

The right to rent scheme and asylum support



These provisions apply to England only for tenancies entered into from 1st Feb 2016.

The Immigration Act 2016 has made changes to the right to rent provisions however at the time of writing these have yet to come into force.

WHY IS THIS AN ISSUE?

1. On the 1st February 2016 the government rolled out a scheme linking the right to rent to a person's immigration status. As of this date, asylum seekers and refused asylum seekers will not have an automatic right to rent. The provisions are wide-reaching and apply even to people who are living in hotels or B&Bs.
2. In summary, asylum seekers and refused asylum seekers will probably face a number of problems:
 - Discrimination and/or additional hurdles to go through in order to find accommodation meaning they find it very difficult or impossible to find somewhere to live;
 - Reliance on more expensive accommodation like hotels resulting in them becoming destitute more quickly;
 - Difficulties in persuading friend and family to house them or providing the relevant evidence to show destitution.
3. It is therefore important for the advice sector to be aware of how the Right to Rent provisions operate so they can help their clients argue they are entitled to asylum support.

RELEVANT LEGISLATION

4. The scheme is governed by:
 - Immigration Act 2014 (the Act). Thereafter, unless states otherwise, references to sections (or s.) are to sections of this act.
 - Immigration (Residential Accommodation) (Prescribed Requirements and Codes of Practice) Order 2014 (the Order). Thereafter, references to articles (or art.) are to articles of this order.
 There is also extensive government guidance (see below).

THE RIGHT TO RENT SCHEME

What is the right to rent?

5. As of 1st February 2016 a landlord (or their agent) must not allow an adult to occupy residential premises in England as their only or main home if they don't have a right to rent (s22(1)). The Home Office may grant people without a right to rent permission to rent (s21(3)).
6. Certain people have a permanent or temporary right to rent, they are:
 - British, EEA and Swiss nationals (s21(5))
 - People with leave to enter or remain in the UK (indefinite or time-limited), as long as the period of leave is not subject to the condition that they don't have a right to rent (s21(4))
 - People with an enforceable EU right (s21(4))
7. A breach of this provision is subject to a civil penalty (on the landlord) of up to £3,000 for each adult found to be occupying the accommodation without a right to rent (s23(2)). The penalty can be avoided if the landlord can show they have carried out the relevant checks (s24 and s26). A landlord will now need to:
 - Enquire who is living in the property and check that they all have a right to rent by asking for certain documents (art3) (there are prescribed lists, Article 4 and List A and B of the Order)
 - Verify the authenticity of these documents (in a prescribed way, art5)
 - Keep records of their tenants' right to rent for a year after the tenant has ceased occupation (the limitation period for issuing a penalty is in s28(5) and see also para 5.1 at "Steps 2 to 4" of the Code of Practice for landlords)
 - Tell the Home Office when their tenants no longer have a right to rent (s24(6) and 26(6)). Note that there is no obligation to terminate the tenancy under these provisions although the Home Office encourages landlords to consider this option (see p.11 of A short guide on the right to rent)
8. All adults occupying the property are subject to these checks, including people not named on the tenancy (s22(4)(c)). This means that the landlord will be in breach of these provisions if their tenants allow other adults who don't have the right to rent to live with them, even if they are not contributing to the rent payments.
9. Checks should be carried out within 28 days of the tenancy starting (s24(4) and art8) and renewed for those with time-limited leave (s27). Renewed checks should take place either a year after the first check or when the period of leave expires (whichever is longest) (s27(4)).

Which kinds of tenancies are affected?

10. The definition of tenancies for this purpose is broad and includes tenancies, sub-tenancies, licences, and sub-licences (s20(3)). This means that as long as rent (of any amount (s20(2))) is paid by an adult in exchange for accommodation (even if the property has other uses (s20(4)))

then the provisions of the Act apply. A key test is whether or not this accommodation is used as a person's only or main residence (s20(4)). Therefore the scheme will catch people living in hotels and B&Bs as well lodgers.

11. The law is targeted at the private rental sector so certain types of tenancies are excluded (s20(6) and schedule 3 of the Act):

- Accommodation provided under s4, s95 and s98 Immigration and Asylum Act 1999
- Social housing provided by local authorities and housing associations
- Accommodation provided by the local authority under a statutory duty to prevent homelessness (the councils use private landlords quite extensively in carrying out this duty)
- Hostels and refuges
- Care homes
- Hotels and holiday accommodation which are not used as a main residence
- Hospitals and hospices
- Tied accommodation (accommodation provided by an employer to an employee)
- Long leases of 7 years or more
- Student accommodation where the student has been nominated for accommodation by an educational institution
- Mobile homes.

How does it apply to asylum seekers and refused asylum seekers?

12. From 1st February 2016 asylum seekers and refused asylum seekers will not have the automatic right to rent. However, they may be treated as having a right to rent if they are given permission to do so by the Home Office under s21(3).

13. **Asylum seekers** Art4(b)(i)(bb) explains that landlords will be able to obtain a Positive Right to Rent Certificate for asylum seekers who are not appeals rights exhausted. This is obtained by contacting the Home Office's Landlord Checking Service. If they receive no answer within 48 hours, the service will generate an automatic message which will give the person the right to rent (art6).

14. **Refused asylum seekers** will need to get permission before a Positive Right to Rent Certificate is issued (art4(b)(i)(dd)). But current guidance is unhelpful in indicating how an individual can apply for permission. The Home Office's [A short guide on the right to rent](#) explains that a person can make an enquiry through their "established contacts points with the Home Office, such as at a reporting event, interview appointment or through the team dealing with their case"(p.10). Presumably any such enquiry will be treated as an application for permission by the Home Office but that is not clear.

15. The same guide provides a list of people for whom permission will usually be granted. This includes refused asylum seekers who:

- Have made further submissions (on protection grounds only, so not those with outstanding Article 8 applications) that have been outstanding for more than 5 days
- Have permission to proceed on a judicial review that is being treated as suspensive of removal
- Are on immigration bail with a residency restriction
- Are taking all reasonable steps to leave
- Are co-operating with the Family's Returns Process
- Victims or potential victims of slavery.

By and large this reflects the criteria for support for refused asylum seekers under proposed the new system created by the Immigration Act 2016. In exceptional circumstances (if it helps Home Office progress someone's case, they are vulnerable, or to avoid a breach of human right) they would consider other categories of people.

IMPLICATIONS FOR ASYLUM SUPPORT APPLICATIONS

Clients with means to rent

16. Asylum seekers and refused asylum seekers with funds¹ at their disposal will be expected to use those to support themselves in the UK. However, thanks to this new scheme they could face a number of problems:

- Obtaining permission to rent: asylum seekers should not have a problem with this. For others it is not very clear how they must do this.
- Finding a landlord willing to take them on as tenants given the additional hurdles they face particularly as the scheme places the burden on the landlords not the tenants.
- Finding their funds deplete more quickly than anticipated because they are staying in more expensive temporary accommodation like hotels. Bear in mind though that the destitution policy uses B&B rates, not market rent as the benchmark for calculating destitution.

17. The scheme includes people using hotels or B&Bs as their only or main residence. Home Office guidance explains that checks should be carried out if the booking is open-ended or for longer than 3 months (see para 3.4 of [Code of Practice](#)). However, we have received recent reports of asylum seekers having difficulties in finding hotel accommodation. The reasons given by hotels for refusing bookings seemed to center on individuals' lack of ID so it's not clear that this is necessarily a direct result of the right to rent scheme.

18. For these reasons advisers may need to argue that although a person has financial resources they are still destitute because they don't have "the means of obtaining" accommodation within the

¹ Please refer to the Home Office guidance [Assessing Destitution](#), particularly para. 2.1 for information on what assets and income are relevant to the test of destitution.

next 14 days as a result of this scheme (s95(3) Immigration and Asylum Act 1999). Applicants will need to provide evidence of reasonable attempts to find accommodation.

19. The asylum support system does provide for some flexible support arrangements and advisers may need to remind the Home Office of this. For instance advisers could rely on regulation 16 of the Asylum Support Regulations 2000 which gives the power to the Home Office to grant s95 support to asylum seekers whilst requiring them to make contributions towards their support. Home Office policy also refers to partial grants of support where someone gets accommodation but not subsistence for example (see p22 [Eligibility and Assessment of Asylum Support](#)).

Destitute clients staying with hosts for free (families, friends, charitable hosting schemes)

20. The right to rent scheme might also make it more difficult for clients with no money to find friends, relatives or charities who are willing to accommodate them.

21. If the host owns the accommodation then they would have no problems if they let a person stay with them as long as no rent is paid (or anything that might resemble rent – like work in exchange for accommodation).

22. If the host is a tenant, then it depends on who the landlord is. Those in local authority or housing association accommodation will not be affected (See para. 11 above). However, if the host is renting privately they may find themselves in difficulties with their landlord who would need to go through additional hurdles avoid a civil penalty for allowing someone without the right to rent to live in their property. Note that this will only apply to hosts who entered into tenancies after 1st February 2016.

23. The potential impact on this kind of support arrangement is that people will be unwilling to let friends/relatives stay with them for very long and destitute asylum seekers or refused asylum seekers will run out of informal options more quickly. It may also be the case that clients are finding it increasingly difficult to get destitution evidence as those that are allowing people to stay with them won't put it in writing for fear of attracting additional problems to themselves. Therefore advisers should be prepared to explain to the Home Office the connection between the right to rent scheme and a lack of evidence as it will assist with credibility issues.

Subs only s95 applicants

24. Asylum seekers applying for subsistence-only support will also be affected if their host is the tenant of a private landlord who entered into their tenancy after 1st February 2016. The landlord has to carry out regular checks of the adults living in the property. They also have an obligation to notify the Home Office as soon as reasonably practicable once they discover someone living in the accommodation without the right to rent (see s24(6)). So it may be advisable for individual to

apply for the right to rent when they make their subsistence-only application (see para 12-15 above).

POTENTIAL DISCRIMINATION

25. The government's evaluation of their Right to Rent pilot (which ran in the West Midlands prior to the national roll out in February 2016) found a risk of discrimination. It may be that individuals have the right to rent or could get it but are unable to find a landlord because they are facing discrimination. Advisers who come across such examples should get in touch with JCWI who are monitoring the situation (see www.jcwi.org.uk).

LEGISLATION, GUIDANCE AND OTHER USEFUL RESOURCES

Legislation

- Ss 20-37 and Schedule 3, Immigration Act 2014
- Immigration (Residential Accommodation) (Prescribed Requirements and Codes of Practice) Order 2014

Government guidance

- Code of practice on illegal immigrants and private rented accommodation, 25 May 2016
<https://www.gov.uk/government/publications/right-to-rent-landlords-code-of-practice>
- Code of Practice for Landlords: avoiding unlawful discrimination when conducting 'right to rent' checks in the private rented residential sector, Oct 2014
<https://www.gov.uk/government/publications/right-to-rent-landlords-code-of-practice>
- Right to Rent Documents Checks: a User Guide, Feb 2016
<https://www.gov.uk/government/publications/right-to-rent-document-checks-a-user-guide>
- Gov.uk quick guide to the right to rent scheme, 8 July 2016: <https://www.gov.uk/check-tenant-right-to-rent-documents>
- A short guide to the right to rent, June 2016
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/529155/A_short_guide_on_right_to_rent_v2.1.pdf

JCWI Guides

- Right to Rent: a brief guide
https://www.jcwi.org.uk/sites/default/files/documets/2016_03_03_%20PUB%20JCWI%20Right%20to%20Rent%20Brief%20Tenant%20Guide.pdf
- Right to Rent: Tenant's Guide
https://www.jcwi.org.uk/sites/default/files/documets/2016_03_03_INT%20JCWI%20RTR%20tenant%20full%20guide.pdf
- Right to Rent flowchart
https://www.jcwi.org.uk/sites/default/files/documets/2016_03_02_PUB%20JCWI%20right%20to%20rent%20flowchart.pdf

Evaluations of the Right to Rent pilot

- JCWI evaluation of right to rent pilot scheme: No passport equals no home
https://www.jcwi.org.uk/sites/default/files/documets/No%20Passport%20Equals%20No%20Home%20Right%20to%20Rent%20Independent%20Evaluation_0.pdf
- Home Office evaluation of the pilot scheme:
<https://www.gov.uk/government/publications/evaluation-of-the-right-to-rent-scheme>

07 September 2016