

# Right to Rent

LANDLORDS AS BORDER CONTROL

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- ▶ “Under section 22 of the Immigration Act 2014 a landlord must not authorise an adult to occupy a property as their only or main home under a residential tenancy agreement unless the adult is a British Citizen, or EEA or Swiss national, or has a ‘right to rent’ in the UK. Someone will have the ‘ Right to Rent’ in the UK provided they are present lawfully in accordance with immigration laws. Landlords who breach section 22 may be liable for a civil penalty.”

# Background

- ▶ The coalition government originally 'piloted' the scheme in the West Midlands in 2014.
- ▶ At the time it was expected that it would be a true pilot scheme with impact assessments, etc before it was rolled out to the country at large
- ▶ Unfortunately this does not seem to be the case as no official evaluation has been published despite the incoming national rollout
- ▶ Civil penalties were relatively small with an average financial penalty of £800 (FOI requests)
- ▶ The scheme was also poorly policed, with only 7 landlords being charged so far.
- ▶ Limited independent studies suggest poor response and/or discrimination

# “No Passport Equals No Home”: An independent evaluation of the ‘Right to Rent’ scheme

3 September 2015

JCWI published an independent review of the scheme. It had a small sample size due to limited knowledge from both tenants/landlords. Even so, the results were consistent with other anecdotal evidence.

- ▶ 65% of landlords had not read the guidance
- ▶ 42% less likely to rent to non-British tenants
- ▶ 27% not engaging with foreign sounding names
- ▶ 77% of landlords do not want the scheme to go national

For tenants

- ▶ 50% felt they had been discriminated against when rejected
- ▶ 56% had no knowledge of the scheme
- ▶ 44% had not been asked for any documents during the pilot

# Landlords as border control

- ▶ From 1<sup>st</sup> February 2016 landlords now have to take ID for all new residents at the start of a tenancy
- ▶ The initial guidance was on taking evidence AND discrimination.
- ▶ ALL prospective tenants must be checked (Brits too)
- ▶ 12 million Brits without a passport.
- ▶ Can pass on responsibility to agents to perform checks to avoid potential prosecution.
- ▶ England only.

# Who do I check?

- ▶ Tenants
- ▶ Other adult occupiers of the property as their only or main home
- ▶ Not children under 18 but still a good idea to keep birth certificate details. Particularly for zambrano carers.

# Identifying someone with a right to reside in the UK

- ▶ British citizens
- ▶ Residents of the European Economic Area
- ▶ British by descent
- ▶ Persons with a Right of Abode (Commonwealth)
- ▶ Outside of these areas there are various other rights to reside granted via the government subject to immigrations controls.

# ID requirements – No follow up checks

## One of the following

- ▶ UK, EEA or Swiss passport
- ▶ National ID card for EEA+Swiss
- ▶ Permanent Resident Card from HO
- ▶ Biometric permanent residence immigrations document
- ▶ A passport or travel document with indefinite leave endorsement from HO
- ▶ An immigration status document with photo
- ▶ Certificate of naturalisation as a Brit

OR

## Two of the following

- ▶ Birth or adoption certificate for British Isles
- ▶ Letter confirming employment status
- ▶ Letter from the police confirming theft of ID
- ▶ Evidence of previous or current service in HM armed forces
- ▶ A letter from the prison service confirming prospective tenant has been released in the last few months
- ▶ Letter from college/uni confirming status as student
- ▶ Current full or provisional driving licence
- ▶ Gun licence in UK
- ▶ DBS Certificate from last 3 months
- ▶ Benefits paperwork

# Time limited stay – follow up checks needed

- ▶ A valid passport or travel document with a time limited period of stay
- ▶ Biometric immigration document from the Home Office
- ▶ Non-EEA family member of an EEA+Swiss with residence card
- ▶ Time limited immigration status document from Home Office
- ▶ “Yes” response from the Landlords Checking Service on a right to rent request

# Help from the government

Where the prospective resident can't provide this information or you are unsure of their ID then there is a Home Office number for the pilot scheme

0300 069 9799

It's not very well staffed however

There are also examples of sample documents available at the government website

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/370484/document\\_guidance\\_for\\_landlords.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/370484/document_guidance_for_landlords.pdf)

# Document checking

- ▶ Prospective tenants need to give the landlord the originals
- ▶ Landlord needs to make their own copies from the originals in a format that can't be altered (eg PDF or printout) and give back originals
- ▶ Checks need to be made in the presence of the prospective tenant
- ▶ If the right to reside is time limited keep a note of when this expires. Check 28 days before the expiry of the right that they have an extension.
- ▶ A landlord doesn't have to evict a tenant or occupier who originally had a limited right to rent and then later has no right to rent. They're only required to report the matter to the Home Office.

# Avoiding immigration penalties

A landlord can avoid receiving a civil penalty if they:

- I. carry out the initial checks before letting property to the tenant(s) and any other adult(s) who'll be living there and keep evidence that they've done so
- II. do a follow-up check if the initial check shows that someone has a limited right to rent and contact the Home Office if the second check shows that someone no longer has a right to rent.
- III. Landlords can receive a civil penalty of up to £3,000 for each adult living in their property who isn't a relevant national or has no right to rent.

# Avoiding other penalties

- ▶ Data protection issues abound
- ▶ Any ID taken needs to be kept for 12 months and stored in line with data protection
- ▶ Discrimination (direct and indirect) leave the landlord or agent open to civil penalties.
- ▶ It's a criminal offence to offer immigration advice without being a registered public body or member of the OISC

# Reasonable Excuse

- ▶ The key point is landlords and agents will not be prosecuted if they can show they have reasonably complied.
- ▶ As long as the documents aren't obviously fake, collecting the info should be enough.
- ▶ 400+ different forms of ID for EU alone. The government doesn't expect you to be an expert
- ▶ Can still pass on obligation to agents though if worried
- ▶ Tech may help. Apps already being planned by Uktenantdata for example

# Subject to change

- ▶ The Immigration Bill 2015 is on its second reading
- ▶ Very much subject to change as there are a raft of potential legal issues as many bills will need changing to accommodate this
- ▶ The RLA has provided a raft of feedback on this bill we hope will be taken into account.
- ▶ 1<sup>st</sup> February 2016 roll out date does not include these changes yet.

# New Penalties

- ▶ The Immigration Bill has upgraded the penalties for landlords, agents and tenants.
- ▶ The financial penalty still exists as well
- ▶ Up to 5 years in jail for knowingly renting out to someone without a right to reside
- ▶ New powers to remove tenants based on notice issued by Home Office to landlord.
- ▶ A new mandatory ground for assured and rent act tenants

# Removing a tenant

- ▶ The notice from the Home Office removes the protection from eviction and has the same power as a high court order.
- ▶ Landlords should, *in theory*, be able to evict a tenant without going to court. Nearest equivalent is lodgers.
- ▶ If this comes in unchanged landlords should be very careful around this. There is no protection in place should the landlord get this wrong.