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United Kingdom – Landlords in England to Check Tenant's Right to Be in U.K.

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The U.K. government has announced that from 1 February 2016, all private landlords in England, including those who sub-let or take in lodgers, will have to check that new tenants have the right to be in the United Kingdom before renting out their property to them.¹ Under the new rules, landlords who fail to check a potential tenant's 'Right to Rent' can face penalties of up to £3,000 per tenant.

A new criminal offence will also be introduced, targeting landlords who repeatedly fail to carry out the necessary checks.

Why This Matters

Arranging suitable accommodation is a key element of fostering the success of an international assignment. The availability of accommodation also affects the availability of international local hires.

The new legislation will change the processes and proof required for arranging rented accommodation in the U.K. for employees on assignment and will potentially lead to greater demands placed on employers to provide assistance to employees with proving their right to rent.

Background

'Right to Rent' was introduced in the Immigration Act 2014 as part of the then government's changes, which were intended to build a more effective immigration system and to deter those who are illegally resident from remaining in the United Kingdom. A pilot scheme was carried out in the West Midlands in 2014². In their election manifesto, the Conservative Party made a commitment to roll-out right to rent checks nationwide.³ Having won a parliamentary majority in May 2015, the Conservative government is implementing this policy.

How It Is Intended to Work

Right to rent checks follow a similar framework to the existing right to work checks that are already used in the U.K. in the sense that the landlord will be liable for a penalty if he rents property to someone who has no right to be in the U.K. unless that landlord has checked specific documents that purport to show the person has a right to be in the United Kingdom. If, for example, a landlord is presented with a good forgery of a British passport, he will not be liable for a penalty even if the person who presented it rented accommodation while having no right to be in the United Kingdom. If the landlord rented the accommodation without checking such a document, he would be liable for the penalty. The documents that can be checked are listed in the legislation; also noted are the timing and method of the checks.

If a British national were to rent a property, but the landlord made no check, there would be no risk of a penalty as the British national has the right to be in the United Kingdom.

KPMG LLP (U.K.) Note: Challenges Raised by the New Rules

The challenge in this area is that, unlike taking employment, the government cannot place a condition on entry to the U.K., preventing someone renting property. Therefore, the duty on landlords is to check whether potential tenants are permitted to be in the U.K. rather than whether they are permitted to rent property. This creates challenges in two specific areas for international business: assignees and regular visitors.

For assignees, the new law may have an impact on an organization's mobility strategies and handling of international assignments in terms of cost and logistics planning. Accommodation can be a costly and time-consuming aspect of an assignee's move to England, especially for those moving to London and southern regions. Long-term accommodation may be difficult to secure in advance of an assignee arriving in the U.K., which may mean that temporary hotel accommodation would be required from the outset, causing even greater cost. The assignees will then have to undergo right to rent checks as part of obtaining a tenancy agreement. This could also disrupt the assignee's focus on achieving the goals of the assignment.

Regular business visitors to the U.K. may also wish to have a U.K. property as a base. This could become difficult as proving the right to be in the U.K. will rely on showing a visitor visa or, for people who do not need a visa to visit the U.K., simply an airport stamp. Only once there is more guidance to landlords on what immigration documents can look like will some of the questions and vague areas be clarified.

The legislative scheme attempts to mitigate both these challenges by requiring the landlord to complete the check before permitting occupation rather than before entering the contract⁴. In theory, an overseas-based tenant could agree the tenancy with the landlord and, on arrival in the U.K., the landlord could check the tenant's visa before handing over the keys. However, from a landlord's point of view, the uncertainty of such an arrangement would make agreeing a tenancy with someone whose immigration status can be checked at the same time preferable.

Full guidance on the right to rent scheme has not yet been published and changes may still happen. The Immigration Team at KPMG LLP (U.K.) will endeavour to update *Flash Alert* readers as these occur.

Footnotes:

- 1 See 20 October 2015 Home Office press release "[Right to Rent Checks Introduced for Landlords in England.](#)"
- 2 See 3 September 2014 Home Office news story "[West Midlands to Be First Landlord 'Right to Rent' Check Area.](#)"
- 3 See page 30 of page 30 <https://s3-eu-west-1.amazonaws.com/manifesto2015/ConservativeManifesto2015.pdf>.
- 4 See Immigration Act 2014 Section 22(4) and (5)

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