



Home Office

Immigration Act 2014:

Guidance on taking reasonable steps to end a residential tenancy agreement within a reasonable time

December 2016

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Presented to Parliament pursuant to section 33A(8)(a) of the Immigration Act 2014

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Web ISBN 978-1-78655-319-5

Guidance in relation to the defence to the offence at section 33A(1) of the Immigration Act 2014 (“the 2014 Act”)¹ of renting private residential premises to an adult tenant or occupant disqualified from renting by virtue of their immigration status, where a landlord knows or has reasonable cause to believe this to be the case.

This guidance is issued by the Secretary of State for the Home Department under section 33A(7) of the 2014 Act and for the purposes of section 33A(6).

¹ Section 33A was inserted by section 39 of the Immigration Act 2016

Introduction

Section 21 of the 2014 Act provides that people who require immigration leave to enter or remain in the UK and do not have it are disqualified from occupying premises under a residential tenancy agreement unless they have been granted permission to rent by the Home Office.

Under section 33A(1) of the 2014 Act, a landlord commits an offence where he knows or has reasonable cause to believe that premises let by him are occupied by an adult who is disqualified.

The legislation provides for a defence to such a charge where the landlord is able to prove that he has taken reasonable steps to terminate the residential tenancy agreement within a reasonable period of time.

This guidance is issued by the Secretary of State for the Home Department (Home Secretary), in accordance with section 33A(7) of the 2014 Act, to set out, for the courts, some of the factors the Home Secretary would consider appropriate as reasonable steps to terminate a residential tenancy agreement and a reasonable period within which those steps should be taken. This guidance has been laid before Parliament and is brought into force by regulations.

When an offence is committed

The offence is committed where a disqualified person is occupying private residential accommodation and the landlord knows or has reasonable cause to believe that the person is disqualified from renting.

Under section 33A(4) of the 2014 Act, no landlord will be committing an offence where they have carried out the prescribed document checks under the Right to Rent scheme, those checks revealed that the prospective tenant/occupant was a person with a limited right to rent and the eligibility period in relation to that limited right occupier has not yet expired². This is unless the Home Office has issued a notice to the landlord explaining that their tenant is disqualified from renting. This offers landlords the reassurance that if someone has limited right to rent in the UK and they have complied with their obligations under the Right to Rent Scheme, they will not be expected to re-check the person's right to rent until the end of the relevant eligibility period under the Right to Rent scheme in order to avoid criminal liability.

² The prescribed requirements under the Right to Rent scheme are set out in the Immigration (Residential Accommodation) (Prescribed Requirements and Codes of Practice) Order 2014 (SI 2014/2874) as amended. The eligibility period is the longer of either one calendar year from the point that a right to rent check was last conducted or in line with the validity of any immigration leave or validity period of some given documents.

The defence against the offence

The reasonable steps to end a tenancy relate to the different routes a landlord may pursue in order to do so, acting in accordance with the law. The reasonable period of time is the time needed to allow for landlords to seek to end the tenancy through agreement with tenants or to take the necessary steps to lawfully end a tenancy agreement.

The reasonable period of time in which a landlord must take reasonable steps to end a tenancy agreement begins from the point where they first knew or had reasonable cause to believe that a tenant or occupant of their property was disqualified.

In deciding whether the landlord took reasonable steps within a reasonable period of time, the courts will take all the circumstances of the case into account but must have regard to this guidance.

Reasonable steps

There are various routes a landlord can take in order to terminate a tenancy agreement and take possession of a property, depending on the nature of that agreement and the statutory protections available to the tenant. Where a landlord is able to evidence that he is actively pursuing these routes he will be considered to have taken reasonable steps to terminate the agreement.

Landlords must ensure that they follow the correct steps to end the tenancy and recover possession to avoid unlawful eviction.

The easiest way to end a tenancy is through mutual agreement where the tenant(s) agree(s) to end or 'surrender' the tenancy. Where this is possible, there will be no need for eviction action, though it would be advisable that the tenant surrender the tenancy in writing.

Landlords may wish to ask whether the tenant will consider ending the tenancy and move out of the property before beginning formal action to end the tenancy.

Alternatively, where there are a number of tenants or occupants and some are not the subject of a notice from the Home Office, the tenants may agree with the landlord that the disqualified person or persons will leave the property. If, the disqualified person is a joint tenant and they leave, it may be possible that the remaining tenants can continue the tenancy. This is commonly done using what is called a 'deed of assignment' and will require the landlord's agreement. Four weeks will normally be sufficient time for the landlord to come to such an agreement with their tenants.

If a mutual agreement is not possible, and there is a short period of time until either any fixed term of the tenancy comes to an end, or a break clause in the tenancy agreement could be exercised, then it is acceptable for a landlord to

end the tenancy at that point. In these circumstances, the landlord should serve notice on the tenants to end the tenancy agreement in accordance with the usual procedure, which in the case of an assured short hold tenancy would be by serving a section 21 notice.

There are a number of other routes to eviction which can be used to evict disqualified people, and further information on these routes in England is available here: <https://www.gov.uk/evicting-tenants>. The 2016 Act provides for additional routes specifically aimed at disqualified people. These are only available where a landlord has received a notice from the Home Office to inform them that they are renting to a disqualified person.

The courts will take into consideration the steps that a landlord must take in order to end a tenancy. In all cases, this will include giving adequate notice to the tenants. The steps that would be taken will vary depending upon the circumstances in each case. These steps are also necessary in order to avoid unlawful eviction.

The courts will also take into consideration any stages where a landlord cannot take any further steps. This includes any notice periods, waiting for court decisions and where a landlord is enforcing possession and reliant upon bailiffs or High Court Enforcement Officers to enforce possession.

Reasonable period of time

The reasonable period of time relates to the point in time at which the landlord came to know that they were letting to a disqualified person or came to have reasonable cause to believe this to be the case. Where the Home Office has issued a notice explaining to a landlord that they are letting to a disqualified person, the landlord will be taken to know that they are letting to a disqualified person upon the notice being served. If the notice is not served in person, but by post or email, it will be deemed to be served two days after the date of the letter.

Where the Home Office has issued a notice to the landlord explaining that a tenant or occupant is a disqualified person, a landlord may need some time to think about how to proceed. The landlord may also want to look for guidance or advice. In many cases, the landlord may want to see whether it is possible to reach an agreement with the tenants, as suggested above. These are reasonable steps and a period of four weeks will normally be sufficient time in which to take such steps, before taking formal steps to terminate the tenancy.

Where the tenancy is being terminated at the end of a fixed term, or through use of a break clause in the tenancy agreement, the time between a landlord becoming aware that a disqualified person was occupying their premises and the day set out in the notice for when the tenancy will end should generally be no more than three months. Landlords who are unable to take this route should consider using another route to ending a tenancy agreement.

Where a landlord undertakes further checks on someone as part of the Right to Rent scheme at the end of the eligibility period and finds that they are now a disqualified person or has reasonable cause to believe that this is the case, the landlord must notify the Home Office as soon as reasonably practicable or they risk prosecution for the offence at section 33A(10) of the Immigration Act 2014. An agent undertaking such checks on behalf of a landlord who knows or has reasonable cause to believe the tenant or occupant is disqualified must notify both the landlord and the Home Office as soon as reasonably practicable or risks committing the section 33B(4) offence.

The courts will consider each case on its own merits and take into account matters such as whether the landlord was abroad when the Home Office issued a notice explaining that the landlord was letting to a disqualified person, or if there were other reasons why the landlord may not have been able to read and act on the Home Office notice or a notification from an agent for some time. This will also include where the landlord had to speak to the Home Office where they have concerns about the validity of the notice they have received.

In circumstances where all known tenants and occupants are named in one or more Home Office notices, where a landlord has then served a notice to leave on their tenants under section 33D(3) of the 2014 Act, the notice period has expired and the tenants have not contested the notice, the landlord will be able to take possession of their property. This should be done peacefully and never involve threats, intimidation or force. Where it is not possible to secure immediate vacant possession of the property, any short delay, such as 14 days, involved in the landlord taking further formal steps towards eviction will be considered as constituting a reasonable period of time.

The courts will also take into consideration any stages where a landlord cannot take any further steps. This includes any notice periods, waiting for court decisions and the time it may take in enforcing an eviction, where the landlord will be reliant upon bailiffs or High Court Enforcement Officers.

ISBN 978-1-78655-319-5