



Tackling illegal immigration in privately rented accommodation

The Government's response to the consultation

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Foreword

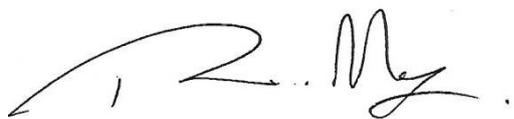
The government has already made changes to our immigration policies with the aim of reducing net migration, which is now down by a third since its peak in 2010. However, we plan to go further in the Immigration Bill. The Bill will make it more difficult for illegal immigrants to live and work in the UK and it will also ensure that legal immigrants make a proper contribution to our key public services. It is vital that our immigration policy is built into our benefits system, our health system, our housing system, the provision of services across government and access to employment.

Effective border controls form an essential component of our work to prevent illegal immigration. These are reinforced with further checks within the UK to trace and remove immigration offenders and are crucial in providing a deterrent to those who might break our immigration laws. Our approach is also to ensure that services and benefits are closed off to those with no right to be here. We have achieved this in part by sharing the responsibility for preventing illegal migration across Government and other public bodies. We have also given responsibility to private sector providers; for example, there are established procedures that penalise those who transport people into the country without proper documents and for employers who employ people with no right to work.

The Government intends now to share this responsibility more widely to create a further deterrent for those who intend to abuse our hospitality and to encourage those who are here illegally to leave.

Our consultation document published on 3 July 2013 outlined a new requirement for landlords to ask prospective tenants to produce evidence from a checklist of specified documents of their entitlement to be in the UK. Those who fail to make the necessary checks and rent accommodation to an illegal migrant would receive a civil penalty.

There has been a significant response to the consultation and I am grateful to all those individuals and organisations who have taken the time to respond and to those who have contributed their experience and insight to what is a complex issue. This document reports what you have told us during the consultation, what we have learned from this process, how the comments received have helped to refine our thinking, and what will happen now.



Rt Hon Theresa May MP
Home Secretary

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1. Introduction and summary

Background

1. In July 2013, the Home Office launched a public consultation on proposals to address use of privately rented accommodation by illegal migrants. The consultation proposed that, in the future, private landlords would be required to check the immigration status of new occupants and would be subject to a penalty for renting accommodation for illegal migrants to live in as their main or only home. The consultation proposals can be found at:

www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/consultations/33-landlords/

2. This report summarises the responses to the consultation and the Government's proposals in light of the consultation. Alongside this consultation report, we are publishing a Policy Equality Statement.

Consultation process

3. The Home Office consultation paper, Tackling Illegal Immigration in Privately Rented Accommodation, focussed on proposed changes to immigration legislation requiring private landlords to check and record the immigration status of new tenants. The consultation began on 3 July 2013 and ended on 21 August 2013 and sought views on the types of accommodation that should be included or excluded in the scope of the legislation, how much the penalties should be fixed at and whether they should apply equally to all types of landlord, the costs and benefits of the policy and the impacts on various groups of people. It also explained how the new landlord's scheme might work in practice, detailed the types of documents that might need to be checked and explained ways in which the landlord could establish that they had complied with the rules and establish a statutory excuse. The consultation document discussed some proposed differences in emphasis for different types of property. These issues included houses in multiple occupation and small letting arrangements such as lodgers. It particularly noted a number of potential impacts to be considered relating to equality issues and outlined an initial assessment of risks that would be further explored during the consultation process.

4. Key interest groups from professional bodies, the third sector and other areas were notified of the consultation and a number of face to face meetings took place during the consultation period. A list of the organisations consulted or who provided a written response is contained at **Annex B**.

5. Each question in the consultation document was followed by categorical response options (e.g. 'Yes', 'No', 'Don't Know'). A space was provided with each question for further comment. The results were analysed initially by response to the categorical questions.

Profile of respondents

6. Respondents were made up from 'tenants, lodgers or sub-tenants' (29%), landlords (28%), members of the public (26%) and as an 'other' category (17%). The 'other' group (224 respondents) included smaller numbers of organisations or individuals such as 'organisations representing individuals or groups' (74 respondents) or legal advisors (42 respondents). (See Table A1 in **Annex A** for a more detailed breakdown). Of the 715 members of the public and tenants, lodgers and sub-tenants providing nationality information, 57 per cent were UK citizens, with 37 per cent from outside the EEA and five per cent from other (non-UK) countries of the EEA. Of the non-EEA respondents, 61% had a time limit on their stay. 50% of the

tenants, lodgers and sub-tenants were from non-EEA countries as opposed to being from the UK (43%).

7. Almost half (49%) described their ethnicity as White (English, Welsh, Scottish, Northern Irish or British). Nine per cent said Indian and 8 per cent described themselves as White other (typically American, Canadian, Australian or from Europe). A large proportion (20%) preferred not to describe their ethnicity.

8. Of the organisations who responded to the consultation, around a third each represented students (38%), migrants (30%) or tenants, lodgers or sub-tenants (29%). Twenty-two per cent represented homeless people. The largest proportions of organisations were small and medium sized enterprises with 10 to 249 employees (46%). For those organisations that were a trade or representative organisation, the largest proportion had more than 1,000 members (39%).

Decisions resulting from the consultation

9. The Government has carefully considered the responses to the consultation and remains convinced of an urgent need for action to deter illegal migration and to safeguard the legitimate housing market. Taken together with other measures to restrict access to benefits and services, a system of checks on the migration status of prospective tenants will help deter illegal migrants from choosing to remain in the country. There may also be benefits in tackling housing market issues. Additional pressure on housing stock results in elevated rents for all those seeking affordable accommodation within the local community. The secondary effects of high illegal migrant demand at the lower end of the private rental market are poor quality, overcrowded accommodation, inflated rents, and exploitation by unscrupulous landlords. In addition, in parts of the country there is the problem of illegally occupied structures, known as 'beds in sheds', which blight communities and which are often used to house vulnerable migrants. A system of penalties for housing illegal migrants will help authorities tackle such rogue landlord issues.

10. However, the Government has taken stock of the many important points raised by consultees and is grateful to all who responded to the consultation. Our original proposals have therefore been revised or refined to take account of points that were raised in association with the following broad issues:

a. Positive effects

Some who were in favour of the proposals cited advantages of more stringent checks; that they were:

- More likely to deter illegal structures;
- More likely to deter unregulated Houses in Multiple Occupation,(HMOs);
- More likely to identify problem tenants;
- More likely to prevent misuse of the property;
- More likely to identify victims of abuse, e.g. child trafficking and domestic abuse.

The Government believes that the policy will help to deter those letting illegal structures and will provide a further means of penalising those who do so. The Government also agrees that the policy provides an additional means of combating problem tenants and that this may benefit not only landlords but also the wider community. Most landlords already accept the need to establish identity and seek references to safeguard their own interests. Evidence of this has been provided by respondents; when landlords were asked what ID they required, only 19% replied, "none". The Government recognises the possibility that the policy might assist in identifying the abuse of vulnerable people and agrees that the scheme may make it more difficult for traffickers to conceal the victims of trafficking within the community.

b. Administrative burdens

The Government acknowledges the concern expressed by landlords and letting agents that the policy may impose additional burdens and costs. However, the experience of the well established existing scheme for employers to prevent illegal working strongly indicates that the checking regime need not represent a significant or costly administrative burden for compliant landlords.

The consultation has informed our thinking on the requirements for the new support service which the Home Office will establish for landlords and tenants. This will be tailored to meet the needs of smaller landlords and the fast moving rental sector. It will include a general enquiry service for landlords requiring information about the new duty, a status checking service for migrants with outstanding immigration applications or appeals who need to evidence their continued legal right to live in the UK, and a “pre-documentation” service so migrants who have an application outstanding with the Home Office and who plan to move accommodation can obtain the necessary confirmation of their status in advance and thereby ease the administrative duty on landlords. Further details of the planned remit of the new Advice Service can be found in Section 5.

The list of documents to be checked has been designed to ensure checks are as straightforward to perform as possible and takes account of the needs of the widest number of people who are entitled to be in the UK. The consultation has also enabled us to revise the list to align it more closely to the needs of particular parts of the private housing sector and existing industry best practice. The revised list may be found at **Annex D**. The range of documentation that will need to be checked under the new landlords scheme will be drastically simplified by the continued rollout of biometric residence permits (BRPs) for non-EEA migrants granted permission to stay for more than six months.

The legislation will also avoid creating double regulation by exempting accommodation provided by employers or educational institutions that are already under a duty to conduct immigration status checks. Further details of additional arrangements for students and educational institutions can be found in Section 4.

c. Vulnerable groups and homelessness

The Government acknowledges the concerns expressed by respondents that the checking requirement may impact on vulnerable groups and aggravate the problem of homelessness. The proposed checking requirement has been designed and revised in the light of the consultation to ensure that the list of documents acceptable as evidence of a prospective tenant’s right to be in the UK includes documents held or obtainable by even the most vulnerable members of our society so that everyone with the right to live in the UK can evidence their status without difficulty. The range of accommodation types exempt from the checking duty, such as homelessness hostels and accommodation provided under local authority powers to prevent homelessness also takes account of the concerns raised around the need to mitigate the risk of individuals facing homelessness. Further details of our planned steps to mitigate the effect of the proposals on these and other protected groups can be found in Section 7 and in the Policy Equality Statement at **Annex C**.

d. Discrimination

The consultation clearly expressed that discrimination against foreign national tenants will be unacceptable. Particular concern was raised by respondents that the scheme would result in discrimination motivated not because of overt prejudice but because of administrative convenience where some people are more likely than others to have

readily available documentation. The Government is equally concerned to address the risk that the new checking duty will inadvertently result in unlawful discrimination.

The legislation will include provision for a statutory non-discrimination code providing clear guidance on the steps landlords must follow to avoid unlawful discrimination, which may be taken into account by tribunals considering claims of unlawful discrimination. In addition, the Government will put into place administrative support and guidance for landlords and will continue to work across the sector to embed the new procedures and raise confidence among landlords that they can continue to provide accommodation without risk.

The Government believes that any added administrative burden can be mitigated by supporting prospective tenants to satisfy the evidence requirement at the point at which they apply for tenancies. Prospective tenants will be assisted and guided in creating their own evidence pack to meet the requirements so that the impact on landlords will be minimised. Further details of the proposed measures can be found in Section 6 and in the Policy Equality Statement at **Annex C**.

e. Implementation

The consultation raised concerns that the new obligation on landlords would unduly impact on landlords in areas where there wasn't a problem with illegal migrants and should be restricted to 'high risk' areas. Some respondents suggested that the new scheme should be piloted in certain areas prior to wider rollout. It was also suggested by London Borough of Newham and the NW Landlords' Association that any pilot should be targeted at those areas where there was a known ongoing issue with criminal landlords and that pilots might also target areas where new funding had been provided to local authorities to tackle the beds in sheds issue. The government is considering options for implementation and the intention remains to roll out the scheme across the UK (as with the illegal working obligation). The risk otherwise is that illegal migrants would simply be displaced to new parts of the country where the landlord requirement wasn't in force.

Next steps

11. The Immigration Bill was introduced to Parliament on 10 October and is now proceeding through its Parliamentary stages. Subject to passage of the Bill through Parliament, it is anticipated that this policy will come into effect in autumn 2014. To prepare for implementation, the Home Office will:

- Prepare draft statutory codes of practice and other secondary legislation required to give effect to the policy and make these available to Parliament and relevant stakeholders during the passage of the Bill.
- Prepare printed and on-line guidance for landlords, and work with industry bodies to disseminate the policy.
- Establish a dedicated enquiry service that landlords, letting agents and tenants can contact.
- Prepare printed and on-line guidance for prospective tenants and continue to work with landlords, industry bodies, third sector organisations and Local Authorities to address implementation issues.
- Develop a communication plan to raise awareness of new requirements among UK communities.

2. Issues raised during the consultation - overview

12. A wide variety of organisations responded to the consultation with written submissions, 95 in all, including 21 organisations representing various parts of the housing sector. A total of 19 third sector organisations responded including those with interests in refugee welfare, children, learning disabilities, homelessness and women's issues. The other organisations that responded represented views from local government, immigration legal advisers, higher education and student accommodation provision, the holiday letting sector and organisations with an interest in data screening and identity fraud management. The Government met or spoke with and took views from the following organisations during the consultation:¹

¹ NB: Does not represent a complete list of those invited to participate in meetings.

Association of Residential Letting Agents
British Hospitality Association
Chartered Institute of Housing
Children's Society
CRISIS
Greater London Authority
Homes and Communities Agency
Law Society of Scotland
Mencap
Local Government Association
National Housing Federation
National Landlords Association
Northern Ireland Housing Executive
Northern Ireland Housing Rights Service
Northern Ireland Local Government
Association

Northern Ireland Strategic Migration
Partnership
National Union of Students
Queens University, Belfast
Residential Landlords Association
Royal Institute of Chartered Surveyors
Scottish Association of Landlords
Scottish Federation of Housing Associations
Scottish Property Federation
Shelter
Shelter (Scotland)
UK Association of Letting Agents
Ulster University
Unipol Student Homes
Universities Scotland

13. The following is a brief summary of issues raised by organisations during face-to-face meetings. Further issues raised by specific organisations are included in the later sections.

i. Housing sector

Organisations representing landlords and letting agents were broadly concerned that the proposals would add to existing regulatory burdens such as those included in tenancy deposit protection.

The National Landlords Association (NLA) indicated that existing industry best practice (set out in the Property Ombudsman's Code of Practice) is for landlords to verify the identity and status of prospective tenants. In their press release the NLA commented:

"The NLA welcomes the Government's consultation on its plans to require private landlords to check the immigration status of all new tenants. If this is to work, it is vital that the system is simple, straightforward and easy for landlords to use and understand ... It makes sense to base the requirements on the established system used by employers to verify that individuals have the right to work in the UK, not least because there is a clear acknowledgement that employers, like landlords, are not immigration experts. They can only be expected to carry out reasonable checks that someone is who they say they are, and that they have the documentation to prove they have the right to be here."

Support for the proposals was also given by the UK Association of Letting Agents who recognised that the proposals were to a substantial extent already part of the best practice that letting agents ought to adhere to anyway.

However, the majority of landlord representative organisations were opposed to the proposals and/or expressed concerns with the details of what was proposed. Concern was raised by other landlords' groups, (and other organisations, such as the Joseph Rowntree Foundation), that the checks would be more complex than described. The Residential Landlords Association (RLA) in particular was concerned that most landlords were micro-businesses, and so lacked the resources and expertise to carry out the checks. A number of landlord organisations raised the issue that delays in verifying documentation could lead to loss of revenue from un-let properties in areas of high demand. The RLA said that it had "...serious misgivings that the success, or failure, of the proposals depends on untrained British civilians, rather than officially trained UK border agency staff".

The Royal Institute of Chartered Surveyors said that it considered it “inappropriate to use private landlords and lettings agents to help deliver the Government’s immigration policy without first introducing clear, consistent and targeted regulation of those categories of individuals and businesses to ensure they are fit and proper to take on such responsibilities”.

Landlord groups also cast doubt on whether the proposals would be effective in deterring or detecting illegal migrants and raised their concern that the effect of the policy might simply be to divert illegal migrants into renting accommodation from landlords who were not aware of the new policy or from landlords who would deliberately break the rules in order to exploit vulnerable tenants.

Many organisations also stressed the importance of ensuring that the Home Office enquiry service is properly resourced to provide a responsive service, in order to mitigate the burdens, reduce the delays in lettings associated with the policy and reduce the risk of discrimination against tenants whose immigration status may be more complex to check.

ii. Third Sector

The most widely expressed concern by third sector organisations was the potential impact on vulnerable people, such as those who were homeless, those with learning difficulties and those fleeing domestic abuse, and the possibility that housing them within the private rented sector would be made more difficult because of the difficulties that they might face in obtaining the necessary documentation.

Others, more broadly, raised concern over those, including people legally resident, that lead chaotic or peripatetic lives, or who are escaping domestic violence. CRISIS noted that the consultation proposed exemptions for cases where the private rented sector was being used by local authorities discharging their homelessness duty, and asked if this could be extended to helping the homeless. Third sector organisations such as the Joseph Rowntree Foundation, (and other non - third sector organisations), expressed particular concern that the policy would lead to indirect discrimination on the basis of administrative convenience.

Refugee support organisations such as the Refugee Council were concerned at the possibility that newly granted refugees would be less likely to secure accommodation upon leaving social housing. Refugee Action believed that “Local Authorities will be obliged to rely more heavily on hotels and B&Bs to provide semi-permanent accommodation”.

CRISIS pointed us to their survey of the experiences of 171 previously homeless people accessing the private rented sector. They highlighted the range of difficulties this group face in accessing rented accommodation, including proving to a landlord that they are financially viable and providing the references most require. CRISIS also raised the issue of homelessness among ex-prisoners. CRISIS advocated the use of benefit documents as proof of status to guard against the policy making it harder for homeless people to access rental accommodation. This view is supported by MENCAP, who told us that people with learning difficulties were particularly unlikely to hold passports or driving licences but are likely to be claiming Disability Living Allowance.

iii. Local Government Organisations

The Local Government Association expressed general concern over the issue of homeless people where they saw "a risk that more people will present as homeless if the checks delay their access to housing or they lose their accommodation while tests are carried out". They said that it was "therefore important that the checking process is responsive and efficient to ensure people are not delayed in accessing accommodation, including cases that are being dealt with by councils at an earlier stage of homelessness."

The Northern Ireland Local Government Association said that it should be made clear in communications that landlords were not being required to register their tenants with the Home Office.

Newham London Borough Council considered that regulations on rogue landlords would be more effective as part of a licensing framework that would allow more targeted enforcement action by multi agency teams. Newham LBC believed that immigration enforcement action would otherwise be spread too thinly across the sector to have real impact. Westminster City Council believed that the policy would introduce a measure of double regulation where many tenants had already been checked by Government agencies and employers.

Southwark London Borough Council said "There could be stress on local authority resources, particularly in inner city /London boroughs, in dealing with possible impacts ... people may turn to local authorities for support, advice and possibly even rehousing to temporary accommodation. There may be costs for local authorities and other social housing providers in familiarising their tenants with the new requirements."

iv. Educational and Student bodies

The National Union of Students (NUS) and local student bodies were concerned that the process could lead to duplicate controls on students where existing regulations on higher / further education institutions and purpose built student accommodation already made it unlikely that the student accommodation sector had a significant problem of illegal migrants. The NUS suggested that a letter from the University in lieu of immigration documentation should be allowed for students and those accommodation providers who already demand proof of students' status as a condition of residence should be exempt. The NUS and Unipol highlighted the difficulties of students registering on-line for accommodation (including those applying from abroad), the practicalities of checking the migration status of large numbers of students arriving at the same time and the disadvantage overseas students would face in competing for accommodation with domestic students. There were also concerns that, following recent tightening up of immigration requirements in relation to overseas students, the policy would send a signal that the UK is discouraging overseas students from coming to study in this country.

v. Others

Some legal bodies, including the Housing Law Practitioners' Association, considered the legislation to be unworkable on the basis that tenants could simply lie about whether they were using the property as their main or only home.

14. The main themes that emerged from the responses to the on-line consultation are summarised below.

- Disagreement with the principle of the policy
 While between one third and two-fifths of respondents supported the proposal to include the three accommodation types (a. properties rented out for one or more person to live in as their main or only home, b. homes which are not buildings, including caravans and houseboats, if they are rented as the tenants only or main home, c. homes which were not built for residential purposes), slightly more than half of all respondents disagreed with the proposals. UK respondents were more likely to disagree with the proposals to include the different types of accommodation, compared with the non-EEA nationals who responded. Around three-fifths of UK citizens disagreed, compared with one-half of the non-EEA citizens.
- Many landlords already carry out checks to avoid letting to problem tenants.
 Thirty-seven per cent of landlords, expressing an opinion within the survey, already required prospective tenants to produce a passport and 32%, accepted a driving licence as proof of identity. By contrast, a survey conducted by the Residential Landlords Association in June 2013 to inform their consultation response showed that 63% of landlords insisted on the production of a passport, 15% already required additional visa documentation from overseas tenants and 12% required National Identity cards. The numbers of those requiring a driving licence were in line with the Government's survey. The next most popular forms of identification cited in the responses to the online consultation were bank statements and written references (both 31%), utility bills, (20%). Some landlords and letting agencies required combinations of these and other documents. A number of the national organisations representing landlords and lettings agents considered that the proposed system of checks was consistent with existing industry best practice protecting landlords from high risk tenants who were liable to default on their rent.
- Issue of illegal structures.
 Of those who were in favour of including 'other' accommodation types in the proposals, and who provided a written comment (77 respondents), the largest proportion (38%) suggested the need to counter the issue of so called "Beds in Sheds" as a factor in favour of regulation.
- Document complexity.
 There was concern over the ability of landlords to accurately check documents and opposition in principle to landlords being called upon to act as surrogate immigration officers, the level of support that they would need to perform the task, and the cost of administration, especially with regard to smaller businesses.
- Discriminatory behaviour.
 There was concern either that the policy would provoke discriminatory behaviour or that landlords would be perceived to be acting in a discriminatory manner. Of all those who expressed an opinion on the policy 58% thought that it might result in more race discrimination. 51% were concerned that the policy might lead to religious discrimination. One-third of the respondents who wrote to raise concerns about the impacts of the proposals (108 respondents) were concerned about the potential for judgements on the basis of race, or race in combination with one or more other protected characteristics, most often faith.

- Impact on vulnerable people.

A smaller number of respondents, of the 310 who gave further details on the impacts of the proposals, cited specific concerns for vulnerable groups, including women at risk of domestic violence and others who were pregnant and children (31 respondents). Others, 3% were concerned about the effects of the proposal on elderly people. Typically concerns were raised relating to the availability and affordability of identity documents. A concern was noted for transgender people who might be liable to produce historic documents issued in their previous gender that might compromise and/or embarrass them.

Tables showing the responses to the consultation questions submitted via the online consultation are attached at Annex A.

Issues by type

15. The main points raised by individual respondents and organisations to the consultation in the on-line survey have been collated under these general headings for ease of reference:

Economic / administrative issues

Most of the administrative issues raised related to the additional administrative burden and costs that the policy would cause landlords and letting agents.

| | Issue | Government response |
|---|--|--|
| 1 | Costs would be passed to the tenant in general; either by increased rents or deposits. Non-EEA applicants might be charged higher rents to reflect the perceived greater risk; | The Government does not accept that these proposals represent a substantial burden on the sector which would result in a material impact on rents or fees. The checks will be light-touch and proportionate, and will build upon checks that many landlords and agents already undertake, so as to minimise the burdens arising from the policy. |
| 2 | There is a risk that some landlords would see it as being administratively simpler to simply refuse all applications for rental property from non-EEA citizens; | The Government acknowledges the possibility that some landlords may be unwilling to undertake checks on people whose status might appear more complex but will take steps to mitigate this effect – see Section 5 and 7 and Annex C. |
| 3 | The length of time that additional checks might take could lead to loss of revenue if a property is left empty where there is high demand; | Landlords already usually conduct checks and clear references. Some responsibility rests with the tenant to provide satisfactory evidence at the outset. Where this is not possible the Home Office will provide pre-documentation. |
| 4 | Mortgage providers might impose additional restrictions on who the property can be let to and restrict the market; | No evidence has been provided to suggest that this is the case. The Government will engage further with bodies representing mortgage lenders if evidence emerges that this is an obstacle. |

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| 5 | Some may charge differential fees dependent on what type of passport is presented; | The risk is closely related to that of administrative burden and is mitigated in a similar way. See (2). |
| 6 | Costs will be disproportionately borne by smaller landlords. | The fact that most landlords are defined as “small” landlords makes this theoretically correct but the actual cost to a small landlord of checking document is in most cases expected to be minimal. |
| 7 | The proposals carry no financial incentive to those who operate the regulations diligently, only a penalty for doing it wrong. | Landlords have a clear financial incentive to conduct checks in order to protect their revenue and property and most already do so. |
| 8 | “Accidental” landlords will be disproportionately affected by the levels of penalty. | See Section 6 Penalties. The penalties proposed for a first breach of the requirements, or for households who take in a lodger or sub-tenant, will be set at a lower level. |
| 9 | The proposed penalties are too high and/or are punitive for landlords of self-contained properties in comparison with people who take in lodgers or sub-tenants. | The penalties need to be set at a level that will provide a deterrent to those who repeatedly breach the rules and house multiple illegal migrants. The lower levels of penalty will be set to reflect the level of seriousness, the circumstances of the person breaking the rules (i.e. those taking in lodgers or sub-tenants) and the numbers of illegal migrants involved. |

Process / Regulatory issues

| | Issue | Government response |
|---|--|--|
| 1 | The proposals will only target the legitimate market without affecting the “shadow” market which will continue to operate illegally; | The policy will complement ongoing work by multi-agency teams to tackle rogue landlords, rogue gang masters and traffickers and will, for the first time, give the Home Office express powers to combat and restrict the accommodation of illegal migrants. |
| 2 | Are unregulated businesses a fit and proper vehicle for delivering the policy of checking private data? | A large proportion of landlords will already hold references and other data relating to their tenants and are subject to the Data Protection Act. |
| 3 | Is it reasonable to expect landlords to be expected to understand immigration documents? | It would be unreasonable to do so without providing proper guidance and this will be provided via a number of methods including material that will be publically available online backed up by support from the Home Office if this is requested. |
| 4 | An overly complex process might prompt landlords to leave the private rented sector and increase the housing shortage. | The Government acknowledges that an overly complex process may deter people from letting property and will take steps to make the process as simple as possible and will support both landlords and tenants. |
| 5 | There is a need for a narrow range of documents in order to ensure stringent checks. Too many documents add to confusion. | A narrow list of documents is more likely to exclude people from the private rented sector. The proposed list of documents is designed to reflect the reality of what most landlords already demand by way of references, but also needs to cater for the documents that tenants who are in the country legally should be able to provide. The types of immigration document needed will, in the large majority of cases, be confined to a few widely held types. |
| 6 | Is it reasonable to expect all checks to be completed at point of entry to the property? Some leeway is needed to check documents once the tenant has taken up residence. Examples cited were people being moved from hostels to private accommodation and people leaving the prison system. | The Government has listened to many points raised in this area and has taken steps to introduce flexibility to the scheme in respect of vulnerable people being placed into the private rented sector. The legislation will give powers to the Secretary of State to prescribe when a tenancy is deemed to be entered into, for purposes of this policy. See Section 4. This will allow a landlord in certain circumstances to enter into an agreement on condition that the individual subsequently establishes their immigration status. The circumstances |

| | | |
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| | | in which this is allowed will be set out in the Code of Practice. |
| 7 | To avoid double regulation, should employers (who will themselves have made checks) provide certification to the landlord as to the tenant's status? | To do so would be to confuse liability between the employer and landlord. However, an employer's reference is one of the forms of documentation that will be acceptable from UK citizens, in combination with a birth certificate (see Annex D). |
| 8 | Relocation agents are agents based in the UK that act on behalf of people seeking accommodation – usually people who live overseas that are coming to the UK as part of a company relocation. Can liability be transferred to a relocation agent? | Liability can be so transferred. A relocation agent will occupy the same status as a letting agent for the purposes of the regulations. |
| 9 | Should repeat checks on tenants with limited leave to remain be conducted annually as proposed or, more simply, in line with the expiry of their leave? | The annual check was proposed in order to reduce the frequency of checks on foreign citizens with a short period of leave and thereby reduce the administrative burden. Some landlords and agents may prefer, for administrative simplicity, to repeat the checks when they renew a tenancy if the renewal falls due before the anniversary. The Government considers that the scheme should include a duty on landlords to conduct follow-up checks to ensure there are effective controls preventing migrants who overstay the period of their leave to be in the UK from remaining in the private rented sector. A landlord who conducts a follow-up check on a tenant and discovers that their lawful immigration status has expired would retain their excuse against a penalty if they inform the Home Office. See Section 4. |
| 10 | EEA nationals should not be required to produce residence cards to obtain services. | The approved documents list will include a variety of documents that means that this is not a requirement. |
| 11 | Should checks be required on all adults who will live in the property or only on the named tenant? | The Government recognises that there is some burden associated with ascertaining who will be living in the property with the named tenant. This aspect of the policy is needed to avoid creating a loophole. The Government will clarify the steps that would be considered reasonable to show that landlords have made due enquiries. Landlords will not be held responsible for people living in the property that were not disclosed to the landlord as |

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| | part of that process. |
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Implementation / support issues

Some landlords and letting agents raised questions regarding the way in which the scheme might be rolled out and the quality of support and advice they would receive. Concerns and suggestions included the following:

| | Issue | Government response |
|---|---|--|
| 1 | The advice service may be too slow, especially in London where the demand for accommodation makes it likely that those not immediately able to provide satisfactory evidence would be disadvantaged because of the immediate availability of those whose status is relatively easy to verify; | The advice service will be resourced with the intention of meeting minimum service levels and will provide three types of response to address these issues: responses to general enquiries, email requests for status verification and pre-documentation for those who legitimately cannot meet the documentation requirement. In high demand areas tenants have a responsibility to prepare evidence of their status. Landlords who have not received a response to a clearance request within 48 hours will be deemed to have discharged their responsibility, (subject to evidence that the request was made). |
| 2 | The advice service would not be able to cope with the volumes of work, especially as regards the seasonal influx of students entering the private rented sector; | Halls of residence, provided predominantly for the use of students will be exempt. Students will be able to enter into conditional letting contracts from overseas subject to presenting their original documents on arrival. |
| 3 | Landlords providing accommodation for students should be entitled to rely on some kind of certification from the university / HE provider, e.g. a letter from the university saying the person is a bona fide student. | The Government agrees that references supplied to existing UK students (in combination with a birth certificate) by bona fide educational institutions will be accepted. |
| 4 | The policy is too widely defined and will fail to identify the target offenders that are intended. | The approach by its nature spreads the responsibility for checking very widely to provide deterrence and is intended to complement other enforcement measures rather than be a lone measure. |
| 5 | Implementation should be phased. | The Government retains an open mind on how to manage the implementation of the policy. |

Equality / Social issues

A separate Policy Equality Statement is at **Annex C**.

| | Issue | Government response |
|---|---|---|
| 1 | The new rules might provoke landlords to discriminate against people who they perceive to be foreign rather than conduct proper checks; | The Government recognises and acknowledges the risk and these issues are addressed within Section 7 and in Annex C . |
| 2 | The policy might impact vulnerable people by disrupting or delaying their relocation into the private rented sector; | The Government recognises and acknowledges the risk and it is addressed in Section 7 and in Annex C . |
| 3 | The policy might push greater numbers into a “shadow” housing market and increase the exploitation of illegal migrants; | The Government will continue its ongoing work to address the shadow market and those who create overcrowding and illegal structures. This policy will complement that work and enable immigration enforcement officers to hold rogue landlords to account. |
| 4 | The policy does not address the issue of unsafe or illegal accommodation; | There is already a well established body of legislation dealing with housing safety and planning issues, which is enforced by local authorities. However, this policy will result in a further sanction which can be brought to bear in dealing with rogue landlords. |
| 5 | The policy may increase public stigma against migrants and have a negative impact on social cohesion. | The Government believes that the policy will improve social cohesion by addressing tensions caused by pressure on local community services, housing and employment. |
| 6 | Those vulnerable people turned away from private housing may become a burden on local social housing. | Where vulnerable people are at risk it is likely that social services will be aware of them. Where the policy brings to light people who need assistance steps have been taken to allow more flexibility to local authorities to help them place people within the private rented sector. Where vulnerable people who are here illegally are brought to notice they will be offered assistance to return to their home country. |
| 7 | The homeless, very old and/or those with learning difficulties are less likely to have original or current documentation. | The Government acknowledges that this is a risk and the advice service will give priority to providing pre-documentation where it is urgently needed. |
| 8 | The policy may impact the privacy of transgendered people. | See Policy Equality Statement at Annex C . |
| 9 | The policy may make it more difficult to place people who are being treated under | See (6). Where a person is receiving statutory services, an exemption will |

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| | the Mental Health Act into rented accommodation within the community. | apply to ensure that the scheme does not impact on the support they require. |
| 10 | The policy might make children homeless along with their parents. | See Section 7. |

3. Property and exemptions –detailed consideration of issues

16. In the consultation document we proposed that the types of accommodation that should be included under the scheme were:

- Accommodation rented out for one or more person to live in as their main or only home;
 - Homes which are not buildings – including caravans and houseboats – if they are rented as the occupier’s main or only home; and
 - Homes which were not built for residential purposes – for example someone renting a disused office as their home, including “property guardians”.
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- We said that the policy would exclude:
 - Social Housing rented to tenants nominated by local authorities or to households provided accommodation under the homelessness legislation;
 - Privately rented accommodation offered by a local housing authority to a person to whom homelessness duty is owed;
 - Accommodation provided by universities and other full-time educational establishments and providers, designated as halls of residences, for students,
 - Accommodation provided by employers for their employees
 - Short term business and holiday lets of less than three months
 - Tourist accommodation such as hotels and guest houses providing short-term accommodation to tourists and business travellers;
 - Properties let for commercial use (shops, offices, etc.);
 - Hostels providing crisis accommodation to homeless and other vulnerable people;
 - Hospital and hospice accommodation for patients
 - Care homes for elderly people;
 - Children’s homes and boarding schools; and
 - The sale and purchase of homes, including those purchasing a home on a leasehold or shared ownership basis.

The legislation will provide for the list of exemptions to be amended through secondary legislation, enabling changes to be made, if necessary, in the light of experience. Nonetheless, the Government has given careful consideration to other exemptions, as follows, (and see also Section 4 regarding students and homelessness):

Hotel and holiday let sector

17. The original list of arrangements included holiday lets and guest houses. The consultation document noted that the inclusion of hotels and guest houses within the scheme was necessary in order to avoid creating a loophole that could be exploited. The Government is concerned, however, to ensure that the rules are administratively reasonable and do not create a disproportionate burden on the tourism sector. Exempting properties such as hotels, guest houses, bed and breakfast and holiday lets from the proposed legislation is made difficult by the lack of formal definitions in law for the types of business mentioned. The proposed rules in

relation to the hotel sector as detailed in the consultation document were that people staying in a hotel for longer than three months would be subject to the regulation and the hotel would therefore need to check the person's documents as per a private rental. Respondents cited the difficulties faced by hotels in recording and reviewing the status of guests. Respondents (The British Hospitality Association) also pointed out that six months would be a more appropriate period as it reflects the period of stay that is permitted to many visitors.

18. The Government has considered the proposals as they apply to hotels and guest houses. Hotels and guest houses will not be required to undertake immigration status checks unless the tenant or guest is to remain for more than three months, has remained in the accommodation for more than three months or where it appears that the accommodation will constitute the occupiers main residential address. In the majority of cases, a landlord operating tourist type accommodation will not need to check the status of their guests at all, as they will be staying for a time limited short period and it will be clear that they are not using the premises as their only or main home. However, where the factual circumstances suggest that they may in fact be living at the premises as their only or main home, the landlord will be required to check the person's immigration status. The Codes of Practice governing the legislation will explain what this means in practice and how hotels and guest houses should decide whether a person has moved from being a temporary guest to being someone who is now effectively living in the property as their main residence. The Government's clear intention is to avoid the need for bona fide tourist accommodation providers having to make checks in the vast majority of cases.

Statutory succession under Rent Act 1977

19. Respondents noted that in some cases tenants have statutory rights of succession to a tenancy under rules relating to protected tenancies (Rent Act 1977). In such cases it is not at the discretion of the landlord to deny them the tenancy. Other, less mainstream forms of tenancy include agricultural tenancies, life tenancies and grace and favour tenancies. The Government has considered these aspects and has concluded that, where there is a statutory right of succession, the requirements to make checks should not apply, and this will be clarified in secondary legislation.

Long lease arrangements

20. Respondent organisations raised the issue of tenants subject to long lease arrangements. The Government has concluded that holders of leases of longer than seven years should be exempt from the provisions.

Warden assisted accommodation

21. The consultation document noted the intention to exempt nursing and care homes. The consultation responses suggested the possibility of also exempting sheltered and/or warden assisted accommodation. The policy intention is to provide discretion to waive requirements for individuals in certain cases rather than to extend blanket exemptions for properties that might have perverse consequences and provide a loophole for those who seek to evade the regulations. The Government is therefore minded not to extend the exemption to additional property types in this sector but will continue to work with local authorities to review issues relating to people under monitoring and/or supervision that may emerge as a result of the regulations.

Properties in receivership or changing ownership

22. Respondents raised the issue that properties in receivership might have sitting tenants whose status should not be the responsibility of the receiver. Concern was also expressed that subsequent owners may find themselves liable to penalties for the failure of their predecessors to check the status of their tenants. If a tenancy is granted to a person who does not have the

right to be in the UK, then the landlord who grants that tenancy will be responsible under the scheme, even if they subsequently sell the property. However, if a landlord lets a property to a person who has the right to be in the UK, and subsequently sells that property the new landlord will be expected to ascertain whether any repeat checks are required, and will be responsible from that point forwards.

Properties owned by religious institutions and orders

23. The Government welcomes the essential work done by many religious organisations to support and protect vulnerable and homeless people. No formal responses to the consultation were received from religious institutions but the Government has considered suggestions that religious institutions and places of worship should be exempted from the proposals. It has decided that it would not be appropriate to exempt all properties owned by religious organisations given their wide variations in usage. It is considered better to consider properties on their individual merits, in terms of their use and who lives in them. The Government intends for instance to grant exemption to certain hostels and the proposed legislation will make no distinction between the religious and secular institutions that run them.

24. It is recognised that some religious properties, such as monasteries and seminaries, will have a resident population, but those who live in them must be legally within the UK. It is the responsibility of such institutions to ensure that proper checks have been made on those from whom it receives rent and for whom the property is their main or only home. It should be emphasised that the provisions will not impact those who do not pay rent. It is therefore expected that the rules should not impact those who normally live within religious accommodation by virtue of their vocation, those who are visiting them, or those being temporarily cared for within them.

4. Detailed issues raised in relation to tenant groups

Lodgers and those who sub-let

25. The government proposed in the consultation that those taking in lodgers or those who sub-let property will be held accountable under the scheme if they rent to persons who do not have the right to be in the UK. .

26. The exact numbers of lodgers within the private rented sector is not known but recent research suggests that it could be as high as 900,000 people.² Lodgers represent an informal sub-sector within the private rented sector and, although they are commonly understood to be people who take a room within accommodation that they share with the owner or landlord, are not legally defined as such. The sector is an important part of the market offering cheap and flexible accommodation that allows independence, especially for young tenants, and labour mobility. The sector has particular importance in the context of the Government's aim to encourage people in social housing to rent surplus space within their properties.

27. The consultation proposed that lodgers living with owner occupiers should be included in the scheme. 37% of all respondents to the on-line survey considered that lodgers should be included and 59% disagreed. Opinion among landlords and letting agents was broadly in line with this, in that 39% considered that lodgers should be included and 55% disagreed. The consultation also asked who should be responsible for making checks if lodgers were to be included. For instance who should be responsible for checks where the lodger paid money to another tenant? Eleven per cent of respondents who answered as tenants, lodgers or who sub-

² LV Insurance survey 2010

let, considered that liability for making checks should always rest with the tenant, whereas 36% considered it to always be the landlord's responsibility.

28. Some respondents, such as Shelter distinguished between lodgers and sub-tenants. Whilst there were concerns about applying the policy to lodgers, there were also concerns that excluding sub-letting (or allowing lower penalties for sub-letting) would provide an incentive for unscrupulous landlords to connive in arrangements whereby the tenant of record sub-lets to illegal migrants who are subjected to exploitative terms and conditions such as high rents and lack of security of tenure.

29. The consultation highlighted a concern that an overly complex process could put people off taking in lodgers. The Government is concerned that the policy should not restrict those in the social housing sector who are legitimately seeking to rent out their spare rooms following the removal of the spare room subsidy. The Government considers, however, that excluding lodgers and those who sub-let within a property as part of the new scheme would provide a major loophole that would allow illegal migrants to continue to obtain accommodation and also make it easier for unscrupulous landlords to circumvent the regulations by entering into renting arrangements that fall outside the rules and potentially offer the tenant / licensee less security of tenure than a tenancy. The Government does however recognise that informal renting arrangements have a legitimate role to play in the rental market. The intention of the regulations is not to try and constrict access to short term informal lets which are an essential provider of flexible and affordable housing.

30. As regards the inclusion of lodgers within the scheme the NW Landlords Association said, "We believe that the disparity between financial penalties proposed for housing a tenant as opposed to a lodger or a sub-tenant will have the ... effect of displacing illegal migrants from tenancies into alternative forms of accommodation". The NWLA disputed that most landlords at the lower end of the market checked references on the basis that tenants in this arena were less likely to be documented. NWLA believed that most landlords relied on personal interviews.

31. The Hyde Group, a housing association group, welcomed plans to exclude social tenants but was concerned that the policy would impact those using lodgers to offset the removal of the spare room subsidy and that social tenants on benefits would suffer a disproportionate cost. The Group believed that tackling fraud and illegal sub-letting "could be very effective in tackling illegal immigration" given that it believed that illegal immigrants were "more likely to become lodgers or sub-tenants in social housing which has been let fraudulently". Consistent with discussions with organisations representing the wider housing association sector, Hyde indicated that, if the requirements are applied to social tenants taking in lodgers or sub-tenants, then they would expect to support their tenants in understanding the new requirements.

32. The legislation will therefore be directed at all people who pay rent for the right to occupy premises as their only or main residence. This makes no distinction between those who have formal or informal letting arrangements. It is more likely, owing to the informal nature of the market, that there is less expertise and knowledge regarding regulatory requirements among the landlords of lodgers. For this reason the Government recognises the need to raise awareness and target specific guidance and support at this sector. Penalties will be set at a lower level for landlords of lodgers and sub-tenants than for other landlords.

33. Government sought views in the consultation on who should be liable for making checks on lodgers and sub-tenants if they are included in the policy, where the lodger's landlord is also a tenant. The Government has decided that this should, unless otherwise agreed between the landlord and tenant, be the responsibility of the person who takes in the lodger or sub-tenant (i.e. it would be the tenant's responsibility). The Government has also considered whether a different approach should apply where the landlord himself lives at the property since he or she

should normally be in a position to know who is paying rent to live at the property. However, this may not always be the case and therefore Government is minded not to provide a different approach to that applying for lodgers / sub-tenants generally.

Homeless and other vulnerable people

34. The Government recognises the need to give vulnerable people the best chance of establishing an independent lifestyle within the community.

35. It is recognised that there will be some people, including some UK citizens, who are not readily able to produce some of the documents listed. This is partly an issue to do with the time and cost of obtaining such documents, and partly to do with the difficulties that vulnerable people leading chaotic lives may face in applying for or holding onto documents. There may also be practical issues for people who do possess the necessary documentation (e.g. students seeking accommodation whose passport is kept at the parental home, etc.). Concern was raised that there may be additional pressures placed on accommodation providers, such as hostels / homelessness charities, if obstacles are placed in the way of people seeking accommodation.

36. Other vulnerable people may have good reasons for not having access to identity documents and the consultation document recognised that certain hostels, such as refuges for victims of domestic violence, should be exempt from the requirements.

37. Respondents were asked whether, in certain circumstances, checks should be deferred to allow the tenant time to acquire evidence and produce documents. Case examples included scenarios where a person is being transferred to accommodation from a hostel that is exempt from the legislation or where a prisoner is being released into the community. Other examples included people who, although not owed a homeless duty, had been identified as a cause for concern by local authorities who seek to help people with non-statutory support to establish them within rented accommodation. In such cases local authorities would benefit from more flexibility and leeway in finalising immigration checks.

38. Local authorities and support organisations for homeless and vulnerable people reported that placing single homeless people presented major challenges where landlords renting out shared or other accommodation preferred professionals or students whenever possible. Many landlords also preferred not to let property to people in receipt of housing benefit. Schemes run by support organisations such as Crisis provide valuable support to both prospective tenants and landlords, helping with the necessary paperwork and arranging for rent to be paid directly to landlords if appropriate. Local Authorities may place destitute people in bed and breakfast accommodation on compassionate grounds where not to do so might place the person at demonstrable risk, for example during extreme weather conditions.

39. The Law Society of Scotland expressed concern at the possibility that people in the care of relatives might be affected by the scheme. The Government has noted these concerns and considers the potential impacts to be limited. The relative providing care will not fall liable for a penalty unless the cared for person is paying rent and requires immigration leave to be in the UK

40. In England and Wales, people who are assessed as needing after care services under the Mental Health Act 1983 are entitled to this whether or not they have legal status in the UK. The scheme will ensure that local authorities are not prevented from securing accommodation for this group of people.

41. The Government acknowledges that there is a need to be flexible in how the rules are applied in order to assist and support the relocation of vulnerable people. The Government is concerned however to ensure that checks are properly applied and is not persuaded that deferring checks until after the person has taken up residence will not undermine the aims of the policy. The Government has decided to build a suitable level of flexibility into the regulations by broadening the range of exemptions for people housed under local authority powers, pursuant to a local authority's statutory duties.

Students

42. The Government proposed in the consultation that university halls of residence should be exempt from the legislation (65% of respondents supported this proposal) but that other forms of student accommodation would be subject to the policy.

43. The Government wishes to encourage overseas students to study in the UK and is concerned to ensure that both students and private landlords have confidence that the system of verification is able to deal with the particular needs associated with the student sector. Feedback from the consultation illustrated the difficulties faced by students in coordinating the visa process and securing accommodation. Also raised were issues about the seasonal nature of student admissions and the wide variety of potential student accommodation providers.

44. Student accommodation is provided by a number of sources including the academic institution itself, private purpose built student accommodation providers (quite often in some kind of joint arrangement with the academic institution) and other private landlords. It is already proposed that University halls of residence should be excluded from the proposals. Purpose built student accommodation is normally subject to planning conditions that only students should live in the accommodation. Apart from planning conditions, the accommodation providers also need to check the student status of their tenants to verify that they have council tax exemptions. Typically, students are provided accommodation under assured short-hold tenancies (in England and Wales), although licences are sometimes used. Students coming to the UK will often arrange accommodation from abroad and, on arrival, require a lead in time to register for courses, obtain the necessary documentation and confirm council tax exemption. The seasonal influx of students presents special difficulties for providers where a large volume of people may need screening very quickly.

45. Other special difficulties relating to the student sector were noted during the course of the consultation including the fact that many students entering rented accommodation for the first time will be British Citizens who may not yet have extensive identity documentation. It was also noted by some respondents that the consultation had referred to universities whereas a broader range of higher and further education institutions should also be considered.

46. Officials met with representatives from the private purpose built student accommodation sector. The sector comprises private business providing purpose built accommodation for students (essentially privately run halls of residence - typically housing several hundred students). Typically, students will apply for the accommodation with their provider and be accepted on-line, with a right to cancel within a certain period (for instance if they fail to get the grades needed to get into the university). First year students will usually apply for accommodation to the university itself which will then allocate its accommodation to students after examination results come in, and notify the accommodation provider of the names of students in late August.

47. The existing list of approved documents was examined in the context of the circumstances described above. It was noted by respondents to the consultation that a broader range of documents might be possible to make the process faster and allow landlords to be

confident that the tenant was a bona fide student. Current practice is that students living in private accommodation (including in the purpose built sector) will be supplied by the University with a letter confirming their status as a student for purposes of eligibility for Council Tax exemption. All non-EEA foreign students will have a visa or BRP. All EEA students will have a passport or ID card. Respondents argued that students should be able to use a letter confirming their university place or a letter provided by the university for the purpose of evidencing entitlement to exemption from council tax.

48. Where students are being placed in accommodation by the University or Higher Education provider it would be possible, if the providers were willing to do so, for the student to be given a letter of authority verifying their status as student. This might be issued online, or as part of, the existing documentation evidencing entitlement to exemption from council tax. The list of approved documents for UK students will therefore include letters from the Higher Education institution confirming their university place.

49. Concern was raised that the proposed document checks, together with the fact that they will mainly be applying for accommodation from abroad at the time of their visa application, will disadvantage overseas students and discourage applications within UK universities. The Government accepts the special constraints posed by processing student applications from overseas and also recognises and welcomes the progress made in recent years by the education sector in restricting access to illegal migrants. The Government will permit landlords to make a conditional offer of accommodation to an overseas student at the time of their visa application abroad. The landlord will however be required to verify that the student has been granted a student visa as described in their application when they take up their accommodation in the UK.

52. The Government has carefully considered the issues raised and has concluded that it would be right to exempt the purpose built student accommodation sector alongside University halls of residence. Therefore halls of residence, provided predominantly for the use of students will be exempt. Students renting accommodation from other private landlords and accommodation providers will be subject to the same document checks required by other private tenants. As noted above, the range of documents that will count as suitable evidence of migration status will include a letter from the education institution confirming their status as a student.

5. Checking process

Documents to be checked

53. In the consultation document the Government said that it wished to strike the right balance between making it easy for people who are lawfully present in the UK to obtain accommodation and not overburdening landlords with an excessively lengthy or non-standardised list of documents that could be presented to them. The Government has taken account of the points raised during the consultation process and will widen the list of approved documents to more closely match existing practice by landlords and the documentation that prospective tenants who are in the UK lawfully are able to provide. The list will, for instance, also now include employer's references, police reports in relation to those with stolen documents, letters from a UK further or higher education institution and prison discharge letters. A full revised list of documents is contained at **Annex D**. The list of acceptable documents will be set out in secondary legislation, rather than on the face of primary legislation, making it easier for the list to be revised over time in case that proves necessary in the light of experience.

54. The responses to the online consultation and additional information provided by respondents, strongly suggests that most landlords already require prospective tenants to produce a passport (37%). The survey by the Residential Landlords Association showed that 63% of landlords do so. The on-line consultation responses showed that many, 32%, accept a driving licence as proof of identity. The next most popular proof of identity and bona fides were bank statements, (31%), written references, (31%), and utility bills, (20%). Some landlords and letting agencies required combinations of these and other documents. Twenty per cent of the landlords and letting agents said they asked for other forms of ID. These included: evidence of student status; photographic ID; financial checks; references from previous landlords; and evidence of employment and home address.

55. Other documents suggested were generally also official Government documents such as benefits documents, marriage or birth certificates or National Insurance Cards. Of non-Government issued documentation respondents reported that they accepted bank statements, employers' letters, previous tenancy agreements and salary slips. Of other checks made against a person's identity and status landlords dealing primarily with students required a University Identity card and proof of Council Tax exemption.

56. Some landlords said that they accepted a reference from the prospective tenant's employer. It was suggested that, where employers already have to make their own checks against a person's immigration status, further checks were theoretically unnecessary and would amount to double regulation.

57. The wide variety of documents already demanded by landlords was cited as evidence of the need to consolidate identity documents and one organisation, Mencap, suggested that a voluntary identity card would be of value to vulnerable people especially where few such people had access to photo-identity documents, passports or driving licences and instead relied heavily on documents that were not in themselves intended to confirm identity, such as benefits documents and National Insurance Cards.

58. Many landlords accepted benefits documents as part of their package of references. Many Third Sector respondents said that in their experience this was often the only evidence of identity that people in receipt of benefits had in the short term and that this should be allowed on the list of approved documentation. Those agencies and organisations dealing with homelessness gave evidence that landlords would most commonly seek evidence of benefits payments as a pre-condition of allowing a let so as to ensure evidence of income. The Home Office notes that certain benefits documents are already being used as reference documents by landlords as evidence of ability to pay rather than as identity. The document list has been revised and is appended to the consultation report at **Annex D**.

59. The Home Office has an ongoing programme to issue biometric residence permits, (BRPs) to non-EEA nationals staying for more than six months, which will significantly simplify the range of documents landlords will be called upon to check. The Home Office will also consider making changes to the rules governing BRPs which would allow anyone making a further application for leave to retain their BRP as proof of their identity, status and wider entitlement to work and where appropriate access benefits while their passports are with the Home Office. While the BRP remains in date, under our proposals this would allow migrants to continue to establish the right to rent regardless of the status of any on-going application. Where the BRP has expired, it would still help to establish identity and make it easier for the Home Office to deal with any enquiry from a landlord seeking confirmation that the migrant has a live in-time application and an associated right to rent.

60. Some respondents voiced concern that there were more types of immigration document than those illustrated in the annex to the consultation document. It was not the Home Office's intention to display a comprehensive guide to immigration documentation within the consultation

document but to give examples of the most common documents likely to be encountered. Although comprehensive guidance on documentation will be provided on-line, as is currently the case for employers, it is expected that the range of documents that most landlords will in practice need to check and copy will be relatively small, mainly including UK passport, current EEA passport or ID card, current UK visa, current UK passport stamp or current UK immigration biometric residence permit. That smaller proportion of foreign nationals whose immigration documentation is more complex will be assisted in providing necessary, pre-verified proof of status.

61. The consultation referred to landlords comparing documentation presented by a prospective tenant against specimens of documentation presented in published guidance. Some respondents pointed out that this means that hundreds of different examples of passports from around the world would need to be depicted in the guidance. The Government therefore wishes to confirm that it is not expecting landlords to compare passports against a specimen specific to each country in the world. The Code of Practice will indicate that the landlord can usually accept a passport or, (in the case of EEA nationals an identity card), that clearly appears to have been issued by a national government and contains:

- a photograph that is a likeness of the prospective tenant; and
- personal details that match the person, for instance, the gender and age are not obviously anomalous.

The landlord will not be expected to compare the document against samples unless they believe that they may be able quickly to satisfy a possible concern and allow the let to proceed. Where there are obvious grounds to suspect that the document is forged or counterfeit and a landlord believes that they may be the victim of attempted deception by someone presenting bogus immigration documents they should decline to proceed and consider reporting the incident to the police.

62. The consultation has identified a need to provide additional identity documentation for those in urgent need of accommodation or who are otherwise vulnerable and being accommodated at short notice. The Government accepts a need to provide documentation in such cases which will be defined under the relevant secondary legislation and guidance set out in the Code of Practice. The Home Office will issue single use, secure identity documents in such cases.

63. The documentation list will be reinforced with clear, simple guidance to make the scheme user-friendly for all landlords and prospective tenants. Together with DCLG, we will take forward discussion with local authorities and social housing organisations to develop a communications plan for distributing the guidance, particularly to social tenants who may be seeking to take in lodgers. We understand from respondents during the consultation that the step-by-step online guidance for employers on illegal working, (<https://www.gov.uk/legal-right-to-work-in-the-uk>), has been particularly well received; we are seeking to improve this as part of our work on the illegal working provisions of the Immigration Bill, and we will deliver an enhanced version for landlords. There will also be printed guidance, recognising that not all landlords or tenants have access to on-line services.

People to be checked

64. As stated in the consultation document it is intended that the landlord or agent should check at the outset of the tenancy the migration status of all the adults who would be living in the property without unlawfully discriminating between different types of people. The landlord will not be required to make ongoing inspections of who is actually living in self-contained

rented accommodation thereafter unless the initial checks show that one or more of the tenants have authority to remain in the UK.

65. A number of respondents were concerned that it would be onerous to check household members besides the named tenant and were unsure what steps would be required to demonstrate that they had made reasonable enquiries as to who would be living at the property. The Government will therefore clarify the latter point in the Code of Practice supporting the legislation. In brief, landlords will be required to ask the tenant who will be living at the property. There will not, however, be a requirement that there should be a written tenancy agreement naming all the people with the right to live in the property. Whether or not such a document should be put in place is a matter for the landlord. However, the landlord will still be expected to check the immigration status of all adults he or she has ascertained will be living there.

66. It is recognised that some EEA nationals will not, as a matter of fact, enjoy free movement rights. However, unless a landlord were required to undertake a verification check with the Home Office in respect of every EEA national, they would have no way of knowing whether the person had the benefit of such rights or not. The Government does not consider it reasonable to expect landlords to differentiate the rights of EEA nationals and once an EEA national has shown proof of their EEA national status in the form of a passport or identity card this will be sufficient for the landlord to fulfil their obligations in relation to this group. However, where an EEA national has third country, i.e. non-EEA, dependants, those persons will be required to produce evidence of their legal status as set out in the secondary legislation and Code of Practice.

Making the checks

67. Some, who provided narrative responses and were in favour of the proposals, cited what they saw as the advantages of more stringent checks. They suggested that more rigorous checks might benefit and protect landlords' interests by helping to prevent identity fraud. Some felt that the policy would help reduce the growth of illegal structures and dangerous overcrowding within unregulated HMOs. The point was made that better checks might incidentally bring to light victims of abuse such as children who had been trafficked and/or victims of domestic abuse.

68. The Government agrees that benefits such as the above might arise from landlords making more stringent checks and encourages landlords to make prudent business judgments in vetting their tenants. However, this is a matter for individual landlords to decide, and the Government is not proposing to extend the checks that are required for the purposes of enhancing these additional benefits.

Advice service

69. The Home Office is committed to providing an advice service to landlords that will deal with both general enquiries by telephone to deal with queries such as confusion over documentation, and a verification service to confirm a persons stated immigration status. Some respondents were concerned that the need to give the landlord personal data might breach a tenant's privacy. The prospective tenant will not need to provide any details of the background to any immigration application and details of the persons application will not be released to landlords. The primary purpose of the service is to give a yes/no answer to whether the person has the right to remain in the UK. The Home Office has assessed the resources required in providing a landlords' enquiry service and a landlords' checking service. The aim in running the checking service is to reply to status checks within 48 hours and provide written confirmation to the landlord that the tenant may rent property (and so provide a statutory excuse from a penalty). The service will enable migrants who might have an in-time application outstanding

with the Home Office to pre certify”, i.e. to obtain a document from the Home Office in advance of applying for a new tenancy for the purpose of satisfying a landlord check. Some landlords and letting agents raised questions regarding the way in which the scheme might be rolled out and the quality of support and advice they would receive. Concerns and suggestions included that:

- The advice service might be too slow, especially in London where the demand for accommodation makes it likely that those not immediately able to provide satisfactory evidence would be disadvantaged because of the immediate availability of those whose status is relatively easy to verify;
- The advice service might not be able to cope with the volumes of work, especially as regards the seasonal influx of students entering the private rented sector;
- Home Office procedures which are costly and/or time consuming could incentivise users to circumvent them, thus eliminating the target population from scrutiny.

70. One respondent organisation, the Association of Residential Letting Agents (ARLA) asked whether a mechanism similar to ‘appropriate consent’ in section 335 of the Proceeds of Crime Act 2002 would be of assistance in this context. Appropriate consent allows those who make Suspicious Activity Reports (SARs) to seek permission for transactions to continue regardless of suspicions of money laundering. If a SAR includes a request for appropriate consent then the recipient of the SAR (usually the Serious Organised Crime Agency, SOCA) must respond within a specified timescale, and if they fail to do so, the reporter is deemed to have consent to continue with the transaction. Appropriate consent is designed to strike a balance between the needs of the private and public sectors, and the needs of the public who are parties to transactions which are reported as SARs.

71. The Government accepts the need to provide a service level for the advice service which takes account of the particular needs of the private housing sector as described elsewhere, including the need to provide documentation in some circumstances and to provide appropriate consent to a landlord on whether a let can proceed quickly. The Government will underpin this commitment by creating a set timetable, 48 hours, for responses similar to that used in Suspicious Activity Reports to SOCA after which time landlords will be deemed to have been granted consent to continue with the let.

Guidance

72. Guidance for landlords will include details of exemptions for different kinds of property under the rules and support in understanding less common immigration documents. Engagement with employers is assisting the Home Office in improving the guidance, advice and assistance made available to them and this experience will be reflected in the provision of such material and services to landlords. An on-line right to work checking resource (gov.uk right to work) has attracted praise for being user friendly and easy and quick to use. The Home Office intends to create a similar tool for landlords.

73. The Government considers that, whilst legal liability will rest with the landlord (or letting agent), tenants have a general responsibility to satisfy the landlord of their status in the UK. The Home Office will provide guidance to prospective tenants to better prepare them in providing the necessary evidence they need to satisfy quickly the documentary requirements. The guidance will provide an explanation of the documents required and a checklist to show that they meet the requirements of the regulations. The guidance will also detail in which circumstances tenants might request pre-documentation to help them in securing accommodation where, for whatever reason, other documentation is not available.

Letting agents and others responsible for making checks

74. The consultation document detailed the Government's intention that, where a landlord is using a letting agent to carry out the immigration status check on its behalf, it should be possible to transfer the liability for failing to perform the check to the letting agent. We intend to legislate that, where it is agreed between the landlord and the letting agent, for purposes of the legislation, that the letting agent will be responsible for performing the required checks on the tenant, then it will be the letting agent rather than the landlord who is liable for the civil penalties associated with allowing a person to rent that property who is in the UK illegally without having made proper checks. Where there is no such transfer of responsibilities, liability for failure to check the migration status of the tenant will remain with the landlord.

75. In the cases where overseas employees have accommodation arranged for them by relocation agents these agents will have the same standing and liability as a letting agent.

Tenants with limited leave to remain – repeating the checks

76. The consultation proposed that, where a tenant has limited leave to remain (LTR) in the country, then the check should be repeated periodically and proposed that the checks should be made no later than (i) the anniversary of the previous check, (ii) expiry of the tenant's leave to remain and (iii) whenever the tenancy is renewed. Most of those responding on the question suggested that the check should be performed whenever tenancy is renewed 31% or immediately after leave to remain expires 29%.

77. A number of landlord and letting agent organisations, including some that supported the overall proposal that landlords should make checks on new tenants, objected to the proposal that checks should be repeated. Concerns were expressed that requiring such checks would expose the landlord or letting agent to intimidation or even violence, if an illegal migrant were to be faced with the prospect of losing their home or being reported to the authorities. There were also concerns about the practicalities of making checks at dates that do not coincide with other milestones in the tenancy.

78. Some respondent organisations, (such as UKALA), believed that it would be more straightforward to tie repeat checks on people with limited leave to remain to the renewal of the tenancy rather than fixed anniversary dates. Since responsible letting agents would in practice limit the length of the tenancy to the tenant's right to remain, this should mean that there wouldn't be a period of the tenancy in which the tenant has no leave to remain. Others suggested that it would be simpler to link the repeat check to the expiry of a person's leave. The Government believes that the scheme should incorporate a requirement to conduct follow-up checks on tenants with a time-limited immigration status in order to better prevent overstaying. A landlord who discovers a tenant's lawfully immigration status has expired when conducting a follow up check will retain their excuse against a penalty if they inform the Home Office of that person's continued residence. All information received from landlords in confidence will be treated in the strictest confidence

6. Implementation and enforcement issues

Rollout

79. Some respondents cited a need for a phased introduction of the policy in order to test assumptions contained within the proposed measures and to guard against perverse and unintended consequences. The NW Landlords Association said "A pilot is essential to test the practicalities of delivery; the snags inevitable in any new scheme could be far-reaching. There

may be merit in testing the scheme in one or more of the nine local authorities which are receiving £2.5M for the 'Beds in Sheds' initiative".

80. The Government will consider this issue further in planning for implementation. However, the Government is also mindful that housing markets operate on a geographic scale which is larger than individual local authorities and is mindful of the risks of an approach which could simply divert illegal migrants from one local authority to neighbouring areas.

Landlord action where an illegal migrant is living in the accommodation

81. Some respondents, including the National Landlords Association, expressed concern at the advice within the consultation document that suggested that landlords would be able to establish a statutory excuse against penalty by reporting a suspected illegal migrant to the Home Office. The NLA considered that, even where such information was provided in confidence, it might place the landlord at risk.

82. There will be no statutory requirement for landlords to register tenants in any way or to report them to the Home Office or other authorities where they suspect them to be in the UK illegally. It is the landlord's choice whether he or she reports a tenant and, in situations where the landlord reports a suspected illegal migrant to the Home Office, the Home Office will treat such disclosures in the strictest confidence, i.e. it will not disclose to the suspected illegal migrant who had reported them. The Home Office receives and acts on such information as a matter of routine but follows a strict process of verification and assessment and may choose not to act on information received for a variety of operational reasons. Where a landlord confides information to the Home Office this will be logged and the landlord will thereby create a defence should the tenant be located at the property and is found to be an immigration offender.

83. The Government acknowledges the concerns of landlords that they should not be perceived as informants as a result of complying with the scheme. The Code of Practice will advise that best practice for landlords should be, where they develop concerns over the bona fides of an existing tenant, that they first of all seek the advice of the Home Office via the advice centre.

Approach to enforcement

84. Tenants who are immigration offenders will normally be detected during the course of routine visits by operational immigration enforcement officers. There is no proposed new power of entry to specifically check that documentary checks have been made by a landlord. The normal course of events that follows the detection and arrest of an immigration offender was set out in the consultation document. No further proposals have arisen as a result of the consultation.

85. Some respondents considered that the absence of specific enforcement initiatives was a weakness of the proposals as it would not only reduce the deterrent effect and effectiveness of the policy but also reinforce a two-tier market in which scrupulous landlords abide by their obligations whilst unscrupulous landlords knowingly break the rules and profit by charging higher rents to vulnerable tenants. The Government recognises these concerns but considers that the new measures will provide some deterrent effect even to unscrupulous landlords as they will provide an additional level of sanctions to levy against rogue landlords who house illegal migrants and who come to light as a result of joint agency operations. .

Denial of liability / statutory excuses

86. The proposals will not affect existing tenancies and there will be no requirement for landlords to review the immigration status of any tenant whose tenure pre-dates the implementation of the scheme. There is no requirement to register tenants.

87. Where the landlord can establish that they checked the status of the adult occupants prior to allowing occupation, they will have established a defence against a penalty. The landlord will be required to check documentary evidence of the immigration status, and retain a copy of this. The documents which will be acceptable as proof of status will be specified within secondary legislation.

88. Where the prospective occupants are either British or EEA nationals, have the right of abode in the UK, or indefinite leave to remain, then one check prior to allowing occupation will be sufficient to establish a statutory excuse that will be valid for the duration of the tenancy/arrangement (including renewals) without any further action required by the landlord.

89. Where the occupant has a limited form of leave to enter or remain, the statutory excuse will be valid for either: (i) the duration of their leave or visa; or (ii) a period of one year; whichever is the greater.

90. The scheme will provide for landlords to be able to avoid penalties where they can establish a statutory excuse, by undertaking documentary checks regarding the immigration status of occupants, repeat checks where these are specified, and where unlawful migrants are found in occupation when repeat checks take place, by reporting the presence of the migrant to the Home Office.

Civil penalties

91. The level at which penalties are set are designed to create a proportionate response to a wide range of breaches and varying scenarios. The policy intention is that a civil penalty of up to £3,000 per illegal migrant will be payable by landlords or responsible agents for the most serious breaches – for instance by housing a large number of illegal migrants and / or breaching the regulations on multiple occasions. Lower penalties (to be set out in a statutory code of practice) will apply for landlords who break the rules for the first time or (if relevant) whose illegal tenants are lodgers / sub-tenants in their own home.

92. Many respondents were concerned at the scale of penalties – both the absolute levels (although there was some support for the £3,000 maximum – e.g. from RICS) and the differentials between first and subsequent contraventions and between people renting to lodgers / sub-tenants and other landlords (around one-half of those who responded to the online consultation thought the penalty was too high in each case). Although there was little disagreement with the rationale for a graduated scale of penalties some questioned whether the level of penalty should take into account discretionary factors rather than a simple formula, citing the unintended consequences of minimum penalties set out in other housing legislation. Organisations representing landlords (e.g. British Property Federation) and letting agents (UKALA) disagreed with applying a higher penalty on landlords of self-contained rented accommodation than on homeowners or tenants who take in a lodger or who sub-let. The Residential Landlords' Association said that penalties should be graduated between £500 and £1,500 and that there should be power to mitigate the penalty depending on the circumstances.

93. The NW Landlords Association cited the potentially disproportionate impact on “accidental landlords” who, typically, rent out one house which they may have inherited from a parent or who are renting elsewhere due to work requirements and cannot sell their own

property in the present housing market. It was felt that the penalty regime was not nuanced in order to take account of such diverse circumstances.

94. The principle of applying a civil penalty regime was questioned by one respondent who considered that a criminal penalty should be applied that could be then considered by due process through the courts. The Government does not however agree that this is proportionate to the aims of the scheme.

95. The Government took note of the need to graduate the scale of penalties according to the size of the let and to take into account the severity of the offence and was concerned to reflect the level of potential profit that might be gained by rogue landlords who create overcrowded accommodation and to provide an effective deterrent. The Government does not consider that the levels proposed are excessively harsh. The maximum penalty of £3,000 per illegal migrant is dependent on a serious breach by the landlord and is considerably lower than the level that applies to illegal employment (£10,000 rising to £20,000). Lower penalties will apply in other cases, namely:

| | No notice of liability in previous 3 years | Separate Notice of Liability or advisory letter served in previous 3 years |
|---|--|--|
| People who take in up to two lodgers in the home they are living in, or sub-let part of the home they are living in to up to two people | £80 | £500 |
| Others (including single property buy-to-let investors, larger landlords, letting agents, etc.) | £1,000 | £3,000 |

96. However, the Government takes full account of the risks that have been highlighted by respondents and will in the light of operational experience review the impact on different sectors within the market and, where there is a perverse or disproportionate consequence to the imposition of penalties this will be taken into account and the Codes of Practice amended to better target those who have committed the most serious breaches.

Further consequences for Houses in multiple occupation (HMOs)

97. Respondents were divided in their opinion on the proposal that penalties issued under the new regulations should be taken into account by local authorities when considering whether the landlord was a fit and proper person to hold an HMO licence. In England and Wales 44% agreed the authority should take a person’s previous record into account, while 40% disagreed. In Scotland and Northern Ireland, 39% agreed and 43% disagreed. Some argued that the issue of whether the landlord had been negligent in checking for tenants who had no evidence of legal immigration status was irrelevant in relation to the wide range of other regulations and conditions that had to be complied with and met. The Residential Landlords’ Association said that it was wrong that “someone should be singled out potentially for special penalisation just because they rent out one kind of accommodation”.

98. The legislation will not require local authorities to take account of serious breaches of the regulations when considering whether a landlord is fit and proper to hold a licence. Local authorities (or, in Northern Ireland, the Housing Executive for Northern Ireland) will continue to exercise their judgment in considering whether a person is fit and proper to hold a licence. However, the Government considers that multiple breaches of these regulations might be a

factor which local authorities in England wish to consider taking into account in considering a person's fitness to hold or qualify for a licence.

Equality issues

99. The policy as designed may potentially deprive some people of access to a place to live. This is not a step that can be taken lightly and can only be considered at all if it is a proportionate measure designed to achieve a specific aim and where proper safeguards are in place to minimise the risk that the policy might impact people who are not the object of the restrictions. It was suggested by some respondents that the policy was not proportionate and potentially breached people's human rights and cited Article 25 of the Universal Declaration of Human Rights which provides that: 'Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services ...'. The Government notes that these articles do not absolve people of responsibility to abide by and be governed by the law.

100. The application of this policy is intended to impact only those who have disregarded our laws and are intent on ignoring proper assistance to leave the UK. It should be noted that any person specifically barred from private tented housing by the policy will have had the opportunity to put forward any grounds for consideration under the Human Rights Act 1998. Article 8, Right to respect for private and family life, states:

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others".

101. The Government takes any perceived risk that a policy may inadvertently increase discrimination or impact on equality with the utmost seriousness. A separate Policy Equality Statement has been prepared which has been informed by responses to the consultation and is at **Annex C**. The most cited issues raised by respondents are individually considered here together with an overview of how the proposals have been modified to take account of these concerns:

i. The new rules might provoke landlords to discriminate against people who they perceive to be foreign rather than conduct proper checks to ascertain their actual status.

A high proportion of respondents expressing an opinion in the on-line consultation survey, 58%, thought that the policy might lead to greater racial discrimination. Existing landlords and letting agents saw this as less of a risk, (51%), but the Government treats any risk of discrimination as a matter of gravest concern and acknowledges that there is a need to address the risk directly.

Concern about increased discrimination was expressed in two different ways:

- the possibility of either allowing or encouraging more overt race discrimination; and
- a perceived risk that landlords might discriminate on the basis of administrative convenience.

Direct discrimination occurs when a person is treated less favourably on racial grounds (including nationality) than another person would be treated in the same or similar circumstances. An example would be where a housing provider refuses to rent a home to someone on the grounds of nationality, ethnic or national origins. It is usually unlawful, but

is allowed in certain circumstances, e.g.: where a charity's lawful aims are to accommodate or help people of a particular race or ethnic or national origin or nationality:

'Indirect discrimination occurs when a provision, criterion or practice which, on the face of it, has nothing to do with race or ethnic or national origins' is applied equally to everyone but it:

- puts or would put people of a certain race or ethnic or national origin at a particular disadvantage when compared with others; and
- puts a person of that race or ethnic or national origin at that disadvantage; and
- cannot be shown to be a 'proportionate means of achieving a legitimate aim'.

In both scenarios a number of elements already exist which are intended to mitigate these risks. Landlords will be required to check and record identity documents for all new tenants whether or not they are, or are suspected to be, foreign nationals. The level of checks that are intended will be minimised – usually to the extent of copying one document with no need for further action – and tenants will be assisted and guided to provide a satisfactory level of evidence that means additional evidence is not necessary. Landlords will not be expected to identify forged documents beyond that which any untrained person might reasonably identify.

A minority of prospective foreign tenants will have a time limit on their stay or will have some other kind of immigration restriction that may require further interpretation or advice. It is this group who respondents indicate are at particular risk of administrative discrimination and the Government recognises that support must be given to this group to ensure that legitimate visitors and legal migrants are not barred from the rented housing market. The Home Office has already committed to providing a service that will deal with general telephone enquiries asking for advice and the facility to request confirmation of a person's status by email. Respondents expressed concern that the service might be too slow to meet their needs. The Government notes these concerns in the context of this risk and will ensure that the service meets agreed service levels.

- ii. The policy might impact vulnerable people by disrupting or delaying their relocation into the private rented sector, e.g.: the policy may make it more difficult to place people who are being treated under the Mental Health Act into rented accommodation within the community. Conversely, vulnerable people unable to secure private rented accommodation may become a burden on local social housing.

There will be some circumstances where local authorities will be under an obligation to provide services, including the provision of accommodation, even though the service recipient is an adult who is present in the UK in breach of the immigration laws. For instance, an adult who requires the provision of services under section 21(1)(a) National Assistance Act 1948 , or after care services under the Mental Health Act 1983. An exemption will be in place for arrangements made by local authorities in accordance with their statutory duties.

A respondent voiced concern that failed asylum seekers and undocumented migrants making further representations or seeking regularisation would be forced to turn to "unscrupulous and exploitative landlords". Failed asylum seekers in receipt of Home Office support because of ongoing case consideration may be placed into accommodation by the Home Office or may be given confirmation from the Home Office that they can rent property. The landlords' checking service will provide written confirmation to a landlord within 48 hours. This confirmation will provide a statutory excuse from penalty valid for one year. In instances where the failed asylum seeker is accommodated by a local authority

under the National Assistance Act 1948 or as a consequence of the Children Act 1989 or equivalent provisions there will be no requirement for the landlord to conduct a status check. Where individuals face recognised barriers to return (for example inability to obtain a travel document, outstanding judicial reviews, health problems preventing travel) the Home Office will authorise their continued ability to rent property until these barriers have been addressed.

Those people whose cases have been finally determined by the asylum system and have exhausted their appeal rights will be expected to leave the UK. The Home Office will work with local authorities and other bodies in ensuring that these people are made aware of and assisted in engaging with the voluntary returns schemes.

- iii. The policy might not achieve its intention of reducing the numbers of illegal migrants and might perversely push greater numbers into a “shadow” housing market and increase the exploitation of illegal migrants. The policy does not directly address the issue of unsafe or illegal accommodation.

The policy must be seen in the context of other measures being taken to reduce illegal migration and ongoing policies to restrict access to work, services and benefits. The Home Office is working with other agencies to address the issue of the shadow housing sector through direct intervention. The Home Office and the Department for Communities and Local Government have worked closely together to draw together multi-agency partnerships that are now targeting particular areas of abuse.

The Government believes that the policy will make it more difficult for illegal migrants to find accommodation throughout the housing sector and that the policy will provide a significant incentive for people who are here illegally to leave voluntarily. The Home Office already has a programme to assist those who have no legal basis and who wish to leave the UK.

- iv. The policy may increase public stigma against migrants and have a negative impact on social cohesion.

The Government believes that the policy will have a net positive effect on social cohesion. The issue of overcrowding and illegal structures has already caused tension within some local communities and the policy is intended to play a part in addressing these issues. Overcrowding causes social tensions where properties and services are not designed to cater for the volumes of people who live in them. Areas where there are particular concerns have reported increases in anti-social behaviour and environmental impacts. The impact of unregistered tenants means an additional financial burden on local council tax payers who have to pay for unexpected demand on services.

- v. Elderly people are less likely to have original or current documentation.

The Government acknowledges there is a small additional risk that older people may have greater difficulty in providing appropriate documentation. Some mitigation in this area has already been suggested and accepted, such as allowing the production of expired passports that still allow a person to be identified by their photograph. For elderly foreign nationals there may be a risk that they have only old immigration documents or passports that prove their status and that these do not appear on the list of specified documents.

- vi. The policy may impact the privacy of transgender people.

The Government acknowledges there is a small additional risk that transgender people may need to produce documentation to a third party that might mean they reveal an earlier identity. It is noted however that this is an issue that is not confined to the housing market and that the policy does not specifically require the production of pre-change identity

documents. HM Passport Office now provides documentation that does not reveal birth gender.

vii. The policy may have an adverse impact on EEA family members who are non-EEA nationals.

The proposal may impact third country national family members of EEA nationals who may be perceived not to have permission to stay in the UK when in fact they may have acquired permanent residence, have a retained right of residence or have other right of residence. EEA family members may apply for residence cards to prove their status but will usually be required to supply a current address. The Home Office will provide advice to this group and, where necessary, additional documentary evidence that will enable them to satisfy the requirements.

Children

102. The Government will ensure that the policy takes full account of and complies with its responsibilities detailed within section 55 of the Borders, Citizenship and Immigration Act 2009. These specify that any government functions relating to immigration, asylum or nationality are discharged having regard to the need to safeguard and promote the welfare of children who are in the United Kingdom. To this end we will make broad exemptions from the policy for local authorities exercising their duties; this will include all circumstances in which children are offered care that includes accommodation. Those with a recognised need for accommodation will continue to have unrestricted access to it.

103. Age threshold - Some respondents, including the Children's Society, pointed out that the age threshold for adulthood varied between UK nations. The Government has decided that, for purposes of this legislation, the age threshold under the rules for defining whose migration status needs to be checked should be 18.

104. Age dispute - Concern was raised by respondents that landlords might become inadvertently liable to a penalty in so called "age dispute" cases where there is doubt over the age of a young migrant or asylum seeker. In cases where minors are being relocated by social services there will be no requirement by the landlord to make additional checks.

105. Undocumented minors - Concern was raised by respondents about the status of migrant children who may have arrived unaccompanied in the UK and who have been placed into local authority care, including foster care, under section 17 of the Children's Act 1989. The issue was raised as to what their position would be under the new rules upon reaching 18 when children in this position are normally relocated by local authorities into adult social housing. Our provisions will not require a landlord to automatically check a young person's immigration status on their 18th birthday and there will be no obligation under the scheme for a landlord to evict a person as a result of their immigration status. Checks will, however, be made on the migration status of children who have turned 18 if a tenancy is renewed. It is intended that exclusion will apply where the young person is receiving after care services under the Children Act 1989.

106. Families granted temporary admission from holding centres – In cases where families await removal from the UK and are located in holding centres for the purpose it may be that they are released to private accommodation in order that further consideration might be given to their case. Families in this position will be provided with appropriate documentation to satisfy the landlord that they have authority to remain in the UK and that no further status checks are necessary.

107. Impact on health and education – The Children's Society raised the issue of increased family mobility as a result of the policy with an adverse impact on children's education and

health. The Government does not accept that the policy will increase insecurity of accommodation for legal migrants.

Privacy issues

108. Most landlords and especially letting agents, already retain records of evidence provided by tenants when first letting a property. The requirement for landlords to copy and retain evidence of a person's immigration status may mean that some landlords will keep identity records of their tenants for the first time. A landlord may ask for and retain personal data in connection with a tenancy to enable them to enter into a contract with the individual and to enable them to comply with a legal obligation.

109. There is a need to ensure that landlords are aware of their responsibilities under the Data Protection Act 1988 ('the DPA') that they handle personal data appropriately and are aware of the consequences of failing to do so. Landlords who conduct credit referencing checks should already be registered with the Information Commissioners Office (ICO). Small landlords will usually be exempt from having to register with the ICO because the data is being retained in connection with maintaining business accounts and records. The Government is satisfied that there are existing sanctions for the misuse or unlawful disclosure of data contained with section 55 of the DPA.

110. The Government accepts that there is a need to create awareness among landlords of their responsibilities under the DPA in connection with this policy. The Home Office will work with DCLG and the ICO and other bodies to communicate the necessary guidance and promote best practice.

111. The ICO was concerned that the process should be compliant with Principle 7 of the DPA which requires organisations to keep the personal data that they are responsible for secure – this would include not disclosing data inappropriately or without due legal basis to third parties. The ICO said, "This detail is something which needs further consideration, to ensure that the Home Office is able to continue operating in compliance with the DPA". The Government does not intend to release confidential case data to landlords. The advice service will provide a confirmation of the tenant's status as stated by them. In the context of these proposals it is particularly important that the data collected and stored by landlords is proportionate to the need to keep enough data that provides a statutory excuse and no more.

112. Retention of documents – The Government expressly does not propose that landlords retain original documents. Some expressed concern at potential data protection issues associated with the retention of documents by private landlords as evidence that checks had been conducted. The Government noted that professional letting agents already in many cases retained evidence for lengthy periods of time. UKALA and RICS cited example of professional agents keeping records for 6 years in line with other guidance. The purpose of evidence retention under these regulations is to protect landlords against liability but it is accepted that there may be other business and legal needs to retain documents. For the purposes of these regulations guidance will state that copies of evidence should be retained for the period of the tenancy plus one year after the tenancy ends and that it should be securely disposed of thereafter. Landlords will therefore be able to establish a defence against penalties raised in connection with breaches under tenancies that came to an end more than a year ago.

113. Use of data- The ICO was concerned to ensure that any data collected as a result of the regulations should be stored and used appropriately. The Government accepts the ICO's advice to ensure that data is not inappropriately shared or used and the Home Office will work with ICO to develop best practice.

Annex A – Summary of consultation responses

The public consultation on ‘tackling illegal immigration in privately rented accommodation’ ran from 3 July 2013 until 21 August 2013.

This report summarises the responses provided through the on-line consultation (1,353) and survey responses sent by email (9). In total 1,362 consultation responses were received. Please note that those responding to consultations are self-selecting and are not necessarily representative of the population as a whole.

Profile of respondents

Respondents were made up from ‘tenants, lodgers or sub-tenants’ (29%), landlords (28%), members of the public (26%) and as an ‘other’ category (17%). The ‘other’ group (224 respondents) included smaller numbers of organisations or individuals such as ‘organisations representing individuals or groups’ (74 respondents) or legal advisors (42 respondents). (See Table A1 below for a more detailed breakdown). Of the 715 members of the public and tenants, lodgers and sub-tenants providing nationality information, 57 per cent were UK citizens, with 37 per cent from outside the EEA and five per cent from other (non-UK) countries of the EEA. Of the non-EEA respondents, 62% had a time limit on their stay. 50% of the tenants, lodgers and sub-tenants were from non-EEA countries as opposed to being from the UK (43%).

Almost half (49%) described their ethnicity as White (English, Welsh, Scottish, Northern Irish or British). Nine per cent said Indian and 8 per cent described themselves as White other (typically American, Canadian, Australian or from Europe). A large proportion (20%) preferred not to describe their ethnicity.

Of the 101 organisations who responded to the consultation, around a third each represented students (38%), migrants (30%) or tenants, lodgers or sub-tenants (29%). Twenty-two per cent represented homeless people. The largest proportions of organisations were small and medium sized enterprises with 10 to 249 employees (46%). For those organisations that were a trade or representative organisation, the largest proportion had more than 1,000 members (39%).

Findings

Where relevant, comparisons have been made between those who said they were responding as:

- tenants, lodgers or sub-tenants (referred to as the ‘tenants’ group);
- members of the public (referred to as the ‘public’ group); and
- individual private landlords, company landlords, social landlords and letting agents (referred to as the ‘landlords’ group).

In addition, further breakdowns comparing responses from UK citizens and non-EEA nationals have been presented where differences were statistically significant. Due to the small number of non-UK EEA responses received, comparisons with this group were not possible, however their responses have been included in the accompanying data tables.

Please note the following:

- Differences between the groups have only been presented if they are statistically significant (at the 5% level);

- Respondents did not answer every question hence overall numbers responding vary by question; and
- The accompanying data tables provide a full breakdown of responses by question (consultation findings – data tables).

Scope of the checking scheme

The policy proposal is to check the immigration status of people who are paying money to live in accommodation as their main or only home, and so respondents were asked whether they thought that **the following forms of accommodation should be included in the landlord checking scheme.**

Table 1: Which forms of accommodation should be included?

| | Yes | No | Total |
|--|-----|-----|-------------|
| | % | % | Respondents |
| Properties rented out for one or more person(s) to live in as their main or only home. | 40% | 56% | 1,065 |
| Homes which are not buildings, including caravans and houseboats, if they are rented as the tenant's main or only home. | 36% | 58% | 1,055 |
| Homes which were not built for residential purposes, for example someone renting a disused office as their home, including 'property guardians'. | 38% | 55% | 1,054 |

While between one third and two-fifths of respondents supported the proposal to include the three accommodation types, slightly more than half of all respondents disagreed with the proposals (Table 1).

UK respondents were more likely to disagree with the proposals to include the different types of accommodation, compared with the non-EEA nationals who responded. Around three-fifths of UK citizens disagreed, compared with one-half of the non-EEA citizens.

Twenty-two per cent (215 respondents) thought other forms of accommodation should also be included in the landlord checking scheme. Eighty-six respondents commented further. The following bullets set out the types of accommodation that these respondents thought should be included.

- Accommodation which has not been designed for long-term accommodation (31 respondents). Examples included: sheds; garages; out houses; caravans; farm buildings; summer houses; tents; and under bridges.

One member of the public commented that the following should be included:
'sheds, out houses and other inhumane buildings or structures used by disreputable landlords to take advantage of the vulnerable.'

- All types of accommodation – without exception (23 respondents).

‘Any form of accommodation must be included, if this is to be operated in an equitable way and show the seriousness with which this legislation is viewed.’ (Organisations representing individuals or groups).

- Any type of accommodation where the person pays rent (7 respondents) or does not pay rent (4 respondents).
- Employment-related accommodation, whether it be in a room above a restaurant, in commercial buildings, factories, and warehouses or for work placements (11 respondents).
- Lodgers, tenants, renting with relatives (5 respondents).
- Other types of accommodation, including: houses of multiple occupation; homes for vulnerable people; holiday parks; hostels; Bed and Breakfast establishments; and hotels (mentioned by three or fewer respondents each).

The respondents were asked whether **the following forms of accommodation should be excluded from the landlord checking scheme.**

Table 2: Types of accommodation to be excluded from the scheme

| | Yes | No | Total |
|---|------------|-----------|--------------|
| | % | % | Respondents |
| Social housing rented to tenants nominated by local authorities or to households provided accommodation under the homelessness legislation. | 59% | 37% | 998 |
| Privately rented accommodation offered by the local authority to a person to whom a homelessness duty is owed. | 60% | 35% | 997 |
| Sales of homes, including those purchased on leasehold or shared ownership basis. | 60% | 34% | 992 |
| Accommodation provided by universities and other full-time educational establishments for their students. | 65% | 32% | 997 |
| Accommodation provided by employers for their employees. | 63% | 33% | 989 |
| Tourist accommodation such as hotels and guest houses providing short-term accommodation to tourist and business travellers. | 74% | 22% | 993 |
| Short-term business and holiday lets. | 72% | 24% | 989 |

| | | | |
|---|-----|-----|-----|
| Hostels providing crisis accommodation to homeless and other vulnerable people. | 69% | 27% | 986 |
| Hospital and hospice accommodation for patients. | 71% | 25% | 989 |
| Care homes for the elderly. | 68% | 28% | 988 |
| Children's home and boarding schools. | 70% | 26% | 983 |

The majority of all respondents agreed that all of the forms of accommodation listed should be excluded from the checking scheme, with the strongest support being shown for the proposals to exclude: tourist accommodation; short term business and holiday lets; hospital/hospice accommodation; children's homes; hostels providing crisis accommodation; and care homes for the elderly.

While the largest proportion of landlords supported the proposals to exclude each form of accommodation listed above, they appeared to be less inclined to exclude *specific* types of accommodation, compared with other respondents. In particular, they were less inclined to exclude social housing provided under homelessness legislation (50%) and children's homes and boarding schools (64%) compared with all other respondents (62% and 72% respectively). They were also less inclined to exclude privately rented accommodation offered to a person for whom a homelessness duty is owed (53%) and care homes for the elderly (61%) compared with all other respondents (63% and 70% respectively).

Fifty-two per cent (437 respondents) thought other forms of accommodation should also be excluded from the policy. Thirty-nine expanded on this as follows.

- Seventeen respondents mentioned the exclusion of other types of accommodation, including: asylum seeker family accommodation; hostels and bed and breakfast establishments; sheltered accommodation; places of worship; accommodation subsidised by the Government; serviced accommodation; and campsites.
- Thirteen respondents suggested excluding student accommodation.
- Ten respondents thought private rental sector accommodation should be excluded.

One private landlord made the following comment about what should be excluded.

'Private landlords letting to a single individual. The policy should focus on areas of greatest risk e.g. houses in multiple occupation/caravans/non standard housing.'

- Two respondents thought that landlords should already be undertaking the checks as part of their routine.

A significant number of the respondents who made a comment (51 respondents), did not directly answer the question about what other types of accommodation should be excluded, but they had strong views about the proposals, as follows.

- All accommodation types should be excluded (29 respondents).
- Twenty disagreed in principle with the proposed policy. One member of the public wrote: *'I oppose the Government's proposals on principle. Getting landlords to do the background checks is NOT the way to cover for the failings of the Home Office and its agencies. You*

are outsourcing the problem to others. If there are rogue landlords too, deal with them under existing legislation/powers and/or finance local council housing officers/trading standards to handle.’

- A further two disagreed with the policy because of the disproportionate impact on tenants who sub-let and on the UK Border Force, due to the expected large volume of enquiries.

The respondents were asked whether lodgers and sub-tenants should be included in the policy. **They were asked whether the policy should apply to the groups listed in Table 3.**

Table 3: Who should the scheme apply to?

| | Yes | No | Total |
|---|-----|-----|-------------|
| | % | % | Respondents |
| Owner-occupiers taking in paying lodgers where the lodger is living there as their main or only home. | 37% | 59% | 965 |
| Tenants of privately rented accommodation taking in lodgers or sub-tenants as their main or only home. | 38% | 58% | 961 |
| Social housing tenants taking in paying lodgers or sub-tenants where the lodger is living there as their main or only home. | 40% | 55% | 952 |

Over half of all respondents disagreed with the proposal to include lodgers and sub-tenants in the policy.

Tenants, lodgers and sub-tenants were more likely to say the scheme should not apply to tenants of privately rented accommodation taking in lodgers or sub-tenants (62%) compared with ‘landlords’ (53%). UK respondents were less supportive of the scheme applying to owner-occupiers taking in paying lodgers (62%), or to social housing tenants taking in paying lodgers or sub-tenants (60%), compared with the non-EEA respondents (52% and 46% respectively).

Who should take responsibility for making the checks?

Assuming the decision is made by Government to include lodgers and sub-tenants in the checking scheme, the respondents were asked **who should be liable for making immigration checks on lodgers and sub-tenants?**

Table 4: Who should be liable for checking lodgers’ and sub-tenants’ immigration status?

| | |
|--|-----|
| | % |
| Landlords’ responsibility – of which | 40% |
| <i>Always the landlord/owner occupiers’ responsibility</i> | 29% |

| | |
|---|------------|
| <i>Unless they specifically agree otherwise, the landlord</i> | 11% |
| Tenants' responsibility – of which | 28% |
| <i>Always the tenants' responsibility</i> | 18% |
| <i>Unless they specifically agree otherwise, the tenant</i> | 10% |
| Don't know | 32% |
| Total | 100% |
| Total number responding to the question | 890 |

Note: percentages are rounded to the nearest whole number so may not sum to 100

A large proportion of respondents (32%), were unsure whose responsibility it should be to check lodgers' and sub-tenants' immigration status. Forty per cent of all respondents thought it should always be the landlords' responsibility, unless a specific agreement was in place to put the onus on the tenant.

Compared with other respondents, landlords were more likely to feel that it should be the tenants' responsibility to confirm the legal residency status of their (i.e. the tenants') lodger or sub-tenant and least likely to be the landlords' responsibility. Tenants and landlords had opposing views. Tenants felt the responsibility should always lie with the landlord, and vice versa.

For properties rented out to a corporate tenant (i.e. a company), respondents were asked **who should be responsible for making checks on people living in the property?**

Table 5: Who should be liable for making checks on people living in properties rented to a corporate tenant (i.e. a company)?

| | % |
|--|------------|
| Landlord responsibility – of which | 20% |
| <i>The landlord</i> | 12% |
| <i>It is up to the landlord and the company to agree, but in the absence of explicit agreement, the landlord should be responsible</i> | 8% |
| Company responsibility – of which | 54% |
| <i>The company that rents the property</i> | 39% |
| <i>It is up to the landlord and the company to agree, but in the absence of explicit agreement, the company should be responsible</i> | 15% |
| Don't know | 26% |
| Total | 100% |
| Total number responding to the question | 880 |

Note: percentages are rounded to the nearest whole number so may not sum to 100

Over half of all respondents (54%) thought that the onus should *always* be on the company to make checks on people living in the property, including in the absence of an explicit agreement to the contrary. Over a third of respondents (39%) thought that it should be the company which rents the property that should be responsible. Over one-quarter (26%) of respondents did not know who should have the responsibility.

Letting agents (35 respondents) were asked whether **they would be willing to provide a checking service on the prospective tenant's immigration status.**

There was a mixed view. Out of those who responded to the question, over half (53%) suggested they would be unwilling to provide this service, with around a third (32%) saying they would. Of the eleven who said they would provide a checking service, only one said the agency would be willing to have liability transferred to them for carrying out the check. This letting agent suggested that they would charge extra to undertake this check.

Landlords not currently using a letting agent (226 respondents) were asked **whether this policy would prompt them to use a letting agent in the future, if the agent agreed to accept the responsibility for checking the immigration status of tenants.**

One-fifth (20%) thought this policy would prompt them to use a letting agent in the future, if the letting agent agreed to accept responsibility for checking the immigration status of tenants. However, over half (58%) said it would not prompt them to use a letting agent.

Current situation of landlords (335 respondents) and letting agents (35 respondents) who responded to the consultation

The largest proportion of landlords who responded tended to rent out self-contained accommodation (59%) and were landlords alongside other occupations (71%). (See Table A3 in the Appendix for a more detailed breakdown of the other types of properties that landlords rented out).

Just over one-third (34%) of landlords and letting agents said they rented out properties more than 50 miles from where they usually live or were based. The vast majority of landlords and letting agents, who responded to the consultation, had five or fewer properties (72%).

The largest proportion had rented out properties to between one and five new tenants in the last year (57%). (See Tables A4 and A5 in the Appendix for a more detailed breakdown).

In terms of *finding* prospective tenants; 44% employed an agent and 56% did not.³ The majority of landlords did not use a letting agent to *manage* their properties (75%).

Landlords and letting agents most frequently required a passport (37%), driving licence (32%), written reference or bank statement (31% each) to verify the tenants' identity. (See Table A6 in the appendix for further details).

Over two-thirds (69%) of the landlords and letting agents *did not* employ a private credit referencing agent to verify the credit status of their tenants. *Nor did* the majority of landlords employ private screening agents to verify the immigration status of their tenants (97%).

Making the immigration checks – the process in practice

a. Landlords and letting agents

Letting agents and landlords (370 respondents) were asked **what is the earliest date by which you would be ready to undertake checks on new tenants, assuming the legislation, enquiry service and guidance are in place by March 2014.**

The majority of the 302 respondents who answered this question were unsure of when they would be ready to implement checks on new tenants (46%). Twenty per cent of respondents thought they would be ready by April 2014, but another 20 per cent thought it would be after January 2015.

When the requirement for employers to check employees' immigration status was introduced, the Home Office estimated that employers would take on average two hours to familiarise themselves with the new requirements.

Almost half (47%) of all respondents to the consultation, felt that landlords would take longer than two hours to familiarise themselves with the new requirements. A quarter of respondents were unable to say.

When the requirement for employers to check employees' immigration status was introduced, the Home Office estimated that employers would on average take 15 minutes to check the migration status of an employee.

³ This is consistent with a finding from The England Private Landlord Survey 2010. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/7250/2010393.xls.

Half of all respondents (50%) estimated that it would take landlords longer than 15 minutes to complete the checks on migrants. A further 21 per cent were unable to say how long they thought it would take.

There was a strong sense of feeling amongst all groups that it would take landlords longer than 15 minutes to complete the checks. Landlords were the most likely to say the check would take longer than 15 minutes (59%) and the least likely to say the check would take less than 15 minutes (7%) compared with all other respondents (46% and 16% respectively). Non-EEA respondents were also more likely to say the check would take less than 15 minutes (25%) compared with the UK respondents (14%).

Respondents were asked **if the landlord or agent undertaking the immigration status check had a specific enquiry that needed to be answered by email, what would be the maximum acceptable response period.**

Just over half of all respondents (52%) thought the response should come within one to two working days and approximately one sixth (17%) said three to five working days. In particular, non-EEA respondents were more likely to say one to two days (57%) compared with UK respondents (43%).

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.

Respondents were asked **after what duration of stay should an immigration check be required if a person stays in tourist or short term business and holiday lets for an extended period of time?**

Table 5: Duration of stay requiring an immigration check

| | % |
|--|------------|
| At the end of one month | 18% |
| At the end of two months | 5% |
| At the end of three months | 12% |
| At the end of four months | 2% |
| Longer than four months | 33% |
| Don’t know | 31% |
| Total | 100% |
| Total number responding to question | 957 |

Note: percentages are rounded to the nearest whole number so may not sum to 100

The largest proportion of respondents thought checks should be undertaken after four months (33%), but a similar proportion did not know when the check should be required (31%). See Table 5. There was little variation in how the sub-groups responded.

Respondents were asked: **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?**

Table 6: When should repeat checks of immigration status be conducted?

| | % |
|---|------------|
| Immediately after leave to remain expires | 29% |
| After one year | 4% |
| After one year or when leave to remain expires | 11% |
| Whenever tenancy is renewed | 31% |
| Don't know | 25% |
| Total | 100% |
| Total number responding to the question | 880 |

Note: percentages are rounded to the nearest whole number so may not sum to 100

There were opposing views on when tenants with limited leave to remain, should have their immigration status checked. Almost one-third (31%) of respondents thought this should happen whenever the tenancy is renewed. On the other hand, a similar proportion (29%) thought the check should happen immediately after their leave to remain had expired.

Non-EEA respondents were more supportive of the check happening whenever the tenancy is renewed (34%) compared with UK respondents (25%). There was no significant difference between the UK and non-EEA respondents on whether a repeat check should be done immediately after the tenant's leave to remain has expired.

Landlords and letting agents (370 respondents) were asked whether **the requirement to check tenants' immigration status added substantially to the work they needed to do in order to be compliant with the Data Protection Act**.

The majority (56%) thought it would add to their workload. Over one-quarter (26%) were unsure.

When the landlords and letting agents were asked **how long they kept the records of past tenants**, the largest proportion said longer than a year (46%) and twenty-four per cent said up to a year. Nineteen per cent said they dispose of them immediately.

b. Tenants, lodgers and sub-tenants

Respondents who identified themselves as current or prospective tenants or lodgers, in the UK legally (590 respondents), were asked whether **they would readily be able to provide one of the forms of documentation listed to verify their right to be in the UK**.

Almost two-thirds (63%) indicated that they would be able to provide documentation. In particular, non-EEA respondents indicated that they would be able to provide one of the forms of documentation (77%), compared with UK respondents (65%).

The consultation document made reference to the fact that the Government is considering whether evidence of welfare benefits could be used to demonstrate immigration status. The current or prospective tenant or lodgers (590) were therefore asked whether **they were in receipt of welfare benefits**.

The vast majority (94%) said they were not in receipt of benefits. Only 35 (6%) said they did get benefits and of these 21 (66%) said they had a letter which evidenced their entitlement to benefits, that they could show to a landlord.

The benefits they were entitled to, as mentioned by nine respondents, included: job seekers allowance; child benefit; disability living allowance; housing benefit; and working tax credit.

Tenants, lodgers and sub-tenants (373) were asked **to indicate the type of accommodation in which they usually lived**.

Most (64%) said they lived in a home where their household was the only occupier, while less than one-fifth (17%) said they lived in a house of multiple occupation. (See Table A7 in the Appendix for a more detailed breakdown).

When asked how **long they had been in their current home and to whom they paid their rent**. Just under half of the tenants, lodgers and sub-tenants said they had been in their home for more than two years (46%) and that they paid their rent to the owner of the property (58%).

Penalties and effects of non-compliance

In the event that the landlord or letting agent was liable to pay a penalty, respondents were asked whether they **considered the following penalty levels (per adult illegal non-EEA migrant) to be about right, too low or too high**.

Table 7: Penalty level per adult non-EEA migrant

| | Too low | About right | Too high | Don't know | Total |
|---|---------|-------------|----------|------------|-------------|
| | % | % | % | % | Respondents |
| £1,000, where landlord/letting agent has not received an advisory letter/notice of liability. | 13% | 20% | 55% | 13% | 865 |
| £3,000, where landlord or letting agent has received an advisory letter/notice of liability. | 12% | 21% | 54% | 14% | 864 |
| £80, where landlord has up to 2 lodgers/sub-tenants in their home and has not received an advisory letter/notice of liability. | 24% | 16% | 44% | 16% | 863 |

| | | | | | |
|--|-----|-----|-----|-----|-----|
| £500, where landlord has up to 2 lodgers/sub-tenants in their home and has received an advisory letter/notice of liability. | 20% | 16% | 49% | 15% | 868 |
|--|-----|-----|-----|-----|-----|

Note: percentages are rounded to the nearest whole number so may not sum to 100

The largest proportion of all respondents thought the penalties were too high for all four scenarios.

Landlords responded quite differently to the other groups. They were more likely to say the £1,000 and £3,000 penalties were too high (67% and 61% respectively) compared with all other respondents (50% and 51% respectively).

Bearing in mind that the largest proportions of all respondents thought the penalties were too high, there was some variation between the groups on how they responded on the other answer categories. In particular, the 'public' group responded differently to the other groups on the questions concerning the £80 and £500 penalties, indicating that they thought both penalties were too low (public 33% versus all other respondents 21%). Similarly on the £500 penalty, the 'public' respondents were more likely to say it was too low (27%), compared with the landlords (14%). Non-EEA respondents were more likely to say the £80 and £500 penalties were about right (25% and 26% respectively) compared with the UK respondents (15% and 16% respectively). (See questions 43-44, consultation findings – data tables for a more detailed breakdown).

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.

The respondents were asked whether **they thought the approach, outlined above, provided sufficient safeguards for landlords and letting agents against a notice of liability issued unfairly.**

Table 8: Sufficient safeguards in place?

| | % |
|--|------------|
| Yes | 33% |
| No | 45% |
| Don't know | 23% |
| Total | 100% |
| Total number responding to the question | 909 |

Note: percentages are rounded to the nearest whole number so may not sum to 100

The largest proportion of all respondents (45%) did not agree that there were sufficient safeguards in place.

Respondents in the ‘landlord’ group were most likely to respond negatively to this question (58%) compared with all other respondents (40%).

Respondents were asked whether **local authorities in: a). England and Wales; and b). Scotland and the Housing Executive for Northern Ireland, should 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.**

The largest proportion (44%) of people responding to the consultation felt that local authorities in England and Wales should be able to take a person’s previous record of complying with the policy into account when deciding whether that person is fit and proper to hold a licence or manage a House in Multiple Occupation. However, 40 per cent did not agree with this proposal. With regard to the situation in Scotland and Northern Ireland, slightly more respondents (43%) did not agree with the proposal than agreed with the proposal (39%).

Equalities

Respondents were asked **what they thought would be the impact of the proposals on individuals with protected characteristics.**

Fewer than 11 per cent of those responding to the question felt that the proposals would have positive impacts on any of the protected characteristics. Far greater proportions felt there would be negative impacts, particularly on race (58%). See Table 9 below.

Table 9: Do you think these proposals would have any negative impact on individuals based on the following protected characteristics?

| | Yes | No | Don’t know | Total |
|----------------------------|------------|-----------|-------------------|--------------|
| | % | % | % | Respondents |
| Age | 44% | 32% | 25% | 823 |
| Disability | 45% | 30% | 26% | 827 |
| Marriage/civil partnership | 44% | 30% | 25% | 822 |
| Pregnancy | 44% | 30% | 25% | 816 |
| Race | 58% | 22% | 20% | 851 |
| Religion or belief | 51% | 27% | 22% | 835 |
| Gender | 41% | 32% | 27% | 814 |
| Gender reassignment | 40% | 32% | 27% | 816 |
| Sexual orientation | 40% | 33% | 28% | 812 |

It is worth noting that around one-quarter of all respondents were unsure whether there would be a negative impact on the characteristics. Landlords in particular were unsure what the impact would be; around a third ticked the ‘don’t know’ box against each characteristic.

Respondents were asked to explain how the positive impacts could be managed or maximised and how the negative impacts could be managed and mitigated.

Many of the written responses on positive impacts actually voiced opposition to the proposals (50 responses). Such views are reflected in the discussion on negative impacts.

Of the more supportive responses:

- Some pointed out that checking would apply to all groups (8 respondents);
- Some felt that access to the housing market would improve, especially for young people (7 respondents);
- A smaller number of respondents felt that the proposed changes would reduce exploitation (2 respondents) or send out a positive message that migrants were here legally (2 respondents);
- A further two respondents suggested there should be some flexibility shown for people with protected characteristics (disabled people, pregnant women).

The question on possible negative impacts attracted a greater number of written responses (310 responses). Many of these reflected three interlinked themes.

- The specific risk that landlords would be less likely to offer tenancies to those they saw as potentially not being from the UK or other EEA countries (108 respondents referred to such judgements on the basis of race, or race in combination with one or more other protected characteristics, most often faith.
- A view that the impact of the proposals was such that it was not possible to mitigate them (105 respondents).
- There were more general statements that the proposals were unfair or discriminatory (27 respondents).

This response, from an organisation representing people and groups, illustrates the range of themes that were raised.

The whole notion of checks is wide open to landlords operating racial profiling. They are very unlikely to check ALL prospective tenants and thus the policy will operate in a discriminatory way. People of colour generally and BME individuals will be checked, white people (unless they speak poor English) will not. The policy will make very small landlords unwilling to house BME tenants and tenants from religious minorities.

There were a number of other issues raised.

- Concerns about the risks to vulnerable groups, for example children and pregnant women (31 responses).
- That certain groups might have difficulties providing documentation, for example older people without passports, and those undergoing gender reassignment (15 responses).
- The potential effect on cohesion and relationships between different communities (5 responses).
- It would cause access barriers for certain groups, for example around language and those with learning disabilities (4 responses).

A small number of respondents, (8 in total), suggested that the proposals could be mitigated or that there should be some flexibility, for example by providing special accommodation for some people with protected characteristics (for example, pregnant women and children).

Appendix to online consultation findings

Table A1: Who are you primarily responding as, or on behalf of?

| | Respondents | % |
|---|--------------------|-------------|
| Tenant, lodger or sub-tenant | 373 | 29% |
| Landlords – of which: | 370 | 28% |
| <i>Private landlord (individual)</i> | 297 | 23% |
| <i>Private landlord (company)</i> | 31 | 2% |
| <i>Letting agents and managing agents</i> | 35 | 3% |
| <i>Social landlord (e.g. local authority landlord or housing association)</i> | 7 | 1% |
| Member of the public | 342 | 26% |
| Other – of which: | 224 | 17% |
| <i>Legal advisor</i> | 42 | 3% |
| <i>Organisation representing individuals or groups</i> | 74 | 6% |
| <i>Local authority</i> | 31 | 2% |
| <i>Community groups</i> | 24 | 2% |
| <i>Institutional investors</i> | 3 | <1% |
| <i>Provider of hotel, bed and breakfast or other tourist accommodation</i> | 2 | <1% |
| <i>Other (see below for more details)</i> | 48 | 4% |
| Total responding to the question | 1,309 | 100% |

Note: percentages are rounded to the nearest whole number so may not sum to 100%

The four per cent who responded as ‘other’ included: representatives of higher education institutions and student services; legal representatives; property owners; and an organisation with an interest in migration or service provision to the rental sector.

Table A2: Which of the following does your organisation speak for?

| | % |
|--|------------|
| Students | 38% |
| Migrants | 30% |
| Tenants and/or lodgers | 29% |
| Homeless people | 22% |
| Community groups | 15% |
| The Housing sector | 14% |
| Other (see below for more details) | 10% |
| Letting agents and/or managing agents | 9% |
| Landlords | 8% |
| Hoteliers or other tourist accommodation providers | <1% |
| Institutional investors | <1% |
| Total responding to the question | 309 |

Note: respondents were asked to tick as many as applied, so the total percentage adds up to more than 100%..

The ten per cent who responded 'other' included: representatives of rights and faith based organisations; vulnerable groups; social housing providers; legal organisations; and unions.

Table A3: Which of the following apply to the properties that you rent?

| | % |
|---|------------|
| You rent the home they live in to lodgers | 15% |
| You are the landlord of a licensable House in Multiple Occupation | 17% |
| You are the landlord of a non-licensable House in Multiple Occupation | 17% |
| You rent out other, self-contained accommodation | 59% |
| Other (see below for more details) | 3% |
| Total responding to the question | 300 |

Note: respondents were asked to tick as many as applied, so the total percentage adds up to more than 100%.

The three per cent responding as 'other' included: those renting out their own home or a single property; a social housing landlord; and prospective or past landlords.

Table A4: Number of properties landlords and letting agencies rent out

| | % |
|---|------------|
| One | 34% |
| 2 to 5 | 38% |
| 6 to 10 | 6% |
| More than ten | 22% |
| Total | 100% |
| Total responding to the question | 308 |

Table A5: Number of new adult tenants

| | % |
|---|------------|
| None | 11% |
| 1 to 5 | 57% |
| 6 to 10 | 10% |
| 11 to 20 | 6% |
| More than 20 | 16% |
| Total | 100% |
| Total responding to the question | 309 |

Table A6: What ID do you currently require from tenants?

| | % |
|------------------------------------|-----|
| Passport | 37% |
| Driving licence | 32% |
| Written reference | 31% |
| Bank statement | 31% |
| Utility bills | 20% |
| Other (see below for more details) | 20% |
| None | 19% |

| | |
|---|------------|
| Evidence of benefits payments | 9% |
| National identity card | 8% |
| NI card | 8% |
| Birth certificate | 6% |
| UK biometric residence permit | 3% |
| Asylum Registration Card | 1% |
| Don't know | 9% |
| Total responding to the question | 303 |

Note: respondents were asked to tick as many as applied so , so the total percentage adds up to more than 100%.

'Other' forms of ID required, included: evidence of student status; photographic ID; financial checks; references from previous landlords; and evidence of employment and home address. Fourteen respondents also stated that they did not conduct checks themselves as this was the responsibility of the letting agent.

Table A7: Which of the following describes where you usually live?

| | % |
|---|-------------|
| In a home where your household is the only occupier | 64% |
| As a lodger (or sub-tenant of the tenant) | 10% |
| In a house in multiple occupation | 17% |
| In social housing | 7% |
| In a communal establishment or other form of accommodation (see below for more details) | 2% |
| Total | 100% |
| Total number responding to the question | 335 |

The two per cent of respondents indicating they live in 'a communal establishment or other form of accommodation' included those living in student accommodation or in an unspecified rented property.

Annex B – List of respondents

All responses to the on-line survey were made anonymously. Written and oral responses were received from the following organisations and representatives:

1994 Group
Active Immigration Ltd
Association of Residential Letting Agents
Association of Retained Council Housing
Birmingham International Student Homes
Bristol City Council
British Holiday & Home Parks Association
British Hospitality Association
British Property Federation – Residential Property Committee
British Red Cross, (Luton New Migration Partnership).
Callcredit Information Group
Centrepoint
Chartered Institute of Environmental Health
Chartered Institute of Housing
Children's Society
Community Housing Cymru
Coram Children's Legal Centre
Cornwall Residential Landlords Association
Country Land and Business Association
Countrywide Residential Lettings
CRISIS
Discrimination Law Association
East of England Local Government Association
Homeless Link
Homes and Communities Agency
Housing Law Practitioners Association
Joint Council for the Welfare of Immigrants
Joseph Rowntree Foundation
Kalayaan
Law Society of Scotland
Mencap
MIND
National AIDS Trust
National Approved Letting Service
National Federation of ALMOs
National Housing Federation
Praxis Community Projects
Residential Landlords Association
Rights of Women
Royal Institution of Chartered Surveyors
Runnymede Trust
Scottish Association of Landlords
Scottish Federation of Housing Associations
Shelter
St Mungo's
Tai Pawb
The AIRE Centre
The Hyde Group
UK Association of Letting Agents
Women's Resource Centre
Edinburgh University Students Association
English UK
Garden Court Chambers
Greater London Authority – Mayor of London
GuildHE
Information Commissioners Office
Immigration Law Practitioners Association
Islington Law Centre
Law Society of Scotland
Local Government Association
London Borough of Newham
London Borough of Southwark
London School of Economics & Political Science
Migrants Rights Network
Migrationwatch
National Landlords' Association
National Union of Students
Northern Ireland Housing Rights Service
Northern Ireland Law Centre
Northern Ireland Local Government Association
Northern Ireland Strategic Migration Partnership
NW Landlords Association
Oxford City Council
Paragon Group PLC
Public Health England
Refugee Action
Refugee Council
Russell Group
Sarah Teather MP
Scottish Refugee Council
South East Strategic Partnership for Migration
South Yorkshire Migration & Asylum Action Group
Southwark Law Centre
SW Migration Partnership
UK Council for International Student Affairs
UNIPOL
UNISON
Universities and Colleges Employers Association
Universities Scotland
Universities UK
University of Cambridge
University of Oxford
University of Sussex Students Union
Wales Migration Partnership
Welsh Local Government Association
West Midlands Strategic Migration Partnership
Westminster City Council

Annex C – Policy Equality Statement



Tackling illegal immigration in privately rented accommodation

The aim of the policy is to require landlords in the private rented sector to check the immigration status of prospective tenants and occupants, with the objective of making it more difficult for illegal migrants to gain access to privately rented accommodation. These proposals form part of a wider set of measures which are intended to diminish the ‘pull’ factors which draw migrants to live and work in the UK without permission. A successful outcome will be a reduction in the extent of such migration.

The policy is also needed to tackle the problems of overcrowding that have been identified in some areas where the informal, seasonal and “cash-in-hand” nature of local economies can draw and sustain illegal migrants. Due to the nature of their presence in the UK, such migrants are often vulnerable to exploitation, and crowding large numbers in inadequate accommodation can have a detrimental effect both on them and, through a deterioration of the immediate environment, on the wider community.

The policy will be brought into effect by provisions in the Immigration Bill. The Bill enables the Secretary of State to make Orders and publish codes of practice which will set out the details of specific measures that need to be taken by landlords and the manner in which civil penalties may be applied and administered, where a landlord has failed to undertake the steps required of upon them.

Landlords and their agents would be expected to seek proof of a tenant and other relevant occupants’ immigration status before they let property and in some cases before renewing tenancies. They would do this by checking documents that have been prescribed as being acceptable in the Order for demonstrating that a tenant is lawfully in the UK. For example, a UK passport, evidence of indefinite leave to remain or an EEA passport or identity card would be acceptable evidence that the holder is a lawfully here (and will require no further checks); or a valid Biometric Residence Permit for a non-EEA national. After they have checked the documents landlords will keep copies for their records. The Home Office will operate an enquiry service for landlords who require support in understanding the documents they are required to check and allow landlords to verify documents which would not be secure enough in their own right.

Provided a landlord or an agent performs these checks correctly, they will be able to demonstrate that they are excused from any prospective penalty which is to be set out in the legislation. Landlords and agents would not be expected to be experts in validating documents such as passports and would not be penalised if they have accepted a forged document where the forgery was not reasonably apparent.

Summary of the evidence considered in demonstrating due regard to the Public Sector Equality Duty.

Introduction:

The policy has been developed by the Home Office, with the support and assistance of other government departments, particularly the Department for Communities and Local Government (DCLG), landlords, letting agents and housing charities so as to obtain an understanding of the existing scrutiny applied by landlords and the potential impacts of these proposals.

The Government also ran a public consultation from 3 July to 21 August 2013, and sought the views of respondents as to potential adverse impacts upon tenants with protected characteristics (in terms of equality legislation). This consultation, "Tackling illegal immigration in privately rented accommodation" can be found here:

[\(http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/consultations/33-landlords/\)](http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/consultations/33-landlords/).

Initial analysis indicated that there was a high risk group that potentially included both UK and foreign nationals who were likely to have difficulty in providing documentation to satisfy the new requirements. The group is characterised by those who may be at higher risk of becoming destitute or homeless. The group includes people with learning or mental health difficulties, people fleeing domestic abuse, and those who may have a "chaotic" lifestyle at any given time such as those with a history of substance or alcohol abuse and people leaving the prison system. DCLG estimates that as many as 10% of all tenants in the private rented sector in England may fall into this group.

Section 1:

The responses to the consultation and from bodies consulted during the consultation period have been taken into consideration in drafting this statement. This section summarises and discusses the issues raised and the steps that will be taken to address them.

The consultation asked whether respondents thought the proposals would have any impact, positive or negative, on individuals based on the protected characteristics defined in the Equality Act, and asked for suggestions about how such impacts might be managed, maximised or mitigated.

1. **"The new rules might lead landlords to discriminate against people who they perceive to be foreign rather than conduct proper checks to ascertain their actual status."**

58% of respondents expressed concern that the policy might lead to greater racial discrimination.

Concern about increased discrimination was based on two scenarios:

- the possibility of either allowing or encouraging more overt race discrimination
- a perceived risk that landlords might discriminate on the basis of administrative convenience.

Direct discrimination occurs when a person is treated less favourably than another person would be treated in the same or similar circumstances. An example would be where a landlord refuses to consider renting accommodation to someone on the grounds of race, ethnic or national origins. Indirect discrimination occurs when a provision, criterion or practice which, on the face of it, has nothing to do with race or ethnic or national origins is applied equally to everyone but it:

- puts or would put people of a certain race or ethnic or national origin at a particular disadvantage when compared with others; and
- cannot be shown to be a 'proportionate means of achieving a legitimate aim'.

Landlords will, however, be required to check and record immigration status checks for all new tenants whether or not they are, or are believed to be non-EEA nationals subject to immigration control. The level of checks required will be *de minimis* – usually to the extent of copying one document with no need for further action. The Home Office will make regulations specifying the document types that must be checked and copied, and the document list has been constructed so that it reflects existing checking best practice by landlords and encompasses documents which are commonly held by the vast majority of those entitled to live in the UK. A Code of Practice will provide guidance in assisting landlords to conduct such checks without breaching equalities legislation. The need to treat all tenants equally will be reinforced in guidance and tools provided for landlords.

Non-EEA migrants who are not settled here (i.e. not those persons with indefinite leave to remain) will have a time limit on their stay, and they will have documentary evidence of this which they will be able to present to the landlord in satisfying these checks. Some migrants may be in the process of making further immigration applications or appeals when they have to undergo a landlord check (an application or appeal lodged within the legal time limits effectively extends the persons lawful immigration status while their case is being considered) and may require further assistance from the Home Office to evidence their status to a landlord.

Respondents to the consultation raised concerns that this group may suffer administrative discrimination, where landlords may consider that conducting more complex checks will prove more burdensome. The government recognises that extra support may be required in some circumstances to ensure that legitimate visitors and legal migrants are not barred from the housing market (for example, The Home Office is committed to providing a service that will deal with general telephone enquiries asking for advice and allow landlords to request swift confirmation of a person's status.

Where migrants with outstanding applications or appeals know that they need to undergo a landlord check in advance, the Home Office will provide a pre-certification service for these migrants, enabling them to obtain the documentation they need up front. The Home Office also intends to amend the immigration application process to allow applicants to retain their Biometric Residents Permit (BRP) when making an immigration application. This will allow the migrant to show evidence of their identity, nationality and immigration status to a landlord enable the landlord to carry out a speedy and accurate check with the Home Office on the person's current status.

2. **“The policy might impact vulnerable people by disrupting or delaying their relocation into the private rented sector. For example, the policy may make it more difficult to place people who are being treated under the Mental Health Act into rented accommodation within the community. Conversely, vulnerable people unable to secure private rented accommodation may become a burden on local social housing.”**

Save for particular circumstances, such as a care need or families with children, non-EEA nationals are excluded from social housing and assistance until such time that they are settled in the UK and have satisfied any other residential or immigration status criteria that may apply. Local authorities already conduct immigration status checks and where a local authority is to place a tenant into privately sourced accommodation, the landlord will not be required to conduct a further status check or indeed in any case where a local authority is arranging for the provision of accommodation. Similar exemptions will apply in relation to hostels and shelters.

A respondent voiced a concern that failed asylum seekers and undocumented

migrants making further representations or seeking regularisation would be forced to turn to “unscrupulous and exploitative landlords”. Failed asylum seekers in receipt of Home Office support because of ongoing case consideration and/or recognised barriers to return may be placed into accommodation by the Home Office or may be given confirmation by the Home Office that they can rent property where they have the financial means to do so,. Where the Home Office has secured the accommodation, the landlord will not be required to conduct an immigration status check and where the individual arranges the accommodation themselves, confirmation from the Home Office that a migrant may rent property will provide a statutory excuse from a penalty valid for one year. In instances where the failed asylum seeker is accommodated by a local authority under the National Assistance Act 1948 or the Children Act 1998 or equivalent provisions, there will be no requirement for the landlord to conduct a status check. Where individuals face recognised barriers to return (for example inability to obtain a travel document, health problems preventing travel) the Home Office will authorise their continued ability to rent property until these barriers have been addressed.

Those people whose cases have been finally determined by the asylum system and have exhausted their appeal rights will be expected to leave the UK. The Home Office will work with local authorities and other bodies in ensuring that these people are made aware of and assisted in engaging with the voluntary returns schemes.

3. “Elderly people are less likely to have original or current documentation.”

The government acknowledges a small additional risk that some older people may have greater difficulty in providing appropriate documentation. We will mitigate this risk by allowing the production of expired passports that still allow a person to be identified by their photograph and the production of other documents in combination, such as birth certificates and letters attesting to the person’s identity and nationality.

4. “The policy may impact the privacy of transgendered people.”

The government acknowledges that there is a risk that transgendered people may need to produce documentation to a third party that might mean they reveal an earlier identity. It is noted, however, that many people in these circumstances will already receive support in obtaining official documentation that does not reflect upon the gender change or is gender neutral. In some cases, gender change may be accompanied by a change in name. HM Passport Office, for instance, now provides documentation that does not reveal birth gender.

Section 2

The following section addresses each of the protected characteristics under the Equality Act 2010:

Race

Race includes colour, nationality and national or ethnic origins (s9 of the Equality Act). Many respondents to the consultation expressed concern that the proposals would have a negative impact on these grounds – specifically, that they would lead to landlords discriminating against individuals who they do not perceive to be of a white British background. A related concern, expressed by landlords, was that they might be thought to be acting in a discriminatory manner.

Of those who expressed an opinion on the policy in the online consultation survey 58% believed it might result in more race discrimination and 11% thought it would have a

positive effect on race. This led some to be concerned that non-EEA migrants might be charged higher rents to reflect the greater perceived risk to the landlord.

One respondent stated that: *'It is likely that landlords will just rule out tenants who have non-British accents, are non-white, and are visibly from minority religious groups'*. Another said: *'By focusing on immigration, private landlords will be even more reluctant to rent their properties to BME tenants...how do you stop stereotyping is the impossible question ...'*

The above comments summed up how many (35%) respondents, who provided a write in comment, felt about the potential for the policy to impact on race.

Other respondents expressed the concern that landlords would only be willing to check documents which were familiar and/or easy to check, making it hard for people who do not hold an EEA passport to secure accommodation.

The Government will provide guidance to landlords and issue a statutory Code of Practice that assists landlords in making immigration status checks in a non-discriminatory manner. The Code and associated guidance will explain that landlords should follow a simple and straightforward checking process for all prospective tenants so as to avoid the risk of discrimination. The proposed checking process reflects the existing best practice observed in this sector, where many landlords and agents already require sight of a passport and make it clear that the checks relate to the lawful immigration status of the tenant and not their race, ethnic origin or nationality.

The existing scrutiny applied to prospective tenants will often mean that the landlord already checks a passport (a survey by the Residential Landlords Association found that over sixty percent of respondents check passports and the National Landlords Association welcomed the proposals as long as they are simple, straightforward and easy for landlords to understand) and that many letting agents also check passports in line with the guidance in the Property Ombudsman's Code of Practice for Residential Letting Agents, that agents establish the identity and nationality of a tenant, often through sight of a passport, and maintain records of such checks. In addition, many credit and tenant referencing agents already seek information as to the immigration status of a tenant through sight of a visa. For the majority of non-EEA migrants who are not settled in the UK, they will be able to evidence their identity, nationality and immigration status by presenting one document, the BRP which from 2014 will be issued to all non-EEA nationals granted leave to remain in the UK for more than 6 months. Non-EEA migrants who are unable to provide a BRP or other acceptable evidence that they may rent property will be able to seek confirmation that they may rent property from the Home Office in advance of a search for a rental property.

Gender

41% who recorded a view in the consultation survey believed that there would be adverse effects on the basis of gender.

A concern was raised about vulnerable women who have fled domestic abuse, leaving their documents behind.

The point was made by some respondents that better checks of identity might have an incidental benefit of bringing to light victims of abuse such as children who had been trafficked and/or victims of domestic abuse.

The Government's Code of Practice and associated guidance will assist landlords in avoiding discriminatory behaviour. Shelters and hostels will be exempted from the duty to

conduct an immigration status check as will landlords who house tenants for local authorities.

Disability

45% who recorded a view in the consultation survey believed that disabled people would be adversely affected.

There may be issues for people with learning difficulties or mental health issues. A person with learning difficulties may have difficulty understanding the requirements of the rules. Many people with learning difficulties may not have either a passport or driving licence.

The Government will work with local authorities, housing (and other) charities and organisations such as the Citizen's Advice Bureau so that they may assist people in such circumstances. Where accommodation is arranged by a local authority, there will be no need for a further immigration status check by the landlord.

Age

44% of all those who responded to the consultation survey were concerned about the effects of the proposal on older people. Concerns were raised relating to the availability and affordability of documents which will be accepted as evidence of identity. For example, some older people might not be in possession of a current passport or driving licence.

The above will apply to older people regardless of their country of origin, but some non-UK born older people may have additional difficulties in providing original documentation, (see Section 1). Some may have had their immigration records destroyed. Some will have originally come into the country under old legislation but may have difficulty in evidencing this. Some may be able to evidence it, but landlords might be unwilling to go to the trouble of verifying unfamiliar documentation.

There could also be a concern about landlords who are older. One respondent said that older landlords might have difficulty in understanding and meeting the requirements.

One respondent raised the point that younger people may not have the necessary identity documents. It was mentioned that UK students might not have passports or driving licences, but this also raises the question of young people who might have fled an abusive domestic environment.

The Government has engaged with housing and other charities, local authorities, landlords and letting agents in considering the range of documents that will be required in order to satisfy an immigration status check. The Government intends to allow for the use of a wide range of documents and, most particularly, to allow landlords to accept expired passports where there remains a likeness in the photograph to the tenant. The list of approved documents has been expanded on the basis of the advice we have received and will more closely reflect existing best practice by landlords. The list will allow evidence of identity in the form of documentation provided by benefits providers.

The Government also intends to work with local authorities, charities, other bodies such as the Citizen's Advice Bureau in ensuring that people who may be affected are able to secure advice and practical assistance in satisfying an immigration status check. The Government will also engage with landlord and letting agent representative bodies and social housing providers in assisting landlords to conduct the required checks correctly (through both on-

line tools and printable check lists).

The Home Office enquiry service will also be available to assist landlords in understanding how to conduct checks and will provide a formal assurance that the landlord has fulfilled their duties in relation to the regulations. The enquiry service will also, where necessary, provide formal documentation for legal migrants in circumstances where they are unable to produce documents from the approved list

Religion or belief

51% of respondents were concerned the policy might lead to religious discrimination. No reasons were advanced by respondents.

The Government will provide a Code of Practice and guidance to landlords. This will make clear the need to apply checks in a consistent and universal manner. These tools will make clear that the check required relates only to the lawful immigration status of the tenant and will not require enquiries into the religious beliefs of the tenant.

Sexual orientation

40% of respondents expressed an opinion that the policy would have negative effect on the grounds of sexual orientation but no reasons were advanced as to why this would be the case.

The Code of Practice and associated guidance will make it clear that the checks relate only and solely to the lawful immigration status of the prospective tenant and that these checks will give no grounds on which to enquire as to sexual orientation.

Gender reassignment

40% of respondents believed that the policy would have a detrimental effect for those who had undergone gender reassignment.

The concern was that the requirement on transgender men and women to produce historic documents issued in their previous gender might embarrass them and/or potentially expose them to the risk of discrimination, or even harassment or victimisation. (See Section 1).

The Code of Practice and associated guidance will make it clear that the checks relate only and solely to the lawful immigration status of the prospective tenant and that these checks will give no grounds on which to enquire as previous gender or gender reassignment. Most people undergoing gender reassignment will already have advice and assistance in securing replacement official documentation. This includes immigration documents, particularly where there is a change in name.

Pregnancy or maternity

44% believed that the policy would have a detrimental effect for those who were pregnant.

One respondent stated that people who need to change accommodation because of pregnancy will need special protection for the good of the unborn child.

The Code of Practice and associated guidance will make it clear that the checks relate only and solely to the lawful immigration status of the prospective tenant and that these checks will give no grounds for enquiries in relation to pregnancy or maternity.

Marriage and civil partnership

44% believed that the policy would have a detrimental effect on the basis of marriage or civil partnership. Five per cent of respondents who provided a write-in response, wrote about their concern with regard to this characteristic. They mentioned, for example, cases where one half of a couple is subject to immigration control and that this might reduce accommodation choices for both.

The Code of Practice and associated guidance will make it clear that the checks relate only and solely to the lawful immigration status of the prospective tenants and that these checks, whilst required in relation to all adults, will not require any enquiries as to the relationship between the adult tenants.

Section 3 – Actions identified / taken

The government will take action to give further reassurance to landlords that the required checks will be simple and that legitimate landlords have nothing to fear from the proposals. A number of further exemptions regarding property types and groups of tenants have been accepted and are discussed elsewhere within the consultation response. The position of students, where landlords will be exempted from conducting checks where an educational establishment has secured accommodation and vulnerable people placed into accommodation through other agencies has also been reviewed and flexibility provided in the proposed scope of checks. This includes the acceptance of additional documentary evidence for students and allowance for provisional tenancy agreements for overseas students applying from abroad.

The risk of discrimination or administrative burden can be best mitigated by both fully supporting landlords and by encouraging prospective tenants to put together the necessary evidence at the outset, thereby minimising the need to copy evidence or make further checks. The Government will achieve this by providing comprehensive guidance to prospective migrant tenants explaining how they can best provide a package of documentary evidence to landlords and letting agents that will immediately satisfy the checks. The Home Office will work with landlord and letting agent representative bodies, local authorities, social housing providers, charities and community groups in publicising the Code of Practice and guidance. This will assist landlords in avoiding discriminatory behaviour and assist migrant tenants in securing rented accommodation in the private sector.

The Home Office will also provide on-line and printable guidance and tools that may be disseminated by other bodies, as well as an advisory telephone service, pre-certification service for migrants seeking accommodation and a verification service for landlords. These channels will also be used also to remind landlords of the need to avoid any discriminatory behaviour or actions. The Code of Practice and associated guidance will make it clear that the checks do not allow for landlords to act in a manner inconsistent with the UK's equality legislation.

| | | | |
|---------------------|--|-------------------|--------------|
| SCS sign off | | Name/Title | K. Armstrong |
|---------------------|--|-------------------|--------------|

I have read the available evidence and I am satisfied that this demonstrates compliance, where relevant, with Section 149 of the Equality Act and that due regard has been made to the need to: eliminate unlawful discrimination; advance equality of opportunity; and foster good relations.

| | | | |
|-------------------------|-------------------|---------------------|-------------------|
| Directorate/Unit | ISPD | Lead contact | P. Asmat |
| Date | 12 September 2013 | Review Date | 12 September 2014 |

Retain the completed PES for your records and send a copy to SDAT@homeoffice.gsi.gov.uk and your relevant business area Equality and Diversity Lead.

Annex D – Proposed List of documents that landlords can accept as proof of status

| Category | Documents accepted as evidence a person falls into that category ^[1] |
|---------------------------------|---|
| United Kingdom citizens | <p>Single documents</p> <p>UK passport (an expired passport is acceptable if the holder is still recognisable from the photograph)</p> <p>Naturalisation certificate</p> <p>Right of abode certificate</p> <p>Letter from police confirming subject is victim of crime and personal documents have been stolen.</p> <p>Combination documents</p> <p>Full UK Birth or Adoption certificate (includes certificates from Isle of Man, Channel Islands)</p> <p>plus</p> <ul style="list-style-type: none"> a) UK Driving licence (full or provisional) b) Evidence of receipt of UK state benefits c) employer’s reference d) letter(s) of attestation from a UK national e) letter from a UK further or higher education institution confirming acceptance on a course of studies f) result of credit reference check showing person has been economically active in the UK for the past 12 months or any year in the past 5 years g) Evidence of previous or current service in HM armed forces* h) HM prison discharge papers or probation service letter* <p>*Do not on their own detail national status. Will require further corroborative evidence of status.</p> |
| European Economic Area citizens | <p>EEA passport (an expired passport is acceptable if the holder is still recognisable from the photograph)</p> <p>A UK Biometric Residence Permit (BRP)</p> <p>National identity card issued by European Union member</p> |

^[1] These are alternatives - not all of them need to be presented and checked.

| Category | Documents accepted as evidence a person falls into that category ^[1] |
|---|--|
| | state ^[3] |
| Non-EEA nationals with lawful regular immigration status (leave to enter or remain) | <p>Biometric Residence Permit (BRP) held by temporary and permanent residents</p> <p>Visa or passport stamp held by short term visitors</p> <p>Home Office letter confirming the person has an outstanding immigration application or appeal which permits them to remain (to be verified by calling the Home Office advice line)</p> <p>Documents held by persons exempt from immigration control (e.g. diplomatic passports, NATO ID card)</p> |
| Non-EEA family members of EEA nationals exercising EU Treaty Rights in the UK | <p>Residence certificate or card issued by the Home Office</p> <p>Certificate of application (but only if verified by calling the Home Office advice line)</p> |
| Non- EEA nationals without leave to remain ^[4] | <p>Application Registration Card (ARC) held by asylum seekers (but only if verified by calling the Home Office advice line)</p> <p>Home Office letter of authorisation But only if verified by calling the Home Office advice line.</p> |

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^[3] The EU member states are Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the UK.

^[4] This covers the following people who would be allowed to take up accommodation despite not having leave to remain: persons with outstanding asylum applications; persons on temporary admission with valid outstanding applications or appeals.