



Joint Council for the Welfare of Immigrants
Campaigning for justice in immigration, nationality & asylum law & policy since 1967

House of Commons Third Reading Briefing
Immigration Bill 2015: Right to Rent

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This briefing is intended to provide information in support of amendments NC17, 35, 46, 22, and 23-26 to the Immigration Bill 2015. These amendments relate to the 'right to rent' scheme, specifically the civil penalty scheme contained in the Immigration Act 2014, as well as the introduction of a criminal sanction and extension of powers of eviction as contained in the Immigration Bill 2015. In addition to this evidence, we refer to the comprehensive briefings by the Race Equality Foundation¹ and the Housing Law Practitioner's Association.² For an overview of all amendments tabled for the third reading we commend and draw attention to the briefing submitted by the Immigration Law Practitioner's Association (ILPA).³

Briefing

JCWI supports **New Clause 17** in the names of Angus Robertson, Stuart McDonald, Anne McLaughlin and Gavin Newlands, which seeks to repeal the 'right to rent' provisions from the Immigration Act 2014; **Amendment 35** in their names, which seeks to remove the criminal penalty regime and powers of eviction from the Immigration Bill 2015; and **Amendments 23-26** in the names of Andy Burnham and others, which also seek to remove the extended powers of summary eviction from the Bill.

The 'right to rent' civil penalty scheme, as introduced by the Immigration Act 2014, should be halted and abandoned. JCWI's [independent evaluation](#) uncovered a number of serious direct and indirect impacts of the 'right to rent' checks on tenants and landlords, both in the West Midlands as well as across the UK as a whole, which have serious implications for race relations and community cohesion in the UK. The Home Office's own evaluation, published on 20 October, is methodologically flawed and downplays instances where discrimination has occurred. For example, in response to a letter from Alan Ward, Chairman of the Residential Landlord's Association, on 16 November, James Brokenshire stated that,

*"The evaluation of the first six months of the Right to Rent scheme has shown that the checks are working well and that whilst respondents had raised concerns, there was **no hard evidence** of discrimination or of people without passports being placed at a disadvantage in accessing the rented accommodation"*

This does not mean that discrimination had not taken place. Evidence of discrimination was found by the Home Office evaluation, despite the fact that the evaluation did not make discrimination a focus of the evaluation or conduct a rigorous examination of the potential for discrimination. It seems that here Mr Brokenshire is relying on the insufficiency of the Home Office evaluation to defend this scheme. The Home Office evaluation should not be relied upon as evidence that the scheme has worked well and should be rolled out. JCWI's concerns arising from both evaluations are set out in more detail below.

The bases for rolling out the scheme nationwide, the introduction of a criminal sanction, and extended powers of summary eviction are flawed and unsubstantiated. The scheme will not encourage irregular migrants to leave the UK; it will deepen unwarranted suspicion of legal migrants and British citizens who appear foreign, especially in over-heated rental markets

¹ <http://www.edf.org.uk/blog/wp-content/uploads/2015/10/BriefingOctfin.pdf>

² <http://www.ilpa.org.uk/resources.php/31491/immigration-bill-house-of-commons-committee-stage-briefing-from-the-housing-law-practitioners-associ>

³ <http://www.ilpa.org.uk/pages/immigration-bill-2015.html>



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such as London. Meanwhile irregular migrants will be driven into the hands of exploitative landlords and employers, contrary to the Government's stated aims, and the principles underlying the Modern Slavery Act.

The extended power of summary eviction is a worrying and unprecedented extension of powers to landlords and landladies to remove individuals from their property, with violence if 'necessary' and without due process. This could also be used against families with children. We fully support the evidence submitted by the Housing Law Practitioner's Association, which sets out the far reaching and, presumably, unforeseen consequences of overturning well-established tenancy law without proper consideration. ⁴

In addition, we lend support to **Amendment 46** in the names of Angus Robertson and others to exempt landlords/landladies who rent a property to a disqualified person where there is no material profit. This would exempt individuals who are supporting a destitute person in their own home for not profit, who cannot and should not be the intended target of a criminal sanction.

JCWI also supports **Amendment 22** in the name of Andy Burnham and others, to introduce a 28 day grace period during which no criminal charge can be brought against a landlord/landlady. This amendment ensures that landlords and landladies do not commit an offence during the 28 period where they may be aware that they have breached the provisions, but are unable to begin eviction proceedings under the terms of the Bill. Under the current provisions landlords will be guilty of a criminal offence long before they are able to do anything about it, and potentially even before they are aware of the fact. It is contrary to basic principles of justice to criminalise landlords in such a manner, and then to rely on prosecutorial discretion to protect them.

As housing is a devolved matter in Scotland, we support **Amendments 54 to 57** in the name of Angus Robertson and others to remove the powers to extend the residential tenancy provisions to Scotland.

Background

The Immigration Act 2014 contained provisions that make it compulsory for private landlords and agents to check the immigration status of all new adult tenants, sub-tenants and lodgers in order to assess whether they have the 'right to rent' in the UK. This was introduced as part of the 'hostile environment' aimed at irregular migrants in the UK.

Under these provisions, all individuals in the UK who are subject to immigration control and require permission to enter or remain in the UK but do not have it are disqualified from entering into a residential tenancy agreement. Landlords and their agents have a duty to check the immigration status of potential tenants or lodgers before entering into a residential tenancy agreement with an individual. If a landlord or agent fails to complete the checks and rents a property to someone who does not have valid 'leave to remain' (and therefore does not have the 'right to rent') they could be fined up to £3,000 per adult by way of a civil penalty notice. Owing to concerns about the potential for discrimination under the provisions, the

⁴ Available on ILPA's website at <http://www.ilpa.org.uk/resources.php/31491/immigration-bill-house-of-commons-committee-stage-briefing-from-the-housing-law-practitioners-associ>



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scheme was first piloted in five West Midlands local authorities. This pilot scheme went live on 1 December 2014.

JCWI, together with partner organisations, conducted an [independent evaluation](#) of the scheme, published on 3 September 2015, which found that in the first six months, the 'right to rent' checks had resulted in discrimination against people with foreign accents, foreign names and those without British passports. People with complicated immigration status, unclear documents and those who require time to provide relevant documents are less likely to be considered and accepted for a property as a result of the scheme, despite having the 'right to rent'. There is also evidence that individuals with the 'right to rent' have been wrongly refused tenancies. Our findings are explored in more detail below.

On 18 September the Government published the [Immigration Bill 2015](#), which contains an extension of the provisions to include a criminal sanction. This is despite clear evidence from JCWI's independent evaluation that the provisions have caused discrimination; do not meet the government's obligations under the equality duty; and have not met their stated aims.

Over a month later, on 20 October 2015, the Home Office published their own [evaluation of the scheme](#). Their report downplays issues of discrimination and fails to adequately address the Government's obligations under the Public Sector Equality Duty (Equality Act 2010). In addition, the Government [announced a roll out](#) of the 'right to rent' civil penalty scheme, as contained in the Immigration Act 2014, in England from February 2016. This was announced on the same day as the report was published, thereby not giving Parliament an opportunity to adequately debate and scrutinise the report's methodology or findings.

Results from JCWI's Independent Evaluation

- ***42% of landlords said that the 'right to rent' requirements have made them less likely to consider someone who does not have a British passport. 27% will no longer engage with those with foreign accents or names. Checks are not being undertaken uniformly for all tenants, but are instead directed at individuals who appear 'foreign'.***

Only one British citizen in the pilot area who responded to the survey had been asked by their landlord whether they had permission to be in the UK, compared to 73% of non-British citizens. Furthermore, 42% of landlord respondents stated that the introduction of the immigration checks had made them less likely to consider renting to someone who does not have a British passport and 27% stated that they would be less likely to open discussions with someone who 'had a name which doesn't sound British' or 'had a foreign accent'. This shows that the scheme has caused discrimination already and any further roll-out or extension of the penalties for landlords and agents will greatly widen the scope for further discrimination.

- ***50% of respondents who had been refused a tenancy felt that discrimination was a factor in the landlord's decision.***

Evidence received through the survey and submissions detail cases where individuals with valid leave to remain or a pending Home Office application have been refused a tenancy despite having the Right to Rent. In total, 50% of respondents who had been refused a tenancy felt that discrimination was a factor in the landlord's decision. This demonstrates that discrimination against individuals who appear 'foreign', whether based on accent, name or appearance, has occurred.



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- **65% of landlords are much less likely to consider tenants who cannot provide documents immediately.**

65% of respondents to the survey stated that they would be less likely to rent to someone who required a little time to provide documentation. This will affect anyone who lacks documents or does not have documents to hand, such as a passport, which includes 17.5% of the UK population according to ONS statistics. Evidence, both from the Home Office evaluation and JCWI's independent evaluation, further suggests that the checks are directed towards those who 'appear' foreign. Therefore, perfectly legal tenants who nonetheless lack clear documentation will face discrimination under these provisions.

- **65% of landlords have not read or feel they have not fully understood the 'Code of Practice on preventing illegal immigration' or the 'Code of Practice on Avoiding Discrimination'**

In response to concerns regarding direct and indirect discrimination as a result of the 'right to rent' checks, the Government published a 'Code of Practice' on Avoiding Unlawful Discrimination and a Code of Practice detailing how to undertake the checks. However, JCWI's survey revealed that 65% of landlord respondents had not read or felt they had not fully understood the Codes. Of those who had read them, 44% found the Code on Avoiding Discrimination difficult to understand. 30% of landlords in the 'pilot' area had not read either document, despite being obliged to carry out the checks.

- **56% of tenants in the 'pilot' area remain unaware of the 'right to rent' scheme. 81% have not received any advice on how to prepare for the checks when applying for a tenancy or their rights in relation to the Equality Act 2010. Therefore tenants are unable to properly safeguard against instances of discrimination**

56% of tenant respondents in the 'pilot' area stated that they were unaware of the 'right to rent' scheme. 81% had received no advice or information on preparing for the checks, compared to 83% nationwide. Furthermore, while 50% of tenants who had been refused a tenancy felt that discrimination was a factor in the decision, only one person had sought advice. This is extremely concerning for a number of reasons. If a tenant complains of discrimination or unfair treatment they do not have any specific remedy under the Immigration Act 2014 or the Code. The Code of Practice on Avoiding Discrimination merely has information at the end which informs tenants why landlords are completing the checks. It adds:

*"The law prohibits discrimination on various grounds known as 'protected characteristics' in England, Wales and Scotland, or 'equality grounds' in Northern Ireland. The prohibition on discrimination includes discrimination based on race in the context of renting residential accommodation."*⁵

The section then goes on to say that the Equality and Human Rights Commission (EHRC) website contains further information. However, the EHRC website is being updated and does not contain any specific advice on discrimination in housing.⁶

To bring a case in the county court under the Equality Act 2010 can be a lengthy and costly endeavor, for which many people may not have the means. As the EHRC website states:

⁵ Home Office (2014) "Code of Practice for Landlords – Avoiding unlawful discrimination when conducting Right to Rent checks in the private rented residential sector", page 11

⁶ <http://www.equalityhumanrights.com/your-rights/service-users/housing>



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*“Making a claim [through the courts] may be demanding on your time and emotions and before starting the process you may want to look at whether or not you have a good chance of succeeding. You may also want to see if there are better ways of sorting out your complaint.”*⁷

Given the real risk of discrimination against BME groups and others on the basis of their accent, name or appearance, this is entirely insufficient. There must be protection in place for those who are wrongly denied housing, even though they do have a ‘right to rent’.

- ***Landlords and agents have charged fees in order to undertake the ‘right to rent’ checks. In addition, unscrupulous landlords have passed the cost of a potential fine on to the tenant in the form of increased rent or deposits.***

One third of respondents from the ‘pilot’ area had been charged a handling fee of over £50 in order to process their application, including undertaking the Right to Rent checks. 20% had been charged a fee of over £100. One landlord also stated that he charged over £100 to undertake the checks. This is corroborated further by organisations who responded to our call for evidence.

Furthermore, evidence has been received from partner organisations of cases where landlords have charged tenants for repairs or increased the rent or deposit in order to off-set any potential fine. In all instances reported to this evaluation, the tenant who was charged by their landlord did have the Right to Rent. This is discriminatory.

- ***The timing and location of the pilot limit the efficacy of any evaluation.***

The ‘pilot’ took place during the quietest seasonal period for new private residential lettings (the winter months). This means the impact at busier times cannot be foreseen and the impact on certain groups (such as students) cannot be effectively captured. The scheme will also undoubtedly have a far greater impact in a higher pressure rental market such as London, where the UK’s migrant population is also concentrated. This means any evaluation is likely to *underestimate* the potential for discrimination.

Conclusions

- Due to the timing, location and duration of the ‘pilot’, it cannot capture the impact of the ‘right to rent’ policy if rolled out nationwide.
- The policy has resulted in instances of discrimination against tenants, including BME tenants, British citizens and those with valid leave to remain, who do have the ‘right to rent’ in the UK.
- There is evidence that landlords are prepared to discriminate against those with complicated immigration status and those who cannot provide documentation immediately. This has occurred in a number of cases.
- Landlords have found the checks confusing and have therefore undertaken them incorrectly.
- The policy has not and will not achieve its stated aim to deter irregular migration or prevent irregular migrants from settling in the UK.
- In light of our evaluation, the additional proposals of a criminal sanction will only serve to deepen the discrimination and hardship already being caused to those le-

⁷ EHRC (2014) “Dealing with discrimination”, <http://www.equalityhumanrights.com/your-rights/service-users/dealing-discrimination>



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gally here and seeking a tenancy. The threat of criminalisation will put extra pressure on landlords (especially small-scale landlords who are private individuals and will fear making mistakes) exacerbating their concerns of renting to anybody without clear immigration status and thus increasing unintended discrimination.

Issues with the Home Office 'Right to Rent' Evaluation

The Home Office evaluation does not provide definitive evidence of the impact of the 'right to rent' scheme on local communities

- The report itself states that sample sizes are small and findings must be seen as indicative rather than definitive.⁸
- While the authors describe the evaluation as 'comprehensive', they do not claim that the results are representative. A lack of definitive evidence cannot be seen as evidence that the scheme has met its aims or worked as intended without causing discrimination.
- The sample sizes relied upon as evidence are in many places incredibly small. For example, results based on responses to the online surveys (completed by landlords, agents, tenants, local authorities, housing associations and charity and voluntary sector organisations) are for some questions based on as few as 5 responses and only 4 volunteer and charity sector organisations and 5 housing associations were interviewed for the research.

The groups surveyed are not representative and results therefore cannot be taken as evidence that the scheme would not cause adverse effects if rolled out nationwide.

- Only 62 landlords surveyed had taken on a new tenant since the implementation of the scheme. Of those, only 26 had conducted the checks on a prospective tenant themselves. Therefore, there is a lack of evidence of how landlords who conduct the checks will be impacted.
- The majority of tenants involved in the research had not moved property since the start of the pilot, and therefore would not have any experience of the scheme. Any evidence of the impact on tenants is therefore limited.
- The majority of tenants surveyed were students, a group specifically targeted by way of an information campaign during the pilot.

The report inadequately addresses the risk of discrimination

- Evidence of discrimination reported is downplayed, despite having occurred. Given the gravity of discrimination in this sphere and the fact that discrimination has taken place, the scheme should be halted and the provisions repealed.
- The analysis is based primarily on a mystery shopper exercise with an unclear methodology and unclear aims. Nonetheless, it is clear that discrimination has occurred.

The report fails to adequately and explicitly assess the Government's obligations or the obligations of Local Authorities under the Public Sector Equality Duty

- Under the Public Sector Equality Duty, contained in section 149 of the Equality Act 2010, public authorities have a duty to have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations in carrying out their functions.

⁸ Home Office (2015) Evaluation of the Right to Rent scheme: Full evaluation report of phase one, p.11



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- The Home Office evaluation does not explicitly address this duty or whether the Government's obligations have been met. For a further analysis see the [Race Equality Foundation's briefing](#).

Nonetheless, the report demonstrates that the 'right to rent' scheme has caused discrimination

The Home Office report states that 'verbatim comments... suggest that there were a small number of instances of potentially discriminatory behaviour'. These results are largely based on a mystery shopper exercise, which found evidence of discrimination:

- The BME 'mystery shopper' group in the pilot area was less likely to receive a 'prompt response' from a landlord/agent
- The BME group was asked to provide more information than 'white' group
- Landlords and agents made discriminatory comments to BME mystery shopper participants, for example stating that they do not want to take the time to undertake the checks.
- Evidence of discriminatory behaviour among landlords was reported by landlords themselves, as well as agents and tenants, including a tenant refused when they had time-limited leave; preference for tenants where their 'right to rent' was easy to check; and preference for tenants with local accents or who don't appear foreign.
- The report cites evidence that British citizens without documentation have been adversely affected
- Evidence was reported by charities and voluntary organisations of increased homelessness as a result of the scheme (6 organisations); difficulties findings accommodation among those with the right to rent but complicated documentation (7 organisations); and discrimination on the basis of nationality (7 organisations). These are serious allegations and must be adequately addressed.

The evaluation does not demonstrate that the scheme has achieved its aims

The aims of the 'right to rent' scheme are a) to reduce the availability of accommodation for those residing illegally in the UK; b) to discourage those who stay illegally and encourage those who are resident in the UK illegally to leave by making it more difficult to establish a settled lifestyle through stable housing; c) to reinforce action against rogue landlords who target vulnerable tenants by putting people who are illegally resident in overcrowded accommodation. The Home Office report does not demonstrate that these aims have been met during the first six months of the scheme.

There is no evidence that the scheme has reduced the availability of accommodation for those residing illegally in the UK

- There is no conclusive evidence that the private rental market had been restricted for irregular migrants as a result of the scheme
- The only evidence cited in the Home Office report is that during focus groups with landlords and agents a small number of participants stated that they had turned down tenants as a result of the landlord/agent not being satisfied that they had the right to rent, and that some prospective tenants had hung up the phone when enquiring about a property and being told about the requirement to undertake immigration status checks. However, this evidence is anecdotal, from a small number of individuals, and there is no evidence that those individuals did not have the right to rent.



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There is no evidence that irregular migrants have been encouraged to leave the UK as a result of the scheme

- The report claims that 109 irregular migrants came to the attention of the Home Office as a direct result of the 'right to rent' scheme. An examination of the results shows that this number is made up of referrals provided by internal Home Office teams, external organisations including government departments, police referrals and public allegations. This number therefore appears to be made up of irregular migrants identified result of normal enforcement activity, and not as a result of the scheme.
- Elsewhere, the report states that just 26 referrals of irregular migrants were specifically related to the scheme.
- Just 15 irregular migrants came to the attention of the Home Office as a result of the online referral system created by the Home Office.
- Of the cases of irregular migrants where enforcement activity was instigated, only 9 have since left the UK, the same amount as have been granted status in the UK as of September 2015.
- 46% (47 out of 103) of those identified by the Home Office now have outstanding legal cases (4 judicial review, 15 family cases, 28 asylum claims) – this means that at this moment they have every right to remain in the UK.
- This shows that many individuals identified by the government's 'hostile environment' do often have a valid claim to remain in the UK, or face real barriers to removal from the UK, for a number of reasons.
- Whether the scheme has impacted the ability of irregular migrants to access the private rental sector, a key aim of the policy, is inconclusive.

There is very little evidence that the scheme has reinforced action against rogue landlords who target vulnerable tenants by putting people who are illegally resident in overcrowded accommodation.

- Only 5 civil penalty notices were issued to landlords a result of the scheme. This undermines the Government's aim to tackle rogue landlords, a key purpose of the scheme.
- However, 8 voluntary and charity sector organisations stated that they found evidence of exploitation by rogue landlords of people without the right to rent as a result of the scheme.

Landlords and agents remain confused about the scheme

The report claims that landlords, agents and housing associations intended to and were carrying out the checks. However:

- Only 42% of landlords surveyed had read the code of practice on illegal immigrants and the private rental sector and only 29% had read the code on avoiding discrimination. These are vital documents which are intended to explain to landlords how to undertake checks, as well as how to avoid discriminating against tenants in the course of their duties.
- Of the 109 checks undertaken on the online Landlords Checking Service Tool, just 15 resulted in the landlord being informed that the tenant did not have the right to rent. The other 94 referrals related to individuals who did have the right to rent, highlighting widespread confusion about checking immigration documents, which is incredibly complicated and should not be made the responsibility of landlords, who are not immigration officials.



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Awareness of the scheme remains low

The report claims that landlords and agents felt aware of the scheme, however:

- The report states that less than a third of tenants felt informed and many were unaware of the scheme. Most of those who were aware were students, a group specifically targeted by way of an information campaign during the pilot.
- Although the report claims that there is 'arguably less need' for tenants to be informed about the scheme, this is extremely important; so that tenants can inform themselves of their rights; understand why the checks are being undertaken; prepare themselves for the checks so that they are not at a disadvantage if they have complicated immigration status; and understand if they are discriminated against and how to seek redress.
- Almost 60% of landlords with only one property felt poorly informed or uninformed about the 'right to rent' scheme. Small-scale landlords make up 78% of landlords, making this a worrying figure. This is the key group that must be made informed of the scheme and the Home Office has not done so adequately.
- More than half of landlords came from membership bodies. This is not representative as the majority of landlords in the UK are not members of professional bodies, and members are more likely to feel informed of and able to comply with the scheme than non-members, as demonstrated by the independent evaluation.
- There is therefore no clear evidence provided that the Home Office has adequately disseminated information about the scheme, which undermines any intention to roll the scheme out further nationwide.

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