



Practical implications

of immigration checks on
new lettings
Update January 2016

Immigration checks on new lettings are required by the Immigration Act 2014. They were piloted in the West Midlands in 2014 but apply across England from 1st February 2016. They do not yet apply in Scotland, Wales or Northern Ireland but there have been consultations about their introduction there too.

Most local authority and many housing association lettings will be exempt, but all 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 briefing explains how the checks are intended to operate, answers questions which social landlords may have and suggests how you can meet the 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 since then, and on experience of the pilot phase since December 2014. It refers to the Home Office [code of practice](#) and other guidance. In addition to this briefing, the CIH-BMENational [housing rights website](#) is regularly updated with detailed information on the housing eligibility of people with different types of immigration status.

CIH has expressed strong reservations about the practicality of immigration 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 piloted and evaluated before being rolled out nationally. Now that the scheme applies across England, as well as being equipped for it social landlords should be aware of its likely effects and can assist in monitoring them.

What are the checks intended to achieve?

Private landlords and others covered by the scheme 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:

'...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 lettings are affected by the scheme?

Immigration checks only apply to **new tenancy agreements** entered into from 1st February 2016 onwards, so there is no requirement to check the immigration status of existing tenants. (Note that in the five local authorities in the pilot phase, the checks that began in 2014 simply continue.) Checks 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** and some other types of letting are excluded from the scheme. The **exemptions** cover:

- Any accommodation provided by a local authority 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 in the private sector.
- Some other forms of temporary accommodation such as mobile homes and accommodation for asylum seekers provided by the Home Office under contract.

More detail on exemptions is given [here](#) in the code of guidance.

How are social landlords affected?

Local authorities (LAs) are exempt because housing entitlements according to immigration status are covered by other regulations, as are housing association (HA) lettings through nomination arrangements with the LA. However, where a HA makes a new letting from its own register or waiting list they have to make the checks in those cases. If the scheme is eventually extended to Scotland, lettings by housing associations will be widely affected as many do not have nomination arrangements with LAs.

Most importantly, all **lodgers** in social housing 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 should therefore review the advice they give to tenants about taking in lodgers to make sure it tells them about the checks. Landlords should know (from 'reasonable enquiries') which adults are moving into the tenancy at the outset, and that they are either exempt from the scheme or have been checked. If new adults join the household subsequently (as their only or main home, not simply as temporary guests), it is the tenant's responsibility to make checks. The only obligation on the landlord to make repeat checks arises where someone is known from the outset to have only a temporary right to rent.

In addition, the exemptions above 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 must be made by the landlord.

Although **transfers or exchanges of existing tenants** are exempt from the checks, there is uncertainty about changes that involve new tenants, e.g. if a transfer occurs which involves a new adult family member, or a tenancy is obtained by succession or assignment. These cases simply seem to have been overlooked in the legislation. However, if the transfer is an assignment (mutual exchange or succession) and this is done by deed (rather than by termination and re-grant) it is not a new tenancy so it seems likely to be exempt.

How should the checks be carried out?

Before allowing anyone to move in, the landlord must check on prospective adult 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 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 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 need to see evidence of a person's identity and citizenship, for example a passport or biometric residence permit. Except for straightforward passports, this can be complicated. The Home Office provides [guidance](#) on how to check documents and the types of documentation that are acceptable.

Copies of the documentation need to be taken as evidence and kept for one year after the tenancy ends. Children under 18 do not need to be checked, but if the landlord has reason to believe a 'child' is over 18 then proof of age should be requested.

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 faces many difficulties – explained below.)

Apart from the guidance already mentioned, there is a two-tier system to help with the checks:

- Use of an online checking system. Landlords have to insert a post code and then tenant details [here](#) to use the tool.
- Document checking service: aimed at 'people who don't have documents', ie. they are with the Home Office, there is an appeal pending, etc. It is available [here](#). 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). There is also an advice line: 0300 069 9799. It is no longer publicised but still operates.

CIH and BMENational provide detailed guidance to migrants and advisers on the [housing right website](#). Guidance on the private rented sector will be updated as the right to rent is implemented.

How is the scheme enforced?

Landlords found to be letting a property to someone who doesn't have the right to rent could be fined up to £3,000. The way the civil penalty scheme will work and the penalties landlords face are described [here](#).

How does the Home Office find out? In practice they are unlikely to make any enforcement visits unless they find 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.

What are the problems that arise?

CIH and others found a range of practical problems in the pilot phase of the scheme, including increased discrimination – potentially not just against migrants but against long-term residents whom landlords might consider to be migrants. An [independent evaluation](#) led the Joint Council for the Welfare of Immigrants sets out the issues that arose. Discrimination is one of the most important and is dealt with below.

Problems arise because immigration status is a complicated issue. Landlords have to inspect each adult's original documents, check they are genuine and ascertain whether they give the holder permission to live in the UK and if so whether this is time-limited. Although [guidance](#) is provided, including pictures of typical documents, it is difficult to be sure about documentation in some cases and landlords are likely to be wary of making a judgement given their liability to penalties.

While larger landlord businesses may cope with these checks, CIH is concerned that the vast majority of landlords who have only one property may well be unaware of the requirements or face difficulty in complying with them.

Does discrimination occur and how can 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 are simply rejecting 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 is a [code of practice on avoiding unlawful discrimination](#) 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 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 are 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 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.

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?

CIH believes they are likely to include these problems:

- As the checks take place, 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 should 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. It could even disrupt relations with respectable landlords.
- Overall, it seems likely to increase the already massive pressures on local authorities and homelessness agencies.

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

Where local authorities or others provide **housing options** or **housing advice** services that help people access the private rented sector, it is very important that frontline staff are familiar with the 'right to rent' and how they can assist potential tenants, for example by explaining what documents they need and how to obtain them.

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 is working with other organisations to monitor the effects of the national roll-out. Contact details are below.

Useful resources and information

- The CIH/BMENational housing rights website is www.housing-rights.info
- The Home Office guidance is available [here](#).
- The national scheme is being monitored by the [Joint Council for the Welfare of Immigrants](#).
- This briefing is partly based on material by Sue Lukes (www.suelukes.com) who is one of the authors for www.housing-rights.info - for further information, contact john.perry@cih.org

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