



information sheet

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IMMIGRATION ACT 2016: RIGHT TO RENT ACCOMMODATION

The Immigration Act 2016 introduces further measures to restrict the right to rent accommodation, building on those introduced by the Immigration Act 2014. These measures are aimed at creating a 'hostile environment' for those who do not have leave to enter or remain in the UK. This information sheet explains the provisions introduced by the Immigration Act 2014 and how these will be extended by the Immigration Act 2016.

Immigration Act 2014 provisions

The Immigration Act 2014 introduced measures to prevent certain groups of people from renting residential property. The provisions were piloted in the West Midlands and then extended to the whole of England on 01 February 2016. The Government intends to extend the scheme to the rest of the UK but has not done so yet.

Under the 'right to rent' scheme introduced, people who are not British or EEA nationals and do not have leave to enter or remain are disqualified from occupying rented accommodation. The Home Office may grant permission to rent to individuals excluded by the provisions, such as asylum seekers who are not destitute and rent privately because they do not need or qualify for Home Office accommodation and others outlined in Home Office guidance (see below).

The scheme requires landlords to check immigration status documents when they rent a property and not rent to those disqualified from doing so, otherwise the landlord may face a fine of up to £3000 per tenant. The 'right to rent' scheme applies to those taking in lodgers as well as to landlords renting property under a formal residential tenancy, provided some form of rent is paid. A landlord must conduct follow-up checks after 12 months or before the date the leave expires if renting to someone who is not a British or EEA national, as tenants with leave to enter or remain only have a limited right to rent. People granted permission to rent by the Home Office also have the right to rent for a time-limited period and the landlord must check they still have the right to rent at the end of that period.

The scheme does not cover holiday lets or people occupying accommodation where the property is not their principal or main home. Certain types of accommodation, such as student accommodation, domestic violence refuges or accommodation provided through a local authority, are excluded from the 'right to rent' scheme. These are listed and described in detail in Schedule 3 of the Immigration Act 2014.

Immigration Act 2016 provisions

The Immigration Act 2016 adds further force to the 'right to rent' scheme by making it a criminal offence for landlords or their agents to rent property to people who are disqualified

from occupying rented accommodation and by giving landlords new powers to evict people who do not have the right to rent. These provisions come into force on 01 December 2016.

New criminal offence for landlords and agents

It will be a criminal offence for a landlord or their agent to permit their rented accommodation to be occupied by an adult who they know or have reason to believe is disqualified from renting as a result of their immigration status. It does not matter whether the person occupying the accommodation is named in the tenancy agreement provided that the landlord or agent had reason to believe they were present. For example, a landlord may not have reason to believe a disqualified person was occupying their property if they made the proper checks when they rented the property and there were no signs that the disqualified person was living there as their main home when the landlord or agent visited.

The offences carry a maximum prison sentence of five years. There is a defence for a landlord who has taken reasonable steps to end the tenancy and evict the tenant within a reasonable period of time after identifying or being notified that the tenant does not have the right to rent.

New powers of eviction

The Act creates new powers for landlords and agents to evict people who are disqualified from renting by their immigration status. Landlords who are notified by the Home Office that a person or persons occupying their property do not have the right to rent are given the power to end the rental agreement. This will be possible because it will be implied within any rental agreement, whether entered into before or after the provisions come into force, that it may be terminated where an adult occupant is disqualified from renting. In these circumstances, the agreement will be excluded from the safeguards in the Protection from Eviction Act 1977.

If all of the occupants are disqualified from renting, the rental agreement may be terminated by giving at least 28 days written notice to the tenants. The landlord may enforce this notice without needing to go to court. This could include taking reasonable action themselves to gain possession of their property.

In other cases, a Home Office letter to the landlord stating that at least one adult in the property does not have the right to rent will allow the landlord to obtain possession of the property through the courts. In these circumstances, the court will be required to make an order giving the landlord the right to evict the tenant and will have no power to consider any personal circumstances that might make eviction inappropriate such as having a baby or children in the family, old age, disability or infirmity. This is likely to add to pressures faced by local authorities who will need to accommodate, for example, families with children, using their powers to provide support and accommodation in order to promote and safeguard the welfare of children and to prevent human rights breaches.

Discrimination

Under the Equality Act 2010, it is illegal for a landlord or agent to discriminate against potential tenants on the grounds of race or any other protected characteristic. Tenants may seek advice from the Equality and Human Rights Commission if this happens.

Further information

- Home Office guidance: <https://www.gov.uk/government/publications/landlords-right-to-rent-checks-guide>
- Equality and Human Rights Commission: <https://www.equalityhumanrights.com/en>
- JCWI is monitoring the impact of the 'right to rent' scheme on landlords, agents and tenants and is keen to hear from anyone with experience of the scheme or who thinks they may be affected at: policy@jcw.org.uk