

Tackling illegal immigration in privately rented accommodation

Overview of the proposals

Introduction

The Government is consulting on proposals to require private landlords to check the immigration status of new tenants. We encourage you to read the full consultation paper, available at:

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

However, this overview gives members of the public the information needed to answer most questions.

Our proposals affect you if you are:

- Renting out accommodation for people to live in anywhere in the United Kingdom. Potentially, this could include taking in a lodger (or similar) in the home where you are living
- A letting agent who provides a service for landlords by finding people to live in rented property or who manages the property for them
- A hotel or guest house or provider of similar accommodation and you take in guests who stay for three months or more
- Intending to live in rented accommodation anywhere in the United Kingdom in the future (potentially including as a paying lodger in someone else's home).

Our survey is open until 21 August. The Government will then introduce the necessary legislation, and we anticipate the new rules would then take effect in 2014.

Background

Illegal immigration causes economic and social problems and presents a challenge to the rule of law. The Home Office takes the lead in tackling illegal immigration but effective action requires involvement from other public and private sector bodies too.

Many private landlords already make checks on tenants' identity and credit status, making it difficult in practice for illegal migrants to rent properties from them. But not all landlords do that, and a small minority of rogue landlords knowingly target illegal migrants who are not in a position to complain about sub-standard accommodation.

Our proposals mean that, in future, all private landlords will make some simple checks on the migration status of new tenants in order to make it more difficult for illegal migrants to live in the UK. These checks will be simple and straightforward for law-abiding landlords and tenants to comply with and we will minimise red tape. Similar checks have been made by employers for a number of years.

Before renting accommodation to anyone to live in as their main or only home, landlords will ask them to produce evidence (from a checklist of documents) of their permission to be in

the UK. Landlords will check this evidence and keep a copy for their records. If a person cannot produce satisfactory evidence, the landlord should not rent accommodation to them. A landlord would be liable to pay a civil penalty if the Home Office found he was renting accommodation to an illegal migrant without having made the necessary checks. The penalties will be proportionate for landlords who have inadvertently taken in an illegal migrant for the first time. But those rogue landlords who repeatedly provide accommodation to multiple illegal migrants will pay penalties amounting to thousands of pounds.

Guidance will be issued so that landlords can readily recognise the documents acceptable as evidence of the tenant's status. The list of documents will be a simple list of readily accessible documentation. Landlords are not expected to be experts in detecting fraud. Unless they accept documents that are readily apparent to an untrained person as being forged or fraudulent, they will have a 'statutory excuse' from paying a penalty. The Home Office will operate an enquiry service for landlords who have questions about documents.

How will it work?

The landlord will need to take reasonable steps, before the rental arrangement starts, to find out who is going to be living in the accommodation (not just the person who pays the rent or signs the tenancy agreement). He will then make immigration checks on all of the adults (children will be exempt) to check that they are entitled to be in the UK at the time of the check. It is not necessary to check all applicants for a property (e.g. people responding to an advert) - only those to whom the landlord actually decides to rent the property. Landlords must make checks on a non-discriminatory basis, i.e. they should not make any assumptions about a person's migration status based on their ethnicity, name, accent, etc.

Checks should be completed before the person moves into the property. The new rules will not apply to tenants who are already living in the property at the time the new rules come into operation.

Responsibility for completing the checks would normally rest with the landlord. However, this responsibility can be transferred to a letting agent where the letting agent agrees to this in writing. If a property is rented to a company, then the company would be responsible for making checks on people that live in the property.

The Government is considering whether households who take in lodgers (or similar) within the home they are living in should be required to make immigration checks on them. However, landlords who do not live in the property they are renting out will not be held responsible for tenants who take in a lodger or sub-let the property without telling the landlord.

The range of documents acceptable as evidence will enable the vast majority of people who are in this country legally to satisfy the checks quickly and easily. British passport holders will only need to show their current passport or (provided the photo is still identifiable) expired passport. Those without passports will be able to produce alternative documents including their birth certificate (or adoption certificate) in combination with a national insurance number or driving licence, or alternatively a naturalisation certificate or right of abode certificate. Further combinations of documents are under consideration.

For citizens of the 27 member countries of the European Union (and also Iceland, Lichtenstein, Norway and Switzerland), presentation of a passport, national identity card of an EU member state or evidence of receipt of UK benefits will satisfy the requirements.

Most people from other countries will have a Biometric Residence Permit which clearly shows the time limit on their stay (see image). Foreign visitors who are staying for less than six months cannot obtain a Biometric Residence Permit and will need to show a passport containing a UK immigration stamp whose time limit is still valid. In a few cases (e.g. diplomats, asylum seekers, people with an outstanding immigration application) alternative documents may be shown, some of which will need to be verified with the Home Office.



The vast majority of documentation may be accepted by landlords at face value without the need for further checks. The Home Office will operate an enquiry service to help in all situations where the landlord is unclear about the documentation he may accept or needs to verify some of the less common forms of documents.

If, following the checks, the landlord is not satisfied that the person is legally in the UK they should not proceed to rent accommodation to the person. The landlord would be under no legal obligation to report the person to the Home Office, although it will be open to them to do so on a voluntary basis.

After the tenancy begins – what landlords will need to do

A landlord would not normally need to make further checks on people he has already checked, unless the tenant was a foreign national with an immigration time limit on their stay. In these cases a further check should be made annually (or when the person's permitted stay is due to expire, if later). If the tenant cannot show that they still have permission to stay, at the subsequent check, then the landlord would not be liable to any penalty (and would not be required to evict the tenant) provided they promptly inform the Home Office.

Landlords who do not live in the property they are renting out will not be required to monitor who is actually living there once the initial checks have been made. If an illegal migrant is subsequently found living at the property, and they are not one of the people who were disclosed to the landlord, then the landlord will not be liable.

Where a landlord suspects that illegal migrants are living in his property he may establish a statutory excuse against future penalty by reporting this in confidence to the Home Office.

A suitable time period after the tenant has moved out, the landlord should securely dispose of the personal information that he collected in making the migration checks.

Exemptions

We are proposing that various types of rented property should be exempt from the scheme, either because checks will already have been made on the people living in it or because the nature of the accommodation makes such checks inappropriate. These include:

- Social housing rented to tenants nominated by the local authority
- Privately rented homes let to people under the homelessness legislation
- Accommodation provided to employees
- Tourist accommodation such as hotels and guest houses where the person is staying less than three months
- Properties let under short term business or holiday lets (less than three months)
- Properties rented 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
- University / college halls of residence, boarding schools and children's homes.

What are the penalties for breaking the rules?

If illegal migrants are found living in rented accommodation, then the landlord (or, where relevant, letting agent) will be subject to a penalty unless they were already living there at the time the rules were introduced (in which case an 'advisory letter' may be issued) or other extenuating circumstances apply (e.g. the landlord was deceived by well forged documents).

The penalties will be calculated as follows:

- Landlord or letting agent who has **not** received an advisory letter or notice of liability within the past three years: £1,000 (per adult illegal migrant)
- Landlord or letting agent who **has** received an advisory letter or notice of liability within the past three years: £3,000 (per adult illegal migrant).

The Government is considering whether the policy on checking the migration status of tenants should apply to lodgers. If it did decide to do this, then lower penalties might apply to people who have just one or two lodgers in their own home – indicatively £80 and £500 per adult illegal migrant (on the same basis as above).

Landlords will be able to object to the Secretary of State against a notice of liability and, if not satisfied with the outcome, to appeal to the courts. There will be a discount for early payment of a penalty, and payment by instalments for those who cannot pay up-front.

Under existing laws, some types of accommodation which are occupied by multiple households (known as Houses in Multiple Occupation) require a licence. To gain a licence (in England), the local authority must be satisfied that the applicant for the licence is 'fit and proper' to hold a licence and with the management arrangements for the property. We are proposing that, if a person repeatedly breaches the new rules, then the local authority should be able to take this into account in considering whether the person is fit and proper. This could result in the person failing to obtain or renew, or even losing, a licence.

Alongside this policy...

The Government already supports local authorities in taking action to tackle rogue landlords who provide sub-standard accommodation to vulnerable people, including illegal migrants. The Government has announced further funding of £3 million to support these activities.

New rules will ensure councils give priority to local people when allocating social housing. Ministers will introduce new statutory guidance for councils, requiring them to amend their allocation policies to ensure only those with a well-established local residency and local connections will go on the waiting lists and qualify for a taxpayer-funded social home.

Completing the survey

The above overview should provide enough information for members of the public to answer most questions. Where you are uncertain of the answer, you may answer '*don't know*'.

If you are ready to complete our online survey now, then the link can be found at:

www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/consultations/landlords

This link also provides a longer document explaining the policy in more detail.