

2020 No. 1047

IMMIGRATION

The Immigration (Residential Accommodation) (Prescribed Requirements and Codes of Practice) (Amendment) Order 2020

<i>Made</i>	- - - -	<i>24th September 2020</i>
<i>Laid before Parliament</i>		<i>29th September 2020</i>
<i>Coming into force</i>	- -	<i>2nd November 2020</i>

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

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.

Citation and commencement

1. This Order may be cited as the Immigration (Residential Accommodation) (Prescribed Requirements and Codes of Practice) (Amendment) Order 2020 and comes into force on 2nd November 2020.

Amendment of the Immigration (Residential Accommodation) (Prescribed Requirements and Codes of Practice) Order 2014

2.—(1) The Immigration (Residential Accommodation) (Prescribed Requirements and Codes of Practice) Order 2014(c) is amended as follows.

(2) In article 2 (interpretation)—

(a) in the definition of “derivative residence card”, for “regulation 18A of the Immigration (European Economic Area) Regulations 2006” substitute “regulation 20 of the Immigration (European Economic Area) Regulations 2016(d)”;

(b) for the definition of “residence card”, substitute—

““residence card” means a residence card issued in accordance with regulation 18 of the Immigration (European Economic Area) Regulations 2016, and includes an “accession residence card” within the meaning of the Accession of Croatia (Immigration and Worker Authorisation) Regulations 2013(e) issued to a person who is not an EEA or Swiss national;”;

(a) See the definition of “prescribed”.

(b) 2014 c. 22.

(c) S.I. 2014/2874, amended by S.I. 2016/9.

(d) S.I. 2016/1052. Relevant amendments have been made by S.I. 2017/1.

(e) S.I. 2013/1460.

(c) in the appropriate places insert—

“document certifying permanent residence” means a document issued under regulation 19(1) of the Immigration (European Economic Area) Regulations 2016;”;

“Home Office online right to rent checking service” means the electronic system operated by the Home Office allowing landlords or agents to check whether a person has a right to rent in the United Kingdom and, if so, the nature of any restrictions on that person’s right to do so;”;

“online right to rent check” means the response generated by the Home Office online right to rent checking service in relation to a person;”;

“permanent residence card” means a permanent residence card issued under regulation 19(2) of the Immigration (European Economic Area) Regulations 2016, and includes an “accession residence card” within the meaning of the Accession of Croatia (Immigration and Worker Authorisation) Regulations 2013 issued to a person who is not an EEA or Swiss national;”;

“registration certificate” means a certificate issued under regulation 17 of the Immigration (European Economic Area) Regulations 2016;”.

(3) For article 3 (the prescribed requirements), substitute—

“**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—

(a) the landlord or agent—

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

(b) the landlord or agent takes the steps set out in article 5A; or

(c) the landlord or agent takes the steps set out in article 5B.”.

(4) For article 4(a) substitute—

“(a) obtain from the occupier or prospective occupier—

- (i) one document listed in List A(1) in the Schedule to this Order;
- (ii) two documents listed in List A(2) in the Schedule to this Order; or
- (iii) one document listed in List B in the Schedule to this Order; or”.

(5) After article 5 insert—

“**5A.**—(1) Where the occupier or prospective occupier has leave to enter the United Kingdom pursuant to article 8B of the Immigration (Leave to Enter and Remain) Order 2000 (further provision as to automatic grant of leave)(a), the steps are that a landlord or agent—

(a) obtains from the occupier or prospective occupier—

- (i) a passport showing that the holder is a national of Australia, Canada, Japan, New Zealand, Singapore, South Korea or the United States of America; and
- (ii) a document or a copy of such a document (whether in an electronic form or otherwise) which indicates that the holder has arrived in the United Kingdom from another country within the period of six months ending with the day before the day on which the landlord obtains that passport and document or a copy of such a document; or

(b) subject to article 6, where the occupier or prospective occupier cannot provide the documents (or copies of such documents, as the case may be) referred to in subparagraph (a), obtains a Positive Right to Rent Notice in respect of the occupier or prospective occupier from the Landlord Checking Service.

(a) S.I. 2000/1161. Article 8B was inserted by S.I. 2019/298.

(2) Where the landlord or agent obtains any document or copy of such document from an occupier or prospective occupier or the Landlord Checking Service pursuant to paragraph (1), the landlord or agent must comply with the requirements set out in article 5 in respect of that document or copy.

5B.—(1) The steps are that—

- (a) the landlord or agent uses the Home Office online right to rent checking service in respect of an occupier or prospective occupier;
- (b) the online right to rent check confirms that the occupier or prospective occupier named in it has the right to rent in the United Kingdom;
- (c) the landlord or agent has satisfied themselves that any photograph on the online right to rent check is of the occupier or prospective occupier; and
- (d) the landlord or agent retains a clear copy of the online right to rent check for a period of not less than one year after the residential tenancy agreement has come to an end.”.

(6) In article 6, after “article 4(b)” insert “or article 5A(1)(b)”.

(7) In article 7, after “article 4” insert “or 5A”.

(8) In article 9, in paragraph (a), in sub-paragraph (i) for “name” substitute “name, date of birth and nationality”.

(9) For the Schedule substitute—

“SCHEDULE

Article 4

LIST A(1)

1. A passport (current or expired) 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 (current or expired) showing that the holder is a national of an EEA state or Switzerland.

3. A registration certificate (current or expired) issued by the Home Office to a national of an EEA state or Switzerland.

4. A document certifying permanent residence (current or expired) issued by the Home Office to a national of an EEA state or Switzerland.

5. A permanent residence card (current or expired) issued by the Home Office to the family member of a national of an EEA state or Switzerland.

6. A document issued by the Home Office to a family member of a national of an EEA state or Switzerland (current or expired) which indicates that the holder is allowed to stay indefinitely in the United Kingdom or has no time limit on their stay in the United Kingdom.

7. A biometric immigration document (current or 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.

8. A passport or other travel document (current or expired) 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.

9. An immigration status document (current or 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.

10. A certificate of registration or naturalisation as a British citizen.

LIST A(2)

1. A birth certificate issued in the United Kingdom.

2. An adoption certificate issued in the United Kingdom.

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 which—

- (a) is issued by a government department or local authority no longer than three months before the date on which it is presented;
- (b) is signed by a named official stating their name and professional address;
- (c) confirms the holder's name; and
- (d) confirms that the holder has accessed services from that department or authority or is otherwise known to that department or authority.

6. A letter which—

- (a) is issued no longer than three months before the date on which it is presented;
- (b) is signed by a British passport holder who is or has been a professional person or who is otherwise of good standing in their community;
- (c) confirms the holder's name;
- (d) states how long the signatory has known the holder, such period being of at least three months' duration, and in what capacity; and
- (e) states the signatory's name, address, profession, place of work and passport number.

7. A letter issued by a person who employs the holder no longer than three 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 or National Insurance 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 three months before the date on which it is presented, confirming that the holder has been the victim of a crime in which a document listed in List A(1) to the Schedule belonging to the holder has been stolen and stating the crime reference number.

9. An identity card or 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 in any of Her Majesty's forces.

10. A letter issued by Her Majesty's Prison Service, the Scottish Prison Service or the Northern Ireland Prison Service confirming that the holder has been released from the custody of that service no longer than six months before the date on which that letter is presented, and confirming their name and date of birth.

11. A letter issued no longer than three months before the date on which it is presented 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(a) or an officer of the Probation Board for Northern Ireland

(a) 1995 c. 46.

confirming the holder's name and date of birth and confirming that the holder is the subject of an order requiring supervision by that officer.

12. A current licence to drive a motor vehicle granted under Part 3 of the Road Traffic Act 1988(a) (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(b) (to include the photocard licence).

13. A certificate issued no longer than three months before the date on which it is presented, by the Disclosure and Barring Service under Part V of the Police Act 1997(c), the Scottish Ministers under Part V of the Police Act 1997 or the Secretary of State under Part V of the Police Act 1997, in relation to the holder.

14. A document, or a screen shot of an electronic document, issued no longer than three 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(d).

15. A letter which—

- (a) is issued no longer than three months before the date on which it is presented;
- (b) is issued by a public authority, voluntary organisation or charity in the course of a scheme operated to assist individuals to secure accommodation in the private rented sector in order to prevent or resolve homelessness;
- (c) confirms the holder's name; and
- (d) states the address of a prospective tenancy which the authority, organisation or charity is assisting the holder to obtain.

16. A letter which—

- (a) is issued by a further or higher education institution in the United Kingdom;
- (b) confirms that the holder has been accepted on a current course of studies at that institution; and
- (c) states the name of the institution and the name and duration of the course.

LIST B

1. 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.

2. 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.

3. A residence card or a derivative residence card, which has not expired, issued by the Home Office to a non-EEA national who is either a family member of an EEA or Swiss national or has a derivative right of residence, which indicates that the holder is permitted to stay in the United Kingdom for a time limited period.

(a) 1988 c. 52.

(b) S.I. 1981/154 (N.I. 1).

(c) 1997 c. 50.

(d) 1999 c. 33. Section 115(1) has been amended by section 4 of the State Pension Credit Act 2002 (c. 16); section 60 of, and Schedule 6 to, the Tax Credits Act 2002 (c. 21); section 28 of, and paragraph 19 of Schedule 3 to, the Welfare Reform Act 2007 (c. 5); section 138 of the Health and Social Care Act 2008 (c. 14); sections 9 and 58 of, and Schedule 7 to, the Welfare Reform Act 2009 (c. 24); sections 31, 33, 91 and 147 of, paragraphs 52 and 54 of Schedule 2 to, paragraph 9 of Schedule 3 to, paragraphs 47 and 44 of Schedule 9 to, and Schedule 14 to, the Welfare Reform Act 2012 (c. 5); S.I. 2002/1457 and 2015/2006. Section 115(2) has been amended by section 4 of the State Pension Credit (Northern Ireland) 2002 (c. 14); sections 33 and 91 of, paragraph 9 of Schedule 3 to, and paragraphs 37 and 44 of Schedule 9 to, the Welfare Reform Act 2012; and, S.I. 2015/2006.

4. A current immigration status document issued by the Home Office to the holder, with a valid endorsement indicating that the holder has been granted limited leave to enter, or remain in, the United Kingdom.

5. A document issued by the Home Office to a family member of an EEA or Swiss national, which has not expired, and which indicates that the holder is permitted to stay in the United Kingdom for a time limited period.”.

Code of Practice

3. The revised code of practice entitled “Code of practice on right to rent: civil penalty scheme for landlords and their agents”(a) issued by the Secretary of State under section 32(5) of the Immigration Act 2014 comes into force on 2nd November 2020.

24th September 2020

Chris Philp
Parliamentary Under Secretary of State
Home Office

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 if they conduct prescribed eligibility checks on prospective occupiers and those occupiers who are renewing their tenancy agreements. The Immigration (Residential Accommodation) Prescribed Requirements and Codes of Practice) Order 2014 (S.I. 2014/2874) set out the prescribed requirements for eligibility checks which must be complied with by landlords and agents when entering into a residential tenancy agreement. That Order also brought into force a code of practice which specified, among other things, the reasonable enquiries that landlords and agents should make to determine the identity of relevant occupiers in relation to a residential tenancy agreement.

Article 2 of this Order amends S.I. 2014/2874 to introduce a new article 5A which sets out the acceptable documents which a landlord or agent must obtain from an occupier or prospective occupier who has leave to enter the United Kingdom pursuant to article 8B of the Immigration (Leave to Enter) Order 2000 (further provision as to automatic grant of leave), in order to establish an excuse under section 24 or 26 of the 2014 Act. Article 2 introduces a new article 5B which sets out the circumstances in which a landlord or agent is excused from paying a penalty by carrying out a right to rent check using the Home Office online right to rent checking service. Article 2 also amends the lists of acceptable documents, as set out in the Schedule, which a landlord or agent must obtain from an occupier or prospective occupier in order to establish an excuse under section 24 or 26 of the 2014 Act.

Article 3 provides for a revised code of practice to come into force on the same day as this Order comes into force. The changes to the revised code of practice reflect the amendments made by this Order.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sectors is foreseen.

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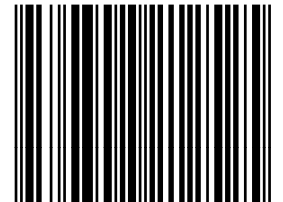
(a) A copy of this Code can be obtained from Home Office, Civil Penalty Compliance Team, PO BOX 665, Salford, M5 0LY 4DF and online at <https://www.gov.uk/government/publications/right-to-rent-landlords-code-of-practice>.

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