

Consultation response

Shelter's response to the consultation: Tackling illegal immigration in privately rented accommodation

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Shelter is a national campaigning charity that provides practical advice, support and innovative services to over 170,000 homeless or badly housed people a year. This work gives us direct experience of the various problems caused by the shortage of affordable housing across all tenures. Our services include:

- A national network of over 20 advice services with legal aid contracts in housing and community care
- Shelter's free housing advice helpline which runs from 8am–8pm
- Shelter's website (shelter.org.uk/getadvice) which provides advice online
- The government-funded National Homelessness Advice Service, which provides specialist housing advice, training, consultancy, referral and information to other voluntary agencies, such as Citizens Advice Bureaux and members of Advice UK, who are approached by people seeking housing advice
- A number of specialist services promoting innovative solutions to particular homelessness and housing problems. These include Housing Support Services which work with formerly homeless families, couples and single people. The aim of these services is to sustain tenancies and ensure people live successfully in the community.

We also campaign for new laws and policies – as well as more investment – to improve the lives of homeless and badly housed people, now and in the future.

Summary

The Government's proposals to require private landlords to carry out checks on the immigration status of private renters will make it harder for people, and especially those in difficult and complex situations, to get a decent home. This is due to the intense pressure in the private rented sector, the discrimination already faced by some prospective tenants, and the poor market power of private renters.

The proposals, and any attempts to strengthen them, will simply restrict access to good quality accommodation to people with every right to rent a home in this country.

On balance, Shelter considers this policy unworkable and argues that it should not be implemented. We believe that these proposals will only make an already difficult, expensive and over-subscribed rental market even worse for people with few good options open to them already.

Issues of principle

The private rented sector is a market under immense pressure, growing rapidly in response to the shortage of affordable rented homes and the high cost of buying a home. More and more people on high, low and middle incomes find themselves renting - not through choice, but as a result of the lack of other options open to them.

In the context of demand outstripping supply in much of the country's private rented sector, rents are unaffordable to people on average incomes in half the country.¹ In the overheated market, prospective renters can face intense competition to secure a home in their price range.

The number of people chasing each property in high demand areas means that it is very easy for landlords or letting agents to choose their preferred tenants. Landlords are typically concerned with ensuring a secure income stream, so will seek to avoid tenants who they perceive as being less likely to maintain rent payments, or who they think may not complete application checks – delaying the process of filling a vacant let.

Landlords already avoid renting to groups they perceive as higher risk

A wide range of research already shows how it is more difficult for groups perceived as 'risky' find it significantly more difficult to find a private rented home:

- Only 27% of landlords are willing to let to people on welfare benefits. This is a reduction of 5% on the previous year, as the perceived risk of letting to people on benefits increases as Universal Credit approaches.²

¹ Shelter, 2011. Private Rent Watch 1.

² National Landlords Association, 2013. Press Release, 30 July 2013. 'Landlords exit Local Housing Allowance market'

- Private renters without bank accounts (1 in 10 private renters) face additional difficulties in sourcing good private rented homes, according to research by Bristol University's Personal Finance Centre.³ As a result, some of the participants in their qualitative research continue living in dangerous and unsanitary conditions because they know how hard it would be to find a reputable landlord who would accept a tenant with no bank account.
- Interim findings from the Shelter and Crisis managed Big Lottery funded longitudinal research into the experiences of previously homeless private renters show that many of these renters feel stuck in their homes due to other landlords not being willing to accept them.⁴
- Racial discrimination in accessing rental accommodation already happens.⁵ An in-depth study of Toronto's rental market shows that prospective renters with Black or Arabic/Muslim names emailing inquiries about properties were less likely to get a response than people with Caucasian names. Meanwhile, black and minority ethnic households are twice as likely to be accepted as homeless.⁶

These examples show that where private renters have any perceived 'risky' characteristics, they find it more difficult to find a decent home let by a mainstream landlord letting out quality accommodation.

The proposed regulations make more renters 'high risk' and reduce their options for a quality private let.

The proposed regulations could see landlords withdraw from segments of the market which they see as riskier, and are more likely to expose them up to the risk of a void period or a fine.

The changes pose two financial risks to landlords, which could have an impact on the behaviour of landlords:

1. If they find that they have let to people who do not have the right to be in the country, they could face a fine of £1,000.
2. If they pursue arranging a letting and it transpires that the prospective tenant doesn't have an acceptable immigration status, the letting could fall through before it starts. This puts landlords at risk of a longer void period between tenancies, which could mean weeks or months without rent payments covering the mortgage.

³ Claire Whyley, Andrea Finney and Dawn Muspratt, 2013. Helping private tenants achieve financial inclusion.

⁴ Shelter and Crisis, 2012. Sustain – Interim findings.

⁵ Hogan, B., Berry, B., 2011. Racial and Ethnic Biases in Rental Housing: An Audit Study of Online Apartment Listings. Available from: http://people.oii.ox.ac.uk/hogan/wp-content/uploads/2011/06/Hogan-Berry_City_and_Community_Craigslislist.pdf

⁶ Department of Communities and Local Government, 2013. Table 771: homeless households accepted by local authorities, by ethnicity, England, 1998 to 2013. 30% of households accepted as homeless in Q1 2013 were from non white backgrounds, compared to 16% of the population (Census, 2011).

With intense competitive pressure on much of the market, it is likely that landlords in a position to choose between tenants will always choose the tenant who they perceive less risky or where the tenancy is easiest to set up.:

- If landlords are concerned about being fined on the basis of a lack of documentation proving identity or are suspicious of the veracity of documentation, they are unlikely to choose that potential tenant.
- If there is extra 'hassle' or a time delay involved in accepting a tenant with less familiar documentation, the landlord or letting agent is likely to choose the tenant with the most familiar documentation.

Even where the landlord is willing to make checks with the Home Office, any delay in receiving confirmation that the immigration status is appropriate could lead to them choosing to let to another party. This is acknowledged in the consultation (paragraph 94), which states:

'There is a risk that misinterpretation of the rules or guidance may lead landlords to exclude prospective tenants on the basis that they are perceived to be foreign nationals on the basis of actual or perceived national or ethnic origins or colour.'

Many people with legitimate rights to rent a home could find themselves locked out, including people in vulnerable circumstances

Shelter's concern is that the hassle factor of verifying less familiar pieces of documentation, and the risk of penalties to landlords of letting to people with no documentation, will make it harder for people in vulnerable situations, but also those who landlords or their letting agents perceive as more likely to have unfamiliar documentation due to their ethnicity, to secure a decent and safe private rented home. Some of the scenarios where people could find it even harder to find decent accommodation include:

- A domestic violence survivor fleeing their home at short notice. They may not have had time to gather together their belongings, including documentation, or perhaps their documentation was retained by their former partner.
- A 19 year old thrown out by abusive parents, who doesn't have access to their documentation.
- An adult, born in the UK, whose parents migrated to the UK 40 years ago with a 'foreign sounding' first and last name, but a British passport. While they may have identity proving their right to live in the country, they may be less likely to be selected by a landlord or letting agent if there is another renter with a more "British sounding" name with similar financial circumstances pursuing that property.
- A person with a lesser known EEA passport. Landlords or letting agents may not know every country in the European Economic Area, and may prefer to rent the home to a person whose nationality they are more certain has the right to live and work in the UK.

- A household with a legitimate right to live in the UK, but an unfamiliar status, e.g. “limited leave to remain”. In this case, a landlord or letting agent may find the hassle factor of verifying this status too off-putting, and so may prefer to rent with a tenant with a more simple status.
- A household where one member, e.g. a partner, is a foreign national. The perception about the need for documentation checks on this one member of the household could make it extremely difficult for the entire household, including any dependent children, to obtain accommodation.

Our worry is that this will force tenants who have the right to live and rent in the UK to seek housing from landlords offering lower quality accommodation, sometimes wilfully avoiding their responsibilities, at the end of the market where there is less competitive pressure, rather than from 'reputable' private landlords in the mainstream market.

Private renters, already frustrated by high letting fees, could be faced with yet more fees.

Private renters who secure their accommodation through a letting agency are already likely to pay a number of fees. Shelter’s Private Renting Census found that tenants renting from a letting agency are most likely to be charged an admin fee (70%), initial contract fee (62%), or credit check (52%). Fewer tenants reported being charged fees for references (35%), protecting a deposit (14%), and contract renewals (26%).⁷ The sum of these charges can amount to more than £500.

Shelter firmly believes that the business costs for carrying out these checks should not fall on tenants, who are already pay high letting agency fees. Any legislation brought forward should expressly prohibit charges being levied on tenants for these checks.

Impact on the children of people with complex immigration statuses

Some people may be in breach of the immigration laws while they attempt to regularise their immigration status. In particular, Shelter’s Children’s Legal Service see many people who are unlawfully in the UK but have children who are the innocent parties in the problems arising from their parents’ immigration history. The family may be applying for leave to remain, and have good prospects of obtaining it. Social Services owe a duty under s.17 of the Children Act 1989 to accommodate the family in the interests of the children as “children in need”. The Supreme Court has recognised (in the case of ZH (Tanzania)) that the interests of the children are a primary consideration in decisions made by public bodies, even where their mother had a complex immigration history.

⁷ Shelter, 2013. Letting agencies: the price you pay.

Rogue landlords will always find loopholes

Shelter considers that there are many amateur landlords in England, who unaware of their responsibilities and may inadvertently break the law or not carry out full checks. But we also see a small minority of wilful rogue landlords, who are already aware they are breaking the law but find loopholes and ways to avoid enforcement to continue their practice.⁸

That many already manage to avoid enforcement raises questions about whether the UK Border Agency would be any better equipped to enforce against wilfully evasive rogue landlords than established private rented sector enforcement agencies.

The private rented sector already has piecemeal regulation, with glaring exemptions. From Shelter's work with local authorities, and from our direct advice provision to private renters, we know that wilfully evasive rogue landlords are able to exploit loopholes. It is quite conceivable that the Home Office's proposed exemptions, designed to minimise disproportionate burdens on different industries, could easily be exploited by landlords who already knowingly let to illegal immigrants.

Working with differing private renting legislation

These proposals cover England, Scotland, Wales and Northern Ireland. Different legislation applies to the private rented sector, meaning that there are likely to be different implications.

For example, in Scotland, letting agent fees to tenants are banned. If tenants were to be charged for the checks, Scottish housing legislation would need to be amended by the Scottish Parliament, as has been done for the Green Deal.⁹

The Scottish Government recently committed to explore the further regulation of letting agents. If this goes ahead it will likely include a register of letting agents along with a code of conduct for agents. Consequently any changes made by the Home Office would need to inform the Scottish Government's work.

Implications for these proposals

Shelter's view is that the Home Office's proposed regulations for the private rented sector need to be considered in light of the impact they will have on those private renters who have every right to live and rent in the country, but may be perceived as higher risk by landlords.

⁸ Shelter, 2011. Asserting authority: Calling time on rogue landlords.

⁹ The Rent (Scotland) Act 1984 (Premiums) Regulations 2012
<http://www.legislation.gov.uk/sdsi/2012/9780111018026>

The unintended consequence could be to exclude even more people in housing need from the mainstream private rental market, potentially increasing homelessness among BME households.

Given that rogue landlords already find many ways to evade their responsibilities, Shelter believes it will be difficult for the Home Office to fully ensure compliance without wide-ranging burdens on the private rented sector.

The Home Office has the choice to make the proposals:

- Watertight, leading to widespread regulatory burdens on home owners providing lodgings and the hotel industry, and potentially creating fear around the status of many people with less 'conventional' circumstances, and possibly excluding them from accommodation.
- Loose, avoiding some of the worst unintended consequences, but not meeting their own policy objective by leaving abundant loopholes for the small minority of exploitative rogue landlords who already knowingly let out accommodation to illegal immigrants.

On balance, Shelter considers this policy unworkable and argues that it should not be implemented. We believe that these proposals will only make an already difficult, expensive and over-subscribed rental market even worse for people with few good options open to them already.

Responses to Consultation Questions

Consultation question 1: *The focus of this policy is to check the immigration status of people who are paying money to live in accommodation as their main or only home. Given this focus, do you think the following forms of accommodation should be included in the landlord checking scheme?*

(i) Properties rented out for one or more person(s) to live in as their main or only home (Yes / no / don't know)

(ii) Homes which are not buildings – including caravans and houseboats – if they are rented as the tenant's main or only home (Yes / no / don't know)

(iii) Homes which were not built for residential purposes – for example someone renting a disused office as their home, including "property guardians" (Yes / no / don't know)

(iv) Further forms of accommodation not described in the consultation (please specify further forms of accommodation) (Yes / no / don't know)

Shelter does not support the policy, nor widening it out, because we believe it will restrict the scant housing options for people in vulnerable situations or at risk of discrimination.

Consultation question 2: *Do you think the following forms of accommodation should be excluded from the landlord checking scheme?*

(i) Social housing rented to tenants nominated by local authorities or to households provided accommodation under the homelessness legislation (Yes

/ no / don't know)

(ii) Privately rented accommodation offered by the local authority to a person to whom a homelessness duty is owed (Yes / no / don't know)

(iii) Sales of homes, including those purchased on a leasehold or shared ownership basis (Yes / no / don't know)

(iv) Accommodation provided by universities and other full-time educational establishments for their students (Yes / no / don't know)

(v) Accommodation provided by employers for their employees (Yes / no / don't know)

(vi) Tourist accommodation such as hotels and guest houses providing short-term accommodation to tourists and business travellers (Yes / no / don't know)

(vii) Short term business and holiday lets (Yes / no / don't know)

(viii) Hostels providing crisis accommodation to homeless and other vulnerable people (Yes / no / don't know)

(ix) Hospital and hospice accommodation for patients (Yes / no / don't know)

(x) Care homes for the elderly (Yes / no / don't know)

(xi) Children's homes and boarding schools (Yes / no / don't know)

(xii) Other forms of accommodation not described above (please specify other forms of accommodation) (Yes / no / don't know)

Shelter does not support this policy, nor widening its scope.

Many of the accommodations listed provide short term accommodation for people in housing need. Given the likely impacts that the risk of fines would have on accommodation providers letting accommodation to groups of people with less common statuses or perceived to be at greater risk of failing an immigration status check, Shelter does not support the inclusion of these accommodation types.

In common with the rest of the proposals, the Home Office would face a difficult balance in trying to meet their own policy objectives and trying to avoid restricting quality accommodation choices for vulnerable people and putting disproportionate burdens on accommodation providers:

- Include too many types of accommodation in the scope, and the impact would be closing off decent housing options for people in urgent housing need;
- Leave the criteria too open and a landlord wilfully letting out accommodation to illegal immigrants already would be able to find exemptions that would allow them to continue this practice.

As an aside, we note that the consultation paper states that employers providing housing should be exempt on the basis that higher fines are already payable for employing illegal immigrants. We question how effective enforcement of these powers will be in light of the Gangmaster's Licensing Authority's recently reduced powers.

Consultation question 3: *The Government wishes to exclude tourist accommodation and short-term business and holiday lets from immigration checks because these do not usually represent the person's main or only home. However, the Government considers checks should be made if the person stays there for an extended period of time. After what duration of stay should an immigration check be required?*

- (i) At the end of one month;*
- (ii) At the end of two months;*
- (iii) At the end of three months;*
- (iv) At the end of four months;*
- (v) Longer than four months;*
- (vi) Don't know?*

As above, Shelter does not support the proposals because we believe they will restrict decent accommodation options to people in housing need.

Any policy will be unworkable because any landlords who are knowingly letting to illegal immigrants will find an exemption that allows them to avoid penalties. Given this, any frequency of checks would have a disproportionate burden on accommodation providers and make it harder for people with less common statuses or perceived to be at greater risk of failing a check to get quality accommodation.

Consultation question 4: *The Government is interested to know whether it is appropriate to include lodgers and sub-tenants in the policy. Should the policy apply to:*

- (i) Owner-occupiers taking in paying lodgers where the lodger is living there as their main or only home (Yes / no / don't know)?*
- (ii) Tenants of privately rented accommodation taking in lodgers or sub-tenants as their main or only home (Yes / no / don't know)?*

(iii) Social housing tenants taking in paying lodgers or sub-tenants where the lodger is living there as their main or only home (Yes / no / don't know)

In terms of lodging and sub-letting, these markets are essential in providing more affordable, flexible and often 'last resort' accommodation to people with few other options available to them. 'Sofa surfing' is a vital part of the informal safety net that keeps people off the streets. The consequence of removing these exemptions could be to further limit vulnerable people's options.

Shelter advisers working in East London have come across a number of examples where a Head Tenant had been installed by the landlord to sub-let rooms to migrants. This was with a view to reducing sub-tenants rights and making it easier to evict at short notice. Head tenants paid a lower rent and charged sub-tenants higher rents. It is conceivable that this practice might expand if landlords were provided with an exemption that enabled them to avoid this responsibility.

This serves as a further example of how unworkable the proposals are. While a tiny minority of wilfully rogue practices are carried out through sub-tenancy arrangements, and would need to be closed for the Home Office to meet its objectives, the consequences would be significant regulatory burdens on people helping friends out, using the flexibility of the private rented sector, and further restricting housing options for people in housing need.

Consultation question 5: *If the Government does decide to include lodgers and sub-tenants, then who should be held liable for making the migration checks on the lodger or sub-tenant?*

(i) Always the landlord's/owner occupier's responsibility;

(ii) Always the tenant's responsibility;

(iii) Unless they specifically agree otherwise, the landlord;

(iv) Unless they specifically agree otherwise, the tenant;

(v) Don't know?

While Shelter does not support these proposals, we note that under current arrangements, the responsibility would fall on the head tenant, because they would be the immediate landlord.

If this practice was to prevent landlords knowingly installing a head tenant to avoid penalties, the process would need to allow enforcers to establish which parties were complicit in the arrangement. This would depend on the landlord's precise state of knowledge: did the landlord know that the head tenant was going to let to people irrespective of their immigration status? Our adviser in East London has come across cases where the landlord has been complicit in the set up.

Consultation questions 6 – 16 are directed at tenants, landlords and letting agents' direct experiences.

Consultation question 17: *If a tenant provides evidence showing they have limited leave to remain in the UK, when is the next time that the landlord or letting agent should be required to repeat the check of their immigration status?*

- (i) Immediately after their leave to remain expires (however soon after the initial check or far into the future that may be);*
- (ii) after a year (regardless of when their leave expires);*
- (iii) after a year or when their leave expires, whichever is later;*
- (iv) whenever the tenancy is renewed / renegotiated;*
- (v) don't know.*

While Shelter does not support this policy, it is important to note that there are no legal grounds for possession on the basis of immigration status, So even if a check on immigration status were made before the tenancy expired, it would not be possible for the landlord to gain possession on this basis. It would make legal sense for further checks to be made when the tenancy is renewed or renegotiated.

Consultation question 18 is directed at landlords and letting agents.

Consultation question 19: *If the Secretary of State issues a notice of liability requiring the recipient to pay a penalty, it is proposed that the recipient should have the opportunity to deny liability and/or claim that one or more of a list of „statutory excuses“ exists, so that a penalty should not be payable. These objections must be considered by the Secretary of State, following which there is a further right of appeal to the courts. Do you think this approach provides sufficient safeguards for landlords and letting agents against a notice of liability issued unfairly? (Yes / no / don't know)*

While Shelter does not support this policy, if the regulations were to be enacted, we support a right of appeal against a notice of liability. This may provide a little more surety to landlords who are reluctant to let to people who they perceive to be foreign nationals, and go some way toward mitigating discrimination against prospective tenants.

Consultation question 20: *If a landlord or letting agent is found to have an illegal adult migrant as a tenant, they may be subject to a penalty. Do you consider that the following penalty levels (per adult illegal non-EEA migrant) are:*

(i) too low;

(ii) about right;

(iii) too high;

(iv) don't know.?

£1,000 per migrant for landlords or letting agents who have not received an advisory letter or notice of liability within the past three years

£3,000 per migrant for landlords or letting agents who have received an advisory letter or notice of liability within the past three years

Consultation question 21: The Government is considering whether the policy should apply to lodgers and sub-tenants. If it is decided that it should apply to them, the

Government is minded to apply lower penalties to those landlords who take into their home up to two lodgers or sub-tenants, if their lodger(s) and sub-tenant(s) are found to be illegal adult migrants. Do you consider the following penalty levels (per adult illegal non-EEA migrant) for such landlords are:

(i) too low;

(ii) about right;

(iii) too high;

(iv) don't know?

£80 per migrant for a landlord who has not received an advisory letter or notice of liability within the past three years

£500 per migrant for a landlord who has received an advisory letter or notice of liability within the past three years

(i) too low;

(ii) about right;

(iii) too high;

(iv) don't know?

This proposal further highlights the difficulty the Home Office faces in developing proposals which meet its objectives while minimising unintended consequences for prospective renters.

A high fine is more likely to create more caution among reputable landlords in letting to people who have a right to live and work in the UK but may be perceived as higher risk or may not have their documentation to hand as a result of their circumstances

However, Shelter's work looking at discouraging illegal practice among landlords in the private rented sector found that higher fines were likely to have a stronger influence on landlords' behaviour. Where local authorities were able to secure high court fines in their enforcement against rogue landlords, complaints from tenants went down. In this sense, the Home Office would want to secure high fines to really deter the tiny minority of wilfully evasive landlords.

On balance, Shelter believes that higher fines are not justified, because of the risk of creating greater unwillingness to rent to tenants who are perceived as being more 'risky'.

Consultation question 22: *Should local authorities in England and Wales be able to take a person's previous record of complying with this policy into account when deciding whether that person is fit and proper (or competent) to hold a licence for (or manage) a House in Multiple Occupation? (Yes / no / don't know / NA)*

Yes.

Consultation question 23: *Should local authorities in Scotland or the Housing Executive for Northern Ireland be able to take a person's previous record of complying with this policy into account when considering licence applications for a House in Multiple Occupation? (Yes / no / don't know)*

Yes.

Consultation question 24 relates only to landlords and letting agents.