

Ensure equality in residential tenancies

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For residential landlords, identity checks on prospective tenants can be challenging and the penalties harsh for getting it wrong; but trying to avoid tenants with complex immigration status is not an option, as this opens the way to claims of unlawful discrimination.

The obligation to conduct so-called 'right to rent' checks was first imposed on landlords, or their agents, under the [Immigration Act 2014](#), and later updated in the [Immigration Act 2016](#). The aim was to prevent individuals without lawful immigration status from accessing the private rented sector. The checks apply to all prospective tenants over the age of 18 for a new residential let, whether via a private landlord, lettings agent or an owner-occupier renting to lodgers.

Since the initial checks were set out, the requirements have regularly been updated to reflect changes in process and digitalisation of services. Most recently a new set of [requirements](#) came into force on 6 April 2022, outlining both online and manual right to work checks, depending on the status of the tenant. This includes changes to the way in which the Biometric Residence Card (BRC), Biometric Residence Permit ([BRP](#)) and Frontier Worker Permit ([FWP](#)) can be used to evidence a holder's right to rent.

Previously landlords could accept a physical BRP, BRC or FWP as valid proof, if it showed an expiry date within the term of the tenancy, but now this must be checked using the Home Office online service. Home Office online checks are also required for individuals who have only digital proof of their immigration status in the UK.

The checks can be extremely complex for some non-UK citizens and a recent [House of Commons](#) review of the regulation of private rented housing found 25% of

landlords were unwilling to rent to non-British passport holders. But any landlord thinking to avoid their obligations, by deterring prospective foreign tenants or favouring those who are apparently British, could find themselves subject to action under anti-discriminatory measures and the [Equality Act 2010](#).

Landlords who discriminate on the basis of a [protected characteristic](#), such as race or racial grounds, including 'colour, nationality, and ethnic or national origins' could find themselves facing a claim for an uncapped level of damages, if a prospective tenant with the right to live in the UK is rejected on these grounds. Or if a landlord publishes a discriminatory advertisement or instructs their agent to discriminate, the [Equality and Human Rights Commission](#) can bring proceedings.

Property partner Ben Marks explains:



When faced with all the small print and knowing there are fines, or even imprisonment, for incorrectly carrying out right to rent checks, a landlord may think it simpler to look for a tenant who is more easily checked out, but that path is equally risky.

To avoid discrimination, every prospective tenant should be treated exactly the same way, so no one is discouraged or excluded, either directly or indirectly, because of a known or perceived protected characteristic. The right to rent checks should also be undertaken consistently, whether or not a landlord believes someone is a British citizen.

Getting guidance and regular updates on how to manage the checks is ideal, as things can change all the time. As well as the new requirements from 6 April, we recently saw the government release [special rules](#) regarding right

to rent checks for Ukrainian nationals escaping the conflict.

It's also a good idea to adopt the Government [checklist](#) and follow the [code](#) that is set out, as that will demonstrate best practice and provide a statutory excuse against liability if you are found to have rented to anyone disqualified by reason of immigration status.



Contact residential property partner, [Ben Marks](#), today to ensure compliance with the right to rent requirements.

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Note: This is not legal advice; it is intended to provide information of general interest about current legal issues.

