

ILPA information sheet

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Immigration Act 2014: Housing

June 2014

The Immigration Act contains provisions which will require private landlords to conduct immigration status checks on new tenants. The provisions are not yet in force. The intention is to prevent those who do not have permission to be in the UK from renting accommodation. Landlords who fail to carry out the immigration checks, or who rent to a person whose immigration status (or lack of one) means that they do not have a “right to rent”, will face hefty financial penalties of up to £3,000. Employers have been required to carry out similar checks for some time¹; however these provisions are the first time that landlords have been required to carry out immigration checks on their tenants.

The checks

Landlords (or their agents) will be expected to check the immigration status of any prospective tenant before agreeing to rent them a property. They must check the status of all those who intend to live in the property; not just the individual whose name is on the lease: the checks will also apply to lodgers and sub-tenants. The landlord must be satisfied that each person living in the rental property falls within one of the following categories:

- British national
- National of a European Economic Area country
- Swiss national
- A person with a “right to rent” defined as:
 - A person who has leave to be in the UK (and who is not barred from renting by the Secretary of State); **or**
 - A person without leave to be in the UK (who has been granted special permission by the Secretary of State to rent a property)

¹ The previous immigration Minister, Mark Harper, fell afoul of these requirements when employing a cleaner and was forced to resign.

These provisions were controversial from the outset and attracted a lot of criticism from landlords' associations and representatives of special interest groups such as survivors of domestic violence. The opposition of such groups resulted in the provisions being watered down somewhat during the passage of the Act through Parliament. In particular, exemptions were created for particular types of housing; examples of the exemptions are:

- social housing
- care homes
- hospitals or hospices
- other accommodation relating to healthcare provision
- a hostel or refuge (e.g. for women fleeing domestic violence)
- local authority accommodation
- certain types of student accommodation (e.g. halls of residence)

Commencement

It is intended to test the scheme in some areas from October 2014 before extending it nationwide; this date is provisional. The Government does not intend to fully implement the new scheme before the 2015 election. If brought in as planned, the checks will only apply to new tenancies; existing tenants will be exempt (until their lease comes up for renewal).

Analysis

UK immigration law is notoriously complicated and an individual may have one of a large number of types of document which evidence their basis of stay in the UK. Private landlords are not immigration experts, yet the provisions will require them to be able to make an assessment of immigration status. The Home Office asserts that the obligatory checks will be straightforward and plans to provide a website, helpline and email-answering service, promising a response to queries within 48 hours; failing which a landlord can proceed to rent the property to the person whose status they were trying to check.

The possibility of a potential fine of up to £3,000 is a significant deterrent, which risks making landlords wary of renting their property to someone who may cause them to fall foul of the new provisions. There is concern that people (including British citizens) whom landlords perceive as looking or sounding "foreign" will be discriminated against. The result could well be that all persons under immigration control, and ethnic minorities, will find it more difficult to rent property. The Government intends to issue a code of practice on discrimination but this may be difficult to prove in practice. The additional checks that will be required will also have a financial cost – rental agencies may charge for checking and pass these costs on to tenants, resulting in higher rents. There are already reports of landlords starting to carry out checks and to ask for deposits of up to £3000 to protect themselves against a possible fine.

These checks come as part of a trend of Home Office outsourcing of immigration checks: employers, banks, landlords and the Driver and Vehicle Licensing Agency (DVLA) are now all required to carry out immigration checks, and health professionals could be next.