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 **‘Right to Rent’ – Further information for members**

 **Introduction**

As part of the Government’s attempts to cut down on illegal migration, the Immigration Act 2014 (“the Act”) contains a number of measures to restrict access to services for those without a legal right to remain in the UK.

One of these measures is the residential tenancies provision of the Act which introduced the ‘Right to Rent’ scheme and introduced new criminal offences for private landlords who fail to comply with their legal obligations.

In 2015 the Government further introduced an Immigration Bill[[1]](#footnote-1), building on the Act to provide landlords with additional routes to evict illegal migrants with no right to reside in the UK, as well as creating new offences for unscrupulous landlords who continuously rent to illegal migrants.

UK Government announced that ‘Right to Rent’ checks would be carried out on all adult tenants for new tenancy agreements in **England** from 1 February 2016.

This document has been produced to assist our members to identify the changes brought by the Bill which may become relevant to them if and when it is introduced in Wales.

1. **Overview of Legislation**

The Bill’s ‘[Right to Rent’](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/483757/Immigration_Bill_Factsheet_04_-_residential_tenancies__report_.doc)[[2]](#footnote-2) provisions introduce new offences for landlords and letting agents who fail to comply with their obligations.

The Scheme applies to:

* private landlords (both businesses and individuals) who let accommodation with a lease or tenancy agreement;
* occupiers (including those in social housing) who sub-let their accommodation, who will be landlords for the purposes of the Scheme, and
* landlords or occupiers who take in lodgers to share their accommodation with a licence to occupy the property
1. **Excluded Arrangements**

The Scheme will only apply to residential tenancy agreements that are first entered into on or after the date on which the Scheme is implemented in the area where the property is located.

The Home Office has provided a list of [excluded arrangements](https://www.gov.uk/government/publications/right-to-rent-landlords-code-of-practice/code-of-practice-on-illegal-immigrants-and-private-rented-accommodation#excluded-agreements) to the Right to Rent scheme.

These include:

1. Residential tenancy agreements which grant a right of occupation in any circumstances where the accommodation is **arranged by a local authority which is acting in response to a statutory duty owed to an individual**. For example, the intention of providing accommodation to a person who is homeless, or who is threatened with homelessness. This includes instances where the occupier is to be placed into private rented property by the local authority.
2. Residential tenancy agreements which grant a right of occupation in **social housing by virtue of legislative provisions as to housing, and the landlord has already been required to consider their immigration status before allocating them the property**. Or where a tenant has such an existing tenancy and is seeking to exchange their home for an alternative tenancy.
3. Other arrangements include; care homes, hospitals and hospices and continuing healthcare provision, hostels and refuges, mobile homes, tied accommodation, student accommodation and long leases which grant a right of occupation for a term of 7 years or more, as such arrangements are more akin to home ownership than traditional landlord and tenant arrangements.

Housing Associations in England are therefore subject to the ‘Right to Rent’ Bill **if the tenancy agreement has been allocated without a direct referral by or nomination from a local authority. Any checks would only be relevant to tenancy agreements first entered into on or after the date on which the Scheme is implemented in the area where the property is located**.

1. **Scheme roll out in England**

‘Right to rent’ has been in force in parts of the West Midlands as part of a pilot since 1 December 2014 in the cities of Birmingham and Wolverhampton and the Metropolitan Boroughs of Dudley, Sandwell and Walsall.

The legislation, as rolled out across England, specifically targets private sector landlords who let accommodation with a lease or tenancy agreement, occupiers (including those in social housing) who sub-let their accommodation and landlords or occupiers who take in lodgers to share their accommodation with a licence to occupy the property.

The UK Government announced that ‘Right to Rent’ checks would be carried out on all adult tenants for new tenancy agreements in England from 1 February 2016.

1. **Extension of the Right to Rent scheme to Wales**

The Immigration Bill will enable UK ministers to extend the proposed eviction measures to Wales through secondary legislation. Clause 16 of the Immigration Bill gives the Secretary of State power to make regulations (subject to the affirmative procedure) to enable the new residential tenancies provisions to apply in the devolved administrations.

The [Delegated Powers Memorandum](http://www.parliament.uk/documents/DPRR/2013-14/Immigration-Bill/98%20Immigration%20Bill%20Delegated%20Powers%20Memo%20Lords.pdf) has been issued alongside the Bill and provides that commencement by order enables the provisions to be brought into force at a convenient time.

1. **Impact in Wales**

At the moment, we are unable to say when or if the scheme will be rolled out to Wales; however, the existing powers of the Secretary of State means that it could be rolled out following a trial across England as part of the phased arrangements.

In our response to the Home Office consultation on ***Tackling illegal immigration in the privately rented sector*** in August 2013[[3]](#footnote-3), Community Housing Cymru indicated that, although our members collaborate closely with local authorities, with common housing registers and housing options for example, many of our members’ allocations are made without a direct referral by or nomination from a local authority. This leaves a higher proportion of allocations subject to these proposals than is perhaps the case in England.

The following points should be considered by housing associations **if and when** the legislation is extended to Wales:

* Housing Associations who make allocations **outside of the common housing register** will need to ensure that they undertake the correct checks where necessary. [(See Code of Practice)](https://www.gov.uk/government/publications/right-to-rent-landlords-code-of-practice)
* Those tenants that are or are considering subletting their property should be notified of their responsibilities under the scheme. Under the Right to Rent scheme, the tenant would be a landlord and would therefore be responsible for undertaking and maintaining checks on all adults. However, where an occupier sub-lets and so becomes a landlord, they can ask their landlord (the ‘superior landlord’) to agree to accept responsibility for occupation by the subtenants and any contraventions of the Scheme. Further information is available in the [Code of Practice.](https://www.gov.uk/government/publications/right-to-rent-landlords-code-of-practice)

**Further information**

The Home Office has produced a simple [video](https://www.gov.uk/government/news/landlords-in-england-get-ready-for-right-to-rent) outlining the process and also provided a list of the documents that landlords can expect to receive.

Community Housing Cymru will be closely monitoring the progress of the roll out of the Right to Rent scheme across England and will continue to keep members informed of extensions of the legislation to Wales.

If you require any further information on the content of this briefing, please contact Selina Moyo, Policy Officer, on selina-moyo@chcymru.org.uk or 029 2067 4807.

 **Community Housing Cymru**

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1. <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/483868/Immigration_Bill_Factsheet_01_-_overarching__report_.doc> [↑](#footnote-ref-1)
2. (see **Immigration Bill 2015/16** Factsheet – Residential tenancies) <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/483757/Immigration_Bill_Factsheet_04_-_residential_tenancies__report_.doc> [↑](#footnote-ref-2)
3. <http://chcymru.org.uk/uploads/general/Immigration_Bill_Consultation_-_CHC_response__August_2013.pdf> [↑](#footnote-ref-3)