The housing advice bulletin from Shelter for the National Homelessness Advice Service

Housing matters

Issue 115 December 2016

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Housing matters

Housing matters is produced by Shelter for the NHAS and aims to provide a source of up-to-date housing and homelessness news, focus on important case law, cover key legal issues, and produce information for public use.

Published by:
Shelter, 88 Old Street, London EC1V 9HU
Tel: 0344 515 2148
shelter.org.uk

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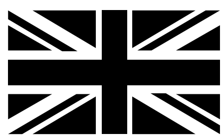
Housing matters welcomes contributions from NHAS members. If you would like to provide an article or update for *Housing matters* please email **JackieL@shelter.org.uk**



National Homelessness Advice Service

The National Homelessness Advice Service (NHAS) is a partnership between Shelter and Citizens Advice funded by the Department for Communities and Local Government.

The service aims to prevent homelessness and remedy other housing problems through increasing public access to high-quality housing advice in England, including online information on the NHAS website at www.nhas.org.uk

The NHAS provides the following to local authorities, local citizens advice and around 100 other advice agencies in England:

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- **housing debt casework** - specialist support for cases relating to mortgage arrears and other problems with housing affordability, including welfare benefits issues. Call **0300 330 0517** or use the online enquiries form (see above for details)
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Registered charity number 279057.

What's new?

Right to rent

With effect from 1 December 2016, the Immigration Act 2016 brings about the following changes to the 'right to rent' scheme:

- a landlord (or agent) commits a criminal offence by knowingly renting to a person with no right to rent
- it is a defence against a criminal charge to 'take reasonable steps in a reasonable time' to terminate a tenancy or licence after the Home Office has served a 'no right to rent' notice on the landlord
- a new 'fast-track' eviction procedure is introduced for situations where nobody has the right to rent
- two new grounds for possession are added to the existing grounds where a landlord wants to evict a Rent Act (new Case 10A) or assured tenant (new Ground 7B)

For details of all the changes, see the article 'Right to rent - eviction' on page 7 of this issue.

New Form 3 - notice seeking possession

Also with effect from 1 December 2016, a landlord seeking possession of an assured (or assured shorthold) tenancy on grounds must use a new form for a notice of seeking possession.

The Assured Tenancies and Agricultural Occupancies (Forms) (England) (Amendment No.2) Regulations 2016 SI 2016/1118 amend Form 3 to reflect new mandatory Ground 7B, which applies to an assured tenant who has no right to rent.

Spare room subsidy and discrimination

In *R (on the application of MA & Ors) v Secretary of State for Work and Pensions [2016] UKSC 58*, the Supreme Court held that regulation B13 of the Housing Benefit Regulations 2006 (the 'bedroom tax') does not unlawfully discriminate against: (1) disabled people, or (2) women at risk of domestic violence whose home has been adapted under a sanctuary scheme. In such cases a local authority should consider making up a rent shortfall through the discretionary housing payments (DHP) scheme.

However, the Court also held that the regulation is unlawful in failing to allow for an additional bedroom when: (1) a couple are unable to share a bedroom due to a disability; (2) it is needed for a carer of a disabled child.

In bulletin HB U3/2016, the DWP advises local authorities to continue to award a DHP to affected claimants until it has decided how it will comply with the judgment.

New class of 'eligible person'

With effect from 30 October 2016, the Allocation of Housing and Homelessness (Eligibility) (England) (Amendment) Regulations 2016 SI 2016/965 add a new class to the classes of persons subject to immigration control who are eligible for housing and homelessness assistance under the Housing Act 1996.

Under new class F (allocation of housing) and class G (homelessness), a person granted limited leave to enter or remain in the UK on the grounds of 'respect for family or private life' under Article 8 of the European Convention on Human Rights is eligible if leave has been granted under the Immigration Rules, and they are not subject to a 'no recourse to public funds' condition.

Changes to 'Surinder Singh' route

Non-European Economic Area (EEA) family members of British citizens cannot normally acquire a right to reside in the UK under European Union law, but under regulation 9 Immigration (EEA) Regulations 2006 SI 2006/1003, where a British citizen has worked in or been self-employed in another EEA state, her/his family members may have the right to reside when s/he returns to the UK. This is known as the 'Surinder Singh' route.

With effect from 25 November 2016, regulation 9 is amended by regulation 44 and schedule 5 Immigration (European Economic Area) 2016 SI 2016/1052 so that:

- family members of British citizens living in another EEA country as self-sufficient persons or students, not just as workers and self-employed, are covered
- the British citizen must have been resident in the other EEA country 'immediately' before returning to the UK, unless s/he had acquired a permanent right to reside in another EEA member state
- only family members who are living with the British citizen before s/he returns to the UK may acquire a right to reside in the UK
- residence in the other EEA country must have been 'genuine' and not in order to circumvent UK immigration rules.

Care leavers 18+

In this article Clare Wall looks at how single care leavers (without children) who are aged 18 and over should be supported, and helped to find somewhere to live.

Clare Wall is a team leader with the NHAS.

Social services have a range of duties to help looked-after children manage the transition to adulthood successfully. This includes planning where they will live when they leave care, and providing them with the necessary support and assistance.[1]

Importance of care leaver status

A child is 'looked after' (or 'in care') when they are placed by social services under section 20 of the Children Act 1989 (CA 1989) in any form of accommodation, eg in a children's home, foster care, or with a family friend, that is suitable to their needs, for at least 24 hours.

The most extensive leaving care duties are owed to a '*former relevant child*'. This is a young person who:[2]

- has been looked after for at least 13 weeks from the age of 14, at least some of which was whilst aged 16 or 17,[3] and
- is aged over18.

The 13 week period does not have to be continuous. It can be made up of separate periods in care.[4] It can be accrued entirely after the young person turns 16.

The leaving care duties to former relevant children outlined below continue until whichever is the later:

- the young person's 21st birthday
- (if following an education or training plan agreed with social services), that education or training ends.

Where leaving care duties to a former relevant child have ceased because the young person is over 21, if s/he later agrees a return to education or training with social services before her/his 25th birthday, then leaving care duties resume until the end of that education or training.

Determining status

Local authorities cannot evade their responsibilities by labelling time spent in care as something else.[5] If a duty under section 20 CA 1989 has arisen and social services arranged accommodation for the child, they cannot 'side-step' and refuse to meet leaving care duties by claiming that accommodation was provided under a different provision of CA 1989 such as their powers under section 17.

Transition to adulthood

All former relevant children must have a pathway plan and a personal adviser to help ensure a successful transition to adulthood. There is extensive statutory guidance about planning this transition.[6]

Pathway plan

A 'pathway plan' is prepared in consultation with a young person before they leave care. It must cover the key issues and strategies that will help the transition to independence. The pathway plan must set out, with time frames:

- where the child will live on leaving care
- what will be suitable accommodation
- planned outcomes such as further education or training
- support and assistance to help the child develop and sustain family relationships
- how emotional, physical and mental health needs will be met
- financial support
- a contingency plan to take account of arrangements possibly breaking down.

Social services must review the pathway plan at least every six months, and amend it if necessary, until the young person reaches 21, or, after turning 21, until their education, welfare, or training needs no longer require it.

Personal adviser

A personal adviser (PA) must support the young person until they turn 21, or until the end of their education or training if they pursue a course identified in their pathway plan. The PA is responsible for liaising with social services in the implementation of the pathway plan.

The PA must stay in regular contact with the young person. This includes visiting them every two months, and shortly after they move in to new accommodation.

Where a young person who is a former relevant child returns to education or training after the age of 21, a PA must be appointed and continue to support the care leaver until their course finishes.

If a care leaver does not know who their PA is, efforts should be made to establish this and, if necessary, to ensure one is appointed.

Challenging the support provided

Where a pathway plan or PA is not adequately supporting the care leaver, a complaint can be made to the relevant authority.[7] Judicial review action may be needed if a complaint is not successful. Legal aid may be available.

Qualifying young people

A care leaver who was looked after for some time while aged 16 or 17, but who does not meet the criteria to be a former relevant child, is a *qualifying young person*. This status also applies to a person who meets the criteria to be a former relevant child, but who returned home successfully aged 16 or 17.[8]

Social services does not have to prepare a pathway plan or provide a PA for a qualifying young person, but a qualifying young person who requires it is entitled to advice and support[9] from social services until their 21st birthday. Social services may also provide assistance, including - in exceptional circumstances - accommodation and cash.

Which authority owes the duties?

The last authority to have 'looked after' the care leaver remains responsible for meeting the leaving care duties, regardless of where the care leaver is now living.

Accommodation

Social services are not generally responsible for providing accommodation to care leavers who are aged 18 and over. However, they must plan well in advance for what housing options will be most appropriate after the care leaver has turned 18. Options include:

Applying as homeless

A homeless applicant aged 18 to 20 is automatically in priority need if s/he has been 'looked after, accommodated or fostered' by a local authority under section 20 of the Children Act 1989 when aged 16 or 17 for any period of 24 hours or more. A care leaver aged 21 or over who is 'vulnerable' as a result of having been in care (for any length of time) is also in priority need.[10]

Care leavers who apply as homeless after leaving care are often placed in a hostel or a foyer[11], or in the private rented sector. Accommodation must be 'suitable' (in line with the care plan) and can be challenged through a homelessness review and/or court action if it is not. Care leavers can apply for housing benefit or universal credit to pay for any rented accommodation.

Private rented accommodation

Care leavers qualify under local housing allowance for one-bedroom housing until their 22nd birthday as, until then, they are exempt from the shared accommodation rate which applies to the private rented sector.

An allocation of social housing

Care leavers may receive additional priority for social housing under a local authority allocations policy. Policies vary, so each will need to be checked individually.

Extended foster care

Former relevant children may continue to live with their foster carers after the age of 18 if their carers agree. This is called 'Staying Put'.[12] A foster family in this situation becomes a 'supported lodgings provider' and receives a reduced allowance.[13]

Vacation accommodation for students

Social services must provide or pay for accommodation outside of term time if a former relevant child (or, at their discretion, a qualifying young person[14]) who is on a course of full-time higher education or in residential further education requires it.[15]

Assistance to live near education or work

A former relevant child is entitled to a contribution from social services towards the cost of living near the place where s/he is working, looking for work, or receiving education or training identified in their pathway plan, if their welfare requires it.[16] Social services has the discretion[17] to assist a qualifying young person under 25 in this way.

Other assistance

Social services must give a former relevant child 'other assistance, to the extent that his welfare requires it'.[18] This duty extends to the provision of accommodation.[19] So, for example, if a care leaver is not entitled to assistance under Part 7 of the Housing Act 1996, or if accommodation that is available does not meet her/his welfare needs, the local authority may accommodate them.[20]

Specialist support

Young people (and their advisers if the young person is with them) who need information, advice or advocacy can phone, free of charge:

- National Youth Advocacy Service on **0808 808 100**
- Coram Voice on **0808 800 5792**.

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8.30.62.20 Children and young people leaving local authority care

Footnotes

[1] See Coram Voice's online tool 'Are you a care leaver?' tinyurl.com/ruacareleaver and Barnardo's and St Basils' 'Care leaver pack' tinyurl.com/bStBpack

[2] s.24 Children Act 1989.

[3] Also applies where a 16- or 17-year-old would have been in care on their 16th birthday, but was in hospital, or detained in the criminal justice system, or had returned home on a family placement that broke down.

[4] Short-term respite placements do not count toward 13 weeks

[5] R (on the application of G) v Southwark LBC [2009] UKHL 26.

[6] Children Act 1989: transition to adulthood for care leavers, DoE October 2010, updated January 2015. tinyurl.com/leaving-careTG

[7] s.26 Children Act 1989

[8] Only applies if the placement did not break down - reg.3(5) Care Leavers (England) Regulations 2010 SI 2010/2571.

[9] s.24(1) Children Act 1989.

[10] Homelessness (Priority Need for Accommodation) (England) Order 2002 SI 2002/2051.

[11] Foyers are for 16-25 year olds. See tinyurl.com/foyer18

[12] s.23CZA(3) Children Act 1989.

[13] See 'Staying put arrangements for care leavers' on Gov.uk tinyurl.com/StayPut1

[14] s.24B(5) Children Act 1989.

[15] s.23C(4) Children Act 1989.

[16] s.23C(4) Children Act 1989.

[17] s.24B(1) and (2) Children Act 1989.

[18] s.23C(4) Children Act 1989.

[19] R (on the application of SO) v Barking and Dagenham LBC [2010] EWCA Civ 1101; s.23C(4)(c) Children Act 1989 - assistance can include cash.

[20] Duties owed to care leavers without leave to remain in the UK are due to change as a result of the Immigration Act 2016. This article may not apply to these care leavers in the future.

Enforcing suspended possession orders

In this article John Gallagher explains how the case of Cardiff v Lee has changed the rules where a landlord wants to evict a tenant who has breached a suspended possession order.

John Gallagher is principal solicitor at Shelter.

Where a landlord brings possession proceedings against a tenant on a discretionary ground, the court may decide that, rather than make an outright possession order, it is reasonable to make a conditional order. Conditional orders usually take the form of a suspended possession order (SPO), or sometimes a postponed possession order (PPO). In either case, possession will not take place as long as the tenant abides by the terms of suspension or postponement.

Suspended orders are also available in mortgage possession proceedings, where the court has discretion under certain conditions to suspend or postpone orders.[1]

Applying for a warrant of possession

As long as the defendant tenant or borrower keeps to the terms of the order, all is well. But if they breach the terms a claimant landlord may want to enforce the order. In the county court, a claimant must apply to the court for a warrant of possession. A warrant instructs the court bailiff to carry out an eviction.

Where the possession order is outright, the claimant landlord or lender applies on court form N325, without notice to the defendant. The court's issue of a warrant of possession to enforce an absolute (outright) possession order is a purely administrative act.

Until recently, claimants would follow the same procedure if they wished to enforce an SPO following the defendant's failure to comply with the terms of that order. Form N325 does not require the claimant to certify that the defendant is in breach of the order, only that 'the whole or part of any instalments due under the judgment or order have not been paid'. No permission was needed. The court would issue the warrant, and the only notice which the occupier would receive was the notice of the eviction appointment (Form N54). The burden would be on the defendant to apply to the court to stay or suspend the warrant.

The procedure to enforce an SPO has now changed radically as a result of the Court of Appeal's decision in *Cardiff City Council v Lee.*[2]

Cardiff CC v Lee

Mr Lee (L) was a secure tenant of the Council. The Council had obtained an SPO against him, on terms that he would not breach his tenancy and/or cause a nuisance. Following disputes between L and a neighbour, the Council filed their request for a warrant of possession on form N325 in order to evict L.

The county court issued the warrant, and L applied to set it aside, on the grounds that, where a landlord was seeking to enforce an SPO, this should not have been done as an administrative act. L argued that under Part 83 of the Civil Procedure Rules (CPR), introduced in April 2014, it was necessary to seek the court's permission for the warrant.

CPR 83

CPR 83 deals with warrants (and writs) of possession. CPR 83.2(3)(e) states when permission to issue one is required:

'A relevant writ or warrant must not be issued without the permission of the court where — …(e) under the judgment or order, any person is entitled to a remedy subject to the fulfilment of any condition, and it is alleged that the condition has been fulfilled…'

The county court judge agreed that the Council should have applied for permission to issue a warrant of possession, because a condition entitling it to possession, namely that L had failed to comply with the terms of the SPO, had been fulfilled.

Could the court waive the defect?

That was not, however, the end of the matter. Although the judge accepted that the warrant had been improperly issued, he held that the court had power to waive the procedural defect (and validate the warrant) under CPR 3.10, which states:

'Where there has been an error of procedure such as a failure to comply with a rule or practice direction – (a) the error does not invalidate any step taken in the proceedings unless the court so orders; and (b) the court may make an order to remedy the error.'

L appealed to the Court of Appeal.

Court of Appeal decision

Both sides accepted that CPR 83.2 applied, and that the Council had breached the rule by failing to apply to the court for permission to issue the warrant. L argued that CPR 83.2 was intended to provide protection for tenants, and that the court did not have power to ignore its requirements and cure the procedural defect under CPR 3.10.

The Court of Appeal dismissed L's appeal. The Court agreed that a landlord, having obtained an SPO, was required by CPR 83.2 to establish that the condition entitling it to possession had been fulfilled (meaning that there had been a breach of the terms of the order) before the tenant could be evicted from her/his home. The Council had requested a warrant using Form N325: this was the wrong form of application.

But CPR 3.10 expressly stated that an error of procedure did not invalidate any step in the proceedings unless the court so ordered. The county court had remedied the procedural error in L's case by hearing his application to discharge the warrant and, having rejected that application, validated the warrant despite the error. The Court of Appeal said that the parties would have ended up in the same place even if the Council had adopted the correct procedure. Extra cost and delay would arise if the court was unable to remedy the matter by using its power under CPR 3.10.

Genuine mistake?

In the judgment, Lady Justice Arden stated that social landlords must ensure that their systems are such that the same mistake would not be made in future. She noted that in different circumstances (that is, where the tenant did not apply to the court to suspend or set aside the warrant before the eviction took place) the Council might have obtained possession of the property 'without the tenant having the benefit of the important judicial pre-scrutiny which CPR 83.2 provides'. She said:[3]

'In this case, a genuine mistake was made, but if the landlord could not show that it had made a genuine mistake in its error of procedure or that it knew that it was not entitled to proceed in this way and of course if it knew that it was not entitled to possession, then the outcome of the case would have been very different.... I reiterate that CPR 83.2 constitutes an important protection for tenants. It is not to be taken lightly.'

Every case must be dealt with on its merits, but this passage suggests that if the landlord could not show that it had made a genuine mistake, there would generally be no question of the court validating the warrant.

Applying for permission

Landlords and lenders seeking to enforce an SPO in the county court will now have to change their procedures to ensure that they apply to the court for permission to issue a warrant of possession. The claimant may apply using the standard form of Application Notice (Form N244), and may do so without giving notice to the defendant and without a hearing.[4] There will be an additional court fee (currently £100 for 'without notice' applications).

The requirement that claimants must obtain permission to issue a warrant could be an important protection for tenants, but the lack of a permission hearing is a major weakness in the rules.

In practice, the court will not know anything about the defendant's circumstances or the reasons why s/he was unable to keep to the terms of the SPO, unless the judge declines to deal with the application without hearing the defendant. In rent arrears cases, the claimant need only produce a copy of the rent or mortgage account to show that there has been a breach, and permission will be granted.

In most cases, the requirement for the court's permission appears to be little more than a formal paper process which incurs an additional court fee. In antisocial behaviour cases, it is possible that the judge will wish to hold a hearing on notice to the defendant before granting permission.

Procedure in the High Court

If a landlord or lender intends to enforce the order in the High Court, using High Court enforcement officers, they will need to apply to the county court for an order transferring the case to the High Court (and will be required to justify why they wish to do so).

For mortgage lenders, once the proceedings have been transferred, the rules state that it is not necessary to apply for permission to issue a writ of possession.[5] However, it is likely that this general High Court rule is also now subject to the ruling in *Cardiff v Lee*, and that lenders are only exempt from the permission requirement when they wish to enforce outright possession orders.

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11.12.8.40 Warrants of possession and eviction by bailiffs

Footnotes

[1] Under s.36, Administration of Justice Act 1970, or by virtue of the court's power to make a time order in relation to regulated mortgage contracts under s.129, Consumer Credit Act 1974.

[2] [2016] EWCA Civ 1034, 19 October 2016.

[3] para 31 [2016] EWCA Civ 1034.

[4] CPR 83.2(5).

[5] CPR 83.13(6).

Borrower's representatives should point out to the court and lenders' advocates that there may be little purpose in ordering a transfer to the High Court as a further permission application will be necessary should the claim be transferred.

For landlords, under CPR 83.13(2) a landlord must obtain the permission of the High Court before the writ of possession is granted so the decision in ***Cardiff v Lee*** has no practical effect in this case.

Defending possession

(1) Pre-execution of the warrant: was permission applied for?

Tenants' and borrowers' representatives (especially duty advisers on court duty schemes) should ask if the claimant has obtained permission to issue the warrant where there is an SPO. If the claimant has simply applied for a warrant using Form N325, the defendant can apply to set aside or discharge the warrant.

In the same application, the defendant can ask for the warrant to be further suspended on terms, in case the court is unwilling to set it aside. Where the court considers the merits of the case in dealing with this application – in particular, whether the defendant is in breach of an SPO, the seriousness of the breach, and the defendant's proposal to remedy the situation – it may decide that the claimant is justified in seeking to enforce the order and may then use its case management powers to waive the lack of permission.

This is what happened in L's case. But the judgment suggests that the court should only be prepared to validate the warrant if the landlord has made a 'genuine mistake' in not obtaining permission. Clearly, any landlords who have applied for warrants to enforce SPOs before the decision in *Cardiff v Lee* will have done so in error. But social landlords who do not apply for permission in the aftermath of the case are likely to struggle to convince a court that they failed to do so as a result of a genuine mistake.

(2) Post-execution of the warrant

Where a tenant or borrower has actually been evicted under a warrant for which permission was not obtained (and should have been), and for whatever reason s/he was not able to apply to suspend the warrant before the eviction, the court will have had no opportunity to validate the warrant before execution.

The defendant may therefore be advised of her/his right to apply to the court to set aside the warrant on the ground of abuse of process, although s/he must act quickly in doing so.

(3) Outright order applied for instead

It is possible that a landlord may now attempt to persuade the court to make an outright order where it would previously have requested an SPO in order not to incur (and have to pass on to the tenant) the additional court fee for permission if the order is breached. The landlord may even offer not to enforce the outright order if terms are kept to.

An adviser should alert the court to situations where a landlord would previously have been content with an SPO, and may argue (1) that the tenant will keep to the terms of an SPO so the issue of fees is not relevant, and (2) it would not be an appropriate exercise of the court's discretion to make an outright possession order merely to avoid the need for an additional court fee.

(4) Requesting permission as part of SPO

Some landlords may attempt to avoid the permission fee by seeking permission to enforce the SPO as part of that order in the event of a breach.

Whilst this could spare a tenant in breach of an SPO from paying an additional fee, such a tactic would defeat the purpose in CPR 83.2 of there being some judicial scrutiny before a warrant is issued.

Conclusion

On the face of it, the Court of Appeal's decision in *Cardiff v Lee* appears to provide the protection for occupiers which for many years has been lacking where a landlord seeks to enforce an SPO. However, the lack of a permission hearing is a major disadvantage which offsets the intended benefit to the defendant. For this reason, it is likely that occupiers who have breached an SPO will still need to rely on making an application to suspend the warrant as they have always done.

Guidance on the implications of the decision in *Cardiff v Lee* is much needed. It is understood that guidance to district judges will be issued in the near future, which may be expected to address some of the issues identified in this article.

Right to rent: eviction

Article

In this article, Richard Lee explains changes to the security of tenure of private tenants with no right to rent brought about by the Immigration Act 2016, from 1 December 2016.

Richard Lee is a trainer with the NHAS.

From 1 February 2016 (1 December 2014 in the pilot area), private landlords (or their agents) who rent to an adult without a right to rent may incur a civil penalty notice.[1] From 1 December 2016, a landlord could also face criminal prosecution and imprisonment. A landlord can avoid sanctions by evicting an occupier who is disqualified from renting because they do not have a right to rent, and changes to security of tenure brought about by the Immigration Act 2016 make this easier.

The right to rent scheme was covered in detail in *Housing matters 111* (April 2016), which also gives a full list of documents which can prove a right to rent.

Rights to rent

Broadly, an occupier will fit into one of three categories, depending on her/his immigration status:[2]

- no right to rent
- limited right to rent
- unlimited right to rent.

Landlords need to check all prospective adult occupiers, not just named tenants. Children are exempt from the scheme. Prospective occupiers with an unlimited right to rent usually have either unrestricted entry to the UK (eg as British or EEA nationals), or indefinite leave to remain.

Criminal offence

From 1 December 2016, the Immigration Act 2016 amends the Immigration Act 2014 so that a landlord (or agent) may face criminal prosecution where:[3]

- their residential premises are occupied by an adult who has no right to rent, and
- the landlord knows, or 'has reasonable cause to believe' that the adult is disqualified from renting, and is in occupation.

Limited right to rent

Landlords can rent to people with limited right to rent (who usually have limited leave to remain), but will need to make further checks to ensure that they have retained the right.[4] Checks should be repeated before the end of the 'eligibility period' – which is the longest of the following:

- one year from the date of the last check
- the expiry of the occupier's leave to remain
- the expiry of an immigration document issued to a limited right occupier.

Expiry of limited right to rent

Where an adult occupier's right to rent has ceased, but s/he is still in the eligibility period, the landlord has an excuse from a civil penalty if s/he notifies the Home Office 'as soon as reasonably practicable'.[5]

Furthermore, the landlord does not commit a criminal offence unless the Home Office has given the landlord notice in writing[6] which identifies that adult as being disqualified from renting.[7] In that case, the Home Office expects landlords actively to take 'reasonable steps' to evict within a 'reasonable time' on becoming aware that a person with no right to rent is occupying their property.[8]

Government guidance[9] explains that reasonable steps may include any lawful option to terminate an agreement. New eviction options brought in by the Immigration Act 2016 supplement existing methods of ending agreements, such as mutually agreed surrender, or the use of statutory procedures such as a section 21 notice for assured shorthold tenants.

What would constitute a 'reasonable period of time' depends on all the circumstances. For example, a landlord may wait until a fixed term expires or activate a break clause if this will occur within three months of becoming aware of the breach.

Changes to security of tenure

The Immigration Act 2016 makes significant changes to occupiers' security of tenure where there is no right to rent. In some cases the changes are only triggered by the Home Office serving notice on the landlord that an occupier does not have (or no longer has) the right to rent.

The eviction process depends on whether:

- **all** of the occupiers lack a right to rent
- one or more, but **not all** of the occupiers lack a right to rent. In this case, the procedure varies according to what type of tenancy status the occupier has.

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11.8.7.10 Immigration checks by landlord

Footnotes

[1] s.22 Immigration Act 2014.

[2] s.21 Immigration Act 2014.

[3] s.33A(1), (2) and (3) Immigration Act 2014.

[4] s.22(5), 24(6) and 26(6), Immigration Act 2014.

[5] s.24(6) Immigration Act 2014.

[6] s.33A(5) Immigration Act 2014.

[7] s.33A(4) Immigration Act 2014.

[8] s.33A(6) Immigration Act 2014.

[9] 'Immigration Act 2014: Guidance on taking reasonable steps to end a residential tenancy agreement within a reasonable time', Home Office, November 2016 (still draft at time of going to press). See it at tinyurl.com/reasonablesteps

Where *all* occupiers lack right to rent

Where the Home Office serves a notice or notices on the landlord that complies with section 33D of the Immigration Act 2014, the landlord may terminate the agreement using a new 'fast track' procedure.[10]

The Home Office notice complies with section 33D if:

- it applies to ***all*** the occupiers, and
- ***all*** the occupiers lack a right to rent.

Where section 33D applies, the Home Office notice 'converts' the occupation status of an assured (including assured shorthold), Rent Act, or basic protection occupier to that of an excluded occupier under the Protection from Eviction Act 1977 (PFEA).[11]

Landlord's notice

Once the landlord has received the 'section 33D' disqualification notice or notices in respect of all the occupiers from the Home Office, the landlord may serve a notice, on a prescribed form,[12] asking the occupier(s) to leave in not less than 28 days from the date of service.[13] The notice is only valid if all the Home Office notices that have been received by the landlord are attached to it.

Possession action

The landlord's notice has the force of a High Court order, which means that s/he can then apply in the High Court for permission to issue a writ of possession.[14]

The landlord is not obliged to seek a writ of possession, but doing so may provide evidence to defend a criminal charge. The alternative is for the landlord to simply take possession once the notice has expired. S/he will have to do so peaceably to avoid an unlawful eviction.

Excluded occupiers

A landlord can evict a periodic excluded occupier with 'reasonable notice'.[15] Where an excluded occupier has a fixed term, the landlord can serve 28 days' notice as above on receipt of the Home Office 'section 33D' disqualification notice.

Not all occupiers lack a right to rent

The table on page nine shows how a landlord can end an agreement where one or more, but not all, occupiers lack a right to rent.

Rent Act and assured tenants

There are new grounds for possession against assured and Rent Act tenants:[16]

- Ground 7B (mandatory) applies to assured tenants
- Case 10A (discretionary) applies to Rent Act tenants.

The new ground or case allows the landlord to seek possession where s/he has been notified by the Home Office that an occupier with no right to rent is living in the property. To make out the ground/case, not only must the Home Office have given a disqualification notice in writing, but the occupier must in fact have no right to rent. An occupier should contact the Home Office immediately if they think they have a right to rent.

Assured and assured shorthold tenants

A landlord must give two weeks' notice if using ground 7B. There is no requirement for a specific clause in the tenancy that ground 7B can be used to end a fixed term.[17]

Where the person without a right to rent is an assured or assured shorthold tenant, the court has the power, as part of possession proceedings, to order the transfer of the tenancy to a joint tenant who does have the right to rent rather than award possession.[18]

Basic protection and excluded occupiers

The Immigration Act 2016 implies a term into basic protected and excluded tenancies and licences that the landlord may end the agreement if the premises are occupied by an adult who has no right to rent.[19]

Where the agreement is periodic, a landlord may use existing lawful methods to obtain possession, depending on occupation type.

For fixed-term agreements, where an occupier has no right to rent and there is a forfeiture clause allowing the landlord to terminate for breach of a condition of the agreement, a landlord may end the tenancy or licence after serving a forfeiture notice[20] and applying to the court for a possession order.[21] Alternatively a break clause could be activated. No Home Office notice is required.

When do the new rules apply?

The criminal offence of letting premises which are occupied by a disqualified person, and new rules regarding security of tenure, apply even where a residential tenancy began before the new provisions came into force.[22]

However, the criminal offence of letting to someone whose right to rent has ended (a 'post-grant contravention') only applies where the contravention occurs after 1 December 2016.[23]

Footnotes

[10] s.33D(2) Immigration Act 2014.

[11] s.3A(7D) Protection from Eviction Act 1977 inserted by s.40(5) Immigration Act 2016.

[12] sch.1 Immigration (Residential Accommodation) (Termination of Residential Tenancy Agreements) (Guidance etc.) Regulations 2016 SI 2016/1060.The notice advises occupiers to contact the Home Office immediately if they believe they do in fact have a right to rent.

[13] s.33D(4) Immigration Act 2014.

[14] s.33D(7) Immigration Act 2014; see part 83, Civil Procedure Rules.

[15] Reasonable notice at common law is the length of the period of the tenancy, but there can be restrictions on when it must be served. See HOMAT 104 February 2015 for details.

[16] s.41 Immigration Act 2016 amends Part 1 of Sch.2 Housing Act 1988 and Part 1 of Sch.15 Rent Act 1977.

[17] s.7(6)(b) Housing Act 1988 as amended by s41(3)(d) Immigration Act 2016.

[18] s.10A, Housing Act 1988, inserted by s.41(5), Immigration Act 2016.

[19] s.33E(1) IA 2014.

[20] Under s.146 Law of Property Act 1925.

[21] s.2 Protection from Eviction Act 1977.

[22] s.35(5) IA 2014 inserted by s.39(3), IA 2016.

[23] s.35(6) IA 2014 inserted by s.39(3), IA 2016.

Possession process where one or more (but not all*) occupiers lack a right to rent

Housing status	Home office action	Possession process
Rent Act tenancies	Notice served on landlord stating that one or more (but not all) occupiers lack right to rent	Landlord can serve notice and seek possession based on discretionary ground – case 10A (s.33E(3), Immigration Act 2014; Case 10A, Schedule 15, Rent Act 1977)
Assured tenancies and fixed term assured shorthold tenancies	Notice served on landlord stating that one or more (but not all) occupiers lack right to rent	Landlord can serve 2 weeks' notice and seek possession action based on mandatory ground 7B (s.33E(4), Immigration Act 2014; s.8(4B) and part 1, Schedule 2, Housing Act 1988)
Periodic assured shorthold tenancies	(1) Notice served on landlord stating that one or more (but not all) occupiers lack right to rent ***or***	Landlord can serve 2 weeks' notice and seek possession action based on mandatory ground 7B (s.33E(4), Immigration Act 2014; s.8(4B) and part 1, Schedule 2, Housing Act 1988)
	(2) No notice from Home Office needed	Landlord can use section 21 procedure (but possession order cannot take effect within first six months (s.21, Housing Act 1988)
Occupation with basic protection within fixed term	No notice from Home Office needed	If forfeiture clause in tenancy or licence, landlord can serve forfeiture notice under s.146 Law of Property Act 1925 and apply for possession order; or use break clause (s.33E(1) and (2), Immigration Act 2014; s.3 and s.5, Protection from Eviction Act 1977)
Occupation with basic protection – not in fixed term	No notice from Home Office needed	Tenancy or licence can be ended with at least 28 days' notice to quit and possession order (s.3 and s.5, Protection from Eviction Act 1977)
Excluded occupancies within fixed term	No notice from Home Office needed	If forfeiture clause in tenancy or licence, landlord can serve forfeiture notice under s.146 Law of Property Act 1925 and apply for possession order; or use break clause (s.33E(1) and (2), Immigration Act 2014 and s.2, Protection from Eviction Act 1977)
Excluded occupancies – not in fixed term	No notice from Home Office needed	Landlord can gain possession with reasonable notice (excluded licence) or basic notice to quit (excluded tenancy) – no court order needed (s.3A Protection from Eviction Act 1977)

* Where **all** occupiers lack a right to rent, and the Home Office has served a notice on the landlord stating this, the Home Office notice 'converts' the tenancy or licence to one that is excluded from the protection of the Protection from Eviction Act 1977. The landlord can then serve at least 28 days' notice on the occupiers in a prescribed form. The notice has the force of a High Court order, and the landlord may then apply to the High Court for a writ of possession. Alternatively the landlord may evict the occupiers peaceably using lawful methods. (s.33D Immigration Act 2014)

Leaflet

Help for care leavers 18+

This leaflet looks at your housing options and the support you can get from social services if you have spent time in care.

You will get most help from social services if you are a 'former relevant child'. This means you were in care on your 16th birthday, and spent at least 13 weeks in care between your 14th and 18th birthdays. Being in care includes living with a foster family, or being placed by social services with a family member.

Pathway plan

You must have a pathway plan. This is a document you have created with your social worker that shows how you will move to independent living. It should clearly say:

- how social services will support you
- what other support is available
- what will happen if things don't go according to the plan.

It should include where you will live, what money you will live on, and a plan for your education, training or employment. Social services must review your plan every six months and amend it if your needs change.

Personal adviser

Your pathway plan should tell you who will help you after you leave care. This is your 'personal adviser'. Your personal adviser should keep in touch with you until you are 21, or until you finish your education or training if that is after you turn 21.

If you don't know who your personal adviser is, contact the social services who looked after you. Or, ring Coram Voice for advice on freephone number **0808 800 5792**

If you return to education after age 21

You must be given a personal adviser and pathway plan if you agree with social services to start a course of education or training between your 21st and 25th birthdays.

In care for less than 13 weeks

If you spent less than 13 weeks in care, or if you returned home successfully when you were 16 or 17, you won't have a pathway plan or personal adviser. However, social services must still advise you, and may give you assistance in exceptional circumstances, such as buying you items you need.

Finding somewhere to live

Social services don't usually provide you somewhere to live after you turn 18, but they must plan what will happen with your housing. Your housing options include:

Staying put

If your foster family agree, you could continue to live with them. Social services will pay them an allowance until you are 21 to provide you with 'supported lodgings'.

Applying to the council as homeless

If you apply to the council's homelessness team as homeless, you are in 'priority need' for housing if you are 18, 19 or 20 and spent 24 hours or more in care when you were 16 or 17. You might also be in priority need if you are 21 or over. The council must find you somewhere to live while they consider your application. This might be a place in a hostel, but it must be suitable for your needs. Your pathway plan should say what kind of accommodation you need.

If your homeless application is successful, the council must provide you with suitable longer-term temporary accommodation until it can offer you somewhere permanent. The council must also put you on its 'waiting list' (or 'housing register') for a council or housing association place.

Applying for social housing

Every council has its own way of deciding who will get a council or housing association home. You may get some priority for social housing as a care leaver. Get advice on this.

Paying for rented accommodation

You can claim housing benefit (HB) or universal credit (UC) to help pay for rented housing. After your 22nd birthday, HB or UC will only pay for a room in a shared house unless your landlord is the council or a housing association, or you have a dependent child. Go to Gov.uk to see what you are entitled to.

Vacation accommodation for students

Social services must usually help you if you are in full-time higher education and have nowhere to live in the vacation periods.

Further advice

You can get further advice from Shelter's free* housing advice helpline (**0808 800 4444**), a local Shelter advice service or local Citizens Advice office, or by visiting shelter.org.uk/advice or adviceguide.org.uk

*Calls are free from UK landlines and main mobile networks.

Note
Information contained in this leaflet is correct at the time of publication. Please check details before use.