

Right to Rent to apply across the UK from 1 February 2016

Introduction

The Immigration Act 2014 introduced requirements on private landlords to verify whether prospective tenants have a "Right to Rent". The requirements were brought into force in certain pilot areas in December 2014. From 1 February 2016 the requirements will apply across England.

Right to Rent

Right to Rent relates to a person's immigration status and whether this entitles them to rent property in England. There are three broad categories:

Permanent Right to Rent includes British citizens, EEA nationals (i.e. nationals of EU states, Iceland, Lichtenstein and Norway), Swiss nationals and people with indefinite leave to remain in the UK.

Time-limited Right to Rent includes any persons with valid leave to enter or remain in the UK for a limited period of time (e.g. asylum seekers, people who time-limited visas).

No Right to Rent includes any person who has no right to remain in the UK.

Landlord's responsibility

Private sector landlords of residential properties will be prohibited from allowing persons without a Right to Rent to occupy those properties. The legislation includes a statutory defence for landlord's who carry out appropriate checks of an occupier's Right to Rent in accordance with the legislation and statutory guidance published by the Home Office (the Home Office has published draft guidance for landlords, available [here](#)).

In respect of tenancies entered into on or after 1 February 2016, landlord's must, within the 28 days before the tenancy agreement is entered into:

1. Take reasonable steps to establish all adults who will be occupying the property (no checks or follow up checks are required for anyone who is under 18 at the time they commence occupation);
2. Obtain originals of the prescribed documents for each prospective occupier;
3. Check the documents in the presence of the document holder; and
4. Make copies of the documents, date them and retain them.

Where the landlord's initial checks show that an occupier has a time-limited right to remain, the landlord must carry out follow up checks at the earliest of:

- The date of expiry of the occupier's leave to remain in the UK;
- The date of expiry of the document(s) evidencing the occupier's leave to remain in the UK; or
- One year from the date of the previous checks.

If initial or follow up checks reveal that an occupier does not have a Right to Rent, the landlord must make a report to the Home Office as soon as reasonably practicable.

Data protection

Landlords should bear in mind their existing duties under the Data Protection Act. All document copies taken should be kept securely and should not be retained for longer than reasonably necessary.

What agreements do the requirements apply to?

The requirements apply to any agreement pursuant to which a property is occupied for residential use as the occupier's only or main home for rent. They will therefore apply to:

- Tenancies and sub-tenancies;
- Leases and sub-leases; and
- Licences to occupy

This means that tenants who sub-let their properties and occupiers who let out a room in their property to a lodger will also have to comply with the requirements.

The following types of arrangements are specifically excluded:

- Arrangements where the accommodation is arranged by a local authority under a statutory duty or power (this includes instances where individuals are placed in private accommodation by a local authority, but the landlord should obtain written confirmation from the authority that it is acting in response to a statutory duty and keep this on file).
- Certain student and employment-tied accommodation.
- Leases for a term of 7 years or more (but note that the lease cannot include a break clause during the first 7 years or it will be deemed to be for less than 7 years).

Who is liable?

The starting point is that liability rests with the immediate landlord, however liability can, by written agreement, be assigned to:

1. A superior landlord (e.g. where a tenant is sub-letting); or
2. An agent acting in the course of business (but note that where an agent notifies a landlord that a tenant doesn't have a Right to Rent prior to a tenancy being granted, the landlord will become liable if a tenancy is entered into).

Where a property is acquired with tenants in place the original landlord will remain responsible for the checks that should have been carried out whilst they were the landlord, but the new landlord will be responsible for carrying out any follow up checks on existing tenants. Purchasers of tenanted properties should therefore ensure they obtain all the necessary information from the seller.

Penalties

A failure to carry out the required checks could lead to civil penalty notices for up to £3,000.

In addition, the Immigration Bill 2015-16 (which is currently going through Parliament) would create a new criminal offence for landlords and agents who repeatedly fail to carry out the required checks.