



# Immigration Act 2016

## 2016 CHAPTER 19

### PART 2

#### ACCESS TO SERVICES

##### *Residential tenancies*

### **39 Offence of leasing premises**

- (1) The Immigration Act 2014 is amended in accordance with subsections (2) to (5).
- (2) After section 33 insert—

#### *“Offences*

##### **33A Offences: landlords**

- (1) The landlord under a residential tenancy agreement which relates to premises in England commits an offence if the first and second conditions are met.
- (2) The first condition is that the premises are occupied by an adult who is disqualified as a result of their immigration status from occupying premises under a residential tenancy agreement.
- (3) The second condition is that the landlord knows or has reasonable cause to believe that the premises are occupied by an adult who is disqualified as a result of their immigration status from occupying premises under a residential tenancy agreement.
- (4) But unless subsection (5) applies the landlord does not commit an offence under subsection (1) if—
  - (a) the premises are located in an area in relation to which section 22 is in force,

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- (b) the adult mentioned in subsections (2) and (3) is a limited right occupier, and
  - (c) the eligibility period in relation to that occupier has not expired.
- (5) This subsection applies if the Secretary of State has given a notice in writing to the landlord which—
- (a) identifies the adult mentioned in subsections (2) and (3), and
  - (b) states that the adult is disqualified as a result of their immigration status from occupying premises under a residential tenancy agreement.
- (6) It is a defence for a person charged with an offence under subsection (1) to prove that—
- (a) the person has taken reasonable steps to terminate the residential tenancy agreement, and
  - (b) the person has taken such steps within a reasonable period beginning with the time when the person first knew or had reasonable cause to believe that the premises were occupied by the adult mentioned in subsections (2) and (3).
- (7) In determining whether subsection (6)(a) or (b) applies to a person, the court must have regard to any guidance which, at the time in question, had been issued by the Secretary of State for the purposes of that subsection and was in force at that time.
- (8) Guidance issued for the purposes of subsection (6)—
- (a) must be laid before Parliament in draft before being issued, and
  - (b) comes into force in accordance with regulations made by the Secretary of State.
- (9) Section 22(9) applies for the purposes of subsection (1) as it applies for the purposes of that section.
- (10) A person commits an offence if—
- (a) there has been a post-grant contravention in relation to a residential tenancy agreement which relates to premises in England,
  - (b) the person is the responsible landlord in relation to the post-grant contravention,
  - (c) the person knows or has reasonable cause to believe that there has been a post-grant contravention in relation to the agreement, and
  - (d) none of paragraphs (a), (b) and (c) of section 24(6) applies in relation to the post-grant contravention.
- (11) Subsection (10) applies whether or not the landlord is given a notice under section 23 in respect of the contravention.

### **33B Offences: agents**

- (1) Subsection (2) applies to an agent who is responsible for a landlord's contravention of section 22 in relation to premises in England.
- (2) The agent commits an offence if the agent—

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- (a) knew or had reasonable cause to believe that the landlord would contravene section 22 by entering into the residential tenancy agreement in question,
  - (b) had sufficient opportunity to notify the landlord of that fact before the landlord entered into the agreement, but
  - (c) did not do so.
- (3) Subsection (4) applies where—
- (a) a landlord contravenes section 22 in relation to a residential tenancy agreement relating to premises in England,
  - (b) the contravention is a post-grant contravention, and
  - (c) a person acting as the landlord's agent (“the agent”) is responsible for the post-grant contravention.
- (4) The agent commits an offence if—
- (a) the agent knows or has reasonable cause to believe that there has been a post-grant contravention in relation to the agreement, and
  - (b) neither of paragraphs (a) and (b) of section 26(6) applies in relation to the post-grant contravention.
- (5) Subsection (4) applies whether or not the agent is given a notice under section 25 in respect of the contravention.

### **33C Offences: penalties etc**

- (1) A person who is guilty of an offence under section 33A or 33B is liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding five years, to a fine or to both;
  - (b) on summary conviction, to imprisonment for a term not exceeding 12 months, to a fine or to both.
- (2) In the application of this section in relation to an offence committed before the coming into force of section 154(1) of the Criminal Justice Act 2003 the reference in subsection (1)(b) to 12 months is to be read as a reference to 6 months.
- (3) If an offence under section 33A or 33B is committed by a body corporate with the consent or connivance of an officer of the body, the officer, as well as the body, is to be treated as having committed the offence.
- (4) In subsection (3) a reference to an officer of a body includes a reference to—
- (a) a director, manager or secretary,
  - (b) a person purporting to act as a director, manager or secretary, and
  - (c) if the affairs of the body are managed by its members, a member.
- (5) Where an offence under section 33A or 33B is committed by a partnership (whether or not a limited partnership) subsection (3) has effect, but as if a reference to an officer of the body were a reference to—
- (a) a partner, and
  - (b) a person purporting to act as a partner.
- (6) An offence under section 33A or 33B is to be treated as—

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- (a) a relevant offence for the purposes of sections 28B and 28D of the Immigration Act 1971 (search, entry and arrest), and
  - (b) an offence under Part 3 of that Act (criminal proceedings) for the purposes of sections 28E, 28G and 28H of that Act (search after arrest).”
- (3) In section 35 (transitional provision) after subsection (3) insert—
- “(4) References in this section to this Chapter do not include sections 33A to 33E (offences and eviction).
  - (5) Sections 33A to 33C apply in relation to a residential tenancy agreement entered into before or after the coming into force of section 39 of the Immigration Act 2016 (which inserted those sections into this Act).
  - (6) But sections 33A(10) and (11) and 33B apply only in relation to a contravention of section 22 which occurs after the coming into force of section 39 of the Immigration Act 2016.”
- (4) In section 36 (Crown application) at the end insert “ or the landlord for the purposes of section 33A. ”
- (5) In section 37(4)(a) (provisions in which references to the landlord are to any of them)
- (a) omit the “and” at the end of sub-paragraph (ii), and
  - (b) at the end of sub-paragraph (iii) insert—  
“ (iv) section 33A, ”.
- (6) In section 28A of the Immigration Act 1971 (arrest without warrant)—
- (a) after subsection (9B) insert—  
“(9C) An immigration officer may arrest without warrant a person who, or whom the immigration officer has reasonable grounds for suspecting—  
(a) has committed or attempted to commit an offence under section 33A or 33B of the Immigration Act 2014 (offences relating to residential tenancies), or  
(b) is committing or attempting to commit that offence.”,
  - (b) in subsection (10) for “and (9B)” substitute “, (9B) and (9C)”, and
  - (c) in subsection (11) for “and (9B)” substitute “, (9B) and (9C)”.

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**Commencement Information**

- I1** S. 39 in force at 1.11.2016 for specified purposes by [S.I. 2016/1037, reg. 2\(a\)](#)
- I2** S. 39 in force at 1.12.2016 in so far as not already in force by [S.I. 2016/1037, reg. 5\(c\)](#)

**Changes to legislation:**

Immigration Act 2016, Section 39 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.

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**Changes and effects yet to be applied to :**

- specified provision(s) amendment to earlier commencing S.I. 2017/1241, Sch. by [S.I. 2018/31 reg. 2](#)

**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 69(9)(d) and word inserted by [2023 c. 37 s. 21\(2\)\(b\)](#)
- Sch. 10 para. 3(2)(eza) inserted by [2023 c. 37 s. 13\(3\)\(a\)](#)
- Sch. 10 para. 3(3A)-(3C) inserted by [2023 c. 37 s. 13\(3\)\(b\)](#)
- Sch. 10 para. 3A and cross-heading inserted by [2023 c. 37 s. 13\(4\)](#)