



Home Office

# **Draft Code of Practice on illegal immigrants and private rented accommodation**

## Civil penalty scheme for landlords and their agents

October 2014

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Civil penalty scheme for landlords and their agents

Presented to Parliament pursuant to Section 32(6)(a)  
of the Immigration Act 2014

October 2014



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Print ISBN 9781474111836  
Web ISBN 9781474111843

Printed in the UK by the Williams Lea Group on behalf of  
the Controller of Her Majesty's Stationery Office

ID 28101402 10/14

Printed on paper containing 75% recycled fibre content minimum.

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# 1. Introduction

Under section 22 of the Immigration Act 2014 a landlord should not authorise an adult to occupy property as their only or main home under a residential tenancy agreement unless the adult is a British citizen, or EEA or Swiss national, or has a “right to rent” in the UK. Someone will have the “right to rent” in the UK provided they are present lawfully in accordance with immigration laws. Landlords who breach section 22 may be liable for a civil penalty. In this Code the restriction and civil penalty provisions are referred to as “the Scheme”. The intention of the Scheme is to ensure that illegal immigrants are unable to establish a settled life in the UK, which includes restricting access to private sector rented accommodation. Certain residential tenancy agreements are excluded from the Scheme and are laid out in detail in section 3.7.

Landlords can establish a statutory excuse against liability for a civil penalty by conducting simple document checks before allowing adults to occupy rented accommodation, to ensure that prospective occupiers have the right to rent in the UK. Landlords should not rent property for use by an adult who is not a British, EEA or Swiss national, or who does not have the right to rent. Where a landlord lets accommodation to a person with a time-limited right to rent, they can maintain their excuse against a penalty by conducting follow-up checks as detailed in this Code. If follow-up checks indicate that the person no longer has the right to rent, to maintain their excuse the landlord can make a report to the Home Office as soon as reasonably practicable and before the expiry of an existing statutory excuse. Landlords will need to keep records of the checks they have undertaken for those people who will occupy their accommodation.

Landlords have the option to appoint an agent to act on their behalf. Where an agent has accepted responsibility for compliance with the Scheme, the agent will be the liable party in place of the landlord.

## 1.1 For whom is this Code of Practice relevant?

This code applies to residential tenancy agreements granted in relation to property located in an area where the Scheme has been implemented. The Scheme will be implemented on a phased geographical basis, and will apply to residential tenancy agreements entered on or after the date of implementation for that area (see website).

## 1.2 How should this Code of Practice be used?

This Code has been issued under section 32 of the Immigration Act 2014. It sets out:

- i. the factors the Secretary of State will consider when determining whether:
  - a residential tenancy agreement grants a right of occupation of premises for residential use;
  - a person is occupying premises as their only or main home,

- ii. the actions a landlord should undertake to comply with the Scheme and establish a statutory excuse against liability for a civil penalty, including:
  - the reasonable enquiries a landlord should make to determine who will occupy their accommodation, whether or not those occupiers are named on the tenancy agreement;
  - the initial and follow-up checks a landlord should perform with details of the documents they can rely upon to satisfy these checks, and
- iii. the factors the Secretary of State will consider when deciding on the amount of a penalty which should be imposed under the Scheme.

This Code has been issued together with guidance for landlords and other sources of information. It may be useful to refer to these alongside this Code.

### **1.3 Who should use this Code of Practice?**

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.

### **1.4 Why should this Code of Practice be used?**

This Code demonstrates how a landlord can avoid breaching section 22 of the Immigration Act and the actions a landlord can take to avoid liability for a civil penalty for such a breach. This is called *establishing a statutory excuse against liability for a civil penalty*. A statutory excuse may be continuous or time-limited in relation to a particular occupier.

### **1.5 References in this Code of Practice**

In this Code, references to:

- 'Right to rent' means allowed to occupy residential accommodation in the UK by virtue of qualifying immigration status.
- 'EEA or Swiss national' refers to citizens of EEA countries or Switzerland. The EEA countries are:
  - Austria, Belgium, Bulgaria, Croatia, Republic of 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.
- 'Non-EEA nationals' means the nationals of country outside the EEA.
- 'Illegal immigrants' means people who seek to evade immigration controls and enter and/or remain in the UK without the legal right to do so.

- ‘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. 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.
- ‘Tenant’ means the person or persons to whom the residential tenancy agreement is granted.
- ‘Occupier’ means a person who is, or who will be, authorised to occupy the property under the residential tenancy agreement, whether or not they are named on that agreement.
- ‘Leave to enter or remain in the UK’ means that a person has permission from the Home Office to be in the UK. Permission may be time-limited or indefinite.
- ‘Residential tenancy agreement’ includes any tenancy, lease, licence, sub-lease or sub-tenancy which grants a right of occupation for premises for residential use, provides for the payment of rent, and is not an excluded agreement. See section 3 for further information about ‘residential tenancy agreements’ and excluded agreements.

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## 2. Who can occupy residential accommodation?

Under the Scheme, people will fall into three broad categories depending on their immigration status. The majority of people will have an **unlimited right to rent**, others will have a **time-limited right to rent** and some will have **no right to rent**.

This section sets out information about who falls into these three categories and also two further groups, **children** and **those who have been given permission to rent**.

### 2.1 Those with an unlimited right to rent

There are two groups of people who have an **unlimited right** to rent. These are:

- i. British citizens, EEA and Swiss nationals;<sup>1</sup> and
- ii. 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.

A landlord will not be liable for a civil penalty if they rent accommodation for occupation by someone with an unlimited right to rent in the UK.

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

Those who are **not** British citizens, EEA or Swiss nationals will have a **time-limited right** to rent if:

- they have valid leave to enter or remain in the UK for a limited period of time; or
- they are entitled to enter or remain in the UK as a result of an enforceable right under European Union law or any provision made under section 2(2) of the European Communities Act 1972. For instance, qualifying family members of EEA nationals under the Immigration (European Economic Area) Regulations 2006 and those who derive their right to reside in the UK directly from the EU Treaties.

These people have a right to reside in the UK as a matter of fact and will be able to obtain documentary evidence to demonstrate this.

A landlord will not be liable for a civil penalty if they rent accommodation for occupation by someone with a time-limited right to rent, but to maintain an excuse against a penalty a landlord will need to conduct follow-up checks (as detailed in section 5.2).

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<sup>1</sup> British citizens, EEA and Swiss nationals are “relevant nationals” as defined in s21(5) of the Immigration Act, and so cannot be disqualified from occupying premises under a residential tenancy agreement under s21(1).

## 2.3 Those with no right to rent

A person is not permitted to occupy residential accommodation if they require permission to be in the UK and do not have it. This means they **do not have the right to rent in the UK**.

A landlord will normally be liable for a civil penalty if they authorise occupation of accommodation for use as an only or main home by a person who does not have the right to rent in the UK.

## 2.4 Those who have been given permission to rent

The Secretary of State may grant someone permission to rent in the UK, even though their immigration status would otherwise leave them with no right to rent. A landlord will not be liable for a civil penalty if they authorise accommodation for use as an only or main home by an adult who has been granted a **permission to rent**.

## 2.5 Children

This Scheme does not apply to children as occupiers. This means that a landlord may allow all those **under the age of 18 years** to occupy property.

A landlord can consider a person to be a child where they are reasonably satisfied that they are **not** 18 years of age or over.

Landlords may allow those who will turn 18 during the course of a tenancy agreement to occupy property. A landlord does not need to conduct additional follow-up checks when the child turns 18. Where further checks are required, the now adult should be checked at the point these further checks fall due.

## 3. What letting arrangements fall within the Scheme?

Under the Scheme a landlord must not authorise any adult to occupy a property under a residential tenancy agreement unless they have a right to rent or are a British citizen or an EEA or Swiss national.

### 3.1 What is a residential tenancy agreement?

A residential tenancy agreement means a tenancy that grants a right of occupation for a property for residential use, provides for the payment of rent<sup>2</sup>, and is not an excluded agreement. A tenancy includes any lease, licence, sub-lease or sub-tenancy. An agreement will grant a right of occupation for residential use if it allows one or more adults the right to occupy the property as their only or main home, whether or not the property can be used for any other purpose.

The Scheme therefore applies to:

- landlords (both businesses and individuals) who let self-contained accommodation with a lease or tenancy agreement;
- occupiers (including those in social housing) who sub-let their accommodation, who will be landlords for the purposes of the Scheme, and
- landlords or occupiers who take in lodgers to share their accommodation with a licence to occupy the property.

A lodger<sup>3</sup> is someone who takes a room within accommodation that they share with their landlord (this could be the owner or an occupier of the property). Lodgers who pay money to live in a property as their only or main home fall within the Scheme.

### 3.2 Which residential tenancy agreements fall within the scope of the Scheme?

The Scheme applies only to residential tenancy agreements first entered into on or after the date on which the Scheme is implemented in the area where the property is located.

A landlord is not required to take any action in relation to residential tenancy agreements entered into before that date, or which are renewed after that date if the renewed agreement will be between the same parties and there has been no break in the tenant's right to occupy the premises.

<sup>2</sup> Rent includes any financial transaction in the nature of rent.

<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.

### 3.3 Property for use as an only or main home

The Scheme applies to all types of property that a person will use as their **only or main home** (with exemptions as detailed in section 3.7). For the purposes of the Scheme, a property will be considered a person's only or main home if:

- i. it is the only property they live in, or
- ii. if they live between multiple properties, their personal, legal or family ties to that property are such that it is where they live their settled day to day life in the UK.

If the occupier lives in multiple homes, landlords should consider factors such as how much time the occupier will spend at the property, their personal and family ties to the home and how much it will be used. Relevant factors will include whether they will keep most of their belongings there, whether they will be registered with a doctor/dentist from that address, whether they will register for voting purposes there, whether their partner or children live there, or they receive post there<sup>4</sup>.

When an occupier lives away from the home for extended periods due to employment, the address to which they return when they are not working is usually taken as being their only or main residence.

The use to which the property is put will need to be considered on a case-by-case basis. If in doubt, it is advisable for a landlord to assume that a person intends to occupy the property as their only or main home. See section 5.1 for further information about the steps landlords should take to establish who will use the property as their only or main home.

### 3.4 Holiday accommodation

Holiday accommodation refers to properties usually let for leisure purposes for short periods to people who also maintain an only or main home elsewhere (whether in or outside of the UK). Holiday accommodation could be in a hotel, guesthouse, caravan, cottage, holiday apartment or elsewhere.

The Scheme only applies to tenancy agreements that allow someone to use a property as their only or main home. Landlords letting holiday accommodation should consider how a person will be using the property to decide whether right to rent checks are necessary.

If the letting is for a short, time-limited period, and it is clear that they intend to use the premises for leisure related purposes and will not remain in the property after this period, then the landlord may conclude that the property is to be used as holiday accommodation and there is no need to conduct right to rent checks.

As a guide, the Home Office would consider that bookings of three months or more may indicate that a person is using the accommodation for a purpose other than leisure purposes, and could be intending to use the accommodation as their only or main home.

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 occupier appears to be using the premises as their only or main home, then it would be advisable to treat the occupier as a person using the property as their only or main home and undertake right to rent checks.

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<sup>4</sup> This is not an exhaustive or prescriptive list; whether a property is being used as an only or main home will be decided on a case by case basis.

The Scheme only applies to residential tenancy agreements which allow someone to take up occupation as their **only or main home**.

### 3.5 House guests

House guests, such as friends or family members, do not fall within the scope of the Scheme provided that:

- a. they are not paying rent, and
- b. they are not living in the accommodation as their only or main home.

### 3.6 Immediate family members

Generally it will be in a landlord's interest to check on the immigration status of **all** adult occupiers who will be authorised to live in the accommodation as their only or main home, to ensure that they do not inadvertently breach the restriction set out in the Immigration Act 2014. Making documentary checks on an occupier's status is the safest way to do this, and allows landlords to ensure that no liability for a civil penalty arises.

However, in some limited circumstances, a landlord may consider that due to a pre-existing relationship with the occupier, they already know enough information about their immigration status to allow them to proceed and rent to them without undertaking status checks. For instance, an adult child who remains in, or returns to the family home after completing a course of education or training, and who makes a financial contribution towards their board may be a licensee and so fall within the scope of the Scheme. In this situation the landlord may be the occupier's parents, who have full knowledge of their adult son or daughter's immigration status and so have no need to undertake a right to rent check.

In other cases, if a landlord is unsure of the immigration status of an immediate family member and they will be staying in the property under a residential tenancy agreement that falls within the scope of the Scheme, it is advisable to conduct right to rent checks.

### 3.7 Excluded agreements

Some types of property and residential tenancy agreements are excluded from the Scheme. In particular:

#### **Accommodation involving local authorities**

Residential tenancy agreements which grant a right of occupation in any circumstances where the accommodation is arranged by a local authority which is acting in response to a statutory duty owed to an individual, or which is exercising a relevant power<sup>5</sup> with the intention of providing accommodation to a person who is homeless, or who is threatened with homelessness, is exempt from the Scheme. This includes instances where the occupier is to be placed into private rented property by the local authority.

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<sup>5</sup> As defined in paragraph 7(2) of Schedule 3, a "relevant power" means a power that is exercised for, or in connection with, a purpose of providing accommodation to a person who is homeless or threatened with homelessness.

## **Social housing**

Residential tenancy agreements which grant a right of occupation in social housing by virtue of legislative provisions as to housing<sup>6</sup> and the landlord has already been required to consider their immigration status before allocating them the property, or where a tenant has such an existing tenancy and is seeking to exchange their home for an alternative tenancy are exempt from the Scheme.

## **Care homes, hospitals and hospices and continuing healthcare provision**

Accommodation provided in care homes, hospitals and hospices is exempt from the Scheme. Accommodation arranged by relevant National Health Service bodies which are acting in response to a statutory duty owed towards individuals as part of a package of continuing health care is also exempt from the Scheme.

## **Hostels and refuges**

Residential tenancies which grant a right of occupation in a hostel or refuge are exempt from the Scheme. This exemption applies to hostels and refuges which are managed by social landlords, voluntary organisations or charities, or which are not operated on a commercial basis and whose operating costs are provided either wholly or in part by a government department or agency or a local authority.

## **Mobile homes**

Agreements to which the Mobile Home Acts 1983 applies, that is an agreement under which a person is entitled to station a mobile home on a site and use it as their only or main home, are exempt. However, should a mobile home owner decide to let their mobile home for use by another adult, this residential tenancy agreement will be subject to the Scheme.

## **Tied accommodation**

A residential tenancy agreement that grants a right of occupation in accommodation provided by an employer to an employee, or by a body providing training to an individual in connection with that training, is exempt from the Scheme.

## **Student accommodation**

All halls of residence (whether the landlord is an educational institution or private accommodation provider) are exempt from the Scheme, as is any accommodation provided for students directly by a higher or further educational institution. Residential tenancy agreements are also excluded where a student has been nominated to occupy the accommodation by a higher or further educational institution, or a body established for charitable purposes only. Such a nomination could take a variety of forms but will require communication between the institute and the landlord providing confirmation that the student will take up occupation under the residential tenancy agreement. Landlords should retain a copy of the nomination document relied upon to support a claim to this exemption.

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<sup>6</sup> See s1 Schedule 3.

### **Long leases**

Leases which grant a right of occupation for a term of 7 years or more are exempt. Such arrangements are more akin to home ownership than traditional landlord and tenant arrangements. An agreement will not grant a right of occupation for a term of 7 years or more if the agreement can be terminated at the option of a party before the end of 7 years from the start of the term. A lease containing a break clause will include an option to terminate and so does not benefit from the exemption. A lease which contains a forfeiture or right of re-entry for the landlord is not considered to include an option to terminate and so is excluded from the Scheme.

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## 4. Who may be liable for a penalty?

### 4.1 Liability and transfer of liability

Responsibility under the Scheme lies with the landlord, that is the person who authorises the occupation of accommodation by the occupier in return for the payment of rent.

There are some circumstances in which responsibility for compliance with the scheme can be transferred to another person. These are described below.

#### **Sub-letting**

If an occupier subsequently sub-lets and authorises occupation by other adults under another residential tenancy agreement, then they will be responsible for occupation by the sub-tenants and sub-occupiers. Any occupier who sub-lets all or part of their accommodation to a person for money will be a landlord for the purposes of the Scheme, and may be liable to a civil penalty if they do not undertake sufficient checks and allow occupation by a person who needs and does not have a right to rent. This applies equally to occupiers sub-letting private or social housing.

However, where an occupier sub-lets and so becomes a landlord, they can ask their landlord (the 'superior landlord') to agree to accept responsibility for conducting right to rent checks and any liability to a penalty. This should be an agreement in writing.

In this situation, the superior landlord is treated as though they have authorised the occupation by the sub-tenants themselves, and are the responsible landlord for the purposes of the Scheme. To protect themselves from liability for a penalty they will need to take the same steps that they would if they were granting the residential tenancy agreement themselves, including ascertaining who will be authorised to occupy the property as their only or main home under the sub-tenancy, checking the status of those persons, making any follow up checks and reports where necessary, and/or instructing an agent to comply with these requirements for them.

Unless the superior landlord confirms that they are willing to accept this responsibility in writing, then the occupier who is sub-letting will be the responsible landlord for the purposes of this scheme.

#### **Agents**

Many landlords use the services of an agent to let or manage their property. The Scheme allows landlords to agree with an agent in writing who is responsible for fulfilling the requirements of the Scheme and so liable to a penalty. The agent can then establish an excuse against a penalty (undertake right to rent checks and where necessary, make a report to the Home Office). The agent appointed for this purpose must act in the course of a business, but does not have to be a letting or managing agent.

Where a landlord and an agent enter a written agreement stating that the agent will be responsible for taking the steps necessary to establish an excuse against a penalty, the agent will be liable for a penalty if a breach of the Scheme is found and they have failed to undertake sufficient checks and report the outcome of these to the landlord and make appropriate reports to the Home Office where necessary.



Where an agent has accepted responsibility in writing for establishing an excuse, they will need the opportunity to undertake the checks in relation to the occupiers, and report back to the landlord on the outcome of these. An agent will have an excuse against a penalty provided they undertake the required steps before the residential tenancy agreement is entered and provide advice to the landlord in reasonable time.

It is in the interests of landlords and agents **for the timescales in which checks will be undertaken and report made to the landlord to be set out in any agreement.** If there is more than one landlord involved (e.g. the superior landlord has agreed to accept responsibility for occupation by sub-tenants) It is also advisable for the agreement to set out which landlord the agent is required to make a report to.

If an agent establishes that a person does not have the right to rent and reports the matter to the landlord in writing, the landlord will be 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

### **Sitting occupiers and changes in landlord**

If a landlord acquires properties with sitting occupiers, the new landlord should confirm with the transferring landlord that document checks have been undertaken and retain evidence to demonstrate this. Careful note should be taken of whether and when further follow-up checks must be undertaken to ensure a statutory excuse against a penalty is maintained.

The Scheme specifies who may be liable for a civil penalty in circumstances where a person with no right to rent is found to be in occupation and the landlord has changed since the time the original residential tenancy agreement was granted. If the occupier should never have been allowed to occupy the property under a residential tenancy agreement as they had no right to rent at the time the agreement was granted, then the original 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 a person had a right to rent in the UK at the time the residential tenancy agreement was granted, but they have subsequently lost that right and the necessary follow-up checks were not conducted, then the landlord at the time the breach is identified will be responsible. This would occur where the occupier's leave to remain in the UK has expired and the landlord's statutory excuse in relation to that occupier has also expired.

## 5. How to establish a statutory excuse

There are 3 steps involved in establishing and maintaining a statutory excuse against liability for a civil penalty:

- Conduct **initial right to rent checks** before authorising an adult to occupy rented accommodation;
- Conduct **follow-up checks** at the appropriate date if initial checks indicate that an occupier has a time-limited right to rent, and;
- Make a **report to the Home Office** if follow-up checks indicate that an occupier no longer has the right to rent.

The majority of occupiers will either be British or EEA or Swiss nationals, or have an unlimited right to rent, therefore in most cases a landlord will have to do no more than undertake an initial right to rent check to establish an excuse against a penalty.

### 5.1 Initial right to rent checks

Right rent checks on prospective tenants may only be undertaken and recorded up to 28 days before the tenancy agreement comes into effect. There are 4 basic steps to conducting an initial right to rent check:

1. Establish the adults who will live in the property as their only or main home;
2. Obtain original versions of one or more of the acceptable documents for adult occupiers;
3. Check the documents in the presence of the holder of the documents<sup>7</sup>, and
4. Make copies of the documents and retain them with a record of the date on which the check is made.

#### **Step 1: Establish the adults who will live at the property as their only or main home**

##### **a) Establish how many adults will be living in the property**

The Scheme applies to all adult occupiers who will be authorised to live at the property, whether or not they are named on a residential tenancy agreement. Landlords should make reasonable enquiries of the prospective tenant about the people who will live at the property.

The enquiries that are reasonable will depend on the specific situation involved. In some circumstances, limited enquiries may be required, for instance if the property being let is a room within the landlord's own home, or a studio apartment, and the tenant says that they alone will be living in the property, then no further enquiries may be required.

In other cases, more detailed questions may need to be asked to ensure that only the adults named by them will share the property. Factors the landlord will want to consider will include whether the reported number of occupiers is proportionate to the size and type

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<sup>7</sup> The person must be present in person or via a live video link.

of property. Landlords are advised to keep a record of enquiries made and responses obtained.

The Scheme applies to adults (aged 18 years and over). If a landlord is unsure as to whether a prospective occupier is a child, they should ask for documentary evidence of their age and keep a copy of this. This is to ensure that occupiers do not claim to be children in order to gain exemption from the Scheme.

**b) Establish whether occupiers will be living in the property as their only or main home**

As set out in section 3.3, a property will be considered a person's only or main home if:

- i) it is the only property they live in, or
- ii) if they live between multiple properties in the UK, their personal or family ties to that property are such that it is where they live their settled day to day life in the UK.

If the occupier lives in multiple homes, landlords should consider factors such as how much time the occupier will spend at the property, their personal and family ties to the home and how it will be used. The occupier must physically live in the home for at least some of the time, but they do not need to spend the majority of their time there. Relevant factors will include whether they will keep most of their belongings there, whether they will be registered with a doctor/dentist/for voting purposes from that address, whether their partner or children live there, and whether they receive post there<sup>8</sup>.

When an occupier lives away from the home for extended periods due to employment, the address to which they return when they are not working is usually taken as being their only or main residence.

A landlord who considers that the occupier will not be using the premises as their only or main home is advised to make a record of the address which the occupier reports they do occupy as their main home, and the reasons for their view that they are not occupying the premises as their only or main home.

Where a landlord has any doubt about a person's intended use of the property, they should assume that the person intends to use it as their only or main home.

**Steps 2–4: Conduct right to rent document checks for adult occupiers**

Where a person has no time limit on their stay in the UK, checks may be undertaken at any point before the residential tenancy agreement is granted. However, where a person has a time-limited right to remain in the UK, checks should be undertaken not more than 28 days before the residential tenancy agreement comes into effect and the landlord will need to conduct follow-up checks at the appropriate time as detailed in section 5.3. All copies of documents taken should be kept for the duration of the tenancy agreement and for at least one year thereafter.

Landlords should be mindful of existing obligations to protect personal data under the Data Protection Act 1998 and all copies of documents, whether paper or electronic, should be kept securely and for no longer than necessary. The Scheme does not entitle landlords to retain the original documents presented by prospective occupier(s).

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<sup>8</sup> This is not an exhaustive or prescriptive list; whether a property is being used as an only or main home will be decided on a case by case basis.

## Document checking process

Step 2: Obtain →	Step 3: Check →	Step 4: Copy
Landlords must <b>obtain</b> original acceptable documents.	Landlords must <b>check</b> 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, the rightful holder and allowed to occupy the property.	Landlords must make a clear <b>copy</b> of each document in a format which cannot later be altered, and retain the copy securely: electronically or in hardcopy. Landlords must retain a record of the date on which the check was made, and retain the copies securely for at least one year after the tenancy agreement comes to an end.
<b>How:</b> Landlords must ask for and be given <b>original</b> documents from either <b>List A</b> or <b>List B</b> of acceptable documents.	<b>How:</b> Landlords must check: 1) photographs and dates of birth are consistent across documents and with the person's appearance in order to detect impersonation; 2) expiry dates for leave have not passed; 4) the documents appear genuine, show no signs of being tampered with and belong to the holder; and 4) the reasons for any different names across documents (e.g. marriage certificate, divorce decree, deed poll). Supporting documents should also be photocopied and the copy retained.	<b>How:</b> Landlords must copy and retain: 1) <b>Passports:</b> any page with the document expiry date, nationality, date of birth, signature, leave expiry date, biometric details and photograph, and any page containing information indicating the holder has an entitlement to enter or remain in the UK. 2) <b>All other documents:</b> the document in full, including both sides of a Biometric Residence Permit.

## How to avoid discrimination

Whether or not a person needs and has permission to stay in the UK and has a right to rent is a matter of fact that can be verified. Only the listed documents should be used to reach a decision on whether the person has a right to rent. It is advisable for checks to be performed without regard to race, religion or other protected characteristics or equality grounds as specified in the Equality Act 2010 or the Race Relations (Northern Ireland) Order 1997, 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 non-discriminatory and in accordance with statutory equalities duties. Except in the very limited circumstances where a landlord may already have sufficient information about the occupier to consider that they do not need to establish a statutory excuse (i.e. immediate family members, see section 3.6), landlords should apply checks to all occupiers, whether or not they may already believe the occupiers to be legally within the UK.

## Timing

Landlords should check all prospective occupiers' right to rent before granting a residential tenancy agreement. However, there will be some circumstances where it is not possible to undertake checks before the residential tenancy is granted. For instance, an occupier may be overseas and wish to arrange accommodation for work or study in the UK in advance of their arrival. In these circumstances, landlords are allowed to check a person's right to rent before taking up occupation of the property, rather than before the start of the residential tenancy agreement.

## 5.2 Lists of acceptable documents for right to rent checks

The documents that are considered acceptable for demonstrating right to rent in the UK are set out in two lists – **List A and List B**. These are shown in the tables below.

**List A** contains the range of documents which may be accepted to establish an excuse against a penalty in relation to a British citizen, EEA or Swiss national, or a person who has an indefinite right to be in the UK. Landlords who check a document from this list will establish a **continuous statutory excuse** against a penalty. If presented with a document from List A, follow-up checks are not necessary.

**List B** contains the range of documents which may be accepted to establish an excuse against a penalty in relation to a person who has a time-limited right to be in the UK. Landlords who check a document in this list will establish a **time-limited statutory excuse**. If presented with a document from List B, landlords should carry out follow-up checks as set out below in order to maintain their statutory excuse.

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

Photographic examples of acceptable documents can be found in guidance.

Group 1 – Acceptable single documents	
1.	A passport (current or expired) showing that 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 (current or expired) showing that the holder is a national of the European Economic Area or Switzerland.
3.	A registration certificate or document (current or expired) certifying or indicating 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, indefinite leave to remain, indefinite leave to enter or no time limit card issued by the Home Office (current or expired), to a non-EEA national who is a family member of an EEA or Swiss national.
5.	A biometric immigration document 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. The document must be valid (not expired) at the time the right to rent check is made.
6.	A passport or other travel document (current or expired) 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.

**Group 1 – Acceptable single documents**

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| 7. | A current immigration status document containing a photograph 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. The document must be valid (not expired) at the time the right to rent check is made. |
| 8. | A certificate of registration or naturalisation as a British citizen.  |

**Group 2 – Acceptable document combinations.**

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|----|---|
| 1. | <p>Any <b>two</b> of the following documents when produced in any combination:</p> <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) A letter issued within the last 3 months confirming the holder’s name, issued by a UK government department or local authority and signed by a named official (giving their name and professional address), or signed by a British passport holder (giving their name, address and passport number), or issued by a person who employs the holder (giving their name and company address) confirming the holder’s status as an employee.</li> <li>c) A letter from a UK police force confirming the holder is a victim of crime and personal documents have been stolen, stating the crime reference number, issued within the last 3 months.</li> <li>d) Evidence (identity card, document of confirmation issued by one of HM forces, confirmation letter issued by the Secretary of State) of the holder’s previous or current service in any of HM’s UK armed forces.</li> <li>e) A letter from HM Prison Service, the Scottish Prison Service or the Northern Ireland Prison Service confirming the holder’s name, date of birth, and that they have been released from custody of that service in the past 6 months; or a letter from an officer of the National Offender Management Service in England and Wales, an officer of a local authority in Scotland or an officer of the Probation Board for Northern Ireland confirming that the holder is the subject of an order requiring supervision by that officer.</li> <li>f) Letter from a UK further or higher education institution confirming the holder’s acceptance on a current course of studies.</li> <li>g) A current full or provisional UK driving licence (both the photocard and paper counterpart must be shown).</li> <li>h) A current UK firearm or shotgun certificate.</li> <li>i) Disclosure and Barring Service certificate issued within the last 3 months.</li> <li>j) Benefits paperwork issued by HMRC, Local Authority or a Job Centre Plus, on behalf of the Department for Work and Pensions or the Northern Ireland Department for Social Development, within the 3 months prior to commencement of tenancy.</li> </ul> |
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## List B – Acceptable documents establishing a time-limited statutory excuse

All documents in List B must be valid (not expired) at the time of the right to rent check. Photographic examples of the documents can be found in guidance.

If presented with a document in List B, the landlord will establish a statutory excuse for a limited time period, “the eligibility period”. The eligibility period will be the longest of the following:

- a) one year, beginning with the date on which the checks were last made, or
- b) before the period of the person’s leave to be in the UK, or
- c) the period for which the person’s evidence of their right to be in the UK expires.

A landlord may conduct further checks at any time, such as when a tenant tells the landlord that they have extended their immigration permission. A further check towards the end of a time limited statutory excuse must always, however, be conducted within 28 days prior to the expiry of that period.

At this point, landlords will need to conduct follow-up checks as detailed in section 5.3.

<b>List B</b>	
<b>Documents where a time-limited statutory excuse is established</b>	
1.	A valid passport or other travel document endorsed to show that the holder is allowed to stay in the UK for a time-limited period.
2.	A current biometric immigration document issued by the Home Office to the holder, which indicates that the named person is permitted to stay in the UK for a time limited period.
3.	A current residence card (including an accession residence card or a derivative residence card) issued by the Home Office to a non-EEA national who is either a family member of an EEA or Swiss national or has a derivative right of residence.
4.	A current 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 for a time-limited period.
5.	In the case that the person has an ongoing application with the Home Office, or their documents are with the Home Office, or they claim to have Home Office permission to rent, an email from the Landlords Checking Service providing a “yes” response to a right to rent request. <b>This will only be sent to the landlord by the Landlords Checking Service.</b>

### When to request a right to rent check from the Home Office

When an individual cannot provide the landlord with any of the documents from List A or List B, but claims to have an ongoing immigration application or appeal with the Home Office, or that their documents are with the Home Office, or they have been given permission to rent by the Home Office, then the landlord must request verification of a right to rent from the Home Office’s Landlords Checking Service using an online form. Where a landlord does not have access to the internet, a request can be made by telephone. The Landlords Checking Service will respond to the landlord with a clear “yes” or “no” response within 2 working days.

In order for the landlord to seek verification from the Home Office, the prospective occupier must provide the landlord with a Home Office reference number. This can be, for example, an application or appeal number, application registration card (ARC) number, certificate of application number issued to a family member of a national of an EEA country or Switzerland, case number, etc. The landlord must include this information when requesting a right to rent check, to receive the “yes” or “no” response.

A “yes” response from the Home Office’s Landlords Checking Service means that the individual does have a right to rent in the UK and the landlord will have a statutory excuse against a civil penalty for at least 12 months from the date of the check.

A “no” response from the Home Office’s Landlords Checking Service means that the individual does not currently have a right to rent in the UK. The landlord should not let the property for use by that individual unless and until they can provide alternative evidence of their right to rent.

### **5.3 Follow-up checks**

#### **When should a follow-up check be conducted?**

Where the initial right to rent checks are satisfied with a document from List B, or where the Landlords Checking Service has provided a “yes” response to a request for verification of a right to rent, a landlord establishes a time-limited statutory excuse from penalty. This time-limited statutory excuse lasts either for 12 months or until expiry of the person’s permission to be in the UK or the validity of their document which evidences their right to be in the UK, whichever is later. Follow-up checks should be undertaken before this time-limited statutory excuse expires (where the right to rent is due to expire, this should be within 28 days before that expiry date), in order to maintain a statutory excuse.

#### **How should a follow-up check be conducted?**

The landlord should ask the occupier for proof of their continued right to rent. If the occupier produces a document in List A and the landlord checks and obtains a copy of this, they will establish a continuous statutory excuse. If the occupier produces one of the documents 1–4 in List B and the landlord obtains and retains copies of these documents, they will establish a new time-limited statutory excuse for either 12 months, or until expiry of the person’s leave to remain in the UK, or until expiry of the validity of the document which evidences their right to be in the UK, whichever is later. In such cases, the landlord will need to conduct further follow-up checks before this new excuse expires.

If the occupier cannot produce a document evidencing their right to be in the UK, the landlord must make a report to the Home Office as detailed below in order to maintain their statutory excuse.

If the occupier cannot produce any documents, but claims to have an ongoing application or appeal with the Home Office to vary or extend their leave in the UK, or that their documents are with the Home Office, the landlord must request a right to rent check from the Landlords Checking Service.

If positive confirmation is received, by way of a “yes” response from the Landlords Checking Service, the statutory excuse will last for at least a further 12 months from the date specified. The landlord will then need to make a further check upon its expiry.



If the Landlords Checking Service inform the landlord that the occupier no longer has a right to rent, by way of a “no” response, the landlord must make a report to the Home Office in order to maintain a statutory excuse, as detailed below. If they do not do this, their statutory excuse will expire.

The landlord is not required to take any steps to remove the occupier, even if checks reveal that a sitting occupier no longer has a right to rent. The landlord can maintain an excuse against a penalty by making the appropriate report to the Home Office.

## **5.4 Making a report to the Home Office**

If the follow-up checks indicate that an occupier no longer has the right to rent, the landlord does not need to evict them, but should make a report to the Home Office. The landlord must make the report as soon as reasonably practicable after discovering that the occupier no longer has a right to rent, and before their existing time-limited statutory excuse expires, in order to renew their statutory excuse which will last for as long as the illegal renter continues to occupy the premises.

This report must be made in writing (by post or email), and contain all of the following:

- The full name of the occupier believed to have no right to rent;
- The address of the premises they are occupying;
- The name and contact address of the landlord;
- Where relevant, the name and contact address of the agent;
- The date on which the occupier first took up occupation; and
- Copies of the documents kept by the landlord when undertaking the initial right to rent checks in respect of the occupier.

If the follow-up checks indicate that an occupier no longer has the right to rent, the landlord does not need to evict them, but should make a report to the Home Office, using link [www.gov.uk/report-immigration-crime](http://www.gov.uk/report-immigration-crime)

The landlord must make the report as soon as reasonably practicable after discovering that the occupier no longer has a right to rent, and before their existing time-limited statutory excuse expires, in order to renew their statutory excuse which will last for as long as the illegal renter continues to occupy the premises.

This report must be made in writing, and must contain all of the following:

- The full name of the occupier believed to have no right to rent;
- The address of the premises they are occupying;
- The name and contact address of the landlord;
- Where relevant, the name and contact address of the agent;
- The date on which the occupier first took up occupation; and
- Copies of the documents kept by the landlord when undertaking the initial right to rent checks in respect of the occupier.

Landlords must ensure they keep a copy of the report sent, noting specifically the time and date sent.

## 6. An overview of how the civil penalty scheme will be administered

If a landlord is found renting to a person who has no right to rent, the landlord or property owner may be issued with a **referral notice** informing them that the details of their case are being referred to officials with responsibility for administering the Scheme, to consider liability for a civil penalty. The notice will also detail how the case will be considered and the possible decision outcomes.

The landlord will then be sent an **information request** giving them the opportunity to present further information and evidence which will inform the decision on liability and, if appropriate, the level of the penalty.

If a landlord is then found liable for a civil penalty, they will be issued with a **civil penalty notice**. This notice will include details of why the Home Office considers the landlord to be liable, the amount of the penalty and how to pay it, and information on how a landlord may pay the penalty or object to the penalty. If a landlord is not found liable for a civil penalty, they will be issued with a **no action notice**.

In the event that the Home Office visits a property and the landlord is able to demonstrate to officials at this time that they have a statutory excuse in respect of the occupiers identified as having no right to rent, the landlord will not be served with a referral notice in respect of these occupiers. Instead, they will be issued with a **no action notice** indicating that no action will be taken and the case will be closed. This notice will not be taken into account for the purposes of calculating penalty amounts in the event of any future breach of the Scheme.

### 6.1 Objecting to the penalty

A landlord who has been issued with a **civil penalty notice** may object in writing to the Home Office within 28 days of the date specified in the notice, after which they will lose the right to object.

A landlord may object on the following grounds:

- they are not liable to pay the penalty (for example because they are not the landlord of the disqualified person), or
- they have a statutory excuse (this means that they undertook the prescribed document checks and made any necessary reports), or
- the level of penalty is too high (this means that the Home Office has miscalculated the amount of the penalty by reference to the wrong criteria).

The objection must contain:

- the reference number of the penalty notice;
- the name and contact address of the landlord and any relevant agent;
- the name and address of the occupier(s) in respect of whom the penalty was issued; and

- full grounds of objection together with supporting evidence, including copies of any documents relied upon.

The Home Office will then consider the objection and reply within 28 days with an **objection outcome notice** notifying the landlord that either:

- a) the penalty is to be maintained, or
- b) the penalty is to be cancelled, or
- c) the penalty is to be reduced.

In the case that the penalty is increased, the landlord will be served with a new civil penalty notice which they may then first object to, and subsequently appeal against.

## **6.2 Appealing against the penalty**

Upon receiving an objection outcome notice informing the landlord that they remain liable for a civil penalty of the same or a reduced amount, the landlord may then appeal to the Courts if they are not satisfied with the Secretary of State's considerations. The landlord must appeal to the Courts within 28 days of either the date specified in the new civil penalty notice or the date specified on the objection outcome notice. The deadline for appeal will be specified on the new civil penalty notice or objection outcome notice.

If the landlord does not receive an objection outcome notice within the 28 day period, an appeal must be brought within 28 days of the date on which that period ends.

A landlord may appeal on the following grounds:

- they are not liable to pay the penalty (for example because they are not the landlord of the disqualified person), or
- they have a statutory excuse (this means that they undertook the prescribed document checks), or
- the level of penalty is too high (this means that the Home Office has miscalculated the amount of the penalty by reference to the wrong criteria).

## **6.3 Paying the penalty**

The landlord must pay the civil penalty by the date specified in the civil penalty notice or the objection outcome notice maintaining or reducing the penalty. This will be at least 28 days after the date on which the notice is given.

A landlord may request permission from the Home Office to pay their civil penalty by instalments. In such cases, landlords should provide the full details of their inability to pay the full penalty in one payment.

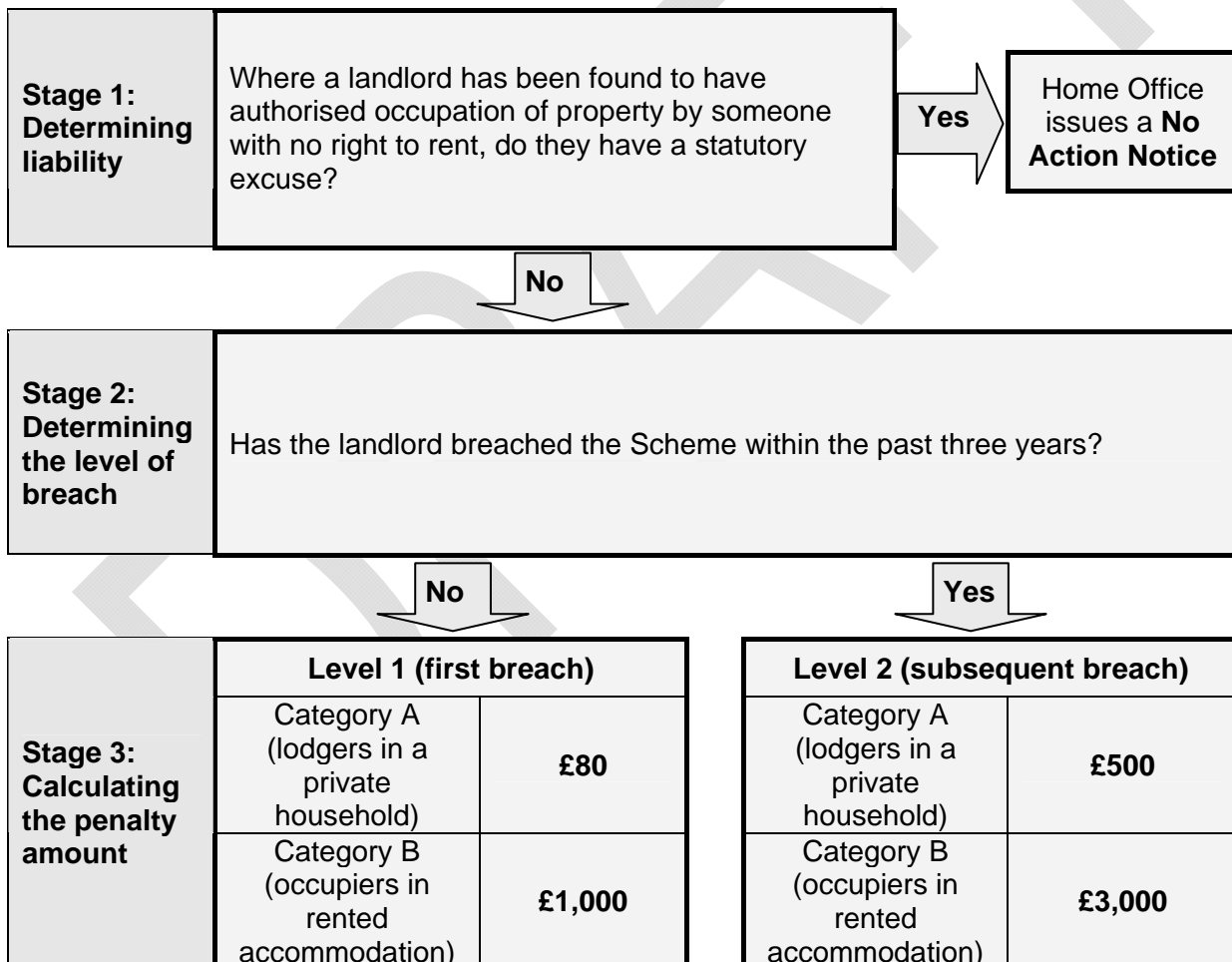
There is also a fast payment option that gives a landlord the opportunity to pay a **30% lower amount** if payment is received **in full within 21 days** of the civil penalty notice being issued. This option is only available for landlords in receipt of their first penalty under the scheme.

## 7. Determining liability and calculating the penalty amount

When considering a landlord's liability for a civil penalty, the Home Office will follow the framework set out below.

A penalty may be imposed in relation to each person who requires a right to rent but does not have one, who is found to have been authorised to occupy the premises under a residential tenancy agreement.

If a landlord has been found to have authorised occupation of property by someone with no right to rent, the Home Office will use the decision process below to first determine liability of the landlord, and then in the case that the landlord is found liable, calculate the final penalty amount per illegal occupier. The penalty amount is based on whether the landlord has previously breached the Scheme as well as the nature of the breach.



### 7.1 Stage 1: Determining liability

In stage 1 of the consideration process, the Home Office will determine if a landlord has a statutory excuse against liability for a civil penalty. A landlord will have a statutory excuse if they have correctly carried out the prescribed right to rent checks using acceptable documents in List A or List B, and made any necessary reports. Where an occupier has a

time limited right to rent and a landlord has therefore established a time-limited statutory excuse, they will need to have conducted follow-up document checks to retain the excuse. If the follow-up checks indicate that the occupier no longer has the right to rent, the landlord will need to have made a report to the Home Office. If an agent is performing the check, they will need to have informed the landlord of the outcome in writing).

Where the Home Office determines that a landlord has a statutory excuse, the landlord will not be liable for a penalty in respect of that occupier. However, where the Home Office considers that a landlord does not have a statutory excuse, the landlord will be liable for a penalty and the decision will proceed to stage 2.

## **7.2 Stage 2: Determining the level of breach**

In stage 2, the Home Office will consider whether a landlord has previously been in breach of the Scheme, as this will affect the penalty amount issued. If in the past three years, a landlord has been issued with a civil penalty notice under the Scheme and exhausted all their objection and appeal rights, the landlord will be subject to Level 2 penalty amounts of either £500 or £3,000. If a landlord has not previously been in breach of the Scheme, they will be subject to the lower penalty amounts specified under Level 1, £80 or £1000.

## **7.3 Stage 3: Calculating the final penalty amount**

In stage 3, the Home Office will consider the nature of the breach to determine the final penalty amount per occupier. If the breach is in relation to a lodger in a private household, the landlord will be subject to the relevant Category A penalty amount (£80 or £500). If the breach is in relation to an occupier in private rental accommodation, the landlord will be subject to the relevant Category B penalty amount (£1,000 or £3,000).

ISBN 978-1-4741-1183-6



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