

Comments on our existing guidance with regards to the Right to Rent scheme from ARLA Propertymark – February 2017

Background

1. ARLA Propertymark is the UK's foremost professional and regulatory body for letting agents; representing almost 9,000 members. Our members operate to professional standards far higher than the law demands and hold Client Money Protection. ARLA Propertymark believes that this growing and increasingly important sector of the property market should be subject to mandatory regulation. By using an ARLA Propertymark agent, consumers have the peace of mind that they are protected and their money is safe. ARLA Propertymark has been part of the Home Office's Landlord Scheme Consultative Panel throughout development of Immigration Act 2014 and Immigration Act 2016. Letting agents are required to carry out Right to Rent checks on all prospective adult tenants as part of a framework of increasing legislative demands in a context where the costs for services provided to tenants are subject to a ban.
2. Ahead of the introduction of Right to Rent checks in England, ARLA Propertymark held 26 free regional seminars throughout England. We maintain a dedicated section on our website covering Right to Rent checks including Frequently Asked Questions and we provide popular Fact Sheets on the subject to members to reinforce Government guidance. We provide support to agents who are dealing with complex Right to Rent issues through the ARLA Legal Helpline which is staffed by a specialist team of landlord and tenant paralegals. Between February 2016 and March 2017 the ARLA Legal Helpline dealt with 450 in-depth member queries wholly concerned with Immigration issues around tenancies. Right to Rent checks can represent significant work and in some cases checks are complex. ARLA Propertymark communications, alongside Government guidance has been essential in ensuring that many letting agents are able to comply with new laws. A similar communications plan will be required for phase 3 of implementation when the legislation is rolled out across the rest of the UK.

Comments

3. To incorporate learning from rollout across England it is essential that there is a joined up approach to implementation of this legislation alongside other new legislation for example anti-money laundering checks as well as measures allowing landlords and agents to regain possession from tenants who are within a tenancy but fail follow up checks.
4. Conscious and subconscious discrimination is a serious concern amongst all Right to Rent stakeholders, most notably highlighted in [JCWI report Passports Please](#). In the current context of consultation on banning letting agents from charging tenants for the cost of services (legislation already in place in Scotland) ARLA Propertymark have very real concerns that agents will discriminate against prospective tenants who have more complicated and time consuming applications, for example using time-limited documents requiring follow up checks.

5. Within the scheme in England ARLA Propertymark believes that there is regular abuse of List A Group 2 Acceptable ID documents. Letting agents and referencing agencies are reporting an increasing number of prospective tenants who cannot provide any List A Acceptable Single Documents or current Time Limited documents from List B but can provide a combination of documents from List A Group 2 (for example, a letter from a professional referee and a letter from a homeless charity) granting them a permanent statutory excuse. Agents who are seeing this regularly are concerned that this is a weakness of the system which undermines the work that goes into carrying out systematic Right to Rent checks. Re-evaluation of accepted identification needs to be carried out prior to more widespread rollout.
6. ARLA Propertymark has concerns about the impact in Wales, Scotland and Northern Ireland on landlords and agents dealing with large numbers of international students. ARLA Propertymark reiterates the call to the Home Office to engage with the Education sector, specifically universities in order to make Right to Rent checks less arduous for landlords and agents providing accommodation to international students in the country on a time limited basis. Currently, international students have to be checked when they organise accommodation (frequently a full year in advance) and then to comply with the Code another check must be done within 28 days before the student moves in. Agents who deal with a lot of student lets cannot practically accommodate repeating face to face checks at volume within a condensed period of 28 days. A letter provided from an institution listed on the [Register of Licensed sponsors: students](#) confirming the student's status would corroborate the first check carried out by the landlord or agent and negate the need for a second check. A system like this would be comparable with letters provided on behalf of US Air Force personnel.
7. Familiarity and legibility of the full range of accepted ID documents will be a significant concern for agents in Scotland, Wales and Northern Ireland. ARLA Propertymark have repeatedly called for improvements in [Right to Rent Document Checks: A user guide](#). The guide needs better visual examples, there are too many repeated stock images and these should be replaced with images of genuine redacted documents. There are also issues with the legibility of visa dates where visas show too many stamps on a page and the time-limit period has become unrecognisable. The information for List B on Page 26 of the 'Right to Rent document checks: user guide' does not state what do if stamps are unrecognisable.
8. Landlord Checking Service/Helpline – This service would need to be provided in Welsh language as well as English.
9. Agents and landlords in Scotland, Wales and Northern Ireland are unclear about new powers under the Immigration Act 2016 which enable a landlord to evict where they have received notice from Secretary of State/ Home Office identifying occupiers who do not have a right to rent. Greater guidance is needed on this. The written notice is very important, particularly where an illegal immigrant refuses to leave a property at the end of the notice period and if the tenancy has been transferred to any joint tenant who are not disqualified from renting at the property. Landlords need to know that their asset (the

property) is being protected and where applicable letting agents will be able to find new tenants to occupy the premises.

10. The experience of many agents in England has been frustration that they do not see a clear connection between the Right to Rent process and the scheme's objectives. While the scheme intends to create a hostile environment for those without a right to accommodation, there is widespread belief among agents that rejected tenants go on to find accommodation through landlords and agents who are not complying with the scheme. Appropriate levels of enforcement are needed to ensure that the scheme genuinely achieves its aims.
11. There is nothing in the guidance which explains that the Home Office will routinely follow up leads created through Right to Rent checks made through the Landlord Checking Service. This makes many landlords and agents feel that their efforts are not part of a coherent system and are being squandered.
12. Many letting agents in England report feeling like 'unpaid border guards', they are concerned about reprisals and personal safety where Right to rent checks are rejected. Many agents believe that Right to Rent checks have fundamentally changed the nature of their job from private sector housing professional to unofficial immigration officer. There is no evidence to suggest that this will be different in Wales, Scotland or Northern Ireland.
13. In Wales consideration needs to be given to how Right to Rent checks fit into Rent Smart Wales; in Scotland consideration needs to be given to how Right to Rent checks fit into Letting Agent Code of Practice Regulations (Scotland) 2016; similarly in Northern Ireland, Public Rented Sector Proposals for Change. Dependent on the rollout date, letting agents in Scotland and Wales will already have had to undergo specified training as part of mandatory obligations.
14. The Government must not underestimate the risks and business impact of additional work involved in doing Right to Rent checks. Checks on tenants with time limited documentation which have to be carried out within 28 days of the start of the tenancy and follow up checks (potentially on an ongoing basis) for those using time limited identification are two examples of additional work that is introduced by this legislation. Agents will have to understand the implications of additional occupiers being introduced to the property. Prior to Right to Rent checks only named tenants would have required any referencing process. Additionally while the Home Office are offering assurances to agents in Scotland, Wales and Northern Ireland that agents will not be responsible for not detecting fraudulent identification, landlords are highly likely to hold their agent responsible for problems which arise from good quality fraudulent identification.