

EXPLANATORY MEMORANDUM TO

THE IMMIGRATION ACT 2014 (COMMENCEMENT NO. 8) ORDER 2023

2023 No. 1215 (C. 84)

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. Purpose of the instrument

- 2.1 This Order brings the powers at sections 23(6) and 25(5) of the Immigration Act 2014 (the Act) into force across the UK. Sections 23(6) and 25(5) are powers to amend by order the maximum civil penalty that may be imposed on a landlord or agent who contravenes section 22 of that Act.
- 2.2 The Home Office intends to rely on the powers at section 23(6) and 25(5) to amend the maximum penalty that may be imposed on a landlord or agent, currently specified at sections 23(2) and 25(4) of that Act, from £3,000 to £20,000. Those amendments will be brought into effect by virtue of the Immigration Act 2014 (Residential Accommodation) (Maximum Penalty) Order 2023, which was laid at the same time as this Order on 15 November 2023.
- 2.3 This Order will come into force on 6 December 2023. The Immigration Act 2014 (Residential Accommodation) (Maximum Penalty) Order 2023 is due to come into force on the later of 22 January 2024 or 21 days after the day on which it is made.
- 2.4 The Right to Rent civil penalty scheme (“the Scheme”) is currently in force in respect of premises located in England only. Neither this Order nor the Immigration Act 2014 (Residential Accommodation) (Maximum Penalty) Order 2023 will bring the operative provisions of the Right to Rent Scheme (“the Scheme”) into effect outside of England, such as the power to issue a civil penalty.
- 2.5 Although the Scheme will remain operative in England only, this Order will allow the amendments to the maximum penalty amounts specified at section 23(2) and 25(4) of the Act to extend across the UK statute book. The provisions required to make the Scheme operative outside of the UK will not come into effect until a further commencement order is laid before Parliament (subject to negative resolution procedure) to roll out the Right to Rent Scheme across other areas in the UK.
- 2.6 Without this Order, the Home Office could amend sections 23(2) and 25(4) by statutory instrument and limit the application of those amendments to premises located in England only. However, it is contrary to best drafting practice to make amendments to a UK-wide Act by statutory instrument which have a more limited extent than the provision amended. This is because such an amendment would create parallel texts in different parts of the UK, which can be confusing and a potential trap to the reader. This Order is necessary to respect this principle.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 The Department regrets that this instrument breaches the 21-day rule due to an unforeseen delay in publication. The Department has also identified that this instrument contains a defect at article 2 in that it states that the appointed day for the coming into force of sections 23(6) and 25(5) of the Immigration Act 2014 is 28th November 2023, instead of 6th December 2023 as originally intended. The Department acknowledges the breach and will be laying a further instrument promptly in order to rectify the defect.

4. Extent and Territorial Application

- 4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is the whole of the UK.
- 4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is across England.

5. European Convention on Human Rights

- 5.1 As this instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

What did any law do before the changes to be made by this instrument?

- 6.1 Chapter 1 of Part 3 of 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 as a result of 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.
- 6.2 The Immigration Act 2014 (Commencement Number 3, Transitional and Savings Provisions) Order 2014 brought the Scheme into operation in the West Midlands (pilot scheme) areas of Birmingham, Wolverhampton, Dudley, Sandwell and Walsall on 1 December 2014. The Immigration Act 2014 (Commencement No. 6) Order 2016 brought the Scheme into operation across the rest of England on 1 February 2016.

7. Policy background

What is being done and why?

- 7.1 The Scheme is part of a package of measures designed to tackle and deter illegal immigration. It is intended to prevent individuals without lawful immigration status from accessing the Private Rented Sector in England, and to support efforts to tackle those who exploit vulnerable migrants.

Why is it being changed?

- 7.2 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. The Government intends to reform the Scheme so that it becomes tougher on rogue landlords by increasing the level of the maximum penalties for a breach of the Scheme, thereby acting as a deterrent to prevent landlords from renting to a person disqualified from renting as a result of their immigration status. 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 will it now do?

- 7.3 The maximum civil penalty for landlords (including letting agents) will be raised, by virtue of the Immigration Act 2014 (Residential Accommodation) (Maximum Penalty) Order 2023 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: civil penalty scheme for landlords and their agents (“the Code”). A draft of the Code was laid before Parliament on 15 November 2023. The Code will be brought into force by virtue of the Immigration (Restrictions on Employment and Residential Accommodation) (Codes of Practice) (Amendment) Order 2024.
- 7.4 The Home Office intend to lay the Immigration (Restrictions on Employment and Residential Accommodation) (Codes of Practice) (Amendment) Order 2024 so that the Code comes into force at the same time as the Immigration Act 2014 (Residential Accommodation) (Maximum Penalty) Order 2023. The Code will provide for a penalty of £5,000 per lodger and £10,000 per occupier for a first breach from £80 and £1,000 respectively; and up to £10,000 per lodger and £20,000 per occupier from £500 and £3000, respectively, for repeat breaches (within the last 3 years). In the case of a first breach, landlords and their agents who elect to pay the penalty via the Fast Payment Option will benefit from a 30% reduction from £10,000 to £7,000 or from £5,000 to £3,500 as applicable.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument does not trigger the statement requirements under the European Union (Withdrawal) Act 2018.

9. Consolidation

- 9.1 There are no consolidation issues in bringing into force the powers required to amend primary legislation across the UK.

10. Consultation outcome

- 10.1 The Home Office has not consulted. However, the Home Office has engaged with landlords (letting agents) and their representatives 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.

11. Guidance

- 11.1 Guidance for landlords (letting agents) is not required for this change.

12. Impact

- 12.1 This Order brings into force enabling powers required to amend primary legislation by Order. There is no, or no significant impact on businesses, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector voluntary, or community bodies as a result of this Order.
- 12.3 There is no, or no significant, impact on the public sector.
- 12.4 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.

13. Regulating small business

- 13.1 This Order brings into force enabling powers required to amend primary legislation by Order. This Order will have no, or no significant impact, on small businesses.

14. Monitoring & review

- 14.1 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.

15. Contact

- 15.1 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
- 15.2 Rebecca Nugent, Deputy Director for Compliant Environment and Enforcement Unit at the Home Office, can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Rt Hon Robert Jenrick MP, Minister of State for Immigration at the Home Office, can confirm that this Explanatory Memorandum meets the required standard.