

EXPLANATORY MEMORANDUM TO

THE IMMIGRATION (RESIDENTIAL ACCOMMODATION) (PRESCRIBED REQUIREMENTS AND CODES OF PRACTICE) (AMENDMENT) ORDER 2020

2020 No. 1047

1. Introduction

- 1.1 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 This Order amends the Immigration (Residential Accommodation) (Prescribed Requirements and Codes of Practice) Order 2014 (“the 2014 Order”) to make changes to the operation of the ‘Right to Rent’ Scheme (“the Scheme”) as provided for in Chapter 1 of Part 3 of the Immigration Act 2014 (“the Act”). The amendments adjust the prescribed requirements that a landlord or letting agent must comply with under the Scheme, in order to obtain a statutory excuse against the imposition of a civil penalty for renting a property to a person disqualified from doing so by virtue of their immigration status.

- 2.2 It also brings into force a revised code of practice for the Scheme which replaces the previous version of the code laid in Parliament on 15 December 2015; the changes to the code relate to the changes made to the 2014 Order by this Order. The Order, in particular:

- makes provision for online ‘right to rent’ checks, allowing landlords and letting agents to rely on the use of a new Home Office online checking service to fulfil the prescribed requirements for establishing a statutory excuse against liability for a civil penalty, in the event that they are found to be renting to disqualified persons;
- amends the list of documents that are deemed acceptable under the existing manual ‘right to rent’ check to include a UK short birth and adoption certificate as well as the long versions of these documents;
- makes provision for the use of the combination of a national passport, plus proof of their arrival within the last six months (for example a physical or electronic plane/boat/train ticket or boarding pass) by visitor nationals from Australia, Canada, Japan, New Zealand, Singapore, South Korea and the USA, to demonstrate a right to rent;
- provides for documents issued to non-EEA family members under the EU Settlement Scheme (EUSS) to be recognised as documents which can be relied upon by landlords and letting agents to establish a statutory excuse against liability for a civil penalty;
- further minor amendments and technical changes to the presentation of the lists of acceptable documents set out in the Schedule making it simpler for landlords and letting agents to conduct the initial and follow-up checks.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 As the instrument is subject to negative resolution procedure, there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

4.1 The extent of this instrument is across the whole of the UK.

4.2 The territorial application of this instrument is across England only. The Right to Rent Scheme is not in force in Scotland, Wales and Northern Ireland.

5. European Convention on Human Rights

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

6. Legislative Context

6.1 The Act allows the Secretary of State to serve a landlord (or an agent if there is a written agreement between them and the landlord that they are responsible for the checks) with a notice requiring the payment of a civil penalty of a specified amount when they have let accommodation to somebody who is disqualified from renting as a consequence of their immigration status. A landlord or agent can carry out simple document checks in order to establish a statutory excuse against a penalty. The statutory excuse will either be continuous or time-limited, dependent on the documents which are provided. A time-limited statutory excuse applies when a tenant is accepted as having temporary permission to remain in the UK: in these cases, a repeat check will be required either within 12 months or when that leave expires, whichever is the later. If such a repeat right to rent check establishes that the tenant has become a disqualified person then the landlord or agent must make a report to the Home Office in order to maintain their excuse against a penalty. The Scheme was brought into force across England on 1 February 2016 following the evaluation of an initial phase of operation in the West Midlands which commenced in December 2014

6.2 The 2014 Order sets out the requirements of a landlord or letting agent in performing the right to rent checks and making a report to the Home Office. This Order amends a number of these provisions.

7. Policy background

What is being done and why?

7.1 On 1 December 2014, the Scheme was introduced across parts of the West Midlands as specified in paragraph 6.1 above. The Scheme provided for in Chapter 1 of Part 3 of the Act, allowed for the Home Office to issue penalties against landlords or letting agents who let property to people who are disqualified from doing so as a result of their immigration status. Under the Scheme a landlord can establish and maintain a

statutory excuse against a penalty through undertaking specific documents checks as prescribed in the 2014 Order, and as explained in further detail in the code of practice for landlords which the Order brought into force.

- 7.2 Housing disqualified persons in the private rented sector allows these individuals to establish a settled life in the UK and can frustrate the process of returning them to their country of origin by providing them with the means and incentive to remain. The aim of the Scheme is to restrict the access of a disqualified person to the private rented sector.
- 7.3 The intention of the new measures is to modernise checks under the Scheme, to make it easier for individuals to demonstrate their right to rent and to make checks simpler and more secure for landlords and letting agents.
- 7.4 This Order amends the detailed provisions of the civil penalty scheme, set out in the 2014 Order, to allow landlords and letting agents to rely on online right to rent checks conducted using the new Home Office online right to rent checking service to establish a statutory excuse against liability for a civil penalty in the event of illegal immigration. Online checks are voluntary, and both the online check and the existing document-based check will establish a statutory excuse.
- 7.5 Where applicable, a landlord or letting agent may conduct a right to rent check using this online service without having to inspect physical documents and doing so will provide a statutory excuse against a civil penalty, provided the tenant is confirmed as having a right to rent. The landlord or letting agent must be able to demonstrate that they have done the check. For online checks, they may do this by saving the document electronically or keeping a printed copy of the PDF page confirming the individual's right to rent.
- 7.6 The Home Office online right to rent checking service for landlords and letting agents is being developed to support immigration status notified in an online format. This includes status issued to EU citizens pursuant to a successful application to the EU Settlement Scheme, which the Government has implemented to allow EU citizens living in the UK to apply for the status they require under UK immigration legislation after their free movement rights are ended.
- 7.7 EU citizens will continue to be able to demonstrate their entitlement to rent to landlords or letting agents by showing a valid passport or ID card until 30 June 2021. The Government will set out its plans for changes to checks conducted by landlords and letting agents in respect of EU citizens after June 2021 in due course.
- 7.8 This Order makes technical amendments to the Scheme which are designed to help nationals of the Australia, Canada, Japan, New Zealand, Singapore, South Korea and the USA to demonstrate their right to rent to a landlord or letting agent where the prospective occupier has entered into the UK through ePassport gates or other routes of entry without having their national passport stamped by an immigration officer on arrival. The changes enable landlords and letting agents to continue to comply with the requirements of the Right to Rent Scheme when letting rented accommodation to legitimate visitors in these circumstances.
- 7.9 This Order also amends the list of acceptable documents for demonstrating an entitlement to rent in the UK. This includes to allow individuals to demonstrate a right to rent using a UK short birth or adoption certificate (currently only the long certificate is permitted) when provided in combination with another document from List A(2). This is intended to make it easier for UK nationals who do not have

passports to demonstrate their right to rent. This Order also provides for documents issued to non-EEA family members evidencing leave to remain (such as under the EU Settlement Scheme (EUSS)) to be recognised as documents which can be relied upon by landlords and letting agents to establish a statutory excuse against liability for a civil penalty.

- 7.10 As a consequence of this Order, the code of practice issued under section 32 (1) of the 2014 Act has been revised, and the revised draft is laid before Parliament alongside this Order.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument is not being made under the European Union (Withdrawal) Act.

9. Consolidation

- 9.1 The Government does not intend to consolidate the Orders at the present time.

10. Consultation outcome

- 10.1 The Home Office carried out a consultation on ‘Tackling Illegal Immigration in Privately Rented Accommodation’ between 3 July and 21 August 2013. The Government carefully considered the response to the consultation and concluded that action was needed to deter illegal migration and to safeguard the legitimate housing market. The housing measures in the Act and the resultant scheme were a response to this.
- 10.2 The Home Office carried out an evaluation of the first six months of the Scheme across the phase one area.
- 10.3 The Home Office engaged extensively with the Right to Rent Panel in making changes to the documents which can be accepted. This panel is co-chaired by the Minister for Immigration Compliance and the Courts and Lord Best, an expert in housing. Its membership comprises representatives of bodies for landlords and letting agents, housing and homelessness charities, local authorities and other government department.
- 10.4 A wider public consultation for the changes was not considered to be required because of the effective representation present on the panel, as well as the relatively minor nature of the changes.

11. Guidance

- 11.1 This new Order and the associated code of practice will come into force 21 days after it has been laid in Parliament. We are using the enhanced interest in the Scheme throughout the housing sector in this period to draw attention to the new code of practice and guidance on the GOV.UK website.
- 11.2 The guidance on GOV.UK for landlords and letting agents will be revised in line with the amendments brought about in this Order.

12. Impact

- 12.1 The legislation will largely affect individual landlords with minimal effects on companies and letting agents. The impact on business is likely to be small. The

overall effect of the proposed changes will be positive by making checks simpler and more secure for landlords and letting agents.

- 12.2 The principal cost of the proposed changes will be familiarisation costs for landlords and letting agents in familiarising themselves with the updated Code of Practice, guidance and the new online checking service. In the central case, these familiarisation costs are estimated at £1.7m. However, online checks are likely to be faster than existing paper checks, with time savings for landlords over 5 years from 2020/21 estimated to be worth £1.8m.
- 12.3 The impact on the public sector is likely to be minimal. The online checking service has been through testing, so the majority of the capital costs are likely to have been incurred. The Home Office team which serves the civil penalties for the Scheme will receive training in Order to understand the changes to accepted documents which provide a statutory excuse.
- 12.4 The major benefit of the online checking service will be improving the confidence of landlords and letting agents in the checks and reducing the risk of fraud as landlords and letting agents will be able to rely on clear, and current information from the Home Office delivered in real time about the person's status as opposed to relying on an examination of a range of physical documents. This benefit is not quantified.
- 12.5 The full Economic Note is submitted with this memorandum and will be published alongside the Explanatory Memorandum on the legislation.gov.uk website.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses. The intention is to make checks simpler and more secure for landlords and letting agents. The civil penalty scheme is in place to prevent access to the private rented sector for disqualified persons applies to all landlords and letting agents.

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation is that an internal review will be carried out after 12 months and the legislation may be amended accordingly.
- 14.2 The regulation does not include a statutory review clause. The measures in question have negligible costs to business and there are no other reasons to consider a statutory review clause to be appropriate.

15. Contact

- 15.1 Lindsay Scott at the Home Office Telephone: 07824 551689 or email: Lindsay.Scott8@homeoffice.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Alison Samedi at the Home Office can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Minister for Immigration Compliance and the Courts, Chris Philp MP at the Home Office can confirm that this Explanatory Memorandum meets the required standard.