4}Housing (Scotland) Act 1987;
 - (c) in relation to Northern Ireland, Part II of the ^{M5}Housing (Northern Ireland) Order 1981 and Part II of the ^{M6}Housing (Northern Ireland) Order 1988;
- “housing authority” means—
- (a) in relation to England and Wales, a local housing authority within the meaning of the ^{M7}Housing Act 1985;
 - (b) in relation to Scotland, a local authority within the meaning of the Housing (Scotland) Act 1987;
 - (c) in relation to Northern Ireland, the Northern Ireland Housing Executive;
- “licence to occupy”, in relation to Scotland, means a permission or right to occupy;
- “tenancy”, in relation to England and Wales, has the same meaning as it has in the Housing Act 1985.

Commencement Information

- I2** S. 9 partly in force; s. 9 not in force at Royal Assent see s. 13(3); s. 9(1)(2) in force for certain purposes at 26.7.1996 by S.I. 1996/2053, art. 2, **Sch. Pt. I**; s. 9(1)(2)(4) in force at 19.8.1996 by S.I. 1996/2127, art. 2, **Sch. Pt. I**

Marginal Citations

- M3** 1985 c. 68.
M4 1987 c. 26.
M5 S.I. 1981/156 (N.I.3).
M6 S.I. 1988/1990 (N.I.23).
M7 1985 c. 68.

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VALID FROM 19/08/1996

10 Entitlement to child benefit.

- (1) The provision set out in subsection (2) below shall be inserted—
- (a) after section 146 of the ^{M8}Social Security Contributions and Benefits Act 1992, as section 146A of that Act; and
 - (b) after section 142 of the ^{M9}Social Security Contributions and Benefits (Northern Ireland) Act 1992, as section 142A of that Act.
- (2) The provision is as follows—

“142A Persons subject to immigration control.

No person subject to immigration control within the meaning of the Asylum and Immigration Act 1996 shall be entitled to child benefit for any week unless he satisfies prescribed conditions.”

Commencement Information

- I3** s. 10 wholly in force at 7.10.1996; s. 10 not in force at Royal Assent see s. 13(3); s. 10 in force for certain purposes at 19.8.1996 by S.I. 1996/2127, art. 2, Sch. Pt. I; s. 10 in force at 7.10.1996 by S.I. 1996/2127, art. 2, Sch. Pt. II

Marginal Citations

- M8** 1992 c. 4.
M9 1992 c. 7.

11 Saving for social security regulations.

- (1) Notwithstanding any enactment or rule of law, regulations may exclude any person who has made a claim for asylum from entitlement to any of the following benefits, namely—
- (a) income support, housing benefit and council tax benefit under the Social Security Contributions and Benefits Act 1992;
 - (b) income support and housing benefit under the Social Security Contributions and Benefits (Northern Ireland) Act 1992; and
 - (c) jobseeker’s allowance under the ^{M10}Jobseekers Act 1995 or the ^{M11}Jobseekers (Northern Ireland) Order 1995.
- (2) Regulations may provide that, where such a person who is so excluded is subsequently recorded by the Secretary of State as a refugee within the meaning of the Convention—
- (a) that person may, within a prescribed period, claim the whole or any prescribed proportion of any income support, housing benefit or council tax benefit to which he would have been entitled had he been recorded as a refugee immediately after he made the claim for asylum; and
 - (b) where he makes such a claim as is mentioned in paragraph (a) above in respect of housing benefit or council tax benefit having resided in the areas of two or more local authorities in Great Britain, the claim shall be investigated and

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determined, and any benefit awarded shall be paid or allowed, by such one of those authorities as may be prescribed.

- (3) Regulations making such provision as is mentioned in subsection (2)(b) above may require the other authorities there mentioned to supply the prescribed authority with such information as it may reasonably require in connection with the exercise of its functions under the regulations.
- (4) Schedule 1 to this Act—
- (a) Part I of which modifies the ^{M12}Social Security (Persons from Abroad) Miscellaneous Amendments Regulations 1996; and
 - (b) Part II of which modifies the ^{M13}Social Security (Persons from Abroad) (Miscellaneous Amendments) Regulations (Northern Ireland) 1996,
- shall have effect.
- (5) The ^{M14}Jobseeker's Allowance (Amendment) Regulations 1996 shall have effect as if they had been made on the day on which this Act is passed.
- (6) In this section—
- “claim for asylum” and “the Convention” have the same meanings as in the 1993 Act;
- “prescribed” means prescribed by regulations;
- “regulations”—
- (a) in relation to income support, housing benefit or council tax benefit under the ^{M15}Social Security Contributions and Benefits Act 1992, means regulations under that Act or the ^{M16}Social Security Administration Act 1992;
 - (b) in relation to income support or housing benefit under the ^{M17}Social Security Contributions and Benefits (Northern Ireland) Act 1992, means regulations under that Act or the ^{M18}Social Security Administration (Northern Ireland) Act 1992;
 - (c) in relation to jobseeker's allowance under the ^{M19}Jobseekers Act 1995, means regulations under that Act or the Social Security Administration Act 1992;
 - (d) in relation to jobseeker's allowance under the ^{M20}Jobseekers (Northern Ireland) Order 1995, means regulations under that Order or the Social Security Administration (Northern Ireland) Act 1992.

Marginal Citations

- M10** 1995 c. 18.
M11 S.I. 1995/2705.
M12 S.I. 1996/30.
M13 S.R. (N.I.) 1996 No. 11.
M14 S.I. 1996/1516.
M15 1992 c. 4.
M16 1992 c. 5.
M17 1992 c. 7.
M18 1992 c. 8.
M19 1995 c. 18.
M20 S.I. 1995/2705.

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