



Landlords' powers to evict illegal immigrants

BACKGROUND CHECKS

On 1st February 2016 the government introduced a framework under the Immigration Act 2014 (“the Act”) to compel landlords to check whether their tenants of new lettings had a right to remain within the UK for the duration of the tenancy that was being contemplated. This became known as the ‘right to rent’ and if landlords or their letting agents failed to carry out such checks they could be subjected to penalties for permitting lettings to persons who have no right to remain in the UK. Initially, the upper limit for a fine was £3,000.00 but this has been increased to an unlimited sum and the possibility of a custodial sentence from 1st December 2016.

ACTION STATIONS

The Act provided a defence to a prosecution where a landlord discovers that his tenant should not be entitled to a tenancy provided the landlord takes ‘reasonable steps’ to terminate the tenancy within a reasonable time. The government has now provided guidance on the meaning of taking reasonable steps within a reasonable time, such guidance came into effect on 1st December 2016.

STEP BY STEP

Examples of reasonable steps:

- An agreement to surrender the tenancy within a reasonable time (e.g. 4 weeks)
- An assignment of the tenancy to persons permitted to stay within a reasonable time (e.g. 4 weeks)
- Service of a Section 21 Notice
- Notice pursuant to Section 33D (See below)

IT'S THE NOTICE, STUPID

By statutory instrument published on 2nd November 2016 the government have provided a form of Notice to be served on tenants who do not have a right to rent. The Notice can be used after 1st December 2016 but can only be given where the landlord has been notified by the Secretary of State that all known occupants of the property are disqualified from occupying premises in England.

The Notice under this procedure provides for the occupiers to leave at the end of a period of 28 days after service of the Notice. If the occupiers fail to leave the Notice is enforceable as if it was an Order of the High Court.

AND ANOTHER GROUND FOR POSSESSION

A new ground for possession has also been introduced from 1st December 2016. Ground 7B is a mandatory ground for possession which can be relied upon under the Section 8 Notice procedure. Essentially only 2 weeks' notice need to be given provided:

- The Secretary of State has given Notice identifying the tenant or tenants who are disqualified from occupying on immigration grounds and
- The person or persons so named are tenants and are disqualified from occupying as a result of their immigration status

FOOD FOR THOUGHT

Clearly, the message from the government is that landlords who are willing to ignore the immigration status of their tenants do so at their own peril. Once an issue over the right to rent arises, there are numerous ways in which steps can be taken to avoid a criminal prosecution. Landlords and managing agents will need to be vigilant and aware at all times.

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This article is not intended to be a full summary of the law and advice should be sought on all issues.

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