

2014 No. 2873

IMMIGRATION

The Immigration (Residential Accommodation) (Prescribed Cases) 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 section 37(6)(a) and (7) of the Immigration Act 2014(a):

Citation and commencement

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

Interpretation

2. In this Order—

“the Act” means the Immigration Act 2014;

“new joint tenancy” has the meaning given in article 3(1)(c);

“new occupier” means an adult occupying premises who did not have a right to occupy the premises under a residential tenancy agreement prior to the variation or assignment of that agreement or the grant of a further residential tenancy (as the case may be);

“original occupier” means an adult who had a right to occupy premises under a residential tenancy agreement prior to the variation or assignment of that agreement or the grant of a further residential tenancy (as the case may be);

“tenant assigned tenancy” has the meaning given in article 3(b);

“varied tenancy” has the meaning given in article 3(a).

Cases in which a residential tenancy agreement is to be treated as being entered into

3. A residential tenancy agreement is to be treated as being entered into for the purposes of Chapter 1 of Part 3 of the Act where a landlord—

(a) consents to a variation of a residential tenancy agreement which grants the right to occupy the premises to one or more new occupiers (“a varied tenancy”),

- (b) consents to the assignment of a residential tenancy agreement by one or more tenants which results in the grant of the right to occupy the premises to one or more new occupiers (“a tenant assigned tenancy”), or
- (c) accepts a surrender of a residential tenancy agreement (“the surrendered tenancy”) by the original occupier or by or on behalf of joint original occupiers and grants a further residential tenancy agreement starting from the time the surrendered tenancy ends to one or more of the original occupiers and one or more new occupiers (“a new joint tenancy”).

4. A residential tenancy agreement granted by a landlord—

- (a) to a tenant who is outside the United Kingdom, or
- (b) to a tenant and one or more other adults who are outside the United Kingdom, whether or not they are named in the agreement,

on condition that the tenant will produce to the landlord documents confirming the tenant’s, and where applicable, any adult’s, right to rent residential premises following the tenant’s, and where applicable the adult’s, arrival in the United Kingdom, shall be treated as being entered into for the purposes of Chapter 1 of Part 3 of the Act on the day on which, under the terms of the residential tenancy agreement, the tenant is entitled to possession.

Cases in which a residential tenancy agreement is not to be treated as being entered into

5. A residential tenancy agreement is not to be treated as being entered into for the purposes of Chapter 1 of Part 3 of the Act where—

- (a) it arises—
 - (i) by virtue of an order of a court,
 - (ii) by or under any statutory provision,
 - (iii) by operation of law, or
- (b) it arises between the same parties at the end of a term granted by a residential tenancy agreement as a result of a contractual right exercised by the tenant.

Modification of application of provisions

6. In relation to a residential tenancy agreement which is a varied tenancy, a tenant assigned tenancy, or a new joint tenancy, the provisions at sections 24 and section 26 of the Act have effect subject to the modifications set out in paragraphs 1 and 2 of the Schedule to this Order.

7. In relation to a residential tenancy agreement where the interest of a landlord is assigned to a new landlord, the provisions at section 24 and section 26 of the Act have effect subject to the modifications set out in paragraphs 3 and 4 of the Schedule to this Order.

Home Office
28th October 2014

James Brokenshire
Minister of State

SCHEDULE

Articles 6 and 7

MODIFICATION OF APPLICATION OF PROVISIONS

Excuses available for landlords

1. For the purposes of article 6, section 24 (excuses available to landlords) of the Act is modified as if for paragraph (4) there were substituted—

“(4) But where compliance with the prescribed requirements discloses that a relevant occupier is a person with a limited right to rent, the landlord is excused under subsection (2)(a) only if—

- (a) in respect of an original occupier who had a right of occupation under a previous residential tenancy agreement, the requirements are complied with in relation to that occupier within such period as may be prescribed in relation to the entering into of that previous residential tenancy agreement, and
- (b) in respect of a new occupier, the requirements are complied with in relation to that occupier within such period as may be prescribed in relation to the entering into of the varied tenancy, tenant assigned tenancy or new joint tenancy agreement.”.

Excuses available for agents

2. For the purposes of article 6, section 26 (excuses available to agents) of the Act is modified as if for paragraph (4) there were substituted—

“(4) But where compliance with the prescribed requirements discloses that a relevant occupier is a person with a limited right to rent, the agent is excused under subsection (2) only if—

- (a) in respect of an original occupier who had a right of occupation under a previous residential tenancy agreement, the requirements are complied with in relation to that occupier within such period as may be prescribed in relation to the entering into of that previous residential tenancy agreement, and
- (b) in respect of a new occupier, the requirements are complied with in relation to that occupier within such period as may be prescribed in relation to the entering into of the varied tenancy, tenant assigned tenancy or new joint tenancy agreement.”.

3. For the purposes of article 7, section 24 (excuses available to landlords) of the Act is modified as if for paragraph (6)(a) there were substituted—

“the landlord, or any previous landlord, has notified the Secretary of State of the contravention as soon as reasonably practicable;”.

4. For the purposes of article 7, section 26 (excuses available to agents) of the Act is modified as if for paragraph (6)(a) there were substituted—

“the agent, or any previous landlord or agent, has notified the Secretary of State and if relevant, the landlord responsible for the contravention at the time of making the notification, as soon as reasonably practicable;”.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order sets out circumstances in addition to those in section 20 of the Immigration Act 2014 (“the Act”) in which a residential tenancy agreement will and will not be treated as being entered into for the purposes of the civil penalty scheme relating to the authorisation of occupation of premises for residential use by illegal immigrants under Chapter 1 of Part 3 of the Act, and modifies the application of some of the provisions in the Chapter in those circumstances.

Article 3 sets out the circumstances in which a residential tenancy agreement will be treated as being entered into. Where a landlord consents to the variation of a residential tenancy agreement so that new adults are granted rights of occupation under the agreement, consents to the assignment of a tenancy which results in the grant of rights of occupation to new occupiers, or accepts the surrender of a joint tenancy and grants a further residential tenancy agreement to one or more of the original tenants and one or more new tenants, this will be treated as though a new residential tenancy agreement had been entered into. The effect is that, if the landlord wants to avail himself or herself of a statutory excuse against a penalty under the Act, the landlord will be required to comply with the prescribed requirements to prevent a pre-grant contravention arising

under section 22(4) of the Act. Article 7 and paragraphs 1 and 2 of the Schedule to the Order modify the applications of the provisions in sections 24 and 26 of the Act in these circumstances, so that a landlord or agent is only required to establish a statutory excuse in relation to new occupiers, and not those persons who had rights of occupation under the previous residential tenancy agreement.

Article 4 provides that where a residential tenancy agreement is granted to a tenant who is outside the United Kingdom, on condition that the tenant and any occupiers will confirm their eligibility to occupy residential accommodation on arrival in the United Kingdom, the agreement shall be treated as being entered into on the day on which the tenant is entitled to possession of the premises.

Article 5 sets out circumstances in which a residential tenancy agreement will not be treated as being entered into for the purposes of the civil penalty scheme.

Articles 6 and 7 and the Schedule modify the application of sections 24 and 26 of the Act in circumstances where a landlord has consented to a variation, assignment or surrender of a residential tenancy agreement, or where a landlord's interest in a residential tenancy agreement has been assigned to a new landlord. This allows the new landlord, or any agent instructed by them, to rely on any statutory excuse against liability for a penalty in relation to a post-grant contravention established by the previous landlord through the making of a report to the Secretary of State.

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