



Practical implications

of immigration checks
on new lettings



Immigration checks on new lettings are required by the Immigration Act 2014, initially in parts of the West Midlands from 1st December 2014 but later to be rolled out nationally.

Most local authority and many housing association lettings will be exempt, but lodgers are covered by the scheme regardless of tenure. Social landlords need to be aware of the requirements both where it applies to their own lettings and to any lodgers which their tenants may have, and because of the expected impact on the private rented sector and on migrant communities.

This '*Practical Implications*' briefing explains how the checks are intended to operate, answers questions which social landlords may have and suggests how you can meet the new requirements and respond to their effects. It is based on CIH liaison with the Home Office, landlord bodies and migrant rights organisations when the legislation was going through Parliament and now that it is being implemented.

CIH expressed strong reservations about the practicality of the new checks and their potential impact on the housing options for migrants and others (e.g. the likelihood of discrimination). Some changes were secured – such as the scheme being phased and evaluated before it is rolled out nationally. Now that the scheme is starting, as well as being prepared for it social landlords can also be aware of its likely effects and assist in monitoring them.

What are the checks intended to achieve?

Private landlords and others covered by the scheme will have to check that a potential tenant is permitted to be in the UK and has a 'right to rent'. The government says that the checks will:

'...make it more difficult for immigration offenders to stay in the country when they have no right to be here. They will also act as a new line of attack against unscrupulous landlords who exploit people by renting out substandard, overcrowded and unsafe accommodation.'

Which areas and lettings are affected by the scheme?

Initially, the only lettings affected are those in Birmingham, Walsall, Sandwell, Dudley and Wolverhampton. Later, and subject to evaluation, the plan is to roll out the scheme across the UK 'next year'. Although only five local authority areas will be covered to start with, there are already reports of private landlords elsewhere instigating checks and (for example) increasing the deposits required from those they perceive to be migrants. The effects of the scheme may therefore be felt much more widely than in the West Midlands.

Landlord checks will only apply to new tenancies from the date of implementation in your area, so there is no requirement to check the immigration status of existing tenants. Once the scheme starts, checks will need to be made on all adults aged 18 or over who will use the property as their only or main residence, not just on the head of household.

Most social lettings (except in Scotland) and some other types of letting are excluded from the scheme. The exemptions cover:

- any accommodation provided by a local authority or the Northern Ireland Housing Executive through homelessness or allocations procedures
- housing association lettings which result from a nomination or referral by a local authority where it is fulfilling a statutory duty
- hostels and refuges
- care homes, hospices and other health care provision

- tied accommodation provided by an employer for an employee
- halls of residence for students or in instances where a higher educational institute has nominated a student for accommodation
- some other forms of temporary accommodation such as mobile homes and accommodation for asylum seekers provided by the Home Office under contract.

How are social landlords affected?

Local authorities are exempt because housing entitlements according to immigration status are covered by other regulations. However, where a housing association makes a new letting from its own register or waiting list – as do most associations in Scotland – they will have to make the checks. Transfers of existing tenants are exempt.

Most importantly, all lodgers in social housing will have to be checked by the tenants who offer them lodgings (e.g. those encouraged to have lodgers in response to the ‘bedroom tax’). Landlords will therefore have to consider changing the advice they give to tenants about taking in lodgers.

In addition, the exemptions do not apply to referrals to private landlords which are not in discharge of a statutory duty. So for example where a local authority takes preventative action to avoid homelessness by referring a customer to a private landlord, a check will have to be made by the landlord.

How will the scheme work?

Before allowing anyone to move in, the landlord must check on prospective occupiers and ask for proof that they are in one of these groups:

- a citizen of the UK, the European Economic Area or Switzerland: they are not covered by the Act at all, but landlords will need proof that the occupant is in this group
- a person with an indefinite ‘right to rent’: someone with indefinite leave to remain or right of abode in the UK
- a person with a ‘time-limited right to rent’: someone who has limited leave to remain in the UK or a right to live in the UK under EU law (but not a European citizen because they are exempt)
- a person with a ‘discretionary right to rent’: the Home Office can grant this in certain cases, e.g. to people waiting for their case to be resolved or taking legal proceedings to sort it out. They will have to apply for it.

Anyone else should not be offered the accommodation. For those with a time-limited right to rent, new checks must be made after a year or just before the current right expires.

Landlords will need to see evidence of a person’s identity and citizenship, for example a passport or biometric residence permit. Copies of the documentation will need to be taken as evidence and kept for one year after the tenancy ends. Children under 18 will not need to be checked.

Landlords can appoint an agent to do the checks for them. They must do this by a written agreement that specifically covers the Immigration Act 2014 checks: it is then the agent who is liable for any breaches, unless the agent notifies the landlord that someone does not have a right to rent and the landlord allows them to move in anyway.

Is help available to assist with making the checks?

The government believes that 'in most cases landlords will be able carry out these simple checks without the need to contact the Home Office'. Some landlords or agents already do similar checks. (However, those working in the private rented sector or advising migrants believe the scheme will face many difficulties – explained below.)

There will be a three-tier system to help with the checks:

- use of an online checking system (the 'right to rent tool'). You can test this by putting in a West Midlands post code here (try WV1 1AA); answer 'yes' to the initial questions then 'no' to see the full range of documents that need to be checked.
- general telephone helpline (0300 069 9799): this won't deal with individual cases unless they are clear cut.
- document checking service: aimed at 'people who don't have documents', i.e. they are with the Home Office, there is an appeal pending, etc. Tenants will have to provide their Home Office reference number to get this check. The service is promised to respond 'within 48 hours'.
- these services are advertised as available only to landlords but tenants can use them as well (e.g. a tenant who does not have access to their documents).
- CIH and BME National will be providing detailed guidance to migrants and advisers on the housing right website. The new sections on the private rented sector will be online at the beginning of 2015.

What are the potential problems that will arise?

CIH believes that there will be a range of practical problems together with an increased risk of discrimination, not just against migrants but against long-term residents whom landlords might consider to be migrants. The discrimination issue is dealt with below.

Despite the official preparations, problems are expected to arise because immigration status is a complicated issue. The first step in the 'right to rent tool' asks the landlord to say whether the tenant can produce one of a large number of immigration documents. One of eight groups of such documents is, for example:

"A Permanent Residence Card, indefinite leave to remain, indefinite leave to enter or no time limit card issued by the Home Office, to a non-EEA national the family member of a national of a EU country, EEA country or Switzerland"

It is not clear what these look like or how you might distinguish them from any of the other documents listed or indeed from a fake. The government promises photographs but they are not yet available. These checks, of course, must be carried out for each adult the landlord knows will be occupying the premises. Apart from the helpline, government guidance is online and no leaflets or other material will be produced.

While larger landlord businesses may be able to cope with these checks, CIH is concerned that the vast majority of landlords who have only one property will be unaware of the requirements or face difficulty in complying with them. (A survey by website Easyroommate in October found that 80% of landlords were unaware of the legislation and 30% did not intend to comply.)

Will discrimination occur and how will it be dealt with?

It seems very likely that – if a prospective tenant is not obviously British or does not have a UK passport – some landlords will simply reject them, given the competition for tenancies in many areas and the potential delay and costs if further checks are needed. This could drive migrants even further into poorer quality lettings with less scrupulous landlords who are probably already in breach of the law in other respects and are unlikely to comply with the new requirements. The government accepts that discrimination is likely (or more likely) to occur: there will be an ‘anti-discrimination code of practice’ but of course many landlords will not be aware of it or comply.

Any landlord who checks some prospective tenants but not others may be committing unlawful acts of discrimination. There is already evidence that some landlords are simply turning away people who they think might be migrants. Landlords will also have to make the same requests of white (apparently obviously) British nationals as they do of (apparent) migrants. If not then there may also be discrimination. Also, if the prospective tenant is facing an administrative obstacle to/delay in obtaining documentation, this might amount to indirect discrimination, if the delay results in their losing a tenancy.

Landlords will be advised to apply the checks ‘consistently’ between different applicants for a tenancy. This implies allowing a realistic period of time to all tenants to provide their documents (i.e. longer than would be required just to show a British passport). Yet at present tenants are often explicitly preferred on the basis of their ability to comply with a landlord’s requirements quickly and it seems highly likely that this will continue to be the case.

Other than giving advice, the scheme provides no new ways to deal with discrimination and inevitably this will occur, will be difficult to prove and most cases are unlikely to be tested in the courts. Housing advice agencies can of course help customers by contacting landlords when issues arise, ensuring that landlords in ‘approved landlord’ and similar accreditation schemes do not discriminate and providing local guidance on avoiding discrimination.

How might the checks affect wider housing services?

The first phase of the scheme in the West Midlands will help to assess its wider effects. CIH believes they are likely to include these problems:

- more people who might have been housed previously in private lettings are likely to go to the housing or social services authorities for help if they cannot get accommodation. This may well not only be migrants but simply those who have trouble with documentation such as victims of domestic violence or other vulnerable people
- authorities will have to consider how they take account of the legislation and its effects, including the extra potential for discrimination in any accreditation schemes they run
- prospective tenants may allege discrimination against landlords and ask local authorities for help in dealing with this
- the scheme could add to the problems which the government is seeking to tackle through its ‘rogue landlords’ and ‘beds and sheds’ initiatives
- overall, it seems likely to increase the already massive pressures on local authorities and homelessness agencies.

As a minimum, social landlords will want to consider the effects on questions they ask customers and the records they keep, especially of referrals to private landlords.

How will the scheme be enforced?

Landlords found to be letting a property after the scheme starts, to someone who doesn't have the right to rent, could be fined up to £3,000. How will the Home Office find out? In practice they are unlikely to make any enforcement visits unless they have found out from other sources (e.g. a workplace raid, follow up on an immigration application, a phone call from neighbours) or because the landlord has been identified as operating outside the law in other respects.

The Home Office says the scheme will help local authority enforcement staff by identifying 'rogue landlords' but of course in many councils such staff are already under considerable pressure of work.

How can housing providers help to monitor the effects of the scheme?

CIH believes it will be very helpful if social landlords and housing advice agencies can monitor the effects of the scheme locally, both quantitatively (e.g. increase in requests for help in dealing with landlords) and qualitatively (e.g. case examples of discrimination or of tenants being asked for larger deposits). CIH will be working with other organisations to monitor the effects of the first phase and any subsequent wider roll-out. Contact details are below.

Useful resources and information

The CIH/BME National housing rights website is www.housing-rights.info

The Home Office has issued a draft 'code of practice' on 'illegal immigrants and private rented accommodation' and a draft anti-discrimination code. The codes and a very brief leaflet are available here: www.gov.uk/government/publications/right-to-rent-landlords-code-of-practice (note that there have been difficulties in accessing this link as documentation changes: if necessary, go to www.gov.uk and search for 'immigration checks' to find the correct pages).

In the West Midlands, the Refugee & Migrant Advice Centre serving Wolverhampton and the Black Country will advise people on the checks and monitor their effects (see www.rmcentre.org.uk; telephone 01902 311 554).

National bodies such as the Movement against Xenophobia (www.noxenophobia.org/immigration-act/) and Migrants' Rights Network (www.migrantsrights.org.uk/) are monitoring the effects of the Immigration Act and of phase 1 of the landlord checks.

This 'Practical Implications' briefing is partly based on material by Sue Lukes (www.suelukes.com) who is one of the authors for www.housing-rights.info

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