

Landlord immigration checks consultation

July 2013

Overview

On 3 July 2013, the Home Office issued a consultation entitled '**Tackling illegal immigration in privately rented accommodation**'. The measures proposed in the consultation aim to '*send a clear and strong deterrent message, both here and overseas, that there are clear and practical consequences to breaking the UK's immigration laws*¹', by introducing a new requirement for UK landlords to check the immigration status of all prospective tenants from 2014.

Under the proposals, landlords would be required to request reasonable evidence from prospective tenants showing that they and other adults who would be living with them have the right to live in the UK. Tenants and other adult occupiers would need to provide landlords with one of the specified documents on a Home Office list, which should be checked and a copy retained by landlords. Repeat checks would need to be carried out on all tenants without the permanent right to live in the UK.

Any landlords found to have rented accommodation to an irregular migrant without having conducted the required immigration document checks could be liable for a civil penalty fine of up to £3000 per irregular migrant tenant.

The current situation

Although the UK does not have a central register of landlords, it is known that there are over 4 million private rental properties in the UK. The majority of UK rental properties are managed by individual private landlords with small property portfolios. According to the Department of Communities and Local Government, private individual landlords had responsibility for 71% of all private rental properties in England in 2010. The same survey showed that 78% of all landlords in England in 2010 had only one rental property².

Private landlords are not currently required by law to check the immigration status of their tenants. Some landlords and letting agents do check the documents of new tenants in order to establish a prior history of rental payments or to confirm their identity. However, other landlords, and particularly some individual landlords with only one or two rental properties, may not do so³.

¹ *Tackling illegal immigration in privately rented accommodation, Consultation document*: Introduction. 3 July 2010, Home Office. Available online at:

<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/consultations/33-landlords/consultation.pdf?view=Binary>

² *Private Landlords Survey 2010*, October 2011, Department of Communities and Local Government. Available online at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/7249/2010380.pdf

³ *Tackling illegal immigration in privately rented accommodation, Consultation document*, 3 July 2010. Home Office. As above.

The policy proposals

The government wishes to introduce a new requirement for UK landlords (or letting agencies where employed by landlords to do so) to check the immigration status of prospective tenants. This would apply to all adults renting specified types of accommodation anywhere in the UK as their main or only home. The government is still considering whether checking the immigration status of lodgers and sub-tenants would be included in the policy.

In order to meet the new requirement, UK landlords would need to do the following:

- Request 'satisfactory evidence' from prospective tenants and other adults who would be living with them showing their entitlement to be in the UK. This should be a piece of specified documentation, drawn from a list provided by the Home Office;
- Satisfy themselves that the documentation is genuine and demonstrates the person's entitlement to be in the UK. Unless considered 'reasonably apparent' that the documents are forgeries, landlords would not be held responsible for accepting a forgery. The Home Office would operate a telephone enquiry service for landlords to answer queries about documentation or regarding individuals' immigration status;
- Take a copy of the documentation and retain that copy until at least 12 months after the tenant has left the property.
- Conduct repeat checks on tenants with limited leave to remain in the UK (probably once every 12 months) to ensure their continued right to remain in the UK. Tenants with the permanent right to live in the UK need only be checked once, prior to the start of their tenancy.

The Equality Act 2010 makes it unlawful for a landlord to discriminate in offering or refusing to offer a tenancy; this means that checks on prospective tenants would need to be carried out in a non-discriminatory way. In order to avoid discrimination on the basis of race, nationality or ethnic or national origin, landlords would be required to check the documentation of all prospective tenants, including British citizens and others with the permanent right to live in the UK. They should also carry out the checks in a manner that avoids any unequal treatment based on any of the characteristics protected under equalities legislation⁴.

Having conducted the immigration document checks, landlords would have a 'statutory excuse' from liability if they were later found to have rented accommodation to someone without permission to be in the UK. Landlords found to have rented accommodation to irregular migrants without having conducted the checks could be liable to a civil penalty fine of up to £3,000 per irregular migrant. A lower level fine system (up to £500 per irregular migrant) would probably operate for individuals who had taken in a lodger or sublet their home to no more than two other people.

The government also proposes to increase data-sharing with local authorities regarding landlords of Houses of Multiple Occupation.

FAQs

Who would be affected by new landlord immigration checks?

In theory, everyone seeking to rent a property in the UK in the future, including British citizens, would be impacted by the introduction of landlord immigration checks. This is

⁴ The protected characteristics under the Equality Act 2010 are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion and belief, sex, sexual orientation

because, in order to avoid unlawful discrimination, landlords would need to check the immigration status of all of their prospective tenants, not just migrants.

However, it is to be expected that some landlords would conduct document checks selectively, based on their assumptions about the immigration status of prospective tenants. In this case some people from ethnic minority backgrounds or with nationalities thought to be at high risk of irregular stay in the UK may find themselves particularly targeted for document checks, or otherwise treated in a discriminatory manner during checks.

Many people with unusual immigration documentation (even if valid), those whose documents are with the Home Office, or migrants who for whatever reason do not have permission to live in the UK, would find it particularly difficult to secure private accommodation in the future as a result of these rules.

How could UK landlords be expected to respond to the new checks?

The government describes this as a 'light-touch and proportionate regime' for landlords and assures landlords that guidance materials and a telephone helpline would be provided to assist them in conducting the checks properly.

However, it is likely that many of the UK's private landlords, collectively responsible for over 4 million private lettings, and many of them renting out only one property, would have difficulties in meeting a new immigration document check requirement. There is already substantial opposition among many landlords to the proposals (82% of landlords surveyed by the Residential Landlords Association said that they opposed the plan), who are concerned about the introduction of further, burdensome 'red tape'⁵.

The evidence from the similar duty introduced for employers in 2008 under the Immigration, Asylum and Nationality Act 2006 suggests that the complicated nature of immigration documentation and the fear of 'getting it wrong' could lead to problems. In 2009, MRN reported evidence of confusion among employers about new checking duties, and that the new employer checks had resulted in discrimination against ethnic minority workers by employers, and even in some cases facilitated wider exploitation of undocumented workers. The employer telephone helpline has been reportedly difficult to use, taking up to six days for some employers to receive a response to queries⁶.

Is this a proportionate policy approach?

The available data suggests that this policy, which is likely to impact across the private rental market, is disproportionate even by the government's own rationale. Although the majority of irregular migrants are thought to be living in private accommodation in the UK, data suggests that they could comprise only a small proportion of those people renting private properties in the UK.

Research by the LSE in 2009 estimated that 618,000 irregular migrants lived in the UK in 2007. Even if they were all privately renting, this would still be less than 1% of the 8.5 million people known to live in private rented accommodation in England alone (Shelter, 2012)⁷.

⁵ *Landlords oppose government's immigration plans*, 3 July 2013, Residential Landlords Association. Available online at: <http://news.rla.org.uk/landlords-oppose-governments-immigration-plans/>

⁶ *Passing the buck – private landlords to be handed responsibility for checking immigration status*, 4 July 2013, John Perry, Migrants Rights Network website. Available online at: <http://www.migrantsrights.org.uk/migration-pulse/2013/passing-buck-private-landlords-be-handed-responsibility-checking-immigration-st>

⁷ *A better deal - towards more stable private renting*, September 2012, Shelter. Available online at: http://england.shelter.org.uk/professional_resources/policy_and_research/policy_library/policy_library_folder/report_a_better_deal_-_towards_more_stable_private_renting

Would these measures reduce the numbers of irregular migrants in the UK?

There is no evidence that making it more difficult for irregular migrants to secure accommodation would make them more likely to leave the UK, or that such measures would deter future migrants from living in the UK with irregular status. The government has not put forward an evidence base for this approach, or cited examples from other countries where similar strategies have been adopted.

It seems more likely that, rather than leaving the UK, many irregular migrants would instead seek to secure accommodation with those landlords who would be unlikely to conduct immigration document checks. Research suggests that, currently, many irregular migrants are exploited by private landlords and are housed in substandard and often overpriced accommodation. It can be expected that irregular migrants would continue to live in the UK, potentially in more clandestine and substandard accommodation than previously, and with some exposed to a greater risk of becoming destitute and/or homeless.

Overall, adopting a policy approach that seeks to tackle irregular migration by denying those without status from accessing accommodation in the UK has problematic social implications. It could result in a more vulnerable underclass of irregular migrants, worsen the housing conditions for many other migrants, and generally increase hostility and suspicion of migrants across the population.

What is the timetable for bringing this policy into effect?

The proposals are open to public consultation until 21 August 2013. Any new measures would need to be introduced as primary legislation, and the government has suggested that a new Immigration Bill would likely take effect during 2014.

The legislation would not be applied to those already renting accommodation from a landlord at the time the law comes into effect (anticipated for 2014), so landlords would not be required to conduct retrospective document checks on existing tenants.

What can I do about it?

It is important that as many people as possible respond to the consultation, adding their own evidence and views on the issues. The Home Office consultation and response form can be found here:

<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/consultations/33-landlords/consultation.pdf?view=Binary>

Migrants Rights Network will be organising briefing events for migrant and refugee community organisations and migrant rights advocates. If you would like to attend an event check our events pages or get in touch with Juan at j.camilo@migrantsrights.org.uk