



Home Office

# Right to rent: landlords' penalties

Version 6.0

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# About this guidance

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

## Contacts

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

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

## Clearance and publication

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

- version **6.0**
- published for Home Office staff on **1 May 2018**

## Changes from last version of this guidance

Amended Private Rental Sector Implementation Team contact details on p16.

### Related content

[Contents](#)

### Related external links

[Right to rent immigration checks: landlords' code of practice](#)

# Right to Rent scheme: background

This page gives operational enforcement officers an overview of the Right to Rent scheme and the checks a landlord is expected to make when renting accommodation.

## Landlords' Right to Rent scheme: purpose

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

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

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

The scheme first came into effect on 1 December 2014 for properties in the 5 West Midlands administrative areas of Birmingham, Dudley, Sandwell, Walsall and Wolverhampton. It was rolled out across the rest of England on 1 February 2016. The scheme does not operate in Northern Ireland, Scotland and Wales. Right to rent checks in relation to tenancies entered into in the West Midlands before 1 February 2016 were made under a different code of practice ([Right to rent immigration checks: landlords' code of practice](#)) with a slightly different list of acceptable documents.

## What is right to rent?

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

The Right to Rent scheme requires someone renting out property in an area where the scheme is in operation to carry out simple document checks before the start of a tenancy to ensure that the person they are renting to is not disqualified from renting by reason of their immigration status. If the person does not have the right to rent, the landlord should not rent to them. If they do not carry out these checks, and are found to have rented to someone who does not have the right to rent, they could be liable for a civil penalty.

The measures are not retrospective and do not apply to tenancies which began before the scheme came into effect in the relevant area. Landlords are not obliged to carry out checks on existing tenants. Also, some properties are [exempt from the Right to Rent scheme](#).

## Right to rent checks

### Landlord responsibilities

Landlords, their agents and homeowners should carry out right to rent checks ([Right to rent immigration checks: landlords' code of practice](#)) before a tenancy starts. They should:

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

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

### The landlord's checking service

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

However, if an occupier claims:

- to have an application or appeal outstanding with the Home Office
- to have permission to rent
- the Home Office has their documentation

a landlord should request a right to rent check from the UK Visas and Immigration (UKVI) landlord's checking service (LCS) ([Check if someone can rent your residential property](#)).

LCS will check CID to see whether a decision has already been made on the permission to rent. Where a decision has been made the LCS will consider whether the circumstances of the case have changed since that decision was recorded. If a decision has been made and the circumstances have not changed since it was recorded then they will issue a 'yes' response to the landlord by email, or letter if required.

If no decision has been made on the permission to rent, or if the circumstances have changed since the previous decision was recorded, then LCS will consider whether the migrant qualifies for permission to rent in line with [permission to rent criteria](#). If LCS can clearly decide whether the individual meets the criteria then they will inform

the landlord by email or letter. If it is not clear from the facts of the case whether to allow the migrant permission to rent then they will refer the request to a caseworker within the unit currently responsible for the migrant's immigration case.

LCS should answer all enquiries within 2 working days. If they cannot confirm whether somebody has permission to rent within this timeframe they will reply to the landlord with a 'yes' response.

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

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

### **Related content**

[Assessing right to rent during visits](#)

[Contents](#)



# To whom does the Right to Rent scheme apply?

This page tells operational enforcement officers who the Right to Rent scheme applies to and what types of accommodation are exempt from the scheme.

## Right to rent: responsibility for carrying out checks

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

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

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

## Tenants who sub-let property

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

## Those with an unlimited right to rent

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

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

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

## Those with a time limited right to rent

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

- foreign nationals with valid limited leave to enter or remain for a time limited period

- third country national family members in line with their EEA or Swiss family member
- those third country nationals entitled to enter or remain as a result of an enforceable right under European Union (EU) law or any provision made under section 2(2) European Communities Act 1972, such as EU family members

This means that a landlord should carry out right to rent checks at the start of a tenancy, and retain evidence that they have done so. The landlord should then also carry out a further check to establish that they have a continuing right to rent. They should do this before the expiry of their statutory excuse – which means just before whichever is the longer of either the occupier’s leave, or 12 months after the initial check – or as soon as reasonably practicable afterwards. For example:

- a person with 6 months’ leave at the time of the initial check will need to be rechecked after 12 months
- a person with 3 years’ leave will need to be checked just before the end of their leave

Where a further check has been made after the expiry of the statutory excuse, and the landlord is claiming to have done so, they should be able to provide evidence that the circumstances which prevented them making the check and notifying the Home Office earlier were exceptional, such as serious illness or a family bereavement.

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

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

### Those with ‘permission to rent’

In most cases, someone who does not have leave to enter or remain in the UK will not have the right to rent. Someone, in the UK illegally, who makes an out of time application does not have a right to rent while their application is considered.

However, when a migrant’s immigration status means they do not qualify for a right to rent, the Home Office may grant them permission to rent ([Considering who should be granted permission to rent](#)).

The circumstances will be **very limited** as the purpose of the Right to Rent scheme is to prevent illegal migrants accessing rented accommodation and to encourage them to pursue any applications or claims to stay in the UK from abroad. The Home Office can assist with this through its voluntary departure scheme ([Return home voluntarily if you're in the UK illegally](#)). The granting of permission to rent is discretionary and is dependent on a migrant being compliant with requirements which have been made by the Home Office.

## Tenancy arrangements covered by the scheme

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

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

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

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

## Exemptions to the Right to Rent scheme

### Children

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

### Accommodation types

Certain types of accommodation are also exempt, as follows:

- accommodation provided by local authorities under a statutory duty to prevent homelessness:
  - landlords should ask for written confirmation from the local authority that the authority is acting in response to a statutory duty and keep this on file
- hostels and refuges
- care homes
- holiday accommodation
- hospitals and hospices
- tied accommodation (accommodation provided by an employer to an employee)
- long leases granting occupation for 7 years or more
- student halls of residence, or accommodation provided to students where the student has been nominated for accommodation by an educational institution

## Members of visiting armed forces

Certain members of visiting armed forces deployed in the UK are not subject to immigration control. Some individuals may have an endorsement in their passport or travel document which explains that they are exempt from immigration control. In such cases Right to Rent scheme checks apply as normal, and their document can be used to satisfy the check.

Other military personnel will travel to the UK using documentation which is not recognisable to many, and which, for security reasons cannot be photocopied. These people will therefore not be able to satisfy a Right to Rent scheme check in the manner set out in the code of practice ([Right to rent immigration checks: landlords' code of practice](#)). If such a person wishes to take up residence in the private rented sector as their only or main home, then they can provide the landlord with a letter from the military unit or base which they are attached to.

This letter should confirm the prospective tenant's name, date of birth, nationality and exemption from immigration control. The landlord should ask to see an identification document to ensure that the letter relates to the holder and, if satisfied, they can let to them. The landlord should retain the letter, or a copy, as evidence that they have acted in the proper manner.

Where a landlord **can** provide a copy or original of this letter and **has** made reasonable enquiries to confirm the identity of the holder of the letter, the Home Office **will not** seek to pursue a penalty against them.

The letter may also include the details of any adult dependants of the holder who are exempt from immigration control and who will be living with them. Any other adult on the same tenancy agreement is subject to Right to Rent scheme checks as normal.

### Related content

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# Considering who should be granted permission to rent

This page tells Immigration Enforcement officers how to consider and grant permission to rent to a migrant.

You must consider any case against the:

- 'Permission to rent criteria' which sets out where the Home Office will normally grant permission to rent
- 'Discretionary permission to rent' which sets out where the Home Office may use discretion to grant permission to rent to migrants who do not meet the criteria, depending on the particular circumstances of the case

## Permission to rent criteria

Permission to rent will normally be granted where any of the following criteria apply:

- individuals with an outstanding protection claim, article 3 of the European Convention on Human Rights (ECHR) medical claim, or an outstanding appeal against the refusal of such a claim:
  - relates largely to migrants who have sought asylum or made a claim for international protection
- individuals who have lodged further submissions against the refusal of a protection claim and the submissions have been outstanding for more than 5 working days:
  - relates largely to migrants who have sought asylum or made a claim for international protection
  - particularly concerns protection cases where further submissions have been made - for guidance on handling these cases see Further submissions
- individuals who have an appeal outstanding which cannot be pursued from abroad:
  - some certified decisions will not carry a right of appeal in the UK: other appeals which have been made in the UK cannot be pursued from abroad - for full guidance see Rights of appeal
- individuals whose judicial review application has been given permission to proceed and where the judicial review would as a matter of policy be treated as being suspensive of removal, this would continue until any reconsideration required of the Home Office as an outcome of the judicial review had been undertaken:
  - if a judicial review would not be considered to be suspensive of removal, then permission to rent should not be considered for that reason - for full guidance see Judicial review guidance
- individuals who have been granted bail by an immigration tribunal or the courts which contains a residence restriction and/or electronic monitoring restrictions:
  - presenting officers will manage bail applications in the normal way and consider whether the Home Office should resist any application: however, where the Tribunal or court is minded to grant bail despite Home Office concerns, presenting officers may provide the courts with assurance that

permission to rent will be granted and CID updated immediately so that any check by a landlord can be managed quickly (the landlord will contact the Home Office [landlord's checking service](#) in order to establish that they may rent to the bailee)

- potential victims of modern slavery from the date of a positive reasonable grounds decision from the national referral mechanism (NRM) up until 2 weeks after either a positive or negative conclusive grounds decision
- recognised victims of modern slavery with an associated outstanding application for discretionary leave
- families with one or more children under the age of 18 who are cooperating with the Home Office's family returns process
- individuals who are complying with the Home Office's voluntary departure process: this includes those with genuine obstacles to return, providing that they are taking all reasonable steps to address these:
  - the National Removals Command (NRC) manages the voluntary departure process, and the consideration as to whether someone remains attached to the process lies with them: if it is not clear if a migrant is attached to the voluntary departure process then contact the NRC for clarification: in order to remain attached to the process a migrant will have to be working with the NRC in order to lift any barriers to their departure: such instances may include where a migrant needs; assistance in leaving the UK because of a medical reason; help to obtain a travel document; help in finding a viable route of return (though consideration will also have to be given to whether they could travel to a third country)

## Discretionary permission to rent

Where a migrant is disqualified from renting, and you have established that they should not be granted permission to rent in accordance with the criteria above, you must also have regard to whether it will be appropriate to grant permission to rent for the following reasons:

- Home Office will better progress a migrant's case if they were allowed permission to rent
- migrant is considered to be a vulnerable person or unable to make their own decisions
- in order to avoid a breach of human rights

You must consider these cases on what is reasonably apparent on the evidence clearly available, including any information which was received with any enquiry about permission to rent. Illegal migrants should already ensure that they inform the Home Office about their circumstances throughout any immigration process.

If you intend to apply discretion you must tell the [Private Rented Sector Implementation Team](#) (PRSIT). PRSIT offer cover during standard office hours 9am to 5pm. You may make decisions outside of these times when necessary, but must inform PRSIT of any action you take.

## Home Office will better progress a migrant's case if they were allowed permission to rent

There may be cases where the Home Office considers, beyond those situations set out in the above criteria, that it is necessary to grant permission to rent, despite the expectation that the individual should leave the UK.

This could happen when, upon making a consideration of a migrant's level of harm (see: Harm matrix), you wish to maintain contact with them by ensuring that they reside at a certain address.

There may also be instances where, in addition to setting reporting restrictions, you consider it necessary, for the protection of the public good, to require a migrant to reside at a certain address. It may be appropriate to grant permission to rent in these circumstances.

Additionally, you may consider granting permission to rent if the migrant has agreed to withdraw a legal challenge in agreement with the Home Office reconsidering an aspect of their case. But only if it is considered necessary and proportionate that the migrant be granted permission to rent while that aspect of their case is reconsidered.

## Migrant is considered to be a vulnerable adult or unable to make their own decisions

It may be the case that someone has lost their right to rent, or has not satisfied the criteria for permission to rent as a direct consequence of their vulnerability or inability to make sound decisions. This could be, for example, where someone has not been able to apply for an extension of their leave in time because the requisite support to do so has not been available. On such occasions, it may be expedient to grant the migrant permission to rent on a discretionary basis.

## In order to avoid a breach of human rights

You must consider whether a migrant's human rights would be breached if they are prevented from renting. This will not involve the same considerations as to whether a migrant's human rights would be breached if their removal from the UK is to be enforced. Whilst the Home Office will consider human rights in enforcing a removal from the UK, in most cases it will be reasonable to expect that a migrant who is here without leave and would not have permission to rent in accordance with the criteria set out above, should leave the UK and make an application to enter the UK legally from abroad if they wish to reside here.

It is expected that the permission to rent criteria will cover the majority of circumstances where there are genuine obstacles to a migrant returning home and where it would be appropriate to grant permission to rent. In other circumstances there will be a clear and reasonable expectation that an illegal migrant will leave and no expectation that they should have access to accommodation in the private rented sector.

When considering whether a decision not to grant permission to rent would breach a migrant's human rights, you must first be satisfied that, in the particular

circumstances of the individual, they do not meet any of the permission to rent criteria and do not fit into any other reason for discretion.

You must only then consider whether, in the particular circumstances, refusing to grant permission to rent would amount to a breach of human rights based upon what is reasonably apparent from the information which is available to you, including any information which was received with any enquiry about permission to rent. It will not be sufficient for an illegal migrant to simply assert that a decision not to grant them permission to rent, that left them with no other accommodation options, amounts to a breach of their human rights in circumstances where they remain in the UK by choice when they should leave.

If, following the consideration of the above, you believe there are any exceptional circumstances about the migrant's case that may breach their human rights if you do not grant them permission to rent, then you must refer the case to PRSIT.

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**Official – sensitive: end of section**

**Related content**

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# Migrant enquires if they have permission to rent

This page tells Immigration Enforcement officers what to do when a migrant, without a right to rent, enquires if they have permission to rent.

A migrant without leave can enquire whether they have permission to rent through their established contact channels with the Home Office. If somebody without leave is not in contact with the Home Office then they must contact the voluntary returns team (see: [Return home voluntarily if you're in the UK illegally](#)), or make an application to remain in the UK.

If a migrant is unsure whether they have permission to rent then they can enquire with the Home Office. They can do this either:

- directly through correspondence
- at a reporting event at a reporting centre
- at a personal appointment concerning an application

If it is obvious that the migrant should be granted permission to rent (see: [Considering who should be granted permission to rent](#)) then you must confirm this at the initial contact. Otherwise, you must refer the enquiry to a decision maker within the unit currently responsible for the migrant's immigration case (if this is not the unit that received the enquiry). Tell the migrant that they will be contacted by the unit responsible for making the permission to rent decision.

You must consider these enquiries quickly using the information already available to the Home Office. The onus is upon the migrant to ensure that they tell the Home Office of any changes to their circumstances, so these cases will rarely require the Home Office to seek further information from the migrant.

It may already have been established that the migrant should have permission to rent in the normal course of progressing the migrant's case. If this has not happened, or if the migrant's circumstances have changed since this happened, you must make a decision on whether to grant it as quickly as possible.

You must determine whether to grant the migrant permission to rent (see: [Considering who should be granted permission to rent](#)). You must make this decision based upon the facts of the case which are reasonably apparent, including any information which was received with the enquiry about permission to rent.

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## Official – sensitive: end of section

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If you decide to grant the migrant permission to rent, you must tell them in writing, by post or email. You can also confirm this verbally in person or by telephone. You must make clear that their permission to rent status can change as their case progresses.

If you decide not to grant the migrant permission to rent, you must tell them in writing, by post or email. Your letter must refer to the [permission to rent criteria](#) and explain why the migrant's case does not meet the criteria, and that their circumstances are not sufficiently compelling to exercise discretion beyond the criteria.

### Internal review of permission to rent decisions

A migrant may challenge a decision not to grant them permission to rent if they believe that the [permission to rent criteria](#) have not been correctly applied. You must consider whether an error was made in the original decision and whether to now grant the migrant permission to rent. If you decide to uphold the original decision you must get a peer or manager, working within the same department, to agree, considering whether the permission to rent criteria were applied properly to the decision.

A maximum of one reconsideration of a permission to rent decision will be made. A migrant may make a subsequent fresh enquiry of their permission to rent, but only on the basis that the circumstances of their case have changed which would allow for permission to rent to be granted.

### Related content

[Contents](#)

# Assessing right to rent during visits

This page tells operational enforcement officers about their powers to search for evidence or require landlords to provide evidence under the Right to Rent scheme.

You can refer to the Right to Rent: interviewing and evidence guidance for further instructions on how to establish whether the scheme applies, establish the responsible person, and gather evidence of liability.

## Powers to search for evidence of a breach

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

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

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

## What to do: illegal migrants encountered in a rental property

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

You must first establish that:

- the tenancy began on or after the date on which the scheme came into force in the relevant area
- the accommodation is not exempt (see: [Exemptions to the Right to Rent scheme](#)) from the scheme
- the occupier is over 18
- the occupier does not qualify for 'permission to rent' (see: [Those with 'permission to rent'](#))

Some of these checks may already have been done before the visit.

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

Those with 'permission to rent' may already have this permission noted on CID. Any case where the individual has already been identified as holding 'permission to rent' will have an associated case on CID named 'Right to Rent Check' and the outcome will be clearly marked as 'Yes Permission to Rent'.

There may be occasions where individuals would qualify for 'permission to rent' (See: [Those with 'permission to rent'](#)) but no case has been raised. If you encounter someone who may qualify for 'permission to rent', but it appears that the landlord has not conducted the appropriate checks, do not take any civil penalty action with respect of the specific individual and note on CID to state they qualify for 'permission to rent'.

## Establishing responsibility and liability

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

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

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

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

Direct questioning should be used to establish if the property is someone's only or main home, evidence could include any of the following:

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

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

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

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

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

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

There is a list of documents which are acceptable as evidence of right to rent in the [Right to rent immigration checks: landlords' code of practice](#) which governs the scheme. A single document may be acceptable, but some documents will only be accepted when combined with a second.

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

### Landlords should make copies of the evidence, keeping a record of the date and keep the copies safely

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

### Landlords should carry out further checks at the correct time, and make any necessary reports to the Home Office

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

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

If the landlord is still renting to an illegal migrant after carrying out further checks at the correct time and discovering they no longer have the right to rent, they should have made a report to the Home Office to inform us of that fact. Making a report in the correct way will generate a unique reference number for the landlord, which can be matched with records held by [the landlord's checking service](#) to demonstrate a statutory excuse against a civil penalty.

If the person responsible for carrying out the checks is present during the visit, you must ask for this reference number and check its validity. This process for making a report is currently only required in the West Midlands and you must check the validity of reference numbers through the Immigration Compliance and Enforcement (ICE) Operational Support Team (in hours) or Command and Control Unit (CCU) (out of hours). You must also establish that the landlord already had a statutory excuse in

relation to the initial checks as making the report merely extends an existing statutory excuse.

## **Related content**

[Contents](#)

# Service of Civil Penalty Notices

This page tells operational enforcement staff about the types of notice that might be served on landlords under the Right to Rent scheme.

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

## No Action Notices

You must issue a No Action Notice (NAN-E) wherever the scheme applies, and you are satisfied that in the present circumstances the responsible person, in relation to a specific individual, has complied with the requirements of the [Immigration Act 2014](#) and the [Right to rent immigration checks: landlords' code of practice](#) sufficient to establish a statutory excuse against a civil penalty.

It is the responsibility of the officer in charge (OIC) to make the decision on whether the evidence is sufficient to issue a NAN-E. The OIC must refer to the duty chief immigration officer (CIO) for the operation for authority to issue the NAN-E.

If you encounter someone who would qualify for 'permission to rent' (see: [Those with 'permission to rent'](#)), but it appears the landlord has not conducted the appropriate checks, you must include their details on the NAN-E. On service, you must explain that the landlord has a continuing obligation to comply with the legislation. The OIC must note in their pocket notebook (PNB) the evidence and the decision, alongside confirmation of the notice issued.

Following this, within 48 hours of issue of the NAN-E, a copy must be sent to the team's assistant director for quality assurance. This is for assurance purposes only and sits outside the penalty decision making process.

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

You must keep a copy of the NAN-E.

## Referral Notices

You must issue a Referral Notice (RN) where you are satisfied that the responsible person has rented property to someone without the right to rent and has not taken sufficient steps to comply with the requirements of the [Immigration Act 2014](#) and the [Right to rent immigration checks: landlords' code of practice](#) sufficient to establish a statutory excuse against a civil penalty.

If the responsible person is present, you must explain this notice setting out that the evidence is such that they may be liable for a civil penalty, the details of where the case will be sent for consideration and next steps in the process. You must also advise them that if a decision is made to issue a civil penalty, they will have the

opportunity to raise an objection. The Civil Penalty Notice issued by the Civil Penalty Compliance Team (CPCT) will give details of how to do this.

You must issue an RN for each property, and include the details of each illegal adult migrant with no right to rent occupying the rental property in breach of [section 22 of the Immigration Act 2014](#).

You must not include any individual who meets the qualifying criteria for permission to rent (see: [To whom does the Right to Rent scheme apply?](#)) on the RN.

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

- the type of rental arrangement (penalties are smaller for homeowners taking in lodgers than for landlords renting out private accommodation)
- whether the responsible person has previously received a Civil Penalty Notice for illegal renting

You must keep a copy of the RN.

## Service of notices

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

For any unplanned visits, or when the identity of the responsible person is not clear, the notice must be addressed to '**To the registered owner of** [insert property address]' and left at the property. Enforcement staff must then seek to establish the responsible person (see: [Establishing responsibility and liability](#)) using the checks previously described after the visit, and reissue a further notice by post in the correct details.

It is possible that an NAN-E and an RN could be served at the same address, if some occupiers have 'permission to rent' (see: [Those with 'permission to rent'](#)) or if evidence exists to show that checks were carried out on some occupiers but not others.

## Related content

[Contents](#)



# Right to rent: post visit and recording of findings

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

## Recording of activity

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

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

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## Submit evidence to the Civil Penalty Compliance Team (CPCT)

You must send evidence packs to CPCT electronically within 14 days of the service of the RN using the CPCT Referrals inbox.

The electronic pack must contain:

- Civil penalty referral form (see: Landlord referral form)
- Power of entry document
- witness statements and accompanying pocket notebook copies from all **relevant officers** providing evidence of illegal renting
- copy of the RN and any Additional Occupiers Supplement (AOS)
- copy of documentary evidence confirming the identity of the liable party

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

### Related content

[Contents](#)

# Residential tenancies measures (England)

This page gives an overview of the residential tenancies measures in the Immigration Act 2016, and how to consider and serve a 'Notice of Letting to a Disqualified Person' (NLDP).

These measures are applicable **throughout England** from 1 December 2016.

## Residential tenancies measures: background

[Section 39 of the Immigration Act 2016](#) (the 2016 act) inserts new provisions into the Immigration Act 2014 (the 2014 act), creating 4 new offences in connection with letting private residential premises, in England, to adults who are disqualified as a result of their immigration status.

The first offence is committed where a landlord rents to an illegal migrant, where they know or have reasonable grounds to believe this is the case. This may also include landlords who have been informed by the Home Office that an occupant in their property is an illegal migrant.

The second offence is committed where a landlord, having previously conducted a right to rent check and discovered that the person has limited leave to remain in the UK, conducts a further check and fails to notify the Home Office that the tenant is now disqualified from renting.

The third offence is committed by an agent who knows or has reasonable cause to believe that a prospective tenant or occupant is a disqualified person but does not advise the landlord before they enter into a residential tenancy agreement.

The fourth offence is committed where an agent should be conducting a further right to rent check on a sitting tenant or occupant but does not advise the landlord and the Home Office that the tenant is now disqualified from renting.

No landlord or agent will be committing an offence if they fail to notify the Home Office in circumstances where the tenant or occupant disqualified from renting was within the eligibility period for the Right to Rent scheme. The eligibility criteria is the amount of time an individual is allowed to rent for, which is a minimum of 12 months, or the length of their leave, whichever is longer. This is the case even where the tenant has become an illegal migrant through subsequently overstaying their leave during the eligibility period. This is explained further in section 5.2 of the [Landlords Code of Practice](#).

There may be a defence for any landlord who has taken reasonable steps to end the tenancy within a reasonable period of time.

[Section 40 of the 2016 act](#) inserts provisions into the 2014 act which, together with amendments made to housing legislation by that section and [section 41 of the 2016 act](#), provides a new route for landlords to be able to terminate residential tenancy

agreements under which one or more disqualified persons are occupying premises. In most cases, the availability of this new route is dependent on a notice or notices having been served on the landlord, by the Secretary of State, informing the landlord that the occupier or occupiers are disqualified (a 'Notice of Letting to a Disqualified Person' or NLDP).

See also [Landlords: immigration right to rent checks](#).

While the Right to Rent scheme only affects tenancies that were entered into on or after the date on which that scheme came into effect in the relevant part of the country, these changes made to housing legislation apply to existing tenancies (entered into before the 1 December 2016 when sections 40 and 41 will come into force) in England, regardless of when the tenancy agreement was entered into. **This means that where criteria for service are met, an NLDP may be served regardless of when any tenancy agreement was entered into.**

## **Actions to trigger the application of the new routes to eviction**

Anyone who is lawfully in the UK generally has the right to rent property. Those who are here illegally do not normally have the right to rent and are usually liable to have their tenancies brought to an end.

The new route to ending a tenancy agreement relies on the Home Office serving an NLDP on a landlord who is letting to someone without the right to rent. The notice informs the landlord that they are letting to such a person and that they may be committing an offence, and explains that they may be able to establish a defence by taking reasonable steps in a reasonable period of time to end the tenancy. This could involve relying on the Home Office notice to invoke the new route to end a tenancy, although other, existing, methods of removing someone from a property can also be used.

Action to trigger the service of an NLDP by the Home Office may occur in 4 ways, summarised below.

### **Action by Immigration Compliance and Enforcement (ICE) teams**

During routine visits, ICE teams will serve an NLDP on the landlord in relation to those, upon encounter, who meet the criteria for service of a notice. The landlord can use this notice to end the tenancy if required. In certain cases, the ICE team may refer a case to the Evictions Team to serve a notice. ICE teams must also look for any evidence that an offence has been committed.

ICE officers who suspect an offence has been committed must seize any relevant evidence under [section 48 of the 2016 act](#) and refer the case to Criminal and Financial Investigations (CFI) team as soon as practicable. For further guidance see Seizure and retention: sections 48 and 49 Immigration Act 2016.

## Action by Home Office decision makers

Home Office decision makers who, during the course of their normal duties, identify individuals living in private rented accommodation who have no leave in the UK and do not have permission to rent, can refer the case to the Evictions Team who will consider the case against the eviction criteria and serve an NLDP on the landlord if appropriate.

## Action by other government departments (OGDs)

Bespoke data sharing exercises between the Home Office and OGDs will also identify offenders who are renting while disqualified.

## Action by landlords

If a landlord knows or has reasonable cause to believe that they are renting to a disqualified person, they may use an online service and request that the Home Office serves an NLDP to allow them to use the new routes to eviction in the 2014 act. The Evictions Team will consider requests for NLDPs from landlords and serve notices if appropriate.

More detail about how the first 2 of these processes work is set out below. The third and fourth are managed by the Evictions Team, and training material for those processes sits separately within that team.

## Actions for Immigration Compliance and Enforcement (ICE) teams

### Step 1: establish whether an offender meets the criteria for service of an NLDP on the landlord

During the course of routine visits, you must consider whether offenders you encounter meet the criteria to be the subject of an NLDP. The criteria are as follows:

- the individual is living in accommodation covered by a residential tenancy agreement defined by [section 20 of the Immigration Act 2014](#), this means that (all apply):
  - the occupier must be living at the property as their only or main home in the UK
  - rent must be being paid for the accommodation, however, this rent does not have to be the market rate nor paid by the disqualified person
  - it is not an excluded agreement (for a list of excluded agreements, see chapter 3 of the [right to rent immigration checks: landlords' code of practice](#))
- the individual requires leave to enter or remain but does not have it
- the individual does not qualify for permission to rent (see Considering who should be granted permission to rent)
- for family cases (a family with one or more children under the age of 18), the family has previously been in the family returns process (FRP) but has since dropped out of that process due to non-compliance:
  - it will be documented on CID that permission to rent was previously granted on the basis that the family was within the FRP, but that this permission

- would not apply for any future tenancies due to their lack of compliance with the process
- o families which are encountered that have **never** been part of the FRP, or which are **currently** within that process, will **not** be the subject of an NLDP
  - o for further guidance on dealing with families outside the FRP see 45 (c) Operational process outside of the FRP

While the Right to Rent scheme **only** affects tenancies that were entered into **on or after** the date on which that scheme came into effect in the relevant part of the country, where criteria for service are met, an NLDP **may** be served **regardless** of when any tenancy agreement was entered into.

There is no requirement for a formal written tenancy agreement to be in place. In the absence of such an agreement you must establish whether the criteria apply by questioning. These questions will be similar to those used to establish whether a tenancy exists under the Right to Rent scheme, see [Notice of letting to a disqualified person \(NLDP\) questions](#).

## Step 2: determine whether to serve an NLDP immediately, and take appropriate action

Once an individual is identified as meeting the criteria for being subject of an NLDP, you must then consider whether a pause of 14 days is warranted before the notice is served on the landlord. A 14 day pause will be appropriate when an individual is a clandestine entrant who, until the point of encounter, has **never had any contact with the Home Office**, whether in or out of country. This is because the individual's circumstances may change within that period, meaning that an NLDP served in respect of them may become invalid.

### Case does not meet the criteria for a 14 day pause

If the case does not meet the criteria for a 14 day pause before service of an NLDP, you must serve the NLDP on the appropriate liable landlord during the visit, and explain the implications of the notice to the migrant if they are present. If the liable landlord is at the property, the NLDP can be served in person. If not, a copy of the NLDP must be left at the rented property addressed to 'the landlord of (property address)', with a further copy served by post to the appropriate address after the visit once the landlord has been identified.

All migrants encountered who meet the above criteria and are on the same tenancy must be named on a single NLDP. If they form part of a family group with linked application, one NLDP can be served naming all the family members who meet the above criteria and are believed to be living at that property, regardless of whether they are all encountered.

### Case meets the criteria for a 14 day pause

If the case meets the criteria for a 14 day pause before service of an NLDP, you must not serve the notice during the visit but instead refer the case to the Evictions Team as soon as possible following the operation, complete with the liable landlord's details (see [Step 3](#)). Make referrals by opening an associated case on CID and sending an email to the specialist inbox, see the instructions in [Step 4](#).

The Evictions Team will then assume responsibility for serving the NLDP on the liable landlord 14 days after the operation, if it is appropriate to do so at that time. If the landlord is present on the visit and enquires as to whether an NLDP will be served, you can refer them to the [Landlords: immigration right to rent checks](#) webpage.

### In all cases

You must **promote** [voluntary departure](#) for all persons encountered that are disqualified from renting in the UK.

You must take care that all individuals who meet the criteria for being the subject of an NLDP are **not given a residence restriction on their bail paperwork**, this must be left blank. This equates to bailing to 'No Fixed Address'.

### Step 3: identify the liable landlord for service of the NLDP

Whether or not a case meets the criteria for a 14 day pause, you must attempt to identify the liable landlord for service of the NLDP during the visit. The liable landlord for the purpose of serving an NLDP is the same as the liable landlord as defined in the Right to Rent scheme. This means that the landlord will be the person who has authorised the disqualified person to rent the property, whether directly or as an agent working on behalf of a landlord, or a homeowner renting to a lodger in their home, or a tenant who is sub-letting to someone else. It is vital to establish:

- who has authorised the rental of the property or room:
  - clarify the full name, address and telephone number of the person authorising rental of the property or room
- who receives the rent paid

Consider conducting the following checks to identify a landlord and their address:

- Home Office systems:
  - CID
  - central reference system (CRS)
  - national operations database (NOD)
- electoral roll
- council tax lists
- business rates records
- operational notification form
- Land Registry ([Search for property information from Land Registry](#)) to identify the property owner, there is a charge of £3 for this check
- Experian (£12 per check)

### Step 4: complete post-visit recording and referrals

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Also consider sharing information about the visit with other government departments (OGDs) and local authorities (LAs) where appropriate to do so.

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## Step 5: on-going monitoring

You must check the CID record of each offender encountered at an address as part of your post visit work. If an individual has previously been named on an NLDP at the same address and the outcome of the 'Eviction Processes' case is 'Tenant Left Property', refer this using the intelligence management system (IMS) to be considered by Intelligence teams, see Intelligence referral form.

## Actions for Home Office decision makers

You must consider referring cases which are appeal rights exhausted (ARE) to the Evictions Team.

For cases that are not immediately suitable for ICE team action or have been rejected by ICE tasking, you must refer to the Evictions Team if (all apply):

- all outstanding in-time applications have been considered and refused and the migrant is ARE
- they do not qualify for permission to rent (see Considering who should be granted permission to rent)
- there is clear evidence of the individual living in accommodation covered by a residential tenancy agreement defined by [section 20 of the Immigration Act 2014](#), this means that (all apply):
  - the occupier must be living at the property as their only or main home in the UK
  - rent must be being paid for the accommodation, however, this rent does not have to be the market rate nor paid by the disqualified person
  - it is not an excluded agreement (for a list of excluded agreements, see chapter 3 of the [right to rent immigration checks: landlords' code of practice](#))evidence might include information provided with an application (such as a rental agreement or an identified landlord)
- for family cases (a family with one or more children under the age of 18), the family has previously been in the family returns process (FRP) but has since dropped out of that process due to non-compliance:
  - it will be documented on CID that permission to rent was previously granted on the basis that the family was within the FRP, but that this permission would not apply for any future tenancies due to their lack of compliance with the process

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Furthermore if, during the course of your duties, you grant leave to a migrant where CID indicates they are the subject of an NLDP (an associated case raised on CID showing a notice has been served), you must refer the case to the Evictions Team for consideration of withdrawing the NDLP which may no longer stand.

It is important the referral of these cases is prioritised to prevent an individual's tenancy being ended unnecessarily.

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**Related content**

[Contents](#)

# Right to Rent scheme evidence checklist

This page gives operational enforcement officers a checklist to follow when deciding if a landlord or agent has completed the required right to rent checks and what notices to issue to them.

**1. Establish that an illegal migrant or person with no right to rent the property is paying to occupy the property as their only or main home**

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

**2. Ask for evidence of a statutory excuse**

If they are present at the property, you must ask the landlord or the appropriate agent if they can provide evidence of a statutory excuse for the identified illegal occupier. If evidence is presented during the operation proceed to [Step 3 Determine if the statutory excuse criteria is met](#). If evidence is not presented, proceed directly to [Step 4 Issue the appropriate notices](#).

**3. Determine if the statutory excuse criteria is met**

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

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

- a clear copy of the documents checked in an unalterable format
- that the documents shown in the copy falls within either 'List A' or 'List B' detailed in [Right to rent document checks: a user guide](#), bearing in mind the different document lists for phases 1 and 2 of the scheme (see: [Right to rent immigration checks: landlords' code of practice](#))
- that the correct parts of the document have been copied:
  - for passports, the personal details pages establishing identity, date of birth, photograph, signature nationality, document issue date, document expiry date, information indicating entitlement to enter or remain and undertake work, and leave expiry date
  - all other documents must be in full
- it is not reasonably apparent that the illegal occupier who presented the document was an imposter
- it is not reasonably apparent that the documents presented was false
- a record of the date when the check was made (this can be on the copy, or in a separate format) and that the check was made at the required time

- copies of supporting evidence for the reasons for any different names across documents (such as marriage certificate, divorce decree, deed poll)

If the landlord claims to have a statutory excuse by virtue of making a report to the Home Office (see: [Landlords should make a report to the Home Office if an existing occupier cannot satisfy any further right to rent checks](#)), you must check their documents to establish this.

#### 4. Issue the appropriate notices

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

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

Outcome 3: Issue both notices:

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

#### Related content

[Contents](#)

# Notice of letting to a disqualified person (NLDP) questions

This page gives operational enforcement officers sample questions to use to help them establish if a residential tenancy agreement exists, and who the liable landlord is.

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