



Home Office

# **Tackling illegal immigration in privately rented accommodation**

**Consultation document**

3 July 2013

## **Foreword by the Home Secretary**

Our migrant communities are a fundamental part of who we are and the United Kingdom is a far richer and stronger society because of them. We are rightly proud of our history as a diverse and welcoming society. However, whilst we have always believed in the benefits of immigration, uncontrolled immigration causes a range of problems for the United Kingdom. Without proper controls, community confidence is damaged, resources are stretched and the benefits that immigration can bring are lost or forgotten.

The Government has already made changes to our immigration policies with the aim of reducing net migration levels from hundreds of thousands to tens of thousands. Net migration has fallen by more than a third since June 2010 and is now at its lowest level for a decade. The UK Border Agency is being replaced with new organisations within the Home Office which will get an effective grip on the volume of casework and provide an effective enforcement response to those who break our immigration laws. IT systems will be overhauled and replaced.

However, we plan to go further in the forthcoming Immigration Bill. The Bill will make it more difficult for illegal migrants to live in the UK and ensure that legal migrants make a proper financial contribution to our key public services. It is vital that we work together across government so that our immigration policy is built into our benefits system, our health system, our housing system and other services.

This consultation seeks views on our proposals to create a new requirement on landlords to conduct immigration checks on tenants, with penalties for those who provide rented accommodation to illegal non-EEA migrants in breach of the new requirements. The new requirements will be modelled on existing controls which apply to the employment of illegal workers which are well established and have operated successfully for the last five years.

We will not allow the growth of a shadow economy for illegal migrants whether it is in employment or housing. The new regulations will make it more difficult for illegal migrants to find accommodation and deter those who set out to disregard the Immigration Rules. It will benefit those communities blighted by illegal structures – the so-called “sheds with beds” and overcrowded houses that can bring social problems and costs to local communities. The Government wants a graduated approach to enforcement in this area, with proportionate penalties for those landlords who make a single honest mistake, and much heavier penalties for rogue landlords who repeatedly and deliberately break the law. We want a system of checks that is simple to operate for law-abiding landlords and tenants, with Home Office support for landlords who are unsure of their responsibilities. This consultation provides an opportunity to influence these important proposals.

We want to ensure that those who come to the UK do so for the right reasons. Even as we want to extend a warm welcome to those many migrants who make such an important economic contribution, we want to see tough action being taken against those who have no right to be here. By working across government and legislating where fresh powers are needed, we will address public concerns about immigration and move to a system where we support the aspirations of hard-working people from the UK and abroad.

**Rt Hon Theresa May MP**  
**Home Secretary**

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# 1. Introduction

***Immigration has brought benefits to the United Kingdom. But proper controls on immigration are needed, and the Government is determined to take a tougher approach to illegal immigration.***

1. Immigration has brought benefits to the United Kingdom. The Government<sup>1</sup> believes that we should continue to be an open and diverse society, which attracts and welcomes the brightest and the best to help promote economic growth and competitiveness.
2. The Government is also committed to operating proper controls on immigration, to ensure that public confidence in the system is rebuilt and pressures on communities and public services are alleviated. The Government has already overhauled the immigration rules to create a more selective system and reduce net migration. The latest statistics show that net migration has reduced by over a third since June 2010.
3. The Government is also determined to get an effective grip on illegal immigration and to take a tougher approach to dealing with those who have either entered the country illegally or overstayed their visa. Some illegal migrants are exploited and, in the worst cases, they can end up living in overcrowded and poor housing conditions whilst generating significant profits for unscrupulous landlords. This can have a corrosive effect on communities and individuals and undermine the availability of homes and jobs for people who are legitimately in the UK.
4. It is the responsibility of the Home Office to prevent illegal immigration by operating strong border controls and removing from the country those who overstay or enter illegally. However, other public and private sector bodies should also play their part in making it more difficult for illegal migrants to remain here, by limiting their access to services and benefits enjoyed by those legally resident here. Our aim is 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.
5. There are already tight controls which limit illegal migrants' access to social housing. But, whilst many responsible private landlords already make identity and credit checks on prospective tenants, there is no current requirement on them to check tenants' migration status. In March 2013, the Prime Minister therefore announced his intention that private landlords should check the migration status of tenants in future<sup>2</sup>.
6. The Government proposes to put in place a new requirement for landlords to make simple checks on tenants' immigration status, through new legislation to be introduced to Parliament in autumn 2013. This legislation will include a range of measures which, if approved by Parliament, will improve the enforcement of the UK's immigration laws and make it more difficult to live in the UK unlawfully. This consultation, which closes on 21 August 2013, seeks views on the details of the policy proposal to require private landlords to make checks on tenants.

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<sup>1</sup> References to the 'Government' in this document are to the UK Government unless stated otherwise.

<sup>2</sup> [www.gov.uk/government/speeches/david-camerons-immigration-speech](http://www.gov.uk/government/speeches/david-camerons-immigration-speech)

## 2. The consultation process and how to respond

***This consultation will last until 21 August 2013. A short overview of the policy can be found at***

***<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/consultations/33-landlords/>***

Topic of this consultation	The introduction of a requirement for private landlords to check the immigration status of people wishing to rent accommodation from them.
Scope of this consultation	The consultation seeks views on how the proposals should be implemented and the impacts that the policy would have.
Geographical scope	United Kingdom. Where specific issues of housing legislation are described in this consultation document, it refers in most places to legislation that applies in England. The UK Government will work with the Devolved Administrations during the course of the consultation period to ensure that the final policy correctly reflects the position in Wales, Scotland and Northern Ireland.

### Basic information

To	This is a public consultation and it is open to anyone to respond. We would particularly welcome views from the following sectors: private landlords; social housing landlords; letting agents; hotels and guest houses; private tenants and lodgers; institutional investors proposing to invest in privately rented accommodation; local authorities; organisations representing vulnerable people, homeless people and migrants; and community groups.
Body responsible for the consultation	The Home Office.
Duration	The consultation begins on 3 July 2013 and ends on 21 August 2013. This is a seven week period.
Enquiries	<a href="mailto:HOlandlordregulation@homeoffice.gsi.gov.uk">HOlandlordregulation@homeoffice.gsi.gov.uk</a>
How to respond	Respondents are asked to complete the online questionnaire which can be accessed via the website. For those respondents who are unable to use an online format, alternative formats can be made available – see Annex B for further details.

### 3. Background and overview of proposals

***Illegal immigration causes a number of economic and social problems. The Home Office represents the first line of enforcement against illegal migrants, but other public and private sector bodies have a role to play too. The Government is proposing that private landlords should make simple checks on people who want to rent accommodation, to make sure that they are entitled to be in the country. The checks will be straightforward, quick and inexpensive for law-abiding landlords and tenants to comply with. Landlords who provide accommodation to illegal immigrants from outside the European Economic Area (EEA) without making the correct checks will face civil penalties. The penalties will be modest for those who breach the rules for the first time or on a small scale. But they will serve as a real deterrent to those rogue landlords who repeatedly house large numbers of illegal immigrants.***

#### Background

##### Illegal immigration

7. The vast majority of foreign nationals within the UK have permission to be here and abide by the immigration rules. However, there are people who seek to evade immigration controls and enter and/or remain in the UK without the legal right to do so. We refer to these individuals as 'illegal migrants' in this document. Reasons why people may not have legal immigration status may include: unauthorised entry to the UK; overstaying visas; breaching conditions of leave to remain; and refusal of asylum.
8. Illegal migration causes a number of economic and social problems and presents a challenge to the rule of law, eroding public confidence and undermining the integrity of the immigration system. Organised criminal gangs profit from those prepared to pay for the means of entering and remaining in the country unlawfully. By working for very low (and at times illegally low) wages, illegal migrants can make it more difficult for people who are in the country legally to find employment. Such people are also vulnerable to exploitation. Illegal migrants are unlikely to be paying taxes, handing rogue businesses an unfair advantage. Those who are in the UK illegally add to the demand for housing, thereby putting pressure on rents – particularly in those areas of the country where there are already significant housing pressures. The number of illegal migrants is, by its nature, difficult to assess. The routinely published immigration statistics provide annual and quarterly data on regular migration, enforced removals from the UK and those refused entry at port and subsequently deported.<sup>3</sup> This data covers only those illegal migrants who are known to the authorities, but illegal immigration is often hidden.

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<sup>3</sup> See *Immigration Statistics - January to March 2013, Removals and Voluntary Departures*, at <https://www.gov.uk/government/publications/tables-for-immigration-statistics-january-to-march-2013>

9. The Home Office, including its operational commands at ports of entry and in-country, represents the first line of enforcement against illegal migrants – operating at our national borders to prevent people who have no right to enter the country from entering, and undertaking intelligence-based enforcement activities within our borders to detect and remove those who have either entered the country illegally or, more often, overstayed their visa. However, once in the country, illegal migrants can often remain undetected until they come into contact with the authorities.
10. Besides the Home Office, other bodies in the public and private sectors have a role to play in making it difficult for illegal migrants to remain in the country and to access benefits and services. For example, since 1997, all employers have been under a duty to check the immigration status of prospective employees. Since 2008, they have faced civil penalties, and in some cases criminal prosecution, for employing illegal migrants<sup>4</sup>. The duty to check the status of new employees is now a well established procedure, which is well understood by employers (including small businesses operating on a scale comparable to small private landlords).
11. The policy of requiring checks on tenants sits alongside and complements other steps that have been taken to restrict and discourage illegal immigration. These include steps to restrict access to financial services and restrictions on access to welfare benefits. The thrust of these measures is to discourage those who intend to stay illegally or encourage those who are here illegally to leave. Those who wish to leave are, where necessary, accorded help to do so and, in 2012, 28,791 people who might otherwise have been illegal migrants left voluntarily.<sup>5</sup>

### Illegal migrants and housing

12. Research by the Department for Communities and Local Government (DCLG) indicates that, in England, 55 per cent of people who are not British or Irish residents live in the private rented sector<sup>6</sup> and that around 26 per cent of people who live in the private rented sector are non-British<sup>7</sup>. Research for the Housing and Migration Network indicates that most new migrants are housed in the private rental sector. The reasons for this are the flexibility and ease of access to this sector, relative to the alternatives of social rented and owner-occupied housing, coupled with new migrants' economic circumstances and understanding of the UK housing market<sup>8</sup>. Given that the same kind of factors will also apply to illegal migrants, it seems likely that they too are concentrated in the private rented sector, particularly as social housing is not available to them.
13. The Government's work on tackling rogue landlords, and in particular illegally occupied outhouses (also known as 'Beds in Sheds'), suggests that a high proportion of the

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<sup>4</sup> See the Immigration, Asylum and Nationality Act 2006 for further details.

<sup>5</sup> <https://www.gov.uk/government/publications/immigration-statistics-january-to-march-2013/immigration-statistics-january-to-march-2013#removals-and-voluntary-departures-1>

<sup>6</sup> From an analysis of the English Housing Survey 2010-11.

<sup>7</sup> From an analysis of the English Housing Survey 2010-11.

<sup>8</sup> Perry, S (2012) *UK migrants and the private rented sector: A policy and practice report from the Housing and Migration Network*. Available from: [www.jrf.org.uk/sites/files/jrf/migrants-private-rental-sector-full.pdf](http://www.jrf.org.uk/sites/files/jrf/migrants-private-rental-sector-full.pdf).

people living in the very worst privately rented accommodation (often unlicensed Houses in Multiple Occupation - HMOs) are migrants, and immigration enforcement operations against such properties have resulted in a number of arrests and removals of illegal migrants<sup>9</sup>.

14. There are already tight controls which limit illegal migrants' access to social housing, albeit with some differences across the UK<sup>10</sup>. In the private rented sector, many landlords and letting agents already make checks on prospective tenants, such as asking to see evidence of identity and of the tenant's prior history of rental payments and seeking third party references. Whilst aimed at protecting the landlord's assets and revenues, rather than an immigration measure, many illegal migrants would find it difficult to satisfy the checks that responsible landlords and agents already require.
15. However not all private landlords do make checks. Many landlords are private individuals who own just one rental property<sup>11</sup>. They may be unaware of the risks of taking in tenants without making suitable checks – particularly if they do not use a letting agent. In addition, as the Government's work in tackling rogue landlords shows, there is a small minority of rogue, or even criminal, landlords who deliberately target tenants in a vulnerable position – such as illegal migrants – by charging high rents for overcrowded and squalid accommodation to tenants who will not complain to the authorities.

#### Policy response

16. The Government considers that private landlords have a role to play, alongside others, in tackling the problem of illegal immigration. As the Prime Minister said in February 2013:

*“Many parts of our current arrangements simply do not pass a simple common-sense test in terms of access to housing, access to the health service and access to justice, and other things that should be the right of all British citizens but are not the right of anyone who just chooses to come here<sup>12</sup>.”*

17. The Government therefore proposes a light-touch and proportionate regime for private landlords to make checks on prospective new tenants – building on the checks that many responsible landlords and letting agents already undertake. These proposals are described below.

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<sup>9</sup> For example, UK Government Ministers observed two recent enforcement operations in Ealing. These resulted in 36 arrests of suspected illegal migrants, of whom 15 have been removed from the country (as of May 2013).

<sup>10</sup> Paragraph 6 of the UK's Immigration Rules specifies certain public funds, access to which is prohibited for non-EEA migrants subject to certain immigration conditions of stay. Paragraph 6 includes within the definition of “public funds” housing provided under Parts VI and VII of the Housing Act 1996, Part II of the Housing Act 1985, Part I or II of the Housing (Scotland) Act 1987, Part II of the Housing (Northern Ireland) Order 1981 or Part II of the Housing (Northern Ireland) Order 1988.

<sup>11</sup> In England, 78 per cent of landlords in the private rented sector own just one rental property – DCLG Private Landlords Survey 2010.

<sup>12</sup> [www.publications.parliament.uk/pa/cm201213/cmhansrd/cm130213/debtext/130213-0001.htm#13021368000010](http://www.publications.parliament.uk/pa/cm201213/cmhansrd/cm130213/debtext/130213-0001.htm#13021368000010)



18. Alongside these proposals, the Government will continue to work with local authorities to tackle the problems of rogue landlords who deliberately target vulnerable tenants – including legal and illegal migrants – in overcrowded and dangerous accommodation. The Government has already provided £2.5 million of funding to nine local authorities in England who are most affected by the problem of ‘Beds in Sheds’, and published guidance that can help all local authorities to tackle the problem of rogue landlords<sup>13</sup>. The Government is extending the multi-agency work that is already proving effective against ‘Beds in Sheds’ to a broader range of rogue landlord issues elsewhere in England. Proposals have been recently announced to allocate up to £3 million to local authorities in England that need additional support in tackling acute and complex problems with rogue landlords in their area.

## Overview of proposals

19. The primary objective of the policy is to make it more difficult for illegal migrants to gain access to privately rented accommodation. Together with other policies restricting access to benefits and services, the policy is intended to encourage more illegal migrants to choose to leave the country, and may reduce the temptation to enter illegally in the first place. The policy will also result in more illegal migrants being reported to the Home Office for enforcement action to be taken.

20. We will minimise the burden of red tape on law-abiding landlords and tenants. Landlords will not be required to become experts in immigration matters or assume the burden of enforcement against illegal migrants. We will also ensure that the checks are straightforward for people looking for a place to live – whether UK citizens or foreign nationals who are here legally.

21. The essence of the proposed policy is that, before renting accommodation anywhere in the United Kingdom to a new tenant<sup>14</sup> to live in as their main or only home, landlords will ask prospective tenants to produce evidence from a checklist of specified documents of their entitlement to be in the UK. The landlord will check this and keep a copy for his records. The Home Office will operate an enquiry service for landlords who require support in understanding the documents they are required to check. Unless it is reasonably apparent that the documents provided by the tenant are forgeries, the landlord will not be held responsible for accepting a forgery. If the tenant cannot produce satisfactory evidence, the landlord should not rent accommodation to them – and would be liable to a civil penalty if he were subsequently found to have rented accommodation to an illegal migrant without having made the necessary checks.

22. Our policy intentions are clear but we are keen to engage with landlords, tenants and the lettings industry to ensure that the details are workable, proportionate and effective.

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<sup>13</sup> [www.gov.uk/government/publications/dealing-with-rogue-landlords-a-guide-for-local-authorities](http://www.gov.uk/government/publications/dealing-with-rogue-landlords-a-guide-for-local-authorities)

<sup>14</sup> For the purposes of this consultation document, we use the term ‘tenant’ in a broad sense to include not only people living in rented accommodation under a tenancy (such as an assured tenancy or assured shorthold tenancy, in England and Wales) but residential occupiers paying money to occupy accommodation under licences as well as people paying to stay in tourist accommodation and equivalent arrangements outside England. The terms ‘landlord’ and ‘tenancy’ are also similarly broadly construed.

The main considerations and the Government's current thinking are summarised briefly below and covered in further details in the sections indicated. The policy will be taken forward via the Government's forthcoming Immigration Bill. Whilst this consultation document reflects the Government's current thinking, it is to be expected that refinements to the proposals may arise as a result of responses to the consultation and during the course of drafting the legislation and Parliamentary scrutiny.

#### **Section 4 covers:**

- **Which types of arrangements are covered?** Broadly, we propose that this should cover circumstances where a person pays to live in accommodation as their main or only home.
- **What should be excluded?** We propose to exclude accommodation which is not someone's main or only home (like a holiday let or hotel, unless they stay there for an extended period of time) as well as places where residents are subject to other migration checks (e.g. university halls of residence or accommodation tied to employment). The consultation poses questions about whether lodgers and sub-tenants should be included.
- **Which people should be checked?** The landlord will need to check, without discriminating between different types of people, the migration status of all the adults who would be living in the property. He would not be required to make ongoing inspections of who is actually living in self-contained rented accommodation thereafter.

#### **Section 5 covers:**

- **How should the checks be made?** A range of specified documents would be acceptable as evidence, and straightforward guidance would be published so that landlords know how to recognise these documents. The landlord would be able to call upon the Home Office for advice.
- **What responsibility should be placed on letting agents and corporate tenants?** Where it is clearly documented that a letting agent has taken on this responsibility on the landlord's behalf, then liability would rest with the agent rather than the landlord. Where a property is rented out to a company, then the company should be responsible for making checks.
- **How often should checks be made?** The check would be made at the outset of the tenancy. Checks would need to be repeated only in the case of those tenants who have limited leave to remain in the country.

#### **Section 6 covers:**

- **What should the landlord do if he thinks that illegal migrants are living in the property?** If a landlord, despite having made the initial checks in good faith, has reason to believe that illegal migrants are living in the property, then he should report the occupiers to the Home Office. Landlords would not be required to undertake costly proceedings to evict the tenant.

- **What should the penalties be?** A sliding scale of civil penalties would apply if the landlord does not carry out his responsibilities and provides accommodation to illegal migrants. The level of penalty would take into account the number of illegal migrants who are present and other factors, so that the largest penalties are reserved for those who repeatedly provide accommodation to large numbers of illegal migrants. Landlords of HMOs could potentially lose their licence for repeated breaches.

**Section 7 covers:**

- **What are the costs and benefits of the policy?** What would be the impacts on different groups, including people with protected characteristics as defined in the Equality Act 2010?<sup>15</sup> What would be the impacts on privacy and data protection be? This section and Annex A include a preliminary indication of impacts.

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<sup>15</sup> s4 of the Equality Act 2010 specifies the protected characteristics. These are age, sex, gender reassignment, race, disability, religion or belief, marriage and civil partnership, sexual orientation, pregnancy and maternity.

## 4. Scope of the requirements

***Once the legislation is in place, checks will need to be made on any adult who wants to rent accommodation to live in as their main or only home. Some forms of accommodation will be exempt. Where a prospective tenant cannot provide the necessary evidence of their status, the landlord should not rent the accommodation to them. Landlords will not be required to monitor whether different people come to live in the property from those that they checked at the start of the tenancy.***

### Types of accommodation to be included / excluded in the scheme

#### What is included?

23. The policy will, except where specifically excluded, cover all situations in which people pay money to rent properties anywhere in the UK as their main or only home. It will not be restricted to particular types of tenancy or licence. So, for example, it will include:

- Properties rented out for one or more person to live in as their main or only home;
- Homes which are not buildings – including caravans and houseboats – if they are rented as the occupier’s main or only home; and
- Homes which were not built for residential purposes – for example someone renting a disused office as their home, including “property guardians”.

24. Establishing whether or not someone is in fact living in accommodation as their main or only home will not always be straightforward and, in order to remove doubt and thereby avoid liability, it would be strongly advisable for the landlord to make checks on the tenant at the start of the arrangement rather than trying to prove later that the accommodation is not the tenant’s main or only home (see paragraph 26 for exceptions to this).

#### What is excluded?

25. Some landlords will have already checked their tenants’ immigration status by virtue of other legislation or regulation governing the relationship between them. We want to avoid double-regulation and will therefore exclude the following types of accommodation:

- The policy will not cover social housing rented to tenants nominated by local authorities or to households provided accommodation under the homelessness legislation. There are already tight controls which prevent illegal migrants from being placed on local authorities’ housing registers. However, to the extent that social housing providers let to tenants who are not referred by a local authority,

or otherwise participate in the private rented sector, such arrangements **will** be subject to this scheme;

- Privately rented accommodation secured by a local housing authority using the private rented sector offer power under s 193 7(F) of the Housing Act 1996 for households owed the main homelessness duty<sup>16</sup>;
- Accommodation provided by universities and other full-time educational establishments for their students; and
- Accommodation provided by employers for their employees - whether self-contained accommodation (such as a caretaker in an apartment block might live in) or in the employer's own home (e.g. for a domestic servant). Civil penalties already apply for those who employ illegal migrants, set at higher levels than proposed for landlords.

26. This policy is about rented accommodation that people live in as their main or only home. We intend to exclude arrangements for which that criterion does not apply, and also a range of other arrangements where the nature of the relationship between accommodation provider and occupier would make such checks unnecessary. We therefore propose to exclude:

- The sale and purchase of homes, including those purchasing a home on a leasehold or shared ownership basis;
- Tourist accommodation such as hotels and guest houses providing accommodation for tourists and business travellers for less than three months. It is reasonable to assume that people staying in such accommodation are not using it as their main or only home, and it would be burdensome to require checks to be made unless the person has been staying there for an extended period of time. We are therefore proposing that checks should only be required at such time as a person has been in the accommodation for three months;
- Short term business and holiday lets of less than three months (rationale as above);
- Properties let for commercial use (shops, offices, etc.);
- Hostels and refuges providing crisis accommodation to homeless and other vulnerable people;
- Hospital accommodation of patients, hospices, care homes, etc.; and
- Children's homes and boarding schools.

27. This policy will not apply to people who were renting the accommodation from the landlord at the time the law comes into effect (currently anticipated for 2014). There will therefore be no requirement for landlords to retrospectively check the immigration

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<sup>16</sup> The Localism Act 2011 (sections 148 – 149) allows a local authority to end the main homelessness duty with an offer of suitable private rented sector accommodation.

status of their existing tenants when the scheme comes into effect, so long as they remain in the same property.

28. It is possible that further categories of accommodation that need to be excluded will come to light during consultations and/or at a later stage. The Government intends to take powers to exclude additional classes of accommodation through secondary legislation.

### Lodgers and sub-tenants

29. A significant number of households act as informal landlords by taking in lodgers – perhaps to contribute towards the cost of running their home. The informal nature of this activity is reflected in the tax treatment, whereby income from lodgers of up to £4,250 per year does not need to be declared to HMRC<sup>17</sup>. Similarly, some tenants of rented property (both in the private rented sector and social housing – see text box) may themselves take in sub-tenants.

#### **Tenants who take in lodgers and sub-tenants (England)**

In the social rented sector, there are two types of tenancy:

- Tenancies with local authorities take the form of a **secure tenancy**; and
- Following the Housing Act 1988, most new tenancies with Private Registered Providers (often referred to as housing associations) have taken the form of an **assured tenancy** although many tenants in the sector still have a **secure tenancy**.

Tenants with a secure tenancy have a statutory right to take in a lodger. There is no requirement to inform the landlord. Tenants with an assured tenancy have the right to take in a lodger unless the tenancy agreement stipulates otherwise. Any requirement to inform the housing association is similarly a matter for the tenancy agreement.

There are limitations on tenants' rights to sub-let social housing<sup>18</sup>. People in secure tenancies may sub-let part of their property with the landlord's consent but may not sub-let the whole of the property. People in assured tenancies may sub-let part or the whole of the property with the landlord's consent unless the tenancy agreement provides otherwise. It will shortly be a criminal offence (punishable by up to two years in prison) to unlawfully sub-let the whole of a council or housing association (Private Registered Provider) property.

In the private rented sector, tenancies can take a variety of forms, including **assured shorthold tenancies**, **assured tenancies**, **protected tenancies** and other forms. A written tenancy agreement is not a legal requirement. The tenant's ability to take in a lodger or to sub-let will depend on the terms of the agreement between landlord and tenant.

<sup>17</sup> See <https://www.gov.uk/rent-room-in-your-home/the-rent-a-room-scheme>

<sup>18</sup> The difference between a lodger and a sub-tenant is that a lodger has use of the property but does not have exclusive use of any part of it. By contrast, a sub-tenant has exclusive use of the whole or part (e.g. a bedroom) of the property such that even the landlord would need the sub-tenant's permission to enter the area over which the sub-tenant has exclusive control.

Arrangements outside England will vary, depending on the specific housing law of that country. However, the requirement on private landlords to make checks on new tenants when renting out a property – and any requirement to make checks on lodgers and sub-tenants - would apply throughout the UK.

30. The Government does not wish to impose unnecessary burdens on this informal sector of the economy. For social housing tenants who are in receipt of housing benefits, taking in a lodger or sub-tenant can mitigate the impact of the removal of the spare room subsidy<sup>19</sup>.
31. At the same time, excluding lodgers and sub-tenants from the policy could make a material impact on the effectiveness of the policy, if it simply means that illegal migrants are diverted from renting properties in their own right to living as lodgers or sub-tenants of other households. The Government is therefore asking in this consultation whether lodgers and sub-tenants should be included in the policy.
32. If lodgers and sub-tenants were to be included, then making the checks would need to be the responsibility of the households and tenants who take in lodgers or sub-tenants. In the social housing sector, the Government expects that social housing providers would want to bring this to the attention of their tenants, as part of their regular engagement and involvement with tenants, and would work with them to promote such dissemination in advance of the policy coming into effect.

**Consultation question 1:** The focus of this policy is to check the immigration status of people who are paying money to live in accommodation as their main or only home. Given this focus, do you think the following forms of accommodation should be included in the landlord checking scheme?

- (i) Properties rented out for one or more person(s) to live in as their main or only home (Yes / no / don't know)
- (ii) Homes which are not buildings – including caravans and houseboats – if they are rented as the tenant's main or only home (Yes / no / don't know)
- (iii) Homes which were not built for residential purposes – for example someone renting a disused office as their home, including "property guardians" (Yes / no / don't know)
- (iv) Further forms of accommodation not described in the consultation (please specify further forms of accommodation) (Yes / no / don't know)

**Consultation question 2:** Do you think the following forms of accommodation should be excluded from the landlord checking scheme?

- (i) Social housing rented to tenants nominated by local authorities or to households provided accommodation under the homelessness legislation (Yes / no / don't know)
- (ii) Privately rented accommodation offered by the local authority to a person to whom a homelessness duty is owed (Yes / no / don't know)
- (iii) Sales of homes, including those purchased on a leasehold or shared ownership basis (Yes / no / don't know)
- (iv) Accommodation provided by universities and other full-time educational

<sup>19</sup> See [www.gov.uk/government/publications/removal-of-the-spare-room-subsidy-fact-sheet](http://www.gov.uk/government/publications/removal-of-the-spare-room-subsidy-fact-sheet)

- establishments for their students (Yes / no / don't know)
- (v) Accommodation provided by employers for their employees (Yes / no / don't know)
- (vi) Tourist accommodation such as hotels and guest houses providing short-term accommodation to tourists and business travellers (Yes / no / don't know)
- (vii) Short term business and holiday lets (Yes / no / don't know)
- (viii) Hostels providing crisis accommodation to homeless and other vulnerable people (Yes / no / don't know)
- (ix) Hospital and hospice accommodation for patients (Yes / no / don't know)
- (x) Care homes for the elderly (Yes / no / don't know)
- (xi) Children's homes and boarding schools (Yes / no / don't know)
- (xii) Other forms of accommodation not described above (please specify other forms of accommodation) (Yes / no / don't know)

**Consultation question 3:** The Government wishes to exclude tourist accommodation and short-term business and holiday lets from immigration checks because these do not usually represent the person's main or only home. However, the Government considers checks should be made if the person stays there for an extended period of time. After what duration of stay should an immigration check be required?

- (i) At the end of one month;
- (ii) At the end of two months;
- (iii) At the end of three months;
- (iv) At the end of four months;
- (v) Longer than four months;
- (vi) Don't know?

**Consultation question 4:** The Government is interested to know whether it is appropriate to include lodgers and sub-tenants in the policy. Should the policy apply to:

- (i) Owner-occupiers taking in paying lodgers where the lodger is living there as their main or only home (Yes / no / don't know)?
- (ii) Tenants of privately rented accommodation taking in lodgers or sub-tenants as their main or only home (Yes / no / don't know)?
- (iii) Social housing tenants taking in paying lodgers or sub-tenants where the lodger is living there as their main or only home (Yes / no / don't know)

**Consultation question 5:** If the Government does decide to include lodgers and sub-tenants, then who should be held liable for making the migration checks on the lodger or sub-tenant?

- (i) Always the landlord's/owner occupier's responsibility;
- (ii) (ii) Always the tenant's responsibility;
- (iii) (iii) Unless they specifically agree otherwise, the landlord;
- (iv) (iv) Unless they specifically agree otherwise, the tenant;
- (v) (v) Don't know?

## People to be checked

33. The landlord (or his agent – see paragraph 48 below) will be required, before the tenancy begins, to check the migration status of the proposed tenant(s). He will need to make checks not only on the person(s) with whom he is entering into a contractual



relationship (whether written or unwritten) but will also need to take reasonable steps to find out, in advance of the start of the tenancy, which other adults will be living at the property and to make checks on them too. There will be no requirement to make checks on tenants' dependants who are not yet adults (although landlords may of course need to make checks to satisfy themselves that they are not adults).

34. Many landlords will meet a number of prospective tenants. There is no requirement to check the immigration status of all of them – only the people with whom the landlord actually proceeds. Checks should be performed on a non-discriminatory basis (i.e. without regard to race, religion or other protected characteristics as specified in the Equality Act 2010<sup>20</sup>) on all adults who will be living at the property.
35. Some prospective tenants may not be able to produce their documents because they have sent them to the Home Office in connection with an outstanding application or appeal. In these cases, the landlord would contact the Home Office enquiry service (see paragraph 43 below) to confirm whether the applicant has lawful immigration status.
36. If the prospective tenant cannot provide satisfactory evidence (or confirmation from the Home Office, as described above), then the landlord should not rent accommodation to them – and would be liable for a civil penalty if he proceeds to rent accommodation to someone who turns out to be an illegal non-EEA migrant (see section 6).
37. If a landlord declines to provide accommodation to a prospective tenant because they cannot produce satisfactory documentation, there would be no legal duty on the landlord to report the person to the Home Office, even if he suspects they are an illegal migrant. However, the landlord could choose to do so. The Home Office will treat such information in confidence. Intelligence received about suspected cases of illegal immigration will, where appropriate, be acted upon and those here illegally can expect to be arrested and removed from the UK.
38. Private landlords have limited powers of entry to inspect a rented property. It is not intended to create new powers of entry or rights for landlords to make intrusive inspections to verify who is actually living in the property. Because of this, a landlord will not be held liable if the people who actually live in the property after the start of the tenancy are different from those who have been disclosed to him as part of his enquiries (see paragraph 33 above) and turn out to be illegal migrants. (See, however, paragraph 32 above regarding the possibility of making tenants responsible for making migration checks on lodgers and sub-tenants.)

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<sup>20</sup> The protected characteristics are age, sex, gender reassignment, race, disability, religion or belief, marriage and civil partnership, sexual orientation, pregnancy and maternity.

## 5. Making the checks

***In the vast majority of cases, the checks will be simple and quick, for the landlord and tenant alike. The Home Office will publish straightforward guidance and will operate an enquiry service that landlords can contact if they need assistance. If the landlord employs a letting agent then, by agreement, the responsibility and liability for making checks can be transferred to the letting agent. When renting property to a company, the company will be responsible for making checks on people who live in the accommodation.***

### Types of evidence that landlords should accept

39. Private landlords are not expected to be experts in immigration. There will be a limited list of documents that they are expected to accept in making the checks. The Home Office will publish guidance so that landlords can easily recognise documents that are presented to them by comparing them with specimens presented in the guidance document<sup>21</sup>.

40. Table 1 below presents the documents that are proposed as satisfactory evidence for the purposes of this policy<sup>22</sup>. Examples of some of these documents are shown at Annex C. The great majority of people will be able to satisfy the checks by producing a passport or other commonly held documents of the kind that many landlords would already request in vetting prospective tenants. The roll-out of Biometric Residence Permits (BRPs) for citizens from outside the European Economic Area (EEA)<sup>23</sup> means that a simple and secure means of demonstrating status will be available for many people of them, greatly simplifying a previously complex range of immigration documentation.

**Table 1: Checklist of acceptable documents**

<b>Category:</b>	<b>Documents accepted as evidence a person falls into that category (any one of the following)</b>
United Kingdom citizens	UK passport (an expired passport is acceptable if the holder is still recognisable from the photograph)  Naturalisation certificate  Right of abode certificate

<sup>21</sup> To see the online guidance that is currently available for employers who make checks on employees, see [www.ukba.homeoffice.gov.uk/business-sponsors/preventing-illegal-working/](http://www.ukba.homeoffice.gov.uk/business-sponsors/preventing-illegal-working/)

<sup>22</sup> It is recognised that not all such documents will satisfy immigration status for other purposes. For example, we are not expecting landlords to be able to recognise that some EU citizens are not eligible to live in the country because they are not in fact exercising their 'Treaty Rights'.

<sup>23</sup> The EEA comprises the countries of the European Union (EU) plus Iceland, Liechtenstein and Norway.

Category:	Documents accepted as evidence a person falls into that category ( <b>any one of the following</b> )
	Birth certificate or adoption certificate <b>plus</b> either (i) national insurance number or (ii) UK driving licence
European Economic Area and Swiss citizens	<p>EEA or Swiss passport (an expired passport is acceptable if the holder is still recognisable from the photograph)</p> <p>National identity card issued by European Union member state<sup>24</sup> or Switzerland</p> <p>European Union Laissez Passer (as issued to certain European Union officials and dependants)</p>
Non-EEA nationals with lawful regular immigration status (leave to enter or remain)	<p>Biometric Residence Permit (BRP) held by temporary and permanent residents</p> <p>Visa or passport stamp held by short term visitors</p> <p>Home Office letter confirming the person has an outstanding immigration application or appeal which permits them to remain (but only if verified by contacting the Home Office enquiry service)</p> <p>Documents held by persons exempt from immigration control (e.g. diplomatic passports, NATO Identification card, International Red Cross Travel document, UN Laissez Passer)</p>
Non-EEA family members of EEA nationals exercising EU Treaty Rights in the UK	<p>Residence certificate or card issued by the Home Office</p> <p>Certificate of Application (but only if verified by contacting the Home Office enquiry service)</p>
Non-EEA nationals without leave to remain <sup>25</sup>	<p>Application Registration Card (ARC) held by asylum seekers (but only if verified by contacting the Home Office enquiry service)</p> <p>Home Office letter of authorisation (but only if verified by contacting the Home Office enquiry service)</p>

<sup>24</sup> The EU member states are Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the UK.

<sup>25</sup> This covers the following people who would be allowed to take up accommodation despite not having leave to remain: persons with outstanding asylum applications; persons on temporary admission with valid outstanding applications or appeals.

41. The Government wishes to strike the right balance between making it easy for people who are lawfully present in the UK to obtain accommodation; not overburdening landlords with an excessively lengthy or non-standardised list of documents that could be presented to them; and ensuring that the evidence that is presented is sufficiently robust as evidence of immigration status. The Government will consider during the consultation period whether there are further combinations of documentation – potentially including evidence of receipt of UK benefits – that could be added to the list.

**Consultation question 6:** If you are a current or prospective tenant or lodger, and you are in the UK legally, would you readily be able to provide one of the forms of documentation that are in the list? (Yes / no / don't know / NA)

**Consultation question 7:** Are you in receipt of welfare benefits? If so, do you have in your possession a letter that is less than three months old and which evidences your entitlement to benefits that you could show to a landlord? Which benefits does this relate to?

**Consultation question 8:** What other evidence have you used to demonstrate your identity for official purposes?

## Making the checks

42. The person making the check would look at the original of any of the above documents that is presented to him. He would need to satisfy himself that it corresponds with the person presenting it - e.g. whether the name in the document corresponds with the name of the person presenting themselves as a prospective tenant and, if the document includes a photograph, that the photograph resembles the person. He would also check that the document looks like the specimen documentation depicted in the guidance and that forgery or alteration is not readily apparent.

43. In the vast majority of cases, the person's status should be established simply by examining their documents. However, as shown in the table, some documents would need to be verified with the Home Office. The Home Office will operate an enquiry service so that landlords can either telephone with general enquiries about documents or email specific queries about particular individuals (including where the documents provided require verification). We will ensure that the service is developed to reflect the real-time nature of competition for housing, including the scope for allowing those with outstanding applications or appeals with the Home Office to pre-certify their status for a limited period (i.e. to obtain documentary proof of their outstanding application or appeal), providing them with a ready up-front means of demonstrating their entitlement to landlords. General telephone enquiries should obtain immediate advice. For the existing scheme that applies to employers, the time for responding to email enquiries is typically six days. The Home Office will provide a reference number for enquiries so that, if a query arises in the future about the tenant concerned, the landlord can provide evidence that the Home Office's advice was obtained.

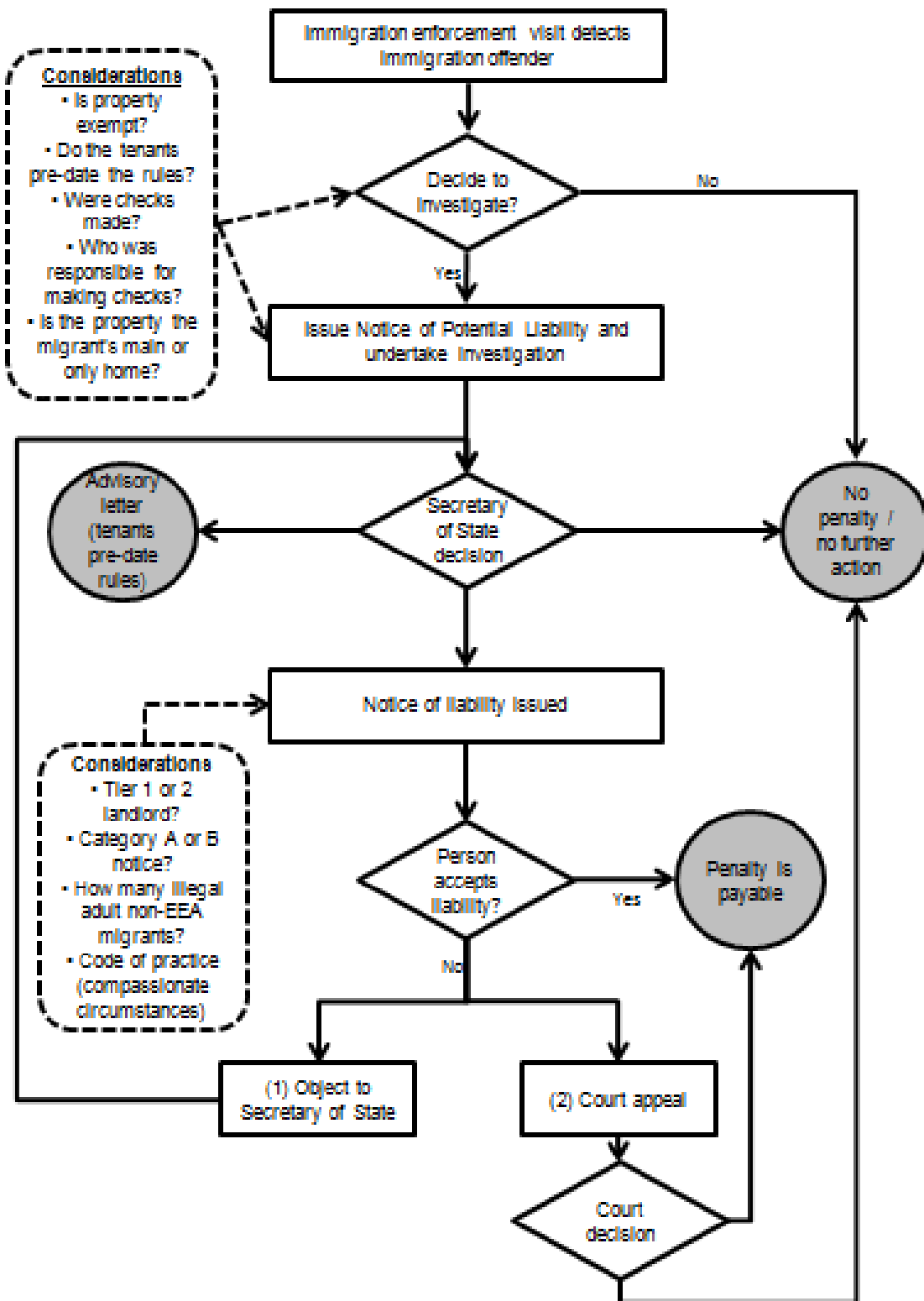
44. Landlords are not expected to be expert in recognising forgeries and, if they have taken reasonable steps to satisfy themselves as to the authenticity of the document presented, will not be held liable for being duped by forged documentation unless the

forgery is reasonably apparent. Under the employer's scheme, the current codes of practice define "reasonably apparent" as being where a person untrained in the identification of false documents, examining it carefully, but briefly and without the use of technical aids, could not reasonably be expected to realise that the document in question was not genuine.

45. Having checked the original of the document, the landlord would be expected to take a copy and keep that copy (and a record of the reference number provided by the Home Office enquiry service, if relevant) in a safe place until at least a minimum period (indicatively 12 months) has expired after the tenant has stopped living at the property (or so long as is required for any other record keeping purposes) before disposing of it securely in accordance with the Data Protection Act.
46. There will be cases where someone from outside the UK seeks living accommodation (perhaps via an agency or their employer) in advance of arriving in the UK or even in advance of receiving a visa. In these cases, the landlord would not be expected to make checks before the person arrives in the UK. However, they could nonetheless agree to rent accommodation to them and would then make the checks when they arrive in the UK, prior to providing keys to the accommodation.
47. There could also be cases of overseas residents who live outside the UK and wish to rent accommodation here purely for the purposes of making occasional visits to the UK whilst continuing to live overseas. The purpose of the policy is to check people living in rented accommodation as their main or only home, not to prevent people who visit the UK from time to time from maintaining accommodation here. However, to avoid any logistical difficulties of proving at a later stage that the tenant is not living in the property as his main or only home, it would be strongly advisable for the landlord to make a check on the tenant's right to be in the UK when they first arrive, prior to providing keys to the accommodation.

Figure 1 below illustrates how the checking process would work.

Figure 1: Checking process



**Consultation question 9:** When the requirement for employers to check employees' migration status was introduced, the Home Office estimated that employers would take on average two hours to familiarise themselves with the new requirements. Do you think the time required for landlords to familiarise themselves with the new requirements would be:

- (i) shorter than two hours;
- (ii) about two hours;
- (iii) longer than two hours;
- (iv) don't know.?

**Consultation question 10:** When the requirement for employers to check employees' migration status was introduced, the Home Office estimated that employers would on average take 15 minutes to check the migration status of an employee. Do you think the time required for checking the migration status of a tenant would be:

- (i) shorter than 15 minutes;
- (ii) about 15 minutes;
- (iii) longer than 15 minutes;
- (iv) don't know?.

**Consultation question 11:** If the landlord or agent undertaking the migration status check has a specific enquiry that needs to be answered by email, what would be the maximum acceptable response period:

- (i) one to two working days;
- (ii) three to five working days;
- (iii) More than five working days but less than two working weeks;
- (iv) Two to three working weeks;
- (v) Don't know?

## Letting agents and others responsible for making checks

48. Many landlords employ letting agents to find tenants for them. The scope of services varies but many letting agents procure or perform checks on tenants on behalf of the landlord, such as credit checks or seeking references from previous landlords. Although letting agents may not currently carry out immigration checks on prospective tenants, they will already be familiar (unless they do not have employees) with making immigration checks on their own employees.

49. Where a landlord is using a letting agent to carry out the immigration status check on its behalf, the Government considers that the letting agent should bear the liability for failing to perform the check. We therefore intend to legislate that, where it is clearly documented that the letting agent will be responsible for performing the required checks on the tenant, then it will be the letting agent rather than the landlord who is liable for the civil penalties associated with failing to make the checks. Where there is no such transfer of responsibilities, liability for failure to check the migration status of the tenant will remain with the landlord.

50. It is possible that, besides letting agents, other businesses will offer immigration screening services for landlords. In principle, the Government considers that, where a

commercial business takes on this responsibility for a landlord, a similar approach to the proposals for letting agents could apply.

51. Sometimes landlords rent properties to companies, who in turn use the property for various purposes such as providing accommodation to employees or clients visiting from overseas. Under these company lets<sup>26</sup>, the landlord may not always know who will be staying in the property or have the chance to approve changes in the people who will be staying there. We are proposing that, for company lets, it should be the tenant rather than the landlord who should be responsible for making checks on people who stay there, as if they were themselves the landlord. In many cases, such checks will not in any case be required – if, for example, someone staying in the property has already had their migration status checked as an employee of the company concerned or if they are staying there under a short term business let.

**Consultation question 12:** If you are a letting agent, would you be willing to provide a checking service on the prospective tenant's migration status? (Yes / no / Don't know)

**Consultation question 13:** If you are a letting agent who would be prepared to provide a checking service, would you be willing to have liability transferred to you for carrying out the check? (Yes / no / don't know)

**Consultation question 14:** If you are a letting agent who would be prepared to provide a checking service and accept liability, would you charge extra to check the migration status of a prospective tenant?  
(Yes / No / Don't know)

**Consultation question 15:** If you are a landlord who does not currently use a letting agent, would this policy prompt you to use a letting agent in the future if they agreed to accept the responsibility for checking the migration status of tenants? (Yes / no / don't know/N/A)

**Consultation question 16:** For properties rented out to a corporate tenant (i.e. a company), who should be responsible for making checks on people living in the property?

(i) The landlord;

(ii) The company that rents the property;

(iii) It is up to the landlord and company to agree but, in the absence of explicit agreement, the landlord should be responsible;

(iv) It is up to the landlord and company to agree but, in the absence of explicit agreement, the company should be responsible;

(v) Don't know.

## Tenants with limited leave to remain – repeating the checks

52. Some tenants from outside the EEA will have documentation showing that they are entitled to be in the UK on the date that the initial check is made but that they are not

<sup>26</sup> In England, company lets are governed by the Law of Property Act 1925 rather than housing legislation.



permanently entitled to be here – for example, they may have a visa stamp in their passport which expires within a few months of the tenancy starting. The Government proposes that the landlord should still be able to rent accommodation to the tenant, provided they have the right to be in the UK on the date that the check is made, but would need to repeat the check periodically thereafter (until such time as the tenancy finishes or the tenant produces evidence that he is now permanently entitled to remain in the UK).

53. However, the Government considers that tenants with limited leave to remain should not need to be checked more than once per year. For example, if a person's passport shows that they have six months' permission to stay in the UK when the landlord first makes the check, then a further check would not be required until the anniversary of the first check. If the tenant is still present in the address at that time, then they would need to prove that they had further permission to be in the UK. However, for a tenant who at the outset of the tenancy shows that he has long term permission to stay, e.g. five years, the check would not need to be repeated until (in this example) five years after the first check was made (if the tenant is still living in the property).

**Consultation question 17:** If a tenant provides evidence showing they have limited leave to remain in the UK, when is the next time that the landlord or letting agent should be required to repeat the check of their immigration status?

- (i) Immediately after their leave to remain expires (however soon after the initial check or far into the future that may be);
- (ii) after a year (regardless of when their leave expires);
- (iii) after a year or when their leave expires, whichever is later;
- (iv) whenever the tenancy is renewed / renegotiated;
- (v) don't know.

## Implementation issues

54. Subject to the passage of legislation through Parliament, it is intended that these measures should come into effect in 2014. The Home Office already operates an enquiry service for employers, and a similar service will be available for to landlords to use when the policy comes into effect. Similarly, the Home Office will by then have produced online guidance that landlords can access.
55. The Government will work with representative bodies for private landlords and letting agents, social landlords and others to ensure that the new requirements are widely communicated before they come into effect.

**Consultation question 18:** If you are a landlord or letting agent: assuming that the legislation, enquiry service and guidance are in place by March 2014, what is the earliest date by which you will be ready to undertake checks on new tenants?

- (i) April 2014;
- (ii) July 2014;
- (iii) October 2014;
- (iv) January 2015;
- (v) later;

(vi) don't know.

## 6. Consequences of illegal migrants living in a property

***In future, if a landlord suspects that illegal migrants are living in their property, then they should take action – usually by reporting this to the Home Office. Landlords who provide accommodation to illegal migrants without making checks will face civil penalties. The penalty regime will be proportionate – with relatively modest penalties for people who breach the rules for the first time. In the most serious cases, however, the penalty would be £3,000 per illegal migrant. There will be a process for appeals, and safeguards to protect landlords who have made reasonable attempts to check their tenants' status.***

### **What happens if the landlord suspects that an illegal migrant is living in the accommodation?**

56. Despite having made checks upon tenants before they move into the property, the landlord might subsequently suspect that illegal migrants are living there. This could arise for a number of reasons, including:

- Upon re-checking a tenant who originally had limited leave to remain (see paragraph 52), the tenant might not be able to provide satisfactory evidence that his leave to remain has been extended;
- The landlord might become aware that the evidence he had originally inspected in good faith was fraudulent. For example, it might subsequently come to his attention that the tenant is not the person he had claimed to be;
- It might come to the landlord's attention that the people who are actually living in the property are not the tenants whom he had originally checked (because of the tenants sub-letting or taking in a lodger) and he might have reason to suspect that they are illegal migrants.

57. In the first case (where the tenant's leave to remain has expired), the landlord would have a 'statutory excuse' from liability (see paragraph 68 below) provided he promptly reported the tenant to the Home Office. Failure to do so would mean that the landlord would not have a statutory excuse if the tenant came to the Home Office's attention and were found to be still living at the property. The landlord would not be under a legal duty to terminate the rental arrangement or to evict the tenant (although that is a course of action he might consider). However, if the rental arrangement came to a conclusion (e.g. if the tenant is living in a property under a fixed term licence, rather than a tenancy that continues until terminated), then the landlord would be required not to take active steps to renew it. Voluntary renewal by the landlord in such circumstances would be treated as if the landlord had entered into a new rental arrangement with a tenant without making the necessary checks.

58. In the other two cases described above, the landlord would have a statutory excuse provided he had done what was required of him at the time of renting out the

accommodation (and had made any subsequent checks that were required, e.g. making checks after three months, in the case of providers of tourist accommodation). Nonetheless, it would still be advisable for the landlord to report his concerns to the Home Office so as to minimise the chances of any subsequent misunderstanding of his own role in the illegal migrants living in the property – for example, to avoid any accusation that he had knowingly accepted false documentation or conspired in other sham arrangements so that illegal migrants could live there.

59. In situations where the landlord reports a suspected illegal migrant to the Home Office, the Home Office would normally treat such disclosures in confidence, i.e. it would not disclose to the suspected illegal migrant who had reported them.

## **Approach to enforcement by the Home Office**

60. The Home Office, including its operational commands at ports of entry and in-country enforcement arm, already has a range of powers available to investigate suspected illegal migrants and to remove them from the country. It is not proposed to create new powers of entry or inspection of properties for the purposes of this policy.

61. The way in which the penalty regime will work will broadly follow the approach that applies to employers of illegal workers under the Immigration, Asylum and Nationality Act 2006, although it will not be identical in all respects.

62. Where Home Office officials detect that a person living in rented accommodation is an illegal migrant from outside the EEA, they would investigate. At the time of its investigation, the Home Office would, where an immigration offender has been detected and there is reason to believe that the landlord has not discharged his duty under the new rules, contact the person(s) to be investigated and issue them with a notice of potential liability<sup>27</sup>. This notice would set out, in everyday language, what these enforcement procedures mean, give details of who to contact in order to find out more, and give the person an opportunity to co-operate with investigations and make representations to the Home Office while investigations were still ongoing.

63. Once the investigation was complete, the Secretary of State would decide how to proceed and would do one of the following:

- Issue a notice of liability requiring the person to pay a civil penalty
- Issue an advisory letter if the Home Office was satisfied that the illegal migrants had been living in the property before the policy came into effect;
- Notify the person being investigated that no advisory letter or notice of liability would be issued.

64. The Home Office intends to develop a statutory Code of Practice which would apply to investigations and issuing of notices. The Code of Practice would set out a range of

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<sup>27</sup> In the scheme that operates for employers, serving a notice of potential liability is an administrative practice, not a legal requirement.

factors that may be taken into account in deciding whether to issue a notice of liability, including reasonable compassionate circumstances.

65. Having received a notice of liability, the landlord (or other party on whom it is served, such as the letting agent) would have the right to object to the Secretary of State and subsequently, if dissatisfied with the outcome of the Secretary of State's consideration of the objection, to appeal to the courts<sup>28</sup>. There would be three grounds for objection / appeal:

- That the person on whom the notice is served is not liable;
- That the person on whom the notice is served had a statutory excuse;
- That the level of the penalty is too high.

66. It is not intended to create any new criminal offences for purposes of this policy.

### **Denial of liability / statutory excuses**

67. There are a range of legitimate reasons – mainly factual matters - why a person who receives a notice of liability might deny liability. A few examples are if the person on whom a notice is served:

- Denies being the landlord or letting agent of the property (e.g. a case of mistaken identity);
- Denies that the illegal migrant is paying to live in the property or that it is being used as the illegal migrant's main or only home (e.g. they might be a squatter who is living there without permission, or they might be using the property only for occasional use);
- Claims that the accommodation is a property exempted from the policy (see paragraphs 25 and 26);
- Claims that the tenant was already living in the property on the date on which this policy comes into force; and
- Is the letting agent for the property but denies that they had agreed to take on the responsibility of checking the tenant from the landlord.

68. From the list above, it can be seen that there are a whole range of factual matters based on which liability could be denied, and it is not intended that an exhaustive list of such reasons should be set out in the legislation. In addition, following the approach that applies for employers, it is anticipated that there would be a list of 'statutory excuses' which would similarly excuse the person on whom the notice is served from

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<sup>28</sup> An advisory letter would not be subject to an objection or appeal process at the time it is issued since no penalty is payable in connection with an advisory letter. However, the person on whom it is served would have the opportunity to make representations in response to the advisory letter. These representations would be taken into consideration at a later date in the event that this had a bearing on the amount of civil penalty payable for a subsequent breach (see paragraph 71).

any liability. These excuses arise mainly where the landlord (or agent) has carried out the procedures that he was required to follow but it nonetheless transpires that illegal migrants were living in the property. The precise approach to be taken in the drafting of the legislation has not yet been decided but, broadly speaking, the following are indicative of the types of circumstances which would be statutory excuses:

- That the person had: used reasonable efforts to make due enquiries as to who would live at the property; had carried out checks on them, in accordance with the guidance, and (if needed) repeated the checks when due; had been presented with satisfactory evidence from the checklist shown in Table 1 above; that it was not reasonably apparent that the evidence was forged; and had retained copies of that documentation;
- That the person had reported their concerns to the Home Office, in the case of a tenant whose leave to remain in the country had expired by the time a repeat check was undertaken (see paragraph 57 above);
- That the person had referred to the Home Office enquiry service and had received clearance to proceed with the rental arrangement;
- That (in the case of a notice served on a landlord) it had been agreed in writing between the landlord and a letting agent or checking agent that the landlord had transferred the responsibility for making checks to the agent;
- That the illegal migrant was living in the property as a sub-tenant or lodger of the tenant and had not been disclosed to the landlord (having made due enquiry at the start of the tenancy) as one of the people who would be living in the property; and
- That the tenant had stopped living at the property more than 12 months ago (see paragraph 45) and that the records of the checks that had been made had been destroyed.

69. If a person on whom a notice of liability is served is successful (either in their objection to the Secretary of State or court appeal) in denying liability or claiming that a statutory excuse exists, then no civil penalty would be payable.

**Consultation question 19:** If the Secretary of State issues a notice of liability requiring the recipient to pay a penalty, it is proposed that the recipient should have the opportunity to deny liability and/or claim that one or more of a list of ‘statutory excuses’ exists, so that a penalty should not be payable. These objections must be considered by the Secretary of State, following which there is a further right of appeal to the courts. Do you think this approach provides sufficient safeguards for landlords and letting agents against a notice of liability issued unfairly? (Yes / no / don’t know)

## Level of civil penalties

70. The objectives of the proposed penalty system are that it should:

- send a signal that all landlords should take their obligations seriously and that the worst offenders can expect serious penalties;
- not discourage law-abiding people from becoming or remaining landlords or create excessive penalties for unintentional / low level breaches; and
- be practical to administer, and straightforward for landlords to understand.

71. A single level of penalty is unlikely to satisfy the above objectives. The Government therefore proposes an approach which differentiates between different levels of seriousness, as follows:

- Category A – No advisory letter or notice of liability has been served on the person in the previous three years (previous notices of liability which had been withdrawn or rescinded following objection or appeal would not count for these purposes); and
- Category B – All notices of liability that are not Category A notices. This category would apply where the recipient has been served with one or more advisory letters or notices of liability (that have not been withdrawn or rescinded) in the past three years.

72. The penalty would be an amount per adult illegal migrant. The penalty levels shown in Table 2 are proposed. The legislation would allow the Government to review the levels of penalties and adjust them upwards or downwards at a later date through secondary legislation.

**Table 2: Penalty levels**

	<b>Category A</b>	<b>Category B</b>
<b>Penalty per adult illegal non-EEA migrant</b>	£1,000	£3,000

73. If the policy were to include lodgers and sub-tenants, then the Government recognises that the above penalty levels may not be appropriate for landlords who are operating informally to contribute towards the cost of running their own home. The Government

would therefore be minded to set the penalties at a lower level for people who take in just one or two lodgers in the home they are living in or who sub-let the home they are living in to up to two people. Indicatively, the penalties might be £80 per illegal migrant for a category A breach and £500 for a category B breach. The Government would wish to ensure that the consequences for informal landlords who have no prior history of accommodating illegal migrants are manageable, but without undermining the credibility of a financial penalty mechanism.

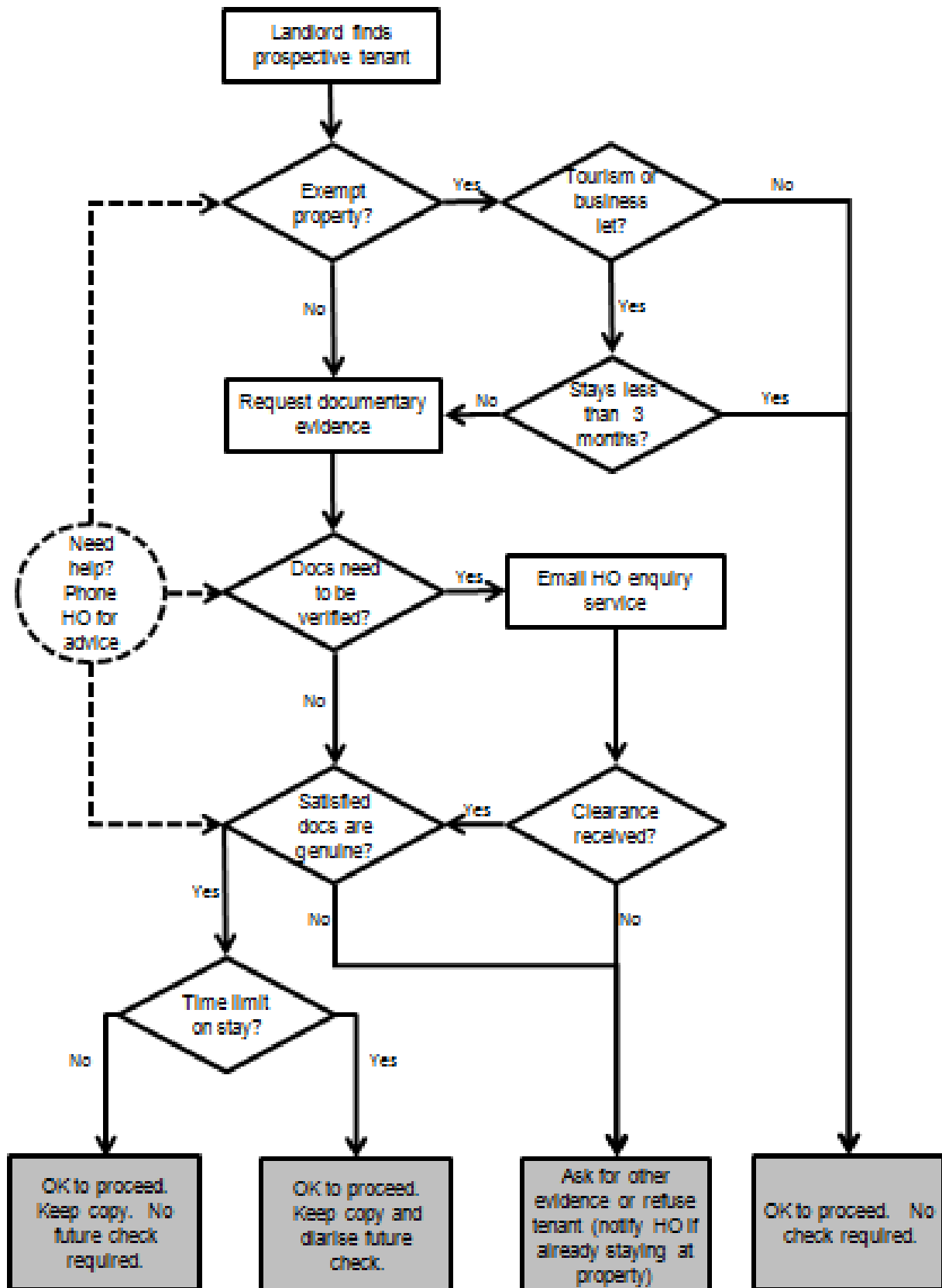
74. If the person served with a notice of liability pays in full within 21 days, it would be subject to a discount of 30 per cent. Payment by instalments would be available to people who are not able to pay up-front.
75. In the event that a civil penalty is not paid when due, then any penalties may be pursued as if payable by an order of a civil court. It would not be necessary to establish through the courts that a debt is owed<sup>29</sup>.
76. Letting agents may have multiple offices across the country. For the purposes of considering whether a notice on a letting agent should be a category A or B notice, it is proposed that this should operate at the level of the individual office. So, for example, the office of a national chain of letting agents operating in a specific location might receive a category A penalty notice even though another branch of the same firm had been served a notice of liability within the past three years.
77. Figure 2 below illustrates how the enforcement process would work.

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<sup>29</sup> Under the scheme that applies to employers, it is currently necessary to go through litigation in the County Court / Sheriff's court in order for the debt to be enforced. The Government is proposing to amend this.



Figure 2: Enforcement process



**Consultation question 20:** If a landlord or letting agent is found to have an illegal adult migrant as a tenant, they may be subject to a penalty. Do you consider that the following penalty levels (per adult illegal non-EEA migrant) are:

- (i) too low;
- (ii) about right;
- (iii) too high;
- (iv) don't know.?

£1,000 per migrant for landlords or letting agents who have **not** received an advisory letter or notice of liability within the past three years

£3,000 per migrant for landlords or letting agents who **have** received an advisory letter or notice of liability within the past three years

**Consultation question 21:** The Government is considering whether the policy should apply to lodgers and sub-tenants. If it is decided that it should apply to them, the Government is minded to apply lower penalties to those landlords who take into their home up to two lodgers or sub-tenants, if their lodger(s) and sub-tenant(s) are found to be illegal adult migrants. Do you consider the following penalty levels (per adult illegal non-EEA migrant) for such landlords are:

- (i) too low;
- (ii) about right;
- (iii) too high;
- (iv) don't know?

£80 per migrant for a landlord who has **not** received an advisory letter or notice of liability within the past three years

£500 per migrant for a landlord who **has** received an advisory letter or notice of liability within the past three years

## Further consequences for Houses in Multiple Occupation

78. As noted in section 3, the Government believes that the problem of illegal migrants is often associated with lower cost accommodation occupied by multiple households who share amenities such as kitchens, bathrooms, etc. These Houses in Multiple Occupation (HMOs), if poorly managed, present a number of risks to their occupiers and the local community. Whilst the definition of HMOs and approach to regulation vary across the UK, there is legislation governing HMOs in all the nations of the UK. Below, we describe the arrangements in England, and then turn to the implications for the other nations of the UK.

### England

79. In England and Wales larger HMOs<sup>30</sup> are required, under the Housing Act 2004 and secondary legislation made under that Act, to obtain a licence from the local housing

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<sup>30</sup> The criteria for requiring a licence (in England and Wales) are that the HMO should be (i) three or more storeys and (ii) house five or more people who form two or more households. See the Licensing of Houses

authority. This is known as 'Mandatory Licensing'. In addition, local authorities have powers to introduce 'Additional Licensing' of other HMOs, in areas where problems are being caused by poor management of HMOs. Operating a licensable HMO without a licence is an offence which carries a fine of up to £20,000.

80. In considering licences under Mandatory Licensing and Additional Licensing schemes, local authorities are required to consider whether the proposed licence holder and (if a different person) manager are 'fit and proper' persons and whether the proposed management arrangements are satisfactory<sup>31</sup>. As explained in the guidance to the legislation, a number of factors are taken into consideration, including the person's previous 'wrong doings' (to the extent relevant to the person's fitness to hold a licence and/or manage the building), association with other persons who have committed wrong doings, and the level of competence of the manager. An HMO licence can be revoked if the licence holder or manager of the property is no longer deemed to be a fit and proper person.
81. It is for the local housing authority, acting in accordance with the Housing Act 2004, to decide whether a licence holder or manager is a fit and proper person and competent. However, the Government considers that once the new requirements to check tenants' migration status comes into effect, a landlord's prior record of compliance with the requirements should be a factor that may be taken into account by the local authority in making that decision – especially if a landlord has received multiple notices of liability or provided accommodation to a large number of illegal migrants.
82. The Government therefore proposes to make sure that local authorities have access to information that would help them make an informed decision about the landlord. In particular:
- If the Home Office believes that the property where illegal migrants are being accommodated is an HMO, then it would copy notices of liability (and notices of potential liability) to the local authority in which the property is located;
  - In order to run the scheme, the Home Office would maintain a register of people who have been served with notices of liability, and will consider ways of working more closely with local authorities to support them with information as to whether landlords have previously breached the regulations);
  - The Home Office would, where appropriate, liaise with local authorities in investigating breaches of the checking requirement and could pass on relevant information to the authority, such as the suspected operation of an unlicensed HMO.
83. The Government will consider whether existing legislation needs to be amended in order to clarify that local authorities may have regard to a landlord's prior history of making migration checks in deciding whether they are fit and proper to hold an HMO licence.

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in Multiple Occupation (Prescribed Descriptions) (England) Order 2006 SI 2006/371 and the Licensing of Houses in Multiple Occupation (Prescribed Descriptions) (Wales) Order 2006 SI 2006/1712

<sup>31</sup> See Housing Act 2004, sections 64 – 66.

## Devolved nations

84. In common with England, the licensing of HMOs in Wales is covered by the Housing Act 2004 but various powers are conferred on the National Assembly for Wales as the “appropriate national authority” under that legislation.
85. There are separate licensing regimes which apply in Scotland and Northern Ireland<sup>32</sup>. In Scotland HMOs are licensed by local authorities and in Northern Ireland they are licensed by the Housing Executive for Northern Ireland.
86. The Government considers that it would be appropriate to ensure that equivalent arrangements for those proposed above for England should apply in Wales, Scotland and Northern Ireland, and will consult with the Devolved Administrations during the consultation period on how best to give effect to that intention.

**Consultation question 22:** Should local authorities in England and Wales be able to take a person’s previous record of complying with this policy into account when deciding whether that person is fit and proper (or competent) to hold a licence for (or manage) a House in Multiple Occupation? (Yes / no / don’t know / NA)

**Consultation question 23:** Should local authorities in Scotland or the Housing Executive for Northern Ireland be able to take a person’s previous record of complying with this policy into account when considering licence applications for a House in Multiple Occupation? (Yes / no / don’t know)

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<sup>32</sup> In Scotland, see part 5 of the Housing (Scotland) Act 2004, and in Northern Ireland, the Housing (Northern Ireland) Order 1992/1725 (as amended by the Housing (Northern Ireland) Order 2003).

## 7. Impacts, equality and privacy issues

***The Government considers that the policy will help tackle the problem of illegal migration by discouraging landlords from renting properties to illegal migrants and encouraging illegal migrants to leave the country. However, it will entail some costs for landlords and letting agents which may potentially be passed on in the form of higher rents. Further work will be carried out to quantify the costs and benefits, and to ensure that equality and privacy considerations are assessed.***

### Impacts – costs and benefits

87. The Government is currently preparing an Impact Assessment for this policy, which will be published as part of the legislative process over the coming months. The Impact Assessment will consider the impacts of the policy on different groups of people, relative to the current situation, and will take account of evidence gathered during the course of this consultation.

88. As a first step towards preparing the Impact Assessment, the Government has prepared an analytical paper, presented at Annex A. This paper gives data on the scale of the private rented sector in the UK and on the migrant population within the sector. It then goes on to describe, in qualitative terms, the potential benefits that will arise from the policy and the types of costs that different groups of people will incur.

89. The potential benefits are summarised as:

- Reduction in numbers of illegal migrants;
- Indirect benefits to the housing market, such as lower losses of income to landlords as a result of performing more due diligence checks on tenants;
- Reduction in costs of investigating and enforcing against illegal immigration;
- Financial income to the Government, in the form of income from civil penalties and fees from illegal migrants seeking to regularise their status.

90. There will be costs to various groups in connection with the policy. The principal costs are likely to be to:

- landlords and letting agents of performing immigration checks;
- tenants in providing and (where necessary obtaining) the required evidence;
- the Home Office in enforcing the policy;
- the courts as a result of any appeals of notices of liability; and

- wider parties, such as local authorities, hostels and citizens advice services. These costs would be indirect.

91. The Government will engage a range of representative bodies during the course of the consultation, in order to obtain further evidence to support the Impact Assessment. Responses to the questionnaire will also inform the evidence base.

## Equality issues

92. A full Policy Equality Statement will be made to take account of findings during the consultation period. This will feed into a full Impact Assessment. An initial assessment of equality issues highlighted some issues that will be considered further in the light of the consultation including the possible effects on vulnerable UK citizens, without passports or other key identifying documents. Other equality issues which have so far been identified across the protected characteristics are set out below.

93. **Race – nationality.** The policy will apply to all new tenants regardless of nationality. Those foreign nationals who have the right to reside in the UK will in most cases have documentation used to gain entry or documentation issued when they were granted settlement. EEA nationals will commonly be in possession of a passport or a national identity card. Non-EEA nationals staying for longer than six months are issued with a Biometric Residence Permit, which will include the date the card and its entitlements expire. To prevent any detriment to UK citizens who do not have passports, other documents or combinations of documents will be allowed.

94. **Race - national and ethnic origins and colour.** The policy will apply to all new tenants regardless of nationality or ethnic origin. There is a risk that misinterpretation of the rules or guidance may lead landlords to exclude prospective tenants on the basis that they are perceived to be foreign nationals on the basis of actual or perceived national or ethnic origins or colour. The guidance and rules will be formulated to make the procedures as simple as possible and to provide advice to both landlords and tenants on how to easily establish legal status and identity.

95. **Gender.** There is a marginal risk that the policy may impact people seeking to quickly move accommodation because of domestic violence where availability of necessary identity documents may be an issue. Guidance and Codes of Practice will take into account the need to provide for compassionate circumstances and flexibility in some exceptional cases, but, in any case, women's refuges will be exempt (see paragraph 26). It is expected that in such cases the Home Office advice service would assess the need to allow a tenancy to proceed pending production of evidence. These and other scenarios will be explored during and after the consultation process.

96. **Disability.** Some people with sensory impairments or physical disabilities may in some circumstances have difficulty in operating the scheme or making checks on documents. The Code of Practice to be developed by the Home Office (see paragraph 64) will provide for compassionate circumstances which would deal with a number of such situations.

97. **Age.** Some elderly landlords may have difficulty in finding out about, understanding and meeting the requirements of the scheme. Again, the Code of Practice to be

developed by the Home Office will provide for circumstances which would deal with a number of such situations.

**98. Other protected characteristics.** No impact has been identified for the following:

- Faith and belief;
- Sexual orientation;
- Gender identity;
- Marriage and civil partnership; and
- Pregnancy and maternity.

## **Children**

99. The welfare of children has also been considered, as set out in section 55 of the Borders, Citizenship and Immigration Act 2009. The policy will not apply directly to children under 16 as their migration status will not need to be checked (although, for children who are approaching adulthood, landlords may need to satisfy themselves that the people concerned are indeed children).

## **Privacy issues**

100. Landlords and letting agents already have responsibilities under the Data Protection Act 1998 for personal data that they hold on tenants. The requirement to keep records of tenants' migration status will not affect those responsibilities, but it may mean that there is more personal data in the landlords' or agent's possession.

- Data collection: The landlord or their agent will hold personal data for the tenant in the form of details of identity, travel documents and/or official references.
- Data storage: The landlord or their agent will be required to keep the data until a period to be determined (indicatively 12 months) after the tenancy ends and will be responsible under the Data Protection Act for securing and protecting the data.
- Data destruction: The landlord or their agent will be responsible for destroying the data once it has fulfilled its use.

101. We will engage with relevant organisations during the consultation to invite their views on privacy issues and how best to mitigate any adverse impacts, and a full Privacy Impact Assessment will be prepared.

**Consultation question 24:** [To be answered by landlords and letting agents] Given that you are already subject to the Data Protection Act, does the requirement to check tenants' migration status add substantially to the work you need to do in order to be compliant with the Data Protection Act? (Yes / No / don't know)

**Consultation question 25:** [To be answered by landlords and letting agents] On average, how long do you keep records of your past tenants?

- (i) Dispose of immediately after the tenant's departure;
- (ii) Up to a year;
- (iii) Longer than a year;
- (iv) Don't know.



## Annex A: Impacts of the Policy

The consultation document sets out the preferred policy option. This annex contains a description of the expected impacts of the preferred proposal relative to the do nothing position and the order of magnitude of these impacts. It can be considered as a level two analysis of the impacts associated with the policy proposals contained in this consultation, as per the Better Regulation Framework Manual (2013), and the first step towards creating a full Impact Assessment. At this stage it is not possible to fully monetise the impacts due to gaps in the available evidence. The consultation process will be utilised to fill in as many of these gaps as possible.

It is expected that landlords in the private rented sector, throughout the UK, will be affected. Thus the available evidence of the size of the landlord population affected is set out in section 1. Sections 2 and 3 set out the preferred proposed policy and the aims of the proposed policy, and section 4 considers the likely costs and benefits of the proposal, including the potential one in, two out (OITO) costs.

### (1) Evidence on the Housing Market

#### Housing stock

The Department for Communities and Local Government (DCLG) publishes annual data on the UK housing stock by tenure. Table 1 shows housing stock in the UK by tenure in 2011.<sup>33</sup> In 2011, 65 per cent of the 27.6 million dwellings in the UK were owner occupied, 17 per cent privately rented, 10 per cent rented from housing associations and 8 per cent rented from local authorities.

**Table 1: Housing by tenure, UK, 2011 (thousands of dwellings)**

2011	Owner occupied	Rented privately or with job or business	Rented from housing associations	Rented from local authorities	All dwellings
UK	17,914	4,712	2,694	2,230	27,614
England	14,827	4,105	2,255	1,726	22,976
Wales	980	181	134	89	1,384
Scotland	1,595	305	275	320	2,495
Northern Ireland	512	121	30	95	759

Source: DCLG Dwelling stock live tables, Tables 101, 104, 106, 107, 108

Note: All dwellings total includes 63,000 'other' for England

<sup>33</sup> [www.gov.uk/government/statistical-data-sets/live-tables-on-dwelling-stock-including-vacants](http://www.gov.uk/government/statistical-data-sets/live-tables-on-dwelling-stock-including-vacants), Table 101

## Households

The 2011 Census suggests that 15 per cent (3.6 million) of households rent from a private landlord or letting agency in England and Wales.<sup>34</sup> This excludes those in accommodation tied to their job.

For Scotland, Census data on tenure has not yet been released. It is, however, available from the Scottish Household Survey (2011 data, published 2012). This suggests a relatively small private rented sector in Scotland accounting for 11 per cent of the housing market in 2011.<sup>35</sup> In Northern Ireland, the Census data indicates that 13.5 per cent of homes are privately rented from a landlord or lettings agency.<sup>36</sup>

These statistics allow the estimation of the volume of households that are in private rented accommodation to be made separately from those in accommodation tied to their job. The landlords of privately rented dwellings are in the scope of this policy proposal, whereas those who rent tied accommodation are out of scope as the occupier's immigration status will be checked as part of existing employment legislation.

**Table 2 – Estimation of the volume of Private rented households in the UK**

	Rented privately or with job or business		Census % in private rented	Estimated Volume in private rented	Estimated volume Rented with Job or Business
2011	17%	4,712	14.6%	4,031	681
England	18%	4,105	15.0%	3,654	632
Wales	13%	181			
Scotland	12%	305	11.0%	274	31
Northern Ireland	16%	121	13.5%	102	19

Source: Table 1 (above) and Home Office analysis of census data

Table 2 suggests that landlords of around 4 million dwellings will be in scope of the policy proposal. In addition, if lodgers were to be included in the policy, then there would be a significant number of lodgers renting rooms with households who are owner occupiers, as well as lodgers renting rooms in households in the private and social rented sectors. However, there are no official estimates of how many lodgers there are at the present time.

## Private landlords

Across the UK, the National Landlord Association (NLA) alone represents 1.4 million landlords.<sup>37</sup> However, publically available data on the number and profile of UK private landlords is limited.

<sup>34</sup> <http://www.ons.gov.uk/ons/rel/census/2011-census/key-statistics-for-local-authorities-in-england-and-wales/stb-2011-census-key-statistics-for-england-and-wales.html#tab---Accommodation-and-tenure>.

<sup>35</sup> <http://www.scotland.gov.uk/Resource/0040/00403747.pdf>, page 16.

<sup>36</sup> <http://www.ninis2.nisra.gov.uk/public/pivotgrid.aspx?dataSetVars=ds-2432-lh-37-yn-2011-sk-136-sn-Census%202011-yearfilter-->. See Tenure and Landlord: KS402NI (administrative geographies) - Table view.

<sup>37</sup> NLA (2013) <http://www.landlords.org.uk/about-nla> (Accessed 10.06.2013).

Scotland has a mandatory Landlord Registration Scheme, which has been in place since 2006. As of 2011, 175,000 landlords had registered in Scotland.<sup>38</sup> National landlord registration schemes are currently being developed in Northern Ireland and Wales, but no national data is available.

According to the DCLG Private Landlords Survey 2010, approximately 43 per cent of private landlords let their properties through a letting agent.

Available data indicates that most UK private landlord portfolios are small. The Private Landlords Survey 2010 for England found that those with one to four properties represented 93 per cent of sampled private landlords.<sup>39</sup> In Scotland, survey responses from local authorities indicated that an average of 97 per cent of landlords had a portfolio of one to five properties.<sup>40</sup> In Northern Ireland, 66 per cent of surveyed landlords were in this same range.<sup>41</sup>

Looking at properties rather than owners, the Private Landlords Survey for England found that the majority (75 per cent) of all private rented dwellings are owned by private individuals, with a further 15 per cent owned by companies, and 14 per cent other organisations.<sup>42</sup> In Scotland, respondents to a landlord survey found that 68 per cent were sideline investor landlords, and only eight per cent and one per cent were business or organisational landlords respectively.<sup>43</sup>

### Length of tenure

Evidence on length of tenure, and thus the frequency of new tenancy agreements, is relevant to consider the potential impact on landlords.

The English Housing Survey found that around a third (32 per cent) of private renters had lived in their homes for less than one year, compared with only three per cent of owner occupiers and nine per cent of social renters. The mean length of tenancy was 3.8 years

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<sup>38</sup> Scottish Government (2011) *Evaluation of the Impact and Operation of Landlord Registration in Scotland* Available from: <http://www.scotland.gov.uk/Resource/Doc/353982/0119289.pdf>.

<sup>39</sup> Department for Communities and Local Government (2011) *Private Landlords Survey 2010*, Available from: <https://www.gov.uk/government/publications/private-landlords-survey-2010> (Accessed 10.06.2013).

<sup>40</sup> Scottish Government (2011) *Evaluation of the Impact and Operation of Landlord Registration in Scotland* Available from: <http://www.scotland.gov.uk/Resource/Doc/353982/0119289.pdf>.

<sup>41</sup> Northern Ireland Housing Executive (2011) *Private rented sector in Northern Ireland. Living in the private rented sector: Landlord perspectives report, Report six*, Available from: [http://www.nihe.gov.uk/private\\_rented\\_sector\\_in\\_northern\\_ireland\\_report\\_6\\_-\\_living\\_in\\_the\\_private\\_rented\\_sector\\_landlord\\_perspectives\\_report.pdf](http://www.nihe.gov.uk/private_rented_sector_in_northern_ireland_report_6_-_living_in_the_private_rented_sector_landlord_perspectives_report.pdf) (Accessed 10.06.2013).

<sup>42</sup> Department for Communities and Local Government (2011) *Private Landlords Survey 2010*, Available from: <https://www.gov.uk/government/publications/private-landlords-survey-2010> (Accessed 10.06.2013).

<sup>43</sup> Crook ADH, Kemp P and Ferrari E (2009) *Views and Experiences of Landlords in the Private Rented Sector, Scottish Government Social Research, Volume 3*, Available from: <http://www.scotland.gov.uk/Resource/Doc/264936/0079342.pdf> (Accessed 10.06.2013)

and the median two years.<sup>44</sup> Data on the length of tenure is not available for Scotland, Wales or Northern Ireland. Thus it is assumed that tenure is as in England.

### Immigration status and housing

The Migration Observatory's (2013) analysis of the Labour Force Survey summarises the available data for migrant housing experiences in the UK. It was found that the foreign born population are, overall, more likely to be in the private rental sector than UK born occupiers (37 per cent compared to 13 per cent). Owner occupier rates were also lower on average, at 44 per cent compared to 70 per cent.<sup>45</sup> However, these proportions vary considerably depending on the migrant's length of stay (see below).

Perry (2012) also points out that the number of migrants in the private rented sector may in fact be higher as The Labour Force Survey is known to under-record transient workers. So the proportions of migrants using caravans, hostel-type facilities and other less formal kinds of private accommodation are almost certainly higher than recorded, as are those sharing with friends or relatives in the private rental sector or elsewhere.<sup>46</sup>

Smaller scale studies also indicate the short time periods that some migrants may live at a particular address. For example, a study on East and Central European migrants' lives beyond the workplace found that almost a third of respondents had moved at least once in the previous eight months.<sup>47</sup>

Research for the Housing and Migration Network indicates that most new migrants are housed in the private rental sector. This research highlights the flexibility and ease of access to this sector, relative to alternatives of social rented and owner-occupied housing as drivers of this trend, coupled with new migrants' economic circumstances and understanding of the UK housing market<sup>48</sup>. Given that the same kind of factors will also apply to illegal migrants, it seems reasonable to surmise that they are also likely to be concentrated in the private rented sector, particularly as social housing is not available to them.

Home Office analysis of Annual Population Survey data is reflected in Table 3 below, indicating that the proportion of migrants with private sector tenancy decreases the longer the migrants remain in the country. The data also indicates that long-term migrants gradually move towards a tenure distribution similar to that of their UK born counterparts

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<sup>44</sup> See Table 5: Length of residence in current home by tenure, 2011-12, page 20 at [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/88370/EHS\\_Headline\\_Report\\_2011-2012.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/88370/EHS_Headline_Report_2011-2012.pdf).

<sup>45</sup> See: Migration Observatory (2013) *Migrants and housing in the UK: Experiences and Impacts*, Oxford: COMPAS Available from: [http://www.migrationobservatory.ox.ac.uk/sites/files/migobs/Briefing%20-%20Migrants%20and%20Housing%20in%20the%20UK\\_0.pdf](http://www.migrationobservatory.ox.ac.uk/sites/files/migobs/Briefing%20-%20Migrants%20and%20Housing%20in%20the%20UK_0.pdf) (Accessed 10.06.2013)

<sup>46</sup> Perry, S (2012) *UK migrants and the private rented sector: A policy and practice report from the Housing and Migration Network*. Available from: [www.jrf.org.uk/sites/files/jrf/migrants-private-rental-sector-full.pdf](http://www.jrf.org.uk/sites/files/jrf/migrants-private-rental-sector-full.pdf)

<sup>47</sup> Spencer S, Ruhs M, Anderson B and Rogaly B (2007) *Migrants' lives beyond the workplace: The experiences of Central and East Europeans in the UK*, Available from: <http://www.jrf.org.uk/sites/files/jrf/2045-migrants-experiences-uk.pdf>.

<sup>48</sup> Perry, S (2012) *UK migrants and the private rented sector: A policy and practice report from the Housing and Migration Network*. Available from: [www.jrf.org.uk/sites/files/jrf/migrants-private-rental-sector-full.pdf](http://www.jrf.org.uk/sites/files/jrf/migrants-private-rental-sector-full.pdf).

(i.e. 72 per cent of those people born abroad who had been resident for more than 21 years are owner occupiers, compared to the 70 per cent quoted above for the UK born population). These figures are from an analysis of the ONS Population statistics and will be updated with 2011 Census data when that becomes available.

**Table 3: Length of stay and housing tenure for UK residents born abroad**

Time lived in UK (years)	Owner occupied	Private rented sector	Social housing
1	8%	85%	7%
2	9%	83%	8%
3 to 5	15%	72%	13%
6 to 10	31%	51%	18%
11 to 20	47%	27%	26%
21 to 50	72%	11%	17%

Source: ONS, Annual Population Survey (APS), July 2011-June 2012 (Home Office internal analysis)

Table 3 implies that the policy will cover the majority of migrants living in the UK during the initial part of their stay. This will provide a greater opportunity to enforce early removal action against illegal migrants.

## (2) Policy Proposal

Two options are considered.

### Option 1

This option is to make no changes to the current legislation, with the effect that (outside the social housing sector) there is no legal requirement on landlords to check the migration status of their tenants. Many private landlords and letting agents already carry out checks on prospective tenants' identity and credit status and/or seek references. Such checks may make it relatively difficult, in practice, for illegal migrants to rent accommodation from landlords who carry out such checks. However, not all landlords make such checks and these checks would not tend to include checking the tenant's migration status.

### Option 2

This option involves making new legislation to require immigration status checks before a landlord makes accommodation available, backed by civil penalties where landlords fail to do so. This will cover England, Wales, Scotland and Northern Ireland.

Under option 2, there are three main strands to the proposals:

- Requiring landlords to check the immigration status of prospective tenants prior to allowing them to take up residence in a property;
- An associated prohibition on letting property to those migrants who are unlawfully present in the UK; and
- Reporting by landlords of migrants who are in occupation and who no longer have the right to remain in the UK.

Landlords who are found to have authorised occupation of residential premises by unlawful migrants, and who have not complied with the duty to check their status, will be liable for a

civil penalty. An objection and appeals procedure will be provided, with objections first being raised with the Secretary of State, followed by a right of appeal to the court.

The duty to check a tenant's status and, where appropriate to report migrants, will fall on the individual or body who rents out the accommodation – usually the landlord, unless (where relevant) the landlord and letting agent agree that this responsibility should be transferred to the letting agent. The duty will arise only where premises are being let for a monetary payment. The landlord will be required to make enquiries as to which adults will be living in the premises as their place of residence and will be required to check the immigration status of all of those persons.

It is intended that these obligations should extend to all types of tenancy and licence arrangement, other than those where landlords are already under an obligation to check the immigration status of tenants, such as social housing provided to tenants nominated by local authorities and other specified exemptions. This includes private individuals letting a room within their home, if receiving payment for doing so.

The scheme will be administered by the Home Office. Landlords will be able to seek advice from the Home Office where they are unsure of a prospective tenant's status in the United Kingdom, or where document verification is required. Investigations and enforcement work will be undertaken by Home Office Immigration Enforcement Officers.

### **(3) Aims**

The aims of the proposals are to:

- Deliver a scheme which leads to a step change in the behaviour of landlords;
- Make it difficult in practice for illegal migrants to rent property;
- Enable immigration enforcement staff to hold someone to account where illegal migrants are found living at a property; and
- Assist with immigration enforcement by providing the Secretary of State with up to date information regarding the location of illegal migrants.

### **(4) Costs and Benefits**

#### Option 1 - costs

There are no additional costs or benefits of option 1. However, there will be a number of risks and costs that will continue to arise. In particular, if there is no policy change, it is unlikely that there will be any change in the behaviour of illegal migrants or landlords. The costs associated with illegal migrants, such as additional burdens on the taxpayer and lack of effective integration will continue.

#### Option 1 - benefits

There are no additional benefits associated with option 1. The lack of deterrence will not lead to a change in the volume of illegal migrants.

## Option 2 - impacts

The proposals are likely to impact on several groups, including:

1. Private landlords and letting agents – including landlords who provide social housing to tenants that have not been nominated by local authorities;
2. The public sector, including the Home Office and HM Courts and Tribunal Service (HMCTS);
3. Individuals, who will be required to prove their immigration status before a rental can commence; and
4. Wider indirect impacts - Other private or third sector organisations (such as emergency and homeless shelters), as well as the public sector (such as local authorities), may be affected indirectly.

## Option 2 - costs

The table below sets out the impacts on these groups and the scale of these impacts. At this stage the impacts have not been quantified. The impacts will be quantified during the consultation period and will be presented in a final stage impact assessment after the consultation is complete. The table also highlights where costs fall into the scope of the One In Two Out (OITO) process.

**Table 4: Costs of Option 2**

Group	Type of Impact	Volumes affected	Scale
Landlords - Letting Agents - Private Landlords - Those letting spare room to lodgers (if included) - Hotels / guest houses whose guests stay for 3 months - Corporate tenants (company let)	Landlords will be required to check each tenant's migration status before a tenancy agreement can commence (or after three months for tourist accommodation and business lets). This is expected to involve the landlord requiring an additional document as part of their routine document checks and, if necessary, seeking additional advice on migration status or legitimacy of the document presented from the Home Office. If this process delays lettings, then voids may be lengthier and the landlord's revenues reduced. The process, burden and cost implications on the landlord (and consequences for rents paid by tenants) will be considered during the consultation period.  This is a direct impact on businesses and will be included in the OITO cost.	Landlords (or agents) of around 4 million households will be affected.  On average tenancies last for 3.8 years.	High
	To maintain a 'statutory excuse' there will be a requirement on landlords to report migrants who no longer have the right to remain in the UK. The consultation will consider the burden of proof on the landlord and when they would be	There is no official estimate of the number of illegal migrants in the UK. Annual flows and the number likely to	Unknown

Group	Type of Impact	Volumes affected	Scale
	<p>expected to make this decision.</p> <p>This is a direct impact on businesses and will be included in the OITO cost.</p>	<p>be reported annually by landlords are uncertain. This will be considered during the consultation period.</p>	
	<p>Landlords who fail to comply with the policy will be liable for a civil penalty.</p> <p>However, as this is an impact on those who are non compliant with the law, the costs will not be included the Net Present Value of this policy, in line with the Better Regulation Manual (2013).</p>	<p>The volume affected will depend on the proportions that fail to comply with the law.</p>	N/A due to non compliance.
	<p>There may be a reduction in demand for rental properties or changes in the price due to illegal migrants not being eligible for rented housing. The policy may incentivise landlords to free up property currently of low value, improve it, and rent it at higher rents – but our assumption would be that the overall effect is probably to reduce the value of the private rental sector to the marginal degree that illegal migrants are removed from it.</p> <p>This is an indirect effect of the proposal and will not be included in the OITO calculations.</p>	<p>It is unlikely that we will be able to quantify this impact.</p>	Unknown
Landlords providing social housing	<p>Private providers of social housing, such as (in England) Private Registered Providers, will need to check the migration status of any tenants who have not been nominated by the local authority. If lodgers and sub-tenants were to be included in the policy, they may also face costs in familiarising their tenants with the new requirements to check the migration status of lodgers and sub-tenants.</p>	<p>Costs are currently unknown and will be considered during the consultation period.</p>	Medium
Public Sector Costs:  - Home Office	<p>The Home Office will face set up costs in relation to the scheme. These will include setting up a facility for the creation and storage of data relating to enquiries from by landlords as well as the set up of an enquiry service.</p>	<p>Costs are currently unknown and will be considered during the consultation period. They are not expected to be high.</p>	Low
	<p>The Home Office will also face additional staffing and IT costs in order to operate an enquiry service for landlords.</p>	<p>The costs are estimated to be £0.4m per annum.</p>	Low



Group	Type of Impact	Volumes affected	Scale
	The scheme will provide a way of objecting to the civil penalty regime through the Secretary of State. The Home Office will incur these costs.	Costs are currently unknown and will be considered during the consultation period.	Medium
	The scheme will also provide a right of appeal against civil penalties. This will incur costs for the Home Office.		Medium
Public Sector Costs: - HMCTS	The scheme will also provide a right of appeal against civil penalties. This will incur costs for HMCTS the Scottish Court Service and Scottish Tribunals Service and the Northern Ireland Courts and Tribunal Service.		Medium
Individuals applying for a tenancy - UK nationals - EEA nationals - Lawful non EEA migrants	UK and EEA nationals and those non EEA nationals who are in the UK lawfully will face an additional burden in proving their migration status to their landlord. This is likely to be negligible for those who hold a passport. There may be additional costs for those UK nationals who do not hold a passport.	It is unlikely that these costs can be quantified.	Low
Individuals applying for a tenancy - Illegal migrants	Illegal migrants face increased difficulty in renting property. Instead they are expected to either leave the UK or apply to regularise their stay. There are also likely to be impacts on the hidden economy as a result.  However, as this is an impact on those who are non compliant with the law, the costs will not be included the Net Present Value of this policy, in line with the Better Regulation Manual (2013). Instead this cost will be counted as a benefit as it is one of the policy aims.	It is unlikely that these costs can be quantified.	N/A
Other private sector impacts - Illegal migrants	Emergency and homeless shelters will be exempt from the provision to check migration status. However, they may face increased demand from illegal migrants otherwise made homeless by the proposal. There may also be increased activity in the hidden economy.  Organisations providing advice on to citizens on housing and legal matters may be faced with additional demand for advice, e.g. from people who have been served with a notice of liability.  This is an indirect effect of the proposal and will not be included in the OITO calculations.	It is unlikely that these costs can be quantified.	Unknown

Group	Type of Impact	Volumes affected	Scale
Other indirect impacts - Local authorities	<p>Some people will not be able to produce evidence of their immigration status and may turn to local authorities for support, to avoid them being homeless. Local authorities will need to offer them advice and, in some cases, will have a statutory duty to ensure that suitable temporary accommodation is found for them.</p> <p>If lodgers and sub-tenants were to be included in the policy, then local authority housing bodies may face costs in familiarising their tenants with the new requirements to check the immigration status of lodgers and sub-tenants.</p>	Costs are currently unknown and will be considered during the consultation period.	Unknown

### Option 2 - benefits

The table below sets out the expected benefits, and the scale of these benefits, associated with the proposals.

**Table 5: Benefits of Option 2**

Group	Type of Impact	Volumes affected	Scale
Private sector benefits – Landlords	<p>By making more due diligence on prospective tenants the norm, the policy may result in landlords accepting fewer tenants who present unanticipated credit risks, resulting in reduced levels of arrears and defaults in rent.</p> <p>This is an indirect effect of the proposal and will not be included in the OITO calculations.</p>	It is unlikely that these benefits can be quantified.	Unknown
Public Sector benefits: - Home Office	<p>The Government will obtain civil penalty income from non compliant landlords. It will also allow the Home Office to hold an individual landlord to account for allowing an illegal migrant to rent property.</p>	Volumes are currently unknown and will be considered during the consultation period.	Medium
	<p>The Home Office may also see a reduction in the costs associated with enforcement action due to:</p> <ul style="list-style-type: none"> <li>- Better information on the location of illegal migrants due to reports by landlords; and</li> <li>- A reduction in the volume of illegal migrants as some choose to either leave the UK or regularise their stay.</li> </ul> <p>This is an indirect impact due to behavioural change by landlords and/or illegal migrants.</p>	It is unlikely that these costs can be quantified.	Unknown
	The Home Office may also see an increase in	Volumes are	Low

Group	Type of Impact	Volumes affected	Scale
	<p>application fees as some illegal migrants choose to regularise their stay in the UK.</p> <p>This is an indirect impact as it is due to behavioural change.</p>	currently unknown and will be considered during the consultation period.	
Individuals applying for a tenancy	<p>An increase in transaction costs associated with replacing tenants may mean that the average length of tenancies will increase, resulting in greater security of tenure for tenants.</p> <p>This is an indirect effect of the proposal and will not be included in the OITO calculations.</p>	It is unlikely that these benefits can be quantified.	Unknown
Wider impacts on the UK	<p>The proposal may result in a lower number of illegal migrants present in the UK. This in turn could result in:</p> <ul style="list-style-type: none"> <li>- Lower levels of immigration abuse through lower numbers of illegal migrants;</li> <li>- Reduction in breaches of housing law; and</li> <li>- Reduced costs associated with providing public services to these migrants.</li> </ul>	Volumes are currently unknown and will be considered during the consultation period.	Medium

The groups likely to be affected by the policy proposals and the scale of the potential costs and benefits are set out above. Work will continue during the consultation period to fully quantify these costs and benefits in line with the Better Regulation Framework Manual (2013).

## **Annex B: Consultation procedures and questions**

***This consultation seeks views on the Government's proposals to require private landlords to make checks on the migration status of people who rent accommodation from them. You are encouraged to answer the questions by completing the online survey, which can be accessed via the website.***

### **Duration**

This consultation was published on 3 July 2013 and will close on 21 August 2013.

### **Enquiries and responses**

We would welcome your responses to the questions posed in this consultation document. We would request that, wherever possible, you respond via the online survey [accessed](#) via the website. This will be the most efficient and reliable way of ensuring that your responses are reflected in our analysis of consultation responses. Alternatively responses can be emailed to the email address below or posted at the address below. Please use the word version of the template available on the website. Where you wish to offer further, narrative comments, you may email or write to the contacts given below.

By post:

Attn: Bill Parsons  
Home Office, Fry Building 2<sup>nd</sup> Floor, SE  
2 Marsham Street  
London  
SW1P 4DF

By email:

[HOlandlordregulation@homeoffice.gsi.gov.uk](mailto:HOlandlordregulation@homeoffice.gsi.gov.uk)

Should you require a copy of this consultation paper in any other format, e.g. Braille, Large Font, or Audio, you should contact the Home Office at the address given above.

### **Additional ways to become involved**

The Home Office will be contacting a range of national bodies representing the sectors most directly affected by these proposals during the course of the consultation to bring this consultation to their attention and to invite them to submit their views. If you are a member of a representative body with a strong interest in the issues covered by this consultation, you may wish to find out if the body is planning to respond to this consultation and ask how you can be involved in their process of response.

## **After the consultation**

A summary of responses will be published as early as possible, subject to comments received in response to this consultation and the views of Ministers.

## **Responses: Confidentiality & Disclaimer**

The information you send us may be passed to colleagues within the Home Office, other Government departments and related agencies for use in connection with this consultation.

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with applicable access to information frameworks (primarily the Freedom of Information Act 2000 [FOIA], the Data Protection Act 1998 [DPA] and the Environmental Information Regulations 2004).

If you want certain information you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

In view of this you should explain to us why you regard any information you have provided as confidential. If we receive a request for disclosure of the information we will take due account of your explanation, but we cannot give an assurance that confidentiality will be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

The Department will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

## **Consultation criteria**

The Consultation follows the Consultation Principles published by the Cabinet Office in July 2012. The Government believes that a seven week consultation period is appropriate in this case.

## **Consultation Co-ordinator**

If you have a complaint or comment about the Home Office's approach to consultation, you should contact the Home Office Consultation Co-ordinator, Adam McArdle, who can be contacted at: [adam.mcardle2@homeoffice.gsi.gov.uk](mailto:adam.mcardle2@homeoffice.gsi.gov.uk).

## **Questions about you**

We have posed, throughout the main body of the consultation document, a series of policy questions seeking your views on the proposed policy. In addition, the following questions ask for some information about you. The purpose of these questions is to provide some context on your consultation responses and to enable us to assess the impact of the proposals on different groups of people. By providing this information you are giving your

consent for us to process and use this information in accordance with the Data Protection Act 1998.

- D1 Are you responding as or on behalf of:
- Tenant, lodger or sub-tenant
  - Private landlord (individual)
  - Private landlord (company)
  - Social landlord (e.g. local authority landlord or housing association)
  - Letting agent or managing agent
  - An organisation which represents individuals and groups (e.g. landlords, the housing sector, tenants, students, homeless people etc)
  - A community group
  - An institutional investor investing in privately rented accommodation
  - Member of the public (not a landlord or tenant)
  - Provider of hotel, bed and breakfast or other tourist accommodation
  - Legal advisor
  - Local authority
  - Other (please specify)
- D2a If you are a tenant; do you usually live:
- In a home where your household is the only occupier
  - As a lodger (or sub-tenant of the tenant)
  - In a house in multiple occupation, (i.e. occupied by more than one household who share amenities such as kitchen or bathroom).
  - In social housing (i.e. owned by a local authority or housing association)
  - In communal establishment or other form of accommodation (please specify)
- D2b If you are a tenant: how long have you been in your current home?
- Less than 6 months
  - 6 months or more but less than 12 months
  - 1 year or more but less than 2 years
  - More than 2 years
- D2c If you are a tenant: to whom do you pay your rent?
- The owner of the property
  - The owner's agent
  - To another tenant in the property
  - To someone else (please tell us your relationship to them, for example, friend, family,)
  - Don't know
- D3 If you are a private landlord (individual); is being a landlord (together with any other business related to residential properties):
- Your only occupation
  - Not your only occupation
- D4a If an organisation which represents people or groups, which of the following does your organisation speak for? (Tick all that apply)
- Landlords
  - Tenants and/or lodgers
  - Letting agents and/or managing agents
  - Migrants
  - Homeless people
  - Students
  - Community groups

- The housing sector
- Hoteliers or other tourist accommodation providers
- Institutional investor
- Other (please specify)

D4b. If you are not a private individual, how many people work for your organisation / company?

- 1 to 9 employees (Micro organisation)
- 10 to 249 employees (Small-medium enterprise)
- Over 250 employees (Large organisation)
- Don't know

D4c: If you are answering on behalf of a trade body or representative organisation, how many members do you have?

Less than 100, 100-499, 500-999, 1,000 or more/ Don't know

D5a If you are a tenant, private landlord or a member of the public, are you:

- A UK citizen
- A citizen of another European Union country or Iceland, Lichtenstein, Norway or Switzerland
- Other

D5b If other; do you have a time limit on your stay in the UK?

- Yes
- No

D6a All - In which part(s) of the UK would the policy on which we are consulting be relevant to you? (Tick all that apply)

- England
- Wales
- Scotland
- Northern Ireland
- None of the above

D6b If you have answered England; in which part(s) of England would the policy on which we are consulting be relevant to you? (Tick all that apply)

- Greater London
- Other

D7 If you are a private landlord, which of the following apply to the properties that you rent out? (Tick all that apply):

For the purposes of answering this question, a House in Multiple Occupation is licensable either because (i) it has three or more storeys, with five or more people (forming more than one household) living in it and who share facilities such as kitchen or bathroom or (ii) the local authority operates a licensing scheme which is applicable to all HMOs where the property is located.

- You rent the home you are living in to lodgers
- You are the landlord of a licensable House in Multiple Occupation
- You are the landlord of a non-licensable House in Multiple Occupation
- You rent out other, self-contained accommodation
- Other (please specify)



- D8 If you are a landlord or letting agent, how far away are your rented out properties from where you usually live or are based?
- Up to 50 miles away
  - More than 50 miles away
  - I have properties that are less than 50 miles away **and** properties that are more than 50 miles away
- D9 Landlords - How many properties do you rent out?  
For the purposes of answering this question, please consider renting out rooms to multiple occupiers in a property (including your own home) as one property.
- One
  - Two to five
  - Six to ten
  - More than ten
- D10 How many new adult tenants have you let a property or properties (including your own home, if you are a resident landlord) to in the last 12 months
- None
  - 1-5
  - 6-10
  - 11-20
  - More than 20
- D11 If you are a landlord, do you usually employ a letting agent to *find* prospective tenants for any of your properties?
- Yes
  - No
- D12 Do you usually employ a letting or managing agent to *manage* any of your properties once they have been let?
- Yes
  - No
- D13 If you are a letting agent or landlord, what identity verification or referencing documents do you currently require of your tenants? (Tick all that apply)
- None
  - Driving licence
  - Birth certificate
  - Bank statement
  - Passport
  - National Identity Card
  - Asylum Registration Card
  - UK Biometric Residence Permit
  - Utility bill(s)
  - Written reference
  - National Insurance Card
  - Evidence of current benefits payments
  - Other (please specify)
  - Don't know
- D14 If you are a landlord or letting agent, do you employ a private credit referencing agent to verify the credit status of your tenants?

- Yes
- No
- Not applicable, my letting agent provides the credit checks

D15 If you are a landlord or letting agent, do you usually employ a private screening agency to verify the immigration status of your tenants?

- Yes
- No
- Not applicable, my letting agent provides the immigration checks

D16 How did you hear about this consultation?

- UK press (national newspapers)
- International press
- Home Office website
- Overseas website
- Word of mouth
- Social networking site
- From a trade body or other representative body
- Other (please specify)

### Equality questions

E1 Please indicate your age.

- Up to 17 years
- 18 to 24 years
- 25 to 44 years
- 45 to 64 years
- Over 65 years
- Prefer not to say

E2. Choose one option that best describes your ethnic group

White:

- English, Welsh, Scottish, Northern Irish/ British
- White Other

Mixed / multiple ethnic groups:

- White and Black Caribbean
- White and Black African
- White and Asian
- Any other mixed / multiple ethnic background

Asian / Asian British:

- Indian
- Pakistani
- Bangladeshi
- Chinese
- Any other Asian background

Black / African / Caribbean/ Black British:

- African
- Caribbean
- Any other Black / African / Caribbean

Other ethnic group:

- Arab
- Any other ethnic group
- Prefer not to say

E3 Please indicate your sex

- Male
- Female
- Prefer not to say

E4. Do you think these proposals would have any impact, positive or negative, on individuals based on the following protected characteristics Yes / No / Don't know

- Age
- Disability
- Marriage / civil partnership
- Pregnancy
- Race (including nationality, ethnic or national origins or colour)
- Religion or belief
- Gender
- Gender reassignment
- Sexual orientation

If you answered yes to any of these, please include any suggestions as to how these impacts might be managed, maximised or mitigated.

## **Further contact**

Home Office consultation confidentiality information link:

[www.gov.uk/government/publications/consultation-confidentiality-information](http://www.gov.uk/government/publications/consultation-confidentiality-information)

# Annex C: Example identity documents and UK immigration stamps

The following are examples of UK travel documents, identity documents, entry clearances and entry stamps that landlords might encounter when conducting their checks. This is not intended to be an exhaustive list but is a general indication of the variety of documentation that might be produced.

## 1. Residence Cards for EEA and Swiss nationals



## 2. Those entitled to remain in the United Kingdom indefinitely



Right of abode certificate

## 3. Non-EEA nationals with a time limit on their stay

Entry clearance is issued in the form of a vignette in a person's passport that provides permission to enter the UK. It will indicate the period for which it is valid.



Visitors are not permitted to work or access public funds and cannot usually extend their permission to stay beyond six months. A multi-entry visa will permit the holder to enter the UK on more than one occasion whilst the visa is valid. However, each visit is limited to a six months duration and, during this time, the visitor is not permitted to work or access public funds.



