



Your complete guide to 'Right to Rent' immigration checks

Section 22 of the Immigration Act 2014 demands that private landlords do not let their properties to those who do not have the right to rent in the UK.

While these regulations currently apply only in areas affected by the pilot scheme (Birmingham, Walsall, Sandwell, Dudley and Wolverhampton), they will be rolled out across England from February 2016. Landlords who breach Section 22 may be liable for civil penalties of up to £3000.

Just to clarify: right now, these regulations only pertain to you if you let residential property in areas governed by those local councils. This brief guide will give you a crash-course on what all other landlords should expect in the New Year.

A brief overview

This guide is intended to give you a very brief overview of the scheme, and some advice on how to conduct the necessary checks in order to 'maintain an excuse' against a penalty, and how to conduct the checks fairly and without risking accusation of discrimination.

This guide will cover:

- **Where does the scheme cover?**
- **What rentals fall under the scheme?**
- **Who has a right to rent in the UK?**
- **How do I avoid liability for a civil penalty?**
- **How do I check a tenant's right to rent?**
- **What are 'acceptable' documents?**
- **How can I avoid accusations of discrimination?**

Where does the scheme cover?

As of the 1st December 2014, the scheme was introduced in the Birmingham, Walsall, Sandwell, Dudley and Wolverhampton area. It will then be rolled out nationally from February 2016.

What rentals fall under the scheme?

- The scheme applies to all residential tenancy agreements entered into on or after the date on which the scheme was first implemented in that particular area.
- Provided, that is, that the tenant is considered to be using the property as their 'only or main home'. For guidance on what constitutes such use, see section 3.3 here.
- A residential tenancy agreement includes any lease, licence, sub-lease or sub-tenancy which:
 - 1.Grants a right of occupation at a residential property.
 - 2.Provides for the payment of rent.
 - 3.And is not an excluded agreement e.g. social housing.

Who has a right to rent in the UK?

There are three broad categories under which potential tenants' right to rent will fall:

1. Unlimited right to rent.
2. Time-limited right to rent.
3. No right to rent.

1. Unlimited right

There are two main groups who have an unlimited right to rent in the UK:

- British citizens, EEA (European Economic Area) or Swiss nationals.
- People who have the right of abode in the UK, or people who have been granted indefinite leave to remain, or those who have no time limit on their stay in the UK.

You will not be liable for a civil penalty if you let to those with an unlimited right to rent in the UK.

2. Time-limited right

Those who aren't British citizens, EEA or Swiss nationals will have a time-limited right to rent if:

- They have valid leave to enter or remain in the UK for a limited period of time
- Or, they're entitled to enter or remain in the UK because of an enforceable right under the European Union law or any provision made under section 2(2) of the European Communities Act 1972.

*You will not be liable for a civil penalty if you let to those with a time-limited right to rent in the UK.
However, you must conduct follow-up checks in order to avoid a penalty at a future date.*

3. No right to rent

Those who require permission to be in the UK and do not have it do not have the right to rent in the UK.

You will normally be liable for a civil penalty if you let to those with no right to rent in the UK if they are using the property as their only or main home.

How do I avoid liability for a civil penalty?

Maintaining a 'statutory excuse'

Avoiding a civil penalty requires that you establish what is called a 'statutory excuse'. This involves 3 steps:

- You must conduct initial right to rent checks before authorising an adult to rent your property.
- If initial right to rent checks indicate the occupant has a time-limited right to rent – then you must conduct follow-up checks at the appropriate date.
- If your follow-up check indicate the occupant no longer has a right to rent in the UK, then you must make a report to the Home Office.

The majority of tenants will be either British, EEA or Swiss nationals. As such, most landlords will not need to do any more than an initial right to rent check in order to maintain an 'excuse' against a penalty.

How do I check tenant's right to rent?

Initial right to rent checks

There are 4 basic steps to conducting an initial right to rent check:

1. Establish the adults who will be using the property as their only or main home.
2. Obtain original versions of one or more acceptable documents for all of the above (see section 6 above for the lists of acceptable documents).
3. Check the documents in the presence of the holder of the documents.
4. Make copies of the documents and keep them along with a record of the date on which the check was made.

Initial right to rent checks can only be undertaken and recorded up to 28 days prior to the tenancy agreement coming into effect.

Follow up checks

If your tenant has a time-limited right to remain in the UK, then you necessarily have a time-limited statutory excuse against a penalty. This statutory excuse lasts either 12 months, or until the tenant's permission to remain in the UK/the validity of their documents evidencing their right to be in the UK, expires (whichever is later).

In order to maintain your time-limited statutory excuse, you must conduct follow-up checks within 28 days of expiry of their time-limited right to rent:

1. To conduct a follow-up check, you must ask the tenant to provide proof of their continued right to rent. At this point, one of three things may happen:
2. The tenant produces documents evidencing that they now have an unlimited right to rent in the UK – in which case no further follow-up checks will be necessary.
3. Or, they may produce documents evidencing that their time-limited right to rent has been extended/renewed – in which case further follow-up checks will be necessary just as before.
4. Or, they may fail to produce any documents which evidence of their continued right to rent – in which you must make a report to the Home Office (see below).

Making a report to the Home Office

Upon indication that your tenant no longer has a right to rent, you must make a report to the Home Office as soon as is 'reasonably practicable'. The report must be made in writing (by post or email) and contain all of the following:

1. The full name of the tenant who you believe has no right to rent.
2. The address of the premises the tenant is occupying.
3. Your own name and contact address.
4. Where relevant, the name and contact address of the agent.
5. The date on which the occupier first took up occupation.
6. Copies of the documents you kept after undertaking the initial right to rent check for the tenant in question.

Upon indication that your tenant no longer has a right to rent, you must make your report to the Home Office as soon as is 'reasonably practicable'. However, making a report does not mean you must begin an eviction process.

What are 'acceptable documents'?

Acceptable documents for demonstrating that a person has a right to rent in the UK are split into two lists:

List A: contains a range of documents which are acceptable as evidence for those who have an unlimited right to rent in the UK. As such, these documents evidence your continuous statutory excuse against a penalty.

List B: contains a range of documents which are acceptable as evidence for those who have a time-limited right to rent in the UK. As such, these documents evidence your time-limited statutory excuse against a penalty.

List A – unlimited right to rent

Documents in 'List A' are further split into two groups:

List A; Group 1: Acceptable single documents. Any one of these documents on its own is sufficient as evidence of a person's right to rent.

- 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.
- A passport or national identity card (current or expired) showing that the holder is a national of the European Economic Area or Switzerland.
- A registration certificate or document (current or expired) certifying or indicating permanent residence issued by the Home Office, to a national of a European Union country, a European Economic Area country, or Switzerland.
- A permanent residence card, indefinite leave to remain card, indefinite leave to enter card or no time limit card issued by the Home Office (current or expired), to a non-EEA national who is a family member of an EEA or Swiss National.
- A biometric immigration document issued by the Home Office to the holder indicating that the person named is allowed to stay indefinitely in the UK, or has no time limit on their stay in the UK. The document must be valid (not expired) at the time the right to rent check is made.
- A passport or other travel document (current or expired) endorsed to show that the holder is: exempt from immigration control, 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.
- A current immigration status document containing a photograph issued by the Home Office to the holder with an endorsement indicating that the named person is permitted to stay indefinitely in the UK or has no time limit on their stay in the UK. The document must be valid (not expired) at the time the right to rent check is made
- A certificate of registration or naturalisation as a British Citizen.

List A; Group 2: Acceptable document combinations. Any two of these documents together is sufficient as evidence of a person's right to rent:

- A full birth or adoption certificate issued in the UK, the Channel Islands, the Isle of Man or Ireland, which includes the name(s) of at least one of the holder's parents or adoptive parents.
- A letter issued within the last 3 months confirming the holder's name, issued by a UK government department or local authority and signed by a named official (giving their name and professional address), or signed by a British passport holder (giving their name, address and passport number), or issued by a person who employs the holder (giving their name and company address) confirming the holder's status as an employee.
- A letter from a UK police force confirming the holder is a victim of crime and personal documents have been stolen, stating the crime reference number, issued within the last 3 months.
- Evidence (identity card, document of confirmation issued by one of HM forces, confirmation letter issued by the Secretary of State) of the holder's previous or current service in any of HM's UK armed forces.
- A letter from HM Prison Service, the Scottish Prison Service or the Northern Ireland Prison Service confirming the holder's name, date of birth, and that they have been released from custody of that service in the past 6 months; or a letter from an officer of the National Offender Management Service in England and Wales, or from an officer of a local authority in Scotland, or from an officer of the Probation Board for Northern Ireland, confirming that the holder is the subject of an order requiring supervision by that officer.
- A letter from a UK further or higher education institution confirming the holder's acceptance on a current course of studies.
- A current full or provisional UK driving license (both the photocard and paper counterpart must be shown).
- A current UK firearm or shotgun certificate.
- Disclosure and Barring Service certificate issued within the last 3 months.
- Benefits paperwork issued by HMRC, Local Authority or a Job Centre Plus, on behalf of the Department for Work and Pensions or the Northern Ireland Department for Social Development, within 3 months prior to commencement of tenancy.

List B – time-limited right to rent

Unlike some documents in 'List A' – all documents in 'List B' must be valid at the time of the rent check taking place. Any of the following documents on its own will be sufficient evidence for a time-limited statutory excuse to be established:

- Any of the following documents on its own will be sufficient evidence for a time-limited statutory excuse to be established:
- A valid passport or other travel document endorsed to show that the holder is allowed to stay in the UK for a time-limited period.
- A current biometric immigration document issued by the Home Office to the holder, which indicates that the named person is permitted to stay in the UK for a time-limited period.
- A current residence card (including an accession residence card or a derivative residence card) issued by the Home Office to a non-EEA national who is either a family member of an EEA or Swiss national or has a derivative right of residence.
- A current immigration status document issued by the Home Office to the holder with a valid endorsement indicating that the named person may stay in the UK for a time-limited period.

Immigration Act and how it affects private landlords

Upon being presented with a qualifying document from 'List B' you will establish a statutory excuse against a penalty for a limited time period. That period will be one of the following three periods, whichever is the longest:

- One year, from the date on which checks were last made.
- Until expiry of the person's permission to be in the UK.
- Until the validity of the documents which evidence a person's right to be in the UK expire.

In order to maintain your time-limited statutory excuse, you must conduct a follow-up check within 28 days prior to the eligibility period's expiry.

In the case that the person: has an ongoing application with the Home Office, or their documents are with the Home Office, or they claim to have Home Office permission to rent, then an email from the Landlords Checking Service providing a "yes" response to a right to rent request will suffice as evidence.

The Landlords Checking Service

If a tenant can't provide the landlord with any documents from List A or B but claims to have an ongoing immigration application or appeal with the Home Office, for example, you can simply request a right to rent verification from the Home Office's Landlords Checking Service.

To do this, you will need the prospective occupier's Home Office reference number e.g. an application/appeal number or an application registration card (ARC) number.

You will receive a simple "Yes" or "No" response from the Landlords Checking Service within 2 working days.

- The "Yes" response means the individual does have a right to rent, and will give you a statutory excuse for at least 12 months from the date of the check.
- The "No" response means the individual does not have the right to rent. You should not let your property to them unless they can provide alternative evidence of their right to rent.

How can I avoid accusations of discrimination?

The best way is to conduct right to rent checks on all adult occupants, and keep copies, regardless of any assumptions you may have about their right to rent.

- Do not discriminate, directly or indirectly, in the provision of rented accommodation because of race. Race and racial grounds includes: colour, nationality, and ethnic or national origins.
- Do not make/act on assumptions about a person's immigration status based on basis of a person's colour, nationality, ethnic or national origins, accent, or on their ability to speak English or the length of time they have been resident in the UK.
- Do not treat prospective tenants less fairly simply because they have a time-limited right to remain in the UK.
- Do not treat a prospective tenant less favourably because they don't have a passport (provided they do have other qualifying documents as laid out in section 6 above).

For more detailed advice, we highly advise that you read in full the Home Office's Code of Practice for Landlords: Avoiding unlawful discrimination when conducting 'right to rent' checks in the private rented residential sector.

"The best way to ensure you don't discriminate is to treat all prospective tenants fairly and in the same way."

For more information, we suggest you visit Gov.uk and look through: Code of Practice for Landlords & Code of Practice on illegal immigrants and private rented accommodation.