

2007 No. 3290

IMMIGRATION

The Immigration (Restrictions on Employment) Order 2007

Made - - - - *15th November 2007*

Laid before Parliament *22nd November 2007*

Coming into force - - *29th February 2008*

The Secretary of State makes the following order, in exercise of the powers conferred by sections 15(3), 15(7), 16(3), 16(5), 19(2), 23(3) and 25(d) of the Immigration, Asylum and Nationality Act 2006(a).

In accordance with section 19(2)(a) of that Act a draft code of practice specifying factors to be considered by the Secretary of State in determining the amount of a penalty imposed under section 15 has been laid before Parliament.

In accordance with section 23(2) of that Act the Secretary of State has consulted those bodies specified in section 23(2)(a) about a code specifying what an employer should or should not do to avoid contravention of the Race Relations Act 1976(b) or the Race Relations (Northern Ireland) Order 1997(c), published a draft code, considered representations made about the published draft code and has laid a draft code before Parliament, after modifying the code to reflect the representations.

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.

(a) 2006 c.13.
(b) 1976 c 74.
(c) S.I. 869 (N.I. 6).

(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

SCHEDULE

Articles 3 and 4

LIST A

1. A passport showing that the holder, or a person named in the passport as the child of the holder, is a British citizen or a citizen of the United Kingdom and Colonies having the right of abode in the United Kingdom.

2. A passport or national identity card showing that the holder, or a person named in the passport as the child of the holder, is a national of the European Economic Area or Switzerland.

3. A residence permit, registration certificate or document certifying or indicating permanent residence issued by the Home Office or the Border and Immigration Agency to a national of a European Economic Area country or Switzerland.

4. A permanent residence card issued by the Home Office or the Border and Immigration Agency to the family member of a national of a European Economic Area country or Switzerland.

5. A Biometric Immigration Document issued by the Border and Immigration Agency to the holder which indicates that the person named in it is allowed to stay indefinitely in the United Kingdom, or has no time limit on their stay in the United Kingdom.

6. A passport or other travel document endorsed to show that the holder is exempt from immigration control, is allowed to stay indefinitely in the United Kingdom, has the right of abode in the United Kingdom, or has no time limit on their stay in the United Kingdom.

7. An Immigration Status Document issued by the Home Office or the Border and Immigration Agency to the holder with an endorsement indicating that the person named in it is allowed to stay indefinitely in the United Kingdom or has no time limit on their stay in the United Kingdom, when produced in combination with an official document giving the person's permanent National Insurance Number and their name issued by a Government agency or a previous employer.

8. A full birth certificate issued in the United Kingdom which includes the name(s) of at least one of the holder's parents, when produced in combination with an official document giving the person's permanent National Insurance Number and their name issued by a Government agency or a previous employer.

9. A full adoption certificate issued in the United Kingdom which includes the name(s) of at least one of the holder's adoptive parents when produced in combination with an official document giving the person's permanent National Insurance Number and their name issued by a Government agency or a previous employer.

10. A birth certificate issued in the Channel Islands, the Isle of Man or Ireland, when produced in combination with an official document giving the person's permanent National Insurance Number and their name issued by a Government agency or a previous employer.

11. An adoption certificate issued in the Channel Islands, the Isle of Man or Ireland, when produced in combination with an official document giving the person's permanent National Insurance Number and their name issued by a Government agency or a previous employer.

12. A certificate of registration or naturalisation as a British citizen, when produced in combination with an official document giving the person's permanent National Insurance Number and their name issued by a Government agency or a previous employer.

13. A letter issued by the Home Office or the Border and Immigration Agency to the holder which indicates that the person named in it is allowed to stay indefinitely in the United Kingdom when produced in combination with an official document giving the person's permanent National Insurance Number and their name issued by a Government agency or a previous employer.

LIST B

1. A passport or travel document endorsed to show that the holder is allowed to stay in the United Kingdom and is allowed to do the type of work in question, provided that it does not require the issue of a work permit.

2. A Biometric Immigration Document issued by the Border and Immigration Agency to the holder which indicates that the person named in it can stay in the United Kingdom and is allowed to do the work in question.

3. A work permit or other approval to take employment issued by the Home Office or the Border and Immigration Agency when produced in combination with either a passport or another travel document endorsed to show the holder is allowed to stay in the United Kingdom and is allowed to do the work in question, or a letter issued by the Home Office or the Border and Immigration Agency to the holder or the employer or prospective employer confirming the same.

4. A certificate of application issued by the Home Office or the Border and Immigration Agency to or for a family member of a national of a European Economic Area country or Switzerland stating that the holder is permitted to take employment which is less than 6 months old when produced in combination with evidence of verification by the Border and Immigration Agency Employer Checking Service.

5. A residence card or document issued by the Home Office or the Border and Immigration Agency to a family member of a national of a European Economic Area country or Switzerland.

6. An Application Registration Card issued by the Home Office or the Border and Immigration Agency stating that the holder is permitted to take employment, when produced in combination with evidence of verification by the Border and Immigration Agency Employer Checking Service.

7. An Immigration Status Document issued by the Home Office or the Border and Immigration Agency to the holder with an endorsement indicating that the person named in it can stay in the United Kingdom, and is allowed to do the type of work in question, when produced in combination with an official document giving the person's permanent National Insurance Number and their name issued by a Government agency or a previous employer.

8. A letter issued by the Home Office or the Border and Immigration Agency to the holder or the employer or prospective employer, which indicates that the person named in it can stay in the United Kingdom and is allowed to do the work in question when produced in combination with an official document giving the person's permanent National Insurance Number and their name issued by a Government agency or a previous employer.

EXPLANATORY NOTE

(This note is not part of the Order)

Article 3 together with the Schedule describe how an employer will be excused from paying a penalty under section 15 of the Immigration, Asylum and Nationality Act 2006 for either the duration or the remainder of the employment.

Article 4 together with the Schedule describe how an employer will be excused from paying a penalty under section 15 of the 2006 Act for limited periods.

Article 5 together with the Schedule provides that an employer is only excused from paying a penalty if documents have been provided prior to the commencement of employment.

Article 6 sets out requirements on an employer in relation to documents obtained by them from an employee.

Article 7 prevents employers from retaining documents for any period longer than is necessary for the purposes of satisfying article 5.

Article 8 prescribes the manner in which an objection against a penalty must be made.

Article 9 prescribes the period in which an objection must be made.

Article 10 prescribes the period within which the Secretary of State must inform the objector of her decision.

Article 11 brings into force the code of practice specifying factors to be considered by the Secretary of State in determining the amount of a penalty.

Article 12 brings into force the code of practice specifying what an employer should or should not do in order to ensure that, while avoiding liability to a penalty, and while avoiding committing an offence, he also avoids contravening race relations legislation.

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The Immigration (Restrictions on Employment) Order 2007

£3.00

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Stationery Office and Queen's Printer of Acts of Parliament.

E1603 11/2007 171603T 19585

