



### **Landlords: New Right to Rent checks from 1 February 2016**

12 January 2016

From 1 February 2016 the government's controversial Right to Rent scheme will be rolled out across England. Under the legislation, all private landlords in England will be obliged to check that new tenants are lawfully resident in the UK before renting property to them. It is estimated that this will affect 2.6million tenants and 1.8million landlords. The government introduced a pilot scheme in the West Midlands in December 2014.

The new regime will apply to any residential tenancy agreement entered into on or after 1 February 2016 whether the contract is written or verbal. Landlords, include those who sub-let or take in lodgers. Landlords can appoint an agent on their behalf who will then be liable in place of the landlord. However any such agreement must be in writing.

The Immigration Minister James Brokenshire has commented that these checks are "straightforward and do not require any specialist knowledge". However the scheme has been sharply criticised by the lettings sector. Tenants may find themselves at a disadvantage as landlords are unlikely to be willing to engage with the significantly more onerous procedure. Research by the Joint Council for the Welfare of Immigrants ("JCWI") suggested that the pilot scheme in the West Midlands was not effective in reducing the number of people living in the UK illegally. The same report stated that 42% of landlords would be unlikely to rent to those without British passports, leading to discriminatory practices.

The Home Office has simultaneously issued guidance on how to carry out the checks in a manner that is not discriminatory however many landlords commented in the JCWI report that this guidance was not easy to understand.

### **How to undertake a Right to Rent check**

A check must be undertaken before the tenancy commences and can be done up to 28 days prior.

Home Office guidance sets out what documents can be relied upon to satisfy the Right to Rent check. The most straightforward way to do this is for the landlord or agent to examine and retain a certified copy of the passport and any immigration endorsement to establish whether:

- The proposed tenant is a British, EEA or Swiss national;
- That they otherwise have a 'Right to Rent'. For example they have indefinite leave to remain, or limited leave to remain in a particular immigration category.

The guidance states that the check should be done in the presence of the tenant either in person or by video link. It also applies to all adults living in the property, not just those named on the tenancy

agreement. The landlord must check that the document appears genuine, including that the photograph and date of birth reflect the appearance of the tenant.

For those with limited immigration status there is an ongoing obligation to conduct a follow up check within 12 months or before the relevant visa expires, whichever is the later.

Those migrants with pending applications are particularly disadvantaged. The landlord in such a case would need to obtain a 'positive verification notice' from the Landlord Checking Service at the Home Office to establish a defence. But delays and bureaucracy can mean that these notices are not always correct, or timeously provided.

### **For how long must the documents be retained?**

The copy documents must be retained throughout the tenancy and for 1 year afterwards. It will be necessary to store these documents securely and not retain them for any longer than is necessary, in accordance with the Data Protection Act 1998.

### **What are the penalties for failing to undertake an appropriate check?**

A civil penalty of up to £3,000 per tenant can be imposed for allowing a person to occupy who does not have a right to rent, subject to various defences.

The landlord can object to the civil penalty within 28 days of the notice being received.

A landlord who can demonstrate that a satisfactory Right to Rent check has taken place will have a defence to the civil penalty regime. If a landlord discovers that a tenant no longer has a right to rent they must notify the Home Office to avoid a civil penalty being imposed. The landlord is not obliged to take steps to take possession of the property, however this may change.

### **More changes, more severe penalties**

The Immigration Bill 2015 currently making its way through parliament is even more draconian.

The bill would include powers to make it a criminal offence, punishable by up to 5 years imprisonment, for landlords who knew or had reasonable cause to believe that an occupier did not have a right to rent. It also includes a power for the Secretary of State to issue a notice in writing to the landlord stating that the tenant has no right to rent; the landlord would then face a criminal penalty if they continued to rent to the tenant. In such a case the landlord would need to give 28 days' notice to the tenant to vacate the premises. If the tenant did not leave then the landlord could pursue a court order to evict.

There is strong opposition to the new bill however the government seems insistent on creating a 'hostile environment' for migrants. What is clear from the research conducted during the pilot scheme is that the effectiveness of the scheme in deterring illegal immigrants from remaining in the UK is in serious doubt, whilst the scheme is leading to a disproportionate level of discrimination against prospective tenants who do not have a British or EEA passport.

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