

# **DRAFT Code of practice on right to rent: Right to Rent Scheme for landlords and their agents.**

November 2023



# **DRAFT Code of practice on right to rent: Right to Rent Scheme for landlords and their agents**

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

November 2023



© Crown copyright 2023

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit [nationalarchives.gov.uk/doc/open-government-licence/version/3](https://nationalarchives.gov.uk/doc/open-government-licence/version/3).

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

This publication is available at [www.gov.uk/official-documents](https://www.gov.uk/official-documents).

Any enquiries regarding this publication should be sent to us at [RighttoRentandRighttoWork@homeoffice.gov.uk](mailto:RighttoRentandRighttoWork@homeoffice.gov.uk).

ISBN 978-1-5286-4547-8

E03016069 11/23

Printed on paper containing 40% recycled fibre content minimum

Printed in the UK by HH Associates Ltd. on behalf of the Controller of His Majesty's Stationery Office

# Contents

<b>1: Introduction .....</b>	<b>3</b>
About this version of the code of practice .....	3
When was the Scheme introduced? .....	4
How should this code of practice be used? .....	4
How to avoid discrimination.....	4
Who should use this code of practice? .....	5
References in this code of practice .....	5
<b>2: Who can occupy residential accommodation? .....</b>	<b>9</b>
Those with an unlimited right to rent .....	9
Those with a time-limited right to rent .....	9
Those with no right to rent .....	9
Those who have been granted permission to rent .....	9
Children .....	10
<b>3: Which letting arrangements fall within the Scheme? .....</b>	<b>11</b>
What is a residential tenancy agreement? .....	11
Property for use as an only or main home .....	12
Holiday accommodation .....	12
House guests .....	12
Excluded agreements .....	13
<b>4: Who may be liable for a penalty? .....</b>	<b>14</b>
Liability .....	14
Transfer of liability – Sub letting .....	14
Agents .....	14
Sitting occupiers and changes in landlord .....	15
<b>5: How to establish a statutory excuse for right to rent checks .....</b>	<b>16</b>
When to undertake an initial right to rent check .....	16
Manual document-based right to rent checks .....	17
List of acceptable documents for right to rent checks .....	17
<b>List A – acceptable documents to establish a continuous statutory excuse .....</b>	<b>18</b>
<b>List A Group 1 – If a prospective tenant can produce one document from this group, then a continuous statutory excuse will be established .....</b>	<b>18</b>

<b>List A Group 2 – If a prospective tenant can produce any two documents from ... this group, then a continuous statutory excuse will be established.....</b>	<b>19</b>
<b>List B - acceptable documents to establish a time-limited statutory excuse .....</b>	<b>21</b>
Using an Identity Service Provider (IDSP) .....	21
Basic steps to conducting a right to rent check using an IDSP: .....	22
Conducting a Home Office online right to rent check .....	22
The Home Office Landlord Checking Service .....	23
Eligibility Periods .....	24
Nationals of an EEA country, Australia, Canada, Japan, New Zealand, Singapore, South Korea or the USA who are visitors to the UK .....	24
Follow-up checks .....	25
Making a report to the Home Office .....	26
COVID-19 temporary adjusted checks .....	26
<b>6: An overview of how the civil penalty is administered .....</b>	<b>27</b>
Breach .....	27
Referral .....	27
Information Request .....	27
Decision .....	27
Paying the penalty .....	27
Objecting to the penalty .....	28
Appealing against the penalty .....	28
Enforcement .....	28
<b>7: Determining liability and calculating the penalty amount .....</b>	<b>30</b>
Does the landlord have a statutory excuse? .....	30
Stage 1: Determining Liability option 2 .....	31
Stage 2: Determining the level of breach .....	31
Stage 3: The final penalty amount .....	31
<b>8: Annex A - List of acceptable professional persons .....</b>	<b>33</b>

# 1: Introduction

All landlords and their agents in England have a legal responsibility under the Immigration Act 2014 legislation to prevent those without lawful immigration status from accessing the private rented sector. Allowing those without a lawful right to be in the UK to rent property supports them in establishing a settled life here, rather than to make provision to return to their home country. This creates a significant cost to the public purse, including through the provision of local authority support, and also reduces the amount of housing stock available to those who are lawfully residing in the UK.

An individual will have the “right to rent” in the UK provided they are present lawfully in accordance with immigration law. Under section 22 of the Immigration Act 2014 (“the 2014 Act”), a landlord should not authorise an adult to occupy property as their only or main home under a residential tenancy agreement in England, if the adult is disqualified as a result of their immigration status.

The legislation underpinning the Right to Rent Scheme (in this code the restrictions and civil penalty provisions are referred to as “the Scheme”) is currently in force only in England. This code is therefore relevant only to premises let in England.

Section 23 of the 2014 Act relating to landlords and section 25 relating to agents allows the Secretary of State to serve a landlord or letting agent with a notice requiring the payment of a penalty of a specified amount where they have let property to a person who does not have the right to rent in respect of a tenancy subject to the Scheme. This code outlines which tenancies are subject to the Scheme and how any penalty will be applied as a result of the Scheme. Landlords and their agents have the option to appoint an agent to act on their behalf. Where an agent has accepted responsibility in writing for compliance with the Scheme, the agent will be the liable party in place of the landlord.

## About this version of the code of practice

This code updates the version issued in March 2022. It is the sixth version of this code and will come into force at the same time as the Immigration Act 2014 (Residential Accommodation) (Maximum Penalty) Order 2023 and the Immigration (Restrictions on Employment and Residential Accommodation) (Codes of Practice) (Amendment) Order 2023. When calculating the amount of a civil penalty, this code applies to all residential tenancy agreements which were entered into in Birmingham, Wolverhampton, Dudley, Sandwell and Walsall on or after 1 December 2014 and all residential tenancy agreements that were entered into in the rest of England on or after 1 February 2016, where a breach of the Scheme occurs on or after of 22 January 2024. This version of the code should also be applied to all right to rent checks from this date, including where a follow-up check is required to maintain a statutory excuse, even if the initial check was undertaken using a previous version of the code which was current at the time.

Right to rent checks which were carried out in the prescribed manner prior to this code having effect will be considered by the Secretary of State in line with the version of the code which was in force at the time the right to rent check was made.

The first version of the code was in force between 1 December 2014 and 1 February 2016;

The second version of the code was in force between 1 February 2016 and 1 November 2020;

The third version of the code was in force between 2 November 2020 and 30 June 2021

The fourth version of the code was in force between 1 July 2021 and 5 April 2022

The fifth version of the code was in force between 6 April 2022 and (the day before this code of practice comes into force).

## **When was the Scheme introduced?**

The Right to Rent Scheme applies only to residential tenancy agreements first entered into:

- on or after 1 December 2014 in Birmingham, Wolverhampton, Dudley, Sandwell and Walsall
- on or after 1 February 2016 in the rest of England.

## **How should this code of practice be used?**

This code has been issued under section 32 of the Immigration Act 2014. It sets out the actions a landlord should undertake to comply with the Scheme and establish a statutory excuse against liability for a civil penalty. The code sets out:

- 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.
- The factors the Secretary of State will consider when determining whether a person is occupying premises as their only or main home.
- 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.
- The factors the Secretary of State will consider when deciding on the amount of the penalty which should be imposed under the Scheme.

This code has been issued alongside the Landlord's guide to right to rent checks. This document sets out how to conduct right to rent checks and how the Home Office administers the Scheme.

## **How to avoid discrimination**

It is unlawful to discriminate against individuals on grounds of protected characteristics, including race, when entering into residential tenancy agreements. Those experiencing unlawful discrimination may claim compensation in the civil courts.



A separate 'Code of practice for landlords: Avoiding unlawful discrimination when conducting 'right to rent' checks in the private rented residential sector' gives further advice on how to operate checking processes that are non-discriminatory and in accordance with statutory equalities duties.

Landlords should apply checks to all occupiers, whether or not they may already believe the occupiers to be legally in the UK.

Checks should be performed without regard to race, religion or any other protected characteristics or equality grounds as specified in the Equality Act 2010 on all adults who will be living in the property.

## **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 the UK Parliament. Courts determining appeals against the imposition of a civil penalty on or after 22 January 2024 are required to have regard to this code. Home Office officials will also have regard to this code when administering civil penalties under the 2014 Act.

A statutory excuse under section 24 of the 2014 Act allows landlords (section 26 for agents) to be excused from paying a penalty for letting their property to someone disqualified from renting. Landlords can establish a statutory excuse against liability for a civil penalty by conducting simple checks before allowing adults to occupy rented accommodation. Landlords should not let property for use by an adult who cannot satisfy a right to rent check. Some checks will allow for an unlimited right to rent, while others will allow for a time-limited right to rent.

This code explains the actions a landlord can take to avoid liability for a civil penalty if they breach section 22 of the 2014 Act, which prohibits a landlord from renting to a person who does not have the right to rent. 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.

## **References in this code of practice**

In this code, a reference to:

'Adult' means a person who has attained the age of 18.

'Breach' means that section 22 of the 2014 Act has been contravened by renting to an adult who is a disqualified person.

'Certificate of Application' (CoA) is a digital, or non-digital document which individuals can rely on to demonstrate their eligibility to rent, work and access benefits and services. This document is issued when a valid application is made to the EU Settlement Scheme (EUSS). 'Civil penalty' or 'penalty' means a financial penalty imposed by the Home Office on a landlord who has allowed a tenant to occupy private rented residential accommodation, but the tenant does not have the right to rent.

‘Current document’ means a document that has not expired.

‘Days’ has two separate meanings:

- when referring to a tenant - means calendar days, including Saturdays, Sundays and bank holidays;
- when referring to the Landlord Checking Service – it does not include Saturdays or Sundays, Christmas Day or Good Friday, or any day which is a bank holiday in England.

‘Disqualified person’ means a person with no legal immigration status in the UK and therefore doesn’t qualify for right to rent.

‘Document’ means an original document unless specified in the code of practice that a copy, electronic or screenshot is acceptable.

‘EEA citizens’ 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 and Sweden.

‘eVisa’ refers to a digital visa provided by the Home Office as evidence of a person’s immigration status (permission to enter or stay in the UK).

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

‘Home Office online right to rent check’ means the online checking service allowing landlords to check whether a person is allowed to rent in England. This system is accessible for landlords on the [Check a tenant’s right to rent in England: use their share code](#)’ page on GOV.UK. No other online portal relating to immigration status may be used instead for right to rent purposes.

‘Identity Document Validation Technology (IDVT)’ are forms of technology operated for the purpose of verifying the identity of a person, whereby a digital copy of a physical document relating to that person is produced for verification of the document’s validity, and whether that person is the rightful holder of the document.

‘Identity Service Provider (IDSP)’ is a provider of identity verification services using IDVT. In the context of this code of practice, an IDSP may be certified to provide identity verification to specific levels of confidence, specified by government standards. IDSPs are sometimes referred to as ‘identity providers’.

‘Immigration document’ means a document of a prescribed description which:

- a) is issued as evidence that a person who is not a national of an EEA state or Switzerland is entitled to enter or remain in the United Kingdom by virtue of an enforceable EU right or of any provision made under section 2(2) of the European Communities Act 1972, or
- b) grants to the holder a right to enter or remain in the United Kingdom for such period as the document may authorise.

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

‘Leave to Enter’ or ‘Leave to Remain’ see ‘Permission to Enter’ and ‘Permission to Stay’.

‘Level of Confidence’ (LoC) is determined through a process required of IDSPs called ‘identity checking’ which is made up of 5 parts. Each step of the identity checking process is scored, and these scores are used to determine the Level of Confidence which has been achieved.

‘Lodger’ means someone who takes a room within accommodation that they share with their landlord (this could be the owner or an occupier of the property).

‘Market rent’ means the amount of rent that can be expected for the use of a property, in comparison with similar properties in the same area.

‘Negative Right to Rent Notice’ (NRRN) is a negative confirmation that a person does not have the right to rent from the Landlord Checking Service (LCS). If a landlord receives an NRRN but continues to enter into a tenancy agreement with this person, the landlord will not have a statutory excuse and may be liable for a civil penalty.

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

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

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

‘Positive Right to Rent Notice’ (PRRN) is a positive confirmation of a person’s right to rent from the Landlord Checking Service (LCS). This will provide the landlord with a statutory excuse for twelve months from the date specified in the Notice.

‘Relevant national’ means a British citizen or an Irish citizen, or a person with settled status or pre-settled status granted under the EUSS.

‘Rent’ means a tenant's regular payment to a landlord for the use of property or land.

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

‘Right to rent’ means allowed to occupy privately rented residential accommodation by virtue of qualifying immigration status.

‘Right to rent checks’ refer to manual document checks, prescribed Home Office online right to rent checks and prescribed use of an Identity Service Provider (IDSP).

‘Settlement’ (also Indefinite Leave to Remain) means a person has permission to stay in the UK indefinitely. This gives an individual the right to live, work and study in the UK for as long as they like and apply for benefits if they are eligible. They can use it to apply for British citizenship. It is sometimes referred to as ‘settled status’.

‘Sub-tenant’ means a person who leases property from a tenant.

‘Statutory excuse’ means the steps a landlord can take to avoid liability for payment of a civil penalty.

‘Tenant’ means the person or persons to whom the residential tenancy agreement is granted.

‘Valid application’ means individuals who comply with the validation requirement of an application process, including the enrolment of biometrics, if required, and the provision of evidence of nationality and identity.

‘Validity period’ in the context of this code of practice means the period for which an immigration document issued to the limited right occupier by or on behalf of the Secretary of State is valid.

Check a tenant's right to rent in England: use their share code’ means the Home Office online service on GOV.UK which enables landlords or agents to check whether a person has a right to rent and, if so, the nature of any restrictions on that person's right to do so. ‘We’ or ‘us’ in this code mean the Home Office. References to ‘you’ and ‘your’ mean the Landlord.

## 2: Who can occupy residential accommodation?

Under the Scheme, people will fall into two broad categories depending on their immigration status. The majority of individuals will have an unlimited right to rent, and others will have a time-limited right to rent.

This section sets out information about who falls into these categories and also three further groups; those with no right to rent, those who have been given permission to rent, and children.

### Those with an unlimited right to rent

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

- Relevant Nationals
- People who have the right of abode in the UK, or who have been granted settlement or have settled status, including via the EUSS, or have no time limit on their permission to stay in the UK.

A landlord will not be liable for a [civil penalty](#) if they let accommodation for occupation by someone with an unlimited right to rent.

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

Those who do not have an unlimited right to rent will have a time-limited right to rent if they have valid permission to stay, including pre-settled status, in the UK. They will have a right to reside in the UK and will be able to provide documentary evidence (physical or digital) to demonstrate this.

A landlord will not be liable for a civil penalty if they let accommodation for occupation by someone with a time-limited right to rent. However, to maintain a statutory excuse against a penalty, a landlord will need to conduct follow up checks via [Check a tenant's right to rent in England: use their share code](#) or [Check a tenant's right to rent in England: use their share code follow-up checks](#) in these cases.

### 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**. 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.

### Those who have been granted permission to rent

The Secretary of State may grant someone permission to rent, even though their immigration status means they would otherwise not have the right to rent. A landlord will not be liable for a civil penalty if they let accommodation to an adult who has been granted

permission to rent. The landlord must contact the [Landlord Checking Service](#) (LCS) for confirmation that the prospective tenant has been granted permission to rent.

## Children

This Scheme does not apply to children. 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 years of age during a residential tenancy agreement to continue to occupy property. A landlord is not required to conduct a right to rent check at the point the child turns 18 years of age. However, where follow-up checks are required for the existing tenants, the now adult should be included in those checks when they are due.

### 3: Which 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 which provides for the payment of rent unless they have a right to rent or have been granted permission to rent.

#### **What is a residential tenancy agreement?**

A residential tenancy agreement, either written or oral, means a tenancy that grants a right of occupation for a property for residential use, provides for the payment of rent (whether or not at market rent), and is not an excluded agreement. A tenancy includes any lease, licence, sublease 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 accommodation with a lease or tenancy agreement.
- occupiers who sub-let their accommodation (including those in social housing), who will be landlords for the purposes of the Scheme and landlords or
- Landlords or occupiers who take in lodgers to share their accommodation with a licence to occupy the property.

A right to rent check should be carried out on all adult tenants before a residential tenancy agreement is entered into, regardless of whether they are named in the tenancy agreement. This includes where the tenancy is:

- Varied – where a landlord agrees to the variation of a tenancy which grants the right of occupation to one or more new adult(s).
- Assigned – where a landlord agrees to the assignment of an existing and ongoing tenancy from one or more tenants which grants a new adult(s) the right of occupation.
- Surrendered – where a landlord agrees to the surrender of an existing residential tenancy agreement and grants a further agreement starting from the time the surrendered tenancy ends, to one or more of the original occupiers and one or more new occupiers ‘a new joint tenancy’.

However, a residential tenancy agreement is not to be treated as being entered into for these purposes where:

- It arises by virtue of an order from a court, by or under any statutory provision, or by operation of law,
- it arises between the same parties at the end of a term granted by a residential tenancy as a result of a contractual right exercised by the tenant.

## 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 exclusions as detailed in excluded agreement). For the purposes of the Scheme, a property will be considered a person's only or main home if:

- It is the only property they live in;
- 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.

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 home.

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.

## Holiday accommodation

The Scheme only applies to residential tenancy agreements which allow someone to take up occupation as their only or main home. 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 England). Holiday accommodation could be in a hotel, guesthouse, caravan, cottage, holiday apartment or elsewhere. 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 undertake right to rent checks.

## House guests

House guests, such as friends or family members, will not ordinarily be treated as an 'occupier' under the Scheme because a guest will generally not be living in the accommodation as their only or main home. A landlord should make reasonable enquiries at the time the residential tenancy is entered into (including when it is renewed or varied) and make an assessment based on those enquiries as to whether someone will be living on the premises as their only or main home.

Where a person is living in accommodation as their only or main home and is paying rent to another occupier, they may be regarded as having entered into their own residential tenancy agreement with that occupier (as a sub-tenant or licensee) and it will fall to that occupier to conduct the right to rent checks. For further detail on sub-letting please see 'Transfer of liability'.



## **Excluded agreements.**

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

- Accommodation arranged by local authorities
- Social housing
- Care homes, hospitals and hospices and continuing healthcare provision
- Hostels and refuges
- Mobile homes
- Tied accommodation
- Student accommodation
- Long leases.

Further information on excluded agreements can be found in the [Landlord's guide to right to rent checks](#).

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

### **Liability**

Responsibility under the Scheme lies with the landlord; that is the person who authorises the occupation of accommodation by the occupier under an agreement providing 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 in Transfer of liability.

### **Transfer of liability – 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 subtenants and sub-occupiers. Any occupier who sub-lets all or part of their accommodation to a person for payment of rent will be a landlord for the purposes of the Scheme. They may be liable for a civil penalty if they do not undertake the prescribed 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 occupation by the sub-tenants and any contraventions of the Scheme. The superior landlord will then be responsible for conducting right to rent checks and will incur any liability for a penalty. This should be an agreement in writing.

Where the superior landlord has agreed to be responsible, they are 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. These steps are 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, 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 the Scheme.

### **Agents**

Landlords may appoint an agent to conduct checks on their behalf but should keep a written agreement which should also make clear if the agent is to be responsible for the initial right to rent check and any follow-up checks for those with a time-limited right to rent. Landlords are advised to agree the timescales the agent should follow when making the checks and the form that the agent should use to communicate these (written or verbal). Under this arrangement, the liability for civil penalties transfers to the agent, but liability cannot be transferred beyond the agent.

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

If a landlord acquires a property with sitting occupiers, the new landlord should confirm with the transferring landlord that right to rent checks have been undertaken and retain evidence, for example copies of the documents (physical or digital) checked by the previous landlords, 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.

If the tenancy was entered in to before the Right to Rent Scheme came into force, landlords do not need to confirm with the transferring landlord that a right to rent check has been carried out. However, landlords should ask for proof of the date of the tenancy was entered in to and keep a record of this.

The Scheme specifies who may be liable for a civil penalty in circumstances where a disqualified 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 an occupier had a right to rent at the time the residential tenancy agreement was granted, but they have subsequently lost that right to rent 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 permission to stay 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 for right to rent checks

In order to establish a statutory excuse against a civil penalty in the event the landlord is found to be renting to someone without lawful status, landlords must do one of the following before commencing a tenancy:

1. A manual right to rent check (all citizens);
2. A right to rent check using Identity Document Validation Technology (IDVT) via the services of an Identity Service Provider (IDSP) (British and Irish citizens only);
3. A Home Office online right to rent check (non-British and non-Irish Citizens).

Increasingly, the Home Office is issuing eVisas rather than issuing physical documents as proof of an individual's immigration status. This means those individuals will only be able to evidence their right to rent using the Home Office online service.

The Home Office online right to rent service sets out what information and/or documentation is needed in order to access the service. However, it will not be possible to conduct an online right to rent check in all circumstances, as not all individuals will have an immigration status that can be checked online at this stage.

In circumstances in which a Home Office online check is not possible, landlords should conduct a manual right to rent check. For British or Irish citizens who hold a valid passport (or Irish passport card) landlords can use the services of an IDSP instead of conducting a manual right to rent check if landlords wish.

When conducting follow-up checks for those who's right to rent is time-limited, landlords may conduct either a manual check or use the Home Office online service where applicable. There are three steps involved in establishing and maintaining a statutory excuse against liability for a civil penalty:

1. Conduct a initial right to rent check before authorising an adult to occupy rented accommodation,
2. Conduct a follow-up check at the appropriate date if initial checks indicate that an occupier has a time-limited right to rent,
3. Make a [report to the Home Office](#) if follow-up checks indicate that an occupier no longer has the right to rent.

### **When to undertake an initial right to rent check**

In order to establish a statutory excuse against a civil penalty, right to rent checks must be undertaken within specific time limits as prescribed:

- A check on a person with an unlimited right to rent may be undertaken at any time before the residential agreement is entered into.
- A check on a person with a time-limited right to rent must be undertaken and recorded no earlier than 28 calendar days (including Saturdays, Sundays and bank holidays) before the start date of the tenancy agreement.

However, there will be some limited circumstances where it is not possible to undertake checks before the residential tenancy is agreed. For instance, a prospective tenant 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 permitted to check a person's right to rent before they take up occupation of the property, rather than before the start of the residential tenancy agreement.

## Manual document-based right to rent checks

There are three basic steps to conducting an initial document-based right to rent check:

1. Obtain original versions of one or more of the acceptable documents for adult occupiers,
2. Check the documents in the presence of the holder<sup>1</sup>,
3. Make clear copies of the documents and retain them with a record of the date on which the check is made. For example: the date on which this right to rent check was made: [insert date].

Landlords must check the validity of the documents in the presence of the holder. The documents must be checked to ensure that:

- They are genuine,
- The person presenting them is the prospective or existing tenant; and
- The photograph and date of birth are consistent across documents and with the person's appearance.

Landlords must make a clear copy of each document, in a format which cannot later be altered, and retain the copy securely, electronically or in hardcopy. Landlords must make a record of the date on which the check was made and retain copies securely for at least one year after the tenancy agreement comes to an end.

For a manual check, landlords should take all reasonable steps to check the validity of the documents presented to them. If a landlord is given a false document, they will only be liable for a civil penalty if it is reasonably apparent that it is false. "Reasonably apparent" means: where a person who is untrained in the identification of false documents, examining it carefully, but briefly, and without the use of technological aids could reasonably be expected to realise that the document in question is not genuine.

For a step by step guide on how to complete a right to rent check please refer to the [Landlord's guide to right to rent checks](#).

## List of acceptable documents for right to rent checks

The documents that are considered acceptable for establishing a statutory excuse when conducting a manual right to rent check are set out in two lists, **List A and List B**.

---

<sup>1</sup> The person must be present in person or via a live video link.

Where a right to rent check has been conducted using the Home Office online service, the information is provided in real-time, directly from Home Office systems and there is no requirement to see any or a combination of any of the documents listed below.

**List A** contains the range of documents which may be accepted for checking purposes for a person who has a permanent right to rent in the UK (including British and Irish citizens). If landlords carry out the prescribed checks, they will establish a continuous statutory excuse for the duration of that person's tenancy. The landlord is required to check one document from List A (Group 1) or two documents from List A (Group 2).

**List B** contains the range of documents which may be accepted for checking purposes for a person who has a time-limited right to rent in England. If landlords carry out the prescribed checks, they will establish a time-limited statutory excuse. Landlords will be required to carry out a follow-up check as set out below.

Examples of the documents, how to check them and how to copy them can be found in the [Right to Rent Checks: A user guide for tenants and landlords](#).

### **List A – acceptable documents to establish a continuous statutory excuse**

If a prospective tenant can produce either **one** document from group 1 or **two** documents from group 2 then they will not require a follow-up check.

#### **List A Group 1 – If a prospective tenant can produce one document from this group, then a continuous statutory excuse will be established**

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 passport card (in either case, whether current or expired) showing that the holder is an Irish citizen.
3. A document issued by the Bailiwick of Jersey, the Bailiwick of Guernsey or the Isle of Man, which has been verified as valid by the [Home Office Landlord Checking Service](#), showing that the holder has been granted unlimited leave to enter or remain under Appendix EU(J) to the Jersey Immigration Rules, Appendix EU to the Immigration (Bailiwick of Guernsey) Rules 2008 or Appendix EU to the Isle of Man Immigration Rules.
4. A passport or other travel document (in either case, whether 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.<sup>2</sup>
5. An immigration status document (current or expired) containing a photograph issued by the Home Office to the holder with an endorsement indicating that the person named in it is allowed to stay in the UK indefinitely or has no time limit on their stay in the UK.

---

<sup>2</sup> Definition includes those with a document which shows that the holder is entitled to readmission to the UK (RUK endorsement)

6. A certificate of registration or naturalisation as a British citizen.

**List A Group 2 – If a prospective tenant can produce any two documents from this group, then a continuous statutory excuse will be established**

1. A birth certificate issued in the UK.<sup>3</sup>
2. An adoption certificate issued in the UK.
3. A birth certificate issued in the Channel Islands, the Isle of Man or Ireland.
4. An adoption certificate issued in the Channel Islands, the Isle of Man or Ireland.
5. A letter which:
  - (a) is issued by a government department or local authority no longer than three months before the date on which it is presented,
  - (b) is signed by a named official stating their name and professional address,
  - (c) confirms the holder's name,
  - (d) confirms that the holder has accessed services from that department or authority or is otherwise known to that department or authority.
6. A letter which:
  - (a) is issued no longer than three months before the date on which it is presented,
  - (b) is signed by a British passport holder who is or has been a professional person or who is otherwise of good standing in their community.<sup>4</sup>
  - (c) confirms the holder's name,
  - (d) states how long the signatory has known the holder, such period being of at least three months' duration, and in what capacity,
  - (e) states the signatory's name, address, profession, place of work and passport number.
7. A letter issued by a person who employs the holder no longer than three months before the date on which it is presented, which indicates the holder's name and confirming their status as an employee and employee reference number or National Insurance number and states the employer's name and business address.
8. A letter issued by a police force in the UK no longer than three months before the date on which it is presented, confirming that the holder has been the victim of a crime in which a document listed in List A (Group 1) belonging to the holder has been stolen and stating the crime reference number.
9. An identity card or document issued by one of His Majesty's forces or the Secretary of State confirming that the holder is or has been a serving member in any of His Majesty's forces.

---

<sup>3</sup> Definition includes a full birth certificate issued by a UK diplomatic mission (British Embassy or British High Commission)

<sup>4</sup> See <https://www.gov.uk/government/publications/landlords-guide-to-right-to-rent-checks> for the full list of acceptable professional persons.

10. A letter issued by His Majesty's Prison Service, the Scottish Prison Service or the Northern Ireland Prison Service confirming that the holder has been released from the custody of that service no longer than six months before the date on which that letter is presented, and confirming their name and date of birth.
11. A letter issued no longer than three months before the date on which it is presented by an officer of the National Offender Management Service in England and Wales, an officer of a local authority in Scotland who is a responsible officer for the purposes of the Criminal Procedure (Scotland) Act 1995 or an officer of the Probation Board for Northern Ireland confirming the holder's name and date of birth and confirming that the holder is the subject of an order requiring supervision by that officer.
12. A current licence to drive a motor vehicle granted under Part 3 of the Road Traffic Act 1988 (to include the photocard licence in respect of licences issued on or after 1st July 1998) or Part 2 of the Road Traffic (Northern Ireland) Order 1981 (to include the photocard licence).
13. A certificate issued no longer than three months before the date on which it is presented, by the Disclosure and Barring Service under Part V of the Police Act 1997, the Scottish Ministers under Part 2 of the Protection of Vulnerable Groups (Scotland) Act 2007 or the Secretary of State under Part V of the Police Act 1997 in relation to the holder.
14. A document, or a screen shot of an electronic document, issued no longer than three months before the date on which it is presented, by His Majesty's Revenue and Customs, the Department of Work and Pensions, the Northern Ireland Department for Social Development or a local authority confirming that the holder is in receipt of a benefit listed in section 115(1) or (2) of the Immigration and Asylum Act 1999.
15. A letter which:
  - (a) is issued no longer than three months before the date on which it is presented,
  - (b) is issued by a public authority, voluntary organisation or charity in the course of a scheme operated to assist individuals to secure accommodation in the private rented sector in order to prevent or resolve homelessness,
  - (c) confirms the holder's name,
  - (d) states the address of a prospective tenancy which the authority, organisation or charity is assisting the holder to obtain.
16. A letter which:
  - (a) is issued by a further or higher education institution in the UK,
  - (b) confirms that the holder has been accepted on a current course of studies at that institution,
  - (c) states the name of the institution and the name and duration of the course.



## List B - acceptable documents to establish a time-limited statutory excuse

If a prospective tenant can produce **one** document from this group, then a time-limited statutory excuse will be established. A follow-up check will be required within the timescales outlined in Eligibility Periods.

1. A current passport or travel document endorsed to show that the holder is allowed to stay in the UK for a 'time-limited period'.
2. A current immigration status document issued by the Home Office to the holder, with a valid endorsement indicating that the holder has been granted limited leave to enter or remain in, the UK.
3. A document issued by the Bailiwick of Jersey, the Bailiwick of Guernsey or the Isle of Man, which has been verified as valid by the Landlord Checking Service, showing that the holder has been granted limited leave to enter or remain under Appendix EU(J) to the Jersey Immigration Rules, Appendix EU to the Immigration (Bailiwick of Guernsey) Rules 2008 or Appendix EU to the Isle of Man Immigration Rules.
4. A document issued by the Bailiwick of Jersey or the Bailiwick of Guernsey, or Isle of Man, showing that the holder has made an application for limited leave to enter or remain under Appendix EU to the Jersey Immigration Rules or Appendix EU to the Immigration (Bailiwick of Guernsey) Rules 2008 or Appendix EU to the Isle of Man Immigration Rules (as the case may be), **together with a Positive Right to Rent Notice** issued by the Home Office Landlord Checking Service.
5. A document issued by the Home Office, confirming an application for leave to enter or remain, under Appendix EU to the immigration rules (known as the EU Settlement Scheme or EUSS), made on or before 30 June 2021 **together with a Positive Right to Rent Notice** issued by the Home Office Landlord Checking Service.
6. A Certificate of Application (non-digital) issued by the Home Office showing that the holder has made an application for leave to enter or remain, under Appendix EU to the immigration rules (known as the EU Settlement Scheme or EUSS), on or after 1 July 2021, **together with a Positive Right to Rent Notice** issued by the Home Office Landlord Checking Service.
7. A passport of a national of an EEA country, Australia, Canada, Japan, New Zealand, Singapore, South Korea or the USA who is a visitor to the UK **together** with evidence of travel to the UK that provides documentary evidence of the date of arrival in the UK in the preceding six months.

## Using an Identity Service Provider (IDSP)

Since 6 April 2022, landlords have been able to use Identity Document Validation Technology (IDVT) via the services of an IDSP to complete the digital identity verification element of right to rent checks for British and Irish citizens who hold a valid passport (including Irish passport cards).

Digital identity verification conducted by IDSPs is the process of obtaining evidence of the prospective tenant's identity, checking that it is valid and belongs to the person who is claiming it.

If landlords use the services of an IDSP for digital identity verification, holders of valid British or Irish passports (or Irish passport cards) can demonstrate their right to rent using this method. This will provide landlords with a continuous statutory excuse. It is the landlord's responsibility to obtain evidence of the IDVT check from the IDSP. Landlords will only have a statutory excuse if they reasonably believe that the IDSP has carried out their checks in accordance with guidance issued here: [Landlord's guide to right to rent checks](#).

Landlords must not treat those who do not hold a valid passport, or do not wish to prove their identity and eligibility using an IDSP less favourably. Landlords must provide individuals with other ways to prove their right to rent and should carry out a manual document-based right to rent check in these circumstances.

For a detailed guide on how to complete a right to rent check, including detailed guidance on using an IDSP, please refer to: [Landlord's guide to right to rent checks](#).

### **Basic steps to conducting a right to rent check using an IDSP:**

1. IDSPs can carry out digital identity verification to a range of standards or levels of confidence. The Home Office recommends that landlords only accept checks via an IDSP that satisfy a minimum of a Medium Level of Confidence. A list of certified providers is available for you to choose from on GOV.UK: [Digital identity certification](#) for right to work, right to rent and criminal record checks not mandatory for you to use a certified provider; you may use a provider not featured within this list if you are satisfied that they are able to provide the required checks.
2. Landlords must satisfy themselves that the photograph and biographic details (e.g. date of birth) on the IDVT output are consistent with the individual seeking to rent the property (i.e. the information provided by the check relates to the individual and they are not an imposter). This can be done in person or by video call.
3. Landlords must retain a clear copy of the IDVT identity check output for the duration of the tenancy and for one year after the tenancy has come to an end.

Should landlords be found to be renting to individuals without their identity and eligibility being verified correctly in the prescribed manner, you will not have a statutory excuse in the event the individual is found to be renting illegally by reason of their immigration status. The landlord remains liable for any civil penalty if there is no statutory excuse.

### **Conducting a Home Office online right to rent check**

Landlords can conduct a check by accessing the Home Office online service [Check a tenant's right to rent in England](#) on GOV.UK. The online service allows checks to be carried out by video call, and landlords do not need to see physical documents as the right to rent information is provided in real-time, directly from Home Office systems.

Currently, the Home Office online service supports checks for a range of individuals, depending on the type of immigration documentation they are issued. The use of digital proof

of immigration status forms part of our move towards a UK immigration system that is digital by default. This will be simpler, safer and more convenient.

Biometric Residence Card (BRC), Biometric Residence Permit (BRP) and Frontier Worker Permit (FWP) holders are only able to evidence their right to rent using the Home Office online service. This means landlords cannot accept or check a physical BRC, BRP or FWP as proof of right to rent.

There are three basic steps to conducting a Home Office online right to rent check:

1. Use the Home Office online right to rent checking service [Check a tenant's right to rent in England: use their sharecode](#) on GOV.UK in respect of an individual and only rent to the person or enter in to a tenancy agreement with the person, if the online check confirms they have the right to rent.
2. Landlords must satisfy themselves that the photograph on the online right to rent check is of the individual.
3. Retain a clear copy of the response provided by the online right to rent check (storing that response securely, electronically or in hardcopy) for the duration of the tenancy and for one year after the tenancy has come to an end. The file must then be securely destroyed.

If the Home Office online right to rent check does not confirm that the individual has a right to rent, the landlord will not have a statutory excuse if they enter into a tenancy agreement with them.

## **The Home Office Landlord Checking Service**

In certain circumstances, a landlord may need to contact the Home Office [Landlord Checking Service \(LCS\)](#) to verify an individual's right to rent and establish a statutory excuse. The landlord should contact the LCS when the individual:

- Has a document (a non-digital Certificate of Application (CoA) or an acknowledgement letter or email) confirming receipt of an application to the EUSS on or before 30 June 2021.
- Has a non-digital CoA confirming the individual has made a valid application to the EUSS on or after 1 July 2021, and is directed to the LCS.
- Is an asylum seeker or has an appeal pending against a determination in respect of their asylum claim.
- Has an ongoing immigration application or appeal with the Home Office.
- Has their documents with the Home Office.
- Has been granted permission to rent by the Home Office.

The LCS can confirm if Home Office records show that the applicant has lawful status and, if appropriate, will issue a Positive Right to Rent Notice (PRRN). The statutory excuse will continue from the expiry date of an existing tenant's permission for a further period of up to 28 days (not including Saturdays or Sundays, Christmas Day or Good Friday, or any day which is a bank holiday in England) to enable the landlord to obtain a PRRN response from the LCS or carry out a Home Office online check. This '28-day period' does not apply to checks carried out before the start of a tenancy. In such circumstances, the landlord should

delay entering into a tenancy agreement with the individual until they have received a PRRN response from the LCS.

**How:** A landlord must request verification of right to rent from the Home Office's Landlord Checking Service using '[Request a Home Office right to rent check](#)' on GOV.UK. This is a different process to the online checking services described in [Conducting a Home Office online right to rent check](#).

The LCS will respond to the landlord with a clear 'yes' or 'no' response within two working days (not including Saturdays or Sundays, Christmas Day or Good Friday, or any day which is a bank holiday in England). This will only be sent to the landlord by the LCS and will contain a unique reference number.

The information provided by the LCS will clearly set out whether a follow-up check will be required, and if so, when.

If the LCS has not considered the request within two working days (not including Saturdays or Sundays, Christmas Day or Good Friday, or any day which is a bank holiday in England), an automatic response will be sent to the landlord informing them that they can let their property to the prospective tenant. Any response from the Home Office LCS must be retained in order to maintain a statutory excuse against liability for a civil penalty.

Please note that the LCS is for the use of landlords and agents **only**.

## **Eligibility Periods**

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:

- One year, beginning with the date on which the checks were last made.
- Until the period of the person's permission to be in the UK expires.
- Until the expiry of the validity period of the document which evidences their right to be in the UK.

To maintain a statutory excuse against payment of a penalty, a check should be conducted before the expiry of the eligibility period. At this point, landlords will need to conduct follow-up checks.

A further check can take place at any time, such as when a tenant tells the landlord that they have extended their immigration permission and by undertaking a further check their eligibility period may be extended.

## **Nationals of an EEA country, Australia, Canada, Japan, New Zealand, Singapore, South Korea or the USA who are visitors to the UK**

Nationals of the EEA, Australia, Canada, Japan, New Zealand, Singapore, South Korea and the USA, who enter the UK as a visitor are able to use eGates at UK airports, seaports and Brussels and Paris Eurostar terminals. Those individuals wishing to do so must hold a biometric passport. Those individuals not in possession of a biometric passport will be processed by a Border Force Officer at the manned passport control point. In either scenario they will not have their passports endorsed with a stamp. Those who are processed by an

officer will be informed of their permission to enter/remain and its associated conditions verbally.

Those coming to live in the UK for more than six months will have a visa in their passport and will collect their biometric residence permit post-arrival or will have been issued with an eVisa.

Those entering the UK as a visitor, including for short term study or for business reasons will be granted automatic Permission to Enter for a maximum period of up to six months and will not have a document to evidence their lawful status in the UK. These nationals are, therefore, permitted to use a combination of their passport, plus evidence of entry to the UK to demonstrate a right to rent. Although, by exception, some individuals may receive a stamp in their passport which will evidence their date of entry to the UK. In these circumstances, a landlord can conduct a right to rent check by checking their passport and the endorsement in it.

Acceptable evidence of entry to the UK may include (but is not restricted to) one of the following, or a combination of:

- An original or copy of a boarding pass or electronic boarding pass for air, rail or sea travel to the UK, establishing the date of arrival in the UK in the last six months.
- An original or copy airline, rail or boat ticket or e-ticket establishing the date of arrival in the UK in the last six months.
- Any type of booking confirmation (original or copy) for air, rail or sea travel to the UK establishing the date of arrival in the UK in the last six months.
- Any other documentary evidence which establishes the date of arrival in the UK in the last six months.

Under the Immigration Rules, upon arrival, non-visa nationals can be granted Permission to Enter the UK for up to six months from the date of their arrival. However, a different legislative framework governs the Right to Rent Scheme, purposely designed to minimise the frequency of checks a landlord needs to undertake. Landlords who have correctly conducted a right to rent check on visitors of these nationalities will obtain a statutory excuse for 12 months and must schedule a follow-up check before the end of the 12-month eligibility period if the individual is still occupying the accommodation.

## **Follow-up checks**

A follow-up check should be undertaken before this time-limited statutory excuse expires in order to maintain a statutory excuse against a civil penalty.

The landlord should ask the occupier for proof of their continued right to rent.

If the occupier cannot produce any documents (physical or digital), but claims to have reasons for this, the landlord must request a right to rent check from the LCS.

If positive confirmation is received, by way of a 'yes' response from the LCS, the response will also establish a statutory excuse, and will clearly detail if and when a follow-up check is required and must be retained as evidence.

If the LCS informs 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, and they will knowingly be letting to a disqualified person.

If the occupier cannot produce evidence of their continued right to rent, the landlord must make a report to the Home Office in order to maintain their statutory excuse, which will provide a defence against liability for a civil penalty.

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

If the follow-up checks indicate that an occupier no longer has the right to rent, or an existing occupier or occupiers are not co-operating, the landlord must make a report to the Home Office using the online form. The landlord must make the report as soon as reasonably practicable after discovering that the occupier no longer has a right to rent, or they are faced with non-compliance and before their existing time-limited statutory excuse expires.

Copies of documents (physical or digital) should not be submitted when making a report, but should be retained as set out in initial right to rent checks to satisfy a right to rent check and for future enquiries.

Making a report in the specified way will generate a unique reference number. Landlords must ensure they keep a copy of that number as evidence of their continued statutory excuse. All copies of documents taken should be kept for the duration of the tenancy agreement and for at least one year thereafter.

Making a report to the Home Office maintains a statutory excuse where the eligibility period in respect of an occupier has expired. A statutory excuse can only be established initially by conducting checks before the beginning of the tenancy.

A landlord who has failed to conduct the requisite checks before the beginning of a tenancy cannot establish a statutory excuse by making a report to the Home Office at a later date.

## **COVID-19 temporary adjusted checks**

The temporary adjustments to right to rent checks, introduced on 30 March 2020 ended on 30 September 2022.

Since 1 October 2022, landlords must carry out one of the prescribed checks as set out in this code of practice before entering into a tenancy agreement:

You do not need to carry out retrospective checks on tenants who had a COVID-19 adjusted check between 30 March 2020 and 30 September 2022 (inclusive). You will maintain a statutory excuse against liability for a civil penalty if the check undertaken during this period was done in the prescribed standard manner or as set out in the COVID-19 adjusted checks guidance. However, any individual identified with no lawful immigration status in the UK may be liable to immigration enforcement action.

## 6: An overview of how the civil penalty is administered

### **Breach**

The Scheme is deemed to be breached if a landlord is found letting to a person who is disqualified from letting private residential accommodation by virtue of their immigration status.

### **Referral**

If a landlord is found to be renting to someone in breach of the Scheme, they may be served with a Referral Notice informing them that the details of their case are being referred to Home Office officials for consideration of liability for a civil penalty.

This Referral Notice will inform the landlord how their case will be considered and the possible decision outcomes. It will also specify the date on which the breach was identified.

### **Information Request**

The Home Office will contact the landlord with an Information Request giving them the opportunity to present further information and evidence of a statutory excuse, which will inform the decision on liability.

### **Decision**

The Home Office will review all the evidence available and decide if the landlord is liable for a civil penalty. If a landlord is 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, ways to pay it, and information on how a landlord may object to the penalty. The notice will be accompanied by a Statement of Case setting out the evidence and the reasons for the Home Office decision.

If a landlord is found not liable for a civil penalty, they will be issued with a No Action Notice which makes clear that no further action will be taken under the Scheme on this occasion 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.

### **Paying the penalty**

The landlord must pay the civil penalty by the date specified in the Civil Penalty Notice or object to the notice.

The Scheme operates a faster payment option (FPO) that gives the landlord the opportunity to pay the penalty at a 30% reduction if payment is made **in full within 21 days**. The FPO is only available for landlords in receipt of their first penalty and cannot be paid in instalments.

A landlord may request permission from the Home Office's Shared Service Centre to pay their civil penalty by instalments over an agreed period, usually up to 24 months. In such

cases, landlords should provide full reasons for their inability to pay the full penalty amount in one payment.

## **Objecting to the penalty**

If the landlord receives a Civil Penalty Notice from the Home Office, they can object in writing within 28 days (not including Saturdays or Sundays, Christmas Day or Good Friday, or any day which is a bank holiday in England) of the due date specified in the notice. Details of the reason for objecting must be supplied along with evidence supporting one or more of the acceptable grounds for objection as set out on the Objection Form.

A landlord may object on one or more of the following grounds:

- they are not liable to pay the penalty (this could mean they are not the landlord of the illegal renter(s) identified);
- they have a statutory excuse (this means they carried out document checks as required); and/ or
- the level of penalty is too high (this means the Home Office have calculated the amount of penalty incorrectly, or the landlord has evidence that they have met specified mitigating criteria which has not been taken into account).

The Home Office will send an Objection Outcome Notice confirming whether the penalty has been cancelled, reduced or maintained. If the penalty is to be increased, a new Civil Penalty Notice will be sent. Each of these notices will include a Statement of Case.

## **Appealing against the penalty**

When a landlord's objection against a civil penalty has determined they remain liable for a civil penalty, the landlord may then appeal to the County Court if they are not satisfied with the decision. The landlord must appeal to the Courts within 28 days (not including Saturdays or Sundays, Christmas Day or Good Friday, or any day which is a bank holiday in England) 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 notice.

If the landlord does not receive a response from the Home Office to their objection within the 28-day period, an appeal must be brought within 28 days beginning with the date by which the Home Office should have replied.

A landlord may only appeal on the same grounds on which they could object to a penalty.

A landlord should be aware that if their appeal to the court does not succeed, the court may order that they pay the reasonable costs/expenses of the Home Office in defending their appeal.

## **Enforcement**

If the landlord does not pay the civil penalty in full or by instalments, or object or appeal, by the specified due dates, the penalty will be registered with the civil court, after which enforcement action may be commenced immediately.



If a landlord is subject to immigration control, if they are liable for a civil penalty, this will be recorded on Home Office systems and may be taken into account when considering any future immigration applications made to the Home Office.

## 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. It comprises three stages of consideration and explains how the level of breach is to be calculated.

### Does the landlord have a statutory excuse?

In **stage 1** of our consideration, we will determine if the 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 before entering into a tenancy agreement with the tenant(s).

Where a tenant has a time-limited right to rent, and the landlord has, therefore, established a **time-limited statutory excuse**, they are required to conduct a follow-up right to rent check to retain this statutory excuse.

It is the landlord's responsibility to demonstrate that they have complied with the requirements to establish and, where necessary, retain their statutory excuse.

A landlord will **not** have a statutory excuse if:

- They cannot provide evidence of having conducted the prescribed right to rent checks before entering into a tenancy agreement.
- They have rented to someone when it is reasonably apparent that they are not the holder of the document they present (either in person or digitally via a check carried out using an IDSP), or the person named and shown in the Home Office right to rent check (i.e. that person is an imposter).
- They have conducted a manual check and it is reasonably apparent that the document is false (the falsity would be considered to be 'reasonably apparent' if an individual who is untrained in the identification of false documents, examining it carefully, but briefly and without the use of technological aids, could reasonably be expected to realise that the document in question is not genuine).
- They have used the services of an IDSP, but it is reasonably apparent that the result of the check sent to the landlord is incorrect or that the document which they are relying upon is not genuine, or that, for some other reason, in the circumstances, the landlord could not reasonably have believed the IDSP had carried out the prescribed checking requirements.
- They have conducted a Home Office online check and it is reasonably apparent that the website they have used to do that check is not the official GOV.UK Home Office online right to rent checking service or they have attempted to conduct a Home Office online check but have not accessed the landlord '[Check a tenant's right to rent in England](#)' part of the service, they have only viewed information online that has been provided directly to the migrant.
- They have rented to someone when it is clear from the right to rent check that the person does not have valid right to rent in England.

- The statutory excuse was time-limited and has expired.

If we are satisfied that a landlord **has a statutory excuse**, the landlord will not be liable for a civil penalty.

But if we consider that the landlord **has not established a statutory excuse**, we will consider if this is a first or repeat breach of the Scheme and this will determine the amount of civil penalty issued.

## **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; or
- Used the Home Office online checking service; 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 maintain a statutory 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**.

## **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 repeat breach penalty amount of either £10,000 per lodger or £20,000 per occupier identified as a disqualified person. If a landlord has not previously been in breach of the Scheme, they will be subject to the lower penalty amounts of £5000 per lodger or £10,000 per occupier.

## **Stage 3: The final penalty amount.**

In stage 3, the Home Office will consider whether the landlord qualifies for a 30% reduction from the amount reached at stage 2.

The faster payment option (FPO) only applies to landlords who are liable for a first breach penalty within 3 years of either £5,000 or £10,000. It only applies where the landlord pays the civil penalty within 21 days (not including Saturdays or Sundays, Christmas Day or Good

Friday, or any day which is a bank holiday in England) of the Civil Penalty Notice being issued. It does not apply where the landlord is given permission by the Home Office's Shared Service Centre to pay the civil penalty in instalments.

Where the landlord qualifies for the FPO, the final penalty amount will be reduced from £10,000 to £7,000 per occupier (in the case of a tenant) or from £5,000 to £3,500 per landlord is liable for.

occupier (in the case of a lodger). The 30% reduction will be off the final total amount the

## 8: Annex A - List of acceptable professional persons

- accountant
- airline pilot
- articulated clerk of a limited company
- assurance agent of recognised company
- bank/building society official
- barrister
- chairman/director of limited company
- chiropodist
- civil servant (permanent)
- commissioner of oaths
- councillor, e.g. local or county
- dentist
- director/manager/personnel officer of a VAT-registered company
- engineer - with professional qualifications
- financial services intermediary, for example a stockbroker or insurance broker
- fire service official
- funeral director
- general practitioner
- insurance agent (full time) of a recognised company
- journalist
- Justice of the Peace
- legal secretary - fellow or associate member of the Institute of Legal Secretaries and PAs
- licensee of public house
- local government officer
- manager/personnel officer of a limited company
- member, associate or fellow of a professional body
- Member of Parliament
- Merchant Navy officer
- Minister of a recognised religion
- nurse - RGN or RMN
- officer of the armed services
- optician
- paralegal - certified paralegal, qualified paralegal or associated member of the Institute of Paralegals
- person with honours, for example an OBE or MBE
- pharmacist
- photographer - professional
- police officer
- Post Office official
- president/secretary of a recognised organisation
- Salvation Army officer

- social worker
- solicitor
- surveyor
- teacher, lecturer
- trade union officer
- travel agent - qualified
- valuer or auctioneer - fellows and associate members of the incorporated society
- Warrant Officers and Chief Petty Office



