

HOUSE OF LORDS

Secondary Legislation Scrutiny Committee

22nd Report of Session 2015–16

**Immigration (Residential
Accommodation) (Prescribed
Requirements and Codes of
Practice) (Amendment) Order
2016**

**Immigration Act 2014
(Commencement No. 6) Order
2016**

Includes 2 Information Paragraph on 2 Instruments

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Secondary Legislation Scrutiny Committee (formerly Merits of Statutory Instruments Committee)

Historical Note

In January 2000, the Royal Commission on the Reform of the House of Lords said that there was a good case for enhanced Parliamentary scrutiny of secondary legislation and recommended establishing a “sifting” mechanism to identify those statutory instruments which merited further debate or consideration. The Merits of Statutory Instruments Committee was set up on 17 December 2003. At the start of the 2012–3 Session the Committee was renamed to reflect the widening of its responsibilities to include the scrutiny of Orders laid under the Public Bodies Act 2011.

The Committee has the following terms of reference:

- (1) The Committee shall, with the exception of those instruments in paragraphs (3) and (4), scrutinise—
 - (a) every instrument (whether or not a statutory instrument), or draft of an instrument, which is laid before each House of Parliament and upon which proceedings may be, or might have been, taken in either House of Parliament under an Act of Parliament;
 - (b) every proposal which is in the form of a draft of such an instrument and is laid before each House of Parliament under an Act of Parliament,with a view to determining whether or not the special attention of the House should be drawn to it on any of the grounds specified in paragraph (2).
- (2) The grounds on which an instrument, draft or proposal may be drawn to the special attention of the House are—
 - (a) that it is politically or legally important or gives rise to issues of public policy likely to be of interest to the House;
 - (b) that it may be inappropriate in view of changed circumstances since the enactment of the parent Act;
 - (c) that it may inappropriately implement European Union legislation;
 - (d) that it may imperfectly achieve its policy objectives;
 - (e) that the explanatory material laid in support provides insufficient information to gain a clear understanding about the instrument’s policy objective and intended implementation;
 - (f) that there appear to be inadequacies in the consultation process which relates to the instrument.
- (3) The exceptions are—
 - (a) remedial orders, and draft remedial orders, under section 10 of the Human Rights Act 1998;
 - (b) draft orders under sections 14 and 18 of the Legislative and Regulatory Reform Act 2006, and subordinate provisions orders made or proposed to be made under the Regulatory Reform Act 2001;
 - (c) Measures under the Church of England Assembly (Powers) Act 1919 and instruments made, and drafts of instruments to be made, under them.
- (4) The Committee shall report on draft orders and documents laid before Parliament under section 11(1) of the Public Bodies Act 2011 in accordance with the procedures set out in sections 11(5) and (6). The Committee may also consider and report on any material changes in a draft order laid under section 11(8) of the Act.
- (5) The Committee shall also consider such other general matters relating to the effective scrutiny of secondary legislation and arising from the performance of its functions under paragraphs (1) to (4) as the Committee considers appropriate, except matters within the orders of reference of the Joint Committee on Statutory Instruments.

Members

Baroness Andrews	Lord Hodgson of Astley Abbots	Baroness Stern
Lord Bowness	Baroness Humphreys	Rt Hon. Lord Trefgarne (<i>Chairman</i>)
Lord Goddard of Stockport	Rt Hon. Lord Janvrin	Lord Woolmer of Leeds
Lord Haskel	Baroness O’Loan	

Registered interests

Information about interests of Committee Members can be found in Appendix 1.

Publications

The Committee’s Reports are published on the internet at www.parliament.uk/seclegpublications

Information and Contacts

If you have a query about the Committee’s work, or opinions on any new item of secondary legislation, please contact the Clerk of the Secondary Legislation Scrutiny Committee, Legislation Office, House of Lords, London SW1A 0PW; telephone 020–7219 8821; fax 020–7219 2571; email hlseclegscrutiny@parliament.uk.

Statutory instruments

The National Archives publishes statutory instruments on the internet at <http://www.legislation.gov.uk/>, together with a plain English explanatory memorandum.

Twenty Second Report

INSTRUMENTS DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Immigration (Residential Accommodation) (Prescribed Requirements and Codes of Practice) (Amendment) Order 2016 (SI 2016/9)

Immigration Act 2014 (Commencement No. 6) Order 2016 (SI 2016/11)

Date laid: 11 January 2016

Parliamentary procedure: negative

*Summary: These two Orders extend the Right to Rent scheme, which has until now been limited to the West Midlands area, to the rest of England from 1 February 2016. The scheme requires landlords to check the immigration status of prospective tenants to see if they have a legal right to reside in the UK. The revised Code of Practice sets out what documents are acceptable as evidence of a right to reside. Landlords who fail to undertake such checks are liable to a fine of £1000. Provisions in the current Immigration Bill intend to take this policy further. Although the Home Office conducted a pilot study and published an evaluation report, which we regard as good practice, the Committee has received submissions from two organisations criticising both the size of the sample and the conclusions drawn. The submissions and responses from the Home Office are published on our website. **On the basis of the information we have seen, it appears to us that the Home Office needs to do more to publicise the checks, in particular to the majority of small landlords who do not belong to a professional association. The Home Office also needs to clarify the consequential impact on local authorities.***

These Orders are drawn to the special attention of the House on the ground that they give rise to issues of public policy likely to be of interest to the House.

1. These two instruments are laid by the Home Office under the Immigration Act 2014 (“the 2014 Act”) and each is accompanied by an Explanatory Memorandum (EM).
2. The Immigration Act 2014 (Commencement No. 6) Order 2016 (SI 2016/11) is accompanied by a copy of the Impact Assessment (IA) from the consultation exercise in 2013 which has not been updated.
3. The Immigration (Residential Accommodation) (Prescribed Requirements and Codes of Practice) (Amendment) Order 2016 (SI 2016/9) amends the list of which documents should be obtained and copied and how reports to the Home Office should be made. It also brings into effect the revised Code of Practice which was laid on 15 December 2015 and has been amended as a result of the evaluation exercise. Among other matters, the Code sets out the reasonable enquiries that a landlord should make to determine the immigration status of prospective tenants.

Background

4. Chapter 1 of Part 3 of the 2014 Act provides for the Right to Rent scheme, and under it the Secretary of State can serve a landlord (or an agent if there is one) with a notice requiring the payment of a civil penalty if he or she has let accommodation to somebody who is disqualified from renting on the grounds of their immigration status. The landlord or agent can establish a statutory excuse against a penalty by carrying out a document check, and making a report to the Home Office where required to do so.
5. The scheme was initially commenced in a group of West Midlands local authorities on 1 December 2014. An evaluation of the first six months of the scheme was published on the Gov.UK website on 20 October 2015.¹ The Home Office states that the evaluation found that landlords, letting agents and housing associations were carrying out Right to Rent checks and as a result of the scheme: 13 referral notices for civil penalties were served; 109 individuals who were illegally in the UK were identified; and 37 enforcement visits took place.
6. The Commencement Order extends the scheme to operate across the whole of England from 1 February 2016. The Government state that this lays the groundwork for the new powers which the Government intend to introduce by means of the Immigration Bill currently before Parliament. These new measures will allow for landlords to evict illegal migrants and for criminal action to be taken against the very worst rogue landlords.

Submissions from external groups

7. The Committee has received submissions from two organisations about the policy and these are published in full on our website:
 - The **Immigration Law Practitioners' Association (IPLA)** takes a broad approach to the whole policy referring to the 2014 Act and the current Bill as well as the Orders. They argue that the pilot study was too small to be conclusive and that this instrument does not fulfil undertakings made during the course through Parliament of the Bill that became the 2014 Act. Lord Taylor of Holbeach said at Report stage of the then Bill:

“I understand the desire of noble Lords to ensure that the landlords’ scheme is “workable” and that provisions are tested and carefully evaluated. Indeed, it is our intention to adopt a carefully phased approach to the implementation and to ensure that we get the guidance and support services absolutely right before considering wider implementation beyond the first phase... one of the reasons why the rollout is important is that we need to check to see if there are any adverse implications in this policy.”²

¹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/468934/horr83.pdf.

² HL Deb, 3 April 2014, col 1089.

- The **Joint Council for the Welfare of Immigrants (JCWI)** also criticises the size of the pilot study but raises a number of other issues such as the position of UK residents without documentation, the potential for increasing racial discrimination and an increased burden on local authorities.

8. We sought responses from the Home Office to some of the questions raised in these submissions. Their response is also published in full on our website. The paragraphs below briefly summarise the issues raised and the Home Office's response.

Small size of the evaluation

9. ILPA describes the sample size as “tiny”, stating –

“an on-line survey had 68 responses, 60 of which (c.90%) were from students. Two-thirds of the tenants surveyed in the Home Office evaluation were white, giving a sample size of 23 tenants visibly from ethnic minorities. Some questions in the on-line survey received as few as five responses. Only 62 landlords and landladies surveyed had taken on a new tenant since the implementation of the scheme ... The evaluation document itself acknowledges that the evidence base is not robust because of the small sample size.”

10. The Home Office responded that the evaluation was conducted with the approval of the Landlords Consultative Panel who considered it robust because of the different methodologies used, which included 17 on-line surveys with 539 responses, 12 focus groups, 36 interviews and a “mystery shopper” exercise (which also operated in a comparator area).

Discrimination

11. The JCWI pointed out that the policy appears to conflict with the obligations on the Government and local authorities under the Public Sector Equality Duty (set out in section 149 of the Equality Act 2010) which requires public authorities to eliminate discrimination. The JCWI's own independent evaluation found that the Right to Rent requirements had increased discrimination:³

“Only one British citizen in the pilot area who responded to the survey had been asked by their landlord whether they had permission to be in the UK, compared to 73% of non-British citizens. Furthermore, 42% of landlord respondents stated that the introduction of the immigration checks had made them less likely to consider renting to someone who does not have a British passport and 27% stated that they would be less likely to open discussions with someone who ‘had a name which doesn't sound British’ or ‘had a foreign accent’.”

³ JCWI (2015) *No Passport Equals No Home: Independent evaluation of the 'right to rent'*.

12. JCWI also found that 65% of landlords are much less likely to consider tenants who cannot provide documents immediately.

“This will affect anyone who lacks documents or does not have documents to hand, such as a passport, which includes 17.5% of the UK population according to ONS statistics. Evidence, both from the Home Office evaluation and JCWI’s independent evaluation, further suggests that the checks are directed towards those who ‘appear’ foreign. Therefore, perfectly legal tenants who nonetheless lack clear documentation will face discrimination under these provisions.”

13. The Home Office maintained that the evaluation found “no hard evidence of discrimination” but it is unclear what was meant by that as the evaluation report states that “verbatim comments ... suggest that there were a small number of instances of potentially discriminatory behaviour”. In supplementary information provided by the Home Office, they state that:

“mystery shopping research found no major differences, in black and minority (BME) and White British shoppers’ access to accommodation, between the phase one area and comparator areas. Additionally, none of the BME mystery shoppers felt discriminated against as a potential renter in the 166 paired encounters (that is, in the phase one and comparator location) that took place during the evaluation. In some instances, BME people were asked additional questions in the phase one area, however, they were also more likely to obtain a viewing of a property or be placed on to customer lists as a consequence.”

The Landlords Consultative Panel (which includes the Equality and Human Rights Commission) accepted the findings of the evaluation.

14. On the issue of those with a right to rent who might not have documentation, we asked the Home Office whether any of the necessary documents were available free of charge. They said:

“The Government accepts that in some instances a person or body asked to provide a letter of attestation may choose to charge a fee. The wide range of documents acceptable in satisfying the right to rent check does, however, provide for a number of options to the prospective tenant.”

The lists of acceptable documents were revised in the Code of Practice following the evaluation.

Impact

15. The penalty for renting a property to an illegal non-EEA migrant is £1000 for the first offence and £3000 thereafter. Lesser penalties apply to landlords renting a room in their house. The impact on the public sector across the UK in the IA is estimated at £8.64 million over ten years in costs, with £6.8 million in income from penalties over the same period.

16. The Home Office states that the checks which landlords and agents are required to make under this legislation are consistent with the checks which they are already carrying out, and the regulatory burden is therefore small. ILPA and JCWI both believe that the impact on local authorities, who will be asked to deal with the homeless who have been refused private accommodation, has been significantly underestimated.
17. The evaluation report indicates that five out of nine local authority respondents felt that the scheme had increased their workload. The Home Office told us that respondents working in social services, homelessness or children's services tended to comment on larger increases in workloads, but did not quantify the scale of any additional workload, and that analysis of the data provided with a comparator area suggested that the scheme has not led to a major change in the number of homelessness decisions. **The Home Office needs to be clear about the consequential effects of this legislation on local authorities, and whether the demand for local authority housing will increase as a result.**

Awareness of the scheme remains low

18. JCWI is currently running a telephone survey to ascertain the level of knowledge amongst private landlords of the scheme. At the time of writing (mid-January) 46% were unaware of the introduction of 'right to rent checks' from 1 February 2016, 83% were unaware of the codes of practice and 88% felt they had not received adequate support and information about how to undertake the checks. The JCWI also point out that while the Home Office evaluation report claims that landlords and agents felt aware of the scheme, almost 60% of landlords with only one property felt poorly informed or uninformed about the 'Right to Rent' scheme. JCWI add that small-scale landlords make up 78% of landlords and are not typically members of the professional bodies with which the Home Office has been cooperating.
19. The Home Office states that it has an extensive communications strategy for the scheme and has produced:
- A revised Code of Practice,
 - Guidance for landlords and tenants,
 - An online checking tool,
 - An interactive user guide for landlords and tenants,
 - A suite of communication materials to be shared with stakeholders to help communicate the scheme to their audiences.

“These resources have been widely shared across a range of channels (e.g. by email to stakeholder lists, press notices, web stories including a story pinned to the front page of GOV.UK, social media) and the Home Office is continuing proactive engagement and communications activity ahead of the roll out to ensure landlords and tenants are aware of the materials available.”

20. However this brief description does seem to us reliant on individuals being able to use electronic media and knowing that they need to seek out the information. Although tenants are not the primary target of the scheme, the Home Office evaluation report stated that only 22 of 68 felt informed and 22 of 39 had received the information from the university accommodation service. This indicates that electronic media are not reaching even the group most likely to use it. **From the limited information we have seen it would appear that the Home Office needs to do more to publicise the checks, in particular to the majority of small landlords who do not belong to a professional association.**

Objectives of the scheme

21. Paragraph 7.1 of the EM to SI 2016/11 states that the objective of the policy is to restrict the access of illegal migrants to the private rented sector “which allows such people to establish a settled life in the UK and frustrates 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.”
22. Both ILPA and JCWI argue that the evaluation does not address whether the aims of the scheme have been met, for example whether those without leave have found it more difficult to obtain accommodation and whether they have left the UK as a result. The evaluation states that 109 irregular migrants came to the attention of the Home Office as a direct result of the ‘Right to Rent’ scheme but, they argue, this number is made up of referrals provided by internal Home Office teams, external organizations including government departments, police referrals and public allegations and thus seems more to do with normal enforcement activity than with the scheme: elsewhere, the evaluation report states that just 26 referrals of irregular migrants were specifically related to the scheme.
23. JCWI adds that of those cases of irregular migrants where enforcement activity was instigated, only nine have since left the UK, and 46% of those identified by the Home Office now have outstanding legal cases (four judicial reviews, 15 family cases, 28 asylum claims) which means that currently they have every right to remain in the UK.
24. The Government also claim that the scheme will reinforce action against rogue landlords who target vulnerable tenants by putting illegal residents in overcrowded accommodation. However both submissions state that only five civil penalty notices were issued to landlords as a result of the scheme. Additionally, JCWI state that eight voluntary and charity sector organisations that they contacted said that they had found evidence of exploitation by rogue landlords of people without the right to rent as a result of the scheme.

INSTRUMENTS OF INTEREST

Draft Immigration and Nationality (Fees) Order 2016

25. As a result of the Immigration Act 2014, the Home Office now increases its fees in a different way. First an affirmative Order sets the maximum amount that can be charged for that type of service. If that is approved, negative regulations set the specific fee for each item. The current Order sets the maxima and is intended to last for four years. Each year, fee regulations will amend the price of specific activities but will not be able to exceed the upper limit for it set out in this Order. Although the negative regulations are not expected until March, the Home Office has published the proposed specific fees on the Gov.UK website.⁴ The Home Office states that the objective is to be able to recover 100% of the costs of front-line Immigration, Border and Citizenship operations through fees by 2019-20. The Impact Assessment (IA) to the current Order estimates that the proposed increase in fees will result in a reduction of about 10,000 migrants per year, or just over 0.2% of the total 4,000,000 estimated applications in 2016-17. We note that page 15 of the IA assumes that International Students deterred by these fee increases will be replaced by EU applicants. We also note that under the “high displacement” scenario some students’ places might remain unfilled. We asked whether these assumptions had been discussed with providers of Higher Education. The Home Office replied:

“We have previously published this assumption in other IAs related to fee changes, to the best of our knowledge, we have not received any comments related to that particular assumption and therefore have not discussed it with Higher Education providers.”

This is a regrettable position and, although the numbers affected may be small, to avoid unintended consequences, the Home Office should engage with Higher Education providers to ensure that the fee policy and the assumptions that support it are robust.

Greater London Authority Elections (Amendment) Rules 2016 (SI 2016/24)

26. Most of the changes made by this instrument apply the electoral conduct provisions from the Electoral Registration and Administration Act 2013 to the Rules for the administration and conduct of elections for the Greater London Authority (GLA), and to the ballot papers and forms used by voters at those elections. Similar changes have already been made for other elections, for example to allow those in the queue at the polling station at 10pm to be issued with ballot papers. Rule 8 allows for the GLA ballot papers to be amended so that they can be made suitable for electronic counting. This change has been made at the request of the Greater London Returning Officer following tests over a series of polls to refine the ballot papers’ layout and design to facilitate electronic counting.

⁴

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/491069/Fees_Table_-_table_with_further_detail_of_indicative_fees_for_2016-17.pdf.

INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

The Committee has considered the instruments set out below and has determined that the special attention of the House need not be drawn to them.

Draft instruments subject to affirmative approval

Immigration and Nationality (Fees) Order 2016
Passenger and Goods Vehicles (Tachographs)
(Amendment) Regulations 2016

Draft instruments subject to annulment

Designation for the British Board of Film Classification
Elmbridge (Electoral Changes) Order 2016

Instruments subject to annulment

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| SI 2016/15 | Public Lending Right Scheme 1982 (Commencement of Variation) Order |
| SI 2016/20 | Licensing Act 2003 (Permitted Temporary Activities) (Notices) (Amendment) Regulations 2016 |
| SI 2016/24 | Greater London Authority Elections (Amendment) Rules 2016 |
| SI 2016/30 | Judicial Pensions (Contributions) (Amendment) Regulations 2016 |
| SI 2016/34 | Liberia (Asset-Freezing) (Revocation) Regulations 2016 |

APPENDIX 1: Interests and attendance

Committee Members' registered interests may be examined in the online Register of Lords' Interests at www.publications.parliament.uk/pa/ld/ldreg.htm. The Register may also be inspected in the Parliamentary Archives.

For the business taken at the meeting on 26 January 2016 Peers declared no interests.

Attendance:

The meeting was attended by Lord Bowness, Lord Goddard of Stockport, Lord Hodgson of Astley Abbotts, Baroness Humphreys, Lord Janvrin, Baroness O'Loan, Baroness Stern, Lord Trefgarne and Lord Woolmer of Leeds.