



Joint Council for the Welfare of Immigrants

Campaigning for justice in immigration, nationality & asylum law & policy since 1967

JCWI Submission of Evidence Re. SI 2016 No. 11(C.2): Immigration Act 2014 (Commencement No. 6) Order 2016

Introduction

The Joint Council for the Welfare of Immigrants (JCWI) is a charitable organisation working to ensure justice and fairness in immigration law and policy in the UK. We have closely scrutinised Government proposals around the Right to Rent Scheme in the Immigration Act 2014, which this Statutory Instrument will put into effect across England. JCWI produced an independent evaluation of the Right To Rent Scheme, which is attached along with this submission to the Committee.

The Right to Rent Scheme

By the Right to Rent Scheme we mean those provisions contained in Part III of the Immigration Act 2014, along with their associated regulations and guidance. These provisions create a civil penalty regime for landlords entering into residential tenancy agreements. In simple terms those without subsisting immigration leave to remain in the UK do not have a 'right to rent'. If private landlord enters into a residential tenancy agreement which explicitly or otherwise allows a person without the right to rent to occupy premises as their sole or main home, they may be issued with a penalty notice of up to £3,000. The landlord has a statutory defence to the penalty notice if they have completed the required checks of the occupier's immigration status.

Inadequate 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. 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 and



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students were better informed about the scheme owing to targeted information campaigns by universities.

The report fails to adequately and explicitly assess the Government's obligations or the obligations of Local Authorities under the Public Sector Equality Duty. The PSED duty, contained in section 149 of the Equality Act 2010, requires public authorities to have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations in carrying out their functions. The Home Office evaluation does not explicitly address this duty or whether the Government's obligations have been met.

Evidence from Home Office report

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 finding 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.



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

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.

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.



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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.

The report claims that landlords, agents and housing associations intended to and were carrying out the checks. It is hard to reconcile this with the findings that 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.

Awareness of the scheme remains low

JCWI is currently running a telephone survey to ascertain the level of knowledge amongst private landlords of the scheme. It is at an early stage, but so far we have received 24 responses in the last week. The responses are listed here:

- Are you aware of the introduction of 'right to rent checks' from 1 February 2016?
13 yes (54%), 11 no (46%)
- Do you feel that you have received adequate support and information about how to undertake the checks? 88% no (21 out of 24)
- Are you aware of the codes of practice? 17% yes (4 out of 24) 83% no (20 out of 24)
- Have you read them? 2 yes, 22 no (92% no)
- How do you plan to ensure that you follow the anti-discrimination code? Only one has a plan in place – to check everyone.

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

- 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.
- 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,



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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.

Meanwhile, preliminary inquiries made by JCWI suggest that local authorities are also under-informed about the scheme. This is worrying as local authorities will bear the brunt of many of the problems this will cause. Local authorities will have to deal with landlords in their area who fail to avoid discrimination. They will face an increase in homelessness applications, as those who previously could have been referred to private providers before going through the formal process, are now more likely to be turned away by landlords. Landlords will prefer tenants already vetted by local authorities or those formally referred to them.

Other Evidence of Discrimination

JCWI's Independent Evaluation,¹ published in September 2015, found the following evidence of discrimination:

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.

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.

¹ JCWI (2015) *No Passport Equals No Home: Independent evaluation of the 'right to rent'*
<http://www.icwi.org.uk/policy/news/no-passport-equals-no-home-independent-evaluation-right-rent-scheme#sthash.d3vRTw9m.dpuf>



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

65% of respondents to our 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.

One in Two Out Policy

According to the [scheme's impact assessment](#) the right to rent regulations fall under the Government's 'One in Two Out' policy whereby departments may not impose new regulations without identifying double the savings in other areas. The impact assessment identified a net cost to businesses of £4.54 million a year. We consider this an underestimate, but even so we have not been made aware of any measures the Home Office is proposing to defray the cost of these new regulations. We note that the Home Office is one of the worst performing departments in this regard with a ranking of 13 out of 14 in the [Ninth Statement of New Regulation](#), by the Better Regulation Executive. It is over its budget by £56.16 million.

Contacts

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