EXPLANATORY MEMORANDUM TO

THE IMMIGRATION (RESIDENTIAL ACCOMODATION) (PRESCRIBED REQUIREMENTS AND CODES OF PRACTICE) (AMENDMENT) ORDER 2016

2016 No. 9

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 change the prescribed requirements 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 reflect policy changes with regards to which documents should be obtained and copied; and how reports to the Home Office should be made in order to establish and maintain a statutory excuse against a penalty as a result of the scheme. It also brings into force a revised code of practice for the scheme which was laid in parliament on 15 December 2015.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 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 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 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 through 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 United Kingdom: in these cases a repeat check will be required either within twelve months or when that leave expires, whichever is the later. If a tenant fails such a repeat Right to Rent check then the landlord or agent must make a report to the Home Office.

4.2 The 2014 Order sets out the requirements of a landlord or agent in performing the Right to Rent checks, and making a report to the Home Office. This order amends a number of these provisions.

4.3 Section 32 of the Act provides that the Secretary of State must provide a code of practice which specifies the factors which the Secretary of State should consider in deciding the amount of a penalty. The code may also set out, among other matters, the reasonable enquiries that a landlord should make to determine the identity of relevant occupiers in relation to a residential tenancy agreement. This order also brings a revised version of this code into effect.

4.4 This order will be laid at the same time as the Immigration Act 2014 (Commencement No. 6) which extends the Right to Rent scheme across all of England, with both orders coming into force on 1 February 2016.

5. Extent and Territorial Application

5.1 The extent of this instrument is across the whole of the United Kingdom.

5.2 The territorial application of this instrument is initially across the whole of England, and will later be extended across the whole of the United Kingdom.

5.3 Previously to the scheme applying across the whole of England a first phase applied to the local authority areas of Birmingham and Wolverhampton City Councils and Dudley, Sandwell and Walsall Metropolitan Borough Councils. A different code of practice was in place for the first phase to the one which this order brings into 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

7.1 On 1 December 2014 the scheme came into force across parts of the West Midlands as specified in 5.3 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 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.

What is being done and why

7.2 Housing illegal migrants in the private rented sector allows such people to establish a settled life in the UK and frustrate the necessary process of returning them to their home country. This creates a significant cost to the public purse and also reduces the amount of housing stock available to British citizens and others residing here legally. The aim of the scheme is to restrict the access of illegal migrants to the private rented sector.

7.3 The first phase of the scheme has been assessed to be successful, but improvements have been identified which will: further reduce the risk of legal residents being disadvantaged by the scheme; make the scheme more easily understood by landlords and agents; and also be more explicit about requirements in order to avoid subversion of the scheme by illegal migrants. This order will amend the 2014 Order by:

7.3.1 Stipulating that a report to the Home Office under the scheme must be made via the Gov.uk website or by telephone, as opposed to in writing as previously and removing

the requirement for a report to be accompanied by a copy of any documents relating to the occupier retained by the landlord or agent.

7.3.2 Allowing expired biometric residence documents and immigration status documents as part of Right to Rent checks, as opposed to just current ones as previously.

7.3.3 Specifying the requirements of the following documents which can be accepted as part of a Right to Rent check in greater detail than existed previously:

- a letter from a local authority or government department
- a letter from a British citizen
- a letter from an employer
- a letter from the police confirming that the holder has been a victim of crime
- a letter from the different prison services in the United Kingdom
- a letter from the different authorities responsible for probation in the United Kingdom.

7.3.4 The removal of a firearm or shotgun certificate as a document which can be accepted as part of a Right to Rent check.

7.3.5 The addition and specification of the following documents which can be accepted as part of a Right to Rent check:

- a letter from an organisation operating a private rented sector access scheme
- a letter from an institution of further or higher education
- an immigration status document which indicates that the prospective tenant has a limited right to remain in the United Kingdom.

7.4 The order will also bring into force a code of practice which is clearer than the previous version which was laid with the 2014 Order. This new code of practice also reflects the amendments made in this new order concerning documents which can be accepted as part of a Right to Rent checks as outlined in 7.3 above.

Consolidation

7.5 The Government has concluded on balance that it is preferable to amend the 2014 Order rather than to revoke and replace it on this occasion, but in the event of any further amendments will give consideration to consolidation.

8. Consultation outcome

8.1 The Home Office carried out a consultation on 'Tackling Illegal Immigration in Privately Rented Accommodation' between 3 July and 21 August 2013. There were 1,362 respondents made up of tenants, lodgers and sub-tenants (29%); landlords (28%); members of the public (26%); and others (17%). 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.

8.2 The Home Office carried out an evaluation of the first six months of the scheme across the phase one area. A small number of stakeholders reported that there was a potential that the documentation requirements for establishing a statutory excuse as they were could disadvantage some British citizens.

8.3 The Home Office engaged extensively with the Landlords Consultative Panel in making changes to the documents which can be accepted. This panel is co-chaired by the Minister for Immigration and Lord Best, an expert in housing. It is populated by representatives of bodies for landlords and letting agents, housing and homelessness charities, the Equality and Human Rights Commission, Local Authorities and other government departments.

8.4 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.

9. Guidance

9.1 This new order and the associated code of practice will come into force as the scheme is rolled out across the whole of England. 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.

9.2 The guidance on Gov.uk for landlords will be revised in line with the amendments brought about in this order; and a new product: an interactive 'User Guide' to the list of accepted documents for a statutory excuse will also be placed onto the website. It will give suitable detail to landlords and tenants as to which documents should be accepted, and how these documents can be identified. It will also include specific scenarios and a list of frequently asked questions to provide clarity around how to approach the document checks.

9.3 The 'Online Aid' used by landlords so that they can check whether a prospective tenant has a right to rent will also be updated in line with the amendments in this order.

10. Impact

10.1 The impact on business, charities or voluntary bodies for familiarisation with the scheme, through the code of practice is estimated to be costs of £22.6m. This is laid out in the Impact Assessment 'Tackling Illegal Immigration in Privately Rented Accommodation (HO0094)' dated 25 September 2013. For most, the code brought into force by this order will be the first one they should read. In the phase one area outlined in 5.3 above landlords will have to familiarise themselves with a revised code. Estimated reading times within the Impact Assessment were rounded up to accommodate all of these people. Reading times for the entirety of the code were calculated using slow, average and good reading speeds of 120 minutes, 60 minutes and 30 minutes respectively. Landlords in the phase one area will only have to familiarise themselves again with approximately 15% of the new code.

10.2 The impact on the public sector is minimal. The Home Office team which calculates and serves the civil penalties for the scheme will receive training in order to understand the changes to accepted documents which provide a statutory excuse.

10.3 The relevant extracts of the Impact Assessment as outlined in 10.1 are submitted with this memorandum and will be published alongside the Explanatory Memorandum on the legislation.gov.uk website.

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 providing clear guidance as outlined above in 9. We have also engaged extensively with representative bodies of landlords and letting agents whose membership is in large part made up of such businesses, and we will continue to do so throughout the implementation of the measures within this order.

11.3 Most of the business impact of the scheme is on small businesses, and so the Government's entire approach is with small businesses in mind, and is greatly informed by the consultation referenced in 8.1. The changes brought about through this order will reduce the regulatory burden of the scheme further by making it easier to conduct a Right to Rent check, as well as to make reports to the Home Office.

12. Monitoring & review

12.1 The outcomes will be subject to internal review as the Home Office works to extend the scheme from England to the whole of the United Kingdom and legislation will be amended accordingly.

13. Contact

13.1 Gareth Medina at the Home Office Telephone: 07469907404 or email: gareth.medina2@homeoffice.gsi.gov.uk can answer any queries regarding the instrument.