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STATUTORY INSTRUMENTS

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**2014 No. 2874**

**IMMIGRATION**

**The Immigration (Residential Accommodation) (Prescribed Requirements and Codes of Practice) Order 2014**

<i>Made</i>	- - - -	<i>28th October 2014</i>
<i>Laid before Parliament</i>		<i>30th October 2014</i>
<i>Coming into force</i>	- -	<i>1st December 2014</i>

The Secretary of State, makes the following Order in exercise of the powers conferred by sections 24(2), (4), (7) and (8), 26(2), (4), (7) and (8), 29(3) and (6), 32(6), 33(5), 34(1) and 37(1)(1) of the Immigration Act 2014(2).

In accordance with section 32(6) of that Act a draft code of practice for the purposes of Chapter 1 of Part 3 has been laid before Parliament.

In accordance with section 33(3) of that Act the Secretary of State has consulted the bodies specified in that section about a code of practice specifying what a landlord or agent should or should not do to avoid contravening the Equality Act 2010(3), so far as relating to race, or the Race Relations (Northern Ireland) Order 1997(4), published a draft code, considered any representations made about the published draft code and laid a draft code before Parliament.

**Citation and commencement**

1. This Order may be cited as the Immigration (Residential Accommodation) (Prescribed Requirements and Codes of Practice) Order 2014 and comes into force on 1st December 2014.

**Interpretation**

2. In this Order—

“the Act” means the Immigration Act 2014;

“asylum-seeker” has the meaning given in section 94(1) of the Immigration and Asylum Act 1999(5);

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(1) See the definition of “prescribed”.

(2) 2014 c. 22.

(3) 2010 c. 15.

(4) S.I. 1997/869 (N.I. 6).

(5) 1999 c. 33; the definition of “asylum-seeker” is prospectively substituted by section 44(2) of the Nationality, Immigration and Asylum Act 2002 (c. 41).

“biometric immigration document” has the meaning given in section 5 of the UK Borders Act 2007<sup>(6)</sup>;

“claim for asylum” has the meaning given in section 94(1) of the Immigration and Asylum Act 1999;

“derivative residence card” means a card issued in accordance with regulation 18A of the Immigration (European Economic Area) Regulations 2006<sup>(7)</sup> to a person who is not an EEA or Swiss national;

“document” means an original document;

“Landlord Checking Service” means the enquiry and advice service for landlords and agents operated by the Home Office;

“occupier” means any adult who is authorised to occupy premises under a residential tenancy agreement;

“Positive Right to Rent Notice” means a document issued by the Landlord Checking Service which indicates that the person named in it is not disqualified from occupying premises under a residential tenancy agreement;

“prospective occupier” means an adult who, under a residential tenancy agreement, will be authorised to occupy premises;

“residence card” means—

- (a) a residence card issued in accordance with regulation 17 of the Immigration (European Economic Area) Regulations 2006 or
- (b) a document certifying permanent residence or a permanent residence card issued in accordance with regulation 18 of those Regulations,

and includes an “accession residence card” issued to a person who is not an EEA or Swiss national within the meaning of the Accession of Croatia (Immigration and Worker Authorisation) Regulations 2013<sup>(8)</sup>.

### **The prescribed requirements**

**3.** For the purposes of sections 24(2) and (7)(a) and 26(2) and (7)(a) of the Act, a landlord or agent complies with the prescribed requirements if the landlord or agent—

- (a) obtains documents prescribed in article 4 from an occupier or prospective occupier; and
- (b) in accordance with article 5, take steps to verify, retain, copy or record the contents of a document obtained under article 4.

**4.** The landlord or agent must—

- (a) obtain from the occupier or prospective occupier—
  - (i) one document listed in List A in the Schedule to this Order; or
  - (ii) two documents listed in List B in the Schedule to this Order; or
- (b) subject to article 6, obtain a Positive Right to Rent Notice in respect of the occupier or prospective occupier from the Landlord Checking Service where—
  - (i) the occupier or prospective occupier informs the landlord or agent that—
    - (aa) they have an outstanding application to vary their leave to enter or remain in the United Kingdom, or have an administrative review or appeal pending against a decision on that application, or

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<sup>(6)</sup> 2007 c. 30.

<sup>(7)</sup> S.I. 2006/1003. Relevant amending instruments are 2012/1547 and S.I. 2013/1391.

<sup>(8)</sup> S.I. 2013/1460.

- (bb) they are an asylum seeker or have an appeal pending against a determination made by the Secretary of State in respect of their claim for asylum, or
  - (cc) they have made an application for a residence card or derivative residence card within the last 6 months, or
  - (dd) they are a person to whom the Secretary of State has granted permission to occupy premises under section 21(3) of the Act, and
- (ii) the occupier or prospective occupier provides the landlord or agent with their Home Office issued reference number in relation to that application, claim, administrative review, appeal or permission to occupy premises.
5. Where the landlord or agent obtains any document from an occupier or prospective occupier or the Landlord Checking Service pursuant to article 4, the landlord or agent must—
- (a) take all reasonable steps to check the validity of the document;
  - (b) if a document contains a photograph, satisfy themselves that the photograph is of the occupier or prospective occupier;
  - (c) if a document contains a date of birth, satisfy himself that the date of birth is consistent with the appearance of the occupier or prospective occupier;
  - (d) take all other reasonable steps to check that the occupier or prospective occupier is the rightful owner of the document;
  - (e) if the document is not a passport or other travel document, retain a clear and legible copy of the whole of the document in a format which cannot be subsequently altered;
  - (f) if the document is a passport or other travel document (which is not in the form of a card), retain a clear and legible copy of the following pages of that document in a format which cannot be subsequently altered—
    - (i) any page containing the holder’s personal details including nationality;
    - (ii) any page containing the holder’s photograph;
    - (iii) any page containing the holder’s signature;
    - (iv) any page containing the date of expiry; and
    - (v) any page containing information indicating the holder has an entitlement to enter or remain in the UK;
  - (g) if the document is a travel document in the form of a card, retain a clear and legible copy of the whole of that document in a format which cannot be subsequently altered;
  - (h) record the date on which the copies were taken;
  - (i) retain a clear and legible copy or copies securely for a period of not less than one year after the residential tenancy agreement has come to an end;
  - (j) take all reasonable steps to identify any additional occupants of the property at the time the occupier or prospective occupier enters into the residential tenancy agreement.
6. If the Landlord Checking Service fails to respond to a request made by a landlord or agent under article 4(b) for confirmation of an occupier or prospective occupier’s eligibility to occupy private residential accommodation within a period of 48 hours, not including Saturdays or Sundays, Christmas Day or Good Friday, or any day which is a bank holiday in England and Wales under the Banking and Financial Dealings Act 1971<sup>(9)</sup>, then the landlord or agent may proceed as though the Landlord Checking Service had issued a Positive Right to Rent Notice.

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(9) 1971 c. 80.

7. Nothing in this Order permits landlords or agents to retain documents produced by an occupier or prospective occupier for the purpose of article 4 for any period longer than is necessary for the purposes of ensuring compliance with article 5.

#### **Time for compliance with the prescribed requirements**

8. The prescribed period within which the prescribed requirements must be complied with for the purposes of sections 24(4) and 26(4) of the Act is 28 days ending on the day before the day on which the residential tenancy agreement which authorises occupation is entered into.

#### **Notification of contraventions to the Secretary of State**

9. The prescribed form and manner of notification for the purposes of sections 24(8) and 26(8) of the Act is that it must be in writing and must—

- (a) contain—
  - (i) the full name of the occupier who is believed to be a disqualified adult;
  - (ii) the address of the premises in which the occupier has been granted a right of occupation;
  - (iii) the name and contact address of the landlord;
  - (iv) the name and contact address of any agent;
  - (v) the date on which the occupier first became entitled to take up occupation; and
- (b) be accompanied by a copy of any documents relating to the occupier retained by the landlord or agent in accordance with article 5.

#### **Objection**

10. A notice of objection must contain—

- (a) the reference number of the notice given under section 23(1) or section 25(3) of the Act;
- (b) the name and contact address of the landlord;
- (c) the name and contact address of any agent;
- (d) the name and address of the occupier in respect of whom the penalty was issued;
- (e) the full grounds of objection; and
- (f) any documents to be relied upon in support of the objection.

11. The prescribed period within which a notice of objection must be given for the purposes of section 29(3)(d) of the Act is 28 days, beginning with the date specified in the penalty notice as the date upon which it is given.

12. The prescribed period for the purposes of section 29(6) of the Act within which the Secretary of State must inform the objector of the Secretary of State's decision is 28 days, beginning with the date on which the notice of objection was given to the Secretary of State.

#### **Codes of Practice**

13. The code of practice entitled "Code of practice on illegal immigrants and private rented accommodation: Civil penalty scheme for landlords and their agents", issued by the Secretary of State under section 32(1) of the Act comes into force on 1st December 2014.

14. The code of practice entitled "Code of practice for landlords: Avoiding unlawful discrimination when conducting 'right to rent' checks in the private rented residential sector", issued by the Secretary of State under section 33(1) of the Act comes into force on 1st December 2014.

Home Office  
28th October 2014

*James Brokenshire*  
Minister of State

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

## SCHEDULE

Article 4

### LIST A

1. A passport showing that the holder is a British citizen or a citizen of the United Kingdom and Colonies having the right of abode in the United Kingdom.
2. A passport or national identity card showing that the holder is a national of an EEA state or Switzerland.
3. A passport or travel document which has not expired endorsed to show that the holder is allowed to stay in the United Kingdom for a time limited period.
4. A registration certificate issued by the Home Office to a national of an EEA state or Switzerland under regulation 16 of the Immigration (European Economic Area) Regulations 2006.
5. A document certifying permanent residence issued by the Home Office to a national of an EEA state or Switzerland under regulation 18 of the Immigration (European Economic Area) Regulations 2006.
6. A permanent residence card issued by the Home Office to the family member of a national of an EEA state or Switzerland under regulation 18 of the Immigration (European Economic Area) Regulations 2006.
7. A residence card or derivative residence card which has not expired or been revoked.
8. A biometric immigration document which has not expired issued by the Home Office to the holder which indicates that the person named in it is allowed to stay indefinitely in the United Kingdom or has no time limit on their stay in the United Kingdom.
9. A biometric immigration document which has not expired issued by the Home Office to the holder which indicates that the person named is permitted to stay in the United Kingdom for a time limited period.
10. A passport or other travel document endorsed to show that the holder is exempt from immigration control, is allowed to stay indefinitely in the United Kingdom, has the right of abode in the United Kingdom, or has no time limit on their stay in the United Kingdom.
11. An immigration status document which has not expired containing a photograph issued by the Home Office to the holder with an endorsement indicating that the person named in it is allowed to stay in the United Kingdom indefinitely or has no time limit on their stay in the United Kingdom.
12. A certificate of registration or naturalisation as a British citizen.

### LIST B

1. A full birth certificate issued in the United Kingdom which includes the name of at least one of the holder's parents.
2. A full adoption certificate issued in the United Kingdom which includes the name of at least one of the holder's adoptive parents.
3. A birth certificate issued in the Channel Islands, the Isle of Man or Ireland.
4. An adoption certificate issued in the Channel Islands, the Isle of Man or Ireland.
5. A letter issued by a government department or local authority no longer than 3 months before the date on which it is presented, confirming the holder's name and the earliest known contact between that government department or local authority and the holder and signed by a named official stating their name and professional address.

6. A letter, issued no longer than 3 months before the date on which it is presented, confirming the holder's name and signed by a British passport holder, stating how long the British passport holder has known the holder, the relationship between them, and giving the British passport holder's name, address and passport number.

7. A letter issued by a person who employs the holder issued no longer than 3 months before the date on which it is presented, which indicates the holder's name and confirming their status as an employee and employee reference number and states the employer's name and business address.

8. A letter issued by a police force in the United Kingdom no longer than 3 months before the date on which it is presented, confirming that the holder has been the victim of a crime and personal documents have been stolen, and stating the crime reference number.

9. A document issued by one of Her Majesty's forces or the Secretary of State confirming that the holder is or has been a serving member of that force.

10. An identity card issued by any of Her Majesty's forces.

11. A letter issued by Her Majesty's Prison Service, the Scottish Prison Service or the Northern Ireland Prison Service confirming that holder has been released from the custody of that service and confirming their name and date of birth .

12. A letter issued within 6 months of discharge by an officer of the National Offender Management Service in England and Wales, an officer of a local authority in Scotland who is a responsible officer for the purposes of the Criminal Procedure (Scotland) Act 1995(10) or an officer of the Probation Board for Northern Ireland confirming the holder's name and date of birth.

13. A current licence to drive a motor vehicle granted under Part 3 of the Road Traffic Act 1988(11) (to include the photocard licence in respect of licences issued on or after 1st July 1998) or Part 2 of the Road Traffic (Northern Ireland) Order 1981(12) (to include the photocard licence).

14. A current firearm or shot gun certificate granted by a chief officer of police under Part II of the Firearms Act 1968(13), a firearm certificate issued by the Chief Constable under article 5 of the Firearms (Northern Ireland) Order 2004(14) or a current authority issued by the Secretary of State or Scottish Ministers under section 5 of that Firearms Act 1968 or the Secretary of State under article 45 of the Firearms (Northern Ireland) Order 2004.

15. A certificate issued no longer than 3 months before the date on which it is presented, by the Disclosure and Barring Service under Part V of the Police Act 1997(15), the Scottish Ministers under Part 2 of the Protection of Vulnerable Groups (Scotland) Act 2007(16) or the Secretary of State under Part V of the Police Act 1997 in relation to the holder.

16. A document issued no longer than 3 months before the date on which it is presented, by Her Majesty's Revenue and Customs, the Department of Work and Pensions, the Northern Ireland Department for Social Development or a local authority confirming that the holder is in receipt of a benefit listed in section 115(1) or (2) of the Immigration and Asylum Act 1999(17).

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(10) 1995 c. 46.

(11) 1988 c. 52.

(12) 1981 No. 154 (N.I. 1).

(13) 1968 c. 27. Part II of the 1968 Act has been amended by the Firearms (Amendment) Act 1988 (c. 45), the Firearms Acts (Amendment) Regulations 1992 (S.I. 1992/2823), the Firearms (Amendment) Act 1997 (c. 5), and the Firearms (Amendment) Regulations 2010 (S.I. 2010/1759).

(14) S.I. 2004/702 (N.I. 3).

(15) 1997 c. 50.

(16) 2007 asp. 14 (Scottish Act).

(17) 1999 c. 33.

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

Chapter 1 of Part 3 of the Immigration Act 2014 (“the Act”) provides a statutory excuse for landlords and their agents from being required to pay a civil penalty when the landlords or agents conduct prescribed identity checks on prospective occupiers and those occupiers who are renewing their tenancy agreements. This Order sets out the prescribed requirements for the prescribed identity checks which must be complied with by landlords when entering into a residential tenancy agreement. This Order also brings the statutory Codes of Practice into force.

Article 3 provides that a landlord or agent is required to obtain prescribed documents from an occupier or prospective occupier (in accordance with article 4), and once obtained, is required to take steps to verify, retain, copy or record the contents of the documents (in accordance with article 5).

Article 4 requires the landlord or agent to obtain either documents prescribed in Schedule 1 from the occupier or prospective occupier or to obtain a Positive Right to Rent Notice from the Landlord Checking Service.

Article 5 requires the landlord or agent, when they have obtained a document from an occupier or prospective occupier, to take the prescribed steps to verify, retain, copy or record the contents of the obtained documents.

Article 6 provides where a landlord or agent requests confirmation of an occupier or prospective occupier’s eligibility to occupy a private residential accommodation from the Landlord Checking Service and the Landlord Checking Service fails to respond to such a request within 48 hours (not including requests made on Saturday, Sunday, Christmas Day, Good Friday or any designated bank holiday), the landlord or agent can proceed as if a positive Right to Rent Notice had been issued.

Article 7 provides that the landlord or agent must return original documents to the occupier or prospective occupier.

Article 8 prescribes a period of 28 days before the tenancy agreement is entered into during which the prescribed requirements must be complied with in order for the landlord or agent to obtain their statutory excuse under the Act.

Article 9 sets out what information the landlord or agent is required to provide to the Secretary of State when giving notice of a contravention by an occupier.

Article 10 sets out what information must be provided by the landlord when giving a notice of objection.

Article 11 prescribes the period within which a notice of objection must be given as 28 days beginning with the date specified in the penalty notice as the date upon which it is given.

Articles 12 and 13 provide for the codes of practice to come into force on 1st December 2014.

List A of the Schedule lists acceptable documents for the purposes of article 4(a)(i).

List B of the Schedule lists acceptable documents for the purposes of article 4(a)(ii).