

Right to rent

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Introduction

Immigration (and in particular the plight of refugees) was never far from the headlines this summer. Eventually, the Prime Minister was forced to accept that the UK should play a limited role in helping people from Syria seek sanctuary from war and other dangers.








But that should not be taken as a sign that the government is looking at immigration in a different light. In September, yet another Immigration Bill appeared – partly to reinforce measures contained in the 2014 Immigration Act. Assuming it becomes law, the new act will be the ninth piece of major immigration legislation in the past 20 years.

Measures include the right to rent, which thrusts landlords into the forefront of the government's attempts to crackdown on illegal immigration. Following a pilot in the West Midlands that began last December, landlords throughout the UK will be expected to check that a prospective tenant's passport or other documents prove they are living in the UK legally.

While it is mainly an issue for private landlords, housing associations will also be affected when they let homes for private or intermediate rent – or if they let at social or affordable rent where the tenant was not nominated by a local authority after being on the housing waiting list.

Depending on how smoothly it is introduced, right to rent could have major ramifications throughout housing, as well as wider social implications.

Summary

-  Immigration checks by landlords to be rolled out nationally within months
-  Jail sentences threatened for landlords who persistently let homes without checking tenants' immigration status
-  Social landlords affected if they let to tenants who are not nominated by local authorities
-  Government still to publish evaluation of West Midlands pilot
-  Concerns some UK citizens may be denied homes because they do not have valid passports
-  Claims other would-be tenants face discrimination because of their race or nationality
-  Charities may be prevented from assisting asylum-seekers and other needy migrants whom they offer private rented accommodation on a short-term basis.

What is right to rent?

Since last December, private landlords in parts of the West Midlands have been required to check the immigration status of new tenants. Unless people can show a valid passport or other documentation to prove they are living in the UK legally they should, in theory, be turned away.





What was initially thought of as a pilot, but was later described by the Home Office as phase 1 of the right to rent scheme, covers Birmingham, Walsall, Sandwell, Dudley and Wolverhampton.

Acceptable documents include a passport or national ID card, a registration certificate, a permanent residence card or a biometric immigration document. Full details of documents acceptable to the Home Office can be found here:







<http://hqnetwork.co.uk/products/welfare-reform-and-universal-credit/document5686.html>

Landlords in these areas that do not carry out checks and let homes to people without the right to live in the UK risk a fine of up to £3,000. Landlords are also required to carry out follow-up checks when a person's right to live in the UK expires during the tenancy. If a person continues renting a property after their right to live in the UK expires, landlords must make an official report to the Home Office.

The right to rent scheme applies to:

-  Landlords letting private rented accommodation
-  Landlords or occupiers allowing a lodger to live in a property
-  Tenants or occupiers sub-letting a property
-  Letting agents appointed by a landlord to take responsibility for complying with the scheme.

Those exempt from the scheme include:

-  Accommodation arranged by local authorities or relevant NHS bodies in response to a statutory duty
-  Care homes, hospitals and hospices
-  Social housing (including private properties let to social tenants) so long as homes are let through local authority allocation procedures
-  Hostels and refuges
-  Home Office accommodation for asylum-seekers and other migrants
-  Student accommodation.

The Home Office provides an online tool to help landlords who are uncertain whether a document presented to them is authentic, or who have other problems with the scheme. More details here:

<https://eforms.homeoffice.gov.uk/outreach/lcs-application.ofml>

What has happened so far?

Initially it was thought that private landlords might kick up a fuss about being asked to become pseudo UK border guards, or at very least object to the extra bureaucracy involved. But members of the National Landlords Association in the West Midlands appeared to welcome the scheme, with the association's local representative suggesting some saw it as an opportunity to keep away possible drug dealers and human traffickers.

A government evaluation of the scheme, focusing on the direct effects it had on landlords and tenants in the West Midlands, got underway in May. It is overseen by a panel chaired by Lord (Richard) Best and immigration minister James Brokenshire. The results of the evaluation have yet to be published by the Home Office.

In August, following a Freedom Of Information request by *The Economist*, it was reported that seven landlords had been fined for failing to check that tenants had the right to live in the UK, while 11 immigrants had been found to be renting properties illegally. Read more here:

<http://www.independent.co.uk/news/uk/politics/right-to-rent-policy-for-illegal-immigrants-was-approved-despite-trial-showing-it-was-ineffective-10444382.html>

The Joint Council for the Welfare of Immigrants (JCWI) carried out its own evaluation and concluded that landlord checks were creating a 'hostile environment' for people who cannot easily show documents they need to prove they have the right to live in the UK.

Nearly half (42%) of landlords said right to rent had made them less likely to consider letting to someone who does not have a British passport, with 27% saying they would not discuss lets with people with foreign accents or names.

Read more about the JCWI study here:

<http://www.jcwi.org.uk/blog/2015/09/03/right-rent-checks-result-discrimination-against-those-who-appear-%E2%80%99foreign%E2%80%99>

In May, within weeks of the general election, David Cameron announced that right to rent would be rolled out nationally, although no date has been set. Its extension to the rest of the UK was confirmed in August in the midst of the media frenzy surrounding refugees and other migrants seeking to enter the UK from Calais.

So-called 'rogue' landlords would in future face more than just fines, said the government. As later confirmed in the Immigration Bill, there would also be possible jail sentences of up to five years and further sanctions under the Proceeds of Crime Act. Read more here: <https://www.gov.uk/government/news/new-measures-to-crackdown-on-illegal-immigrants-renting-properties>

What is happening next?

Most landlords (private and social) are waiting to hear when right to rent will be rolled out nationally. Only then should it become more apparent exactly what impact it is going to have.

In response to the new bill, the National Landlords Association said it was pleased that the government is promising to make it easier for landlords to end tenancies swiftly and without undue costs when a tenant loses the right to rent because their immigration status changes.

But Richard Lambert, the NLA's chief executive officer, added that many landlords remained concerned about the practical implications of having to check people's documents and the consequences if they get it wrong.

"Until landlords are comfortable with the system, ministers' reassurances that the five-year jail term will only affect those who knowingly or persistently ignore the law will cut little ice," he said. "The NLA will continue to work very closely with the three different departments involved during the passage of the bill to find solutions to the problems of implementing this controversial policy."

The NLA's full advice to private landlords can be found here:

<https://www.nlatenantcheck.org.uk/righttorent.aspx>.

The Residential Landlords Association claims that right to rent is causing confusion and anxiety for its members. It also agrees that people whose immigration documents are unfamiliar to landlords could, in areas of high demand, miss out on renting a home.

"The RLA opposes discrimination against tenants because of their race or nationality," said RLA chair Alan Ward. "If the government expects landlords to act as border police it should provide them with the training and material needed to give them the confidence to carry out the checks required of them."

The government claims it is already helping landlords. The Home Office's landlord checking service 'right to rent aid' was used more than 11,000 times between December and May, while its helpline took more than 800 calls from landlords, agents and tenants. Private firms are also willing (for a fee) to carry out right to rent checks on behalf of landlords.

More concern about right to rent has come from charities who pay rent on behalf of asylum-seekers and other migrants so they can live in private rented accommodation for short periods and avoid destitution. This includes asylum-seekers who need time to prepare and submit fresh asylum claims.

Some charities are seeking legal advice over ways to get around the new rules. This might include grant funding landlords (so that the landlord does not have to charge rent) or buying properties themselves and using them as a refuge or hostel.

How will it affect social landlords?





Social housing is exempt from right to rent providing tenants are nominated by a local authority using allocation procedures under the 1996 Housing Act or subsequent legislation. This means lets by councils will not be affected as, in effect, the immigration status of prospective tenants was checked when they applied to join the housing waiting list.

Housing associations, however, will be required to carry out right to rent checks if they operate as private landlords or let at intermediate rents, or run their own housing waiting list or register.

Where tenants sub-let by taking in a lodger, the landlord will need to be satisfied that a right to rent check was carried out by the tenant or occupier.

The National Housing Federation has yet to produce any guidance for its members, having received very few enquiries from associations in the West Midlands affected by the right to rent pilot.

Action points for social landlords

-  Do you let to tenants who are not nominated by local authorities as part of the statutory allocations process?
-  Are you aware of the system of checks that must be carried out when somebody applies to rent a home?
-  Do you have systems in place to carry out these checks?
-  Are your tenants aware that checks must be carried out on lodgers before they can sub-let properties?

Conclusion

Immigration and ways to monitor or control it are bound to be controversial subjects. On one hand, it is difficult to argue against a policy that says people renting in the UK should have the right to live here, either on a temporary or permanent basis.

Reputable landlords also want to know who they are letting homes to, and be certain they are trustworthy. But at the same time it is doubtful any landlord wishes to take on the role of a UK security guard.

The problem with right to rent is that it is being introduced by a government that, at times, seems more interested in demonstrating that it is tough on immigration than in it is in housing. There was little if any consultation with landlords prior to the introduction of right to rent in the West Midlands, and David Cameron announced a national roll-out before the evaluation of the pilot (or first phase) had begun, let alone concluded.

The Home Office's evaluation is limited to individuals and organisations directly affected by right to rent in the West Midlands. Those in the remainder of the country that may be concerned about its wider impact were precluded from taking part.

And the evaluation has still not been published. When it is, it will no doubt be reported by a hysterical media in terms of whether, so far, right to rent has been a failure or success. But how can this be judged? By the fact that many landlords were fined, or just a few?

For landlords (private and social) in the rest of the country, the important thing is to be aware of what right to rent will entail when it goes nationwide in the next few months. Housing associations, in particular, can start by assessing how frequently they let homes to people who do not hail from the housing waiting list.

Yes it will involve more work, and only time will tell whether this is excessive. In the meantime, housing professionals could focus on ensuring that right to rent checks are fair to everyone, including migrants, and nobody is denied a home because of a genuine mistake in an immigration document or because a landlord or letting agent did not like the sound of their name.

Further reading

More information about measures in the new Immigration Bill can be found here:

<http://hgnetwork.co.uk/products/welfare-reform-and-universal-credit/document5687.html>

Further Home Office guidance on right to rent can be found here:

<http://hgnetwork.co.uk/products/welfare-reform-and-universal-credit/document5688.html>

Other Home Office documents, including a code of practice, are available here:

<https://www.gov.uk/search?q=right+to+rent>

This *Daily Telegraph* story from June shows how landlords reacted to the extension of the scheme, and the range of help available to them to ensure they do not break the law:

<http://www.telegraph.co.uk/finance/personalfinance/investing/buy-to-let/11683858/Right-to-rent-all-landlords-must-check-immigration-status-or-face-3000-fine.html>

More information about housing rights for migrants here:

<http://www.housing-rights.info/whats-new.php>

For a brief history of previous UK immigration legislation:

<http://www.bbc.co.uk/news/uk-politics-24463873>

About the author

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