



Home Office

Code of Practice for Landlords

Avoiding unlawful discrimination when conducting ‘right to rent’ checks in the private rented residential sector

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1 Introduction

The Right to Rent Scheme (the Scheme) was launched to ensure only those lawfully present in the UK can access the private rented sector, and to tackle unscrupulous landlords who exploit vulnerable migrants, sometimes in very poor conditions. The Scheme also helps ensure that those people who do not have the right to be in the UK are prevented from establishing a settled life here. The Right to Rent Scheme is currently only in force in England.

All landlords in England have a responsibility to prevent those without lawful immigration status from accessing the private rented sector. Landlords do this by conducting 'right to rent checks' on all prospective adult tenants before the start date of a tenancy agreement, to make sure the person is not disqualified from renting a property by reason of their immigration status. Landlords who rent residential premises to adults without carrying out proper checks that they have the right to rent may be liable for a civil penalty.

The purpose of this code of practice is to ensure that landlords do not unlawfully discriminate contrary to the Equality Act 2010 when carrying out right to rent checks. It provides practical guidance for landlords on what they should or should not do to avoid unlawful discrimination when complying with their obligations under the Immigration Act 2014. The code applies both to landlords and to agents who carry out letting services on behalf of landlords.

This code of practice has been issued under section 33 of the Immigration Act 2014. It sets out guidance in relation to a landlord's legal obligations in England under the Equality Act 2010. Although unlawful discrimination may occur in several different ways, for the purpose of this code of practice, the focus will be on the subject of avoiding race discrimination.

As per section 33(3)(a) of the Immigration Act 2014, the Equality and Human Rights Commission has been consulted regarding the contents of this code.

This code of practice has been issued alongside a code of practice on right to rent: civil penalty scheme for landlords and their agents, available on GOV.UK:

<https://www.gov.uk/government/publications/right-to-rent-landlords-code-of-practice>

For further information about how to carry out a right to rent check, the Home Office has published a code of practice and further guidance available on GOV.UK:

<https://www.gov.uk/government/collections/landlords-immigration-right-to-rent-checks>

References

Throughout this code of practice, the Equality Act 2010 is referred to as 'the 2010 Act'.

'Civil penalty' or 'penalty' means a financial penalty imposed by the Home Office on a landlord who has allowed a tenant to occupy private rented residential accommodation but does not have the right to rent.

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'eVisa' means a digital visa provided by the Home Office as evidence of the individual's immigration status. Prospective tenants with an eVisa are required to use the Home Office online service to evidence their right to rent digitally.

'Home Office Landlord Checking Service (LCS)' refers to the enquiry and advice service operated by the Home Office that landlords are required to contact in certain circumstances to check whether a person has a right to rent.

'Home Office online checking service' means the online service which allows landlords to check whether a person is allowed to rent in England. This system is accessible for landlords via the 'View a tenant's right to rent' on GOV.UK.

'Identity service provider' (IDSP) means a provider of identity verification services. In the context of this code of practice, they may be certified to provide identity verification to specific levels of confidence, specified by government standards. IDSP's are sometimes referred to as 'identity providers'.

'Landlord' means a person who lets accommodation for use by one or more adults as their only or main home. This includes people who take in lodgers and tenants who are sub-letting. References to 'landlord' also include agents who have accepted responsibility for complying with the Scheme on behalf of landlords, except for when agents are specifically and separately referred to.

'Leave to Enter' or 'Leave to Remain' – see 'Permission to Enter' and 'Permission to Stay'.

'Permission to Enter' also known as 'Leave to Enter'. Immigration documents and guidance may refer to either term, both are acceptable. This means that a person has permission from the Home Office to enter the UK

'Permission to rent' means a person who is disqualified from renting by virtue of their immigration status but to whom the Secretary of State has granted permission to occupy premises.

'Permission to Stay' also known as 'Leave to Remain'. Immigration documents and guidance may refer to either term, both are acceptable. This means that a person has permission from the Home Office to be in the UK.

'Residential tenancy agreement' means an arrangement in any form (whether or not in writing) between parties that grants a right to occupy premises for residential use and provides payment of rent but does not include the specified types of tenancy which are excluded from the right to rent provisions as set out in Schedule 3 of the Immigration Act 2014.

'Right to rent' means an individual is allowed to occupy privately rented residential accommodation in England by virtue of qualifying immigration status.

'Settlement' (previously known as Indefinite Leave to Enter / Indefinite Leave to Remain), means that a person has permission from the Home Office to be in the UK indefinitely.

'Statutory excuse' means the steps a landlord can take to avoid liability for a civil penalty. Landlords gain a statutory excuse against liability for a civil penalty when they conduct right to rent checks in the manner set out in legislation and guidance.

'Tenant' means an adult (aged 18 or over) who will be authorised to occupy the premises as their only or main home.

For whom is this Code of Practice relevant?

This version of the code of practice applies only to residential tenancy agreements commencing on or after 6 April 2022. It also applies where a repeat check on an existing tenant is required to be carried out on or after 6 April 2022 to retain a statutory excuse.

2 What is discrimination?

The Equality Act 2010 (the 2010 Act) prohibits discrimination and other unlawful acts in letting practices on the following grounds, known as 'protected characteristics':

- age
- disability
- gender reassignment
- marriage or civil partnership
- pregnancy and maternity
- race
- religion or belief
- sex
- sexual orientation

The protected characteristic of race includes skin colour, nationality or ethnic or national origins.

The Immigration Act 2014, as the legislative framework for the Right to Rent Scheme, mandates that this code directly addresses the 2010 Act so far as relating to race and race discrimination (section 33(1)(a)). Therefore, the following section will focus on race discrimination. However, landlords should take steps to ensure they do not discriminate on any other protected characteristic, as listed above.

Direct discrimination

This is when an individual is treated worse than another person or people because either:

- they have a protected characteristic
- someone thinks they have a protected characteristic (known as discrimination by perception)
- they are connected to someone with that protected characteristic (known as discrimination by association).

Unless there is a statutory exception, direct discrimination cannot be excused or defended.

For example, in relation to right to rent checks, direct discrimination would include:

- rejecting prospective tenants because they do not have British citizenship or another specified citizenship
- refusing to consider any international tenants, or only carry out checks on person believed to not be British citizens on the basis of the individual's colour, ethnic or national origins.

As stated in the Equality Act 2010 race can mean an individual's colour or nationality. It can also mean an individual's ethnic or national origins, which may not be the same as their current nationality. Race also covers ethnic and racial groups. This means a group of people who all share the same protected characteristic of ethnicity or race. Members of particular religious groups, such as Jews and Sikhs, also form racial groups for the purposes of equality law.

Indirect discrimination

Indirect discrimination is where:

- there is a policy that applies in the same way irrespective of protected characteristics but disadvantages a group of people who share a protected characteristic, and
- an individual is disadvantaged as part of this group.

This will be unlawful, unless the provision, criterion or practice is objectively justifiable (proportionate and necessary). It makes no difference whether anyone intended the policy to disadvantage an individual or not.

For example, indirect discrimination in the context of right to rent checks could occur:

- where there is a requirement that a prospective tenant must have been resident in the UK for over five years, migrants are less likely to be able to meet the requirement than UK citizens even if they have a right to rent.
- where there is a requirement that the accommodation is only to be rented by members of a particular occupation, in which specific ethnic groups are over or underrepresented, unless there is a justifiable reason why the accommodation should only be occupied by members of that occupation.

Under the 2010 Act, discrimination committed by someone acting on a person's behalf (such as a letting agent or property manager) may also be treated as having been committed by that person. Landlords can avoid this liability if they can prove that they took all reasonable steps to prevent such discrimination. It is also unlawful to instruct or induce another person to discriminate or to publish an advertisement or notice that indicates an intention to discriminate.

Harassment and victimisation

Landlords must also not subject prospective or existing tenants to harassment under the terms of the 2010 Act.

Harassment is unwanted conduct related to a protected characteristic (see below) that violates someone's dignity or creates an intimidating, hostile, degrading, humiliating or offensive environment for them. In respect of premises, the harassment provisions do not apply to sexual orientation or religion and belief, but harassment on these grounds would very likely amount to unlawful direct discrimination.

It should also be noted that it is unlawful to victimise a person because it is believed he or she has done, intends to do, or might do, a 'protected act'. A protected act can be anything done for the purposes of or in connection with the Equality Act, such as making or supporting a complaint of discrimination, bringing legal proceedings, providing information, evidence or statements.

It is also unlawful to instruct or induce another person to discriminate or to publish an advertisement or notice that indicates an intention to discriminate.

Unlawful discrimination in letting and sub-letting a property

When they decide who should be offered rented residential accommodation they must not discriminate:

- (a) in the terms on which the accommodation is offered
- (b) by refusing to offer the accommodation
- (c) in their treatment of persons seeking the accommodation (including the way in which right to rent checks are carried out).

The 2010 Act also includes provisions concerning withholding permission to sell, let or sub-let accommodation and the management of premises (including the treatment of tenants). It makes it unlawful for a person whose permission is needed to sell, let or sub-let a property to discriminate against or victimise another person by withholding that permission, or harassing someone who seeks that permission or someone to whom the property would be sold or let if permission were given. It also makes it unlawful for a person who manages premises to discriminate against, victimise or harass an occupier or to harass someone who seeks to occupy the premises.

3 How to avoid discrimination

The best way for landlords to ensure they do not discriminate when carrying out right to rent checks is to treat all prospective tenants fairly, making sure their criteria and practices in this regard are appropriate and necessary.

To ensure they are avoiding discrimination in the context of the Right to Rent Scheme, landlords should:

- Be consistent in how they conduct right to rent checks on all prospective tenants, including those who the landlord believes are more likely to be British citizens
- ensure that no prospective tenants are discouraged or excluded, either directly or indirectly, because of known or perceived protected characteristic.

Furthermore, landlords should not:

- discriminate when conducting right to rent checks
 - simply check the status of those who the landlord thinks appear or are likely to be migrants
 - treat those with a time-limited right to rent more or less favourably
 - treat those who have access to the Home Office online checking service more or less favourably
 - treat those who provide a manual documentation as listed in the list of acceptable documents more or less favourably
- make assumptions about a person's right to rent, or their immigration status on the basis of their colour, nationality, ethnic or national origins, accent or length of time they have been resident in the UK.

A landlord who discriminates contrary to the Equality Act 2010 in the way in which right to rent checks are carried out may be subject to a discrimination claim in court. The Equality and Human Rights Commission can also bring proceedings against a landlord who publishes a discriminatory advertisement or who instructs or induces another person to discriminate.

Fair practices

The Home Office informs migrants in the UK about right to rent checks and how they can prepare to assist in conducting a check when leave is granted. However, it is also helpful if landlords can inform prospective tenants about the checks and signpost the information available on GOV.UK.

Where advertising, they could state that all prospective tenants will need to satisfy the right to rent checks and ensure that all prospective tenants (not just some of them) are asked to provide documentary proof of their right to rent.

If landlords provide information to prospective tenants, or supply an information pack, they could also include a reminder that the successful tenant, or short-listed tenants, will be required to evidence their right to rent either digitally via the Home Office online checking service, or manually via original, acceptable documents as detailed in the list of acceptable documents, featured on GOV.UK in the Landlord's guide to right to rent checks

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and the code of practice on right to rent: civil penalty scheme for landlords and their agents.

There are three types of right to rent checks: a manual document-based check, the use of the services of a certified Identity Service Provider (IDSP) or to carry out a Home Office online check. Conducting any of these checks as set out in this guidance and in the separate code of practice will provide the landlord with a statutory excuse against liability for a civil penalty if it is later found that a landlord rented to someone without lawful immigration status.

Tenants with a time-limited right to rent

Prospective tenants should not be treated less favourably if they have a time-limited right to stay in the UK. Once a person who has time-limited permission to stay in the UK has established their initial and ongoing entitlement to stay, they should not be treated less favourably than others even if further right to rent checks are subsequently required.

Conducting a right to rent check

Depending on the documentation the individual has to evidence their right to rent, some will be able to demonstrate a right to rent using the Home Office online service, but others will not. Neither group should be discriminated against or treated less favourably.

You must not discriminate against any individual based upon the type of right to rent check which is required. For instance, a British or Irish citizen may decide that they do not want to use an IDSP for digital identity document verification and choose to demonstrate their right to rent using a physical document instead.

Prospective tenants should not be treated more or less favourably if they have an eVisa. This means landlords cannot, for example, only let their property to individuals who have digital evidence and refuse to carry out manual checks on those who do not have access to the Home Office online checking service.

Tenants who provide a combination of documents from List A, Group 2

Landlords should not treat a prospective tenant more or less favourably if they have the required combination of documents showing their right to rent (for example a driving licence with a long UK birth certificate) but does not have a passport. There should be no need to ask further questions about a prospective tenant's immigration status where it is clear that they have permission to stay in the UK. Any subsequent further checks need only establish that the tenant is still here with permission.

Tenants who cannot evidence their right to rent

Subject to business requirements, landlords should try to keep the offer of accommodation open in order to provide a prospective tenant the opportunity to produce documents that will demonstrate their right to rent.

Where an individual is unable to evidence their right to rent, in some cases the landlord should contact the Home Office Landlord Checking Service (LCS) in order to establish a statutory excuse:

<https://eforms.homeoffice.gov.uk/outreach/lcs-application.ofml>

The LCS will respond to the request to confirm whether the individual has the right to rent with a clear 'yes' or 'no'. Further information on how to contact the LCS is available in our guidance products on GOV.UK. Which can be found at:

<https://www.gov.uk/government/collections/landlords-immigration-right-to-rent-checks>.

4 If you need more information

The Equality and Human Rights Commission (EHRC) provides further information on matters relating to the law on discrimination:

<https://www.equalityhumanrights.com/en>

Further information on the Right to Rent Scheme:

- Home Office guidance and code of practice on right to rent checks and private rented accommodation: <https://www.gov.uk/government/collections/landlords-immigration-right-to-rent-checks>
- request a right to rent check via the Home Office Landlord Checking Service: <https://eforms.homeoffice.gov.uk/outreach/lcs-application.ofml>

Advice for landlords and tenants in the private rented sector:

- GOV.UK guidance on private renting: <https://www.gov.uk/private-renting>
- GOV.UK guidance for landlords on renting out a property: <https://www.gov.uk/renting-out-a-property>

Information for tenants

You should not be offended if a landlord asks you to evidence your right to rent. Landlords are expected to conduct right to rent checks on all prospective tenants. By performing the checks and keeping records of the checks they have made, landlords will protect themselves from a civil penalty should it turn out they have inadvertently let property to someone who is here unlawfully. The checks are not intended to do anything other than restrict unlawful migrants from accessing rented accommodation.

The ways you can evidence your right to rent may vary depending on your nationality or immigration status. If you are in possession of a UK or Irish passport or you have access to the Home Office online checking service, the landlord is unlikely to require further documents. For documents that are encountered less frequently, the landlord might need to make further checks, by consulting guidance or possibly by contacting the Home Office to verify your immigration status directly with us.

You can assist landlords and speed up the process for yourself, by making sure your documents are ready for checking when the landlord needs to see them.

Anyone who believes that they have been discriminated against, either directly or indirectly, by a landlord or prospective landlord on the basis of one or more protected characteristic may bring a complaint before a county court. If you need expert advice and support on discrimination, you can call the Equality Advisory Support Service (EASS) on 0808 800 0082.

<https://www.gov.uk/discrimination-your-rights>

