

EXPLANATORY MEMORANDUM TO

THE IMMIGRATION (RESTRICTIONS ON EMPLOYMENT AND RESIDENTIAL ACCOMMODATION) (PRESCRIBED REQUIREMENTS AND CODES OF PRACTICE) AND LICENSING ACT 2003 (PERSONAL AND PREMISES LICENCES) (FORMS) ORDER 2021

2021 No. 689

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 The instrument is concerned with the prescribed checks that employers, landlords and letting agents may conduct in order to obtain a statutory excuse against a civil penalty for employing or letting property to persons subject to immigration controls who require leave to enter or remain but do not have it, or, otherwise have no right to take up the work in question or reside in the United Kingdom.
- 2.2 In particular, the instrument amends the Immigration (Restrictions on Employment) Order 2007 (“the 2007 Order”) and the Immigration (Residential Accommodation) (Prescribed Requirements and Codes of Practice) Order 2014 (“the 2014 Order”), to update the lists of documents that can be produced by EEA and Swiss nationals in order for employers and landlords to obtain a statutory excuse.
- 2.3 The Order brings into force revised Codes of Practice to reflect these changes and makes consequential amendments to the Licensing Act 2003 (Personal Licenses) Regulations 2005 and the Licensing Act 2003 (Premises Licenses and Club Premises Certificates) Regulations 2005, and the Illegal Working Compliance Order Regulations 2016.

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 and territorial application of the 2007 Order and the Illegal Working Compliance Orders Regulations 2016 is the United Kingdom.
- 4.2 The territorial extent of the 2014 Order is the United Kingdom. The territorial application is England only as the Right to Rent Scheme is not in force in Scotland, Wales and Northern Ireland.

4.3 The extent and territorial application of the Licensing Act 2003 (Personal Licences) Regulations 2005 and the Licensing Act 2003 (Premises Licences and Club Premises Certificates) Regulations 2005 is England and Wales only.

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 Immigration, Asylum and Nationality Act 2006 (“2006 Act”) and Immigration Act 2014 (“2014 Act”) introduced the Right to Work and Right to Rent Civil Penalty Schemes. The Schemes allow the Secretary of State to serve an employer, landlord or letting agent (landlord) with a notice requiring the payment of a civil penalty of a specified amount where they have employed, or let accommodation to, an individual who is disqualified from working or renting on account of their immigration status.

6.2 The 2007 Order and 2014 Order describe how an employer or landlord will be excused from paying a penalty and prescribes the way in which an employer or landlord conduct both online (using the Home Office online right to work and right to rent services on GOV.UK) and manual (checking of physical documents) right to work and right to rent checks.

6.3 The UK’s withdrawal from the EU changed the legal basis on which EEA citizens enter and remain in the UK. From 1 July EEA citizens will be required to demonstrate they have a right to work or right to rent through evidence of their immigration status, rather than their nationality. This instrument makes the necessary changes to remove an EEA passport or national identity card from the right to work and right to rent acceptable document lists.

6.4 This Order also makes the consequential amendments set out below.

6.5 The Licensing Act 2003 contains powers to prescribe forms and notices and makes provision for what they must and may contain. This instrument amends the Licensing Act 2003 (Personal licences) Regulations 2005 and the Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005 so as to substitute forms and notices with an up-to-date list of acceptable documents for evidencing an individual’s entitlement to work in the UK.

6.6 The Immigration Act 2016 (the “2016 Act”) supplements the controls provided in the Immigration, Asylum and Nationality Act 2006 by setting out a regime for illegal working closure notices and compliance orders when liaising with employers that repeatedly flout the law by employing illegal workers. These powers are used in the most serious of cases, where previous civil or criminal sanctions have failed to change employer behaviour. A court may make an illegal working compliance order, which may include certain provisions such as ordering the employer to perform right to work checks to ensure that illegal workers are not employed, or requiring the employer to produce evidence of right to work documentation to immigration officers.

6.7 The Illegal Working Compliance Orders Regulations 2016 (“the 2016 Regulations”) prescribe the right to work checks which must be conducted, and the documents which must be produced to an immigration officer, where this is ordered by the court. The checks and documents specified in the 2016 Regulations are intended to be

aligned with those which would give employers a statutory excuse from paying a civil penalty under the 2007 Order, and this instrument gives effect to that intention.

7. Policy background

What is being done and why?

- 7.1 The Right to Work and Right to Rent Schemes were introduced as part of a package of measures designed to tackle and deter illegal immigration. They are intended to prevent individuals without lawful immigration status in the United Kingdom from taking up employment in the United Kingdom or accessing the Private Rented Sector in England; and to support efforts to tackle those who exploit vulnerable migrants.
- 7.2 Employers and landlords are required to carry out simple checks, applicable to everyone including British citizens, to ensure the individual has lawful status in the United Kingdom before they employ, or let a property to, an individual. Legislation setting out employer responsibilities to prevent illegal working has been in place since 1997. Since 2008, a system of civil and criminal sanctions for non-compliance has been in place, set out in the Immigration, Asylum and Nationality Act 2006 (sections 15 and 21). Legislation setting out landlord and letting agent responsibilities to prevent disqualified persons from accessing the private rented sector, on the other hand, has been in place since 2014, set out in the Immigration Act 2014. Since 2016, civil and criminal sanctions for non-compliance have been in place in England.
- 7.3 The Codes of Practice describe how employers and landlords obtain a statutory excuse against liability for a civil penalty by carrying out either a digital check using the Home Office online services, or a manual check of an acceptable document in the presence of the holder and making a copy of that document. Evidence of the digital or manual check must be retained; noting the date on which the check was conducted. Where an individual's immigration status is time-limited, employers and landlords must repeat the check when that permission is due to end, in order to maintain a statutory excuse.
- 7.4 Right to work and right to rent checks have been modernised by introducing digital checks using the Home Office online services. Employers and landlords have been able to rely on the online right to work (view a job applicant's right to work – GOV.UK) and rent services (view a tenant's right to rent in England – GOV.UK) to provide a statutory excuse against liability for a civil penalty since 28 January 2019 and 20 November 2020 respectively.
- 7.5 The measures in this instrument are intended to enable EEA citizens and their family members, who will require United Kingdom immigration status from 1 July 2021, to simply demonstrate their right to work in the United Kingdom or right to rent in England.
- 7.6 This instrument amends the list of acceptable documents which can be produced to evidence an individual's right to work or right to rent removing EEA passports and national identity cards from the document lists. The amendments also include the addition of: a Republic of Ireland passport or passport card; a document issued by the Bailiwick of Jersey, the Bailiwick of Guernsey or the Isle of Man, which has been verified as valid by the Home Office Employer or Landlord Checking Service, showing that the holder has been granted unlimited or limited leave to enter or remain under the respective EU Settlement Schemes; a document issued by the Home Office or the Bailiwick of Jersey, the Bailiwick of Guernsey, which has been verified by the

Home Office Employer or Landlord Checking Service, showing that the holder has an outstanding application made by the 30 June deadline to the respective EU Settlement Schemes; and a Frontier Worker Permit (digital or physical document).

- 7.7 This instrument also amends the document list in the 2007 Order, for the Right to Work Scheme, to include a Home Office document issued to a family member of an EEA or Swiss citizen, which has not expired and confirms indefinite or time-limited leave. The 2014 Order, for the Right to Rent Scheme, is also amended at article 5, by extending the list of those granted status as a visitor who can prove their right to rent using the combination of a national passport, plus proof of their arrival within the last six months (for example a physical or electronic ticket or boarding pass) to EEA citizens.
- 7.8 The 2016 Act amended the Licensing Act 2003 in order to introduce immigration safeguards into the licensing regimes for alcohol and late-night catering in England and Wales. The aim of the measures is to prevent illegal working, to which the alcohol and late-night refreshment sector is susceptible.
- 7.9 This instrument amends The Illegal Working and Compliance Order Regulations 2016, to align with the 2007 Order, as amended, with regard to the prescribed checks that employers may be required to conduct, or produce to an immigration officer when subject to a compliance order.
- 7.10 Finally, this instrument brings into force revised Codes of Practice for the Right to Work Civil Penalty Scheme and the Right to Rent Civil Penalty Scheme, which replaces the previous versions of the Codes laid in Parliament on 13 December 2018 and 29 September 2020, respectively. The changes to the Codes relate to the changes made to the 2007 Order and the 2014 Order by this instrument.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument is not being made under the European Union (Withdrawal) Act but relates to the withdrawal of the United Kingdom from the European Union, which requires EEA citizens and their family members to have a United Kingdom immigration status in order to be lawfully-present in the United Kingdom from 1 July 2021.

9. Consolidation

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

10. Consultation outcome

- 10.1 There was no public consultation on these changes. The changes result from the withdrawal of the United Kingdom from the European Union.

11. Guidance

- 11.1 This Order, and associated Codes of Practice for the Right to Work and Right to Rent Schemes, will come into force 21 days after it has been laid in Parliament. Published guidance to employers and landlords will be updated to reflect these changes. It will be published in advance of the measures coming into force.
- 11.2 Guidance to licensing authorities on conducting right to work checks, in respect of applicants for personal and premises licenses, will be amended in line with these

changes and will be made available before entry into force of the measures on 1 July 2021. This guidance will be circulated to licensing authorities in England and Wales.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies. There may be some familiarisation costs to businesses and letting agents on the updated requirements for EEA citizens and their family members to demonstrate a right to work or right to rent.
- 12.2 There is no significant impact on the public sector. There may be minor indirect familiarisation costs for licensing authorities in the event that they receive applications from EEA citizens and the public sector in fulfilling their duties as an employer.
- 12.3 The full Economic Note is submitted with this memorandum and will be published alongside the Explanatory Memorandum on the [legislation.gov.uk](https://www.legislation.gov.uk) website.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.

14. Monitoring & review

- 14.1 The approach to the monitoring of this legislation is that an internal review will be carried out within 12 months of the legislation coming into force and the legislation may be amended accordingly.

15. Contact

- 15.1 Lindsay Scott at the Home Office (Tel: 07824551689 or Email: Lindsay.scott8@homeoffice.gov.uk) can be contacted with any queries regarding the instrument.
- 15.2 Alison Samedi, Deputy Director for the Compliant Environment and Enforcement Unit, at the Home Office can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Minister for Immigration Compliance and Justice, Chris Philp MP, at the Home Office can confirm that this Explanatory Memorandum meets the required standard.