

IMMIGRATION ACT 2014

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3: Access to Services etc

Chapter 1: Residential tenancies

Section 23: Penalty notices: landlords

135. This section sets out the penalty for landlords who allow disqualified persons to take up residence in a property as their only or main home.
136. *Subsections (1) and (2)* empower the Secretary of State to impose a penalty of up to £3,000 on a landlord for each disqualified adult that they allow to occupy property.
137. *Subsection (3)* determines which landlord is responsible for a penalty. Where liability for a penalty arises because the landlord entered into the agreement which allowed occupation by a disqualified person, then the landlord who entered that agreement will always be responsible. This is to stop landlords who sell property with sitting tenants from passing the burden of a penalty onto the new owner who had no involvement in selecting or checking the occupants.
138. Where liability for a penalty arises because a person was allowed to occupy premises at a time that they had a right to rent, but that person has subsequently become a disqualified person who remains in occupation, the landlord at the time of the contravention will be responsible. This means that where a landlord acquires the freehold of a property with sitting tenants, they will take on responsibility for ensuring that any checks are undertaken in respect of occupants who have a limited right to rent at the required intervals and taking the prescribed steps should those occupants subsequently become disqualified persons.
139. *Subsections (4) and (5)* make provision regarding the transfer of responsibility from an immediate to the superior landlord. Subsection (5) allows a landlord to pass responsibility for a breach to a superior landlord, where the superior landlord is willing to accept that responsibility. To take the example of a landlord (L1) who grants a tenancy to a tenant (T1) who then grants a licence to a lodger (T2), if T2 is a disqualified person, T1 will be the responsible landlord, unless L1 and T1 have agreed between them in writing that L1 will accept responsibility for T2 for the purposes of this scheme. L1 and T1 may determine the extent to which L1 will accept responsibility; for instance, L1 could agree to undertake responsibility only for specifically named occupants, or only for pre-grant, and not post-grant, contraventions. Subsection (4) provides that where such an agreement has been made between the landlords regarding the transfer of responsibility, the superior landlord will be the responsible landlord for the purposes of the scheme, and references in the Chapter to the landlord should be read as referring to the superior landlord.

*These notes refer to the Immigration Act 2014 (c.22)
which received Royal Assent on 14 May 2014*

140. *Subsection (6)* enables the Secretary of State to amend by order the amount of the penalty referred to in subsection (2). This order is subject to the affirmative resolution procedure (see section 74(2)).