
EXPLANATORY NOTE

(This note is not part of the Order)

This Order is the third commencement order made under the Immigration Act 2014 (“the Act”). Article 2 lists the provisions of the Act which will come into force on 20th October 2014, subject to saving provision in articles 9, 10 and 11. Article 3 lists the Part 4 provisions of the Act which will come into force on 20th October 2014 for the purposes of making secondary legislation, and article 4 lists the other provisions coming into force on 20th October 2014.

Article 5 lists the provisions coming into force on 17th November 2014. Articles 6 and 7 commence provisions in Chapter 1 of Part 3 on residential tenancies. Article 6 lists provisions which will come into force in certain areas only, and article 7 lists other provisions which come into force, in each case on 1st December 2014. Article 8 lists the provisions in Part 6 of, and Part 11 of Schedule 9 to the Act, relating to fees which will come into force on 15th December 2014.

Articles 9, 10 and 11 make transitional and saving provision in relation to sections 1, 15 and 17(2) of, and paragraphs 3, 4, 5, 6 and 7, and Part 4 of Schedule 9 (apart from paragraph 26(2), (3) and (5)) to, the 2014 Act (“the relevant provisions”), which substitute new provisions about the removal of persons unlawfully in the United Kingdom, and rights of appeal. Article 9 makes saving provision in relation to the “saved provisions” so that they continue to have effect, and the relevant provisions do not have effect, other than so far as they relate to the persons in articles 10 and 11, unless article 11(2) and (3) applies. The “saved provisions” are defined as meaning section 10 of the Immigration and Asylum Act 1999 (c. 33), sections 62, 72 and 76, and Part 5 of the Nationality, Immigration and Asylum Act 2002 (c. 41) (“the 2002 Act”), section 8(7) of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 (c. 19), section 47 of the Immigration, Asylum and Nationality Act 2006 (c. 13) and paragraph 19(10) of Schedule 1 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10) as in force immediately prior to 20th October 2014.

The persons referred to in article 10 are a person (“P1”) who becomes a foreign criminal under section 117D(2) of the 2002 Act on or after 20th October 2014 or their family members. The persons referred to in article 11 are a person (“P2”) who makes an in-country application for leave to remain as a Tier 4 Migrant or as their family member (“the Tier 4 applicant”) on or after 20th October 2014. The effect of the saving provision is that only the persons in articles 10 and 11 will be subject to the new appeals provisions in section 82(2), as inserted by section 15(2) of the 2014 Act, which provide a right of appeal to the First-tier Tribunal where a person’s protection claim or human rights claim has been refused, or their protection status has been revoked.

Article 11(2) provides that the saved provisions will apply, and the relevant provisions will not apply where P2, having made a Tier 4 application, then makes a further application for leave to enter, or for leave to remain which is not a Tier 4 application, provided that the further application is not a protection claim or a human rights claim that is made while they are in the UK, other than at a port. Article 11(3) provides that where article 11(2) applies, the saved provisions will also have effect where a decision is taken in relation to P2 which is an immigration decision under section 82(2) of the 2002 Act as in force immediately prior to 20th October 2014, or to which section 83 or 83A of the 2002 Act as in force immediately prior to 20th October 2014 applies. This ensures that any subsequent decision, including a decision to refuse or revoke an asylum claim, made after the application in 11(2), will fall under the appeals provisions in force prior to 20th October 2014, if applicable. Article 11(4) contains a transitional provision which provides that where a person has already had a right of appeal, or brought an appeal, under the version of section 82(1) of the 2002 Act as in force immediately prior to 20th October 2014, the reference to a “decision” in section 96(1)

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(a) is to be read as a reference to an “immigration decision” so that the previous right of appeal will apply in relation to section 96(1).

Article 12 has the effect that Chapter 1 of Part 3 of the Act, which imposes restrictions on residential tenancy agreements, does not apply to an agreement entered into before 1st December 2014. Article 13 makes transitional and savings provisions in relation to the fees powers now being commenced. It provides that, whilst the existing powers under which fees are levied are here revoked, the statutory instruments made under those powers (which set out the fees to be charged in respect of specified immigration and nationality functions) will remain in force. This means that such fees can continue to be charged, until new fees regulations (made under the fees powers contained in Articles 68 and 69 of the 2014 Act) are laid.

Article 14 revokes article 4 of the Immigration Act 2014 (Commencement No.1, Transitory and Saving Provisions) Order 2014, subject to the saving provision in article 15.