

Right to rent

3rd MARCH 2017



The combination of the relevant provisions of the *Immigration Act 2014* and the *Immigration Act 2016* has brought into legal effect the *Right to Rent* scheme to the private rented sector and the penalties for non-compliance.

Right to Rent Scheme

In effect individuals will fall into one of the three categories below which will determine whether or not they have the *Right to Rent* in England:

First Category

Those individuals who are British Citizens, European Economic Area Nationals ('EEA') Nationals of Switzerland and those with a; Right of Abode in the United Kingdom, Indefinite Leave to Remain in the United Kingdom (presumably Indefinite Leave to Enter the United Kingdom is also included) or No Time Limit to reside permanently in the United Kingdom will have an unlimited *Right to Rent* in England.

Second Category

Those individuals who do not fall into the First Category and have a valid leave to enter or leave to remain in the United Kingdom (presumably entry clearance to the United Kingdom is also included)

whether under the Immigration Rules (for example, Tier 1, Tier 2, Tier 4, Tier 5, Spouse etc) or under European Union/Communities Law (for example, Qualifying Family Members of EEA Nationals etc) will have a time-limited *Right to Rent* in England.

Third Category

Those individuals who do not fall into either the First Category or Second Category will simply have no *Right to Rent* in England and the general legal position is that landlords and letting agents must not rent out private accommodation to these adults.

Such individuals may however seek permission from the Secretary of State for the Home Department ('the SSHD') for a *Right to Rent* in England and if this discretionary power is exercised in favour of the individual then landlords and letting agents would be able to rent out private accommodation to them.

Document Checks

The landlords and letting agents must carry out the Right to Rent checks in accordance with the Home Office: *Code of Practice on Illegal immigrants and private rented accommodation* and if the individual:

- Can produce a document from List A, Group 1 or a combination of two documents from List A, Group 2 then the individual will fall into the First Category and will establish a *continuous statutory excuse* and no follow-up checks will be required to be undertaken
- Can produce a document from List B then the individual will fall into the Second Category and will establish a *time-limited statutory excuse* however follow-up checks will be required to be undertaken

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- Cannot produce a document from List A, Group 1 nor a combination of two documents from List A, Group 2 nor a document from List B however has an application outstanding with the Home Office or an appeal against the Home Office or their documents are with the Home Office or they have been given permission by the SSHD to rent then a verification of the *Right to Rent* must be made via the Home Office's Landlords Checking Service for an answer in the affirmative otherwise there will be no *Right to Rent*.

Discrimination

It is against the law for landlords and letting agents to discriminate against individuals in conducting the *Right to Rent* checks on grounds of, amongst many other protected characteristics as set out in the *Equality Act 2010*, race which includes nationality, national or ethnic origin and colour.

These *Right to Rent* checks must be undertaken by landlords and letting agents against all individuals aged 18 and over and not only on certain prospective tenants/occupiers/lodgers,

Legal Responsibility

The landlord is responsible for undertaking and carrying out the legal *Right to Rent* checks unless a letting agent has been appointed in which case the legal responsibility lies with the latter. The arrangement between the landlord and the letting agent must however be confirmed in writing including expressly confirming the legal responsibility of the letting agent to undertake the *Right to Rent* checks for the landlord to avoid legal liability and penalties.

Where a tenant/occupier sublets the property, it will usually be the legal responsibility of the tenant/occupier to carry out the *Right to Rent* checks, as opposed to the main landlord, as they will in effect be treated as the landlord for the purposes of occupation by sub-tenants/sub-occupiers unless it is agreed in writing that the main landlord, as opposed to the tenant/occupier, will be legally responsible for conducting the *Right to Rent* checks.

In this case, especially given the legal liability and penalties for breaching the laws, the main landlord should make notice to subletting and consent a pre-requisite before the tenant/occupier sublets the property so that the main landlord can then closely monitor whether the legal obligations and requirements of the *Right to Rent* scheme have been met.

Please have a look at our article on '[Private Landlords: 10 key Legal Obligations, 10th February 2017](#)' to find out more.

Punishment

Civil Penalty

If there is a suspicion that any of the laws in the *Right to Rent* scheme have been breached by a landlord or letting agent then initially a *Referral Notice* may be issued and sent by the SSHD informing them and putting them on notice that they are under investigation.

The landlord or letting agent would then be sent an *Information Request* providing them with an opportunity to put forward any further information and evidence in support.

After consideration of the case including all of the information and evidence provided by the landlord or letting agent the SSHD will then proceed to make one of two decisions either:

- (i) A *No Action Notice* or
- (ii) A *Civil Penalty Notice*.

In the former the landlord or letting agent will have been deemed by the SSHD to have complied with the *Right to Rent* checks and not liable for any civil penalty.

In the latter however the landlord or letting agent will be liable to pay a civil penalty of up to £3,000.00.

In the latter the landlord or letting agent may provide a written *Objection* to the *Civil Penalty Notice* within 28 days of the date specified by the SSHD in the *Civil Penalty Notice* on grounds that:

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- (a) They are not liable for a civil penalty
- (b) They have a statutory excuse, or
- (c) The level of civil penalty is too high.

The SSHD will thereafter consider the written *Objection* and provide an *Objection Outcome Notice* within 28 days.

If the *Civil Penalty Notice* is maintained by the SSHD whether at the same, lower or higher level or no *Objection Outcome Notice* is made within 28 days then the landlord or letting agent may *Appeal* against the *Civil Penalty Notice* to the appropriate County Court in England within 28 days of either:

- (1) The deadline date as stated in the *Objection Outcome Notice* or
- (2) The deadline date by which an *Objection Outcome Notice* ought to have been received from the SSHD if not made

On grounds that:

- (a) They are not liable for a civil penalty
- (b) They have a statutory excuse, or
- (c) The level of civil penalty is too high.

Criminal Penalty

From 1st December 2016 onwards may be prosecuted and face a criminal penalty if:

- (1) The private accommodation is occupied by an adult under a tenancy agreement and they are disqualified from doing so as a result of their immigration status i.e. do not have the *Right to Rent* AND
- (2) The landlord knows or has reasonable cause to believe that the private accommodation is occupied by an adult under a tenancy agreement and they are disqualified from doing so as a result of their immigration status i.e. do not have the *Right to Rent*.

If a landlord is prosecuted they may possibly have a defence under the *Immigration Act 2014 (as amended)* to the charge(s) laid and if proved could result in acquittal and therefore they would not face a criminal penalty. If however a landlord is convicted either by pleading guilty or after a trial then:

- The Magistrates' Court can sentence him/her to *Imprisonment* of up to six months (and once Section 154(1) of the *Criminal Justice Act 2003* comes into force then imprisonment of up to 12 months) or a *Fine* of up to an unlimited amount or *both* or

the Crown Court can sentence him/her to *Imprisonment* of up to five years or a *Fine* of up to an unlimited amount or *both*.

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