

EXPLANATORY MEMORANDUM TO
THE IMMIGRATION ACT 2014 (COMMENCEMENT No. 6) ORDER 2016
2016 No. 11 (C. 2)

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 extends the Right to Rent scheme (“the scheme”) to the whole of England from 1 February 2016. The scheme restricts the access of illegal migrants to privately rented accommodation. Previously to this order a first phase of the scheme was in operation in the local authority areas of Birmingham and Wolverhampton City Councils and Dudley, Sandwell and Walsall Metropolitan Borough Councils.

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 Chapter 1 of Part 3 of the Immigration Act 2014 (“the Act”) provides for the scheme. Within the scheme, the Secretary of State can 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, and in some cases make a report to the Home Office, in order to establish and maintain a statutory excuse against a penalty.
- 4.2 The Immigration Act 2014 (Commencement Number 3, Transitional and Savings Provisions) Order 2014 made the scheme effective in the West Midlands local authority areas outlined in 2.1 from 1 December 2014. This came into force at the same time as the Immigration (Residential Accommodation) (Prescribed Requirements and Codes of Practice) Order 2014 which prescribed the requirements of the scheme, and brought in a code of practice for it.
- 4.3 This order extends the scheme to operate across the whole of England from 1 February 2016.
- 4.4 This order is made at the same time as the Immigration (Residential Accommodation) (Prescribed Requirements and Codes of Practice) (Amendment) Order which amends

the prescribed requirements for the scheme, and also brings into force a revised code of practice.

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 across England.

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

What is being done and why

- 7.1 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.
- 7.2 A government consultation on ‘Tackling Illegal Immigration in the Private Rented Sector’ carried out between 3 July and 21 August 2013 found 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.
- 7.3 The Impact Assessment for the scheme ‘Tackling Illegal Immigration in Privately Rented Accommodation (HO0094)’ found that the scheme would lead to the increased detection and removal of immigration offenders; reinforce action against rogue landlords; make savings for the public sector through the reduction in delivery of public services for those who have left the United Kingdom; and increase employment opportunities for legal residents.
- 7.4 An evaluation of the first six months of the scheme was published on the Gov.uk website on 20 October 2015. The evaluation found that landlords, letting agents and housing associations were carrying out Right to Rent checks. Further to this it found that as a result of the scheme: thirteen referral notices for civil penalties had been served; that 109 individuals who were illegally in the UK had been identified; and that 37 enforcement visits had taken place. Joint working between the Home Office and other government departments with an interest in housing issues and local authorities had also increased as a result of the new measures.
- 7.5 These findings from the consultation, impact assessment and evaluation are the justification for extending the scheme across England. Following this order, the Government intends to make preparations for the scheme to apply across the United Kingdom.
- 7.6 Extending the scheme lays the groundwork for new powers which the Government intends to introduce via the Immigration Bill currently before Parliament. These measures will allow for landlords to evict illegal migrants and criminal action to be taken against the very worst rogue landlords.

Consolidation

7.7 There are no consolidation issues in extending the scheme to the whole of England.

8. Consultation outcome

8.1 The outcome of the government consultation carried out in 2013 is set out in 7.2. There were 1,362 respondents made up of tenants, lodgers and sub-tenants (29%); landlords (28%); members of the public (26%); and others (17%).

8.2 The outcome of the government evaluation of the first six months of the scheme is set out in 7.4. The evaluation carried out over 300 pulse checks from representatives from local authorities, letting agents, housing associations, the voluntary and community sector and the Home Office. It also carried out 332 mystery shopping contacts across the phase one area of the scheme and a comparator location; one-off surveys with 114 landlords and 68 tenants; ten focus groups with landlords letting agents and tenants; two focus groups with Home Office staff; and a further 20 interviews with external stakeholders and 16 with Home Office staff.

8.3 Further to the consultation and evaluation the Government has also sought the advice of the Landlords Consultative Panel in deciding how to extend the scheme. This panel has met throughout the introduction and implementation of the scheme, and 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.

9. Guidance

9.1 A new code of practice for the scheme will come into force as the scheme is rolled out across the whole of England. This was laid before parliament and made available online at the Gov.uk website on 15 December 2015. A communications strategy has been employed to inform the housing sector of this using print and digital channels.

9.2 Guidance for landlords has also existed on Gov.uk since implementation of the first phase of the scheme which will be maintained and kept current as the scheme is extended. A new product will also be available online: an interactive 'User Guide' to the list of accepted documents for a statutory excuse. 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 An additional 'Online Aid' used by landlords during phase one will also be maintained and kept current as the scheme is extended.

10. Impact

10.1 The impact assessment referenced above in 7.3 estimates the cost across the United Kingdom on business, charities or voluntary bodies for familiarisation with the scheme at £4.7m a year over ten years.

10.2 The impact on the public sector across the United Kingdom in the impact assessment is £8.64m over ten years in costs, with £6.8m in income from penalties over the same period.

10.3 The Impact Assessment is 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. The checks which landlords and agents should make are consistent with the checks which they are already carrying out, and we therefore believe the regulatory burden to be small.

12. Monitoring & review

12.1 The outcomes will be subject to internal review after 12 months and the legislation may 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.