

Case Book:

'Right to Rent' checks come into force



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The government's 'Right to Rent' scheme, introduced through the Immigration Act 2014, has now come into force, meaning landlords will need to carry out checks on all new tenants to make sure they are legally entitled to live in the country. Ann Ebberson discusses the implications the scheme will have.

As if landlords of residential properties in England have not had enough thrown at them in the last couple of months, from 1st February 2016, landlords and agents involved in the letting of residential premises across England have to comply with the provisions under the Immigration Act 2014 (IA) relating to checking tenant's and occupier's right to reside in the UK.

The provisions will apply to all new and relevant tenancies. Failure to undertake these checks will carry with it a civil penalty of up to £3,000. In addition to initial checks, landlords will also have an ongoing obligation to ensure a tenant's right to reside does not lapse where they enter into a tenancy with limited residency. Should this right have lapsed, landlords will be required to make a notification to the Home Office.

Under its guidance on the matter, the Home Office states identification must be obtained and checked in its original form in the presence of the individual to which it relates before allowing them to take up residence in the rented property. Landlords are also required to retain

copies of this identification, noting the date it was received, for the duration of the tenancy and for 12 months after its end.

The Immigration Order 2016, which was passed in January this year, outlines the documents which landlords and agents should obtain when assessing the 'Right to Rent'. It also sets out the requirements for the identity checks which must be undertaken and acts to flesh out the IA in its original form.

The IA captures the Assurance Shorthold Tenancy (AST) agreement and states that a residential tenancy agreement, to which it also applies, is any agreement which grants rights of occupation in relation to residential premises and provides for payment of rent. Leases, licences, sub-leases and sub-tenancies will therefore constitute a tenancy. However, not all tenancies are caught by the IA and landlords should refer to schedule 3 of the IA to see if the tenancy in question falls into one of the prescribed exclusions.

The future

The new rules will no doubt cause issues for landlords and agents alike and there is of course likely to be teething issues in implementation.

The requirement of ongoing 'Right to Rent' checks, where a tenant's or occupier's residency status has changed, is likely to be particularly taxing.

Some of the guidelines provided by the Home Office to landlords include:

- » Obtain identification showing the

tenant is either a British citizen, EEA member state national, Swiss national or has been granted the right to reside in the UK

- » Check the identification in its original form in the presence of the individual to which it relates before allowing them to take up residence in the rented property
- » Retain copies of this identification, noting the date it was received, for the duration of the tenancy and for 12 months after its end
- » Follow-up checks every 12 months to ensure the tenant is still legally entitled to remain in the country
- » If a tenant fails the follow-up check, the landlord does not have to evict them, but should report the matter to the authorities as soon as possible
- » Landlords who have any suspicions about the legitimacy of a document should make copies and send them to the Home Office along with a record of who presented them and when.

Considering the not insignificant penalties for failure or non-compliance with the IA, it is important landlords get to grips with this issue as early as possible. The government has also announced further measures to tackle illegal residents, and the Immigration Bill 2015-2016 is currently making its way through parliament. If passed, this bill will amend the IA to make it a criminal offence if landlords repeatedly fail to conduct the 'Right to Rent' checks, making it clear the degree of significance the government is placing on these new rules. ■