



Legal update — November 2016

# Residential Private Client Right to Rent

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**Since 1st February 2016 landlords in England have been required to check the immigration status of all tenants and occupiers over the age of 18. The Immigration Act 2014 (Act) imposes these obligations on landlords and, in some cases, agents. The civil penalty for non-compliance is a fine of up to £3,000 and, from 1 December 2016, criminal sanctions also apply. The provisions of the Act do not yet apply to Wales**

The check must be carried out during the 28 days prior to entering into a tenancy agreement where the proposed tenant is renting the property as their only or main home. The proposed tenant and all other adult occupiers must be British, EEA or Swiss nationals (referred to as "relevant nationals" in the Act) or have a right to live the UK. This latter category includes those with leave to enter or leave to remain in the UK and landlords need to take care that the checks are not used as a tool (perhaps inadvertently) to discriminate against tenants from different ethnicities.

A landlord should obtain and take reasonable steps to verify the validity of certain prescribed identity documents. The lists of prescribed identity documents can be found in the Code of Practice and essentially a landlord must have either one item from List A (such as a passport or national identity card) or two items from List B (where a time limited right to be in the UK applies). A landlord must additionally retain copies of the prescribed documents obtained as they must be produced to the Secretary of State upon request and the original check will provide a defence against liability for a period of 12 months or until expiry of the tenant's permission to be in the UK; whichever is the earlier. Where a tenant's right to rent is time limited or where any of the occupiers change, follow up checks must be carried out and records of checks retained.

If a proposed tenant is unable to produce any of the prescribed documents but maintain that they have a right to remain in the UK, a landlord can request a "positive right to rent notice" from the Home Office's Landlord Checking Service (details on the Home Office

website). Where it becomes clear that the tenant or occupiers no longer have a "right to rent", the landlord is under an obligation to notify the Home Office of this fact. Leases which grant a right of occupation for a term of 7 years or more are excluded from the provisions.

From 1 December 2016 landlords can be charged with a criminal offence if they know, or have reasonable cause to believe, that they are allowing a property they have rented to be occupied by an adult who is disqualified from renting as a result of their immigration status. That individual need not be named as the tenant.

Landlords will be able to obtain a notice from the Home Office to end tenancies for occupiers with no 'right to rent'. A new mandatory ground for possession for properties let under assured tenancies comes into force on 1 December 2016 and the new prescribed form Notice Seeking Possession (which refers to that ground) must be used where landlords are seeking to evict (on any ground) after that date.



Source: Fotolia

Landlords who feel that they are already overburdened with administration and red tape can pass responsibility for carrying out the Right to Rent checks required under the Act to the letting agent, if this is agreed in writing between them.

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Agreements with letting agents should therefore be checked carefully so that there is no doubt about where the responsibility for checks lies. There have been some concerns that the Government is using landlords as an extension of the UK Border Agency and time will tell whether they are realised.

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