



Home Office

Code of Practice for Landlords

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

October 2014

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1 Introduction

The Immigration Act 2014 introduced a prohibition on renting premises to adults who do not have a right to stay here for use as their only or main home. This is to deter illegal immigration and prevent illegal immigrants from accessing our finite housing stock and displacing lawful residents. It will also help ensure that those people who do not have the right to be in the UK are prevented from establishing a settled life here. Landlords who breach this prohibition may be subject to a civil penalty.

Landlords can avoid liability for a penalty by making, or arranging for an agent to make, simple documentary checks to establish a person's 'right to rent' before entering into a tenancy agreement. Where the tenant is a non-EEA national with a time-limit on their stay in the UK, the landlord or agent will need to make another check when the person's visa or residence permit is due to expire. In this Code of Practice we will refer to the prohibition and civil penalty provisions as "the Scheme".

The Scheme will first be implemented in a single geographic area to allow systems, processes and guidance to be tested and evaluated before decisions are made on subsequent implementation across the UK.

Landlords should ensure that they comply with the Scheme. However, they must also ensure that they act in accordance with their obligations under equality legislation. Among other things, it is unlawful to discriminate in letting practices on the basis of race, which includes colour, nationality and national or ethnic origins. A landlord or letting agent who refuses to let to someone – or who only carries out document checks on persons – who they *believe* are not British citizens, for example, on the basis of their colour, or ethnic or national origins, would be directly discriminating on grounds of race. This would be unlawful. The person who is discriminated against could make a claim to the courts and the landlord or agent could then face financial penalties. They could also experience reputational damage, and could lose business as a consequence.

It is important to remember that the population of the UK is ethnically diverse. The majority of people from ethnic minorities in the UK are British citizens and most non-British citizens, including those from black and minority ethnic communities are entitled to be here. The vast majority of non-EEA nationals who are working, studying or living with family in the UK have immigration documents which clearly and simply evidence their lawful status in this country. It should not therefore be *assumed* that someone from an ethnic minority is an immigrant, or that someone born abroad or who speaks with a particular accent is not allowed to be in the UK. The restrictions that the Act brings about relate only to a small number of illegal immigrants – that is people who do not have permission to be here.

Anyone who believes that they have been discriminated against, either directly or indirectly, by a landlord or agent on the grounds of race may bring a complaint before the courts. It is also unlawful for a landlord to instruct another, such as a lettings or management agent, to act in a discriminatory fashion.

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This is why we recommend that landlords obtain a statutory excuse by checking documents for **all** persons who will use premises they let as their only or main home. This will protect them from liability for a civil penalty if the person in question is an illegal immigrant, whilst also demonstrating consistent, transparent and non-discriminatory letting practices. Where the tenant has a limited entitlement to remain in the UK, these checks should be repeated as prescribed by the Scheme. Further information on the right to rent checks and the statutory excuse may be found at <https://www.gov.uk/government/publications/right-to-rent-landlords-code-of-practice>.

We have issued this code of practice for landlords to strengthen the safeguards against unlawful discrimination and to assist landlords in avoiding discrimination. The Equality and Human Rights Commission and the Equality Commission for Northern Ireland have been consulted regarding the contents of this Code.

The equality laws are there to protect everyone. Landlords are advised to conduct immigration status checks in a consistent and fair manner in relation to all prospective tenants to protect themselves from claims of discrimination and to keep records of checks made. If a prospective tenant will not co-operate with the checks, landlords should explain that they are undertaking these checks to protect themselves in law. Should the tenant still fail to co-operate, landlords are not breaching any law by looking to other tenants to fill their accommodation.

Definitions

What is a residential tenancy agreement?

‘Residential tenancy agreement’ means 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.

Who is a landlord?

‘Landlord’ means a person who lets or licenses accommodation for use by one or more adults as their only or main home. This includes people who take in lodgers and can include tenants who sublet their rented property. 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.

Who is a tenant/occupier?

‘Tenant’ means the person or persons, aged 18 or over, to whom the residential tenancy agreement is granted, and ‘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.

What is a right to rent?

‘Right to rent’ means allowed to occupy residential accommodation in the UK by virtue of qualifying immigration status. Categories of people with a right to rent are set out in the Code of Practice on illegal immigrants and private rented accommodation.

For whom is this Code of Practice relevant?

This Code of Practice is relevant for all landlords of private rental accommodation and their agents who are under an obligation to ensure that they do not allow illegal immigrants to live in their premises as their only or main home.

We use the term landlord to mean any person or body providing private rented accommodation, including those who take in lodgers.

How should this Code of Practice be used?

This Code of Practice has been issued under section 33 of the Immigration Act 2014. It sets out a landlord's legal obligations under the Equality Act 2010 and the Race Relations (Northern Ireland) Order 1997, as amended. It provides practical guidance for landlords on how to avoid unlawful discrimination when complying with their obligations under the Immigration Act 2014. It is not, however, intended to be a comprehensive statement of the law. This Code of Practice has been issued alongside a Code of Practice on illegal immigrants and private rented accommodation (civil penalty scheme for landlords and their agents) and guidance for landlords and agents.

All private landlords and their agents in England, Scotland, Wales and Northern Ireland are advised to follow this Code of Practice.

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 may be used as evidence in legal proceedings. Courts may take account of any part of the Code which may be relevant to matters of discrimination.

References in this Code of Practice

Throughout this Code of Practice, the Equality Act 2010 is referred to as 'the 2010 Act', and the Race Relations (Northern Ireland) Order 1997, as amended as the '1997 Order.'

When we refer to a "tenant" or "tenants", we mean all adults (aged 18 and over) who will be authorised to occupy the premises as their only or main home, and not just the person or persons who is/are named on the residential tenancy agreement.

2 Your duty under the law

It is unlawful to discriminate in the provision of rented accommodation because of race. In Great Britain under Chapter 2 of Part 2, and Part 4 of the 2010 Act and in Northern Ireland under Part III of the 1997 Order, landlords must not discriminate against a potential tenant because of race (2010 Act) or on racial grounds (1997 Order). Race and racial grounds include colour, nationality, and ethnic or national origins.

Colour means being black, white, etc. Nationality (or citizenship) is the specific legal relationship between a person and a state through birth and naturalisation. It is distinct from national origins, which must have identifiable elements, both historic and geographic, which indicate the existence or previous existence of a nation. With regards to ethnic origin, the provisions of the Equality Act apply where a person belongs to an 'ethnic group' as defined by the courts. The person must belong to an ethnic group which regards itself and is regarded by others as a distinct and separate community because of certain characteristics, which usually distinguish the group from the surrounding community¹.

Case law has established that members of particular religious groups, such as Jews and Sikhs, also form racial groups for the purposes of equality law. It should also be noted that in Northern Ireland the 1997 Order covers the Irish Traveller Community.

Race discrimination may be either **direct** or **indirect**. **There are also prohibitions against race-related harassment and victimisation.**

Direct race discrimination

Direct discrimination means treating a person less favourably because of race or on racial grounds, for example by rejecting prospective tenants who do not have British nationality or another specified nationality, or by refusing to consider any non-European tenants. Treatment based on racial or national stereotypes can also constitute direct discrimination.

Examples of direct discrimination include:

- Where only people from one nationality or ethnic group are considered in the provision of accommodation; or
- Where people of certain nationalities or ethnic groups are excluded from the accommodation.

¹ This information has been taken from the EHRC's Code of Practice on Services, Public Functions and Associations, http://www.equalityhumanrights.com/sites/default/files/publication_pdf/servicescode.pdf

Indirect race discrimination

Indirect discrimination occurs where a provision, criterion or practice, although applied equally, would put persons of a particular racial group at a particular disadvantage compared with other persons. This will be unlawful, unless the provision, criterion or practice is objectively justifiable (appropriate and necessary).

Examples of indirect discrimination are likely to include:

- Where there is a requirement that a prospective tenant has been resident in the UK for over five years (because migrants are less likely to be able to meet the requirement than UK citizens, even though a UK citizen who has recently returned to the country after living abroad would also be prevented from renting the accommodation by that requirement).
- 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 under represented (unless there is a justifiable reason why the accommodation should only be occupied by members of that occupation). This requirement could constitute indirect discrimination even though ethnicity is not an overt criterion and all members of the occupation could apply.

Harassment, victimisation and other unlawful acts

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.

Under the 2010 Act and the 1997 Order, discrimination committed by someone acting on a person's behalf may also be treated as having been committed by that person². 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.

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.

² Instructing, causing, inducing or aiding discrimination, harassment and victimisation is unlawful under sections 110 -112 of the 2010 Act.

Discrimination in letting and sub-letting a property

Landlords and their agents must not unlawfully discriminate against people seeking rented accommodation when letting or sub-letting property, and they must not unlawfully harass people who apply for or occupy rented premises. 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; or
- (c) in their treatment of persons seeking the accommodation.

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.

There are some very limited exceptions to the duty not to discriminate for owner occupiers making private disposals of premises (i.e. selling, letting or sub-letting them), and in respect of residents of small premises (or their near relatives) when they do anything in relation to the disposal, occupation or management of those premises. None of these exceptions apply to race.

Small premises are those where the person (or their near relative) shares accommodation, except means of access or storage, with others who are not in their household, or where the premises would not normally accommodate more than six people in addition to the person and his household.

Other discrimination grounds

The 2010 Act also generally prohibits discrimination and other unlawful acts in letting practices on the following grounds (which together with age and marriage and civil partnership are known as the “protected characteristics”):

- race;
- disability;
- gender reassignment;
- pregnancy and maternity;
- religion or belief;
- sex; or
- sexual orientation.

In Northern Ireland legislation prohibits discrimination in letting practices on these grounds:

- race;
- gender, including gender reassignment and pregnancy or maternity;
- sexual orientation;
- political opinion and/or religious belief; or
- disability.

Although this Code of Practice only addresses race discrimination, landlords should be mindful of these other forms of discrimination.

Potential legal remedies in cases of alleged discrimination

Anyone who believes that they have been discriminated against, either directly or indirectly, harassed or victimised by a landlord, a prospective landlord, or an agent of a landlord, may bring an action against them in the courts for failing to comply with the law. The consequences of losing a civil action for discrimination could be severe. In addition to any compensation ordered by the courts and the complainant's legal costs, landlords may be required to change their practices, and they might receive unwelcome publicity which could cause them to lose business.

The Equality and Human Rights Commission and the Equality Commission of Northern Ireland can also bring proceedings against a landlord or agent who publishes a discriminatory advertisement or who instructs or induces another person to discriminate.

3 How to avoid race discrimination

As a matter of good practice, landlords and their agents should apply the right to rent checks in a fair, justifiable and consistent manner, regardless as to whether they believe the prospective tenant to be British, settled or a person with limited permission to be here.

Landlords should ensure that no prospective tenants are discouraged or excluded, either directly or indirectly, because of their personal appearance or accent or anything else associated with a person's race. They should not make and act upon assumptions about a person's immigration status on the basis of their colour, nationality, ethnic or national origins, accent, ability to speak English or the length of time they have been resident in the UK.

The best way for landlords to ensure they do not discriminate is to treat all prospective tenants fairly and in the same way, making sure their criteria and practices in this regard are appropriate and necessary.

Fair practices

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

Prospective tenants should not be treated less favourably if they produce acceptable documents showing 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 on-going entitlement to stay, they should not be treated less favourably than others even if further right to rent checks are subsequently required, as prescribed by the Scheme and set out in the [general] Code of Practice. Neither should a landlord treat less favourably a prospective tenant who has 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 questions about a prospective tenant's immigration status where it is clear that they have permission to stay here. Any subsequent further checks need only establish that the tenant is still here with permission.

If a person is not able to produce acceptable documents a landlord should not assume that they are living in the UK illegally. 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, but they are not obliged to do so.

The Home Office will tell new immigrants about these checks and how they can prepare to assist in conducting a check, but it will also help if landlords tell prospective tenants about the checks. They could simply ask them to look up the online guidance. It is there for tenants as well as landlords.

Lodgers

There are limited exemptions for people taking in lodgers in Northern Ireland. The 1997 Order provides an exemption in Northern Ireland from the requirement not to discriminate on grounds of colour or nationality for landlords who reside in the property, provided they do not use the services of an estate agent or publish an advertisement or cause an advertisement to be published.

Landlords should conduct right to rent checks of all adult occupants and keep copies. Where they make a repeat check or the tenants do not co-operate, contact the Home Office. The new Scheme creates no new obligations to evict a sitting tenant, nor does it create any new barriers. A landlord will continue to enjoy the existing rights to evict.

Information for tenants

The restrictions in law are designed to stop illegal immigrants obtaining access to rented accommodation. You should not be offended if a landlord asks to see your passport or other documents which evidence your immigration status. A landlord or letting agent will wish to protect their position in law by checking that a prospective tenant is lawfully here. A British or EEA national can satisfy the check by showing their passport or other specified documents such as a driving licence in combination with a full birth certificate. For the majority of non-EEA migrants who are here lawfully, the checks are equally simple and can be satisfied with a Biometric Residence Permit. This is a credit card sized document that carries the name, date of birth and photo of the holder and also sets out their immigration status. A number of other documents will be acceptable for purposes of the check, which can be shown by prospective occupiers who do not possess a passport, driving licence or biometric residence permit.

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. If you are in possession of a UK or EEA passport or a current Biometric Residence Permit the landlord is unlikely to need to see any further documents. For documents that are encountered less frequently, including some types of visa, 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.

By performing the checks and keeping records of 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 illegal immigrants from accessing rented accommodation.

The law prohibits discrimination on various grounds known as 'protected characteristics' in England, Wales and Scotland, or 'equality grounds' in Northern Ireland. The prohibition on discrimination includes discrimination based on race in the context of renting residential accommodation.

Further advice about your rights under equality law can be found on the websites of the Equality and [Human Rights Commission](#) and the [Equality Commission for Northern Ireland](#).

4 If you need more information

The Equality and Human Rights Commission (EHRC) and the Equality Commission for Northern Ireland provide further information on matters relating to the law on discrimination.

The EHRC has produced a number of Statutory Codes of Practice to assist individuals and organisations on complying with the equality law, including Codes of Practice on Employment; Services, Public Functions and Associations; and Equal Pay. It has also produced guidance for businesses which includes a short section on estate agents and letting premises. This can be found here.

- Home Office guidance and Code of practice on illegal immigrants and private rented accommodation here.
- Right to rent aid – link.
- Advice for landlords and tenants in the private rented sector to help them understand their rights and responsibilities can be found at these links:
- Gov.UK guidance for tenants on private renting
- Gov.UK guidance on renting out a property – landlords
- Gov.UK landlord responsibilities in Scotland
- Scottish Government – tenant information
- Northern Ireland Government – private rent and tenancies
- Welsh Government – housing and regeneration

