What you need to know about 'right to rent' in Scotland

Background

Following a pilot in the West Midlands, the UK Government rolled out the 'right to rent' scheme across England on 1 February 2016.

The scheme requires private landlords (or an agent acting on their behalf) to check the immigration status of prospective tenants and to take action against existing tenants if their immigration status changes.

The scheme also applies to registered social landlords (RSLs) that let their own homes, as many do in Scotland, and to social or private tenants who take in lodgers.

Failure to comply or carry out the correct checks could result in a fine of up to £3,000 for each tenant or lodger without leave to remain and up to five years imprisonment.

The scheme is intended to create a "hostile environment for illegal immigrants" and support the UK Government's immigration objectives.

It is our understanding that the UK Government plans to roll out the scheme across the rest of the UK, including Scotland although timescales are still to be confirmed.

How can the UK Government apply 'right to rent' in Scotland when housing is a devolved matter?

The 'right to rent' scheme is set out in immigration law, which is a reserved matter, through the Immigration Act 2014. Section 76 of the Act includes Scotland, Wales and Northern Ireland within the territorial extent of the legislation meaning it can be rolled out with a Commencement Order from the Home Secretary.

While the UK Government does have the power to roll out the scheme across the UK, CIH Scotland and the Scottish Government have questioned the principles of applying the scheme in Scotland, particularly given the lack of consultation that was carried out.

In 2015 we submitted evidence to the Home Office and to the Scottish Parliament outlining concerns with the proposed roll out of 'right to rent' and some of the unintended consequences such as the potential for discrimination.

What has been the impact in England?

The 'right to rent' scheme has been operating in England for just over a year. An evaluation of the pilot was published by the Home Office in 2015.

Concerns from CIH and others include:

Potential for discrimination. There are many different types of document that can prove that a person has a right to live in the UK but they are not all familiar or easily recognised. If a potential tenant does not have a common form of identification such as a British passport, there is a risk that they may not be offered the tenancy.

Lack of understanding or compliance. The UK Government does not have a way of monitoring how many checks are being carried out and it is not clear that all landlords are aware of the scheme or their obligations to carry out checks.

Effectiveness. It is estimated that in order to comply with 'right to rent', landlords and tenants who take in lodgers in England would have to carry out over 2.9 million checks each year. To September 2016, only 654 undocumented migrants had been identified by the scheme. This raises questions as to whether the scheme constitutes a good use of resources.

Further information

You can find further details of the 'right to rent' scheme, including guidance for those who need to carry out checks, on the UK Government website.

A range of materials has been developed by CIH to support members in England where the scheme has already been rolled out. These are available on our website. The CIH Housing Rights website also provides useful information for people moving to Scotland from outside the UK.

The Joint Council for the Welfare of Immigrants published an independent review of the pilot in 2015 and will shortly publish a review of the first year of 'right to rent'.