



Home Office

**Enforcement Instructions and Guidance**

## **Chapter 26**

# **Right to rent scheme: landlords**

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# 1. About this guidance

This guidance tells you about the right to rent scheme and the process for the enforcement of the scheme and the imposition of civil penalties on those who breach its restrictions.

## Contacts

If you have any questions about the guidance and your line manager or senior caseworker cannot help you or you think that the guidance has factual errors then email Removals, Enforcement and Detention guidance team.

If you notice any formatting errors in this guidance (broken links, spelling mistakes and so on) or have any comments about the layout or navigability of the guidance then you can email the team shown above.

## Clearance

Below is information on when this version of the guidance was cleared:

- version **2.0**
- published for Home Office staff on **1 February 2016**

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### Official – sensitive: start of section

The information in this page has been removed as it is restricted for internal Home Office use only

### Official – sensitive: end of section

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- approved on **29 January 2016**

## Changes from last version of this guidance

This guidance has been amended to reflect the roll-out of the right to rent scheme across England on 1 February 2016, and the new Code of Practice which comes into effect on that date.

### Related content

[Contents](#)

**Related external links**

Further details about the right to rent scheme can be found in the published [Codes of Practice](#).

## 2. Right to rent scheme: background

### Landlords' right to rent scheme: purpose

The [Immigration Act 2014](#) introduced the power to impose a civil penalty on private rental sector landlords, homeowners or lettings agents who rent property to a person with no right to rent in the UK, known as the 'right to rent scheme'. The purpose of the rules is to deny those in the UK illegally access to the rental sector, and to address persistent rental of property to illegal migrants by rogue landlords.

The scheme requires that anyone, including landlords, their agents and homeowners offering rental accommodation in the private rented sector, should carry out document checks on new adult occupiers before renting to them. This is to check they have the right to rent. The full Code of Practice setting out the requirements under the scheme and a list of acceptable documents can be found at [right to rent immigration checks: landlords' code of practice](#).

The term 'landlord' is used in this Guidance to refer to anyone who has taken on responsibility for renting out property, whether directly, or as an agent working on behalf of a landlord, or as a homeowner renting to a lodger in their home, or as a tenant who is sub-letting.

The scheme first came into effect on 1<sup>st</sup> December 2014 for properties in the five West Midlands administrative areas of Birmingham, Dudley, Sandwell, Walsall and Wolverhampton, and rolled out across the rest of England on 1<sup>st</sup> February 2016. Right to rent checks in relation to tenancies entered into in the West Midlands before 1<sup>st</sup> February 2016 were made under a different [Code of Practice](#) with a slightly different list of acceptable documents. The scheme has now been rolled out nationwide.

See also: [Assessing right to rent during visits](#)

Further details about the right to rent scheme can be found in the published [Codes of Practice](#).

### What is right to rent?

Anyone who is lawfully in the UK has the right to rent property. Those who are here illegally do not have the right to rent, unless under certain narrow circumstances they qualify for '[permission to rent](#)'.

The right to rent scheme requires someone renting out property in an area where the scheme is in operation to carry out simple document checks before the start of a tenancy to ensure that the person they are renting to has the right to rent. If the

person does not have the right to rent, they should not rent to them. If they do not carry out these checks, and are found to have rented to someone who does not have the right to rent, they could be liable for a civil penalty.

The measures are not retrospective and do not apply to tenancies which began before the scheme came into effect in the relevant area. Landlords are not obliged to carry out checks on existing tenants.

## Right to rent checks

### Landlord responsibilities

Landlords, their agents and homeowners should carry out right to rent checks before a tenancy starts. They should:

- establish which adults will occupy the property as their only or main home
- obtain and check original evidence of right to rent for those occupiers, in their presence
- make copies of the evidence, keep a record of the date and keep the copies safely
- carry out any further checks required at the correct time, and make any necessary reports to the Home Office

If they carry out checks and make a report as required, they will have a statutory excuse against a civil penalty.

### The Landlords Checking Service

In most cases, landlords will be able to carry out right to rent checks without contacting the Home Office.

However, if an occupier claims to have an application or appeal outstanding with the Home Office, or if the Home Office has their documentation, a landlord can request a right to rent check from the UKVI Landlords Checking Service. The service will provide a yes/no answer within two working days.

A 'yes' response from the Checking Service means the landlord can rent to the individual, and provides them with a statutory excuse against a civil penalty for 12 months, after which time they should carry out a further check.

A 'no' response means the landlord should not rent to the individual.

See also: further information on the [code of practice](#) that landlords must follow.

## 3. To whom does the right to rent scheme apply?

### Right to rent: responsibility for carrying out checks

Landlords who let private rental accommodation in return for payment for use by one or more adult occupiers as their only or main home are responsible for carrying out right to rent checks, unless they pass responsibility to an agent in writing. The person responsible for carrying out checks may not necessarily be the property owner.

If an agent establishes that a person does not have the right to rent and reports the matter to the landlord prior to a tenancy being granted, the landlord will become the person liable to a penalty if a residential tenancy agreement which authorises occupation by a person who does not have a right to rent is granted. In these instances an agent may wish to keep written records and copies of their actions.

Homeowners who rent out part of their own property to one or more adult lodgers as their only or main home in return for payment are also responsible for carrying out these checks.

### Tenants that sub-let property

Tenants who sub-let property, with or without the written permission of their landlord, are responsible for carrying out checks on sub-tenants and are liable for a civil penalty if a breach of the scheme is identified.

### Those with an unlimited right to rent

The following groups have an 'unlimited right to rent':

- people who have the right of abode in the UK, or who have been granted indefinite leave to remain or have no time limit on their stay in the UK
- minors, that is those under the age of 18 years at the start of the tenancy
- British, European Economic Area (EEA) and Swiss nationals
- third country national family members in line with their EEA or Swiss family member

This means that a landlord should carry out right to rent checks at the start of a tenancy, and retain evidence that they have done so for at least one year after the tenant has left. They do not need to conduct any further checks.

### Those with a time-limited right to rent

The following groups have a 'time-limited right to rent':

- foreign nationals with valid limited leave to enter or remain for a time-limited period
- third country national family members in line with their EEA or Swiss family member
- 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

This means that a landlord should carry out right to rent checks at the start of a tenancy, and retain evidence that they have done so. The landlord should then also carry out a further check to establish that they have a continuing right to rent. They should do this before the expiry of their statutory excuse – which means just before whichever is the longer of either the occupier’s leave, or 12 months after the initial check – or as soon as reasonably practicable afterwards. So, for example, a person with six months’ leave at the time of the initial check will need to be rechecked after twelve months. A person with three years’ leave will need to be checked just before the end of their leave. Where a further check has been made after the expiry of the statutory excuse, and the landlord is claiming to have done so, they should be able to provide evidence that the circumstances which prevented them making the check and notifying the Home Office earlier were exceptional, such as serious illness or a family bereavement.

If an existing occupier fails to provide evidence that they have a continuing right to rent at the time of a further check, the landlord or agent should then make a report of this fact to the Home Office as soon as reasonably practicable after discovering that the occupier no longer has the right to rent and before their statutory excuse expires. The landlord or agent must retain evidence that they have done so in order to preserve their statutory excuse against a civil penalty. Agents working on behalf of landlords should also notify the landlord as soon as reasonably practicable and before the statutory excuse expires.

The landlord or agent must retain evidence that they have done so in order to preserve their statutory excuse against a civil penalty. Landlords are not obliged to report illegal migrants to the Home Office other than in these circumstances following a further check in order to avoid a civil penalty; however, we would encourage any allegations to be made to [Report Immigration Crime](#).

### **Those with ‘permission to rent’**

In most cases, someone who does not have leave to enter or remain in the UK will not have the right to rent.

However, in certain circumstances the Home Office may grant ‘permission to rent’ to someone who otherwise would be disqualified from renting property. This can include:

- families with minor children who are within the Family Returns Process
- potential or accepted victims of trafficking or slavery who are noted on CID as having their reasonable grounds accepted for consideration or are within 2 weeks of a conclusive grounds decision
- those with an outstanding out of time initial asylum claim or appeal (those with an in-time application or appeal will have an automatic right to rent)
- those on bail (either criminal or immigration bail)
- those in the voluntary departures process (including AVR) who have had an Associated Case added to CID to confirm they qualify for Permission to Rent

These individuals may already be identified and noted on CID as holding '[permission to rent](#)', but this will not always be the case.

Landlords will not be liable for a civil penalty for renting property to someone who qualifies for 'permission to rent', whether or not this status has already been noted on CID.

## Tenancy arrangements covered by the scheme

A landlord or their agent must not authorise an adult to occupy premises under a residential tenancy agreement if the adult does not have the right to rent.

A residential tenancy agreement exists for the purposes of the scheme where:

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

The effective date of a tenancy is the date the tenant is granted possession of the accommodation. There is no requirement for a written tenancy agreement to be in place for an arrangement to fall under the scheme.

## Exemptions to the right to rent scheme

Children under 18 years of age are exempt from the right to rent scheme, although a landlord should satisfy themselves that the person is a minor.

Certain types of accommodation are also exempt, as follows:

- accommodation provided by local authorities under a statutory duty to prevent homelessness:
  - landlords should ask for written confirmation from the local authority that the authority is acting in response to a statutory duty and keep this on file
- hostels and refuges
- care homes

- holiday accommodation
- hospitals and hospices
- tied accommodation (ie, accommodation provided by an employer to an employee)
- long leases granting occupation for 7 years or more
- student halls of residence, or accommodation provided to students where the student has been nominated for accommodation by an educational institution

## 4. Assessing right to rent during visits

This section tells operational enforcement officers about the powers to search for evidence or require landlords to provide evidence under the right to rent scheme.

You should refer to the Aide Memoire for fuller instructions on how to establish whether the scheme applies, establish the responsible person, and gather evidence of liability.

### Powers to search for evidence of a breach

Existing guidance on conducting visits to private property applies to those visits where action under the right to rent scheme takes place. Personal notebooks (PNBs) and witness statements must be completed to evidentiary standards.

You have no powers to require occupiers to provide information about who their landlord is or to whom they pay rent. Nor are you able to search persons/premises for evidence of landlord/tenancy details. You can interview occupiers on a voluntary basis and request such information, but cannot require that it be produced.

Fully informed and documented consent should be used for photographing any evidence found during a legal search.

### What to do when illegal migrants are encountered in a rental property

When illegal migrants are identified in a rental property, you should consider whether a landlord, agent or homeowner is liable for a civil penalty.

You should first establish that the tenancy began on or after the date on which the scheme came into force in the relevant area, that the accommodation is not [exempt](#) from the scheme that the occupier is over 18 and that they do not qualify for [permission to rent](#). Some of these checks may already have been done before the visit.

Usually an occupier would be disqualified from renting due to their immigration status but you need to consider whether any occupiers may benefit from permission to rent.

Those with permission to rent may already have this permission noted on CID. Any case where the individual has already been identified as holding permission to rent will have an associated case on CID named "right to rent checks" and the outcome will be clearly marked as "Yes- permission to rent".

There may however be occasions where individuals would qualify for permission to rent but no case has been raised; this particularly relates to bailees. The fact that an individual is on bail will be clearly identified through individual reporting restrictions.

Should someone be encountered who may qualify for [permission to rent](#), but it appears that the landlord has not conducted the appropriate checks, no civil penalty action should be taken with respect of the specific individual and CID should be noted to state they qualify for permission to rent.

## Establishing responsibility and liability

See also: [Right to rent: evidence checklist](#)

It is likely that on many residential visits the person responsible for carrying out right to rent checks will not be present. In their absence, and if that person has not been identified in advance of the visit, you should try to establish their name and address by asking for sight of any written tenancy agreement, or where this does not exist by asking occupiers for information about who they pay rent to.

If the responsible party has carried out right to rent checks as required by the scheme, they will have a statutory excuse against a civil penalty. The requirements, along with some factors that might help with establishing liability, are as follows:

### **1. Landlords should establish which adults will occupy the property as their only or main home**

Direct questioning should be used to establish if the property is someone'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 for bank statements or other accounts) and/or other official purposes
- there is evidence of regular domestic usage (such as clothing, personal belongings or laundry)
- proximity of work address or schools (where relevant)

### **2. Landlords should obtain and check original evidence of right to rent for all adult occupiers, in their presence**

Landlords should ask reasonable questions to establish who will live at the property, and keep written records of the enquiries made. Consider the credibility of these against other factors such as the size and nature of the rental property.

Landlords must check in the presence of the holder (in person or via live video link) that documents appear genuine, that the person presenting them is the prospective occupier and that they are the rightful holder of the document. .

Landlords must check in the presence of the holder that the documents appear genuine, that the person presenting them is the prospective occupier and that they are the rightful holder of the document. This can be a physical presence in person or

via a live video link, although in either case the landlord must be in possession of the original documents.

There is a list of documents which are acceptable as evidence of right to rent in the [Code of Practice](#) which governs the scheme. Some documents are acceptable on their own, and some in combination.

The original list of acceptable documents was amended slightly when the scheme rolled out across England. Officers should ensure they refer to the list which is relevant for the tenancy under consideration. Both lists are available, and their application clearly marked, at the link above.

**3. Landlords should make copies of the evidence, keeping a record of the date and keep the copies safely**

Landlords should store clear and legible copies in compliance with data protection legislation until not less than one year after the residential tenancy agreement has come to an end. They should keep clear records of the date on which checks are carried out and the copies are made. If the person responsible for carrying out the checks is present during the visit, you should ask to see the copies they made of the documents when they conducted the checks, and a record of the date on which they did so.

**4. Landlords should carry out any further checks required at the correct time, and make any necessary reports to the Home Office**

Further checks may be required during the tenancy if the occupier has a time-limited right to rent. If the person responsible for carrying out the checks is present during the visit, you should ask to see the copies they made of the documents when they conducted the further checks, and a record of the date on which they did so, and check that it was done either before 12 months had passed since the previous check or just before the expiry of the occupier's previous leave (or as soon as reasonably practical afterwards).

**5. Landlords should make a report to the Home Office if an existing occupier cannot satisfy any further right to rent checks**

If the landlord is still renting to an illegal migrant after carrying out further checks at the correct time and discovering they no longer have the right to rent, they should have made a report to the Home Office to inform us of that fact. Making a report in the correct way will generate a unique reference number for the landlord, which can be matched with records held by the Landlords Checking Service to demonstrate a statutory excuse against a civil penalty. If the person responsible for carrying out the checks is present during the visit, you should ask for this reference number and check its validity. This process for making a report is currently only required in the West Midlands and officers should check the validity of reference numbers through the ICE Operational Support Team (in hours) or CCU (out of hours). You should

also establish that the landlord already had a statutory excuse in relation to the initial checks as making the report merely extends an existing statutory excuse.

Use the [statutory excuse checklist](#) to inform your assessment as to whether a statutory excuse (for each adult illegal migrant present) has been established.

## 5. Service of Civil Penalty Notices

This section tells operational enforcement staff about the types of notice that might be served on landlords under the right to rent scheme.

The civil penalty process mirrors to a large extent the established penalty process for illegal working.

### No-Action Notices

You must issue a **No Action Notice (NAN-E)** wherever the scheme applies, and you are satisfied that in the present circumstances the responsible person, in relation to a specific individual, has complied with the requirements of the Immigration Act 2014 and the relevant right to rent Code of Practice sufficient to establish a statutory excuse against a civil penalty.

See also: [What to do when illegal migrants are encountered in a rental property](#)

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.

Anyone who has the right to rent should NOT be named on a NAN-E (for example GBR, EEA nationals, or those with valid leave.) Anyone to whom the scheme does not apply, including children under the age of 18 and occupiers whose tenancies pre-date the effective start date of the scheme, should also not be listed on a NAN-E.

Copies of the NAN-E should be retained.

### Referral Notices

You must issue a **Referral Notice (RN)** where you are satisfied that the responsible person has rented property to someone without the right to rent and has not taken sufficient steps to comply with the requirements of the Immigration Act 2014 and the relevant right to rent [Code of Practice](#) sufficient to establish a statutory excuse against a civil penalty.

If the responsible person is present, you must explain this notice setting out that the evidence is such that they 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 them 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 who meets the qualifying criteria for permission to rent set out at section 3d should not be included on a Referral 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 type of rental arrangement (penalties are smaller for homeowners taking in lodgers than for landlords renting out private accommodation)
- whether the responsible person has previously received a Civil Penalty Notice for illegal renting

Copies of the RN should be retained.

## Service of Notices

When serving a [Referral Notice](#) (RN) or No Action Notice (NAN-E) you must ensure wherever possible that you serve the notice on the appropriate [responsible person](#).

For any unplanned visits, or when the identity of the responsible person is not clear, the notice must be addressed to "TO THE REGISTERED OWNER OF \*\*\*\*\*" and left at the property. Enforcement staff should then seek to establish the responsible person using the [checks](#) previously described after the visit, and reissue a further notice by post in the correct details.

It is possible that an NAN-E and an RN could be served at the same address, if some occupiers have Permission to Rent or if evidence exists to show that checks were carried out on some occupiers but not others.

## 6. Right to rent: post visit – recording of findings

This section tells operational enforcement staff about the information that needs to be recorded following a visit where a notice has been served on a landlord in relation to the right to rent scheme.

### Recording of activity

Following any residential visit and any subsequent service of a Notice, officers should continue with business as usual in terms of updating systems such as CID, NOD, and operational outcome spreadsheets.

Officers must ensure they note on CID and NOD who the landlord or the owner of the property is (these may be different) to assist any future visits to the same address.

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## **Submission of evidence to the Civil Penalty Compliance Team**

Evidence packs should be sent to CPCT electronically within 14 days of the service of the Referral Notice using the CPCT Referrals inbox.

The electronic pack must contain:

- Referral Form
- Power of Entry document
- witness statements and accompanying pocket notebook copies from all **relevant officers** providing evidence of illegal renting
- copy of the Referral Notice (RN) and any Additional Occupiers Supplement (AOS)
- copy of documentary evidence confirming the identity of the liable party

Where these documents and any other supporting documents to be contained within a referral pack are generated and held electronically by the enforcement team, (for example witness statements and the Referral Form), then these can be attached straight to the referral email as Word/pdf documents. There is no need to print these off and scan them. It is only in instances where only a paper copy of a document is held (PNBs for example) that these would need to be scanned in and then attached as pdf scanned documents to the email.

## **Right to rent scheme evidence checklist**

**Step 1: Establish that an illegal migrant/person with no right to rent the property is paying to occupy the property as their only or [main home](#).**

If the landlord is present at the property and he claims that he had reasonable grounds to believe that the property would not be used as the occupier's only or main home, he should provide verbal or documentary evidence to support his claims.

### **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](#), bearing in mind the different document lists for phases 1 and 2 of the scheme
- 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) and that the check was made at the required time
- copies of supporting evidence for the reasons for any different names across documents (such as marriage certificate, divorce decree, deed poll)

If the landlord claims to have a statutory excuse by virtue of making a report to the Home Office, you should check their documents to establish this. See section 5.

**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
- a RN listing the details of the applicable identified illegal occupiers where the statutory excuse criteria have not been met

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