

ILPA information sheet

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‘Tackling illegal immigration in privately rented accommodation’: Home Office Consultation

30 July 2013

On 3 July 2013, the Home Office published its consultation, ‘Tackling illegal immigration in privately rented accommodation’ as part of a wider consultation exercise on provisions in the forthcoming Immigration Bill. The Government states that these are aimed at making it difficult for illegal migrants to live in the United Kingdom (UK). This information sheet provides information about the consultation. The consultation document can be found at:

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

Responding to the consultation

The consultation document sets out 25 questions. Responses should be received by the Home Office on or before 21 August 2013. Responses can be sent by post or by completing the online survey (see link above):

Enforcement Partnership Team
Home Office
Consultation Response (Rented accommodation)
2nd Floor, Fry 2 Marsham Street
London
SW1P 4DF

The proposals

The Government proposes to require private landlords to check the immigration status of new tenants and other adults living at the rented property. Landlords who do not carry out checks and are found renting residential property to anyone unlawfully in the UK will face fines. The proposed new rules would not apply to tenants who are already living in the property at the time the new rules come into operation (2014). But they will affect:

- All those and their adult families/friends intending to live in rented accommodation
- ‘Landlords’ renting out accommodation (possibly including to lodgers – i.e. people living in the property with the landlords)
- Residential property letting and managing agents
- Hotel/guest houses/Bed and Breakfasts (B&Bs) where guests stay for three months or more

Prior to the start of a tenancy: “simple and straight forward” checks

The Government compares the checks to those presently undertaken by prospective employers. Landlords would be required to make immigration checks on prospective tenants and to take reasonable steps to establish who is going to be living in the accommodation and make immigration checks on all adults. The Government is considering whether those who take in lodgers (“or similar” says the consultation paper) should be required to make immigration checks on them.

Prospective tenants/lodgers and any adult intending to live in the rented accommodation would be required to produce evidence of their permission to be in the UK. Landlords would check this evidence against a checklist of what is described as ‘readily accessible documentation’ and keep a copy for their records. Where a landlord is not satisfied that the prospective tenant or other adult is not in the UK legally they should not rent accommodation to that person. There would be no legal obligation on the landlord to report the person(s) to the Home Office.

After the tenancy begins: annual or visa-limit checks

If the tenant (and any other adult known to be living in the accommodation) were a foreign national with a time limit on their stay, the landlord would be required to make checks annually or when the person’s leave was due to expire. If the tenant (or adult living at the accommodation) could not show that they still had permission to stay, at the time of the subsequent check, then the landlord would not be liable to any penalty provided they promptly informed the Home Office of this.

Landlords who do not live at the property would not be responsible for tenants who sub-let without telling the landlord. Having taken ‘all reasonable steps’ at the outset of the tenancy, a landlord would not be required to monitor who was living there once the initial checks had been made.

Exempted property

The rules would not apply to some types of rented property either because checks would already have been made on the tenants and/or because of the nature of the accommodation, for example: social housing; privately rented homes let to people under homelessness provisions; accommodation provided to employees; hostels and refuges providing crisis accommodation; and/or university/schools’ residences.

The penalties

If persons without lawful leave were found living in rented accommodation covered by this requirement to check immigration status, the landlord (or letting agent) would be subject to a penalty. Where the tenant was already living there when the rules were introduced, the Home Office would send a letter ‘advising’ the landlord of the requirements. Penalties will be calculated as follows:

- If an advisory letter or notice of liability **has not** been received within the past three years: £1000 per adult;
- If an advisory letter or notice of liability **has** been received within the past three years: £3000 per adult;

Landlords would have a “statutory excuse” if the documents were forged/fraudulent unless the forgery is readily apparent to an untrained person.

ILPA’s concerns

- Documentation: for various reasons, people lawfully in the UK, including British citizens cannot always produce identity documentation – they may be denied access to privately rented accommodation; and/or
- Discrimination: landlords may simply say that they are ‘not satisfied’ with a prospective tenant’s (or their partner’s or friend’s) identity documentation and refuse them accommodation which may lead to discrimination; and/or
- Data Protection: there will be no proper regulation of whether landlords comply with data protection provisions regarding the handling of and saving of personal information.
- Bureaucracy: the scheme appears impractical, unworkable and ill-thought out.