
Property Matters

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Habeo Homes

Winter 2019

Right to Rent Guidance

As we march towards Brexit, one common concern for landlords is what will happen around right to rent checks when we are no longer part of the EU. Will we have to check visas or other documents for EU nationals? New guidance has provided answers to some right to rent questions.

Immigration Act 2014

On 1 December 2014 the Government introduced the Act in the West Midlands as a working trial. The Act was then rolled out to the rest of England in December 2016.

Within the Immigration Act 2014 Section 27(4) states that the length of the eligibility period for renting a property for non-European nationals, is either one year beginning with the time when the prescribed requirements were last complied with or the expiry of their visa, whichever is the later.

For example, if the occupier has a three-year visa, you would not need to check their documents until three years later. If they have a six-month visa you can still grant a 12-month tenancy and would need to check again after 12 months. If an agent or landlord does not carry out the correct checks, they could, if convicted, be fined or imprisoned for a maximum of five years.

Termination of agreement

The landlord under a residential tenancy agreement relating to premises in England may terminate the agreement if the Secretary of State has given one or more notices in writing to the landlord which identify the tenant(s) and or permitted occupiers of the premises and state that the tenants(s) and or permitted occupiers are disqualified as a result of their immigration status from occupying a premises under a residential tenancy. The landlord may terminate the tenancy agreement by giving notice in writing and in the

prescribed form, specifying the date on which the agreement will end.

20 May 2019

Since May 2019 the majority of individuals from Australia, Canada, Japan, New Zealand, Singapore, South Korea and the USA (known as B5JSSK nationals) have been able to use eGates at UK airports, sea ports and Eurostar terminals, to enter the UK. If they do not have a Biometric passport, they will be seen by a UK Border Force officer; however, their passports will not be stamped and they would be told verbally how long they have in the UK.

This poses an issue for agents and landlords who rely on potential tenants producing a visa along with their passport for a right to rent check to confirm they are permitted to reside in the UK, and for how long. Agents and landlords can request to see the original or a copy of their boarding pass confirming when they arrived into the country or contact the Home Office. The idea behind the plane, train or boat ticket is to prove that they entered the UK lawfully. Without this, how would you know entry was within the last six months? All documents must be kept securely for the duration of the tenancy and then for twelve months after the tenancy has ended

Those coming for under six months will have an automatic right to be here for up to six months and can rent a property during this period.

Those arriving to live in the UK for more than six months will have a visa in their passport and will collect their biometric residence permit after arrival, providing them with a means of evidencing their status in the UK.

Previously, foreign nationals from outside the European Economic Area (EEA) and Switzerland could only apply for a biometric residence permit once they had arrived in the UK. Also, non-EU visitors, who do not intend to reside in the UK, would have had their passport stamped at border control.

10 October 2019

The Home Office issued updated guidance for right to rent checks to reflect the changes in the system made in May 2019. This guidance needs Parliamentary approval and the Home Office is seeking approval from Parliament to amend the Code of Practice. Until this approval is received, the Home Office has said it would not issue penalties if the new guidance was used before then.

The evidence of arrival in the UK within the last six months, together with a copy of the person's passport, should be retained by the landlord, including the date the landlord checked these documents, as evidence they have followed the correct procedures.

Wales

Right to rent checks are not a legal requirement in Wales. However, Rent Smart Wales, the Welsh landlord and agent licensing authority, consider doing them best practice.

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