
STATUTORY INSTRUMENTS

2007 No. 3290

The Immigration (Restrictions on Employment) Order 2007

Citation, commencement and interpretation

1. This order may be cited as the Immigration (Restrictions on Employment) Order 2007 and shall come into force on 29 February 2008.

2. In this order—

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

“document” means an original document.

Excuse from paying civil penalty

3.—(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) the employee or prospective employee produces to the employer any of the documents or combinations of documents described in list A in the Schedule to this Order; and

(b) the employer complies with the requirements set out in article 6 of this order.

(2) An employer will be excused under this article from paying a penalty under section 15 of the 2006 Act—

(a) for the duration of the employment, if the document or combination of documents is produced prior to the commencement of employment; or

(b) subject to article 5, for the remainder of the employment, if the document or combination of documents is produced after the employment has commenced.

4.—(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) the employee or prospective employee produces to the employer any of the documents or combination of documents described in 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 a period of twelve months, beginning with the date on which the employee produced the document or combination of documents.

5. An employer is excused from paying a penalty under section 15 of the 2006 Act by virtue of article 3(2)(b) and article 4(2) 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.

6. The requirements in relation to any documents or combinations of documents produced by an employee pursuant to articles 3 or 4 of this order are that—

(a) the employer takes all reasonable steps to check the validity of the document;

- (b) the copy or copies are retained securely by the employer for a period of not less than two years after the employment has come to an end;
- (c) if a document contains a photograph, the employer has satisfied himself that the photograph is of the prospective employee or employee;
- (d) if a document contains a date of birth, the employer has satisfied himself that the date of birth is consistent with the appearance of the prospective employee or employee;
- (e) the employer takes all other reasonable steps to check that the prospective employee or employee is the rightful owner of the document;
- (f) if the document is not a passport or other travel document the employer retains a copy of whole of the document in a format which cannot be subsequently altered; and
- (g) if the document is a passport or other travel document, the following pages of that document are copied in a format which cannot be subsequently altered—
 - (i) the front cover;
 - (ii) any page containing the holder's personal details including nationality;
 - (iii) any page containing the holder's photograph;
 - (iv) any page containing the holder's signature;
 - (v) any page containing the date of expiry; and
 - (vi) any page containing information indicating the holder has an entitlement to enter or remain in the UK and undertake the work in question.

7. Nothing in this Order permits employers to retain documents produced by an employee for the purposes of articles 3 or 4 for any period longer than is necessary for the purposes of ensuring compliance with article 6.

Objections

8. The manner prescribed in which the notice of objection must be given is that it must contain—
- (a) the reference number of the notice given under section 15(2) of the 2006 Act;
 - (b) the name and contact address of the employer;
 - (c) the name and contact address of the employee in respect of whom the penalty was issued;
 - (d) the full grounds of objection;
 - (e) where the employer requests permission to pay by instalments, full details of the employer's ability to pay the penalty;
 - (f) confirmation and details of any appeal made by the employer to a County Court or Sheriff Court on the basis that the employer is not liable to the penalty, he is excused payment by virtue of section 15(3) of the 2006 Act, or that the amount of the penalty is too high; and
 - (g) any documents to be relied upon in support of the objection.

9. The prescribed period within which a notice of objection must be given for the purposes of section 16(3)(d) of the 2006 Act is 28 days, beginning with the date specified in the penalty notice as the date upon which it is given.

10. The period prescribed for the purposes of section 16(5)(b) of the 2006 Act within which the Secretary of State must inform the objector of his decision is 28 days, beginning with the date on which the notice of objection was given to the Secretary of State.

Codes of Practice

11. The code of practice entitled “Civil Penalties for Employers”, issued by the Secretary of State under section 19(1) of the 2006 Act shall come into force on 29 February 2008.

12. The code of practice entitled “Guidance for Employers on the Avoidance of Unlawful Discrimination in Employment Practice While Seeking to Prevent Illegal Working”, issued by the Secretary of State under section 23(1) of the 2006 Act shall come into force on 29 February 2008.

Home Office
15th November 2007

Liam Byrne
Minister of State