EXPLANATORY MEMORANDUM TO

THE IMMIGRATION ACT 2014 (RESIDENTIAL ACCOMMODATION) (MAXIMUM PENALTY) ORDER 2023

2023 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of His Majesty.

2. Purpose of the instrument

2.1 The Immigration Act 2014 (Residential Accommodation) (Maximum Penalty) Order 2023 (this Order) amends sections 23(2) and 25(4) of the Immigration Act 2014 (the Act) to increase the maximum penalty that may be imposed on a landlord or agent who contravenes section 22 of that Act from £3,000 to £20,000 per occupier. The code of practice entitled 'Code of Practice on right to rent: right to rent scheme for landlords and their agents' (the Code of Practice) will provide for new penalty levels within the new maximum.

2.2 A draft revised Code of Practice will be laid before Parliament on 15 November 2023. The Code will be brought into force by the Immigration (Restrictions on Employment and Residential Accommodation) (Codes of Practice) (Amendment) Order 2023. The Home Office intends to lay the Immigration (Restrictions on Employment and Residential Accommodation) (Codes of Practice) (Amendment) Order 2023 so that the revised Code comes into force at the same time as this Order. The maximum penalty has not been increased since the Right to Rent civil penalty scheme ("the Scheme") was introduced in 2014.

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 territorial extent of this instrument (that is, the jurisdiction(s) which this instrument forms part of the law of) is all the United Kingdom.

4.2 The territorial application (that is, where this instrument produces a practical effect) is England only as the Right to Rent Scheme is not in force in Scotland, Wales and Northern Ireland.

5. European Convention on Human Rights

5.1 The Minister for Immigration, Robert Jenrick MP, has made the following statement regarding Human Rights:

"In my view, the provisions of the Immigration Act 2014 (Residential Accommodation) (Maximum Penalty) Order 2023 are compatible with the Convention Rights."

6. Legislative Context

What did any law do before the changes to be made by this instrument?

6.1 The Immigration Act 2014 introduced the Scheme. The Scheme 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 will be 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 result of their immigration status.

6.2 Legislation setting out landlords' and letting agents' responsibilities to prevent disqualified persons from accessing the private rented sector is provided in the 2014 Act (sections 20-37).

6.3 The Immigration (Residential Accommodation) (Prescribed Requirements and Code of Practice) Order 2014 prescribes how a landlord (or agent) will be excused from paying a penalty where they conduct checks online (using the Home Office online right to rent service on GOV.UK), use Identification Document Validation Technology (IDVT) service providers or undertake manual (checking of physical documents) right to rent checks.

6.4 Sections 23(6) and 25(5) of the Act contain the enabling powers to increase the maximum civil penalty that may be imposed in relation to a landlord or letting agent who contravenes section 22 of that Act. These powers were brought into force in the West Midlands (pilot scheme) in Birmingham, Wolverhampton, Dudley, Sandwell and Walsall by virtue of the Immigration Act 2014 (Commencement No. 3, Transitional and Saving Provisions) Order 2014 with effect from 1st December 2014. They were subsequently brought into force, in so far as not already in force, across the rest of England by virtue of the Immigration Act 2014 (Commencement No. 6) Order 2016, with effect from 1st February 2016.

6.5 This Order is due to come into force on 22 January 2024 or, if later 21 days after the day on which it is made. This Order was laid in draft on 15 November 2023, at the same time as the Immigration Act 2014 (Commencement No.8) Order 2023. The Immigration Act 2014 (Commencement No.8) Order 2023 will come into force on 6 December 2023. It will bring the enabling powers (referred to at para 6.4 above) fully into force, so that the textual amendments made to sections 23(2) and 25(4) under the powers at sections 23(6) and 25(5) of the Act will extend across the UK statute book.

6.6 The Home Office could amend sections 23(2) and 25(4) by statutory instrument and limit the application of those amendments to premises located in England only. However, it is contrary to best drafting practice to make amendments to a UK-wide Act by statutory instrument which have a more limited extent than the provision amended. This is because such an amendment would create parallel texts in different parts of the UK, which can be confusing and a potential trap to the reader. Bringing the enabling powers into force across the UK first, by virtue of the Immigration Act 2014 (Commencement No.8) Order 2023, will allow us to respect this principle.

6.7 However, this Order will only produce a practical effect in England, until the remaining provisions giving the Scheme operative effect are fully brought into force in respect of premises located in other areas of the UK.

7. Policy background

What is being done and why?

7.1 The Home Office is the first line of enforcement against illegal migration and works across government to prevent individuals without lawful status in the UK from accessing work, services, and benefits. Allowing those without a lawful right to be in the UK to rent property supports them in establishing a settled life. This creates costs to the public purse, including through the provision of local authority support, and also reduces the amount of housing stock available to those who are lawfully residing in the UK.

7.2 Landlords (and letting agents) have a role to play in ensuring that their tenants have the right to rent. Since 2014 anyone offering rental accommodation in the private rented sector should carry out checks on new adult occupiers before renting to them. This is to check the individual has the right to rent and is commonly known as the Right to Rent Scheme.

Why is it being changed?

7.3 A penalty notice can be issued where a property is rented to someone without a right to rent. The level of civil penalty for non-compliance has remained the same since introduction, diluting its impact as a deterrent to those contemplating entering the UK illegally (by challenging the belief that it will be possible to find housing on arrival) and to those considering renting property to individuals who do not have a right to rent by not reflecting the full economic advantage that landlords achieve through illegal letting behaviours nor the wider costs to society.

What will it now do?

7.4 Accordingly, the Government intends to increase the level of the maximum penalty to £20,000, acting as a deterrent to prevent landlords from renting to disqualified persons. By so doing, the Government aims: to change the behaviour of rogue landlords; to eliminate any financial gain or benefit from non-compliance; to tackle the harm caused by regulatory non-compliance, where appropriate; and to deter future non-compliance. As is the case now, the maximum penalty will only be levied on a landlord who breaches the Scheme on more than one occasion by entering into a residential tenancy agreement with a disqualified person. The actual level of the penalty imposed on a landlord or agent who contravenes the Scheme will be determined by the Code of Practice.

7.5 The Code will provide for a penalty of £5,000 per lodger and £10,000 per occupier for a first breach from £80 and £1,000 respectively; and up to £10,000 per lodger and £20,000 per occupier from £500 and £3,000, respectively, for repeat breaches (within the last 3 years). In the case of a first breach, landlords and their agents who elect to pay the penalty via the Fast Payment Option will benefit from a 30% reduction from £10,000 to £7,000 or from £5,000 to £3,500 as applicable.

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 No consolidation issues arise as a result of this instrument.

10. Consultation outcome

10.1 The Home Office has not consulted on these proposals. However, the Home Office has engaged with landlords and their representatives to support implementation of this instrument. This includes established Home Office-led fora such as the Home Office consultation groups, as part of engagement with other government departments, or upon invitation to other events including webinars.

11. Guidance

11.1 Guidance for 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 impact on legitimate businesses. The cost of increased penalties falls only to non-compliant landlords and letting agents who choose not to comply with the Scheme.

12.2 There are direct impacts on the public sector if there is a change in the number of appeals against penalties.

12.3 Further detail on the impact on business, charities, voluntary bodies as well as the public sector are set out in the full Economic Note which has been produced alongside this instrument and is published on legislation.gov.uk.

12.4 The Environmental impact has been considered in accordance with the duty imposed by section 19 of the Environmental Act 2021. No negative environmental impacts have been identified for this change.

13. Regulating small business

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

13.2 Small businesses can manage the potential impact of these proposals through compliance, thereby mitigating their risk of being issued with a civil penalty.

14. Monitoring & review

14.1 The policy behind the Scheme is kept under regular review by the Home Office.

14.2 We will review the impact of this Order in 12 months.

15. Contact

15.1 John Harrison at the Compliant Environment and Enforcement Unit, Home Office, email: john.harrison@homeoffice.gov.uk and Scott Bailey at the Compliant Environment and Enforcement Unit, Home Office, email: scott.bailey2@homeoffice.gov.uk can be contacted with any queries regarding the instrument.

15.2 Rebecca Nugent, Deputy Director for Compliant Environment and Enforcement Unit at the Home Office, can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Rt Hon Robert Jenrick MP, Minister of State for Immigration at the Home Office, can confirm that this Explanatory Memorandum meets the required standard.