

IMMIGRATION ACT 2014

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3: Access to Services etc

Chapter 2: Other Services etc

National Health Service

Section 38: Immigration health charge

185. This section provides the Secretary of State with a power, by order, to require certain migrants to pay an immigration health charge. Affected migrants would be required to pay the charge when applying for leave to enter or remain in the UK or when applying for entry clearance. The order may include provision about the amount, method of payment and consequences of non-payment of the charge and for exemptions from the charge. The order may also provide for a reduction, waiver or refund of all or part of the charge. In specifying the amount of the charge, the Secretary of State must have regard to the range of health services likely to be available free of charge for persons who have paid the charge.
186. *Subsection (5)* provides that any funds collected under this power must be paid to either the Consolidated Fund or applied as specified in the order. The order is subject to the affirmative resolution procedure (see section 74(2)).

Section 39: Related provision: charges for health services

187. Persons who are ordinarily resident in the UK are not chargeable for health services under the legislation specified in section 39(2). Section 39 states that for the purpose of the charging provisions those who require leave to enter or remain and do not have it and those who have limited leave to enter or remain are not to be treated as ordinarily resident, so ensuring they can potentially be charged for health services throughout the UK.
188. *Subsection (2)* sets out the specific health service charging provisions in each of the constituent parts of the UK in respect of which the definition of not ordinarily resident in *subsection (1)* applies.

Bank accounts

Section 40: Prohibition on opening current accounts for disqualified persons

189. *Subsection (1)* provides that a bank or building society must not open a current account for a person who falls within *subsection (2)* unless one of two conditions has been satisfied.
190. The first condition is that the bank or building society has carried out a “status check” in respect of the applicant, that is a check in relation to their immigration status, and this has indicated the person is not a “disqualified person” for whom an account should not

be opened. The second condition is that the bank or building society has been unable to carry out a status check because of circumstances that cannot reasonably be regarded as within its control. This might occur, for example, if it were unable to perform a check because of operational difficulties being encountered by the checking service for an extended period.

191. *Subsection (2)* sets out the persons who may be disqualified from opening a bank account. A person may be disqualified from opening a current account if they are physically present in the UK and require leave to enter or remain in the UK but do not have it.
192. *Subsection (3)* defines what constitutes a “status check” and a “disqualified person” for the purposes of these provisions. A status check means a check with a specified anti-fraud organisation or a specified data-matching authority. A disqualified person is a person who falls within subsection (2) and in respect of whom the Secretary of State considers a current account should not be opened. The Secretary of State therefore has discretion as to who should be barred from opening current accounts. This is because there will be some individuals who face legitimate barriers which prevent them from leaving the UK, even though they do not have leave. The Secretary of State may enable these persons to open a current account. Subsection (3) provides that the prohibition on opening an account for a disqualified person extends to instances where the disqualified person is applying for a joint account, an account to which that person is to be a signatory or a named beneficiary, and also to instances where the disqualified person is to be added to an existing account as an account holder, signatory or named beneficiary.
193. *Subsection (4)* provides that an anti-fraud organisation specified for the purposes of subsection (3)(a) must be an anti-fraud organisation within the meaning set out in section 68 of the Serious Crime Act 2007 and that a data-matching authority specified must be a person or body conducting data matching exercises within the meaning of Schedule 9 to the Local Audit and Accountability Act 2014, under or by virtue of that or any other Act. The Government has published a statement of intent that CIFAS will be the organisation specified to be the data-matching authority for the purposes of this section.¹
194. *Subsection (5)* has the effect that where a bank or building society is unable to carry out a status check because it has not paid a reasonable fee for the status check to be carried out when required to do so, and it opens an account for a disqualified person, it will breach the prohibition on opening current accounts for disqualified persons.
195. *Subsection (6)* provides that where a bank or building society refuses to open a current account in accordance with the requirements of this section, the bank or building society must tell the person of the reason for refusal, if it can do so lawfully. The duty to inform the person of the reason for refusal is to enable the person, if relevant, to contact the immigration authorities if they consider that they are not, or should not be, disqualified from opening an account. However, the duty to inform is subject to any other provision that would prevent a bank or building society from communicating information to the person. For instance, if informing the person would amount to an offence under section 333A of the Proceeds of Crime Act 2002 (tipping off: regulated sector), the bank or building society could not tell them.

Section 41: Regulation by Financial Conduct Authority

196. *Subsection (1)* provides that the Treasury may make regulations to enable the Financial Conduct Authority (FCA) to make arrangements for monitoring and enforcing compliance with the prohibition imposed on banks and building societies by section 40. The regulations are subject to the affirmative resolution procedure (see section 74(2)).

¹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/283962/statement_of_intent_bank_accounts.pdf

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

197. The regulations may make provisions for the FCA to be given free access to the information held by the anti-fraud organisation or data-matching authority specified for the purposes of section 40 which is accessed by banks and building societies (*subsection (2)(a)*). Such access may be necessary to ensure effective regulation and enforcement by the FCA. *Subsection (2)(b)* provides any regulations may correspond to any provisions of the Financial Services and Markets Act 2000, in particular those listed in *subsection (3)*, with or without modification.
198. *Subsection (3)* sets out specific matters that the regulations may cover in order to ensure the FCA can take such steps as necessary to put in place appropriate arrangements to combat and deter breaches of the obligations under section 40 by banks and building societies. The reference to “criminal offences” at *subsection (3)(a)* will, for example, enable the regulations to make it an offence for banks and building societies to mislead the FCA.

Section 42: “Bank” and “building society”

199. This section defines what is meant in these provisions by the terms “bank” and “building society”.
200. *Subsection (1)* provides that for the purposes of these provisions, a “bank” is an “authorised deposit-taker” that has its head office or a branch in the UK. This is subject to the exclusions set out at *subsection (4)*.
201. *Subsection (2)* defines an “authorised deposit-taker,” consistent with the relevant provisions of the Financial Services and Markets Act 2000, while *subsection (3)* provides that this definition does not include bodies that have permission to accept deposits only for the purposes of or in the course of another form of activity (for example insurance companies).
202. *Subsection (5)* defines a building society for the purposes of these provisions.

Section 43: Power to amend

203. In *subsection (1)*, paragraph (a) provides that the Treasury may, by order, amend sections 40 to 42 to alter the categories of financial institutions to which those sections apply. This is an anti-avoidance measure, in case in future it becomes necessary to extend the prohibition set out in section 40 to institutions such as credit unions.
204. *Paragraphs (b), (c) and (d) of subsection (1)* allow the Treasury, by order, to amend section 40 to make the prohibition apply to different kinds of accounts (including other financial products by means of which a payment can be made), beyond or instead of current accounts, to define such categories of accounts and to further define accounts operated or to be operated by or for a person or body of a description that will be specified in the order. This is largely an anti-avoidance measure, in case in future it becomes necessary to alter the ambit of the prohibition to cover financial products other than current accounts (for example savings accounts, or to clarify the types of accounts that are covered).
205. *Subsection (2)* provides that such an order may amend sections 40 to 42 to confer order making powers upon the Treasury itself so that, for example, details of persons or bodies to whose accounts the prohibition in section 40(1) will not apply can be specified in secondary legislation.
206. Orders under this section are subject to the affirmative resolution procedure (see section 74(2)).

Work

Section 44: Appeals against penalty notices

207. This section amends section 17 of the 2006 Act. It substitutes for subsections (4) and (5) new subsections (4A) to (4E). The effect is to require an employer to exercise their right to object to a penalty notice for a breach of the illegal working provisions in that Act to the Secretary of State before they appeal to the civil court against the penalty.

Section 45: Recovery of sums payable under penalty notices

208. This section amends section 18 of the 2006 Act. It substitutes subsections (1) and (2) with new subsections (1) to (1D). The effect is to allow the Secretary of State to enforce a penalty as if it were a debt due under a court order. The amendment will allow an outstanding penalty to be registered with the civil court, after which enforcement action may be commenced immediately. It will eliminate the need for the Secretary of State to first make an application to the court for a substantive order for payment.
209. Currently the penalty ‘may be recovered by the Secretary of State as a debt due to him.’ This requires the issue of a substantive claim which gives the employer the opportunity to raise a defence before the matter is determined and judgment is given. At this point in proceedings, the Secretary of State can seek to rely on subsection (2) of section 18 which states that in proceedings for the enforcement of a penalty, no question may be raised regarding liability to the penalty, application of an excuse in section 15(3) or the amount of the penalty. The amendment will remove the need for these proceedings entirely and allow the Secretary of State to register the penalty with the court and then move to enforcement proceedings.
210. Subsection (1D) provides that where action is taken under this section for the recovery of a sum payable as a penalty, the penalty is to be treated as if it were a judgment entered in the county court in England and Wales for the purposes of section 98 of the Courts Act 2003, and as a judgment in Northern Ireland in respect of which an application for enforcement has been entered for the purposes of Article 116 of the Judgments Enforcement (Northern Ireland) Order 1981. This will allow penalty notices where enforcement action is taken to be entered on the registers of judgments in England and Wales and in Northern Ireland as though a substantive order for the sum payable had been made by a court in those jurisdictions.

Driving licences

Section 46: Grant of driving licences: residence requirement

211. Section 97 of the Road Traffic Act 1988 (“the 1988 Act”) and Article 13 of the Road Traffic (Northern Ireland) Order 1981² (“the 1981 Order”) set out the circumstances in which the Secretary of State and Department of the Environment must grant Great Britain and Northern Ireland driving licences respectively.
212. *Subsection (1)* amends section 97(1) of the 1988 Act to provide that one of the conditions for the grant of a driving licence is that the person must meet the relevant residence requirement.
213. *Subsection (2)* inserts new section 97A after section 97 of the 1988 Act to define the residence requirement and provides, in particular, that a person will not meet this requirement where they require leave to enter or remain in the UK but do not have it.
214. *Subsections (3) and (4)* make corresponding provision to the 1981 Order in respect of the grant of driving licences in Northern Ireland.

2 S.I. 1981/154 (N.I. 1)

Section 47: Revocation of driving licences on grounds of immigration status

215. *Subsection (1)* inserts into section 99 of the 1988 Act a power to revoke a driving licence where it appears to the Secretary of State that a licence holder is not lawfully resident in the UK (defined as where a person requires leave to enter or remain in the UK but does not have it). Provision is also made for persons who fail to surrender a driving licence that has been revoked on grounds of immigration status, without reasonable excuse, to be guilty of a criminal offence.
216. *Subsection (2)* makes provision for a person who is aggrieved by the Secretary of State's decision to revoke their driving licence on the grounds that they were not lawfully resident in the UK to appeal to a magistrates' court or, in Scotland, to the sheriff within whose jurisdiction he resides. In any appeal against the revocation of a driving licence, the court or sheriff is not entitled to entertain any questions as to whether the appellant should be, or should have been, granted leave to enter or remain in the UK or whether the appellant has been granted leave to enter or remain after the date that the Secretary of State served a revocation notice.
217. *Subsections (3) and (4)* make corresponding provision to the 1981 Order in relation to the revocation of driving licences in Northern Ireland.