

EXPLANATORY MEMORANDUM TO
THE IMMIGRATION (RESIDENTIAL ACCOMMODATION) (PRESCRIBED CASES)
ORDER 2014

2014 No. 2873

1. This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The Order sets out types of residential tenancy agreements that may or may not constitute being agreements ‘entered into’ by a landlord and tenant for the purposes of Chapter 1 of Part 3 of the Immigration Act 2014 (residential tenancies). The significance of whether an agreement has been ‘entered into’ is that this should be the point at which a landlord conducts a check of a tenant’s right to rent. There will be cases, however, where a tenancy is extended automatically by virtue of contractual rights, or where a tenant enjoys a statutory right to remain in possession of a property. The Order sets out a number of such cases and whether any tenancies arising in such cases shall be treated as having been ‘entered into’ and so subject to enforcement. The Order also deals with the situation where new occupiers are added to residential tenancy agreements, and with the position where a prospective tenant - such as a foreign student - is overseas and wishes to arrange future accommodation in the UK in advance of their arrival. The Order clarifies when checks should be performed by a landlord in these circumstances.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Context

4.1 The Order relates to the powers conferred by Chapter 1 of Part 3 of the Immigration Act 2014 (residential tenancies) and Schedule 3 (excluded residential tenancy agreements).

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom. The landlord scheme is being phased in starting in a single geographical area. When first introduced, the penalty scheme and statutory excuses for landlords will only apply in respect of new tenancy agreements entered into from 1st December 2014 for occupation of premises in the local authority areas of Birmingham and Wolverhampton City Councils and Dudley, Sandwell and Walsall Metropolitan Borough Councils. As a consequence, the types of residential tenancies discussed here are those most commonly encountered in England. Further

provision will be made in relation to other types of tenancy agreements across the UK when the provisions are to be extended beyond England.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The Immigration Act 2014 introduced a new prohibition on landlords providing private rented accommodation to persons subject to immigration control who are disqualified by their immigration status – persons who require leave to enter or remain but do not have it or, otherwise, have no right to reside in the UK – and put in place a new requirement for landlords to make simple checks on specified documents to be produced by tenants as evidence of their right to rent property in the UK. The aim of these measures, which are modelled on the existing civil penalty scheme for employers of illegal workers provided in the Immigration, Asylum and Nationality Act 2006, is to deter illegal immigration, make it difficult for persons present in the UK in breach of immigration laws to establish a settled life in this country, and to influence the decision-making of those who are in the UK illegally so they are encouraged to regularise their stay or to depart voluntarily.

7.2 Landlords who contravene that prohibition and rent property to a disqualified person may be liable to a financial penalty unless they can show they conducted relevant document checks specified in the Immigration (Residential Accommodation) (Prescribed Requirements and Codes of Practice) Order 2014 before renting the property. This would give the landlord a ‘statutory excuse’, which is an excuse provided for in law to prevent landlords from being penalised in cases where it subsequently transpires that the tenant is a disqualified person.

7.3 These provisions will apply to all new tenancies entered into once the landlord scheme comes into force on 1st December 2014. However, the Order deals with the situation where such a tenancy is extended automatically without a new agreement between a landlord and tenant. This Order clarifies that a new tenancy agreement is not considered to have been entered into in these circumstances, and the checking provisions do not therefore apply.

7.4 Article 1 set out the citation and commencement date of the Order and Article 2 sets out how terms used within the Order are to be interpreted.

7.5 Article 3 of the Order sets out circumstances or cases which will be considered to constitute a new tenancy agreement being entered into. The principle that is determinative here is that these are cases where there is a new tenancy agreement that a landlord and tenant will actively work towards. These cases include circumstances where a landlord consents to a variation of an existing tenancy agreement or where a landlord accepts the surrender of an existing tenancy agreement and grants a new one to one or more of the

original occupiers. These cases will normally arise where new tenants are granted occupancy. In such cases, the landlord should conduct the prescribed checks on all adults who are to take up occupancy before entering into the new tenancy agreement.

7.6 Article 4 deals with cases where a tenancy arrangement is agreed in principle with a tenant who is at that time outside the United Kingdom, for example overseas students or business people who need to arrange their accommodation here in advance. It provides that the tenancy agreement will be considered to have been entered into on the date that the tenant is entitled to take possession of the premises. In such cases, a landlord should conduct the prescribed checks after the tenant has arrived into the UK and before providing possession of the premises. This is intended to assist legitimate visitors from overseas and landlords may arrange accommodation in this country in advance of the tenant's arrival.

7.7 Article 5 sets out cases where a tenancy is varied or extended without a landlord and tenant entering into a new tenancy agreement. These include circumstances where a tenancy may be extended by virtue of an existing contract and where an order has been made by a court (most commonly in matrimonial and family matters). There are also cases where a tenancy agreement may be extended because of other statutory powers such as where a tenant enjoys a right of succession. In such cases, these varied or extended tenancies shall not be considered to have been entered into by the landlord and will not place a requirement upon the landlord to conduct the prescribed checks.

7.8 Articles 6 and 7, together with Schedule 1, provide for safeguards for landlords and agents who permit new tenants to occupy the premises or who take control of property with sitting tenants. Modifications are made to the Act, so as to ensure that a landlord or agent is not required to make checks of any existing occupiers who remain in the property when new ones take up occupation, and that a new landlord or agent is not penalised where a failure to comply with the prescribed checks was the fault of a previous landlord or agent, whilst also providing that a statutory excuse established by a previous landlord or agent protects the position of the new landlord or agent. In particular, Article 7 and paragraphs 3 and 4 of Schedule 1 provide that a landlord who acquires property with a sitting tenant who has a time-limited immigration status, or any agent instructed by them, may rely on any statutory excuse established by the previous landlord to avoid a post-grant contravention and may maintain this excuse where a follow-up check on the tenant establishes that they have become a disqualified person by notifying the matter to the Secretary of State under section 24 of the Immigration Act 2014.

8. Consultation outcome

8.1 The landlords' measures in the 2014 Act were subject to a full public consultation. This took place between 3 July and 21 August 2013 prior to the inclusion of the measures within the Bill which received Royal Assent as the Immigration Act 2014 in May 2014. Responses to the consultation are summarised in the Government's consultation report published on 10 October 2013.

8.2 Among the issues raised by respondents to the consultation were: difficulties that could be experienced by overseas students who need to arrange accommodation in advance of their arrival in the UK; and premises that should be excluded from the measures including cases where it is not at the discretion of a landlord to deny a tenancy (as where there is a statutory right of succession to a tenancy under the Rent Act 1977) and circumstances where a landlord or agent may secure new premises with sitting tenants. The Government undertook to make adequate provisions in such cases through secondary legislation.

9. Guidance

9.1 Guidance in connection with this Instrument will be published on gov.uk. Information is already available for landlords and tenants, including a right to rent aid at <https://www.gov.uk/government/publications/right-to-rent-landlords-code-of-practice>

10. Impact

10.1 The impact on business, charities or voluntary bodies set out in the Impact Assessment relating to these provisions in the Act which was laid before Parliament in September 2013 and can be found at <http://www.parliament.uk/documents/impact-assessments/IA13-24E.pdf>

10.2 The Impact Assessment set out the expected impacts upon the public sector (primarily the Home Office).

10.3 No further Impact Assessment has been prepared for this instrument.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 The Impact Assessment laid before Parliament in September 2013 sets out expected impacts upon small and micro business in Annex 1.

12. Monitoring & review

12.1 The initial implementation of the measures in the first phase area (in the West Midlands) is being monitored by a Consultative Panel comprising representatives within Government and from key areas of the Housing Sector and Local Government. The measures are subject to review by the Consultative Panel and will be formally evaluated prior to decisions on further roll-out during the next Parliament.

13. Contact

Stephen Vail at the Home Office Tel: 0207 035 8443 or email:
Stephen.vail@homeoffice.gsi.gov.uk can answer any queries regarding the instrument.