

## **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), ETC., REGULATIONS 2022**

**2022 No. 242**

#### **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 instrument relates to measures that control migrant access to social housing and homelessness assistance; private rented accommodation; employment and current accounts in the UK and makes minor corrections to prescribed licensing application forms.
- 2.2 Part 2 of the instrument makes changes by adding new classes of migrant who may access social housing or homelessness assistance.
- 2.3 Part 3 makes changes to the controls on migrant access to employment and private rented accommodation and the prescribed checks employers, and landlords or letting agents should make in order to obtain a statutory excuse against a civil penalty for employing or letting accommodation to a person without the right to work or rent as a result of their immigration status. It brings into force revised codes of practice for employers, landlords and letting agents which specify requirements for right to work and right to rent checks, as well as revised codes of practice on avoiding discrimination when conducting checks. Part 3 also makes amendments to regulations relating to illegal working compliance orders and the prescribed licensing application forms for personal or premises licences under the statutory alcohol and late-night refreshment licensing regime.
- 2.4 Part 4 provides for a change in the specified anti-fraud organisation involved in sharing details, with the financial sector, of persons disqualified from opening and maintaining a current account because they require leave to remain in the United Kingdom, but do not have it.
- 2.5 Part 5 provides that employers, landlords and letting agents may use Identification Document Validation Technology (IDVT) service providers to digitally verify the identity of British and Irish citizens with valid passports (or Irish passport cards) for the purpose of right to work and right to rent checks.
- 2.6 This instrument also corrects defects in The Immigration (Restrictions on Employment) Order 2007 and errors in 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, which contained errors and minor omissions in respect of amendments to the prescribed licensing application forms for personal and premises licences.

2.7 This statutory instrument has in part been made in consequence of defects in S.I2007/3290 and in S.I. 2021/689 and is being issued free of charge to all known recipients of those statutory instruments. The procedure for free issue of these Regulations has been applied.

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

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

3.1 None.

### **4. Extent and Territorial Application**

4.1 The extent and application of these orders, save for those listed below, is the United Kingdom.

4.2 The extent and territorial application of The Persons subject to Immigration Control (Housing Authority Accommodation and Homelessness) Order 2000 is England, Scotland and Northern Ireland and these amendments have the same extent and application as the provisions they are amending.

4.3 The extent and territorial application of the Licensing Act 2003 (Personal licenses) Regulations 2005 and the Licensing Act 2003 (Premises licenses and club premises certificates) Regulations 2005 is England and Wales only and these amendments have the same extent and application.

4.4 The territorial extent of The Immigration (Residential Accommodation) (Prescribed Requirements and Codes of Practice) Order 2014 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 and these amendments have the same extent and application.

### **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 Sections 118 and 119 of the Immigration and Asylum Act 1999 set out restrictions on access to Housing Authority accommodation or homelessness assistance for persons who are subject to immigration control, unless they fall within a class of person set out in an Order made by the Secretary of State. The changes to The Persons Subject to Immigration Control (Housing Authority Accommodation and Homelessness) Order 2000 align the position across the devolved administrations and expand the classes of migrants eligible to access these services to include people granted leave under new Appendix Hong Kong British National (Overseas) if they are not subject to a condition restricting access to public funds.

6.2 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 respectively. The Schemes allow the Secretary of State to serve respectively, an employer, landlord or letting agent 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.

- 6.3 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 2006 Act (sections 15-25).
- 6.4 The Immigration (Restrictions on Employment) Order 2007 (2007 Order) and The Immigration (Residential Accommodation) (Prescribed Requirements and Codes of Practice) Order 2014 (2014 Order) prescribe how an employer, landlord or letting agent (as relevant) will be excused from paying a penalty where they conduct online (using the Home Office online right to work and right to rent services on GOV.UK) or manual (checking of physical documents) right to work and rent checks. Legislation setting out landlords and letting agent responsibilities to prevent disqualified persons from accessing the private rented sector is provided in the 2014 Act (sections 20-37). The Secretary of State must issue a code of practice in relation to the factors to be considered in determining the amount of a civil penalty, under section 19 of the 2006 Act in respect of right to work and section 32 of the 2014 Act in respect of right to rent. The Secretary of State must also issue a code of practice on avoiding discrimination in conducting these checks, under section 23 of the 2006 Act (right to work) and section 33 of the 2014 Act (right to rent).
- 6.5 The Immigration Act 2016 supplemented the controls provided in the 2006 Act by setting out a regime for illegal working business premises closure notices and compliance orders where employers repeatedly flout the law by employing illegal workers. This instrument amends The Illegal Working Compliance Orders Regulations 2016 in order to ensure that the checks to be conducted by such employers are in line with the changes described above.
- 6.6 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 to correct minor typographical errors in those forms.
- 6.7 The 2014 Act provides for restrictions on migrants' access to current accounts. The Secretary of State may only share details of disqualified persons with the financial sector using bodies that are a specified anti-fraud organisation or a data matching authority. This instrument revokes The Immigration Act 2014 (Specified Anti-fraud Organisation) Order 2014 and provides for a change in the specified-anti fraud organisation that will share these details with the financial sector.

## **7. Policy background**

### *What is being done and why?*

- 7.1 The instrument amends a number of provisions across a range of immigration measures and enables the use of digital identity checking on behalf of British and Irish citizens with a valid passport (or Irish passport card).

### *Social housing and homelessness assistance*

- 7.2 The Persons subject to Immigration Control (Housing Authority Accommodation and Homelessness) Order 2000 sets out which persons subject to immigration control can access social housing or homelessness assistance. Although access to housing is

devolved, the immigration restrictions on access in the Immigration and Asylum Act 1999 are reserved to the UK Government with respect to Scotland and Northern Ireland. The provisions in Part 2 of this instrument make changes to enable the following additional classes of migrants to be eligible for specified housing authority accommodation (in England, Scotland and Northern Ireland) and homelessness assistance (in Scotland and Northern Ireland):

- persons who have leave under Appendix Hong Kong British National (Overseas) of the Immigration Rules ('the Hong Kong BN(O) route'), whose leave is not subject to a 'No Recourse to Public Funds' condition;
- persons who are habitually resident in the United Kingdom, the Channel Islands, the Isle of Man, or the Republic of Ireland and have Calais leave to remain under paragraph 352J or 352K of the Immigration Rules;
- persons who have limited leave to enter or remain in the United Kingdom on family or private life grounds under Article 8 of the Human Rights Convention that is granted under the Immigration Rules, whose leave is not subject to a 'No Recourse to Public Funds' condition.

7.3 The instrument also adds reference to being habitually resident in the Common Travel Area for the existing category of persons who have leave under paragraph 352ZH of the immigration rules /s67 of the Immigration Act 2016.

7.4 These changes will align the classes of person who can access social housing and homelessness assistance across the Home Office, the Department for Levelling Up Housing and Communities and Welsh Government. The changes will also allow the governments of Northern Ireland and Scotland to provide social housing and homelessness assistance to these specific cohorts.

*Access to employment and accommodation in the private rented sector, use of Identity Document Validation Technology (IDVT) and statutory codes of practice*

7.5 Employers, landlords and letting agents are required to carry out checks, applicable to everyone including British and Irish citizens, to ensure an individual has lawful status in the United Kingdom before they employ, or let a property, to that individual.

7.6 'Right to work' and 'right to rent' checks have been modernised by introducing digital checks using the Home Office online services as an alternative to paper and card-based documents for an increasing number of migrants. Employers, landlords and letting agents have been able to rely on the online services to provide a defence against a civil penalty since 28 January 2019 and 20 November 2020 respectively.

7.7 Part 3 of this instrument changes the way holders of Biometric Residence Cards (BRCs), Biometric Residence Permits (BRPs) and Frontier Worker Permits (FWPs) (collectively referred to as Biometric Cards) prove their right to work and right to rent. The Order will remove the Biometric Cards from the lists of acceptable documents for the Right to Rent and Right to Work Schemes, instead requiring holders to use their cards to access the Home Office online services.

7.8 Following the UK's departure from the EU, holders of BRCs issued under EEA regulations are required to have valid UK immigration status issued under the EU Settlement Scheme or the points-based immigration system to be lawfully present in the UK. It is, therefore, no longer possible to determine from a physical check of an unexpired BRC if the holder has lawful immigration status in the UK. This can only be determined by a check using the Home Office online services. Also, as BRPs and

FWPs are comparable in appearance to BRCs this instrument provides one clear position on the use of all Biometric Cards to make it simpler for employers, landlords and letting agents to determine an individual's right to work or rent.

- 7.9 On 6 August 2021, the government announced temporary protection for more applicants to the EU Settlement Scheme (EUSS). This instrument allows those who apply to the UK or Crown Dependencies' EU Settlement Schemes from 1 July 2021 (including joining family members), to have their rights protected while their application is under consideration. Those who have made a valid application to the EUSS on or after 1 July 2021, can rely on their 'Certificate of Application' to prove their right to work or rent property when this is verified by the Home Office Employer or Landlord Checking Service. This matches the position for those who applied to the EUSS before 1 July 2021. The instrument also corrects previous omissions in respect of the Isle of Man's EU Settlement Scheme.
- 7.10 This instrument will allow the employer, landlord or letting agent to use IDVT service providers to digitally verify identity documents of British and Irish citizens with a valid passport (or Irish passport card), and when undertaken in the prescribed manner, this will provide employers, landlords and lettings agents with a statutory excuse against liability for a civil penalty (Part 5).
- 7.11 The instrument provides for revised draft codes of practice referred to in paragraph 6.4 above to be laid before Parliament to reflect these changes. Codes relating to employers, landlords and letting agents avoiding discrimination when conducting checks have been subject to a general equalities update following consultation.
- 7.12 Under the Immigration Act 2016 (the "2016 Act") a court may make an illegal working compliance order. The Illegal Working Compliance Order 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 (regulation 5).
- 7.13 The instrument corrects an ambiguity in the 2007 Order and allows British citizens to use expired passports to satisfy right to work checks.
- 7.14 The instrument removes redundant references introduced by 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 related to evidencing outstanding applications to the EUSS in Crown Dependencies. Article 5 of the 2016 regulations already provides for this.
- 7.15 This instrument also introduces a definition of the Home Office Employer Checking Service into the 2007 Order and 2016 regulations (regulation 3(2)).

#### Licensing Act Forms

- 7.16 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.

- 7.17 The Licensing Act 2003 contains powers to prescribe forms and notices and makes provision for what they must and may contain. This instrument (regulation 6) amends the Licensing Act 2003 (Personal licences) Regulations 2005 and the Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005 to correct typographical errors in some of those forms.

*Specified anti-fraud organisation*

- 7.18 Providers of current accounts are required to undertake checks on new applicants against a list of disqualified persons (people who require leave to be in the UK, but do not have it) and to undertake regular periodic checks on existing account holders against that list. The data in the list has to be shared with the financial sector through a specified anti-fraud organisation or a data-matching authority. This instrument (part 4) facilitates a change of the specified anti-fraud organisation that will be involved in these measures after 6 April 2022.

**8. European Union Withdrawal and Future Relationship**

- 8.1 This instrument does not trigger the statement requirements under the European Union (Withdrawal) Act 2018.

**9. Consolidation**

- 9.1 It is not intended to consolidate the various subordinate legislation amended by this instrument.

**10. Consultation outcome**

- 10.1 The Home Office has engaged with the devolved administrations in preparing this instrument as it contains changes related to social housing and homelessness assistance.
- 10.2 The Home Office has consulted the Equalities and Human Rights Commission and the Equality Commission for Northern Ireland in preparing the draft codes relating to employers, landlords and letting agents avoiding discrimination when conducting checks and has modified the Codes in response to their feedback. The Home Office has also published the codes in draft and invited representations which have been taken into consideration.
- 10.3 The Home Office has also undertaken informal consultation on the changes in respect of current accounts with bodies representing the financial sector. Their feedback informed the decision to change the specified-anti fraud organisation that will share data with the financial sector.

**11. Guidance**

- 11.1 Guidance in respect of the changes relating to access to social housing and homelessness assistance will be provided by the relevant departments of the devolved administrations.
- 11.2 This Order, and associated codes of practice for the Right to Work and Right to Rent Schemes, will come into force on 6<sup>th</sup> April 2022. Guidance for employers, landlords and letting agents will be updated to reflect these changes. It will be published in advance of the changes coming into force.

## **12. Impact**

- 12.1 There is no, or no significant, impact on charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 A full Impact Assessment has not been prepared for this instrument. Economic notes have been prepared for the measures relating to current accounts and the use of IDVT. Other changes, such as the removal of biometric cards, are not considered to have any adverse impact upon business and may lead to savings in costs.

## **13. Regulating small business**

- 13.1 The legislation applies to activities that are undertaken by small business. The instrument will have no, or no significant, impact on the regulation of 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.
- 14.2 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015 Kevin Foster MP, Minister for Safe and Legal Migration, has made the following statement: a statutory review clause is not considered necessary here as the measures are beneficial to business and a review clause would be disproportionate.

## **15. Contact**

- 15.1 David Bartlett at the Home Office Telephone: 0300 071 5643 or email: david.bartlett3@homeoffice.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Matthew Bligh, 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 Kevin Foster MP, Parliamentary Under Secretary of State (Minister for Safe and Legal Migration) at the Home Office can confirm that this Explanatory Memorandum meets the required standard.