EXPLANATORY MEMORANDUM TO

THE IMMIGRATION (RESTRICTIONS ON EMPLOYMENT AND RESIDENTIAL ACCOMMODATION) (CODES OF PRACTICE) (AMENDMENT) ORDER 2024

2024 No. 78

1. Introduction

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

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Declaration

2.1 The Minister for Countering Illegal Migration, Michael Tomlinson MP at the Home Office, can confirm that this Explanatory Memorandum meets the required standard.

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

3. Contact

3.1 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.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 The Immigration (Employment of Adults Subject to Immigration Control) (Maximum Penalty) (Amendment) Order 2024 and the Immigration Act 2014 (Residential Accommodation) (Maximum Penalty) Order 2024, laid in draft before Parliament on 15 November 2023 and made on 23 January 2024, will provide for increased maximum civil penalties for the Right to Work and Right to Rent Schemes. These orders come into force on 13 February 2024.

4.2 The Immigration (Restrictions on Employment and Residential Accommodation) (Codes of Practice) (Amendment) Order 2024 (this Order) amends the Immigration (Restrictions on Employment) Order 2007 (the 2007 Order) and the Immigration (Residential Accommodation) (Prescribed Requirements and Code of Practice) Order 2014 (the 2014 Order), to bring into force revised Codes of Practice that set out the factors to be taken into account in determining the amount of a civil penalty to be issued against an employer or landlord in respect of a contravention of the Schemes.

Where does the legislation extend to, and apply?

4.3 The extent (that is, the jurisdiction(s) which the order forms part of the law of) and territorial application (that is, where the order produces a practical effect) of the 2007 Order is the United Kingdom.

4.4 The territorial extent of the 2014 Order is the United Kingdom.

4.5 The territorial application of the 2014 Order is England only, as the powers required to enable the Right to Rent Scheme to have a practical effect (such as the powers to issue a civil penalty at sections 23(1) and 25(3) of the Immigration Act 2014) are not in force in Scotland, Wales and Northern Ireland.

5. Policy Context

What is being done and why?

5.1 The 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 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.

5.2 However, civil penalties for non-compliance have remained the same since 2014 and the Government is concerned that they do not now provide a sufficient deterrent to those contemplating entering the UK illegally or reflect either the full economic advantage derived by those who profit from illegal migration or the wider costs to society. Accordingly, the Government intends to reform the Schemes so that they become tougher on rogue employers and landlords by increasing the level of the maximum penalties for a breach of either of the Schemes, thereby 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.

What was the previous policy, how is this different?

5.3 The maximum civil penalty for employers will be raised, by virtue of the Immigration (Employment of Adults Subject to Immigration Control) (Maximum Penalty) (Amendment) Order 2024 from £20,000 to £60,000. The actual amount of a penalty that may be imposed will be determined by the 'Code of Practice on preventing illegal working: Right to Work Scheme for employers'. A draft of this code of practice was laid before Parliament on 15 November 2023. The final version of the code was issued on 23 January 2024 and will come into force on 13 February 2024. The Code of Practice provides for a starting point of £45,000 per illegal worker for a first breach and £60,000 per illegal worker for repeat breaches within the last three years. The actual amount of a penalty may be reduced further where the specified mitigating factors apply. In the case of a first breach, employers who elect to pay the penalty via the Fast Payment Option will benefit from a further 30% reduction from the final penalty amount.

5.4 The maximum civil penalty for landlords (including letting agents) will be raised, by virtue of the Immigration Act 2014 (Residential Accommodation) (Maximum Penalty) Order 2024 from £3,000 to £20,000. The actual amount of a penalty that may be imposed will be determined by the 'Code of Practice on right to rent: Right to Rent

Scheme for landlords and their agents'. A draft of this code of practice was laid before Parliament on 15 November 2023. The final version of the code was issued on 23 January 2024 and will come into force on 13 February 2024. The Code provides for a penalty of £5,000 per lodger and £10,000 per occupier for a first breach which is an increase from £80 and £1,000 respectively; and up to £10,000 per lodger and £20,000 per occupier respectively which is an increase from £500 and £3000 for repeat breaches. In the case of a first breach (within the last 3 years), landlords and their agents who elect to pay the penalty via the Fast Payment Option will benefit from a 30% reduction (e.g. from £10,000 to £7,000 occupier or from £5,000 to £3,500 per lodger as applicable).

6. Legislative and Legal Context

How has the law changed?

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"). 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.

6.2 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). 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).

6.3 The 2007 Order and the 2014 Order prescribe how an employer, landlord or letting agent (as relevant) will be excused from paying a penalty where they conduct checks online (using the Home Office online right to work and right to rent services on GOV.UK), use Identification Document Validation Technology (IDVT) service providers or undertake manual (checking of physical documents) right to work and rent checks.

6.4 Where an employer is found to have employed an adult subject to immigration control in contravention of section 15 of the 2006 Act, and has not obtained a statutory excuse against a civil penalty under the 2007 Order, the Secretary of State may issue a civil penalty under section 15(2) of the 2006 Act. The penalty must not exceed the prescribed maximum amount. The maximum amount is prescribed by the Immigration (Employment of Adults Subject to Immigration Control) (Maximum Penalty) Order 2008 (the 2008 Order). The 2008 Order was amended by the Immigration (Employment of Adults Subject to Immigration Control) (Maximum Penalty) (Amendment) Order 2014 to increase the maximum penalty from £10,000 to £20,000. The Immigration (Employment of Adults Subject to Immigration Control) (Maximum Penalty) (Amendment) Order 2024 will amend the 2008 Order to increase the maximum penalty that may be imposed on an employer from £20,000 to £60,000.

6.5 Where a landlord or an agent is found to have contravened section 22 of the 2014 Act, and has not obtained a statutory excuse against a civil penalty under the 2014 Order, the Secretary of State may issue a civil penalty under sections 23(1) or 25(3) of that Act. A civil penalty may not exceed the maximum amount for the time being

specified in sections 23(2) and 25(4) of the 2014 Act. The Immigration Act 2014 (Residential Accommodation) (Maximum Penalty) Order 2024 will amend the maximum amount for the time being specified in sections 23(2) and 25(4) of the 2014 Act from £3,000 to £20,000 with effect from 13 February 2024.

6.6 The actual amount of a penalty that may be imposed in relation to the Schemes is determined by the statutory codes of practice. The Codes specify the factors to be taken into account in determining the actual amount of a civil penalty to be imposed. In accordance with section 19(2)(a) of the 2006 Act, a draft revised code of practice specifying factors to be considered by the Secretary of State in determining the amount of a penalty imposed under section 15 of that Act was laid before Parliament on 15 November 2023. In accordance with section 32(6)(a) of the 2014 Act, a draft revised code of practice for the purposes of Chapter 1 of Part 3 of that Act was laid before Parliament on the same date. The final versions of both codes were published on gov.uk on 23 January 2024 and will come into force on 13 February 2024.

Why was this approach taken to change the law?

6.7 This Order is necessary to bring into force both the Code of Practice on preventing illegal working: Right to Work Scheme for employers' and Code of Practice on right to rent: Right to Rent Scheme for landlords and their agents. These codes will come into force on 13 February 2024.

7. Consultation

Summary of consultation outcome and methodology

7.1 The Home Office has not consulted on these proposals. However, the Home Office has engaged with employers, landlords (letting agents) and their representative organisations 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.

8. Applicable Guidance

8.1 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.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument. Legitimate employers or landlords will not face higher costs through increased penalties. The scope of the penalty regime has not changed. Those that continue to act in a legitimate manner, by checking and recording the documents of their employees or tenants, will not be affected by the strengthened penalty regime.

9.2 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.

Impact on businesses, charities and voluntary bodies

9.3 There is no impact on legitimate businesses. The cost of increased penalties falls only to non-compliant employers or landlords who choose not to comply with the Right to Work and Right to Rent Schemes.

9.4 The legislation does impact small or micro businesses.

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

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

9.7 Further detail on the impact on business, charities, voluntary bodies as well as the public sector are set out in the Economic Note which has been prepared alongside this instrument.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

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

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

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

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 (“relevant European Union Acts”).