



**A Response on behalf of the Housing Rights Service
and Law Centre (NI) to the Home Office consultation
'Tackling illegal immigration in privately rented
accommodation'**

August 2013

About this response

This is a joint response submitted by Law Centre (NI) and Housing Rights Service. A brief profile of each organisation is provided as follows:

Law Centre (NI) uses the law as a tool to promote social justice. The Law Centre provides advice, casework, training, information and policy services to over 400 member organisations in Northern Ireland from our two regional offices. We are a primary provider of specialist immigration advice in Northern Ireland. We are a member of the Immigration Lawyers' Practitioners Association and support its detailed response to this consultation.

Housing Rights Service was established in 1964 and is the leading provider of independent specialist housing advice services in Northern Ireland. We work to achieve positive change by protecting and promoting the rights of people who are in housing need in Northern Ireland. Our policy work is based on the experience of our clients and in this response we have focused on the housing related aspects of this consultation. Our services are delivered throughout Northern Ireland and focus on the key areas of preventing homelessness; accessing accommodation; and tackling affordability and poor housing conditions.

This consultation response is arranged in two parts. Part 1 outlines our general concerns about this consultation and its scope. Part 2 outlines our response to specific consultation questions where applicable to our work and expertise.

PART 1: General comments

We oppose the proposed checking scheme outlined in the consultation.

We are concerned that prospective tenants, who are perceived to be foreign nationals, may be discriminated against by landlords fearful of being prosecuted under these proposals. Landlords may well prefer to let to tenants who can readily produce UK passports in order to avoid any risk of prosecution. Tenants who are unable to immediately satisfy the proposed checking scheme will be disadvantaged in areas of high renting demand as landlords will be forced to carry out additional checks before letting to these prospective tenants. The resultant delays will disadvantage migrants as they compete with other tenants who provide less cause for concern to landlords and letting agents. In the worst case scenario, those persons perceived to be foreign nationals may risk homelessness.

We would therefore welcome additional information from the Home Office on how to ensure "Landlords must make checks on a non-discriminatory basis, i.e. they should not make any assumptions about a person's migration status based on their ethnicity, name, accent, etc." The consultation paper refers to the protected characteristics of tenants as specified in the Equality Act 2010 but does not reference corresponding Northern Ireland equality legislation. We have concerns that even where landlords ask all tenants for evidence of a person's immigration status

such as a passport, in the specific circumstances of Northern Ireland, such a check could lead to the possible circumstance of a landlord discriminating against an applicant on the basis of religion and nationality when for example an Irish passport is furnished as part of the checking scheme. There is a risk of racial profiling occurring if these proposals are implemented.

We also believe the plans may also penalise those tenants legally allowed to stay in the UK as pre-tenancy charges and rents could rise due to letting agents and landlords increasing their fees to cover the administrative costs of carrying out further checks on tenants. Housing Rights Service has already raised concerns about the high costs of letting fees in Northern Ireland.¹

Vulnerable tenants, particularly women and young people fleeing home due to domestic violence, may also find it difficult to produce the required documentation to satisfy the identification check in such emergencies. In addition it may be difficult for people with applications pending to stay in the UK to satisfy these information requirements. Our experience of such difficulties is set out in the following section. The Government is also considering whether the proposals should also apply to lodgers and sub-tenants which will have implications for social tenants encouraged to sub-let in order to minimise the impact of the controversial 'Bedroom Tax' (still under consideration in Northern Ireland).

Finally, we are concerned that the exploitation of irregular migrants may increase, putting them at risk of more clandestine and substandard housing conditions.

Feasibility and NI health comparison

We have no confidence in the feasibility of the proposed checking scheme. This is because the proposal will require persons who have no expertise in immigration law to make an assessment of a person's immigration status. Establishing a person's status is not always straightforward. We draw an analogy with the current situation for accessing healthcare in Northern Ireland, which patently illustrates the difficulties.

The rules on registering with a GP are different in Northern Ireland than they are in Britain - to be eligible a person must be 'ordinarily resident'. Deciding whether a person is 'ordinarily resident' involves an assessment of the person's immigration status, which usually involves a check of a person's identity documents. This has proven to be a difficult process, partly because a person's immigration status can be derived through different means and is not always evidenced by way of a clearly acknowledged visa in a passport. Thus staff at the Business Services Organisation (which is tasked with identifying which migrants are eligible to register with a GP) must consider a wide range of identity documents and papers that extend well beyond a simple checklist. Unfortunately, the reality is that some migrants are unable

¹ The Hidden Costs of Private Renting in Northern Ireland: an Investigation into the Practice of Letting Charges. Housing Rights Service. Belfast. (May 2013) <http://www.housingrights.org.uk/policy-type/research-paper>

to evidence their lawful status despite having a right to reside in the United Kingdom.² There are very serious implications for persons who are unable to register with a GP, including risks to patient health and public health. Likewise we foresee similarly grave implications arising from a system that makes it difficult for persons to obtain accommodation i.e. an increase in homelessness and increased demand for shelter/emergency accommodation. We provide a detailed discussion of the proposed checklist in our response to question 6, below.

Requirement for letting agencies to register as advice providers?

We query whether the government has considered whether the interaction of the proposed checking scheme with the regulatory scheme administered by the Office of Immigration Services Commissioner (OISC).

The Immigration and Asylum Act 1999 makes it a criminal offence for a non-regulated or exempt person to give immigration advice. All immigration advisers need to be registered with the Office of Immigration Services Commissioner or be formally exempted from the scheme. Providing advice on a person's immigration status falls within the definition of immigration advice.³ It is therefore likely that a letting agency that advises a landlord/lady on a tenant's immigration status would need to comply with the OISC scheme.

Scope of consultation

At paragraph 99, the consultation refers to the children's welfare duty of section 55 of the Borders, Citizenship and Immigration Act 2009 and states that the policy will not apply directly to children under 16 years. We wish to highlight that section 55 applies to any child under the age of 18 years. To be compliant with this duty, the Home Office should make it clear that the policy will only apply to those aged 18 years and above.

The same paragraph also states that landlords may need to "satisfy themselves that the people are involved in are indeed children". Calling into question a child's age is a complicated matter and can have grave consequences from an immigration perspective. We do not think it would be consistent with the section 55 duty for the Home Office to give such powers or responsibilities to private landlords.

Further reforms

² <http://www.lawcentreni.org/Publications/Policy-Briefings/Policy-Briefing-Migrants-and-health-care-Law-Centre-NI-2013.pdf>

³ It does not matter whether the advice is given to a third person or to the person under immigration control for the purposes of Immigration Act 1999 s82(1). For more information about this aspect, please refer to the consultation response submitted by ILPA.

The Home Office's 'Overview of the proposals'⁴ document includes brief reference to:

- New rules to ensure councils give priority to local people when allocating social housing; and
- New statutory guidance for councils, requiring them to amend their allocation policies to ensure that those with a well-established local residence and local connections will go on the waiting lists and qualify for a taxpayer-funded social home.

We are alarmed by these proposals, both in terms of their legality and in the way they are presented here as a short reference at the tail-end of a summary document. There is no further discussion about these new rules or guidance in the full consultation document. It is important to recognise the different legal basis for the housing selection scheme in Northern Ireland and the role played by the Northern Ireland Housing Executive (not local councils) in administering the scheme. It is not good practice to introduce such far-reaching policy proposals in such a manner. We call on the Home Office to clearly set out its intentions and to follow a detailed and comprehensive consultation process including with devolved administrations.

PART 2: Consultation questions

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

We are opposed to a checking scheme. Accordingly, we do not think any of the forms of accommodation described at question 1 should be included in the checking scheme.

Question 2: do you think the following forms of accommodation should be excluded from the landlord checking scheme?

We oppose the introduction of a checking scheme. However, if a checking scheme is introduced, we agree that none of the types of property listed at question 2 should be part of it. The list of excluded properties should also be extended to include:

- Accommodation provided under the Children's Act 1989 / Children (Northern Ireland) Order 1995
- Accommodation in which persons are housed under mental health legislation

Question 3 - 5

No comment

⁴ <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/consultations/33-landlords/>

Question 6: if you are a current or prospective tenant or lodger, and you are in the UK legally, would you readily be able to provide one of the forms of documentation that are on the list?

The current checklist of acceptable documents is inadequate. Many persons who are lawfully resident in the UK would be unable to prove their status if the proposed checklist were adopted. The following headings are taken from the proposed checklist.

EEA and Swiss citizens:

The checklist states that EEA and Swiss nationals can evidence their entitlement by producing either: an EEA/Swiss passport; or a national identity card issued by European Union member states or Switzerland; or a European Union Laissez Passer. We note that holders of national identity cards issued by Iceland, Liechtenstein and Norway are also entitled to exercise EEA free movement rights.⁵ The current list could exclude such nationals.

Non EEA nationals with lawful regular immigration status:

The checklist states that non EEA nationals with lawful regular immigration status can evidence their entitlement by producing: a Biometric Residence Permit; a visa or passport stamp held by short-term visitors; a Home Office letter confirming the person has an outstanding immigration application or appeal which permits them to remain (but only if verified by contacting the Home Office enquiry service); or documents held by persons exempt from immigration control.

The list does not take into account the fact that some non EEA nationals, who are lawfully present in the UK, are relying on leave endorsed in their passports that predate the Biometric Residence Permit system introduced in February 2012.

Non-EEA family members of EEA nationals exercising EU Treaty Rights:

The checklist requires these categories of migrants to provide either a Home Office issued residence certificate or card or a certificate of application (only if verified). We emphasise that UK law does not require a non EEA family member to hold such a residence certificate. Any such requirement would be incompatible with European law and the principles of free movement for European nationals and their family members. EU Directive 2004/38/EC states at Article 25:

General provisions concerning residence documents

*1. Possession of a registration certificate as referred to in Article 8, of a document certifying permanent residence, of a certificate attesting submission of an application for a family member residence card, of a residence card or of a permanent residence card, **may under no circumstances be made a***

⁵ <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/ecg/eun/eun1/>

precondition for the exercise of a right or the completion of an administrative formality, as entitlement to rights may be attested by any other means of proof. [emphasis added]

This provision is reflected in domestic regulations and indeed Home Office guidance clearly states:

*You do **not** need to obtain documents confirming your right of residence in the UK if you are a family member of an EEA national.*⁶

If the current checklist is implemented, it would effectively force such family members to obtain documents if they wish to rent accommodation. This would call to question the UK's compliance with European law.

Non-EEA nationals without leave to remain:

The consultation notes that this category could include persons with outstanding asylum applications, persons on temporary admission with valid outstanding applications or appeals and others.

The Home Office does not regularly issue letters confirming that a person has an outstanding immigration application. This is an on-going and serious problem as lack of confirmation letters mean that applicants cannot provide evidence of continued leave (leave is deemed to continue if an application for further leave to remain was submitted in time⁷). Furthermore, individuals are unable to provide other statutory agencies with evidence that their status documents are being held by the Home Office. The lack of status update letters and indeed the lack of application acknowledgement letters can cause serious difficulties for many categories of migrants (including EEA nationals) in obtaining access to healthcare and social welfare in Northern Ireland.

A recent healthcare briefing paper issued by the Law Centre provides some examples of the problems that can arise when the Home Office does not issue confirmation/status update letters. The briefing includes the case of a refugee who waited more than 15 months for her ILR application to be processed and an EEA national who waited for 9 months.⁸ Both cases resulted in the applicants being unable to prove their entitlement to access primary health services.

If the Home Office does proceed with its proposals then it is essential that it also introduces a mechanism to ensure that all applicants receive acknowledgement letters (that confirm which identity documents have been submitted) as well as

⁶ <http://www.ukba.homeoffice.gov.uk/eucitizens/documents-family/>

⁷ There is also provision within the Immigration Rules for in-time but invalid applications to be resubmitted within 28 days. There is also a 28 day concession for over stayers that applies in some instances. None of these possibilities are covered in this proposal.

⁸ <http://www.lawcentreni.org/Publications/Policy-Briefings/Policy-Briefing-Migrants-and-health-care-Law-Centre-NI-2013.pdf>

regular status update letters. Failure to do so could result in the Home Office being responsible for the homelessness that could occur if a migrant, whose documents are being held by the Home Office, were unable to satisfy a landlord's demands for evidence. This would clearly be an embarrassing situation and one which is best avoided.

Questions 7 – 10

Not applicable / no comment.

Questions 11: if the landlord or agent undertaking the migration status check has a specific enquiry that needs to be answered by email, what would be the maximum acceptable response period?

The proposal is for the Home Office to operate an enquiry service so that landlords can either telephone with general enquiries or email specific queries about particular individuals.

As alluded to earlier in this response, finding rented accommodation can be a very competitive experience for tenants and it is inconceivable that in such circumstances letting agents and landlords would wait days for a response via the checking service when they can immediately make a letting to another tenant who happens to be a UK passport holder. Therefore, if a checking scheme is implemented, the enquiry service needs to be able to provide a real-time response so that a potential tenant, who is perhaps sitting in a letting agency office, can have their status verified immediately. We recognise that it might be difficult to provide an immediate response in some circumstances and therefore we would recommend one working day as the maximum acceptable response period. Any timescale should be made public with results being monitored and published.

Questions 12 – 23

Not applicable / no comment

Conclusion

Housing Rights Service and Law Centre (NI) welcome the opportunity to respond to this consultation paper. We trust you will find our comments helpful. If there is any further way in which we can contribute to this process, we would welcome the opportunity to do so.

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