

Chapter 26: Right to rent and landlords

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26.1 Introduction

This chapter sets out the immigration enforcement policy and process for the enforcement of the Immigration Act 2014 restrictions on illegal migrants renting private accommodation and the civil penalty imposed on landlords who breach these restrictions. The civil penalty scheme for landlords effectively mirrors the established penalty process for illegal working.

The Immigration Act 2014 provisions are being rolled-out incrementally. From 1 December 2014, Phase One will apply only to those landlords with accommodation in local authorities: Birmingham, Walsall, Sandwell, Dudley and Wolverhampton. Landlords in these areas will need to carry out right to rent checks on prospective tenants in order to establish a statutory excuse against a penalty. This will apply to tenants moving in (or tenancy agreements agreed) from 1 December, Phase One is not retrospective and will not apply to existing tenants in place before 1 December.

26.2 Relevant legislation and guidance

[Immigration Act 2014 sections 20-37](#)

[Code of practice](#) regarding the civil penalty scheme for landlords and their agents:

Refer to the following chapters of the 'Enforcement instructions and guidance' (EIG), for relevant guidance:

- Chapter 16: Powers of an immigration officer
- Chapter 24: Fingerprinting: taking fingerprints. Powers
- Chapter 31: Enforcement visits
- Chapter 34: Warrants
- Chapter 36: Power to search arrested persons
- Chapter 41: Searching premises
- Chapter 43: Personal safety in enforcement work
- Chapter 61: Arrest teams – operational procedures (where relevant).

26.3 Landlords and their agents: Who is responsible?

Landlords are those who let accommodation for use by one or more adults as their only or main home (as listed at [26.4 Right to rent: Who does the scheme apply to?](#)). This may not necessarily be the property owner.

They can transfer liability to their agents. An agent will be liable where they are acting in the course of a business and they have agreed with the landlord to act on their behalf in respect of the documentary checks and record keeping of tenants. When serving a referral notice (RN) or no action notice (NAN-E) under the landlords scheme you must ensure that you serve the notice on the appropriate responsible landlord or agent. For planned visits, operational support teams or intel teams will ensure the appropriate checks have been made. For any unplanned visits or when the identity of the landlord is not clear, the notice must be addressed to 'the Landlord' and left at the property. Tenants who sub-let accommodation are responsible for ensuring that those they are sub-letting have the correct immigration status, unless otherwise agreed in writing that the responsibility remains with the main landlord.

Further details can be found in the published [Codes of Practice](#).

26.4 Right to rent: Who does the scheme apply to?

The scheme applies to landlords of private accommodation and their agents. However, it should be noted that a tenant in social housing who sub-lets their premises becomes a landlord for the purposes of the scheme and may not rent to a person who is disqualified.

A landlord or their agent must not authorise an adult to occupy premises under a residential tenancy agreement if the adult is disqualified as a result of their immigration status.

The landlords' scheme disqualifies adults, (those 18 years or older), from renting premises as their only or main home where:

- They have no leave to enter or remain in the UK
- They have not otherwise been granted a right to rent.

Except in certain cases where exemptions apply, (see below) a "Residential tenancy agreement" exists where:

- The tenant has been granted a right to occupy the premises for residential use in exchange for rent. The amount of rent paid does not affect liability.
- The tenant is occupying the premises as their only or main residence, whether or not it is also being used for other purposes.

The following groups have an unlimited right to rent:

- minors, that is those under the age of 18 years at the time of tenancy,
- British, European Economic Area (EEA) and Swiss nationals, and
- foreign nationals with indefinite leave to remain or right of abode.

The following groups have a 'time-limited right to rent' which means that the landlord is required to conduct a follow-up check to establish that the tenant has a continuing right to rent in order to preserve their statutory excuse against a penalty::

- foreign nationals with valid limited leave to enter or remain, and
- those third country nationals entitled to enter or remain as a result of an enforceable right under European Union (EU) law or any provision made under section 2(2) European Communities Act 1972, such as EU family members.

Exemptions: 'Permission to rent'. Certain individuals may be exempt from the requirement, these include:

- families with children who are complying with Home Office restrictions (eg reporting) or are within the Family Returns Process

- those on bail, and
- certain people in the voluntary departures process.

These individuals may already be identified and noted on CID as holding a 'permission to rent'.

Those in:

- accommodation involving local authorities
- social housing
- hostels and refuges
- care homes
- hospitals and hospices, or
- student halls of residence

are exempt from the provisions. Further details can be found at [right to rent immigration checks: landlords' code of practice](#)

The effective date of a tenancy is the date the tenant is granted possession of the accommodation.

26.5 Checks: Pre- and post-visit

Cases will be referred through the routine tasking and coordination group (TCG) process. For cases referred from Intel, they will have established:

- the address of the property
- the named landlord or agent, and
- (where disclosed) the identity and immigration status of tenants.

Routine pre-visit checks must be undertaken, including detailed identity and background checks on named landlords and tenants. These checks should include whether the intended subject or any other persons linked to the address would fall for permission to rent and the outcome of checks should be noted on CID.

The landlord civil penalty scheme must be integrated into your routine checks, pre and post visit. For example, if during an illegal working operation illegal migrants disclose a separate residential address, make checks under the landlords scheme on that address.

The purpose of the check is to identify the landlord of an address where renting to persons with no right to rent is suspected or detected, so that a civil penalty can be served on and collected from that landlord.

Checks must be made before an operation on any known residential address, and during or after an operation where a previously unknown residential address is disclosed.

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If the name and address of the landlord is not available from these systems, make a check on the property address in the [Land Registry database](#) to identify the property owner. There is a charge of £3 for this check.

For addresses where multiple incidences of renting to person(s) with no right to rent are found or suspected, or the address is of interest to other agencies or has already been the subject of a civil penalty notice, make checks against local authority records using local partnership arrangements to ensure maximum confidence in the identity of the landlord.

Check the following sources to obtain additional information as needed, at the discretion of operational support:

- voters
- council tax lists (via Intel)
- business rates records (via Intel)
- schools
- patient data
- GP surgeries
- social services
- ONF.

When all other sources have failed to provide a name and address then consideration can be given to an Experian check. Note that this should normally only be done if other checks have failed as there is a charge for this (currently £12).

26.6 Visits

Existing guidance on conducting visits to private property apply to those visits tasked as part of the landlords civil penalty scheme. Personal notebooks (PNBs), premises search books (PSB) and witness statements must be completed to evidentiary standards. See relevant guidance above at [26.2 Relevant legislation and guidance](#).

You have no powers to require occupiers to provide landlord information. Nor are you able to search persons/premises for evidence of landlord/tenancy details. You can interview occupiers and request such information, but cannot require that it be produced.

Should someone be encountered that would qualify for permission to rent, but it appears that the landlord has not conducted the appropriate checks, no action should be taken with respect of these specific individuals and CID should be noted to state they qualify for permission to rent.

Unlike illegal working operations, the landlord generally is less likely to be present at the property than employers. In the event that the landlord is not present and cannot be contacted, you must leave the original paperwork at the address and arrange for a copy of the paperwork to be served on the landlord at their registered address by post.

26.7 Liability for a civil penalty: Landlords obligations

Landlords (or their agents) can avoid liability for a civil penalty by evidencing that they have:

- a. established how many adults will be living at the property as their only/main home, and
- b. undertaken simple documentary checks to verify the immigration status of those seeking to rent their property or verified status with the Landlord's Checking Service.

When illegal migrants are identified in a rental property, in order to assess if a landlord has taken adequate measures to potentially establish a statutory excuse, consider whether they have:

a. Established how many adults will be living at the property as their only/main home: landlords should keep written records of the enquiries made of tenants as to the number of adults occupying the rental property. Consider the credibility of these against other factors such as the size and nature of the rental property. To establish if this is a tenant's only or main home, evidence could include any of the following:

- the tenant occupies the accommodation more than any other property in the UK
- the tenant uses the accommodation as the primary correspondence address (such as bank statements or other accounts) and/or other official purposes
- there is evidence of regular domestic usage (such as clothing, personal belongings or laundry), or
- proximity of work address or schools (where relevant).

b. Undertaken simple documentary checks to verify the immigration status of those seeking to rent their property or verified status with the Landlord's Checking Service: landlords (or their agents) should keep records of the checks they have made and copy the documents provided to evidence immigration status. Landlords are required to make reasonable checks to ensure the document matches the person presenting it and that it is a genuine document. The list of acceptable documents can be found at [Right to rent immigration checks: landlords' code of practice](#). In limited circumstances, landlords may also check right to rent with the Home Office Landlord's Checking Service. Landlords should retain a copy of the check and result. Landlords can also establish a statutory excuse by making a report to the Home Office about an illegal migrant in their property – they should retain evidence of this, eg. webpage printout.

In doing so, the landlord may be able to establish a 'statutory excuse' against liability for a civil penalty.

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You must issue a:

- **No action notice (NAN-E)** where you are satisfied that in the present circumstances the landlord, in relation to a specific individual, has complied with the requirements of the Immigration Act 2014 and Statutory Code sufficient to establish a statutory excuse against a civil penalty. It is the responsibility of the officer in charge (OIC) to make the decision on whether the evidence is sufficient to issue a NAN-E. The OIC must refer to the duty chief immigration officer (CIO) for the operation for authority to issue the NAN-E. Should someone be encountered that would qualify for permission to rent, but it appears the landlord has not conducted the appropriate checks their details should be included on the NAN-E. On service, you must explain that the landlord has a continuing obligation to comply with the legislation. The OIC must note in their PNB the evidence and the decision, alongside confirmation of the notice issued. Following this, within 48 hours of issue of the NAN-E, a copy should be sent to the team's Assistant Director for quality assurance – this is for **assurance purposes only** and sits outside the penalty decision making process.
- **Referral notice (RN)** where you are satisfied that the landlord has not taken sufficient steps to comply with the legislation regarding an illegal migrant with no right to rent and has therefore not established a statutory excuse. You must explain this notice setting out that the evidence is such that the landlord may be liable for a civil penalty, the details of where the case will be sent for consideration and next steps in the process. You must also advise the landlord that if a decision is made to issue a civil penalty, they will have the opportunity to raise an objection. The civil penalty notice issued by the civil penalty compliance team (CPCT) will give details of how to do this.

A referral notice must be issued for each property, and include the details of each illegal adult migrant with no right to rent occupying the rental property in breach of s22 of the Immigration Act 2014.

Any individual qualifying for permission to rent does not get included on either notice.

The maximum penalty per illegal migrant tenant will not exceed £3,000. The penalty level will be assessed by CPCT on the basis of a number of factors, including:

- the landlord relationship (for example a smaller level of penalty is likely for a private householder/lodger arrangement versus a commercial landlord), and
- previous history of compliance/breaches under this scheme.

Copies of the RN or NAN-E should be retained.

26.8 Process for recording and referring landlords civil penalty cases

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26.9 Other sources

[Guidance for Landlords and agents](#): Prevention of illegal migrants securing private rented accommodation

Right to rent decision [logic aid](#)

Annex A: Statutory checklist

Step 1: Establish that an illegal migrant/person with no right to occupy the property has been occupying the property as their main home .

Step 2: Ask for evidence of a statutory excuse

If they are present at the property, you must ask the landlord or the appropriate agent if they can provide evidence of a statutory excuse for the identified illegal occupier. If evidence is presented during the operation proceed to Step 3. If evidence is not presented, proceed directly to Step 4.

Step 3: Determine if the statutory excuse criteria is met

For each illegal occupier you must determine if all of the applicable criteria below have been met for an excuse to be established. If all the criteria have been met for all occupiers, proceed to Step 4 Outcome 1. If not, proceed to Step 4 Outcome 2 or 3, as appropriate.

For every occupier, the landlord/agent in order to establish a statutory excuse, should show you:

- A clear copy of the document(s) checked in an unalterable format.
- That the document(s) shown in the copy falls within either List A or List B (see overleaf).
- That the correct parts of the document have been copied. For passports, the personal details pages establishing identity, date of birth, photograph, signature nationality, document issue date, document expiry date, information indicating entitlement to enter or remain and undertake work, and leave expiry date. All other documents must be in full.
- It is not reasonably apparent that the illegal occupier who presented the document was an imposter.
- It is not reasonably apparent that the document(s) presented was false.
- A record of the date when the check was made (this can be on the copy, or in a separate format).
- (For students only): a letter or email from a higher educational institution nominating the student, which includes the name of the student and details of their course dates.
- Copies of supporting evidence for the reasons for any different names across documents (e.g. marriage certificate, divorce decree, deed poll). And
- Verbal or documentary evidence that the landlord had reasonable grounds to believe that the property wouldn't be used as the occupier's only or main home. This may include a statement or other documentary evidence provided by the tenant of their only or main home and the reasons for their view that the property is not the only or main home.

Step 4: Issue the appropriate notice(s)

Outcome 1: Only issue a No Action Notice (NAN-E) listing the details of all the identified illegal occupiers, as the statutory excuse criteria have been met for all of them.

Outcome 2: Only issue a Referral Notice (RN) listing the details of all the identified illegal occupiers, as the statutory excuse criteria have not been met for any of them.

Outcome 3: Issue both notices:

- a NAN-E listing the details of the applicable identified illegal occupiers where the statutory excuse criteria have been met, and
- a RN listing the details of the applicable identified illegal workers where the statutory excuse criteria have not been met.

Acceptable documents can be found at [right to rent immigration checks: landlords' code of practice](#)

Annex B: Aide Memoire for interviewing/evidence

Initially, you should ask for a copy of the tenancy agreement

Identifying the landlord/tenant and evidence of 'main home'

You must seek information/evidence covering the following:

- Confirmation of identity for all present.
- Who owns the property.
- Who is the landlord of the property.
- Where does the landlord live.
- What is the landlord's phone number.
- When was the last time the landlord was seen.
- How is rent paid.
- Does someone collect the money (rent)/who collects/how often.
- Is a receipt given for the rent.
- Are (utility) bills included in the rent.
- Do you work/where/address given to employer as contact details .
- What post do you have delivered .
- Do you have a mobile phone/where is it registered/where are the bills sent.
- Are you registered with a GP (obtain GP address details)/what address was given to the GP.

Establishing the start of the tenancy

You can ask for evidence, such as bills, a tenancy agreement, contracts, receipts, bank statements, but you have no power to search for or seize such evidence .

You must photograph and/or record full details in your PNB and include in your witness statement.

You must seek information/evidence covering the following:

- What date did you agree to live here with the owner/landlord?
- How did you make contact with the landlord?
- Where was the property advertised?
- Were you in the UK when you initially agreed a start date/was there a follow up meeting?
- What ID documents did the landlord ask for?
- What did you show them/were they just photocopies?

- Where are those documents now?
- Did the landlord take copies?

Establishing the contract for the tenancy

You must seek information/evidence covering the following:

- Did you sign a lease?
- Where do you sign it? Was it an estate agent or direct with landlord?
- How long is it for?
- Did anyone else sign with you?
- How many other people live here?
- Did you know anyone else who lives here before you moved in?
- Where do you sleep?
- Where are your belongings?
- Do you have a key for any room including front door?
- Have you allowed anyone to stay here, with or without your landlord knowing?
- Do they help you with the rent? How much? How long have they been staying?
- Where do they sleep/their belongings/ do they have keys?

Power of Entry: The OIC must ensure that you have the appropriate power of entry and warrant for the visit. Informed consent has been fully explained and documented.

Interpreters: Do not use other occupiers or colleagues who are not Home Office qualified to interpret. Interpreters must be either Home Office qualified or the official Home Office telephone interpreter.

Revision History

| Date change published: | Officer / Unit: | Details of changes: | Authorised by: | Version number: |
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| November 2014 | Enforcement Policy, IBPD | New chapter implementation s20-37 IA2014 provisions | K Armstrong, SCS IBPD; A Perfect, SCS Central Ops | V1 |
| 28 November 2014 | Enforcement Operational Policy | Minor changes at request of Landlords Implementation Programme | | V1.1 |