

IMMIGRATION, ASYLUM AND NATIONALITY ACT 2006

EXPLANATORY NOTES

EMPLOYMENT

Section 15: Penalty

37. **Section 15** provides that a person is liable to a civil penalty if he employs an adult subject to immigration control who has not been granted leave to enter or remain in the United Kingdom or whose leave is invalid, has ceased to have effect (whether by reason of curtailment, revocation, cancellation, passage of time or otherwise), or is subject to a condition preventing him from accepting the employment. An employer is excused from paying a penalty if he complies with the requirements of an order made by the Secretary of State. The excuse does not apply where the employer knew that his employment of the individual was unlawful. The section describes the matters to be covered in the penalty notice and sets out the parameters of the requirements which may be provided for in an order of the Secretary of State. Those are the requirements which, if complied with, will excuse the employer from paying the penalty.
38. Subsection (1) sets out the circumstances in which an employer may be liable to a penalty. Subsection (2) provides the Secretary of State's power to impose a penalty.
39. Subsection (3) sets out the circumstances in which an employer is excused from paying a penalty. Subsection (4) provides that the employer loses the excuse if he knew at any time during the employment that it was contrary to this section. Subsection (5) provides that as a matter of law, the onus is on the employer to satisfy the Secretary of State that he can establish an excuse under subsection (3), rather than on the Secretary of State to establish this prior to the service of a penalty notice.
40. Subsection (6) sets out the specific matters to be covered in a penalty notice, including the reason why the Secretary of State thinks the employer is liable, the amount of the penalty, the date before it should be paid, and other practical points.
41. Subsection (7) sets out the parameters of the requirements which may be placed on employers by way of an order of the Secretary of State. The requirements, if complied with, will excuse the employer from paying a penalty. They relate to the checking, copying and retention of specified documents.

Section 16: Objection

42. **Section 16** sets out the procedure for employers to object to the Secretary of State in relation to a penalty notice, and for the Secretary of State to consider objections.
43. Subsections (1) and (2) provide that an employer may object to his liability to the imposition of a penalty and to the amount. He may also object on the grounds that he is excused payment because he has complied with the requirements of an order under section 11 subsection (7).

44. Subsection (3) sets out the form the objection must take. It enables the Secretary of State to prescribe the manner and time period in which the objection should be made.
45. Subsections (4) and (5) cover the actions to be carried out by the Secretary of State on receipt of an objection, and the possible outcomes of his consideration. Subsection (4) provides that the Secretary of State must consider an objection and may cancel, reduce, increase it or take no action. Subsection (5) provides that where the Secretary of State considers a notice of objection, he must have regard to the code of practice issued under section 19 specifying the criteria to be applied in determining the amount. The Secretary of State must inform the objector of his decision within a prescribed or agreed period. If the penalty is increased, a new notice must be issued. If the penalty is reduced, the Secretary of State must inform the objector of the reduced amount.

Section 17: Appeal

46. **Section 17** sets out the arrangements for an employer wishing to appeal to the court against a penalty.
47. Subsection (1) provides that an employer on whom a penalty is served may appeal to the court on the grounds that he is not liable to the penalty, the amount is too high, or he is excused payment having complied with the specified requirements.
48. Subsection (2) covers the actions that may be taken by the court. Subsection (3) clarifies the nature of the appeal and the matters to which the court must have regard in determining the case. Subsection (4) specifies the time period within which an appeal may be brought. The 28 day period runs from the specified date upon which the notice is given, including where the Secretary of State imposes a new notice increasing the penalty following his consideration of an objection under section 16. The 28 day period also runs from the date on which, having considered an objection under section 16, the Secretary of State gives the employer notice that the penalty is reduced or that he intends to make no change to the penalty. Subsection (5) provides that an appeal may be brought by an employer irrespective of whether he has objected to the Secretary of State under section 16 and the outcome of any objection. Subsection (6) defines "court" for the purpose of the section.

Section 18: Enforcement

49. **Section 18** covers the arrangements for enforcing a penalty imposed by the Secretary of State. Subsection (1) provides that the amount may be recovered as a debt. Subsection (2) restricts the matters that may be raised in proceedings for the enforcement of the penalty. In such proceedings, no question may be raised as to the employer's liability to the penalty or its amount, because the legislation provides a separate right of action in relation to these matters in section 17. Subsection (3) provides that any penalty money paid to the Secretary of State shall be paid into the Consolidated Fund.

Section 19: Code of practice

50. **Section 19** requires the Secretary of State to issue a code of practice specifying the criteria to be applied in determining whether to impose a penalty and the amount. The code must be laid before Parliament in draft before it can come into force by order of the Secretary of State, who must review the code from time to time.

Section 20: Orders

51. **Section 20** elaborates on the Secretary of State's order-making powers under sections 15, 16 and 19. An order under section 15(2) is subject to the affirmative resolution procedure. The other order-making powers under section 15, 16 and 19 are subject to the negative resolution procedure.

Section 21: Offence

52. **Section 21** creates a new criminal offence of employing a person knowing that they are an adult subject to immigration control who has not been granted leave to enter or remain (unless granted permission to work by the Secretary of State), or whose leave to remain is invalid, has ceased to have effect (whether by reason of curtailment, revocation, cancellation, passage of time or otherwise) or subject to a condition preventing him from accepting the employment. On conviction following indictment, the maximum penalty is two years imprisonment and/or a fine. On summary conviction, the maximum penalty is 12 months imprisonment in England and Wales (once section 154(1) of the Criminal Justice Act 2003 is commenced), 6 months in Scotland or Northern Ireland, or a fine up to the statutory maximum, or both.
53. Subsection (3) provides that the offence is to be treated as a relevant offence for the purpose of sections 28B and 28D of the Immigration Act 1971 and an offence under Part III of that Act for the purposes of sections 28E, 28G and 28H. The practical effect of this is to provide immigration officers with arrest, entry and search powers in relation to the offence.

Section 22: Offence: bodies corporate, &c

54. **Section 22** defines the liability of bodies corporate, officers of bodies, and members of partnerships in relation to the criminal offence in section 21. Subsection (1) provides that a body shall be treated as knowing a fact about an employee if a person who has responsibility within that body for an aspect of the employment knows the fact. Subsection (2) provides that where an offence under section 20 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. Subsection (3) defines an officer of a body for the purpose of the section, and subsection (4) relates to partnerships.

Section 23: Discrimination: code of practice

55. **Section 23** requires the Secretary of State to issue a code of practice to employers specifying how to avoid contravening the Race Relations Act 1976 or the Race Relations (Northern Ireland) Order 1996 while avoiding liability for a civil penalty under section 15 or the commission of a criminal offence under section 21.
56. Subsection (2) sets out the steps the Secretary of State must take to consult certain bodies before issuing the code. Subsection (3) provides that the code shall be brought into operation following an order made by the Secretary of State. Subsection (4) provides that a breach of the code does not make a person liable to civil or criminal proceedings, but may be taken into account by a court of tribunal. Subsection (5) provides that the Secretary of State shall review the code and may revise and re-issue a new code following the review. Subsection (6) provides that until the dissolution of the Commission for Racial Equality, reference to the Commission for Equality and Human Rights in subsection (2)(a)(i) shall be treated as a reference to the Commission for Racial Equality.

Section 24: Temporary admission, &c.

57. **Section 24** provides that where a person is at large in the United Kingdom by virtue of having been granted temporary admission or release from detention under paragraph 21(1) of Schedule 2 to the Immigration Act 1971, he is to be treated for the purpose of the employer's liability to a penalty in section 15 or the commission of an offence in section 21 as if the person had been granted leave to enter the United Kingdom and any restriction as to employment shall be treated as a condition of leave. The practical effect of this is that an employer is not liable to a penalty under section 15 and commits no offence under section 21 if he employs someone who does not have leave to enter or

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remain, but has been granted temporary admission or release together with permission to take employment under paragraph 21(1) of Schedule 2 to the Immigration Act 1971.