EXPLANATORY MEMORANDUM TO

THE IMMIGRATION (RESTRICTIONS ON EMPLOYMENT AND RESIDENTIAL ACCOMMODATION) (PRESCRIBED REQUIREMENTS AND CODES OF PRACTICE) (AMENDMENT) REGULATIONS 2026

2026 No. 700

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 Alex Norris MP, Minister of State (Minister for Border Security and Asylum), at the Home Office confirms that this Explanatory Memorandum meets the required standard.

2.2 Rebecca Nugent, Deputy Director for the Access, Compliance, Removals and Enforcement Unit at the Home Office, confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 The Access, Compliance, Removals and Enforcement Unit, Home Office, email: RighttoRentandRighttoWork@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 This instrument updates the rules designed to prevent people from working or renting privately in the UK without the required permission: the Right to Work or Right to Rent Schemes ("the Schemes"). It widens employers' duties beyond traditional employment to cover other types of working arrangements. It sets out the checks that employers must complete to obtain a statutory excuse (a defence) against liability for a civil penalty if they are later found to have employed someone who does not have the required permission. In addition, it updates the rules for those using digital identity verification services, aligning terminology and processes with the Data (Use and Access) Act 2025 (c. 18) ("DUAA25").

4.2 The instrument requires employers, landlords and letting agents who carry out digital identity checks to use a certified and registered Digital Verification Service (DVS). Where digital checks are undertaken, only those completed correctly through a DVS can provide a statutory excuse. It also expands the range of documents that may be checked digitally, including British and Irish passports for up to six months after expiry. It restricts facial recognition checks to registered providers and brings updated statutory codes of practice into force.

Where does the legislation extend to, and apply?

4.3 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is the United Kingdom

4.4 The territorial application of the instrument for the Right to Work Scheme is the United Kingdom. For the Right to Rent Scheme, the territorial application of the instrument is England. The Right to Rent Scheme does not apply in Wales, Scotland or Northern Ireland

5. Policy Context

What is being done and why?

5.1 Employers across the UK, and landlords and letting agents in England, are required to carry out checks to ensure an individual has lawful immigration status in the United Kingdom before they employ or let a property to them.

5.2 Modern working arrangements beyond traditional employment (such as worker's contracts, individual sub-contractors (including where an individual has the ability to substitute work to another) and online matching services) fall outside compliance requirements, and therefore responsibility for preventing illegal working has become less clear and fragmented. The May 2025 White Paper ('Restoring Control over the Immigration System') sets out the Government's intention to strengthen enforcement against illegal working.[1] As such, the Right to Work Scheme ensures all employers who engage workers have the responsibility for preventing illegal working, regardless of the contractual model used.

5.3 This instrument gives effect to that policy by applying right to work checking requirements, and associated responsibility for compliance, beyond traditional contracts of employment. It ensures that those who engage individuals to carry out work or services under the alternative contractual arrangements described in paragraph 5.2 are subject to clear and proportionate checking requirements, strengthening deterrence of illegal working while supporting a level playing field for compliant businesses.

5.4 For Digital Capabilities for both Scheme, this instrument amends secondary legislation to update the prescribed requirements for right to work and right to rent checks by requiring that digital checks are carried out by a relevant registered Digital Verification Service Provider (DVSP), as listed on the register maintained by the Office for Digital Identities and Attributes (OfDIA), and by allowing reliance on digital versions of certain physical documents.[2] These measures ensure that digital checks meet recognised standards, provide greater clarity and assurance for relying parties, and make it easier for individuals to demonstrate their rights while maintaining appropriate safeguards. The instrument provides legal certainty, ensures consistent standards across the Schemes, and supports their effective operation, without changing who is permitted to work or rent in the UK

What was the previous policy, how is this different?

5.5 Since 2022, both Schemes have permitted the use of digital checks for some British and Irish passport holders through Identity Document Validation Technology (IDVT), as an alternative to manual document checks. The DUAA25 introduced a wider statutory framework for digital identity verification, establishing DVS, a certification

[1] https://www.gov.uk/government/publications/restoring-control-over-the-immigration-system-white-paper
[2] https://www.digital-identity-services-register.service.gov.uk/

and registration scheme, and amending the underlying right to work and right to rent legislation to allow reliance on documents and checks generated by registered DVSPs.

5.6 The use of DVS for checks under both Schemes has been hitherto limited to those with a current British or Irish passport/Irish passport card, restricting opportunity for some candidates to digitally prove their rights to access employment or tenancies.

5.7 The amendments made by this instrument permit the use of:

- expired British and Irish Passports (and Irish Passport cards), up to six months after expiration (currently only valid until date of expiry)
- the use of digital versions of the current acceptable documents lists (where available) across both Schemes, which the Schemes do not currently permit even though some documents are now only issued digitally (the list of digitally available documents includes national insurance card and documents issued by government departments and will increase as more digital documents become available); and
- facial recognition technology to support the secure onboarding of candidates. This secure technology is already widely used but was not recognised by the Schemes as technology had accelerated past the prescribed requirements of the checks (this will extend opportunities to verify identity digitally and provide greater choice of how individuals' data is shared and used).

5.8 Under the previous policy, the Right to Work Scheme for employers applied only where an individual was employed under a contract of employment (a contract of service). This instrument sets out the prescribed requirements for those employers employing individuals in non-contracted employment working arrangements where illegal working has been identified, reflecting changes in working practices; including the use of worker contracts, subcontracting models (including where an individual has the ability to substitute work to another) and online matching services that provide details of service providers to clients or customers for remuneration. The instrument creates the requirement for all businesses and organisations in the UK that engage individuals under these working arrangements, to check that anyone working for them has the right to do so.

6. Legislative and Legal Context

How has the law changed?

6.1 Legislation which sets out employer responsibilities to prevent illegal working has been in place since 1997. Since 2008, a system of civil and criminal sanctions has been in place, set out in the Immigration, Asylum and Nationality Act 2006 (c. 13) ("the 2006 Act") (sections 15-25).

6.2 Sections 20 to 37 of, and Schedule 3 to, the Immigration Act 2014 (c. 22) ("the 2014 Act"), which set out the responsibilities of landlords and their agents to prevent disqualified persons from accessing the private rented residential sector and include 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)), have been brought into force only in respect of premises located in England (see article 2 of the Immigration Act 2014 (Commencement No. 6) Order 2016 (S.I. 2016/11 (C. 2)).

6.3 The Border Security, Asylum and Immigration Act 2025 (c. 31) (section 48) amended the 2006 Act by extending the scope of employers required to carry out right to work

checks to other working arrangements. Employers required to carry out right to work checks includes those who engage individuals under a worker's contract, those who engage individual sub-contractors and online matching services who provide details of service providers to potential clients or customers for remuneration.

6.4 The 2006 Act and the 2014 Act prescribe how an employer, landlord or letting agent (as relevant) must obtain a statutory excuse (a defence) against liability for a civil penalty if they are later found to have employed or rented to someone who does not have the required permission (using the Home Office online right to work and right to rent services on gov.uk), by using DVS or carrying out a manual check of physical documents.[3] [4] 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 Draft, revised codes of practice will be laid before Parliament alongside the instrument. The final versions of the codes will come into force on 1 October 2026.

6.6 Under the Immigration Act 2016 (c. 19), a court may make an illegal working compliance order. The Illegal Working Compliance Order Regulations 2016 (S.I. 2016/1058) ("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 Immigration (Restrictions on Employment) Order 2007 (S.I. 2007/3290) ("the 2007 Order") and this instrument gives effect to that intention in order to ensure that the checks to be conducted by such employers are in line with the changes described above.

6.7 This instrument amends the 2007 Order, and the 2016 Regulations to ensure that the prescribed checking requirements, Codes of Practice and compliance measures remain aligned and operable in light of changes to the scope of employer responsibilities to prevent illegal working, including updates to terminology and checking methods.

6.8 This instrument amends the 2014 Order (S.I. 2014/2874) for landlord and letting agent responsibilities.

Why was this approach taken to change the law?

6.9 This is the only possible approach to make the necessary changes.

7. Consultation

Summary of consultation outcome and methodology

7.1 The Home Office conducted a six-week public consultation, which closed on 10 December 2025. Industry engagement through the consultation confirmed strong support for tougher action on illegal working and enhanced Right to Work compliance, while clearly signalling the potential impacts on businesses and existing practices. These insights, and the consistent call for clarity and certainty, were central to the development of the statutory codes of practice and guidance. The Government's response to the consultation will be published alongside this instrument. In addition to

[3] https://www.gov.uk/government/publications/right-to-work-checks-employers-guide
[4] https://www.gov.uk/government/publications/landlords-guide-to-right-to-rent-checks

the consultation, the Home Office has engaged with employers, landlords, letting agents and their representative organisations, along with digital verification services, to provide support with compliance with the requirements introduced by this instrument. This includes engagement through established Home Office-led consultation groups/workshops, at other events including webinars upon invitation and engagement with other government departments including the Department for Business and Trade and HM Treasury.

7.2 The instrument provides for revised draft codes of practice referred to in paragraph 4.2 above to be laid before Parliament to reflect these changes. Before updating the codes of practice on avoiding discrimination, the Home Office consulted the relevant equalities and representative bodies. Their feedback has been considered and reflected in the updated codes of practice where appropriate.

8. Applicable Guidance

8.1 Updated guidance for employers, landlords and letting agents will be published on gov.uk on the laying date, in advance of the changes coming into force.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 An Impact Assessment for extending the scope of employers required to carry out right to work checks to other working arrangements is published alongside this instrument. The findings of the Assessment are summarised in paragraph 9.3.

9.2 An Economic Note has been prepared for the requirement for checks to be completed through a registered DVS for a statutory excuse against liability for a civil penalty or for expanding the evidence that can be used during a digital check using a DVS.

Impact on businesses, charities and voluntary bodies

9.3 There will be a cost impact on business, charities or voluntary bodies by extending right to work checks to other working arrangements due to the additional checking requirements. The central cost estimate for this activity is £90 million (2026/27 prices, 10-year appraisal period, present value). There will also be a familiarisation cost to bodies brought into scope of the Right to Work Scheme and a benefit of potential increased profit for legitimate firms who do not employ illegal workers. However, the Government consultation on the measure found many businesses brought into scope of the Scheme said they are already conducting right to work checks.[5] The intention of the measures is to provide parity and a level playing field for businesses to uphold their responsibilities to prevent illegal working in the UK.

9.4 To become registered, a DVS is audited by a certification body, certified and then registered against the UK Digital Identity and Attributes Trust Framework (UKDIATF) and any additional codes (supplementary codes), such as right to rent or right to work, that they wish to provide services for.[6] The certification body charges a DVS for completing the assessment process. Recertification is required every three years, with two surveillance audits in the interim, typically one and two years after initial certification.

[5] Extending the Right to Work Scheme - GOV.UK: https://www.gov.uk/government/consultations/extending-the-right-to-work-scheme
[6] UK digital verification services trust framework - GOV.UK: https://www.gov.uk/government/collections/uk-digital-verification-services-trust-framework

9.5 The legislation does impact small or micro businesses who will not be exempt. All businesses brought into scope of the Right to Work Scheme through the extension to other working arrangements are to be held to the same responsibilities in restricting the opportunity for illegal working regardless of their size or the working arrangements they should adopt. The specific impact on small or micro businesses, has not been quantified. In relation to the registered DVS measure, this is because there is no precise information on the number or size of unregistered DVS providers offering RTW and RTR checks.

9.6 There is no significant impact on the public sector. It is expected that some currently uncertified DVS will become certified. The Department for Science Innovation and Technology (DSIT) will review the outcomes of these assessments and, if all requirements have been met, will publish the certified service on a live register.

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 Regulation 2(2)(a)(i) and (4)(a)(ii) corrects, and regulation 2(2)(b) includes a correction to, the 2007 Order. Regulation 2(2)(a)(i) and (4)(a)(ii) omit the incorrect final "and", and regulation 2(4)(a)(ii) also substitutes the incorrect final semicolon with a full stop. Regulation 2(2)(b) substitutes the incorrect final full stop with a semicolon at the end of the substituted definition.

11.2 In accordance with paragraph 4.7.6 of Statutory Instrument Practice, the Department consulted the SI Registrar on whether, in view of these corrections, this instrument should be issued free of charge. The Department considers that these corrections have no legal effect and that the free issue procedure would be disproportionate and therefore should not be applied.

12. European Convention on Human Rights

12.1 As the instrument is subject to negative 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”).