

The Right to Rent Scheme under the Immigration Act 2014

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Toolkit

Codes of Practice

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

- Code of practice on illegal immigrants and private rented accommodation for tenancies which started before 1 February 2016
- Draft code of practice on illegal immigrants and private rented accommodation for tenancies which start on or after 1 February 2016
- Code of practice for landlords: avoiding unlawful discrimination when conducting 'right to rent' checks in the private rented residential sector

Toolkit

Guidance

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

Right to rent document checks: a user guide
15 January 2016

Right to rent immigration checks: landlords' code of practice
3 January 2016

Landlords right to rent checks: guide
20 October 2015

How to make a right to rent check: a 3 step guide
16 December 2015

Toolkit

Legislation

- Immigration Act 2014, Part 3, Chapter 1, and Schedule 3
- Immigration (Residential Accommodation) (Prescribed Cases) Order 2014 SI 2014/2873
- Immigration (Residential Accommodation) (Prescribed Requirements and Codes of Practice) Order 2014 SI 2014/2874
- Immigration Act 2014 (Commencement No 6) Order 2016 (SI 2016/11)
- Immigration (Residential Accommodation) (Prescribed Requirements and Codes of Practice) (Amendment) Order 2016 SI 2016/9

A civil penalty regime for landlords

- Source: Immigration Act 2014, Chapter 1, Part 3
- Aim: to create a hostile environment for migrants who are not lawfully resident in the UK
- Outcome: to make landlords into 'immigration officers' checking the status of adult occupiers of residential accommodation
- Enforcement: via financial penalties

Residential tenancy agreement

Immigration Act 2014, s 20(2)

“Residential tenancy agreement” means a tenancy which:

- (a) grants a right of occupation of premises for residential use,
- (b) provides for payment of rent (whether or not a market rent), and
- (c) is not an excluded agreement.

Residential tenancy agreement

Immigration Act 2014, s 20(3)

“tenancy” includes:

- (a) any lease, licence, sub-lease or sub-tenancy,
and
- (b) an agreement for any of those things

Residential tenancy agreement

Immigration Act 2014, s 20(4)

An agreement grants a right of occupation of premises “for residential use” if, under the agreement, one or more adults have the right to occupy the premises as their only or main residence (whether or not the premises may also be used for other purposes).

Residential tenancy agreement

Immigration Act 2014, s 20(5)

“rent” includes any sum paid in the nature of rent.

Residential tenancy agreement

Immigration Act 2014, s 20(6)

“excluded agreement” means any agreement of a description for the time being specified in Schedule 3.

Persons disqualified by immigration status or with limited right to rent

Immigration Act 2014, s 21

A person (“P”) is disqualified as a result of their immigration status from occupying premises under a residential tenancy agreement if:

- (a) P is not a relevant national, and
- (b) P does not have a right to rent in relation to the premises.

Persons disqualified by immigration status or with limited right to rent

Immigration Act 2014, s 21

“relevant national” means:

- (a) a British citizen,
- (b) a national of an EEA State other than the United Kingdom, or
- (c) a national of Switzerland.

Persons disqualified by immigration status or with limited right to rent

Immigration Act 2014, s 21

P does not have a “right to rent” in relation to premises if:

- (a) P requires leave to enter or remain in the United Kingdom but does not have it, or
- (b) P’s leave to enter or remain in the United Kingdom is subject to a condition preventing P from occupying the premises.

Persons disqualified by immigration status or with limited right to rent

Immigration Act 2014, s 21

But P is to be treated as having a right to rent in relation to premises if the Secretary of State has granted P permission to occupy premises under a residential tenancy agreement.

Persons disqualified by immigration status or with limited right to rent

Immigration Act 2014, s 21

A person with a “limited right to rent” [is a] reference[] to:

(a) a person who has been granted leave to enter or remain in the United Kingdom for a limited period, or

(b) a person who:

(i) is not a relevant national, and

(ii) 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.

Persons disqualified by immigration status not to be leased premises

Immigration Act 2014, s 22

A landlord must not authorise an adult to occupy premises under a residential tenancy agreement if the adult is disqualified as a result of their immigration status.

Persons disqualified by immigration status not to be leased premises

Immigration Act 2014, s 22

The first case is where a residential tenancy agreement is entered into that, at the time of entry, grants a right to occupy premises to:

- (a) a tenant who is disqualified as a result of their immigration status,
- (b) another adult named in the agreement who is disqualified as a result of their immigration status, or
- (c) another adult not named in the agreement who is disqualified as a result of their immigration status.

“pre-grant contravention”

Persons disqualified by immigration status not to be leased premises

Immigration Act 2014, s 22

There is a contravention as a result of subsection [(c) only if:

- (a) reasonable enquiries were not made of the tenant before entering into the agreement as to the relevant occupiers, or
- (b) reasonable enquiries were so made and it was, or should have been, apparent from the enquiries that the adult in question was likely to be a relevant occupier.

Persons disqualified by immigration status not to be leased premises

Immigration Act 2014, s 22

The second case is where:

- (a) a residential tenancy agreement is entered into that grants a right to occupy premises on an adult with a limited right to rent,
- (b) the adult later becomes a person disqualified as a result of their immigration status, and
- (c) the adult continues to occupy the premises after becoming disqualified.

“post-grant contravention”

Persons disqualified by immigration status not to be leased premises

Immigration Act 2014, s 22

Any term of a residential tenancy agreement that prohibits occupation of premises by a person disqualified by their immigration status is to be ignored for the purposes of determining whether there has been a contravention of this section if:

- (a) the landlord knew when entering into the agreement that the term would be breached, or
- (b) the prescribed requirements were not complied with before entering into the agreement.

It does not matter [] whether or not:

- (a) a right of occupation is exercisable on entering into an agreement or from a later date;
- (b) a right of occupation is granted unconditionally or on satisfaction of a condition.

**Persons disqualified by immigration
status not to be leased premises**

Immigration Act 2014, s 22

A contravention of this section does not affect the validity or enforceability of any provision of a residential tenancy agreement by virtue of any rule of law relating to the validity or enforceability of contracts in circumstances involving illegality.

**Persons disqualified by immigration
status not to be leased premises**

Immigration Act 2014, s 22

“relevant occupier”, in relation to a residential tenancy agreement, means any adult who occupies premises under the agreement (whether or not named in the agreement).

Penalty notices: landlords Immigration Act 2014, s 23

- The Secretary of State may give the responsible landlord a notice requiring the payment of a penalty.
- The amount of the penalty is such an amount as the Secretary of State considers appropriate, but the amount must not exceed £3,000.
- “Responsible landlord” means:
 - (a) in relation to a pre-grant contravention, the landlord who entered into the residential tenancy agreement;
 - (b) in relation to a post-grant contravention, the person who is the landlord under the agreement at the time of the contravention.

Penalty notices: landlords Immigration Act 2014, s 23

- But if there is a superior landlord in relation to the residential tenancy agreement who is responsible for the purposes of this section, the “responsible landlord” means that superior landlord
- A superior landlord is “responsible for the purposes of this section” if arrangements in writing have been made in relation to the residential tenancy agreement between the landlord and the superior landlord under which the superior landlord accepts responsibility for:
 - (a) contraventions of section 22 generally, or
 - (b) contraventions of a particular description and the contravention in question is of that description.

Excuses available to landlords Immigration Act 2014, s 24

- Where a landlord is given a notice under section 23 requiring payment of a penalty.
- Where the notice is given for a pre-grant contravention, the landlord is excused from paying the penalty if the landlord shows that:
 - (a) the prescribed requirements were complied with before the residential tenancy agreement was entered into, or
 - (b) a person acting as the landlord's agent is responsible for the contravention
- The prescribed requirements may be complied with for the purposes of subsection [] at any time before the residential tenancy agreement is entered into.
- But where compliance with the prescribed requirements discloses that a relevant occupier is a person with a limited right to rent, the landlord is excused [] only if the requirements are complied with in relation to that occupier within such period as may be prescribed.
- The excuse is not available if the landlord knew that entering into the agreement would contravene section 22.

Excuses available to landlords Immigration Act 2014, s 24

- Where the notice is given for a post-grant contravention, the landlord is excused from paying the penalty if any of the following applies:
 - (a) the landlord has notified the Secretary of State of the contravention as soon as reasonably practicable;
 - (b) a person acting as the landlord's agent is responsible for the contravention;
 - (c) the eligibility period in relation to the limited right occupier whose occupation caused the contravention has not expired.
- The landlord is to be taken to have notified the Secretary of State of the contravention "as soon as reasonably practicable" if the landlord:
 - (a) complied with the prescribed requirements in relation to each limited right occupier at the end of the eligibility period, and
 - (b) notified the Secretary of State of the contravention without delay on it first becoming apparent that the contravention had occurred.
- Notification [] must be in the prescribed form and manner.
- "limited right occupier", in relation to a residential tenancy agreement, means a relevant occupier who had a limited right to rent at the time when the occupier was first granted a right to occupy the premises under the agreement.²⁵

Penalty Notice: agents Immigration Act 2014, s 25

- Applies where:
 - (a) a landlord contravenes section 22, and
 - (b) a person acting as the landlord's agent ("the agent") is responsible for the contravention.
- An agent is responsible for a landlord's contravention of section 22 if (and only if):
 - (a) the agent acts in the course of a business, and
 - (b) under arrangements made with the landlord in writing, the agent was under an obligation to comply with the prescribed requirements on behalf of the landlord.
- The Secretary of State may give the agent a notice requiring the agent to pay a penalty.
- The amount of the penalty is such an amount as the Secretary of State considers appropriate, but the amount must not exceed £3,000.

Excuses available to agents Immigration Act 2014, s 26

Where an agent is given a notice under section 25 requiring payment of a penalty.

- Where the notice is given for a *pre-grant contravention*, the agent is excused from paying the penalty if the agent shows that the prescribed requirements were complied with before the residential tenancy agreement was entered into.
- The prescribed requirements may be complied with at any time before the residential tenancy agreement is entered into.
- But where compliance with the prescribed requirements discloses that a relevant occupier is a person with a limited right to rent, the agent is excused only if the requirements are complied with in relation to that occupier within such period as may be prescribed.
- The excuse is not available if the agent:
 - (a) knew that the landlord would contravene section 22 by entering into the agreement,
 - (b) had sufficient opportunity to notify the landlord of that fact before the landlord entered into the agreement, but
 - (c) did not do so.

Excuses available to agents Immigration Act 2014, s 26

Where an agent is given a notice under section 25 requiring payment of a penalty.

- Where the notice is given for a post-grant contravention, the agent is excused from paying the penalty if either of the following applies:
 - (a) the agent has notified the Secretary of State and the landlord of the contravention as soon as reasonably practicable;
 - (b) the eligibility period in relation to the limited right occupier whose occupation caused the contravention has not expired.
- The agent is to be taken to have notified the Secretary of State and the landlord of the contravention “as soon as reasonably practicable” if the agent:
 - (a) complied with the prescribed requirements in relation to each limited right occupier at the end of the eligibility period, and
 - (b) notified the Secretary of State and the landlord of the contravention without delay on it first becoming apparent that the contravention had occurred.
- Notification [] must be in the prescribed form and manner.

Eligibility Period Immigration Act 2014, s 27

- An eligibility period in relation to a limited right occupier is established if the prescribed requirements are complied with in relation to the occupier.
- An eligibility period established [] may be renewed (on one or more occasions) by complying with the prescribed requirements again.
- But an eligibility period in relation to a limited right occupier is only established or renewed under this section at any time if it reasonably appears from the information obtained in complying with the prescribed requirements at that time that the occupier is a person with a limited right to rent.
- The length of an eligibility period established or renewed under this section in relation to a limited right occupier is the longest of the following periods:
 - (a) the period of one year beginning with the time when the prescribed requirements were last complied with in relation to the occupier;
 - (b) so much of any leave period as remains at that time;
 - (c) so much of any validity period as remains at that time.

Eligibility Period Immigration Act 2014, s 27

- “leave period” means a period for which the limited right occupier was granted leave to enter or remain in the United Kingdom;
- “validity period” 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.
- “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.

Penalty Notices Immigration Act 2014, s 28

The Secretary of State may give a penalty notice:

- (a) to a landlord under section 23 without having established whether the landlord is excused from paying the penalty under section 24;
- (b) to an agent under section 25 without having established whether the agent is excused from paying the penalty under section 26.

A penalty notice must:

- (a) be in writing,
- (b) state why the Secretary of State thinks the recipient is liable to the penalty,
- (c) state the amount of the penalty,
- (d) specify a date, at least 28 days after the date specified in the notice as the date on which it is given, before which the penalty must be paid,
- (e) specify how a penalty must be paid,
- (f) explain how the recipient may object to the penalty or make an appeal against it, and
- (g) explain how the Secretary of State may enforce the penalty.

(3)

Penalty Notices

Immigration Act 2014, s 28

- A separate penalty notice may be given in respect of each adult disqualified by their immigration status in relation to whom there is a contravention of section 22.
- Where a penalty notice is given to two or more persons who jointly constitute the landlord or agent in relation to a residential tenancy agreement, those persons are *jointly and severally* liable for any sum payable to the Secretary of State as a penalty imposed by the notice.
- A penalty notice may not be given in respect of any adult if:
 - (a) the adult has ceased to occupy the premises concerned, and
 - (b) a period of 12 months or more has passed since the time when the adult last occupied the premises,
 but this [] is not to be taken as affecting the validity of a penalty notice given before the end of that period. [This proviso] does not apply to a penalty notice given after the end of the 12 month period mentioned in that subsection if:
 - (a) it is a new penalty notice [] on the determination of an objection to another penalty notice, and
 - (b) that other penalty notice was given before the end of the period.

Objection

Immigration Act 2014, s 29

- The recipient of a penalty notice ("the recipient") may object on the ground that:
 - (a) the recipient is not liable to the imposition of the penalty,
 - (b) the recipient is excused by virtue of section 24 or 26, or
 - (c) the amount of the penalty is too high.
- An objection must be made by giving a notice of objection to the Secretary of State.
- A notice of objection must:
 - (a) be in writing,
 - (b) give the reasons for the objection,
 - (c) be given in the prescribed manner, and
 - (d) be given before the end of the prescribed period.
- In considering a notice of objection to a penalty the Secretary of State must have regard to the code of practice under section 32.
- On considering a notice of objection the Secretary of State may:
 - (a) cancel the penalty,
 - (b) reduce the penalty,
 - (c) increase the penalty, or
 - (d) determine to take no action.
- After reaching a decision as to how to proceed [] the Secretary of State must:
 - (a) notify the recipient of the decision (including the amount of any increased or reduced penalty) before the end of the prescribed period or such longer period as the Secretary of State may agree with the recipient, and
 - (b) if the penalty is increased, issue a new penalty notice under section 23 or (as the case may be) section 25.

Appeals

Immigration Act 2014, s 30

- The recipient may appeal to the court on the ground that:

- (a) the recipient is not liable to the imposition of a penalty,
- (b) the recipient is excused payment as a result of section 24 or 26, or
- (c) the amount of the penalty is too high.

The court may:

- (a) allow the appeal and cancel the penalty,
- (b) allow the appeal and reduce the penalty, or
- (c) dismiss the appeal.

- An appeal is to be a re-hearing of the Secretary of State's decision to impose a penalty and is to be determined having regard to:

- (a) the code of practice under section 32 that has effect at the time of the appeal, and
- (b) any other matters which the court thinks relevant (which may include matters of which the Secretary of State was unaware).

- [The above] has effect despite any provisions of rules of court.

Appeals

Immigration Act 2014, s 30

- An appeal may be brought only if the recipient has given a notice of objection under section 29 and the Secretary of State:

(a) has determined the objection by issuing to the recipient the penalty notice (as a result of increasing the penalty under section 29(5)(c)),

(b) has determined the objection by:

- (i) reducing the penalty under section 29(5)(b), or
- (ii) taking no action under section 29(5)(d), or

(c) has not informed the recipient of a decision before the end of the period that applies for the purposes of section 29(6)(a).

- An appeal must be brought within the period of 28 days beginning with the relevant date.
- Where the appeal is brought under subsection (5)(a), the relevant date is the date specified in the penalty notice issued in accordance with section 29(6)(b) as the date on which it is given.
- Where the appeal is brought under subsection (5)(b), the relevant date is the date specified in the notice informing the recipient of the decision for the purposes of section 29(6)(a) as the date on which it is given.
- Where the appeal is brought under subsection (5)(c), the relevant date is the date on which the period that applies for the purposes of section 29(6)(a) ends.

"the court" means:

- (a) the county court, if the appeal relates to a residential tenancy agreement in relation to premises in England and Wales;
- (b) the sheriff, if the appeal relates to a residential tenancy agreement in relation to premises in Scotland;
- (c) a county court in Northern Ireland, if the appeal relates to a residential tenancy agreement in relation to premises in Northern Ireland.

Enforcement

Immigration Act 2014, s 31

- In England and Wales the penalty is recoverable as if it were payable under an order of the county court in England and Wales.
- In Scotland the penalty may be enforced in the same manner as an extract registered decree arbitral bearing a warrant for execution issued by the sheriff court of any sheriffdom in Scotland.
- In Northern Ireland the penalty is recoverable as if it were payable under an order of a county court in Northern Ireland.
- Where action is taken under this section for the recovery of a sum payable as a penalty under this Chapter, the penalty is:
 - (a) in relation to England and Wales, to be treated for the purposes of section 98 of the Courts Act 2003 (register of judgments and orders etc) as if it were a judgment entered in the county court;
 - (b) in relation to Northern Ireland, to be treated for the purposes of Article 116 of the Judgments Enforcement (Northern Ireland) Order 1981 (S.I. 1981/226 (N.I. 6)) (register of judgments) as if it were a judgment in respect of which an application has been accepted under Article 22 or 23(1) of that Order.

Transitional provision

Immigration Act 2014, s 35

- [The provision made] does not apply in relation to a residential tenancy agreement entered into before the commencement day.
- [The provision made] does not apply in relation to a residential tenancy agreement entered into on or after the commencement day (“the renewed agreement”) if:
 - (a) another residential tenancy agreement was entered into before the commencement day between the same parties (“the original agreement”), and
 - (b) the tenant has always had a right of occupation of the premises leased under the renewed agreement since entering into the original agreement.

(some) Interpretation Immigration Act 2014, s 37

- “agreement” includes an agreement in any form (whether or not in writing);
- “occupy” means occupy as an only or main residence;
- “premises” includes land, buildings, moveable structures, vehicles and vessels;
- “recipient” means the recipient of a penalty notice;
- A residential tenancy agreement grants a person a right to occupy premises if:
 - (a) the agreement expressly grants that person the right (whether or not by naming the person), or
 - (b) the person is permitted to occupy the premises by virtue of an express grant given to another person, and references to a person occupying premises under an agreement are to be read accordingly.
- A reference [] to the “prescribed requirements”, in connection with compliance with the requirements at a particular time, is a reference only to such of the requirements as are capable of being complied with at that time.
- Where two or more persons jointly constitute the landlord in relation to a residential tenancy agreement:
 - (a) the references to the landlord in:
 - (i) section 22(7)(a),
 - (ii) section 24(5), (6)(a) and (7), and
 - (iii) section 26(6)(a) and (7)(b),
 are to be taken as references to any of those persons;
 - (b) any other references to the landlord in this Chapter are to be taken as references to all of those persons.

(some) Interpretation Immigration Act 2014, s 37

Where two or more persons jointly constitute the agent
in relation to a residential tenancy agreement:

- (a) the references to the agent in section 26(5), (6)(a) and (7) are to be taken as references to any of those persons;
- (b) any other references to the agent [] are to be taken as references to all of those persons.

SCHEDULE 3

Excluded residential tenancy agreements

Social housing

- An agreement that grants a right of occupation in social housing.
- "Social housing" means accommodation provided to a person by virtue of a relevant provision.
- "Relevant provision" means a provision of:
 - (a) in relation to England and Wales:
 - (i) Part 2 of the Housing Act 1985, or
 - (ii) Part 6 or 7 of the Housing Act 1996;
- Accommodation provided to a person by virtue of a relevant provision includes accommodation provided in pursuance of arrangements made under any such provision.
- An allocation of housing accommodation by a local housing authority in England to a person who is already:
 - (a) a secure or introductory tenant, or
 - (b) an assured tenant of housing accommodation held by a private registered provider of social housing or a registered social landlord, is to be treated as an allocation of housing accommodation by virtue of Part 6 of the Housing Act 1996 (and accordingly section 159(4A) of that Act is to be ignored).
- An allocation of housing accommodation that falls within a case specified in, or prescribed under, section 160 of the Housing Act 1996 (cases where provisions about allocation under Part 6 of that Act do not apply) is to be treated as an allocation of housing accommodation by virtue of Part 6 of that Act (and accordingly that section is to be ignored).
- Terms used in sub-paragraphs (2) and (3) have the same meanings as in Part 6 of the Housing Act 1996.

SCHEDULE 3

Excluded residential tenancy agreements

- Care Homes
- Hospitals and hospices
- Other accommodation relating to healthcare provision
- Hostels and refuges
- An agreement that grants a right of occupation of accommodation in a hostel or refuge.
- "Hostel" means a building which satisfies the following two conditions:
 - (i) The first condition is that the building is used for providing to persons generally, or to a class of persons:
 - (a) residential accommodation otherwise than in separate and self-contained premises, and
 - (b) board or facilities for the preparation of food adequate to the needs of those persons (or both).
 - (ii) The second condition is that any of the following applies in relation to the building:
 - (a) it is managed by a registered housing association;
 - (b) it is not operated on a commercial basis and its costs of operation are provided wholly or in part by a government department or agency, or by a local authority;
 - (c) it is managed by a voluntary organisation or charity.
- "Refuge" means a building which satisfies the second condition [above] and is used wholly or mainly for providing accommodation to persons who have been subject to any incident, or pattern of incidents, of:
 - (a) controlling, coercive or threatening behaviour,
 - (b) physical violence,
 - (c) abuse of any other description (whether physical or mental in nature), or
 - (d) threats of any such violence or abuse.
- "registered housing association" means—(a) a private registered provider of social housing; (b) a registered social landlord within the meaning of Part 1 of the Housing Act 1996
- "voluntary organisation" means a body, other than a public or local authority, whose activities are not carried on for profit.

SCHEDULE 3

Excluded residential tenancy agreements

- Accommodation from or involving local authorities

- An agreement:

(a) under which accommodation is provided to a person as a result of a duty or relevant power that is imposed or conferred on a local authority by an enactment (whether or not provided by the local authority), and
 (b) which is not excluded by another provision of this Schedule.

- "Relevant power" means a power that is exercised for, or in connection with, a purpose of providing accommodation to a person who is homeless or is threatened with homelessness.

- The reference to a person who is homeless or is threatened with homelessness is to be read in accordance with in relation to England and Wales, section 175 of the Housing Act 1996.

- Accommodation provided by virtue of immigration provisions

- Agreement granting a right of occupation of accommodation that is provided to an individual by virtue of any of the following provisions of the Immigration and Asylum Act 1999:

(a) section 4 (provision of accommodation to persons granted temporary admission etc);
 (b) section 95 (provision of support to asylum seekers etc);
 (c) section 98 (provision of temporary support to asylum seekers etc)

- Mobile homes
- Tied accommodation
- Student accommodation
- Long leases