

2018 No. 1340

IMMIGRATION

The Immigration (Restrictions on Employment) (Code of Practice and Miscellaneous Amendments) Order 2018

<i>Made</i>	- - - -	<i>6th December 2018</i>
<i>Laid before Parliament</i>		<i>13th December 2018</i>
<i>Coming into force</i>	- -	<i>28th January 2019</i>

The Secretary of State makes the following Order in exercise of the powers conferred by sections 15(3), 15(7)(b), (c), (d) and (e), 19(2) and (3), and 25(d) of the Immigration, Asylum and Nationality Act 2006(a) and section 38 and paragraph 5(6)(b) and (c) of Schedule 6 to the Immigration Act 2016(b).

In accordance with section 19(2) and (3) of the Immigration, Asylum and Nationality Act 2006, a draft revised code of practice specifying factors to be considered by the Secretary of State in determining the amount of a penalty imposed under section 15 of that Act has been laid before Parliament.

Citation and commencement

1. This Order may be cited as the Immigration (Restrictions on Employment) (Code of Practice and Miscellaneous Amendments) Order 2018 and comes into force on 28th January 2019.

Amendments to the Immigration (Restrictions on Employment) Order 2007

- 2.—(1) The Immigration (Restrictions on Employment) Order 2007(c) is amended as follows.
- (2) In article 2 (interpretation), after the definition of “document”, insert—
- ““employee”, except in articles 4(3) and 4B(3), includes a reference to a prospective employee;”.
- (3) In article 3 (excusal from paying civil penalty: right to work without time limit)—
- (a) in paragraph (1), for “To the extent provided for by paragraph (2)” substitute “Subject to article 5,”;
- (b) in paragraph (1)(a), omit “or prospective employee”;
- (c) omit paragraph (2).
- (4) In article 4 (excusal from paying civil penalty: time-limited right to work)—
- (a) in paragraph (1)(a), omit “or prospective employee”;

(a) 2006 c. 13.
(b) 2016 c. 19.
(c) S.I. 2007/3290, amended by S.I. 2009/2908 and S.I. 2014/1183; there are other amending instruments but none is relevant.

- (b) in paragraph (3), after “appeal” insert “or administrative review”.
- (5) In article 4A (excusal from paying civil penalty: Positive Verification Notices), in paragraph (1)(a)(i), omit “or prospective employee”.
- (6) After article 4A insert—

“Excusal from paying civil penalty: Home Office online right to work checking service

4B.—(1) To the extent provided for by paragraphs (2) and (3), an employer is excused from paying a penalty under section 15 of the 2006 Act^(a) if—

- (a) the employer uses the Home Office online right to work checking service in respect of an employee;
- (b) the online right to work check confirms that the employee named in it is allowed to work in the United Kingdom and is allowed to do the work in question;
- (c) the employer has satisfied himself that any photograph on the online right to work check is of the employee;
- (d) the employer retains a clear copy of the online right to work check for a period of not less than two years after the employment has come to an end; and
- (e) the employer complies, if applicable, with the requirement in article 6(2).

(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 the period for which the online right to work check confirmed that the person named in it was permitted to carry out the work in question.

(3) If, on the date on which the period specified in paragraph (2) expires, the employer is reasonably satisfied that the employee has an outstanding application to vary his leave to enter or remain in the United Kingdom or the employee has an appeal or administrative review pending against a decision on that application, the employer will be excused from paying that penalty for a further period beginning with the date on which the period specified in paragraph (2) expires and ending—

- (a) after 28 days, or
- (b) if earlier, on the date on which the Secretary of State gives the employer written notice that the employee does not have the right to undertake the employment in question.

(4) In this article—

“online right to work check” means the response generated by the Home Office online right to work checking service in relation to a person;

“Home Office online right to work checking service” means the electronic system allowing employers to check whether a person is allowed to work in the United Kingdom and, if so, the nature of any restrictions on that person’s right to do so.”

(7) In article 5 (condition for excusal to apply)—

- (a) for “article 3(2)(b)”, substitute “article 3(1)”;
- (b) for “or article 4A(2)”, substitute “, article 4A(2) or article 4B(2)”;
- (c) after “to the employer”, insert “, or the employer obtains an online right to work check which confirms that the employee named in it is allowed to work in the United Kingdom and is allowed to do the work in question,”.

(8) In article 6 (requirements in relation to documents)—

- (a) in paragraph (1)—
 - (i) in sub-paragraphs (b), (f) and (g), insert “clear” immediately before “copy”;

^(a) Section 15 was amended by paragraph 61 of Schedule 9 to the Immigration Act 2014 (c. 22).

- (ii) in sub-paragraphs (c), (d) and (e), omit “prospective employee or”;
 - (b) in paragraph (2) omit “or prospective employee” in both places where it appears.
- (9) In article 7 (restriction on retention of documents)—
- (a) after “employee”, insert “or the Home Office”;
 - (b) for “4 or 4A”, substitute “4, 4A or 4B”.
- (10) In the Schedule (lists of acceptable documents), in List A—
- (a) in paragraph 8, omit “full” and “which includes the name(s) of at least one of the holder’s parents”;
 - (b) in paragraph 9—
 - (i) for “A full” substitute “An”;
 - (ii) omit “which includes the name(s) of at least one of the holder’s adoptive parents”.
- (11) In the Schedule (lists of acceptable documents), in Part 2 of List B, in paragraph 1, for “regulation 17(3) or 18A(2) of the Immigration (European Economic Area) Regulations 2006” substitute “regulation 18(3) or 20(2) of the Immigration (European Economic Area) Regulations 2016(a)”.

Amendments to the Illegal Working Compliance Orders Regulations 2016

- 3.**—(1) The Illegal Working Compliance Orders Regulations 2016(b) are amended as follows.
- (2) In regulation 2 (interpretation)—
- (a) at the appropriate places, insert—
 - ““online right to work check” means the response generated by the Home Office online right to work checking service in relation to a person;”;
 - ““Home Office online right to work checking service” means the electronic system allowing employers to check whether a person is allowed to work in the United Kingdom and, if so, the nature of any restrictions on that person’s right to do so.”;
 - (b) for the definition of “employee”, substitute—
 - ““employee”, except in regulations 4(2), 4(3), 5A(2) and 5A(3), includes a reference to a prospective employee”.
- (3) In regulation 3 (obligation to conduct right to work checks), for “either regulation 4 or 5” substitute “any of regulations 4, 5 or 5A”.
- (4) After regulation 5 (right to work checks: Positive Verification Notice), insert—

“Right to work checks: Home Office online right to work checking service

- 5A.**—(1) A relevant person must—
- (a) use the Home Office online right to work checking service in respect of an employee;
 - (b) obtain an online right to work check confirming that the employee named in it is allowed to work in the United Kingdom and is allowed to do the work in question;
 - (c) be satisfied that any photograph on the online right to work check is of the employee;
 - (d) retain a clear copy of the online right to work check for a period of not less than two years after the employment has come to an end; and
 - (e) comply, if applicable, with the requirement in regulation 6(2).

(a) S.I. 2016/1052, as amended by S.I. 2017/1; there are other amending instruments but none is relevant.
 (b) S.I. 2016/1058.

(2) Where the online right to work check provides that the employment is permitted for a limited period, a relevant person is deemed to comply with this regulation for a further period if the relevant person is satisfied on reasonable grounds that—

- (a) the employee has an outstanding application to vary his or her leave to enter or remain in the United Kingdom; or
- (b) the employee has an appeal or administrative review pending against a decision on that application.

(3) In paragraph (2), the further period begins on the date on which the limited period expires and ends—

- (a) after 28 days; or
- (b) if earlier, on the date on which the Secretary of State gives the relevant person written notice that the employee does not have the right to undertake the employment in question.”.

(5) In regulation 6(1) (right to work checks: general requirements), in sub-paragraphs (b), (f) and (g), insert “clear” immediately before “copy”.

(6) In regulation 7 (obligation to produce documents to an immigration officer), for “either regulation 8 or 9” substitute “any of regulations 8, 9 or 9A”.

(7) In regulation 8 (documents to be produced to an immigration officer: general), insert “clear” immediately before “copy”, in each place where it appears.

(8) After regulation 9 (documents to be produced to an immigration officer: Positive Verification Notice), insert—

“Documents to be produced to an immigration officer: Home Office online right to work checking service

9A. A relevant person must produce—

- (a) a clear copy of the online right to work check; and
- (b) if the employee is a student who has permission to work for a limited number of hours per week during term time whilst studying in the United Kingdom, a document or clear copy of a document which records the details of the term and vacation dates of the course that the employee is undertaking.”.

(9) In regulation 10 (restriction on retention of documents)—

- (a) after “employee”, insert “or the Home Office”;
- (b) for “6 or 8”, substitute “6, 8, 9 or 9A”.

(10) In Schedule 1 (list of acceptable documents: right to work without time limit)—

- (a) in paragraph 8, omit “full” and “which includes the name of at least one of the holder’s parents”;
- (b) in paragraph 9—
 - (i) for “A full” substitute “An”;
 - (ii) omit “which includes the name of at least one of the holder’s adoptive parents”.

Code of Practice

4. The revised code of practice entitled “Code of practice on preventing illegal working: Civil penalty scheme for employers”, issued by the Secretary of State under section 19(1) of the Immigration, Asylum and Nationality Act 2006 and laid in draft before Parliament on 10th December 2018, comes into force on 28th January 2019.

6th December 2018

EXPLANATORY NOTE

(This note is not part of the Order)

An employer is excused from paying a penalty under section 15 of the Immigration, Asylum and Nationality Act 2006 (c. 13) if the employee produces to the employer any of the documents described in the Schedule to the Immigration (Restrictions on Employment) Order 2007 (S.I. 2007/3290) (“the 2007 Order”) and if the employer complies with the requirements prescribed under article 6 of that Order.

Additionally, paragraph 5 of Schedule 6 to the Immigration Act 2016 (c. 19) empowers a court to make an illegal working compliance order to prevent an employer from employing an illegal worker. The Illegal Working Compliance Orders Regulations 2016 (S.I. 2016/1058) (“the 2016 Regulations”) prescribe the right to work checks which a court may require a person specified in an illegal working compliance order to carry out, and the documents which a court may require a person specified in an illegal working compliance order to produce to an immigration officer.

Article 2(6) amends the 2007 Order to set out the circumstances in which an employer is excused from paying a penalty by carrying out a right to work check using the Home Office online right to work checking service.

Article 2(7) makes amendments to the 2007 Order to clarify the requirement that employers must carry out a right to work check prior to the commencement of employment in order to be excused from paying a penalty.

Article 2(10) amends the 2007 Order to remove the requirement to provide a full birth or adoption certificate, permitting short certificates to be relied upon when evidencing a person’s right to work.

Article 3(4) amends the 2016 Regulations to provide that a relevant person can be required to use the Home Office online right to work checking service.

Article 3(8) amends the 2016 Regulations to include copies of an online right to work check in the list of documents that can be required to be produced to an Immigration Officer.

Article 3(10) amends the 2016 Regulations to remove the requirement to provide a full birth or adoption certificate, permitting short certificates to be relied upon when evidencing a person’s right to work.

Article 4 brings into force a revised code of practice specifying factors to be considered by the Secretary of State in determining the amount of a penalty.

Other minor ancillary changes are made to other provisions of both instruments.

A full impact assessment has not been prepared for this instrument as no, or no significant, impact on the private, voluntary or public sectors is foreseen.

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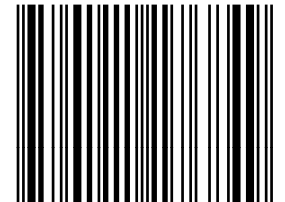
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