

FACT SHEET



MAY 2018

The legal helpline is available to members with individual queries arla.co.uk/members/legal-advice

MORE INFO

landlords' code of practice
www.gov.uk/government/publications/right-to-rent-landlords-code-of-practice

Immigration Act and Right to Rent Checks
arla.co.uk/lobbying/immigration-act/


Undocumented Commonwealth citizens resident in the UK
www.gov.uk/government/publications/undocumented-commonwealth-citizens-resident-in-the-uk

For queries about the scheme call the Home Office landlords helpline: 0300 069 9799

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Right to Rent Immigration Checks for landlords, agents and sub-lettings

CONTEXT

Under Section 22 of the Immigration Act 2014 a landlord must not authorise an adult to occupy property as their only or main home under a residential tenancy agreement unless the adult is a British citizen, or European Economic Area (EEA) or Swiss national, or has a Right to Rent in the UK.

THE CHANGES

The law introduces a requirement from 1 February 2016 for all landlords of private rental accommodation in England to carry out Right to Rent checks for new tenancy agreements to determine whether occupiers aged 18 and over have the right to live in the UK legally.

NB: The law does not apply to children (under the age of 18) living at the property and you only need to check people who will be using your property as their only or main home. You do need to conduct checks on all adult occupiers not just the tenancy holder.

'Windrush' - Undocumented Commonwealth citizens resident in the UK

In April 2018, the Government confirmed that if a prospective tenant has lived in the UK permanently since before 1973 (and not been away for long periods in the last 30 years) they have the right to be in the UK and rent property.

If a prospective tenant came to the UK after 1 January 1973 they might not have the automatic right to be in the UK. However, they may be allowed to stay in the UK permanently and will have the Right to Rent property.

NB: You should contact the Home Office checking service if you are concerned about the checks and a prospective tenant's ability to evidence their right to rent. Telephone: 0300 069 9799 (Monday to Thursday: 9am to 4.45pm Friday: 9am to 4.30pm).

Prospective tenants who cannot evidence their Right to Rent should contact the Home Office Commonwealth Task Force. Freephone: 0800 678 1925 (Monday to Saturday: 9am to 5pm Sunday: 10am to 4pm) Email: commonwealthtaskforce@homeoffice.gsi.gov.uk

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ELIGIBILITY

You need to make Right to Rent checks if you are a private landlord; have a lodger; are sub-letting a property; are an agent appointed by a landlord to make Right to Rent checks.

Any occupier who sub-lets all or part of their accommodation to a person for money will be classed as landlord under the law and liable for penalty. However, the sub-letting can ask their landlord to accept responsibility for conducting checks and this agreement should be made in writing.

In addition, under the law landlords can agree in writing with an agent who is responsible for conducting checks and so liable to a penalty. The agent can then carry out the checks and where necessary, make a report to the Home Office. The agent must also report back to the landlord. If an agent's Terms of Business state they will undertake reference checks on the tenant, the agent will become liable for the Right to Rent checks. Clauses which attempt to remove the liability for Right to Rent checks will not remove liability.

NB: The Right to Rent check applies to new tenancy agreements on or after 1 February 2016. Within the phase one area checks apply from 1 December 2014. Existing tenancy agreements are unaffected and landlords will not be required to carry out retrospective checks.

WHAT YOU NEED TO DO

STAGE 1

Establish who will live in the property. Obtain, Check and Copy one or more original documents that demonstrate the Right to Rent in the UK for all adult occupiers for that property in the presence of the holder. Acceptable documents include a UK passport and a permanent residence card or travel document showing indefinite leave to remain. The full list of documents can be found here: www.gov.uk/government/publications/right-to-rent-document-checks-a-user-guide

NB: In circumstances where a tenant is arranging their tenancy from overseas this is more challenging. One course of action is to do checks by video call and agree the tenancy subject to an ID check on arrival.

You don't have to do further checks if the person doesn't have any restrictions on their right to stay in the UK (such as if they are a British, EEA nations or non-EEA national with the right to be in the UK definitely).

If you use a tenant referencing agency you still need to see original documents and make copies yourself. You should retain clear versions or electronic records of the documents and record the date when you did this.

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NB: Checks should be carried out in the presence of the holder to ensure the documents match and there are no obvious causes for suspicion such as photographs that are an unsatisfactory likeness.

If the tenant's permission to stay in the UK is time limited, you'll have to make a follow up check on the tenant.

NB: Record any dates regarding occupants who have a time limited right to be in the UK (which will be on their passport visa, passport stamp or biometric residence permit).

Securely store copies of all documents throughout the tenancy and for at least one year afterwards.

STAGE 2

Where the initial check shows that a person has the right to be in the UK for a limited time you can let to that person but you must also make a follow up check.

In the case of Let Only tenancies you need to inform the landlord of any need for follow up checks and keep evidence of this communication.

NB: Follow up checks must be carried out just before the expiry date of the tenant's right to be in the UK or 12 months after the original check whichever is the later.

STAGE 3

If the follow up check shows that the person no longer has the right to be in the UK you must make a report to the Home Office using: www.gov.uk/report-immigration-crime

NB: The report must include the full name and address of the occupier, the date they first took up occupation plus copies of their documents when you first undertook the initial Right to Rent check. You must also include your name and contact address or where relevant the contact details of the agent.

THE IMPACT

You can be fined up to £3,000 per occupier if you rent your property to someone who isn't allowed to stay in the UK and you can't show that you checked their Right to Rent.

You can also be fined if you make a follow up check and don't make a report to the Home Office saying that a tenant's stay has run out or you don't make a follow up check on a tenant who has a time limited permission to stay in the UK: www.gov.uk/penalties-illegal-renting

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ASSISTANCE

If a person cannot show any documents due to an ongoing appeal being dealt with by the Home Office you can request that the Home Office carry out a check via the Landlord Checking Service. For this you must have a Home Office reference number. For queries about the scheme call the Home Office landlords helpline on 0300 069 9799. Further information can be found here: www.gov.uk/government/publications/right-to-rent-landlords-code-of-practice


PHASE THREE

The Home Office are working with stakeholders in Edinburgh, Belfast and Cardiff on the extension of Right to Rent checks across the UK. While the legislation is part of UK law, the timetable for implementation is subject to agreement with the devolved administrations.

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