

## EXPLANATORY MEMORANDUM TO

### THE IMMIGRATION (RESIDENTIAL ACCOMMODATION) (TERMINATION OF RESIDENTIAL TENANCY AGREEMENTS) (GUIDANCE ETC.) REGULATIONS 2016

2016 No. 1060

#### 1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

#### 2. Purpose of the instrument

- 2.1 Under new section 33A(1) of the Immigration Act 2014 (“the 2014 Act”), it is an offence to permit an adult who is disqualified as a result of his or her immigration status to occupy premises, in England, under a residential tenancy agreement. In determining whether the defence of having taken reasonable steps to terminate the residential tenancy agreement within a reasonable time is made out, a court must have regard to guidance issued by the Secretary of State. These Regulations bring into force the statutory guidance laid before Parliament for these purposes on 1st November 2016.
- 2.2 The Regulations also prescribe the form of notice to be used by a landlord if the landlord wishes to terminate a residential tenancy agreement by making use of the new route to eviction available in circumstances where all occupiers of the property are disqualified as a result of their immigration status.

#### 3. Matters of special interest to Parliament

##### *Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 These Regulations are made in exercise of new powers in sections 33A(8)(b) and 33D(3) of the 2014 Act, as inserted by sections 39 and 40 respectively of the Immigration Act 2016 (“the 2016 Act”).
- 3.2 In accordance with the Immigration Act 2016 (Commencement No. 2 and Transitional Provisions) Regulations 2016, which were made on 31st October 2016, sections 39 and 40 of the 2016 Act came into force for the limited purpose of making subordinate legislation on 1st November 2016. Sections 39 and 40 will come into force for all remaining purposes, along with section 41, on 1st December 2016.
- 3.3 This is the first exercise of the powers in new sections 33A(8)(b) and 33D(3) of the 2014 Act.

##### *Other matters of interest to the House of Commons*

- 3.4 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

#### **4. Legislative Context**

- 4.1 Section 21 of the 2014 Act provides that people who require immigration leave to enter or remain in the UK and do not have it are disqualified from occupying premises under a residential tenancy agreement unless they have been granted permission to rent by the Home Office. Where these provisions have been brought into force, landlords, agents and others providing rented accommodation should conduct checks on all prospective adults who intend to take up occupancy as their main or only home. Where these checks are not conducted and a person disqualified from renting by virtue of their immigration status is found in rented accommodation, the person or body responsible for authorising the occupancy may be liable for a civil penalty. The 2016 Act amends the 2014 Act so as to create new offences which bite on landlords and agents, as the case may be, in circumstances where property has knowingly been let to disqualified persons or has been let with reasonable cause to believe that is the case. The 2016 Act also provides for new powers for landlords to end a tenancy agreement with, or involving, a disqualified person and seek possession of the property.
- 4.2 The 2016 Act provides for the Secretary of State to give guidance to the courts in relation to the defence to one of these offences, where a landlord is knowingly letting to a disqualified person or has reasonable cause to believe this to be the case. A landlord may have a defence to the offence where he or she has taken reasonable steps within a reasonable period of time to seek to end a tenancy agreement with a disqualified person. These Regulations bring the statutory guidance issued by the Secretary of State for these purposes into force. The statutory guidance is issued in the fulfilment of a commitment given to Parliament during the passage of the 2016 Act and will be placed into the public domain on the Gov.uk website.
- 4.3 The 2016 Act also provides a power for the Secretary of State to prescribe the form of notice that a landlord must serve upon a tenant in seeking to end a tenancy agreement where the landlord is seeking to rely upon the new powers to evict in circumstances where the Secretary of State has given the landlord notice(s) that all known occupants are disqualified from renting. The landlord's notice is enforceable as if it were an order of the High Court.

#### **5. Extent and Territorial Application**

- 5.1 The extent of this instrument is the whole of the United Kingdom.
- 5.2 The territorial application of this instrument is England (in so far as the residential tenancies provisions in sections 39 to 41 of the 2016 Act and the amendments made by those provisions apply only to residential tenancy agreements relating to premises in England).
- 5.3 Section 42 of the 2016 Act confers a regulation-making power on the Secretary of State to make such provision as she considers appropriate to enable the residential tenancies provisions, and the amendments made by those provisions, to apply in Wales, Scotland or Northern Ireland. That provision is not yet in force.

#### **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**

### *What is being done and why*

- 7.1 The measures in the 2014 and 2016 Acts are concerned with immigration control. They restrict illegal migrants' access to our finite housing stock. The measures make it harder for illegal migrants to establish a foothold here, make the UK a less attractive destination for illegal migrants and encourage them to leave voluntarily. The measures will also tackle unscrupulous and rogue landlords who make money out of illegal immigration, undermining the immigration system and exploiting the vulnerable.
- 7.2 Landlords and agents involved in letting to disqualified people may be liable for a civil penalty where the 2014 Act measures have been brought into force. However, there is a small minority of landlords who will choose to let to such people, often with a view to exploiting them. For some of these landlords, a civil penalty may prove an inadequate sanction. The offences provided for in the 2016 Act will provide for firmer penalties against this minority of landlords and agents.
- 7.3 Where a landlord has knowingly let property to a disqualified person, or with reasonable cause to believe this is the case, they may be able to avail themselves of a defence against one of the new offences where they take reasonable steps within a reasonable period of time in ending a tenancy agreement. The Secretary of State may provide statutory guidance for the courts in relation to the defence and has exercised her power to do so. The courts must have regard to this guidance.
- 7.4 The 2016 Act also provides new powers to landlords in seeking to end a tenancy agreement with a disqualified person and obtain possession of their property. In the absence of these provisions, landlords would have no grounds for ending a tenancy agreement on the basis of the tenant's immigration status. Where a landlord chooses to end a tenancy agreement using the new powers available to them by virtue of section 33D of the 2014 Act, in cases where all occupants are disqualified persons, the landlord must serve notice upon their tenants using the form prescribed in these regulations.
- 7.5 This instrument relates to England alone. The 2016 Act provides, however, that the Secretary of State may make provisions, by regulations, to bring about measures that provide for similar effects across the rest of the United Kingdom.

## **8. Consultation outcome**

- 8.1 The Home Office has had extensive engagement, on these measures, with the Landlords Consultative Panel. This panel is co-chaired by the Minister for Immigration and Lord Best, an expert in housing and comprises bodies representing landlords, agents, local authorities, housing and homelessness charities and the Equality and Human Rights Commission amongst others. The panel was convened in the summer of 2014 and provided advice and assistance in the implementation of the measures in the 2014 Act, informed and contributed to an evaluation of the impacts of those measures and was consulted in relation to the extension of these measures across the UK. The Home Office consulted with the panel on both the statutory guidance and prescribed notice.

## **9. Guidance**

- 9.1 The statutory guidance is issued in order to assist the courts in their considerations as to whether a landlord can establish a defence against the offence of knowingly letting to a disqualified person, or having reasonable cause to believe this to be the case. The defence may be available where a landlord takes reasonable steps within a reasonable period in time in seeking to end a tenancy agreement with a disqualified person, from the point in time the landlord came to know or have reasonable cause to believe that they are letting to a disqualified person.
- 9.2 Guidance on ending a tenancy agreement will be made available on the Gov.uk website. This guidance will be available to both landlords and tenants.
- 9.3 The Crown Prosecution Service will produce guidance for prosecutors in explaining that the new offences are targeted at the most serious of offenders. In the main, a landlord or agent who breaches the regulations will be managed through the civil penalty scheme.

## **10. Impact**

- 10.1 The impact on business, charities or voluntary bodies falls below the threshold required for an impact assessment or a regulatory triage assessment form.
- 10.2 There is no impact on the public sector as a result of this instrument.
- 10.3 An Impact Assessment has not been prepared for this instrument. An overarching Impact Assessment was submitted with the introduction of the Immigration Act 2016. The assessment set out why the measures in this instrument will not create additional costs for compliant businesses. Costs that may be accrued by non-compliant businesses fall outside the scope of impact assessments.

## **11. Regulating small business**

- 11.1 The legislation applies to activities that are undertaken by small businesses.
- 11.2 To minimise the impact of the requirements on small businesses (employing up to 50 people), the approach taken is to engage with bodies representing landlords and agents, many of whom are small businesses, through the Landlords Consultative Panel and to make guidance available for landlords on Gov.uk.

## **12. Monitoring & review**

- 12.1 As these Regulations do not impose requirements, restrictions or conditions on residential landlords, or set standards in relation to their business activity (such provisions being contained in the 2014 Act itself), these Regulations do not make “regulatory provision” within the meaning of section 32(4) of the Small Business Enterprise and Employment Act 2015 and no provision for review pursuant to section 28(2) of that Act is required.
- 12.2 Whilst the Regulations prescribe the form of notice to be used by a landlord who wishes to make use of the new route to gaining possession of a property under new section 33D(3) of the 2014 Act, the requirement to give notice to the tenants in writing and in a particular form to be prescribed by the Secretary of State is set out in the 2014 Act itself.
- 12.3 The Home Office will work with the private rented sector and the Landlords Consultative Panel in better understanding how effective the statutory guidance and

the prescribed notice are once brought into force and may review these documents from time to time.

### **13. Contact**

- 13.1 Gareth Medina at the Home Office Telephone: 0161 886 0414 or email: Gareth.medina2@homeoffice.gsi.gov.uk can answer any queries regarding the instrument.