

**EXPLANATORY MEMORANDUM TO
THE IMMIGRATION (RESIDENTIAL ACCOMMODATION) (PRESCRIBED
REQUIREMENTS AND CODES OF PRACTICE) ORDER 2014**

2014 No. 2874

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 A draft code of practice for the purposes of Section 32(6) of the Immigration Act 2014 has been laid before Parliament. The purpose of this Instrument is to provide additional definition of terms within the code of practice and to prescribe the requirements for landlords and their agents in order to establish an excuse against a penalty under the scheme.

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

3.1 None.

4. Legislative Context

4.1 The Instrument 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 the whole of the UK. The landlord scheme is being phased in starting in a single geographical area. When first introduced, the penalty scheme and excuses for landlords will only apply in respect of tenancy agreements entered into for occupation of premises in the local authority areas of Birmingham and Wolverhampton City Councils and Dudley, Sandwell and Walsall Metropolitan Borough Councils.

6. European Convention on Human Rights:

6.1 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 – 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 regularise their stay or to depart voluntarily.

7.2 This Order seeks to ensure that the scheme is simple and practical for landlords to operate and provides clear instructions on the checks landlords and their agents should perform to avoid letting property to disqualified persons and associated financial penalties for breaching this prohibition. The Instrument specifies a wide range of acceptable documents which, if produced singly or in combination by a prospective tenant, provide evidence of their right to rent property in the UK. The landlord scheme was the subject of a full public consultation exercise between 3 July and 21 August 2013 prior to the inclusion of the measures with the Bill which received Royal Assent as the Immigration Act 2014 in May 2014. Responses to the consultation, summarised in the Government's consultation report published on 10 October 2013, informed the content of the document lists included in the Schedule to this order. The list of documents is intended to reflect current checking practice within the industry and also to minimise the risk of unintended consequences for those legally in the UK by ensuring the vast majority of lawful residents can evidence their right to rent by producing commonly available documentation. The range of documents is also intended to minimise the risk of discrimination against tenants.

7.3 Article 2 provides definitions of terms used within the instrument.

7.4 Articles 3,4 and 5 prescribe the requirement for a landlord to establish a tenant's right to rent by obtaining, verifying and retaining copies of documents as prescribed in the Schedule, (or by retaining evidence that the Secretary of State has granted permission to occupy the premises). These checks are modelled closely on the requirements of the Immigration (Restrictions on Employment) Order 2007, as amended. The order prescribes the steps that a landlord must take to identify those who will occupy the premises and to verify the validity of any documents presented, and the steps that must be taken to show that this has been done. Article 7 prescribes that landlords may not retain original documents, including passports, and may only retain documents for as long as is necessary to ensure compliance.

7.5 Article 6 prescribes the service level to be provided by the Landlords' Checking Service to be delivered by the Home Office, which will confirm to a landlord whether an individual has a right to rent if the check is performed during a period in which they have an immigration or asylum application or appeal which has yet to be determined. The

article specifies that enquiries will be answered with two working days. If the service fails to provide a response within this period, the landlord is automatically accorded an excuse for a 12 month period if they enter into a tenancy agreement with the subject of the enquiry.

7.6 Article 8 prescribes that checks made by landlords only establish an excuse if they are conducted within a 28 day period prior to date on which the tenancy agreement is entered into.

7.7 Article 9 prescribes the method by which a landlord or agent may notify the Secretary of State of an existing occupier who is believed to be a disqualified person. This provision applies where a landlord has entered into a tenancy agreement with a person subject to immigration control who has a time-limited immigration status and the landlord or agent establishes, when conducting a repeat check at the point the person's leave was due to expire, that the tenant no longer has the right to be in the UK (post grant contravention). By reporting the matter to the Home Office, the landlord or their agent maintains their excuse against a penalty.

7.8 Articles 10, 11 and 12 prescribe the manner in which a notice of objection against a penalty should be given and the period within which an objection to a penalty must be lodged.

7.9 Articles 13 and 14: specify that the "Code of practice on illegal immigrants and private rented accommodation: Civil penalty scheme for landlords and their agents" and "Code of practice for landlords: Avoiding unlawful discrimination when conducting 'right to rent' checks in the private rented residential sector" shall come into force on 1st December 2014.

7.10 The Schedule prescribes the documents that may be accepted by a landlord in conducting a right to rent check and establishing an excuse against a penalty if the tenant is found to be a disqualified person.

8. Consultation outcome

8.1 The landlord scheme was subject to a full public consultation, as detailed in paragraph 7.2 of this explanatory memorandum above, prior to the commencement of the Immigration Act's passage through Parliament. In addition, the draft codes and statutory instruments pertaining to the scheme have been subject to review by a Consultative Panel comprising representative groups from local government, charitable bodies and landlord and lettings organisations, co-chaired by the Immigration and Security Minister and Lord Best.

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 scheme is being monitored by a Consultative Panel comprising representatives within Government and from key areas of the Housing Sector and Local Government. The scheme is 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

Bill Parsons at the Home Office Tel: 020 7035 6914 or email: Bill.Parsons1@HomeOffice.gsi.gov.uk can answer any queries regarding the instrument.