

## Code of practice

# Prevention of illegal migrants securing private rented accommodation - Civil Penalties for landlords and their agents

This is a draft Code of Practice prepared to assist Parliament in considering proposed clauses, relating to migrant access to the private rented sector. This forms part of the Access to Services aspects of the Immigration Bill. The Code of Practice will be developed further in light of Parliament's considerations.

31 October 2013

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# 1. Introduction

1. Landlords are not permitted to allow adults who are illegally in the UK to access private accommodation. In order to comply with this restriction, landlords will need to carry out document checks on people before granting them a tenancy or rights of occupation in their properties. This code of practice applies where a tenancy commences on or after [XXXX 2014] and has been issued under [section 27 of the Immigration Act 2014]. It sets out:

- a. How Home Office officials will administer the landlords' civil penalty scheme from [XXXX 2014].
- b. It also provides guidance on the factors that will be taken in consideration when determining liability for a civil penalty, and illustrates how the amount to be imposed may be calculated on a case by case basis.

This code has been issued together with guidance for landlords and other sources of information. You may wish to refer to this code alongside those.

2. This is a statutory code. This means it has been approved by the Secretary of State and laid before Parliament. The code does not impose any legal duties on landlords, nor is it an authoritative statement of the law; only the courts can provide that. However, the code can be used as evidence in legal proceedings and courts must take account of any part of the code which may be relevant. Home Office officials will also have regard to this code in administering civil penalties to landlords and their agents under the [Immigration Act 2014].

## Using the Code

3. The vast majority of foreign nationals within the UK have permission to be here and abide by the immigration rules. Some need permission to stay in the UK whilst nationals of the European Economic Area along with Switzerland do not. When we refer to EEA nationals in this document we mean British Citizens, other EEA nationals and Swiss nationals. When we refer to non-EEA national we mean all those who need permission to stay in the UK in the form of passport stamps, visas and other immigration documents.

4. However, there are people who seek to evade immigration controls and enter and/or remain in the UK without the legal right to do so. We refer to these individuals as 'illegal immigrants' in this document.

5. When we refer to 'we' or 'us' in this code we mean the Home Office. When we refer to 'you' and 'your' this means the landlord. For the purposes of this code the term landlord also covers agents working on behalf of landlords, except for those times which agent is specifically referred to where it exclusively means an agent. We use the term 'tenant'<sup>1</sup> in a broad sense to include not only people living in rented accommodation under a tenancy (such as an assured tenancy or assured shorthold tenancy, in England and Wales) but residential occupiers paying money to occupy accommodation under licences, for example lodgers.

6. Throughout the code of practice, the [Immigration Act 2014] is referred to as 'the Act'.

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<sup>1</sup> Throughout this Code 'tenant' is used in a broad sense to include not only people living in rented accommodation under a tenancy (such as an assured tenancy or assured shorthold tenancy, in England and Wales) but residential occupiers paying money to occupy accommodation under licences and equivalent arrangements outside England. It only covers individuals and not companies.

## 2. Who should be checked?

7. Checks must be made of **all new occupants** before they take up residence in your accommodation under a residential tenancy agreement whether or not they are known to you and whether or not you believe them to be lawfully in the UK.<sup>2</sup> The scheme requires you to ask all adults who will be permitted to occupy the premises under the residential tenancy agreement for documentary proof of their immigration status sufficient to satisfy yourself that the person has current authority to stay in the UK.

8. Any enquiries and requests for documentation for immigration status checking purposes must be solely related to the fact of whether the person has current permission to stay in the UK and the regulations provide no grounds on which to demand other information. This does not prejudice the checks that landlords' are already entitled to undertake in order to ascertain identity and credit history.

9. In order to establish a statutory excuse, you will need to keep the evidence of who it was said was going to occupy the accommodation. You should ascertain who will be living at the property once the tenancy begins and, where necessary, carry out checks on any adult whom, as a result of your enquiries, you establish has a time limited stay in the UK and will be living at the property. We would advise keeping a record of any enquiries that you undertake prior to the start of the tenancy.

10. It is for you to show that you have complied with the requirements to establish a statutory excuse. This means that they should show you evidence that they have permission to live or stay in the UK and you should copy that evidence for your records. The scheme does not give you the right to retain the original documents provided by the tenant; it is unlawful to possess another person's identity documents without reasonable excuse.

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<sup>2</sup> The checks that need to be done on renewal will be dealt with in secondary legislation and we will issue updated guidance on the landlords' responsibilities in relation to that.

11. A lodger is someone who takes a room within accommodation that they share with their landlord (this could be the owner or a tenant of the property)<sup>3</sup>. Lodgers who pay to live in the property as their main or only residence fall within the scope of the scheme. You should check that that they have current permission to stay in the UK before granting them a residential tenancy agreement, and undertake repeat checks if their leave to stay in the UK is limited.

12. House guests are not required to be checked provided:

- that they are not paying rent, or
- that they are not living in the accommodation as their main or only residence.

(See also – holiday lets).

## British and other EEA nationals

13. British passport holders and other European Economic Area (EEA) nationals and Swiss nationals enjoy freedom of movement to and from the UK. They do not need UK visas and will not have any stamps in their passports showing a time limit on their stay. The countries comprising the EEA are:

Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein Lithuania, Luxembourg, Malta, Netherlands, Norway Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the UK.

Plus: Switzerland

14. Immigration documents can take many forms but the most common are passports. For the purposes of these provisions a current or expired British or EEA passport containing a recognisable photograph of the prospective occupant is

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<sup>3</sup> The difference between a lodger and a sub-tenant is that a lodger has use of the property but does not have exclusive use of any part of it. By contrast, a sub-tenant has exclusive use of the whole or part (e.g. a bedroom) of the property such that even the landlord would need the sub-tenant's permission to enter the area over which the sub-tenant has exclusive control.

sufficient to establish the person's legal status. Other documents that can immediately be accepted as sufficient evidence of identity and status are:

- EEA National Identity Cards; and
- UK Biometric Residence Permits showing current permission to stay.

15. You may usually accept a passport or, (or, in the case of EEA nationals, an identity card), that clearly appears to have been issued by a national government and contains:

- a) a photograph that is a likeness of the prospective tenant; and
- b) personal details that match the person, for instance, there is no obvious or unexplainable disparity of gender and age.

16. You will have met your responsibilities when you properly conduct checks on the documents that have been presented to you and retain copies. In all cases, you should undertake basic visual checks to ensure that the document or documents, relate to the occupant by

- a. Comparing any photographs in the document or documents, and dates of birth against the appearance and apparent age of the holder.
- b. You should check for any obvious discrepancy in age.
- c. Where a variety of documents have been presented as evidence it is good practice to check that the names, photographs and dates of birth are consistent.

17. Where an EEA national is accompanied by a dependent family member who has a non-EEA passport, the family member will normally be able to produce a residence document issued by the Home Office that evidences their right to live in the UK.

18. In case of doubt, the Home Office Landlords Enquiry service will be able to offer advice.

## People subject to immigration control

19. Non-EEA nationals generally need permission to reside in the UK. Permission is usually given in the form of passport stamps, visa vignettes, Biometric Residence

Permits and Asylum Registration Cards. A list of acceptable documents is given below.

20. You should conduct the same basic visual on the passports of non-EEA citizens. Check that any United Kingdom Government endorsements (stamps, vignettes etc.) grant the potential occupant permission to stay in the UK that this is valid and that any expiry date has not passed. Where a non-EEA occupant produces a passport stamp or Biometric Residence Permit showing that they have a time limit on their stay in the UK you should take careful note of the expiry date.

21. Where the non-EEA occupant provides evidence that they have indefinite leave to remain, indefinite leave to enter, a no time limit endorsement or a certificate of right of abode, you should take copies of the evidence to this effect and any passport shown at the same time (expired passports are acceptable as long as you can see that it is the occupant's document). Retain these copies and there will be no need for a further check whilst they rent your accommodation. You should also retain these copies for at least a year after they leave your property

## What do I need to do?

22. You should make checks on the person(s) with whom you are entering into a contractual agreement (whether written or unwritten) **and any adult persons** who will occupy the premises under that agreement.

23. There is no requirement for a written tenancy agreement listing all those who will live within the property, however the landlord is responsible for checking the status of those adults who the prospective tenant says will be joining him or her at the property before they grant rights of occupation, and those adults who the landlord would have been able to establish would take up residence had they made reasonable enquiries.

24. There is no requirement to make checks on the dependants of tenants who are not yet adults (although you may of course need to make checks to satisfy themselves that they are not adults). Adults are defined as persons 18 years of age or older. You will therefore need to take reasonable steps to find out, in advance of the start of the tenancy, whether other adults will be living at the property and to make checks on them too. Reasonable steps can be said to be made if notes of the questions that we are asked at the start of the tenancy are kept on record along with

photocopy of documents. For instance, where you have a three bedroom property to let, it is expected that you would ask the prospective tenant who they intend to live at the premises with them. Where the tenant is married and they intend to rent the property as a home for themselves, their spouse, their 19-year-old son and 14-year-old daughter, you should check the status of both spouses and the adult son.

25. Landlords are therefore strongly advised to conduct and record checks as part of good practice to ensure they do not breach the restriction on letting to illegal migrants, to enable them to establish an excuse against a penalty should this be necessary, and also has a precaution against fraud. If these checks are not made prior to letting the property, the landlord will not have the benefit of the statutory excuse if they are later found to be housing illegal migrant occupants.

26. Most landlords routinely make checks on prospective tenants and many landlords and agents will be familiar with the documents specified on page 21. There is no requirement to check the immigration status of all those who enquire after a property let – only those people that you accept as tenants and to whom you intend to grant a residential tenancy agreement.

27. When you make pre-letting checks, you should ensure that they are made in a non-discriminatory manner by applying them to all applicants, whether or not you may already believe them to be legally within the UK. Checks on the immigration status of occupants must be conducted prior to their taking up residence.

### Conditional agreements

28. The scheme allows landlords to enter into a conditional agreement with prospective tenants where it is not practical immediately to conduct document verification. For example, if the person is currently overseas and wishes to arrange accommodation for work or study in the UK in advance of travelling to the country. A tenancy agreement such as that described is however conditional on the occupier(s) producing evidence to the landlord that they have a valid permission to stay in the UK prior to taking up residence in the property.

# Important Notes

- Checks must be performed without regard to race, religion or other protected characteristics as specified in the Equality Act 2010, on all adults who will be living at the property. A separate Anti-discrimination Code of Practice gives further advice on how to operate checking processes that are fair and in accordance with equalities obligations.
- There are no additional powers under these provisions that entitle the landlord to enter the property or to require additional evidence once a tenancy has commenced.

## 3. Administering the civil penalty scheme

29. The intention of the civil penalty scheme is to penalise those who do not undertake the legally required checks on tenants of private rented accommodation for which they are responsible. The penalties are proportionate to the level of non-compliance and illegal behaviour. The scheme does not affect landlords' wider property rights.

30. A landlord can establish a statutory excuse against a penalty. A statutory excuse describes certain activities, such as undertaking document checks to the required standard and reporting suspected illegal immigrants to the Home Office advice line, which mean they will not face a penalty.

### Who does it apply to?

31. The scheme applies to:

- Landlords<sup>4</sup> and anybody else who lets accommodation, for which rent is paid, to a person as their main or only home,;
- Tenants who sub-let accommodation. This applies to both private and within social housing;
- Anyone taking in a lodger;
- Letting Agents where an agreement exists that an agent is responsible for carrying out checks under this scheme.

32. The scheme does not apply to sitting tenants where:

- Their tenancies pre-date the start of the scheme, **and**
- There has been no break in the tenancy.

33. A landlord must not authorise the occupation of premises for use as an only or main residence by an adult who is present in the UK in breach of the immigration laws. All landlords who are found to have let accommodation to an illegal migrant

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<sup>4</sup> Throughout this Code the term 'landlord' is used as a general descriptor of the person with control over premises who is authorising occupation by the tenant (see footnote 3), whether under a tenancy or licence arrangement.

after [date] without having established a statutory excuse will be liable to a civil penalty. Checks are not required to be carried out on tenancies before [date]. More information on the scales of the penalties can be found in section 5 of this document.

34. You will be liable to a penalty if you are found to be letting accommodation for use by a person or persons aged 18 or over as their main or only residence, where they are subject to immigration control <sup>5</sup>unless you have checked whether they have current and valid permission to be in the United Kingdom.

35. Under section 23 of The Act you may be liable for a civil penalty in respect of each illegal migrant occupant living within the property as their main or only home.

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<sup>5</sup> A person subject to immigration control is defined as 'a person who under the [Immigration Act 1971] requires leave to enter or remain in the UK (whether or not such leave has been given)'.

## Liability and transfer of liability

36. Liability rests with the person who has authorised the occupation of the premises. A landlord is expected to make reasonable enquiries as to the people who will take up occupation is then responsible for the ensuing occupation by those people.

### Sub-letting

37. If tenants subsequently sub-let and authorise occupation by other people under another residential tenancy agreement, then they will be responsible for occupation by the sub-tenants. Any tenant who sub-lets all or part of their accommodation to a person for money is a landlord for the purposes of this scheme and may be liable to a civil penalty if they fail to make the proper checks described within this Code of Practice. This applies equally to tenants within private or social housing.

38. It is the responsibility of the person sub-letting the property to comply with the requirements of the scheme in order to establish a statutory excuse against a penalty. However, where a tenant sub-lets and so becomes a landlord, he can ask his landlord (the 'head landlord') if he will agree to accept responsibility for occupation by the sub-tenants. Unless the head landlord confirms that he is willing to accept this responsibility in writing, then the tenant who is sub-letting will be the responsible landlord for the purposes of this scheme.

### Agents

39. The law recognises that many landlords may employ letting agents or transfer agents to let and manage their property. Where a landlord agrees in writing with an agent, who is acting in the course of a business, that the agent will be responsible for undertaking checks and taking any other action required for the purposes of ensuring compliance with the scheme, then the agent may be held responsible for any contravention which occurs.

40. Where an agent has accepted responsibility for carrying out the checks, it is the responsibility of the landlord to ensure that a tenant is not granted a right of occupation before the agent has the opportunity to undertake the checks and report back to the landlord regarding the outcome. If an agent establishes that a person is an illegal immigrant and reports the matter to the landlord, the landlord is liable to a penalty if they proceed to grant a tenancy to that person.

41. Where a let is managed by agents with more than one business address liability for any civil penalty shall be assumed to apply to the business address which received the instructions. Failing that it will be the address that is nearest to the property that is being let.

### Corporate lets

42. Employers are already subject to separate duties to conduct right-to-work checks under immigration law. Where the tenant is a corporate body leasing premises in order to provide accommodation for employees, the landlord would not be required to seek details of all employees who may use the premises, but given the employer will have control over who uses the premises, responsibility for occupation as a home will in those circumstances rest with the employer.

(See also, section 5, page 35 Tied Accommodation).

### What types of property does it apply to?

43. Generally, the restriction applies to all types of property that a person uses as their main or only residence. There is a power for the Secretary of State to specify in secondary legislation cases where a person is to be treated as occupying premises as their only or main residence, notwithstanding they may have a home elsewhere.<sup>6</sup>

44. There are some types of premises for which residential tenancy agreements are exempt from the restriction. These are set out in [Schedule 3 to the 2014 Act]. They include hospitals, hospices, student accommodation in halls of residence and hostel accommodation for vulnerable individuals.

### Only or main residence

45. Whether a person occupies the premises as their only or main residence is a matter of fact which you will need to consider. Residence implies occupation as a home. It is recognised that a person might remain in residence at one property, even though he also has another home. The landlord will need to consider carefully the way the occupant intends to use the premises, and decide whether, based on that use, they will be occupying as their only or main residence.

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<sup>6</sup> Consideration is being given to the circumstances that will be specified in secondary legislation.

46. . There is no single legal definition, but a residence will be considered as a main or only home where a combination of the following factors are found to be true:

i) The tenant spends more time residing at that property than any other property in the UK.

ii) The tenant would give or has given the address as his address for correspondence and paper work.

iii) It is clear to enforcement officials that the resident has been staying in the room given the presence of possessions and signs of being 'lived in' regularly, such as laundry and bed sheets.

iv) The tenant sends their children to a local school or the tenant's work is found to be closer to the property than any other residence.

47. In some cases, this will be very clear, for instance: Mr & Mrs A and their 2 children live in an owner-occupied 3 bedroom house. They go on holiday for 2 weeks and stay in a hotel. During the 2 weeks that they are on holiday, they use the hotel as a residence but their main residence remains their 3 bedroom house. Therefore, the hotel would not constitute their main or only residence.

48. In others, it may be less obvious: Mr B is a non-EEA national who comes to the UK for work. He has leave to enter and remain in the UK for [X] and has permission to work. He rents a room in a hotel on an open ended basis. While he has a home in his home state, at present his intention is to spend his day to day life in the UK and the accommodation is being provided on an open ended basis. In this situation his only or main residence in the UK is at the hotel, and checks regarding his status should be made.

## Sitting tenants and changes in landlord

49. The scheme specifies who is liable for a civil penalty in circumstances where an illegal migrant is found to be in occupation and the landlord has changed since the time the original residential tenancy agreement was granted. If the illegal migrant should never have been allowed to occupy the premises under a residential tenancy agreement at all, then the landlord who granted the residential tenancy agreement will be liable for a civil penalty, even if they have since sold the property on to a new

landlord. If, when the residential tenancy agreement was granted, the migrant had a right to rent in the UK, but they have subsequently lost that right, then the landlord at the time the breach is identified will be liable. This would occur where the tenant's leave to remain in the UK has expired and the landlord's eligibility period in relation to that tenant has also expired

50. It is therefore advisable for landlords who acquire properties with sitting tenants to ask the transferring landlord for confirmation of the checks regarding immigration status which have been undertaken in respect of occupants, and to determine whether and when further repeat checks must be undertaken in order to ensure the continuing validity of a statutory excuse against a penalty.

## Notifying liability to a civil penalty

51. There are **6 documents** that can be issued to landlords under this scheme:

- 1) A Referral Notice
- 2) An Information Request
- 3) A Civil Penalty Notice
- 4) A No Action Notice
- 5) Objection Outcome Notice
- 6) Penalty Notice

52. If you are found renting accommodation for use by an illegal migrant we may issue you with a **Referral Notice** informing you that the details of your case have been passed to Home Office officials for consideration of liability for a civil penalty. Where liability is found consideration will be given to certain factors to determine the penalty level.

53. During the course of our investigations we may issue you with an **Information Request** asking for you to provide us with evidence to help us assess your liability and where appropriate, your penalty level. Where we do not receive a response from you within 16 days of the request (14 days plus 2 days for postage), then we will assume that no evidence is available.

54. If you are considered liable you will be issued with a **Civil Penalty Notice** for a specified amount, which will be your first formal notification that a financial penalty has been imposed on you. The maximum penalty amount which may be imposed for

each illegal migrant, who has been allowed to occupy the private rented accommodation in breach of the 2014 Act, is £3,000.

The **Civil Penalty Notice** will state:

- why you are liable;
- the amount payable;
- when it must be paid by
- how the penalty must be paid;
- how you may object to the penalty;
- how you may appeal against the penalty; and
- how the penalty may be enforced.

55. Where you are found to have an illegal migrant occupant whose length of residence within the accommodation is undetermined, or whose tenancy pre-dated the commencement of the scheme, you may instead be issued with a **No Action Notice**. This notice will not imply that you have breached the law and will provide advice as to how right to rent checks should be conducted. An Advisory Notice may also be issued where it has been decided to take no further action in other circumstances, however, this notice will be held on record and taken into consideration where there are further breaches in the future.

56. If you are not liable for a civil penalty you will be issued with a **No Action Notice** informing you that no action will be taken against you on this occasion, and your case has been closed.

## Fast payment option

57. There is a **Fast Payment Option** that gives you the opportunity to pay a **30% lower amount** if payment is received **in full within 21 days** of the Civil Penalty Notice being issued. This option is available upon receipt of the initial notice, or following receipt of an outcome to an objection.

## Objecting

58. Where you receive a Civil Penalty Notice you will have 28 days from the date specified to pay the penalty or to object. An objection must be made in writing and

submitted using the **Objection Form** ensuring all mandatory fields are completed with the information required, and providing your reasons for the objection.

**Your objection must set out your full grounds for objecting to the penalty.**

You may object on the grounds that:

- you are not liable to pay the penalty (e.g.: you are not the responsible landlord or an agent is responsible for the penalty) ; **or**
- you have a statutory excuse (i.e. document checks were undertaken and report made to the Home Office if necessary); **or**
- the level of penalty does not reflect the published scale of penalties.

59. Home Office officials will review the evidence again and will consider any additional evidence in light of your objection. Under section 24(5) of the 2014 Act the Secretary of State, when considering an objection, may decide to cancel, reduce, increase or take no further action on the penalty. You will receive an **Objection Outcome Notice** advising you of the outcome of your objection. Where a decision is made to increase the level of penalty, you will also receive a new **Penalty Notice**.

## Appealing

60. You must exercise your right to object before you can appeal to the court. If, after objecting to a Civil Penalty Notice, you receive an **Objection Outcome Notice** advising that you are still liable for a financial penalty, then you can appeal to the courts. You will have 28 days following the date the outcome notice was issued to do this.

**You may appeal on the grounds that:**

- you are not liable to pay the penalty (e.g. you are not the responsible landlord or an agent is responsible for the penalty) ; **or**
- you have a statutory excuse (i.e. document checks were undertaken and report made to the Home Office if necessary); **or**

- the level of penalty does not reflect the published scale of penalties.

61. If you choose to appeal against a civil penalty, the court may allow the appeal and cancel the penalty; or allow the appeal and reduce the penalty; or dismiss the appeal. If you are unsuccessful at the appeal you may also be liable for our costs in preparing for and attending the hearing.

## Information sharing

62. When we issue a Civil Penalty Notice, information may be shared with other government departments such as Her Majesty's Revenue and Customs (HMRC), the Department for Work and Pensions (DWP) and Local Authorities.

## 4. Making the checks

### Document checks

63. This section deals with the types of documents<sup>7</sup> to be checked. In order to establish a statutory excuse against liability for a civil penalty, you should check the new occupant's original document(s) presented from the document lists below, prior to the person is being granted a right of occupation. You must should make a paper copy or electronic record of the document and store it securely for the duration of the tenancy and for twelve months thereafter.

**An expired passport does not invalidate any visas or passport stamps contained within it, if the visas or stamps have not yet expired (for example, where they confer indefinite leave to remain). It is still an acceptable form of proof provided the owner is recognisably the person shown in the photograph. Where there is doubt over the photograph other approved documents may be used to corroborate the person's identity.**

64. If you are given a false document you will not have a statutory excuse if it is reasonably apparent that it is false. We consider the falseness to be reasonably apparent if an individual, who is untrained in the identification of false documents, examining it carefully, but briefly, and without the use of technological aids, could reasonably be expected to realise that the document in question is not genuine.

65. Equally, where a person presents a document and it is reasonably apparent that the person presenting the document is not the person referred to in that document; even if the document itself is genuine then you will also not have a statutory excuse.

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<sup>7</sup> All references to the documents issued by the Home Office in these lists include documents issued by the former Immigration and Nationality Directorate (IND), Work Permits (UK), Border and Immigration Agency, (BIA), and UK Border Agency, (UKBA).

**You will not have a statutory excuse if:**

- you cannot provide evidence of having checked the documents before the tenancy commenced; or
- you have accepted a document which clearly does not belong to holder; or
- you have conducted a check and it is reasonably apparent that the documents is false, or
- you have accepted a document which clearly shows that the person does not have permission to live in the UK.

66. Where we find that you **have** established a statutory excuse then you will not be liable for a civil penalty and you will be issued with a **No Action Notice** informing you of this.

67. Where we find that you **have not** established a statutory excuse then we will progress to stage 2 of our consideration process to calculate the level of your civil penalty.

## List A - Acceptable documents establishing a continuous statutory excuse

List A	
1.	A passport showing the holder, or a person named in the passport as the child of the holder, is a British citizen or a citizen of the UK and Colonies having the right of abode in the UK.
2.	A passport or national identity card showing the holder, or a person named in the passport as the child of the holder, is a national of the European Economic Area or Switzerland.
3.	A Registration Certificate or Document Certifying Permanent Residence issued by the Home Office, to a national of a European Union, European Economic Area country or Switzerland.
4.	A Permanent Residence Card issued by the Home Office, to a non EEA national the family member of a national of a European Union, European Economic Area country or Switzerland.

5.	A valid Biometric Residence Permit issued by the Home Office to the holder indicating that the person named is allowed to stay indefinitely in the UK, or has no time limit on their stay in the UK.
6.	A valid passport endorsed to show that the holder is exempt from immigration control, is allowed to stay indefinitely in the UK, has the right of abode in the UK, or has no time limit on their stay in the UK.
7.	A valid Immigration Status Document issued by the Home Office to the holder with an endorsement indicating that the named person is permitted to stay indefinitely in the UK or has no time limit on their stay in the UK.
8.	A certificate of registration or naturalisation as a British citizen, (with a passport).
9.	Documents held by persons exempt from immigration control (e.g. diplomatic passports, NATO ID card)
10.	Any two of the following documents when produced in combination: <ul style="list-style-type: none"> <li>a. A full birth or adoption certificate issued in the UK, the Channel Islands, the Isle of Man or Ireland, which includes the name(s) of at least one of the holder's parents or adoptive parents.</li> <li>b. Letter of attestation from a named government or local government official or British passport holder, (giving name, address and passport number) or an employer's reference issued within the last 12 months.</li> <li>c. Letter from a UK police force confirming subject is victim of crime and personal documents have been stolen.</li> <li>d. Evidence of previous or current service in HM armed forces.</li> <li>e. HM prison discharge papers or probation service letter.</li> <li>f. .</li> <li>g. Result of credit reference check showing person has been economically active in the UK for the past 12 months or any year in the past 5 years.</li> <li>h. Letter from a UK further or higher education institution confirming acceptance on a course of studies.</li> <li>i. A current UK driving licence (a full or provisional car licence).</li> <li>j. Current UK Firearms Certificate.</li> <li>k. Disclosure and Barring service certificate</li> <li>l. Benefits paperwork issued by HMRC, Local Authority or a Job Centre Plus, on behalf of the Department for Work and Pensions,</li> </ul>

within previous 12 months prior to commencement of tenancy.

### List B – Acceptable documents establishing a limited statutory excuse

<b>List B</b>	
1.	A valid passport endorsed to show that the holder is allowed to stay in the UK.
2.	A valid Biometric Residence Permit issued by the Home Office to the holder which indicates that the named person can currently stay in the UK.
3.	A Residence Card or a Derivative Residence Card issued by the Home Office to a non-EEA national who is either a family member of a national of a European Union, European Economic Area country or Switzerland or has a derived right of residence in the UK under European Union law.
4.	An Application Registration Card, verified by the Home Office advice service, issued by the Home Office, which indicates that the named person can currently stay in the UK.
5.	A valid Immigration Status Document issued by the Home Office to the holder with a valid endorsement indicating that the named person may stay in the UK.
6.	Certificate of application (but only if verified by calling the Home Office advice line.) (for non-EEA family members)
7.	Home Office letter confirming the person has an outstanding immigration application or appeal which permits them to remain (to be verified by calling the Home Office advice line) (non-EEA nationals with leave to remain)
8.	Home Office Special Certificate – limited duration letter of authorisation – but only if verified by calling the Home Office advice line. (non-EEA national without leave to remain).

### Repeat checks

68. Where the document provided by the occupant shows that they have a time limit on their stay, a further check or checks may be required during the period of the tenancy. How soon after occupying the premises a further check needs to be undertaken depends on the expiry date of their permission to stay as signalled on their passport visa or biometric residence permit. A follow up check will be required:

- On the date that a person's biometric residence permit or visa expires; or
- After 12 months of the original check (e.g. in cases where the document does not have an expiry date or the document is due to expire within the next 12 months), whichever is the longer period.
- Where the expiry date on the passport stamp or permit is found to be less than one year from the date the tenancy begins then you will need to check the tenant's documents again on the anniversary of their taking up residence in order to be satisfied that the person still has current permission to stay.
- Where the expiry date is longer than one year a further check need not take place until the date of expiry.

69. No repeat checks on a person's status are necessary where a person satisfactorily proves that they have no restriction or time limit on their stay. They may do this by producing:

- a UK passport, or
- Biometric Residence Permit showing that they have indefinite leave to remain,
- any EEA passport / identity card, or
- a passport showing that they have "no time limit" on their stay or "indefinite leave to remain or enter" or "Right of Abode", or
- A combination of other documents, (listed below).

70. Some people who are subject to immigration control may not have passports or visas to prove their legal status. These may include asylum seekers and others who have applied to the Home Office to stay in the UK or whose status is under consideration. People in this situation will have other Home Office documents proving their current permission to stay in the UK.

71. Some migrants may have lived legally in the UK for considerable periods and may consequently produce very old passports or other immigration documents. A person who has been granted indefinite permission to stay still has permission to be in the UK whether or not the passport has expired.

72. If the repeat check does not satisfy requirements, or if the tenants decline to provide documentation, then contact the Home Office in order to report the incident

and this will allow you to establish a statutory excuse from a penalty. Where you have reported the tenant to the Home Office you should retain the evidence to provide you with proof that you have taken steps to discharge your responsibility. In reporting the tenant to the Home Office you are advised to email the Home Office using the template wording provided in **Annex XX** or to send a printed copy of the Annex to the address contained within it.

## Renewals

73. The intention of the scheme is that landlords should not renew a tenancy to tenants who are illegal immigrants and that, if they do, they will be liable to a penalty.<sup>8</sup>

## The Home Office Landlords' Advice Service

74. The Advice Service provided by the Home Office is designed to support landlords by:

- Providing telephone advice on understanding the rules and interpreting immigration stamps and visas;
- Providing an email confirmation service in response to scanned, transmitted evidence or data emailed on the template at **Annex XX**.
- Providing verification of letters of authority to migrants regarding their right to rent in some exceptional circumstances.
- Acknowledging receipt of reports submitted by landlords of illegal migrant tenants.
- Verification of Asylum Registration Cards.

The Advice service can be contacted by telephone – XXXXXXXXXXXXXXXX. Or by

Email – Landlords [Advice \[xxx@homeoffice.gsi.gov.uk\]](mailto:Advice [xxx@homeoffice.gsi.gov.uk])

**The Home Office Landlords Advice service can only provide advice or guidance in respect of people who are subject to UK immigration control and**

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<sup>8</sup> Further consideration is being given to tenancy types that might be excluded under secondary legislation.

**cannot issue or verify British passports, EEA passports and identity cards or UK birth or adoption certificates.**

## Provision of special certification

75. Generally, a person who is not a UK national who is required to evidence their right to rent will have documents evidencing their status readily available to them. If their documents have been mislaid or stolen, then they will ordinarily need to obtain a replacement from their own home state, and where necessary, apply to the Home office to have their conditions of stay endorsed on the new document.

76. In cases of special need the Advice Service may be able to issue a time limited certificate allowing a person to proceed with a tenancy in these specific circumstances:

- The person is unable to produce a passport or identity card showing their current immigration status because these documents have been submitted to the Home Office in connection with a current application or appeal.
- The person is a dependent of an EEA national who is currently seeking a Residence Permit.

**The Advice Service cannot issue clearance certificates in other circumstances.**

## Reporting a suspected illegal migrant tenant.

77. You may establish a statutory excuse and safeguard yourself against future penalties by reporting a concern about the immigration status of an existing tenant to the Home Office. The Home Office landlords Advice Service will note and log the information in the strictest confidence and provide the landlord with a reference which can be quoted in case the illegal migrant comes to notice in the course of immigration enforcement investigations. The fact that a report has been made will not be disclosed.

78. Despite having made checks upon tenants before they move into the property, the landlord might subsequently identify or suspect that illegal migrants are living there. This could arise for a number of reasons, including:

- Upon re-checking a tenant who originally had limited leave to remain (see paragraph xx), the tenant might not be able to provide satisfactory evidence that his leave to remain has been extended;
- The landlord might become aware that the evidence he had originally inspected in good faith was fraudulent. For example, it might subsequently come to his attention that the tenant is not the person he had claimed to be;
- It might come to the landlord's attention that the people who are actually living in the property are not the tenants whom he had originally checked (because of the tenants sub-letting or taking in a lodger) and he might have reason to suspect that they are illegal migrants.

79. In the first case (where the tenant's leave to remain has expired), the landlord would have a 'statutory excuse' from liability provided he promptly reported the continued occupation by the migrant to the Home Office. Failure to do so would mean that the landlord would not have a statutory excuse if the migrant came to the Home Office's attention and was found to be still living at the property. The landlord would not be under a legal duty to terminate the rental arrangement or to evict the occupant (although that is a course of action he might consider).

80. In the second case above, the landlord would have a statutory excuse provided he had done what was required of him at the time of renting out the accommodation (and had made any subsequent checks that were required). In the third case above, the landlord would not be responsible for occupation by the tenant's, sub-tenants or lodgers, provided he had not agreed to accept responsibility for them. In both these situations, while there is no obligation to make report to the Home Office, it would still be advisable for the landlord to report his concerns to the Home Office so as to minimise the chances of any subsequent misunderstanding of his own role in the illegal migrant's occupation of the property. For example, to avoid any accusation that he had knowingly accepted false documentation or conspired in other sham arrangements so that illegal migrants could live there.

## 5. Determining liability and calculating the penalty level

81. If you are found to have authorised occupation of property by an illegal migrant, the onus is on you to show that you have demonstrated that you have established a statutory excuse against a penalty. If you cannot, then you may be liable for a civil penalty. We will then look at certain factors to decide on the level of the penalty that would be appropriate. We will use the framework below to assist us in our consideration. We have a **Consideration Table**, which sets out the 3 stages of our consideration process and the factors taken into account at each stage.

**Table1: Consideration Table**

<b>Stage 1: Determining liability</b>		
<b>Liability</b>		
<b>1/ Are you a landlord or agent</b>	1/ Do the facts show that you are providing accommodation for rent to illegal migrant adults.	<b>No to (1) : Issue a No Action Notice</b>
<b>2/Did you report the tenant to the Home Office?</b>	2/ Do you have a record of the reference number provided or copy of the reference as made? If not, did you tell the Home Office, we can check for you.	
<b>3. Did a previous landlord provide accommodation that you now control as the landlord? Did they fail to conduct a check or was the tenant in occupation before xx 2014?</b>	3/ Do you have evidence to show this?	
<b>4. Do you have effective document checking practices in place and generally comply with the prescribed requirements for landlords?</b>	4/ Do your records and copies of documents evidence your compliance?	
		<b>Yes to 1-4: Proceed to Stage 2</b>
<b>Stage 2: Determining the breach level</b>		
<b>Breach factor:</b>	Have you (landlord or agent)	<b>Yes: Proceed to Stage</b>

	received any Civil Penalty or No Action Notice within the past 3 years?	<b>3</b> using the <b>Level 2 Civil penalty Calculator</b>
		<b>No:</b> Proceed to <b>Stage 3</b> using the <b>Level 1 Civil penalty Calculator</b>

82. The **Civil Penalty Calculator**, below, sets out the sliding scale of maximum and minimum penalty levels, and their financial values **per illegal migrant tenant**. This calculator is used at **stage 3** of our consideration process, and is provided for guidance purposes. The penalty level can be increased or reduced based on different criteria. The actual penalty level and financial value will be determined on a case-by-case basis.

**Table 2: Civil Penalty Calculator**

	<b>Category A (first breach)</b>	<b>Category B (second breach or multiple illegal immigrants in tenancy)</b>
<b>Tier 1 (Lodgers in a private household)</b>	£80	£500
<b>Tier 2 (Tenants in rented accommodation)</b>	£1,000	£3,000

### Do you have a statutory excuse?

83. During **stage 1** of our consideration process we will determine if you have a statutory excuse against liability for a civil penalty. A statutory excuse is established

by correctly carrying out checks on acceptable documents **before** the tenancy commences, or by having reported a sitting migrant occupant where a further check has not proved possible or led to concerns as to their immigration status. We have a **3 Step Process** which sets out the steps you must follow to correctly carry out document checks and establish a statutory excuse.

**Table 3: 3 Step Process**

1. Obtain	2. Check	3. Copy
<p>You must obtain original acceptable documents for each of the people for whom you have a responsibility to check.</p>	<p>You must check the validity to satisfy yourself that they are genuine, that the person presenting them is the rightful holder.</p>	<p>You must take a dated copy of the documents in a format which cannot later be altered and retain them securely.</p>
<p><b>How:</b> You must ask for and be given <b>original</b> documents from the lists shown.</p>	<p><b>How:</b> You must check:</p> <ol style="list-style-type: none"> <li>1) photographs and dates of birth are consistent across documents and with the person's appearance;</li> <li>2) expiry dates for leave have not passed;</li> <li>3) the documents appear genuine, have not been tampered with and belong to the holder;</li> <li>4) The reasons for any different names across documents.</li> </ol>	<p><b>How:</b> You must copy:</p> <ol style="list-style-type: none"> <li>1) For <b>passports and travel documents:</b>, any page with nationality, date of birth, signature, leave expiry date, biometric details and photograph, and any page with a UK Government endorsement.</li> <li>2) For <b>all other documents:</b> the document in full, including both sides of a Biometric Residence Permit.</li> </ol>

84. You already have a duty to protect occupants' personal information under the Data Protection Act 1998. Any copies of documents containing personal information belonging to the occupants must be kept only for as long as is necessary to comply with the scheme and should then be destroyed in a secure manner. For the purposes of this scheme, you are required to keep documents for 1 year after the occupant leaves the property.<sup>9</sup>

85. Where a person has an ongoing right to live in the UK, and presents acceptable documents showing this from **List A**, then you will establish a **continuous statutory excuse** for the duration of that person's occupation.

86. Where a person has a limited right to live in the UK,, whether for a time limited period or based on a contingent right, and presents acceptable documents showing this from List B, (and where appropriate, List C),, then you will establish a **limited statutory excuse**. To establish an excuse beyond this period you must carry out a repeat check on acceptable documents at the prescribed point in time.

## Have you received civil penalty or warning notices before?

87. During **stage 2** of our consideration process we will look at whether you have received any civil penalty or warning notices in the past three years. We will do this to determine the level of your breach. Where you have received notices within three years of this current instance, then they will be taken into account and a higher level of penalty will apply.

88. Where we find that you **have not** received notices within this time period then we will use **Category A** of our **Civil Penalty Calculator** to determine the financial value of your civil penalty in this instance.

89. Where we find that you **have** received notices within this time period then we will use **Category B** of our **Civil Penalty Calculator** to determine the financial value of your civil penalty in this instance.

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<sup>9</sup> Landlords may wish to consider retaining documents for a longer period where there is a legitimate need. The general limitation period for civil claims is 6 years.

## 6. Special provisions & exclusions

### Exclusions for certain types of property

90. Some types of property and residential tenancy agreements are excluded under the provisions. In particular:

- a) Social housing rented to tenants nominated by local authorities or to households provided accommodation under the homelessness legislation;
- b) Privately rented accommodation secured by a local housing authority using the private rented sector offer powers in homelessness legislation;
- c) Halls of residence provided by universities and other full-time educational establishments where a majority of rooms are nominated for students by universities or educational establishments; and
- d) Accommodation provided by employers for their employees - whether self-contained accommodation (such as a caretaker in an apartment block might live in) or in the employer's own home (e.g. for a domestic servant).
- e) Leases of 21 years or more and leases granted on a shared ownership basis;
- f) Properties let for solely commercial use (shops, offices, etc.);
- g) Hostels and refuges providing crisis accommodation to homeless and other vulnerable people;
- h) Hospital accommodation of patients, hospices, care homes, etc;
- i) Leases granted for a term of 7 years or more, where there is no option to break the lease;
- j) Tenants who hold certain types of contract that grant automatic renewal. These include statutory rights of succession to a tenancy under rules relating to protected tenancies (Rent Act 1977), agricultural tenancies, life tenancies and grace and favour tenancies.<sup>10</sup>

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<sup>10</sup> Under consideration. These will be circumstances prescribed in secondary legislation as circumstances where no residential tenancy agreement is entered into.

## Students and providers of student accommodation

91. Accommodation provided by Universities and other Higher Education institutions is exempt under these provisions. Where the landlord is an educational establishment which offers accommodation to a student, they will already be under an obligation to confirm the student's eligibility to undertake the course and should not also need to confirm their immigration status specifically for the purpose of this scheme. The exemption will apply to a Hall of Residence which is either owned or managed by a Higher Education institution or one which is purpose built, privately managed student accommodation which has the majority of its residents nominated by one or more Higher Education institutions.

92. Residential tenancy agreements granted to students by other private landlords and accommodation providers are not exempt and will be subject to the same requirements as for all other tenants.

93. It is recognised that overseas students often seek to secure rented accommodation prior to arrival in the UK. For the purposes of this scheme landlords may, for students who are applying for or who have been issued with a student visa, agree a tenancy licence or contract prior to the student's arrival in the UK. Such an agreement is however conditional on the student producing evidence to the landlord that they have a valid student visa prior to taking up residence in the property.<sup>11</sup>

## Position of holiday accommodation

94. We use the term 'holiday accommodation' to refer to properties usually let for short periods to tenants who also maintain a main or only residence elsewhere. This could be in a hotel, guesthouse, caravan, a cottage or holiday apartment.

95. A landlord operating holiday accommodation will need to consider the basis on which a person takes up occupation in order to decide whether it would be advisable to comply with the documentary checking requirements. The restriction on letting only applies to residential tenancy agreements, which allow someone to take up occupation as their only or main residence.

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<sup>11</sup> Under consideration. Provision to be made under secondary legislation.

96. If it is clear that the accommodation is for holiday let purposes only, e.g. the booking is for a defined period of time of no more than you may conclude that the person is not occupying as their only or main residence, and that there is no need to ask for proof of the occupant's immigration status.

97. If the booking is open ended, or the initial booking was time limited but has subsequently been extended on one or more occasions such that the occupant appears to be using the premises as their only or main residence, then it would be advisable to undertake documentary checks regarding the individual's immigration status. As a guide, we would consider that if a person is in occupation for a period of 3 months or longer, they are likely to be occupying the premises as their only or main residence. If the checks demonstrate that the individual does not have the right to be in the UK, a further grant of a residential tenancy agreement would be in breach of the statutory restriction.

## Position of Crown Estate

98. The provisions bind the Crown, and it is anticipated that Crown landlords, such as the Crown Estates, the Duchy of Lancaster and Duchy of Cornwall will undertake the prescribed checks. However, where the Crown is the responsible landlord, no civil penalty may be served upon them for failure to comply with the restriction. If a tenant of the Crown sub-lets premises and in doing so breaches the restriction on allowing occupation by an illegal migrant, then they will be liable for a civil penalty under the scheme.

## Property managed by religious institutions

99. There is no specific exemption for religious institutions under the regulations. Those living within property owned or managed by religious institutions and religious charities are subject to these provisions. The provisions will not however apply to those who either do not pay rent or are not living within the accommodation as their main or only home. The restriction will therefore not usually apply, for instance, to those who are receiving temporary housing and charitable assistance or to those who live in rent-free accommodation provided in connection with a religious order.

## Position of tied accommodation

100. We use the term “tied accommodation” to refer to arrangements where the offer of accommodation is made as a result of a relationship of employment or training provision between the landlord and the occupant. An employer who offers a job which has tied service accommodation is required to confirm the applicant’s eligibility to work only under the separate regulations prohibiting the employment of illegal migrant workers, they do not also need to confirm their immigration status for the purpose of the landlord scheme. However, adult dependants of tenants in tied accommodation must be checked in accordance with the provisions where their permission to live in the property is not associated with employment or study.