



# **“No Passport Equals No Home”: An independent evaluation of the ‘Right to Rent’ scheme**

3 September 2015





Joint Council for the Welfare of Immigrants (JCWI) is an independent national charity that provides direct legal assistance to immigrants and campaigns for a human rights based approach to the formulation of asylum, immigration and nationality law. JCWI was founded in 1967.

The Movement Against Xenophobia (MAX) is a coalition of civil society groups, faith groups, trade unions and individuals who have come together to oppose xenophobia and misinformation in the debate on immigration. MAX was launched in October 2013 and has grown rapidly since then. It now has 165 affiliated organisations. JCWI is the founding member and the secretariat for MAX.

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## Glossary

<b>Coalition Government</b>	During the 2010-2015 parliament, the Conservative and Liberal Democrat parties formed a formal coalition in order to gain a governing majority in the House of Commons. This government is often termed the 'Coalition Government'.
<b>Early Day Motion (EDM)</b>	A formal motion submitted for debate in the House of Commons. EDMs are rarely debated, rather they tend to allow MPs to draw attention to an event or cause. MPs register their support by signing individual motions.
<b>European Economic Area (EEA) national</b>	The European Economic Area (EEA) comprises all the EU member states plus Iceland, Liechtenstein and Norway. By agreement, the free movement rights of EU citizens are extended to nationals of all EEA states. EEA nationals therefore do not require permission to enter the UK and can live, work and study in the UK without restriction. Switzerland is not part of the EEA but has a similar arrangement.
<b>Freedom of Information Request (FOI)</b>	The Freedom of Information Act gives people the right to access recorded information held by public sector organisations. Anyone can request information. Public sector organisations should respond within 20 working days. However, in some cases they are not required to provide the information, for example if the cost limit exceeds £450 (local/regional body) or £600 (central Government), or if information is considered 'sensitive'.
<b>Impact Assessment</b>	Policy Impact Assessments (IAs) are formal, evidence-based procedures undertaken by the UK government that assess the economic, social, and environmental effects of public policy.
<b>Irregular Migrant</b>	This report uses the term 'irregular migrant' to refer to a person who, owing to irregular entry into the country, the expiration of their visa, the rejection of their status application or other reason, lacks legal status in the UK. 'Irregular' is preferred above other terms, such as 'illegal', because it is legally correct, humane, and discourages discriminatory and oppressive notions of those who lack legal status.
<b>Leave to Remain</b>	Leave to remain is the legal condition of a person who has been granted permission to live in the UK for any period of time, subject to any restrictions placed upon them as a condition of their 'leave'.
<b>Negative Resolution Procedure</b>	A statutory instrument subject to a negative resolution procedure will automatically become law unless there is an objection from either House, normally within 40 days of the instrument being laid before parliament. A motion to annul the instrument can be tabled via an Early Day Motion (see above), but these rarely result in the motion being debated. It is even less likely that an objection will lead to annulment. The House of Commons last annulled a Statutory Instrument on 24th October 1979.
<b>'Pilot' area</b>	In this report, 'pilot' area refers to the five local authorities in the West Midlands chosen by the Home Office as the first geographical location where landlords are required to undertake the Right to Rent checks. These are Birmingham, Walsall, Sandwell, Dudley and Wolverhampton.
<b>Right to Rent</b>	Under the provisions contained in section 20 to 34 of the Immigration Act 2014, individuals must have the Right to Rent in order to enter into a residential tenancy agreement. All non-British, non-EEA or non-Swiss citizens who require leave to enter or remain in the UK but do not have it do not have the Right to Rent. Landlords are required to check the immigration status of prospective tenants in order to ensure that they have the Right to Rent or face a civil penalty of up to £3,000. The policy is not yet a requirement nationwide and has been piloted in the West Midlands areas of Birmingham, Walsall, Sandwell, Dudley and Wolverhampton since 1 <sup>st</sup> December 2014.
<b>The 'pilot'</b>	In this report the 'pilot' refers to the six month trial in the West Midlands of the policy requiring landlords to check the immigration status of prospective tenants. The 'pilot' was designed to evaluate the implementation of the policy. Any further roll-out of the scheme requires an order laid before Parliament subject to the negative resolution procedure.



## **\*\*UPDATE 21/01/2016\*\***

*On 20<sup>th</sup> October 2015 the Minister for Immigration, James Brokenshire announced that the Right to Rent scheme would roll out across England following the six month pilot in the West Midlands. On the same day the Home Office published their own evaluation into the pilot scheme, which did not contain enough data to make any definitive findings, but disclosed worrying indications of discrimination. However, no further investigation of those findings is planned and the Government intends to press on with the scheme. The date set for the rollout is **1<sup>st</sup> February 2016**, and from then on all landlords in England will be subject to the civil penalty scheme laid out below.*

*The passage of the commencement order is subject to annulment through the negative resolution procedure in Parliament. Prayers have been laid against Statutory Instrument 2016/11, which puts the scheme into force, in both Houses of Parliament and so it is still possible, though very unlikely, that it will not come into effect. No date has been set for the scheme's commencement in Wales or in Scotland.*

*Meanwhile the Immigration Bill 2015/2016 continues to make its way through Parliament. It is currently in the Committee stage of the House of Lords. If the Bill passes through Parliament and come into force it will substantially increase the scope of the Right to Rent scheme and the powers granted under it. The most significant changes will be that criminal sanctions to be added on top of the civil penalty regime with landlords facing up to five years in prison for breaching the rules. There will also be extensive new powers to enable, or rather require, landlords to evict tenants when told to by the Secretary of State. These powers are a significant departure from current property and housing laws and give new powers to the executive to sever tenancy agreements between private individuals and to order evictions without judicial oversight or approval.*

## **1. Executive Summary**

### **Background to the provisions**

The Immigration Act 2014 (the 'Act') contained provisions to make it compulsory for private landlords 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.<sup>1</sup>

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

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<sup>1</sup> The Immigration Act was introduced by the Coalition Government and received royal assent on 14 May 2014.



residential tenancy agreement.<sup>2</sup> 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. Certain types of properties are excluded from the scheme.<sup>3</sup> Two codes have been issued for landlords: a Code of Practice on 'Illegal Migration and the Private Rented Sector' and another on 'Avoiding Unlawful Discrimination'.<sup>4</sup>

These measures were introduced as part of the 'hostile environment' for irregular migrants, which the Immigration Act 2014 was tasked with creating.<sup>5</sup>

JCWI stated in its policy briefing on the Right to Rent provisions following the announcement of the Immigration Bill:

*Most of the measures will not serve to reduce the numbers of undocumented entrants coming to the UK nor will they serve to force people already here to leave, but they will create a hostile environment for all migrants. For example, people who are already here will not leave simply because a landlord will not rent to them. Instead they will be forced to take more desperate measures and will rent from rogue landlords, exacerbating problems of criminality and exploitation.*<sup>6</sup>

Evidence collated during our evaluation of the 'pilot' indicates that many of these predictions have indeed come to pass.

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<sup>2</sup> In the UK, non-British, non-EEA or non-Swiss citizens are subject to immigration control and require permission to enter and remain in the UK, in the form of a visa or grant of 'leave to remain'.

<sup>3</sup> Excluded properties include: social housing, care homes, hospices, student accommodation from universities and colleges, accommodation provided by an employer, hostels and refuges and where leases are granted for longer than 7 years

<sup>4</sup> Home Office (October 2014) *Code of Practice for Landlords: Avoiding unlawful discrimination when conducting Right to Rent checks in the private rented residential sector*, available at

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/376789/Code\\_of\\_Practice\\_for\\_Landlords\\_web.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/376789/Code_of_Practice_for_Landlords_web.pdf); Home Office (October 2014) *Code of Practice on illegal immigrants and private rented accommodation: Civil penalty scheme for landlords and their agents*, available at:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/376788/Code\\_of\\_Practice\\_on\\_illegal\\_immigrants\\_and\\_private\\_rented\\_accommodation\\_web.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/376788/Code_of_Practice_on_illegal_immigrants_and_private_rented_accommodation_web.pdf)

<sup>5</sup> The Guardian (2013) *Immigration bill: Theresa May defends plans to create 'hostile environment'* available at: <http://www.theguardian.com/politics/2013/oct/10/immigration-bill-theresa-may-hostile-environment>

<sup>6</sup> JCWI & MAX (October 2013) "Briefing for the Second Reading of the Immigration Bill", available at: [http://jcw.org.uk/sites/default/files/Briefing%20Imm%20Bill%202nd%20Read\\_0.pdf](http://jcw.org.uk/sites/default/files/Briefing%20Imm%20Bill%202nd%20Read_0.pdf)



## Assurance given during the passage of the Immigration Bill

As a result of concerns raised by Liberal Democrats MPs when the proposals were first formulated, the Coalition Government made a commitment to stagger the roll-out of the Right to Rent scheme. It was announced on 3<sup>rd</sup> September 2014 that the proposals would initially be 'piloted' in the West Midlands areas of Birmingham, Sandwell, Wolverhampton, Dudley and Walsall for a period of six months from 1<sup>st</sup> December 2014.<sup>7</sup> An expert advisory panel, co-chaired by Lord Best and James Brockenshire, was set up to assist the Home Office in monitoring the scheme.

The Home Office stated that following the 'pilot' the scheme would be evaluated before any subsequent roll-out nationwide. These assurances were also repeated on multiple occasions in parliament, meetings and in letters by civil servants and ministers:

*"The Government will evaluate the findings and outcomes of that roll-out so that any lessons learned can be applied **before** decisions are made on a wider roll-out in 2015."*<sup>8</sup> (emphasis added)

Home Office

However, following the election of a Conservative Government in 2015 and before the evaluation had been completed, the Prime Minister said in his speech on immigration in May 2015:

*"For the first time we've had landlords checking whether their tenants are here legally. The Liberal Democrats only wanted us to run a 'pilot' on that one. But now we've got a majority, **we will roll it out nationwide**..."*<sup>9</sup> (emphasis added)

This statement is worrying as it contradicts assurances given to Parliament that any decision on a nationwide roll-out would only take place after a transparent and public evaluation. An evaluation would allow Parliament to debate, scrutinise and ultimately decide on any further stages. These assurances appear to have now been overridden.

The proposed new Immigration Bill outlined in this year's Queen's Speech also refers to "building on the national roll-out of the landlord scheme established in the Immigration Act".<sup>10</sup> On 3 August

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<sup>7</sup> Home Office (3 September 2014), "West Midlands to be first landlord Right to Rent check area", available at: <https://www.gov.uk/government/news/west-midlands-to-be-first-landlord-right-to-rent-check-area>

<sup>8</sup> Response from Home Office on Q&A submitted by interested parties issued at meeting on 3 November 2014

<sup>9</sup> Prime Minister's Office (21 May 2015) "PM speech on immigration", available at <https://www.gov.uk/government/speeches/pm-speech-on-immigration>

<sup>10</sup> The Queen's Speech 2015 Background Briefing p.37





2015, the Government announced that the new Bill would include three new measures which will reinforce the Right to Rent scheme.<sup>11</sup> These include:

- Possible criminal sanctions for landlords who repeatedly fail to carry out the checks, with a maximum penalty of five years' imprisonment.
- Two measures to make it easier to evict existing tenants who do not have the Right to Rent; a new possession ground (expected to be introduced by means of amending the Housing Act 1988); and a legal notice from the Home Office which would bring tenancies to an end.

Considering that the Government has not produced any evidence which demonstrates that the initial 'pilot' has worked well or achieved its stated aims, it is extremely concerning that further sanctions and a widening of the scheme have already been announced. In light of our evaluation, these proposals will only serve to deepen the discrimination and hardship already being caused to those legally 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 or documentation and thus increasing unintended discrimination.

An unambiguous political commitment to a further national roll-out and reinforcement of the provisions, prior to the outcome of any evaluation, is of concern both in terms of the validity of the evaluation and in not giving Parliament the opportunity to debate the merits of the scheme. It is hoped that in light of commitments made during the last parliament, the Government will ensure that the evaluation is made public, with time for scrutiny and reflection, before pursuing any further roll-out or widening of the scheme.

## Research and Aims

Due to concerns raised during the passage of the Immigration Bill, as well as those relating to the remit of the Home Office evaluation, JCWI, under the umbrella of MAX, brought together a group of representatives from various organisations who shared our concerns about the potential impacts of the Right to Rent scheme.<sup>12</sup> Together we have conducted an independent evaluation of the

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<sup>11</sup> DCLG press release, New measures to crackdown on illegal immigrants renting property, 3 August 2015, available at: <https://www.gov.uk/government/news/new-measures-to-crackdown-on-illegal-immigrants-renting-properties>

<sup>12</sup> Contributors include Barbara Cohen, Chartered Institute of Housing (CIH), Citizens UK, Coventry Law Centre (Birmingham Branch), Discrimination Law Association (DLA), Generation Rent, Hansen Palomares, Immigration Law Practitioner's Association (ILPA), Refugee and Migrant Centre (RMC) Wolverhampton, Shelter, Southwark Law Centre,





'pilot'. The findings of this report are drawn from research undertaken between December 2014 and July 2015.

### ***Aims***

The aims of our research were:

- To monitor the 'pilot' scheme for discrimination and human rights violations for immigrants, BME communities and indigenous people,
- To assess the impact on those who become destitute or are subject to exploitation by their landlords,
- To evaluate the efficacy of the scheme and the impact it has on landlords and tenants.

### ***Methodology***

In collaboration with Shelter, the National Union of Students (NUS), Generation Rent and the Chartered Institute of Housing (CIH) we drafted two surveys, one for 'Landlords and Agents' and one for 'Tenants and Lodgers'. The surveys went live online from 1 December 2014. Hardcopies were also distributed to local and national organisations. Advice and community organisations were encouraged to complete surveys with their clients and service users when housing problems were identified.

We received a total of 76 responses, with 45 responses from tenants/lodgers and 31 from landlords/agents.

In addition, four meetings were held in the 'pilot' areas during the course of the evaluation, including a roundtable with local organisations and groups from the charity and private sector, a discussion with local people at a community centre and various meetings with local government representatives.

We also issued a call for evidence to local and national organisations as to the observed and potential impact of the Right to Rent scheme on their clients and service users. Evidence was received from student organisations, housing charities, local authorities, legal organisations and local and national charities working directly with migrants and BME groups.<sup>13</sup>

We received:

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Sue Lukes, the National Union of Students (NUS), the University of Sheffield and Sheffield Student's Union, UK Council for International Student Affairs (UKCISA)

<sup>13</sup> A full list of organisations who responded to our call for evidence is included on page 2



- 17 case studies of instances of discrimination and unfair refusals of tenancies
- 11 impact statements from advice organisations, international student representatives, local council representatives, homelessness charities and charities representing migrants and asylum seekers
- Initial results of a 'mystery shopping' exercise exploring discrimination in the private rental market
- Three further pieces of evidence describing issues surrounding the 'pilot'

### **Timing, Location and Duration of the 'pilot'**

Due to the timing, duration and location of the 'pilot', any forthcoming evaluation is likely to under-represent potential problems with the scheme, especially detrimental impacts on vulnerable groups and discrimination as a result of the Right to Rent checks. Lack of evidence of detrimental impacts cannot and should not be taken as indicative of the fact that the scheme has worked well. In fact, our initial findings indicate that the opposite is the case, and these negative impacts are likely to increase over time.

#### ***Timing***

The 'pilot' has taken place during the quietest seasonal period for new private residential lettings. Therefore, the impact of the scheme at times when the private rental market is more competitive cannot be foreseen and any data generated for a proper evaluation will be correspondingly low. The timing also means that the impact on certain groups cannot be effectively captured by the evaluation. This is particularly pertinent in the case of international students who rent in the private sector. A number of the submissions to our evaluation directly referred to the lack of evidence of the impact on this group due to the timing of the 'pilot'.

#### ***Duration***

Statements from local authorities and advice organisations indicate that it has taken landlords some time to familiarise themselves with the requirements. This means we can expect that many landlords only started undertaking the checks weeks or even months after the commencement date. This is especially true for small-scale landlords who are not a member of a professional body. Details of the scheme have also not filtered down to tenants, in particular vulnerable groups. Extensive discussions with charities and community groups demonstrated that most of their



service users were unaware of the checks and had had no experience of them. This is also reflected in the response rate to our surveys.

The fact that awareness was low during the initial months of the 'pilot' calls into question the ability of any evaluation to measure the true impacts of the scheme when the checks were not in fact taking place. As a result, any impact on vulnerable groups is very difficult to ascertain at such an early stage.

### **Location**

A number of organisations who contacted us during the course of our evaluation expressed concern that the Home Office assessment of the scheme in the West Midlands would not be able to foresee the more considerable impacts in a high pressure rental market such as London, where the UK's migrant population is also concentrated. This concern was also raised by organisations in relation to certain groups of migrants, such as students, where the impact of the policy would be felt far more in high-density, high-pressure areas such as London.

### **Our Findings**

Our independent evaluation has uncovered a number of worrying direct and indirect impacts of the Right to Rent checks on tenants and landlords, both in the 'pilot area', as well as across the UK as a whole (despite the 'pilot' only currently operating in the West Midlands). These are outlined in more detail in section 6.

### **Impact on Tenants and Landlords**

- a) 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% are reluctant to 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 our survey had been asked by their landlord whether they had permission to be in the UK. It is noteworthy that they did not describe their ethnicity as 'White British'. This compares to 73% of non-British citizens in the pilot area. 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 is contrary to the 'Code of Practice on Avoiding Discrimination' and is discriminatory.*

- b) 50% of respondents who had been refused a tenancy felt that discrimination was a factor in the landlord's decision. Further evidence of discrimination as a result of the Right to Rent checks has been received from organisations.**

*Evidence has been received through the survey and submissions of cases where individuals with valid leave to remain or a pending Home Office application have been refused tenancies despite having legal status in the UK and, therefore, the Right to Rent. In total, 50% of respondents to our survey who had been refused a tenancy felt that discrimination was a factor in the landlord's decision.*

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

*65% of landlord respondents to the survey stated that they would be less likely to rent to someone who required a little time to provide documentation. This attitude will affect anyone who lack documents or do not have documents to hand, such as a passport. ONS data from the 2010 census shows that 17.5% of the UK population do not own a passport. Where tenants do not have papers, landlords are able to check their status with the Home Office through the online checking tool. The Home Office aims to respond to all enquiries within 48 hours which is too long for many landlords.*

- d) 57% of landlords and agents nationwide and 40% in the pilot area feel they have not effectively understood the Right to Rent changes or remain unaware of them.**

*40% of landlords in the 'pilot' area who responded to our survey felt that they had not effectively understood the Right to Rent requirements or were unaware of the changes. One landlord from the 'pilot' area who filled out the survey in April this year (four months after the commencement of the six month 'pilot') stated that he remained unaware of the scheme. Overall nationwide 19% of landlord/agent respondents were unaware of the Right to Rent checks and 38% felt that they had not effectively understood the changes.*



*Confusion is greater among landlords who are not a member of a professional body and those who own fewer properties. 72% of landlords who were not members and 70% who leased less than five properties felt that they had not understood or were unaware of the changes.*

*Confusion in undertaking the checks is also widespread. Data obtained through a Freedom of Information request shows that 86% of enquiries to the Home Office Online Checking Tool related to individuals with valid leave to remain in the UK, who therefore had the Right to Rent.*

- e) 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’.**

*65% of landlords had not read or feel they have not fully understood the Codes of Practice. Of those who had read the codes, 67% found the Code of Practice difficult to understand, while 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 Right to Rent checks.*

- f) 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 therefore 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.*

- g) 44% of tenants within the pilot area had not been asked for identity documents. This shows that the checks are not being undertaken by all landlords and agents in the 'pilot' areas.**

*Survey responses and submissions indicate that many landlords and agents in the 'pilot' area have not undertaken the Right to Rent checks as required since the commencement of the 'pilot'. 44% of tenants from within the pilot area stated that their landlord had not asked them whether they had permission to be in the UK.*

- h) Landlords and agents have charged fees in order to undertake the Right to Rent checks.**



*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.*

**i) Unscrupulous landlords have passed the cost of a potential fine on to the tenant in the form of increased rent or deposits.**

*Evidence has been received from partner organisations 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.*

**j) 69% of landlords do not feel that they should be made to undertake these checks. 77% are not in favour of a national roll out.**

69% of landlords surveyed do not feel that they should be required to undertake the Right to Rent checks. 77% stated that they are not in favour of the scheme becoming permanent and compulsory nationwide.

**k) The Right to Rent checks are not deterring irregular migration nor are they preventing irregular migrants from accessing the private rental market.**

*In two out of the three cases where a survey respondent from within the pilot area did not have valid leave to remain or an outstanding application with the Home Office at the time of applying for a tenancy (and therefore did not have the Right to Rent) they stated that they had subsequently found a property and were renting privately. Data received through our Freedom of Information request also demonstrates that enforcement during the 'pilot' has been very low. Between 1 December 2014 and 22 May 2015, only two landlords were issued with a civil penalty notice as a result of renting a property to someone who does not have the Right to Rent. Data from JCWI's Irregular Migrant Advice Line shows that the majority (66%) of irregular migrants who have contacted the advice line rarely enter into private tenancy agreements, instead staying with friends or 'sofa-surfing'.*

## **1.6 Conclusions**

- Due to the timing, location and duration of the 'pilot', it cannot capture the impact of the policy if rolled out nationwide.



- The policy has resulted in instances of discrimination against tenants, including BME tenants, who **do** have the Right to Rent in the UK. The current safeguards against discrimination are insufficient.
- There is evidence that landlords are prepared to discriminate against those with complicated immigration status and those who cannot provide documentation immediately.
- Many landlords have found the checks confusing and have therefore undertaken them incorrectly.
- The checks increase the bureaucratic and financial burden on tenants and landlords.
- The 'Code of Practice on Avoiding Discrimination' and the 'Code of Practice for Landlords' are difficult for landlords and agents to understand.
- The policy has not and will not achieve its stated aim to deter irregular migration or prevent irregular migrants from settling in the UK.

### 1.7 Recommendations

- Based on the evidence received during our independent evaluation, we urge the Government to reconsider the Right to Rent policy.
- In light of the commitments given during the last parliament, the Government must ensure that the Home Office evaluation of the 'pilot' is made public before any decision is taken on a further roll-out. Sufficient time must be given so that parliament, as well as individuals and organisations, have an opportunity to respond to the findings.
- Given the fundamental necessity of housing and the gravity of discrimination in this sphere we urge the Government to undertake a full and proper consultation which will allow individuals and organisations nationwide dealing with the private rented sector and vulnerable groups, as well as individual landlords, to provide input to the scheme.
- If any decision for a further roll-out is taken, policies should be put in place to mitigate the adverse impact on certain groups and ensure proper redress where discrimination does take place. Civil litigation under the Equality Act 2010 is costly, difficult and time consuming and not a proper redress for those who have been discriminated against under the scheme.





- Any further roll-out must include additional phased geographical roll-outs in different locations in order to address area-specific problems which will not have been captured during this 'pilot'. This should include a London borough to test the policy in a high-pressure rental market. Each phase must be fully, publicly and transparently evaluated.
- Any further rollout must include a 12 month evaluation period in order to monitor problems at times of high demand for properties, as well as seasonal variation in the rental market and among different groups, such as students.
- The Government should halt any plans to increase the penalties and scope of the Right to Rent policy until the 'pilot' has been fully, transparently and publicly evaluated and issues of discrimination against certain groups of tenants, as well as other adverse impacts on landlords and tenants, have been properly addressed.

## 2. Our Evaluation - Methodology

JCWI, under the umbrella of MAX, brought together a group of representatives from various organisations who shared our concerns about the potential impacts of the Right to Rent scheme.<sup>14</sup> Together we have conducted an independent evaluation of the 'pilot'. The findings of this report are drawn from research undertaken between December 2014 and July 2015.

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<sup>14</sup> Contributors include Shelter, Generation Rent, National Union of Students, Chartered Institute of Housing Coventry Law Centre (Birmingham branch), ASIRT and the Refugee and Migrant Centre (RMC) Wolverhampton



## Surveys

Two surveys (one for 'Landlords and Agents' and one for 'Tenants and Lodgers') were created with input from Shelter, the National Union of Students (NUS), the Chartered Institute of Housing (CIH) and Generation Rent in order to monitor the experiences of these groups during the 'pilot'.

The surveys went live online on 1 December 2014 and have been widely publicised online. Hardcopies were also distributed to local and national organisations. In addition, local advice and community organisations in the 'pilot' area have completed surveys with their clients and service users where housing problems have been identified. The survey will remain live to capture future impacts of the scheme until a decision on further phases has been reached. If a further roll-out takes place we will continue to monitor and independently evaluate its impacts.<sup>15</sup>

At the time of writing we have received a total of 76 responses to the survey, with 45 responses from tenants/lodgers and 31 from landlords/agents. Where the respondent had registered interest, contact was sought via email or telephone to discuss their experiences of the 'pilot' in greater detail. 30 responses were from the 'pilot' areas (13 from landlords/agents and 17 from tenants/lodgers). 46 responses were from other areas in the UK. These responses were included in the analysis as they indicate the wide-reaching negative impacts of the Right to Rent scheme and provide an indication of the detrimental effects of any future national rollout.

The responses provide clear evidence of adverse impacts on tenants and landlords. We believe that the relatively low response rate and sample size is in part a result of the timing, location and duration of the 'pilot', outlined in the next section. This limits the scope and depth of any evaluation on the impact on vulnerable groups. Furthermore, many people remain unaware of the checks: 44% of tenant respondents to our survey from the 'pilot' area stated that landlords had not carried out the Right to Rent checks. Evidence submitted by local groups also indicates that many individuals do not realise that they have been refused a tenancy and potentially discriminated against as a result of the scheme. Furthermore, most of the adverse impacts of the scheme are likely to be cumulative and medium to long term, as stated by one housing expert:

*"Local Housing Association impacts, for example, will be year on year and after an initial delay. The numbers of new homelessness and social services applications will climb over time, especially if the landlord grapevine explains the advantages of local authority referrals. Community cohesion effects are also likely to be a slow burn."*

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<sup>15</sup> The surveys remain available to complete online.

Survey for landlords/agents: <http://bit.do/LandlordAgentSurvey>

Survey for tenants/lodgers: <http://bit.do/TenantsLodgerSurvey>



## **Submission from Sue Lukes**

### ***Meetings***

Four meetings were held in the 'pilot' area during the course of the evaluation, including a roundtable with local organisations and groups from the charity and private sector. Meetings were also held with local government representatives, as well as representatives from local charities and from within the voluntary sector. In addition, contact was established with local organisations, migration charities, housing associations, places of worship and community groups over the course of the 'pilot', in order to raise awareness and monitor the perceived impacts of the scheme on the ground.

### ***Call for evidence***

We issued a call for evidence asking local and national organisations to submit statements as to the observed and potential impact of the Right to Rent scheme on their service users. 17 case studies and 11 impact statements were received from student organisations, housing charities, local authorities, legal organisations and local and national charities, many of whom work directly with migrants and BME groups. A full list of organisations who submitted evidence is included in the acknowledgments on page 2 of this report.

### ***Freedom of Information (FOI) Requests***

Two FOI requests were lodged with the Home Office in April 2015 requesting information on the progress of the Right to Rent scheme. The Home Office responded to our requests on 22 May 2015.<sup>16</sup>

## **3. Background to Legal Provisions**

The Immigration Act 2014 (the 'Act') contains provisions that bar individuals who do not possess the 'Right to Rent' as a result of their immigration status from entering into a private residential tenancy agreement. To this end, the Act contains provisions to make it compulsory for private landlords 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. The requirements are contained in Section 20 to 37 of the Immigration Act 2014.<sup>17</sup> This section explores the provisions as outlined in the Act, as well

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<sup>16</sup> FOI 35463 and FOI 35199, see Appendix A

<sup>17</sup> Immigration Act 2014, Chapter 1, Part 3



as the 'Code of Practice for Landlords' and the 'Code of Practice on Avoiding Discrimination'. The provisions are currently being piloted in the West Midlands areas of Walsall, Sandwell, Birmingham, Wolverhampton and Dudley (the 'pilot' area).

### ***Provisions in the Act***

Section 20 of the Act outlines what is to be understood by a 'residential tenancy agreement'. This is any tenancy which grants a right of occupation of premises for residential use,<sup>18</sup> provides for payment of rent (whether or not a market rent)<sup>19</sup>, and is not an excluded agreement.<sup>20</sup>

Section 21 outlines who is considered to have the Right to Rent and who is disqualified. Relevant nationals who have an unlimited Right to Rent include all British, EEA and Swiss citizens. A person who is not a relevant national must have valid leave to remain in the UK in order to possess the Right to Rent. Anyone who requires leave to enter or remain in the UK but does not have it is thereby disqualified.<sup>21</sup> Someone with a time-limited right to remain in the UK<sup>22</sup> or someone who is not a relevant national but who is entitled to remain in the UK under EU law<sup>23</sup> is considered to have a limited Right to Rent.

Section 22 of the Act outlines the requirements placed on landlords or their agents. Under these provisions, landlords are barred from entering into a residential tenancy agreement with anyone who does not possess the Right to Rent, as above. Landlords are deemed to have contravened the Act if they are found to have entered into a residential tenancy agreement with someone who does not have the Right to Rent and 'reasonable enquiries' were not made before entering into the agreement. The Code of Practice for Landlords outlines how checks should be undertaken as per section 32 of the Act, outlined in more detail below.

If someone has a limited Right to Rent, it is the responsibility of the landlord to ensure that they do not become disqualified while remaining in the property once their leave to remain expires. The

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<sup>18</sup> A right of occupation grants a person a right to premises for residential use as their only or main residence

<sup>19</sup> Where rent is not paid section 20 does not apply, for example people staying in convents or mosques.

<sup>20</sup> Certain properties are excluded from the provisions in the Act. These include: social housing, care homes, hospices, student accommodation provided by universities and colleges, accommodation provided by an employer, hostels and refuges and where leases are granted for longer than 7 years

<sup>21</sup> However, Section 21(3) of the Act states that the Secretary of State may grant someone permission to enter into a residential tenancy agreement if they do not have the Right to Rent.

<sup>22</sup> For example someone in the UK on a short term work permit or student visa

<sup>23</sup> Such as non-EEA family members of EU nationals



landlord must undertake to check the immigration status of the tenant again after one year or at the time their leave to remain expires, whichever is the longer period.<sup>24</sup>

Section 23 states that, if a landlord rents a property to someone who does not have the Right to Rent and they cannot provide evidence to demonstrate that proper checks were carried out in accordance with the law, the landlord can be issued with a penalty notice by the Secretary of State of not more than £3,000. The scope for issuing civil penalties is outlined in section 30 of the Act. The civil penalty amounts are outlined in the Code of Practice:

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<b>Fines per 'illegal' occupier:</b>	<b>1<sup>st</sup> breach</b>	<b>Subsequent breach</b>
<b>Lodgers</b>	£80	£500
<b>Tenants</b>	£1,000	£3,000

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Section 24 outlines the statutory excuses available to landlords in order to avoid a civil penalty. Where a civil penalty notice is issued, a landlord must demonstrate that they have complied with the requirements of the Act. Where someone with a limited Right to Rent subsequently becomes disqualified (outlined above), the landlord is excused only if they notify the Secretary of State within a 'reasonable period' of time. Where a civil penalty notice is issued, the recipient may appeal the decision, as outlined in section 30 of the Act.

Where the landlord can prove that they have handed over responsibility for the Right to Rent checks to a third party, such as a tenant who has permission to sublet the property or an agent, the responsible party may be liable for any civil penalty issued.<sup>25</sup>

### ***Codes of Practice***

Landlords or agents are required to adhere to two codes of practice: the "Code of Practice on Illegal Migration and the Private Rented Sector"<sup>26</sup> (the 'Code of Practice for Landlords') and the

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<sup>24</sup> The eligibility period is outlined in section 27

<sup>25</sup> Sections 25 and 26 apply to agents where they have entered into a written agreement with a landlord which states that they will be responsible for ensuring that tenants have the Right to Rent, and therefore become responsible for any contravention and liable for any civil penalty issued.

<sup>26</sup> Home Office (October 2014) "Code of Practice on illegal immigrants and private rented accommodation: Civil penalty scheme for landlords and their agents" available at:



Code of Practice on “Avoiding Discrimination When Conducting Right to Rent Checks in the Private Rented Residential Sector” (the ‘Code of Practice on Avoiding Discrimination’).<sup>27</sup> Breach of either code does not carry any civil or criminal liability but may be taken into account by a court or tribunal.

The first Code of Practice contains a list of documents that the landlord can accept as proof of a tenant’s Right to Rent. There are two document lists. The first is for British citizens, those with indefinite leave to remain in the UK and EEA or Swiss nationals. The second list applies to those who have limited leave to remain in the UK.

### ***Undertaking the checks***

The checks must be carried out prior to letting a property (but less than 28 days before the lease commences).

In order to be able to prove that the landlord has carried out the checks he or she must:

- Establish the adults who will live at the property as their only or main home;
- Obtain an original version of one or more of the acceptable documents from the lists in the Code of Practice;
- Check the documents in presence of the holder of the documents (the person must be present although a video link is acceptable);
- Retain copies of the documents with a record of the date on which the check was made.

If an applicant has limited leave to remain in the UK, and therefore a limited Right to Rent, the checks must be carried out again, either after 12 months or when a person’s current leave to remain in the UK comes to an end, whichever period is longer.

### ***Online checking tool***

If a tenant is unable to provide any of the listed documents, landlords are advised to go online and use the Home Office’s Right to Rent checking service (the ‘online checking tool’). If the landlord does not have internet access they can call a number to access the service instead. This is the method by which the Home Office will conduct a status check and advise the landlord whether or not the individual in question has the Right to Rent. In order to do this, the landlord must be able to

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[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/376788/Code\\_of\\_Practice\\_on\\_illegal\\_immigrants\\_and\\_private\\_rented\\_accommodation\\_web.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/376788/Code_of_Practice_on_illegal_immigrants_and_private_rented_accommodation_web.pdf)

<sup>27</sup> Home Office (October 2014) “Code of Practice for Landlords: Avoiding unlawful discrimination when conducting Right to Rent checks in the private rented residential sector”, available at

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/376789/Code\\_of\\_Practice\\_for\\_Landlords\\_web.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/376789/Code_of_Practice_for_Landlords_web.pdf)



provide personal details of the tenant, including his/her Home Office reference or appeal number. The Home Office aims to respond within 48 hours.<sup>28</sup> These steps are required for the landlord to establish a statutory excuse against a penalty.<sup>29</sup>

### ***Civil penalties***

If the Home Office finds that a landlord is renting to a person without the Right to Rent, a referral notice will be issued to the landlord informing them of details of their case. The landlord will also be sent an information request which will allow them to provide the information which will form the basis of any decision on liability and level of penalty. If the landlord is found liable for a civil penalty, a civil penalty notice will be issued.

The landlord has 28 days from the issue of the penalty notice to object. Within a further 28 days the Home Office will reply with an objection outcome. If the Home Office maintains the penalty notice the landlord can appeal to the Court, on the grounds that they are not the person responsible for the penalty, that they have a statutory excuse, or that the level of penalty is too high.

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<sup>28</sup> If the Home Office does not respond within 48 hours, the landlord has a statutory excuse against any civil penalty if the tenants does not have the Right to Rent and may rent the property to the individual.

<sup>29</sup> A statutory excuse exempts a landlord from being liable for a civil penalty. In order to establish a statutory excuse, the landlord/ agent must demonstrate that they have complied with the Right to Rent policy as outlined in the 'Code of Practice for Landlords'.





## 4. Provisions to safeguard against discrimination

The potential for racial discrimination as a result of the Right to Rent provisions was recognised by the Coalition Government from the outset. In order to mitigate the risk of discrimination the Government secured parliamentary approval for a Code of Practice outlining to landlords how to avoid discrimination in carrying out the Right to Rent checks. This was approved by Parliament and published in October 2014.

### The Code of Practice on Avoiding Discrimination

“The Code of Practice for Landlords: Avoiding unlawful discrimination when conducting Right to Rent checks in the private rented residential sector” (the ‘Code of Practice on Avoiding Discrimination’) is a 12 page document mainly aimed at landlords, with one page containing information for tenants and lodgers. The code explains that it is unlawful under the Equality Act 2010 and the Race Relations (Northern Ireland) Order 1997 to discriminate in letting practices on the basis of race (which includes “colour, nationality and national or ethnic origins”). It goes on to state that a person who is discriminated against can seek redress through the courts, with the landlord facing financial penalties and reputational damage.

To avoid discriminating against tenants, the Code of Practice on Avoiding Discrimination recommends that landlords:

- Do not assume that someone does not have the Right to Rent or is not British on the basis of their colour, ethnic or national origins;
- Check documents for all tenants, regardless of colour, nationality or national or ethnic origins, in order to demonstrate consistent, transparent and non-discriminatory letting practices;
- Do not treat a tenant less favourably if they have a time-limited right to remain in the UK;
- Do not harass or intimidate a prospective or existing tenant, and;
- Do not instruct or induce another person, such as an agent, to discriminate on their behalf.

However, results from our independent evaluation show that landlords have found the Code of Practice on Avoiding Discrimination confusing and many have not even read the document, limiting its usefulness as a tool against discrimination. Furthermore, direct discrimination has occurred in a number of instances as a result of the Right to Rent provisions, both within and outside of the 'pilot'



area (see section 6 for the results of the evaluation), indicating that the Code has not been followed by all landlords and/or agents.

### Legal redress for tenants

If a tenant complains of discrimination or unfair treatment they do not have any specific remedy under the Immigration Act 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.”<sup>30</sup>*

The section then goes on to say that the Equality and Human Rights Commission (EHRC) website contains further information. However, at the time of writing, the EHRC website is being updated and does not contain any specific advice on discrimination in housing.<sup>31</sup>

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

*“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.”<sup>32</sup>*

Furthermore, landlords are under no legal obligation to provide a reason for refusing an application for a tenancy. Therefore, many tenants may be unaware that a landlord has refused them on a discriminatory basis and will therefore not realise that they have been discriminated against.

This is also evidenced in our survey results, which show that while 50% of the tenant respondents who had been refused a tenancy since 1<sup>st</sup> December 2014 felt that discrimination was a factor in the landlord or agent’s decision, only one had sought advice about it.

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<sup>30</sup> 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

<sup>31</sup> <http://www.equalityhumanrights.com/your-rights/service-users/housing>

<sup>32</sup> EHRC (2014) “Dealing with discrimination”, <http://www.equalityhumanrights.com/your-rights/service-users/dealing-discrimination>



## Public Sector Equality Duty under the Equality Act 2010

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 and to foster good relations in carrying out their functions. This applies without exception.

Given the evidence from our evaluation, it is questionable whether the 'Code of Practice on Avoiding Discrimination' can be seen to absolve the Home Office of its obligations under the Public Sector Equality Duty.

Local authorities are also subject to the Public Sector Equality Duty and must ensure that they take all necessary steps to tackle discrimination and foster good relations. Lack of awareness of the provisions among tenants, as evidenced in our evaluation, questions whether this duty has been met.

### **Recommendations**

We recommend that the Home Office assesses whether, in evaluating the proven discriminatory impact of the Right to Rent scheme, issuing a code of practice is sufficient in meeting their obligations.

In order to ensure that individuals who suffer from discrimination as a result of the Right to Rent scheme have their rights recognised, the Government should provide additional resources to the EHRC to monitor instances of discrimination and take up complaints against landlords and agents who transgress the Code of Practice. The Government should provide resources to ensure that Local Authorities are equipped to tackle discrimination and provide advice in the form of leaflets and other resources explaining how people can have their rights protected and encouraging them to do so through legal action if necessary.

If landlords transgress the 'Code of Practice on Avoiding Discrimination', there is currently no civil or criminal penalty under the Code. Given the gravity of discrimination the Government should ensure that penalties for discrimination equal those of non-compliance with the Right to Rent checks.

Following the announcement on 3 August 2015 that further provisions on the Right to Rent policy are set to be included in the forthcoming Immigration Bill (including new measures to evict tenants without the Right to Rent, as well as criminal sanctions for landlords who fail to comply with the provisions – see page 30-31) we urge the Government to undertake a thorough Equality Impact Assessment; this should include an evaluation of the discriminatory impact of the scheme so far, as well as a thorough assessment of the discrimination which is likely to occur as a result of the new measures. For the purpose of this assessment, the Government should consult with and draw on the experience of relevant organisations. The assessment should be made public in order to allow its findings to be discussed.



## 5. Assurances Given During the Parliamentary Process

This section examines the opposition raised during the passage of the Immigration Act 2014 (the 'Act'), as well as the assurances given by the Government, and evaluates to what extent these have been met.

The Act states that the Right to Rent provisions will be implemented on a phased geographical basis. While commencement of the initial stage is not subject to any parliamentary procedure, any subsequent order to roll-out the scheme in further geographical areas is subject to a negative resolution procedure.<sup>33</sup>

*Implementation of the provisions in Chapter 1 of Part 3 relating to residential tenancies will be rolled out on a phased geographical basis across the United Kingdom. Commencement of the initial implementation will be by order which is not subject to any parliamentary procedure. Section 74(7) provides that **any subsequent order made under section 75(3) bringing into force those provisions is subject to the negative resolution procedure.***<sup>34</sup> (emphasis added)

There was considerable confusion among political parties throughout the passage of the Act concerning the exact parameters of the "phased" nature of the provisions as outlined in the Bill. The Liberal Democrats referred to a 'pilot', whilst the Conservatives spoke of a 'phased roll-out':

*"...I consider it a 'pilot', because there will be a vote and an evaluation. We will see what happens in one place. However, it should have a pause to evaluate it, and in the next Parliament, a decision will be made about whether to go ahead."*<sup>35</sup>

**Dr Julian Huppert, former Liberal Democrat MP for Cambridge**

In contrast, the Conservative members of the Coalition Government maintained that the roll-out would be 'phased' and, while an evaluation following the initial phase would inform later stages, the assumption was that further phases would be implemented.

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<sup>33</sup> A statutory instrument subject to a negative resolution procedure will automatically become law unless there is an objection from either House, normally within 40 days of the instrument being laid before parliament. A motion to annul the instrument can be tabled via an Early Day Motion, but these rarely result in the motion being debated. It is even less likely that an objection will lead to annulment. The House of Commons last annulled a Statutory Instrument on 24th October 1979. For more information see: House of Commons Information Office (2008) "Statutory Instruments", *Factsheet L7 Legislative Series*, p.4

<sup>34</sup> Immigration Act 2014, 'Explanatory Notes', *Commentary on Sections*, ch. 22, P.3, ch. 1, s.35

<sup>35</sup> House of Commons; v. 570, c. 237, 07/11/2013



*"We intend to have a phased roll-out of those provisions. That means that we will implement them in one or more areas first, and once they have commenced, we will look at how they work in practice to see if there are any lessons that we need to learn."<sup>36</sup>*

**Mark Harper, former Immigration Minister and MP for Forest of Dean**

Semantics aside, the provisions in the Act fall far short of the demands from parliamentarians in both Houses due to a number of serious concerns about the efficacy and practicability of the Right to Rent proposals.

Furthermore, while not included in the Act, the Coalition Government made a number of additional assurances that a thorough, transparent and public evaluation would take place following the initial phase and before any subsequent roll-out of the scheme. However, these commitments have not been met. The Prime Minister announced a nationwide roll-out prior to the evaluation being completed. At the time of writing, the findings of the Home Office evaluation have still not been made public nor have parliamentarians been given the opportunity to consider them. Conversely, the Government has announced their intention to introduce further sanctions against landlords, including a criminal penalty, as well as proposals to make it easier for landlords to evict tenants who do not have the Right to Rent.<sup>37</sup>

### Concerns raised by parliamentarians

Opposition to the Right to Rent scheme during the passage of the Bill was widespread. A number of MPs and peers raised concerns about the efficacy and practicability of the proposals. These concerns can be grouped into three main categories:

- 1. The Right to Rent checks will not fulfil their stated aims to:**
  - a) Reduce the incentives for irregular migrants to remain in the UK, or
  - b) Combat unscrupulous landlords who exploit people by renting out substandard, overcrowded and unsafe accommodation.
- 2. The Right to Rent checks are unworkable and/or impractical**
  - a) Landlords will be unable to understand and identify complicated immigration documents and are therefore likely to make mistakes when checking the documents of potential tenants.

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<sup>36</sup> Mark Harper, Volume 569, Column number 112, 31/10/2013

<sup>37</sup> DCLG press release, New measures to crackdown on illegal immigrants renting property, 3 August 2015, available at: <https://www.gov.uk/government/news/new-measures-to-crackdown-on-illegal-immigrants-renting-properties>



- b) The Home Office will be unable to offer advice to landlords and agents within a suitable timeframe.
- c) Landlords should not be expected to undertake a bureaucratic burden which asks them to perform duties of immigration officials.

**3. The Right to Rent checks will have unintended negative consequences**

- a) The checks are likely to foster discrimination in the rental market.
- b) Discrimination is likely to be made worse by a 'heated' rental market.
- c) Tenants who are rejected due to their immigration status (rightly or wrongly) would be forced underground into the hands of 'rogue landlords'.
- d) This is likely to worsen unsafe conditions, overcrowding and poor standards of housing.

Individual concerns raised by individual parliamentarians are outlined in Appendix B.

### Opposition in the House of Commons

In addition to concerns regarding the impact of the proposals, outlined above, a number of parliamentarians expressed misgivings that a phased roll-out, subject to a negative resolution procedure, would not be sufficient to ensure that the Right to Rent measures would be given proper scrutiny before any expansion of the scheme nationwide.

As a result of the lack of clarity surrounding how the provisions would be evaluated, the Shadow Immigration Minister David Hanson MP tabled two amendments during the public committee stages of the Immigration Bill (the 'Bill'). 'Amendment 2' proposed increasing the 'pilot' to five areas across the country. Each 'pilot' would be required to produce a report which would be subject to a parliamentary motion to approve a further roll-out. 'Amendment 38' called for an affirmative procedure for subsequent stages, subject to a vote. However, the Liberal Democrat and Conservative MPs opposed both amendments and they were defeated when put to a vote.

Dr Julian Huppert tabled 'Amendment 38', also requiring a vote in parliament before any subsequent roll-out of the policy beyond the initial phase. However, following assurances from Norman Baker, then Minister for Crime Prevention, that the opportunity for a proper evaluation would arise in the next parliament, it was withdrawn.

"I personally am confident that my hon. Friend will be returned as the Member of Cambridge at the next election and so will have the opportunity to take that course of action following the next election. He will be able to do so by tabling an early-day motion requesting that the order be considered or annulled... given the innovative nature of this proposal and the determination of both coalition



partners to ensure that it is properly evaluated, it is pretty unlikely that the outcome would be that the business manager blocked the debate.”<sup>38</sup>

**Norman Baker, former Liberal Democrat MP and Minister for Crime Prevention**

Neither MP was returned as a Member of Parliament in the 2015 general election.

### Opposition in the House of Lords

The same concerns were raised by Labour peer Baroness Smith of Basildon during the Committee Stage in the House of Lords. She put forward two amendments, Amendment 50 and Amendment 51. The amendments required Parliament to debate any subsequent roll-out of the policy in further geographical areas beyond the first phase.

In response, Lord Taylor of Holbeach, spokesperson for the Home Office in the House of Lords, reiterated assurances that the negative resolution provided room for a proper evaluation:

“The commencement provisions in Clause 67 indicate the Government’s commitment to ensuring that, should it wish to do so, Parliament may scrutinise the implementation of the scheme following the initial rollout and before the subsequent stage commences. Any commencement order which brings the landlord provisions into operation in a subsequent area following the initial rollout will be subject to the negative resolution procedure. The House will be able to trigger a debate regarding the further rollout of the measures and any questions can then be addressed.”<sup>39</sup>

Baroness Smith withdrew her amendment in light of these assurances. However, she stated that that she was not entirely satisfied with the official response.<sup>40</sup>

At the final Report Stage in the House of Lords, Baroness Hamwee returned to the subject by tabling amendment 24. This amendment clarified the terms evaluation report of the 'pilot' scheme, those that would be consulted to produce it, and that it would be expected to be published. However, this amendment was also withdrawn following announcement by Lord Taylor of Holbeach that a formal consultative panel would be convened to oversee the operation and evaluation of the first phase.

As detailed above, despite attempts to clarify the scope of the evaluation of the 'pilot' and increase the level of parliamentary input, amendments to reinforce stronger scrutiny failed in both Houses,.

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<sup>38</sup> House of Commons; Volume 570, Column 362; 12/11/2013

<sup>39</sup> House of Lords; Volume 752, Column 1649; 10/03/14

<sup>40</sup> House of Lords; Volume 752, Column 1656 & 1657; 10/03/14





This was on the basis of assurances given to Members of Parliament which have not been met. The negative resolution procedure put in place to authorise further stages of the Right to Rent policy therefore remains.

### Assurances given by the Coalition Government

In a letter dated 12 March 2014 to all peers who spoke at the Second Reading of the Bill in the House of Lords, Lord Taylor of Holbeach confirmed that any further roll-out would be subject to a negative resolution procedure, adding that this will allow a debate in either House. He also stated that Parliament will expect the Government to produce an evaluation of the first phase with complete transparency on what aspects have worked well and what lessons have been learned, in order to facilitate and inform debate. The Government also agreed to convene a formal consultative panel to, “oversee the operation and evaluation of the first phase” and provide “transparency, objectivity and the necessary degree of expert input”.<sup>41</sup>

In September 2014, the Home Office issued a press release confirming that a thorough evaluation would occur following the ‘pilot’ and that a consultative panel had been convened:

“The government has committed to a phased implementation of these provisions with the measures initially coming into force in one location, **followed by an evaluation to inform decisions on further roll-out...** To assist and advise the implementation and evaluation of the measures, the government is convening a consultative panel. The panel consists of bodies that represent landlords, letting agents, housing and homeless charities and others with an informed interest in the matter, and will also include representatives from the local authorities in these areas. **This will ensure that the first phase can be thoroughly evaluated and considered as part of the decision making process on further roll-out.**”<sup>42</sup> (emphasis added)

On 8 December 2014 a meeting was held at the Home Office. One of the authors of this report raised the question about the remit of the ‘pilot’/ first phase with the Immigration Minister, James Brokenshire. The minutes of the meeting outline his response:

“A **clear assessment** would need to be made at the end of the first phase which will inform the subsequent roll out. **No further decisions will be taken before then...** It was essential to get as

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<sup>41</sup> Lord Taylor of Holbeach, House of Lords; Volume 753, Column 1090, 03/04/2014

<sup>42</sup> Home Office (3.9.2014) “Written statement to parliament: implementation of the Immigration Act 2014” <https://www.gov.uk/government/speeches/implementation-of-the-immigration-act-2014>



clear a level of detail as possible of the impact of the scheme in the West Midlands because the outcome will inform subsequent phases.”<sup>43</sup> (emphasis added)

However, following the election of a Conservative Government in May 2015, the Prime Minister said in his speech on immigration:

“For the first time we’ve had landlords checking whether their tenants are here legally. The Liberal Democrats only wanted us to run a ‘pilot’ on that one. But now we’ve got a majority, **we will roll it out nationwide**”<sup>44</sup> (emphasis added)

In addition, the proposed new Immigration Bill outlined in this year’s Queen’s Speech referred to “building on the national roll-out of the landlord scheme established in the Immigration Act”.<sup>45</sup> On 3 August 2015, the Government announced that a new Immigration Bill would include three new measures which will reinforce the Right to Rent scheme.<sup>46</sup> These include:

- Possible criminal sanctions for landlords who repeatedly fail to carry out the checks, with a maximum penalty of five years’ imprisonment.
- Two measures to make it easier to evict existing tenants who do not possess a current right to rent; a new possession ground (expected to be introduced by means of amending the Housing Act 1988) and a legal notice from the Home Office which would bring tenancies to an end.

The consultative panel assisting with the Home Office evaluation met on 7 July 2015 to discuss the initial findings of the evaluation. Details of the meeting or any decisions that took place are yet to be officially made public. An initial version of this report was submitted for circulation to panel members at the meeting. It is unclear what the remit of the panel has been in terms of evaluating the scheme considering that further stages were announced prior to the meeting taking place.

On 3 August 2015, Minister for Housing and Planning Brandon Lewis announced that the evaluation would be published at the end of August.<sup>47</sup> However, the report is yet to be published at the time of writing.

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<sup>43</sup> Minutes from National Asylum Stakeholder Forum meeting held on 8.12.2014

<sup>44</sup> Prime Minister’s Office (21 May 2015) “PM speech on immigration”, available at <https://www.gov.uk/government/speeches/pm-speech-on-immigration>

<sup>45</sup> The Queen’s Speech 2015 Background Briefing p.37

<sup>46</sup> DCLG press release, New measures to crackdown on illegal immigrants renting property, 3 August 2015, available at: <https://www.gov.uk/government/news/new-measures-to-crackdown-on-illegal-immigrants-renting-properties>

<sup>47</sup> BBC Radio 4, “World at One”, aired 03/08/2015, 13:00 GMT



## Conclusion

Many parliamentarians have been concerned about the efficacy and fairness of the Right to Rent provisions. As a result, assurances were given by Conservative and Liberal Democrat ministers and peers that there will be a proper, thorough and transparent evaluation of the scheme before any further decision is made on a subsequent roll-out. In light of this it is concerning that the Prime Minister has already made a commitment to roll the scheme out nationally. The Government's announcement for an extension of the sanctions placed on landlords, including a criminal penalty, as well as proposals to make it easier for landlords to evict certain groups of tenants who are found not to have the Right to Rent are also very worrying given that no evidence has been produced to show that the checks have so far been a success and are not resulting in discrimination. Our evaluation shows that the opposite has in fact occurred.

## Recommendation

*The results of our evaluation demonstrate that discrimination has occurred and there is widespread confusion surrounding the checks. In light of this we urge the Government to put a halt to any further expansion of the scheme and to honour commitments made during the last parliament, in order to ensure that proper parliamentary scrutiny of the Right to Rent provisions does take place.*



## 6. Issues with the 'pilot'

The requirement for landlords to check the immigration status of prospective adult tenants applying for new tenancies has been running in the areas of Birmingham, Walsall, Sandwell, Wolverhampton and Dudley since 1 December 2014. The Home Office has conducted its own evaluation of how the Right to Rent provisions have been operating. However, due to the timing, duration and location of the 'pilot', any forthcoming evaluation is likely to under-represent potential problems with the scheme, especially detrimental impacts on vulnerable groups and discrimination caused as a result of the Right to Rent checks. These concerns are explored below.

### Timing of the 'pilot'

The 'pilot' has taken place during the quietest seasonal period for new private residential lettings. Therefore, the impact of the scheme at times when the private rental market is more competitive cannot be foreseen and any data generated for an evaluation will be correspondingly low.

Data from SpareRoom<sup>48</sup> on monthly website 'hits' indicates that the summer months are the busiest period for searching for and securing tenancies. More people access the SpareRoom website to search for a rental property during the summer and autumn months (June, July, August, September and October), while the winter and spring months (November, December February, March, April and May) are quieter.<sup>49</sup>

This is also demonstrated in a quote from John Boyle, Managing Director of HomeLet:

*"During the winter months we tend to see a seasonal drop in demand for rented properties... Traditionally we see the highest volume of new instructions during July, August and September."*<sup>50</sup>

The fact that the 'pilot' took place over six months from December to May also means that the impact on certain groups cannot be effectively captured by the evaluation. This is particularly pertinent in the case of international students who rent in the private sector. A number of the submissions to our evaluation directly referred to the lack of evidence of the impact on this group due to the timing of the 'pilot':

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<sup>48</sup> HomeLet describes itself as, "The UK's largest tenant referencing and specialist lettings insurance company": [www.homelet.co.uk](http://www.homelet.co.uk)

<sup>49</sup> With the exception of January which can often be a busy period

<sup>50</sup> "HomeLet Rental Index" (June, 2011)



*"We have serious concerns that a lack of evidence in relation to students probably results from the timing and location of the 'pilot':*

- It was not tested at a peak time for students seeking accommodation - which would have been autumn rather than December through to June*
- It was not tested at a time when large numbers of students have immigration applications pending with the Home Office and so are unable to show the required documents to landlords"*

**From submission by UKCISA**

*"The 'pilot' scheme has not been carried out at a busy time for international student arrivals and/or student lettings. We are concerned therefore that it will not have fully measured the impact of these proposals on the student lettings process and especially what this means for international students trying to find accommodation."*

**From submission from the University of Sheffield and Sheffield Students' Union**

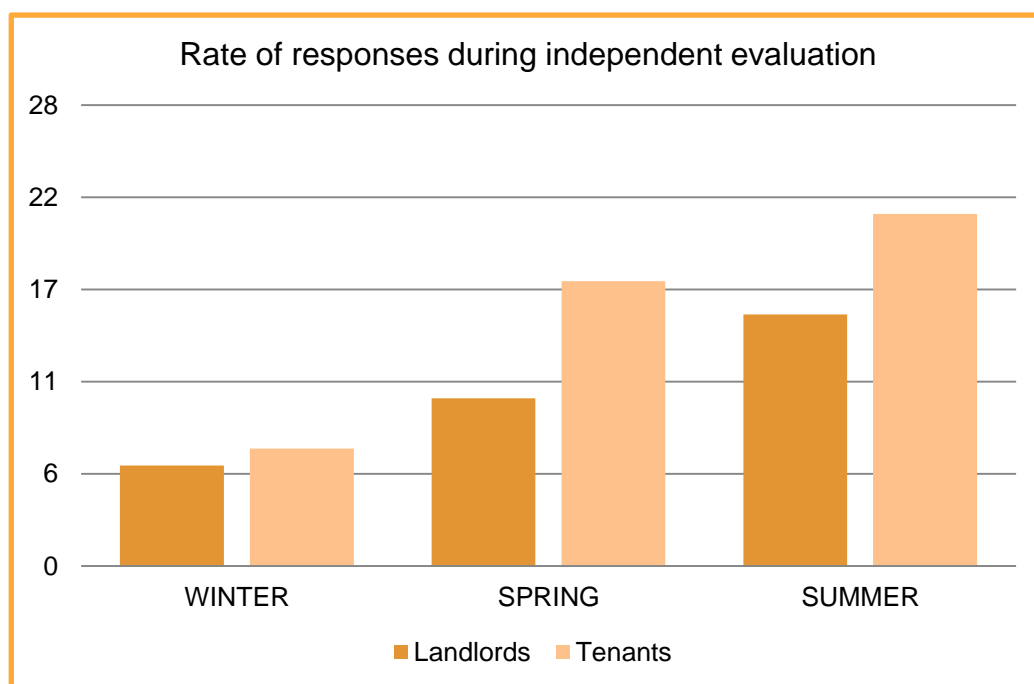
### **Duration of the 'pilot'**

Statements from local authorities and advice organisations indicate that it has taken landlords some time to familiarise themselves with the requirements. This means we can expect that many landlords to have only started undertaking the checks weeks or even months after the commencement date.

This is especially true for small-scale landlords who are not a member of a professional body. Data from our surveys reveal almost a quarter of landlords nationwide remained unaware of the checks months after the commencement of the 'pilot'. One landlord from within the 'pilot' area remained unaware of the requirements as late as April this year, five months after the 'pilot' commenced.

Details of the scheme have also not filtered down to tenants, in particular vulnerable groups. Extensive discussions with charities and community groups demonstrated that most of their service users were unaware of the checks and had had no experience of them.

This is also reflected in the response rate to our surveys. Among both landlords and tenants the rate of responses increased over the evaluation period, peaking during the summer months. This could demonstrate increased awareness of the scheme as it progressed, as well as reflecting the fact that more individuals are searching for new properties during these months (as outlined above).



The fact that awareness was low during the initial months of the 'pilot' calls into question the ability of any evaluation to measure the true impacts of the scheme when the checks were not in fact taking place.

As a result, any impact on vulnerable groups is very difficult to ascertain at such an early stage. Lack of evidence of detrimental impacts cannot and should not be taken as indicative of the fact that the scheme has worked well. In fact, our findings indicate that the opposite is the case, and these negative effects are likely to increase over time.

### Location of the 'pilot'

A number of organisations who contacted us during the course of our evaluation expressed concern that the Home Office assessment of the scheme in the West Midlands would not be able to foresee the more considerable impacts in a high pressure rental market such as London.

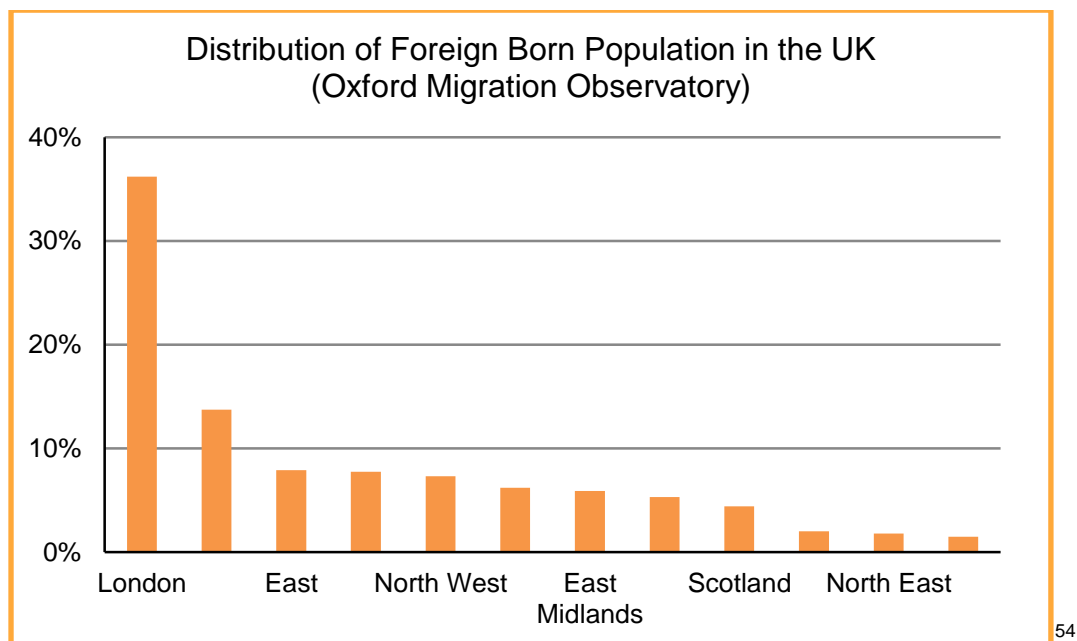
*"In parts of the UK where tenancies are already so hard to come by, many landlords/agents openly state that they prefer tenants who can comply with the landlord's requirements quickly and this is not going to change. It is the places where the rental market is already so overheated due to demand that tenants will suffer the most."*

**From statement submitted by Generation Rent**



The UK's migrant population is overwhelmingly concentrated in London, with 37% of the foreign-born population living in the capital. This is compared to just 12% in the UK as a whole. Only 11.2% of the population in the West Midlands is born outside of the UK.<sup>51</sup>

Furthermore, London is the most ethnically diverse area in the UK. It has the highest proportion of minority ethnic groups and the lowest proportion of the total population who describe their ethnic group as "white", at 59.8% in 2011. In contrast, 79.2% of the population in the West Midlands describe themselves as "white".<sup>52</sup> London also has the highest demand for private rental housing of anywhere in the UK, with 8.5 applicants for each property available to rent, compared to 5.2 nationwide.<sup>53</sup>



This is significant because the migrant population is likely to have limited leave and therefore more complicated immigration status. Our evidence shows that tenants with complicated immigration status or limited leave have been discriminated against by landlords and agents as a result of the Right to Rent scheme (see next section).

<sup>51</sup> [www.parliament.uk/briefing-papers/sn06077.pdf](http://www.parliament.uk/briefing-papers/sn06077.pdf)

<sup>52</sup> [http://www.ons.gov.uk/ons/dcp171776\\_290558.pdf](http://www.ons.gov.uk/ons/dcp171776_290558.pdf)

<sup>53</sup> Papadopoulos, C. (2015) "London rents more than double UK average as high property prices lift sector demand", City AM, available at: <http://www.cityam.com/212726/high-property-prices-lift-rental-sector-demand>

<sup>54</sup> Rienzo, C. & Vargas-Silva, C. (2014) "Briefing Migrants in the UK: An Overview", Migration Observatory





This concern was also raised in relation to certain groups of migrants, such as students, where the impact of the policy would be felt far more in high-density, high-pressure areas such as London:

*[The Right to Rent policy] was not tested in areas where landlords are less likely to be familiar with student immigration documentation – we are particularly concerned about London and the South East where a substantial majority of (non-EU) international students are studying; numbers for 2013/14 (HESA) were: London – 67,405 and South East – 33,330 making a total of 100,735, which is over a quarter of the total number of non-EU international students in the whole of the UK, while the number in West Midlands was 27,765 in that year.*

**From submission from UKCISA**

### **Recommendations**

- *If a decision is taken on a further roll-out of the Right to Rent scheme this must include an additional phased geographical roll-out in different locations in order to address area-specific problems which will not have been captured during this 'pilot'. This should include a London borough to test the policy in a high-pressure rental market.*
- *Any further rollout should include a 12 month evaluation period in order to monitor problems at times of high demand for properties, as well as seasonal variation in the rental market and among different groups, such as students.*
- *Further stages should each entail a full and transparent evaluation.*



## 7. Impact on Tenants & Landlords

- a) **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% are reluctant to 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’.**

*“Shortly after the ‘pilot’ was introduced, a tenant in Kingston-upon-Thames rang us to inform us that she had been asked for evidence of her right to stay in the country whereas her ‘British sounding’ partner was not. This is discrimination: the letting agent was assuming because her accent wasn’t typically ‘British’ that she did not have the right to stay in the country. Moreover, the tenant informed us that she suspects it was likely that her race also played a part in this request.”*

**From submission by Generation Rent**

Results from our survey show that only one British citizen in the pilot area had been asked by their landlord whether they had permission to be in the UK. It is also noteworthy this person did not describe their ethnicity as ‘White British’. This compares to 73% of non-British citizens in the pilot area who stated that they had been asked by their landlord whether they had permission.

This demonstrates that the Right to Rent checks are not being undertaken uniformly for all tenants. Instead, the checks are being directed towards those who do not appear “British” because of their accent or appearance, on which basis landlords/ agents have assumed that they may not have the Right to Rent.

This mirrors initial (as yet unpublished) results from a ‘Mystery Shopper’ exercise undertaken by an organisation specialising in equality and human rights<sup>55</sup> and submitted to us as part of our evaluation. The findings provide pertinent evidence that discrimination in the housing market is already commonplace. This is likely to be exacerbated by the Right to Rent policy.

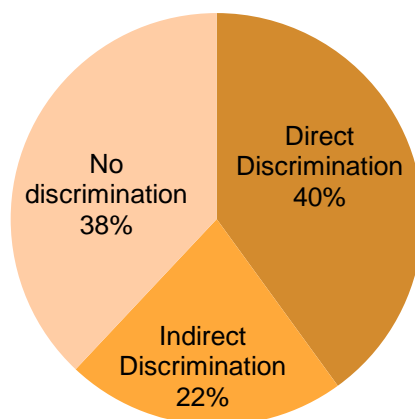
Out of 27 tests undertaken by the organisation, 11 (or just above **40%**) showed what appears to be straightforward direct discrimination, i.e. there were properties available to the British person but not to the non-British person. Further, 6 tests (**22%**) showed some sort of more subtle discrimination. For example, the British person was not asked about whether s/he is employed or receiving benefits but the non-British person was. Discrimination was therefore apparent in **62%** of cases.

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<sup>55</sup> As the findings are part of ongoing research which has not yet been published the organisation has asked to remain anonymous.



### Mystery Shopper Exercise: Evidence of Discrimination



56

This is also reflected in a submission sent to us by a housing and immigration expert which indicates that Local Authority staff expect that landlords will discriminate and that this has been vocalised by landlords themselves:

*Local authority staff are in no doubt that many landlords will refuse to consider many more tenants than they do now. Some will simply discriminate against anyone who “looks like a migrant” (and several landlords have told me as much). Most will refuse to consider anyone who has unusual documentation or none. The local authority housing department will be the next port of call for many.*

**From submission by Sue Lukes**

Furthermore, many landlords who responded to our survey from both within and outside the 'pilot' area stated that they may be forced to discriminate or admitted that they have discriminated against certain groups of tenants as a result of the Right to Rent scheme.

*“The rollout of this policy will continue to drive discrimination, encouraging otherwise fair-minded landlords and agents to let to white tenants with British sounding names, just to reduce the likelihood of additional bureaucracy from the Home Office.”*

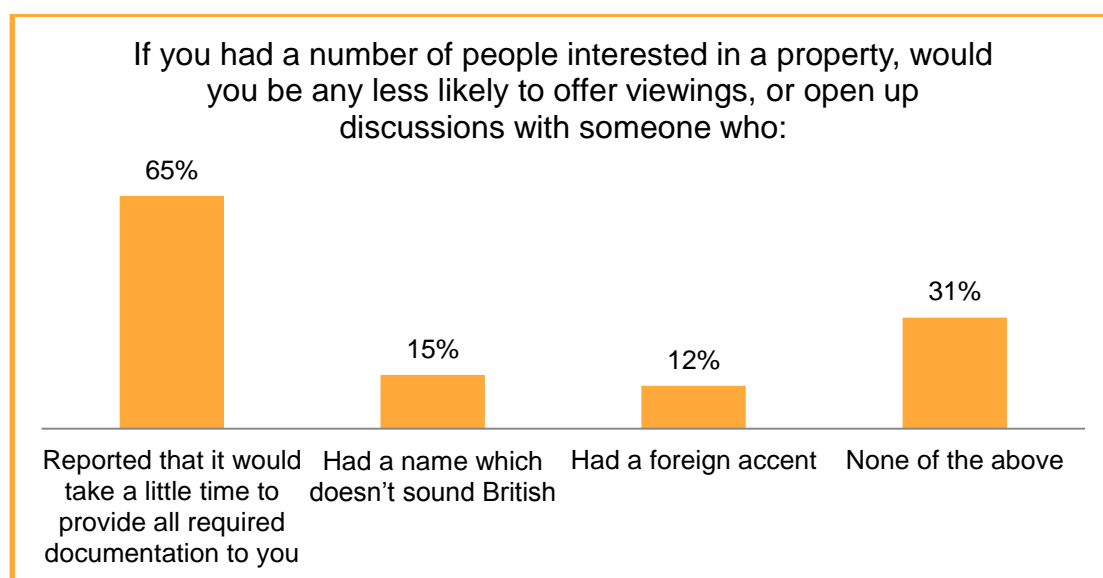
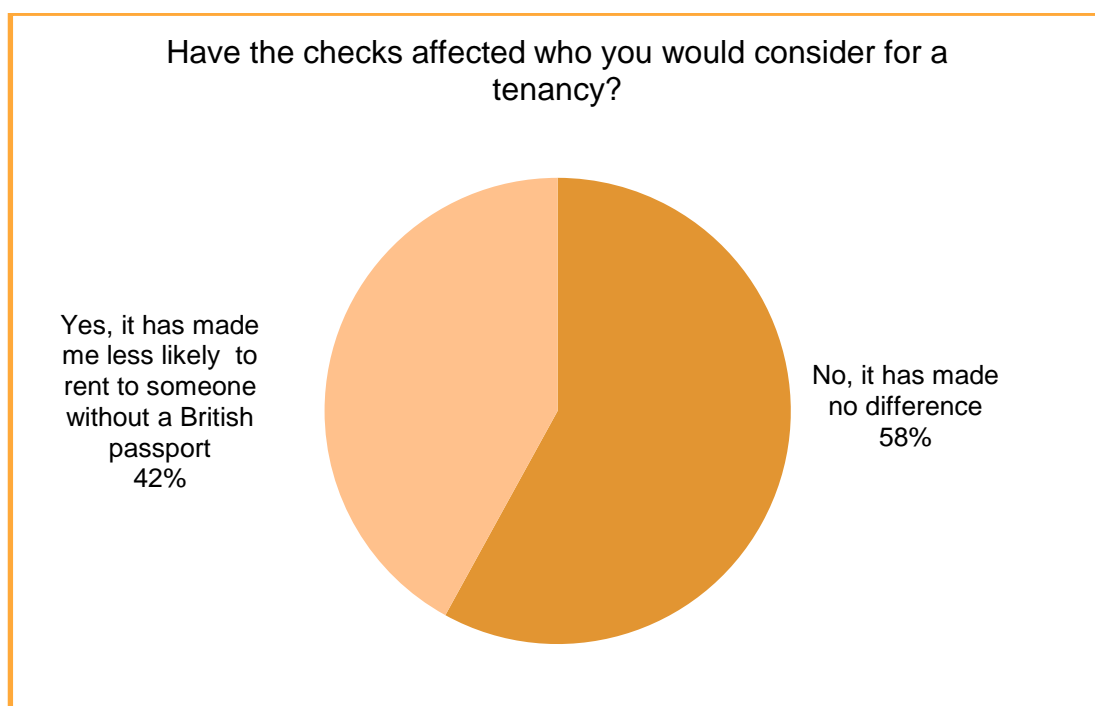
**Submission from Generation Rent**

In our survey, **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

<sup>56</sup> NB: We note that the categories ‘indirect’ and ‘direct’ discrimination used by the organisation conducting this study do not correspond to the legal definition of those terms. Here they are used to differentiate between two types of what would both be classed as direct discrimination. (Footnote added 21 Jan 2016)



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'.





*"We have found that if a prospective tenant is obviously not British or does not have a UK passport then the easy option for many landlords is to simply reject them for a tenancy. Given the competition for privately rented accommodation in many areas, landlords have a plethora of tenants to choose from, thus any potential delay and cost if further checks are needed means a landlord is understandably going to pick the tenant who is unlikely to have uncomplicated paperwork."*

**Submission from Generation Rent**

*"I do not accept most of the documents in the list as I could produce most of them on my laser printer. Therefore **no passport equals no home!** As I don't know how to tell if a non-UK passport is valid, I would try to choose someone with a UK passport."*

**Survey response from landlord (emphasis added)**

*"I am not a trained immigration officer. That is what the Home Office are trying. I have sadly become over cautious and turned down people who may be eligible."*

**Survey response from landlord**

*"I would be concerned to rent to non-UK nationals"*

**Survey response from landlord**

The above evidence demonstrates that, despite the issuance of a Code of Practice on how to avoid discrimination when undertaking the Right to Rent checks, landlords have discriminated against individuals as a result of not wishing to fall foul of the Right to Rent scheme and face the risk of a civil penalty. This suggests that the Code of Practice is an insufficient safeguard against discrimination and harassment.

- b) Individuals with unclear or complicated immigration status have been wrongly refused tenancies as a result of over-cautious landlords and confusion surrounding the Right to Rent checks. 50% of respondents who had been refused a tenancy felt that discrimination was a factor in the landlord's decision.**

*"I am currently be evicted from the property I live in with my 3 year old. I have been told by numerous estate agents and landlords that until the Home Office makes a decision on my application, they legally cannot let a property to me. I cannot get help from anyone and I am at the end of my rope really. I feel like I am being forced to decide to leave the UK."*

**Survey response from tenant living in the 'pilot' area who has the Right to Rent**



*"In Liverpool, a Syrian tenant was asked to leave his flat share by his landlord because he had heard of the immigration checks and he didn't want any bother so simply evicted him. The tenant tried to explain that he had every right to rent a property but the landlord would not listen."*

**From submission by Generation Rent**

*A week after the Right to Rent 'pilot' had kicked off, Shelter received a call to its helpline. A British couple of Chinese descent had their sister and baby son staying at the property (also British) and the landlord demanded to see the passport and immigration status of the baby. It appeared that the landlord had heard of "Right to Rent". The landlord told the couple that he could face a big fine if they didn't provide the passport and immigration status of the baby. Shelter advised the couple that because they lived in Greenwich, the Right to Rent checks did not apply. The advisor reported that the tenant had been traumatised by the landlord's discriminatory approach. The tenant had a fixed tenancy until November 2015 so did not get served a section 21. The tenant subsequently called Shelter back in January to say the landlord was still requesting the information. The couple decided to move out before their tenancy came to an end in November, and felt they had been harassed out of the property. There is no easy redress for tenants who are harassed in this way. It is tantamount to an unlawful eviction as the tenants feel that they were being hounded out of the accommodation. It is also discriminatory. The tenants would have been eligible for an application for damages in the county court for the trauma they experienced from the harassment. Legal Aid is available for discrimination cases under the Equalities Act.*

**Case study submitted by Shelter**

*"The way I have been treated by landlords who are as confused as tenants with this new law is pathetic. Landlords were open, [they said] we are not Home Office, and they said that the Home Office messed up their departments and want us landlords... to do their dirty work. They said they are there to make money and not immigration officers. They can't take risks and are declining non-whites accommodation to avoid fines."*

**Survey response from tenant with the Right to Rent who was wrongly refused a tenancy as a result of the Right to Rent checks**

As the above examples demonstrate, misunderstanding of the Right to Rent checks, both within and beyond the 'pilot' area, is rife and has in a number of instances resulted in people being wrongly refused tenancies and/or feeling harassed by their landlord or agent in ways which could amount to discrimination. **50%** of tenants who responded to our survey and who had been refused a tenancy since 1<sup>st</sup> December 2014 felt that discrimination was a factor in the decision.

Despite the list of acceptable documents in the 'Code of Practice', there are many cases where a person who has the Right to Rent does not have documents, or where the landlord, through



caution or prejudice, is not prepared to accept documentation or make appropriate investigations (such as using the Home Office online checking tool).

The process is not simple for landlords and results from our evaluation indicate that in some cases they have refused to accept tenants with unclear immigration status or confusing documentation, as they feel that accepting them may result in the risk of a civil penalty. As the third case study demonstrates, landlords have misunderstood their legal obligations and are incorrectly applying the Right to Rent checks in ways that can be seen as a form of harassment as well as direct discrimination. This example is not even in the 'pilot' area, meaning that the landlord has not understood that they are not yet required to undertake the checks.

Landlords cannot be expected to understand the vast number of different forms of documentation which can be used to evidence legal residence in the UK. In relation to EU documentation alone, Richard Jones, Policy Director at the Residential Landlords Association, stated the following as evidence to the Public Bill Committee during the passage of the Immigration Act 2014:

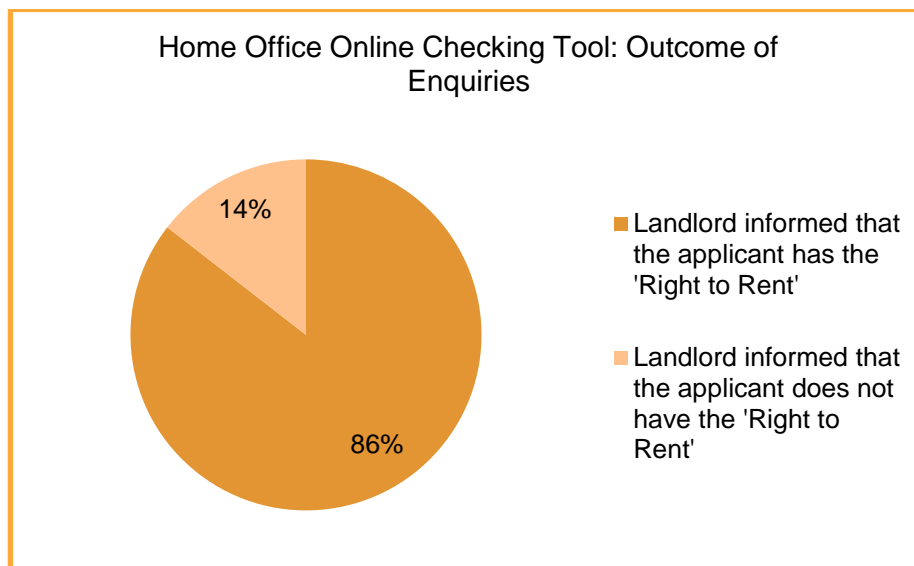
*"[Landlords] are going to be bewildered by the complexity of it. I have calculated that there are 404 different EU or European economic area documents, although it was quoted as 444 on Second Reading—I think I had overlooked the fact that local authorities in Italy apparently issue their own individual documents. I have also calculated that there are 13 different documents for those who are subject to immigration control. It is just bewildering."*<sup>57</sup>

The Home Office response to our FOI request indicates that, between 1 December 2014 and 30 April 2015, only 13 out of the 90 referrals to their online checking tool resulted in the landlord or agent being informed that the applicant did not have the Right to Rent (**14%**). The remaining **86%** related to individuals with valid leave to remain in the UK. This includes one request for a check relating to an EEA national and 12 checks related to non-EEA family members of EEA nationals. This demonstrates the confusion faced by landlords in determining a person's immigration status.

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<sup>57</sup> Hansard 29.10.2013, col. 50





Furthermore, 90 online referrals are not indicative of the landlords who may simply have failed to use the online checking tool and have turned legitimate tenants away because of difficulties understanding their documentation (which has occurred in a number of instances, as evidenced above).

As the above quotes demonstrate, confusion, discrimination and harassment have occurred in areas far beyond the 'pilot' area. Landlords, having heard about the provisions, have become over-cautious and have assumed that they must apply them to all tenants, although this is not the case. This demonstrates that landlords have misunderstood their obligations and the facts have not filtered down, especially to small-scale landlords. This is explored in more detail below.

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

*"The risk of taking on a tenant who does not have the paperwork, even if they have a reference number for the checking service, is not worth it for most landlords: the 48 hour wait means that the landlord potentially faces loss of income. Often, tenants find themselves losing out as the tenancy could be let to someone else in that time."*

**Submission from Generation Rent**

**65%** of landlords stated that they would be less likely to offer viewings or open up discussion with someone who reported that it would 'take a little time' to provide all required documentation.

This is corroborated in a further submission by Generation Rent:



*"[The Right to Rent checks] add time to the letting process, a business that often markets itself on the quick turnaround of properties. This will either lead to a reduction in rental income due to the longer turnaround time, or systematic discrimination in favour of familiar documentation because the letting agent/ landlord knows there will not be issue with immigration status."*

**Submission from Generation Rent**

Landlords and agents we spoke to during the course of the evaluation agreed that having to wait for evidence from a prospective tenant would often result in them losing the property if another person was able to provide documents more quickly. This again demonstrates discrimination against those with unclear documentation or those who lack it.

*"We are not immigrants but my husband does not have his birth certificate and his passport expired. It will take weeks for the new one to arrive but the agent says there is no leeway."*

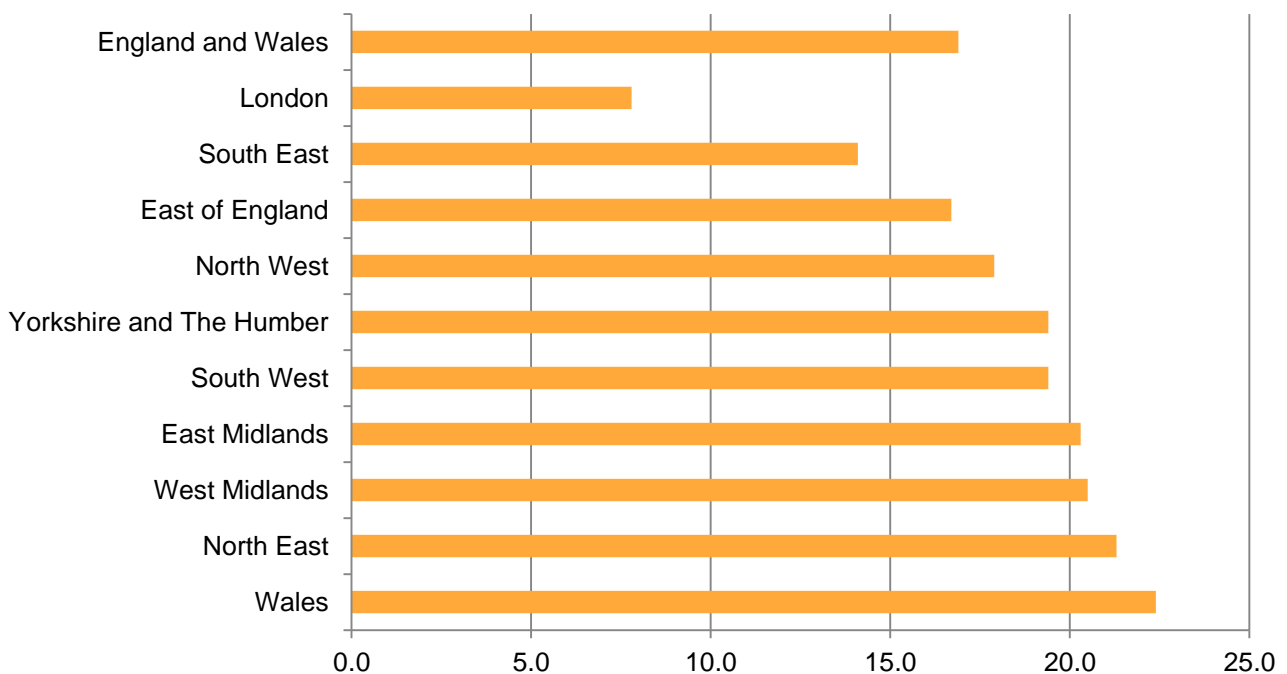
**Online comment from a tenant living outside of the 'pilot' area**

This will also impact British citizens, as the above quote from a tenant demonstrates. ONS data from the 2011 census shows that 9.5 million UK residents (**17.5%**) do not have a passport.<sup>58</sup> This group would be required to provide two pieces of further documentation including a full birth certificate, which many do not possess. Leaked details from a meeting of the Home Office Advisory Panel reveal that the Home Office evaluation of the 'pilot' also found evidence that the Right to Rent scheme has resulted in some British citizens finding it harder to access rented accommodation.<sup>59</sup>

<sup>58</sup> ONS (2012) Statistical Bulletin: 2011 Census: Key Statistics for England and Wales, March 2011  
[http://www.ons.gov.uk/ons/dcp171778\\_290685.pdf](http://www.ons.gov.uk/ons/dcp171778_290685.pdf)

<sup>59</sup> The Guardian (2015) <http://www.theguardian.com/uk-news/2015/aug/03/british-citizens-without-passports-being-turned-away-by-landlords>

**Proportion of the population who do not own a passport  
ONS Data 2011 Census**

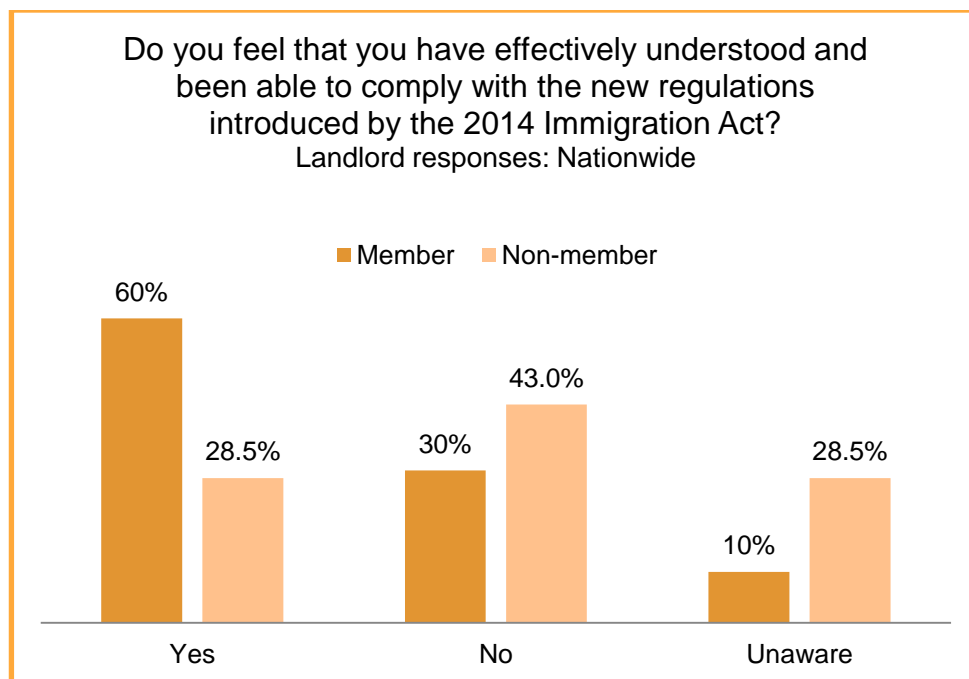


**d) 57% of landlords and agents nationwide and 40% in the ‘pilot’ area feel they have not effectively understood the Right to Rent changes or remain unaware of them.**

Our research demonstrates that many small-scale landlords remain confused about how to undertake the Right to Rent checks and do not feel confident that they can comply fully with the regulations. This has in some cases resulted in an over-cautious approach whereby landlords and agents have refused prospective tenants who **do** have the Right to Rent (as evidenced above).

Misunderstanding was greater among respondents who were not members of a professional body.<sup>60</sup> In this group of respondents, only **28%** answered ‘yes’ to the question, “*Do you feel that you have effectively understood and been able to comply with the new regulations introduced by the 2014 Immigration Act?*”. The remaining **72%** did not feel they had understood the changes or were unaware that the changes had taken place.

<sup>60</sup> Professional bodies, such as the National Landlords Association (NLA) and the Residential Landlords Association (RLA) provide a number of services to members, promoting best practice and providing legal advice to landlords, as well as lobbying the government on their behalf and informing landlords of their rights and responsibilities.



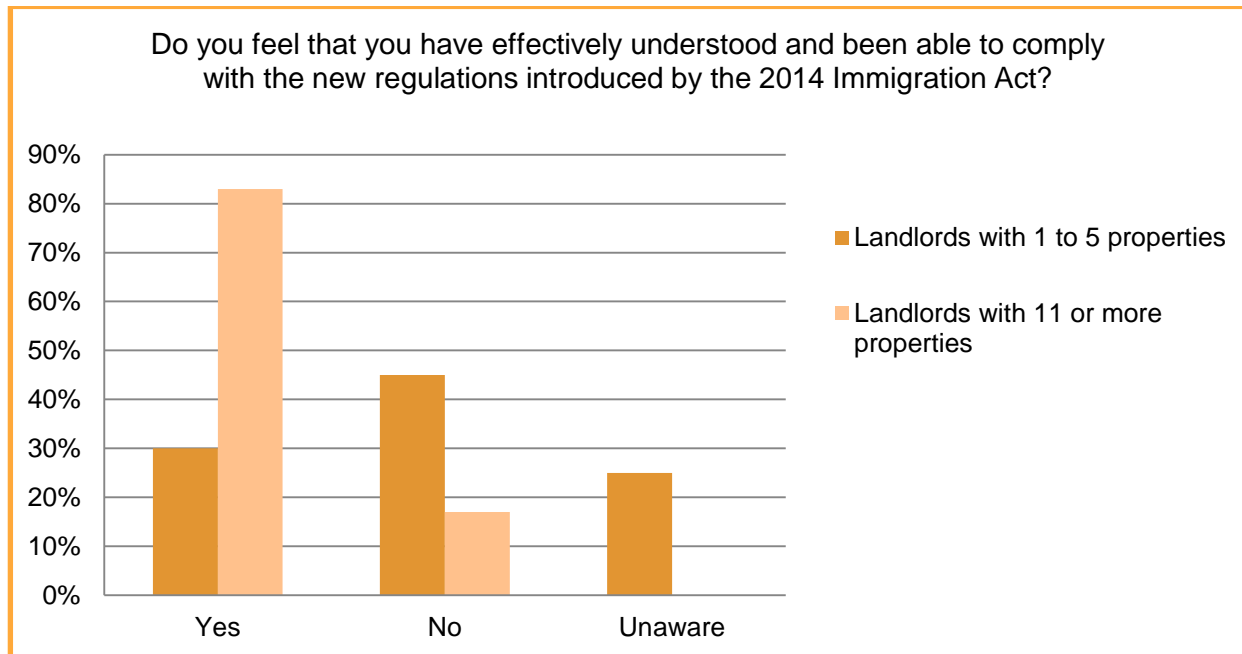
Understanding was also greater among members nationwide with **60%** of respondents who were members stating that they had effectively understood the changes. Members were also much more confident about complying with the regulations and Codes of Practice, while the opposite was true among those who were not members.

There is no requirement among landlords to become a member of a professional body and membership is correspondingly low, at around 3.9% (there are an estimated two million landlords in the UK<sup>61</sup> and the National Landlords Association and the Residential Landlords Association, the two largest professional bodies, have a combined membership of around 78,000).<sup>62</sup> Furthermore, there is no overarching regulatory body for landlords and this makes dissemination of information and ensuring compliance with the Right to Rent scheme inherently problematic.

Our results also show that there is less awareness and understanding of the scheme among small-scale landlords with fewer properties. 70% of landlord respondents who owned five properties or less stated that they were unaware of the scheme or had not effectively understood the changes, compared to only 17% of landlords with 10 or more properties.

<sup>61</sup> Paragon (2014) "18 years of buy-to-let", [http://www.paragon-group.co.uk/file\\_source/Files/MAIN/pdf/Press%20Releases/2014/18%20Years%20of%20BTL.pdf](http://www.paragon-group.co.uk/file_source/Files/MAIN/pdf/Press%20Releases/2014/18%20Years%20of%20BTL.pdf)

<sup>62</sup> The NLA website puts membership at over 60,000 (<http://www.landlords.org.uk/>); The RLA website states that their membership is over 18,000 ([www.rla.org.uk/moreinfo/](http://www.rla.org.uk/moreinfo/))



Discussions with a member of a local city council in the 'pilot' area also indicated that while reputable landlords and agents who are known to the local authority are undertaking the checks correctly, there remain a number of small-scale landlords who remain unaware of the checks and are failing to undertake them.<sup>63</sup>

The Landlord's Survey 2010<sup>64</sup> found that 89% of landlords were private individuals, responsible for 71% of all private rented dwellings. More than three quarters (78%) owned a single dwelling for rent, and only 8% stated that being a landlord was their full-time occupation. The Government's own Impact Assessment estimates that 99.3% of landlords and businesses that let properties are "micro or small sized businesses".

Landlords are overwhelmingly private individuals with a small number of properties. It is concerning that it is among this group (which the vast majority of landlords fall under) that our evaluation has found awareness and understanding of the Right to Rent provisions to be particularly low.

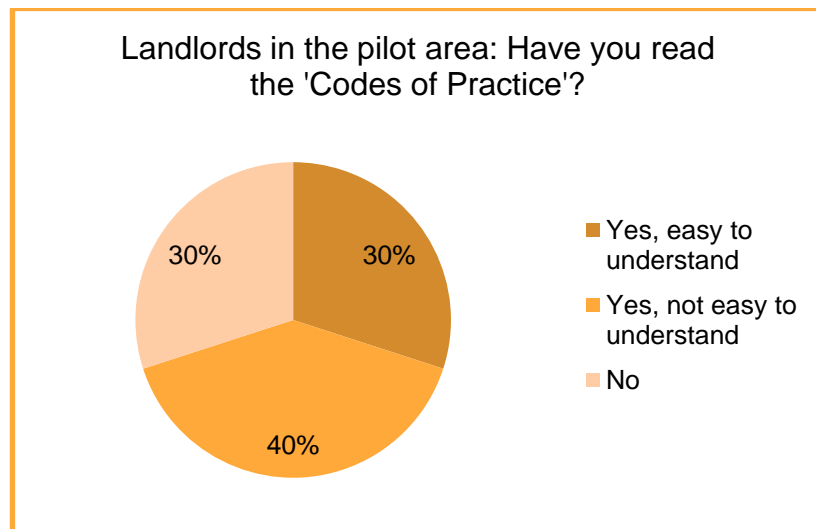
**e) 65% of landlords have not read or feel they have not fully understood the 'Code of Practice on preventing illegal immigration' or the 'Code of Practice on Avoiding Discrimination'**

<sup>63</sup> Confidential submission from a high ranking official provided during a roundtable discussion

<sup>64</sup> Department for Communities and Local Government (2011) "Private Landlords Survey 2010"



**40%** of landlords and agents within the 'pilot' area found the Codes of Practice issued by the Home Office difficult to understand. **30%** had not read either document. This undermines the very purpose of the 'Code of Practice on Avoiding Discrimination', as a lack of adherence to the code carries no civil or criminal penalty. There is therefore no way to ensure that landlords will even read it, let alone understand and comply with it.



It is particularly concerning that almost all landlords (**89%**) who responded to our survey from outside of the 'pilot' area had not read either Code. This is despite the fact that responses indicate that many had still implemented the Right to Rent checks on tenants and prospective tenants, believing that this was a national requirement despite the fact that this is not the case. This further demonstrates that confusion surrounding the scheme is widespread.

- f) 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 therefore unable to properly safeguard against instances of discrimination**

*"There is expectation and experience amongst RMC service users that they will be subject to discrimination in the housing market. Therefore it may not be discernible to them that the reasons they are unable to access a house is due to a landlord considering the Right to Rent checks. This task is made more difficult by anecdotal evidence that landlords are not carrying out the checks, likely as they are not aware, or do not fully understand the scheme. This means that the impacts of the scheme may not be fully realised until landlords are carrying out the checks in greater numbers."*

**Submission from RMC Wolverhampton**



Responses from tenants indicate that awareness of the Right to Rent scheme is very low. **63%** of tenants stated that they were unaware that landlords were required to check their immigration status and **84%** have not received any information or advice on preparing documents for the checks.

*No [I did not seek advice]. It's costly, time consuming and won't see any change as MPs are part and parcel of system that agreed this process. I don't think I will ever return to UK again. [I] feel unwanted and blamed for everything.*

**Tenant from the 'pilot' area with the 'Right to Rent' who was wrongly refused a tenancy**

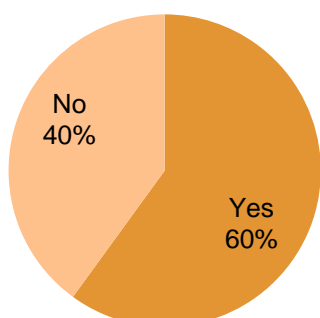
While **50%** of tenants who had been refused a tenancy since 1 December 2014 felt that discrimination had played a part in the landlord or agent's decision, only one had sought advice. It can be very difficult for tenants to prove that they have been discriminated against, especially as there is no legal obligation for private residential landlords and agents to provide a reason for turning down a tenancy application.

Under the Public Sector Equality Duty, the Home Office and Local Authorities have a duty to have due regard to the need to eliminate discrimination and to foster good relations in carrying out their functions.<sup>65</sup> The lack of awareness of the Right to Rent scheme among tenants, as well as a lack of awareness about their rights, indicates that these obligations have not been met within the 'pilot' area.

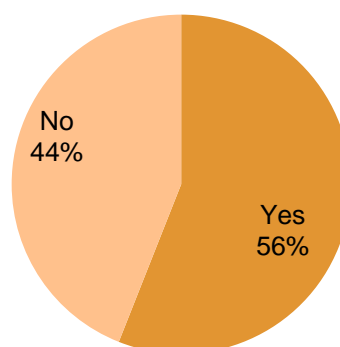
**g) 44% of tenants within the pilot area had not been asked for identity documents. This shows that the checks are not being undertaken by all landlords and agents in the 'pilot' areas**

Our evidence reveals that the Right to Rent checks are not being undertaken by all landlords and agents in the 'pilot' area. Almost half (**44%**) of all tenant respondents from within the 'pilot' area who were looking for a property had not been asked by a landlord or agent if they had permission

Landlords/Agents: Do you currently ask all applicants, regardless of ethnicity, for proof of their immigration status?  
(Pilot area responses)



Tenants/Lodgers: Have you been asked if you have permission to be in the UK?  
(Pilot area responses)





to be in the UK. This is despite the 'Code of Practice on Avoiding Discrimination' advising landlords and agents to undertake checks for all prospective tenants. 40% of landlords from the pilot area also stated that they did not currently ask all applicants, regardless of their immigration status, for proof of their immigration status.

If the checks are not being undertaken, this makes any evaluation of impact of the scheme on landlords and tenants, especially for instances of discrimination, inherently problematic.

#### **h) Landlords and agents have charged fees in order to undertake the Right to Rent checks**

One third of respondents from within the 'pilot' area stated that they had been charged a handling fee of over **£50** to process their application for a tenancy. **20%** had been charged a fee of over **£100**. One landlord who responded to our survey also stated that he charges in the region of **£100** to undertake the Right to Rent checks. In another case, a letting agency stated that a fee is charged to applicants, but not at a fixed level (presumably the level will be higher for someone with limited leave where the checks are often more complex). The Right to Rent checks do not only create extra bureaucracy, but also increase the financial burden for tenants. This is backed up by further evidence submitted by Generation Rent:

*"Whilst the cost of the immigration checks is minimal, tenants who go through a letting agent will find themselves handed yet another tenancy-related fee, creating an additional financial barrier. Landlords, too, are likely to find themselves charged an additional fee for this check. We already know of one tenancy referencing service who is trying to capitalise on the immigration checks. If it is rolled out nationwide, there is likely to be more firms capitalising on this and letting agencies using this as an excuse to charge yet another fee."*

**Submission by Generation Rent**

The Home Office Impact Assessment on "tackling illegal immigration in privately rented accommodation" estimated that agents will pass 100-300% of the costs of the checks on to tenants, who as a result will face a central estimate of £18.2 million worth of charges over 10 years (the higher estimated cost to tenants is £52.9 million).<sup>66</sup> The same charges are predicted to be faced by landlords who use estate agents to undertake the checks. The Impact Assessment did

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<sup>66</sup> Home Office (2013) "Impact Assessment: tackling illegal immigration in privately rented accommodation"





not however quantify the cost to tenants who are charged directly by their landlords for undertaking the checks.

As the above evidence demonstrates, the Right to Rent checks can be seen to represent yet another financial hurdle in an already expensive rental market which will make it harder for tenants, especially vulnerable groups, to find a home.

**i) Unscrupulous landlords have passed the cost of a potential fine on to the tenant in the form of increased rent or deposits**

*Mr M has been looking for property since November 2014. He had a house viewing in December and was happy with the property. However, before signing the three month tenancy agreement, the landlord asked about Mr M's immigration status. As Mr M's Leave to Remain expires in three months, the landlord demanded **6 months non-refundable rent** as deposit in advance. Mr M cannot afford 6 months' rent as a deposit and therefore he had to give up the chance of the tenancy.*

**Case study submitted by RMC Wolverhampton (emphasis added)**

*Mr B has been living in a shared private property since January 2014. The rent on his tenancy agreement is £300 per month, including bills. In mid-December 2014 Mr B's landlord came to his property under the premise of checking his immigration status. As Mr B has submitted all his immigration documents to Home Office to apply for an extension of his leave to remain, he could not provide any documents. The landlord gave Mr B two choices: move out within one week or pay **an extra 100 pounds per month** until he could provide his immigration status documents. Mr B could not find any alternative properties as he did not have any immigration documents with him at that time. Mr B therefore felt he had to pay the extra rent which the landlord demanded.*

**Case study submitted by RMC Wolverhampton (emphasis added)**

*"My landlord had exercised this immigration check very harshly with me and my family in a sort of harassment. He abused this power to force [me] as a tenant to do some repairs for his property."*

**Tenant from the 'pilot' area with Indefinite Leave to Remain**

There is worrying evidence to suggest that unscrupulous landlords are profiting from the Right to Rent checks and passing on the costs of potential fines onto tenants in the form of increased rent or demanding tenants to undertake repairs. This is a direct impact of the scheme.



In each instance above, the tenant did possess the Right to Rent and the landlord would therefore not have been liable for a fine. In the first two case studies, the tenant had a limited Right to Rent. As outlined in the Code of Practice, in these instances the landlord should take copies of the tenant's status documents and seek to undertake the checks in one year or when the tenant's leave is due to expire (whichever period is longer). If documents are with the Home Office as part of an ongoing application for leave to remain (as in the second case study), the landlord should make the necessary enquiries using the Home Office Online Checking Service tool to confirm this information. However, instead of following the Code of Practice, these landlords chose to increase the deposit/rent in order to mitigate the risk of a fine if the tenant was found at a later stage not to have the Right to Rent. This is an incorrect application of the checks, which may amount to discrimination.

In the last instance the tenant had a permanent Right to Rent. However, the tenant did not understand his rights and the landlord used the premise of undertaking the checks to insist that the tenant undertake repairs on the property. This is direct discrimination and could also amount to harassment. The lack of information made available to tenants on their rights and how to prepare for the checks makes these instances more likely to occur. Furthermore, there are few forms of redress available to tenants seeking to bring a charge for discrimination or harassment against a landlord. This is explored in more detail below.

**j) 69% of landlords do not feel that they should be made to undertake these checks.  
77% are not in favour of a national roll out**

*"At present we have non UK citizens but never sought their visa status as [it was] not required. This new rule is an extra burden and worry."*

**Survey response from landlord**

*"My current tenants are all international students and I would not be comfortable in asking them for such documentation after two years."*

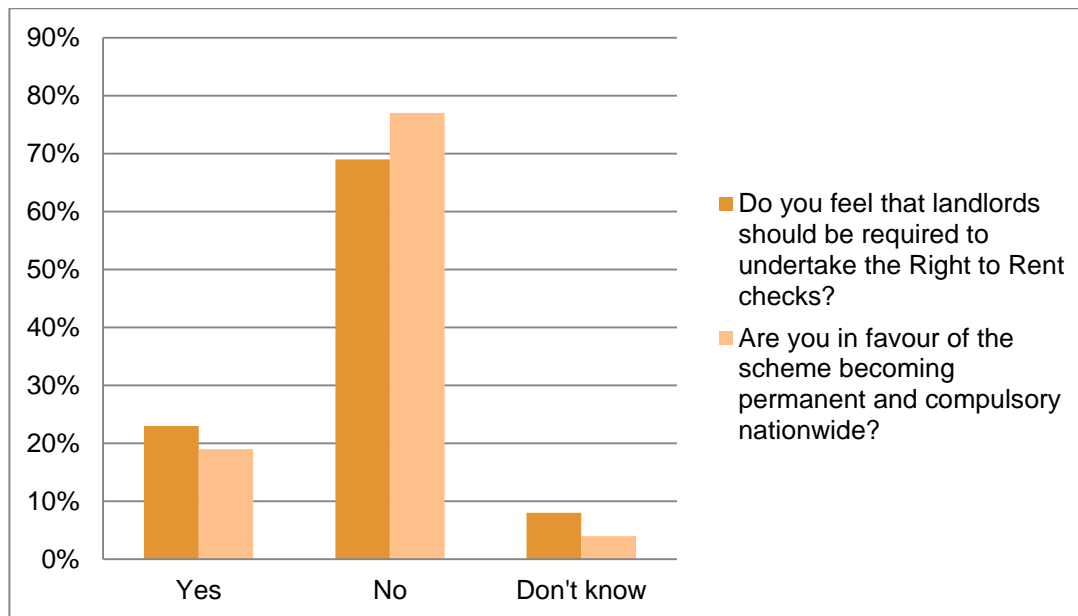
**Survey response from landlord**

*"It gives me a lot more work to do and makes me learn about something highly complex, which I shouldn't have to understand, and which is private to the individual concerned."*

**Survey response from landlord**



**69%** of landlords and agents who responded to our survey did not feel that landlords should undertake immigration checks and **77%** were not in favour of the Right to Rent scheme becoming permanent and compulsory nationwide.



The above data clearly shows that many landlords are uncomfortable with the Right to Rent checks and have admitted discriminating against certain groups of tenants, including those without British passports, despite knowing that this is discriminatory. Their justification is that they do not want to risk a fine. Furthermore, landlords are finding the checks onerous and do not wish to have further red tape imposed upon them. In light of this evidence, it is extremely concerning that the Government has announced further provisions that would seek to impose a criminal sanction on landlords.

**k) The Right to Rent checks are not deterring irregular migration nor are they preventing irregular migrants from accessing the private rental market.**

*"People want to regularise their visa but Home Office fee and [thousands of pounds] for solicitors forces people to accept defeat in front of immigration status. Throwing [them] out of the house and making their already miserable life more miserable will cause havoc in some migrant's life who cannot go back to their country. They will have no other option except either commit suicide or die on the road."*

**Respondent from 'pilot' area with an application lodged with the Home Office**



Three respondents to our survey from within the 'pilot' area indicated that they did not have valid leave to remain in the UK or an outstanding application with the Home Office at the time they were applying for a tenancy and therefore did not have the Right to Rent. One of the respondents was not asked by their landlord whether they had permission to be in the UK or to provide any identity documents. The other two respondents stated that while they were refused a tenancy by a landlord because they did not have the Right to Rent they had since found accommodation. While the numbers are small, this indicates that, aside from the negative impacts outlined above, the scheme is not working as intended.

Enforcement is also low. The Home Office response to our Freedom of Information request states that, between 1 December 2014 and 22 May 2015, only two landlords were issued with a civil penalty notice as a result of renting a property to someone who does not have the Right to Rent. In addition, only 14 Civil Penalty Referral Notices were served on landlords to inform them that they were potentially liable to a civil penalty for renting a property to an irregular migrant. Thus the scheme is not identifying irregular migrants as intended.

This is unsurprising. For over three years JCWI has run a legal advice line for irregular migrants.<sup>67</sup> Some basic demographic data is logged anonymously on all calls, including current living situation. Initial data demonstrates that **66%** of callers did not rent privately but were instead sofa surfing or living with family or community members. Conversely, the Home Office Impact Assessment on the Right to Rent provisions, published in October 2013, states that:

*“the Home Office do not have good estimates of the location of type of accommodation people who are illegally resident are resident in”. [sic]*<sup>68</sup>

Given that the Home Office do not possess information on the living situation of irregular migrants to support the aims of their scheme and the lack of published evidence that the checks have worked as intended, it is extremely worrying that the Government has already announced its intention to proceed with a further roll-out, in addition to further sanctions against landlords.

The Government's stated aims of deterring irregular migration and preventing irregular migrants from settling in the UK have not and will not be met by this policy. Instead, as the above evidence indicates, irregular migrants and other vulnerable groups will be pushed into the hands of increasingly rogue landlords who will seek to mitigate the risk to themselves through increased rent

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<sup>67</sup> JCWI's advice line for irregular and undocumented migrants runs on Mondays, Tuesdays and Thursdays from 10am to 1pm. The service is free and any information shared and the advice given is completely confidential. The number to call for advice is 020 7553 7470.

<sup>68</sup> Home Office (2013) "Impact Assessment: tackling illegal immigration in privately rented accommodation", pg. 22



and/or deposits. It is however hard to quantify at this early stage how many people are going underground or are being exploited further by rogue landlords as a result of this policy.

## 8. Conclusion and Recommendations

The Right to Rent checks form part of a package of measures intended to create a “hostile environment” for irregular migrants in the UK. They are contained in the Immigration Act 2014, which stipulates that they are to be implemented on a phased basis. The checks came into force in five local authorities in the West Midlands on 1<sup>st</sup> December 2014. Assurances were given to Parliament during the passage of the Act that the scheme would be thoroughly and transparently evaluated before any decision on a national roll-out takes place, yet these assurances appear to have now been overridden. The Home Office conducted an evaluation of the checks from 1<sup>st</sup> December 2014 to 1<sup>st</sup> May 2015, but at the time of writing it has yet to make public its findings. Despite this, the Government has announced it will go ahead with a national rollout and measures to widen and strengthen the proposals. This report, an independent evaluation of the Right to Rent scheme, has uncovered a number of negative impacts on tenants and landlords as a direct result of the scheme.

- **The policy has resulted in instances of discrimination against tenants, including BME tenants, who do have the Right to Rent in the UK.**

Our evaluation has uncovered instances of discrimination against individuals who have every legal right to live in the UK and rent a home, including British citizens. This is not the aim of the policy, but it is a grave and direct consequence. Worrying evidence has been received through the survey and submissions of cases where individuals with valid leave to remain or a pending Home Office application have been refused tenancies despite having the Right to Rent. This has occurred in areas far from the ‘pilot’ area, demonstrating that landlords have misunderstood their obligations and are implementing the checks despite the provisions not yet being compulsory nationwide. Our evaluation demonstrates that the policy is creating a hostile environment for all migrants and will continue to do so on a greater scale if rolled out nationwide.

- **There is evidence that landlords are prepared to discriminate against those with complicated immigration status and those who cannot provide documentation immediately.**



Landlords have indicated that they feel that they are forced to discriminate against certain groups, rather than face the possibility of a fine. As a direct result of the Right to Rent scheme, landlords are now less likely to rent to people without a British passport, those with foreign accents or people who have a name which doesn't sound British. This is contrary to the 'Code of Practice on Avoiding Discrimination' and is discriminatory. The majority of landlords also indicated that they would not rent to someone who needed time to provide documentation, an attitude which will affect anyone applying for a tenancy who lacks clear documents or does not have documents, such as a passport, to hand.

- **Many landlords have found the checks confusing and have therefore undertaken them incorrectly.**

Landlords cannot and should not be expected understand the vast array of immigration documentation. Landlords who responded to our survey stated that they are confused by the requirements and have misunderstood their obligations under the Immigration Act 2014. Expecting landlords to undertake these tasks has and will continue to result in an overcautious approach causing discrimination against anyone who seems 'foreign' or cannot provide documents quickly.

- **The 'Code of Practice on Avoiding Discrimination' and the 'Code of Practice on Avoiding Discrimination' are difficult for landlords and agents to understand.**

The majority of landlords are private individuals with a small number of properties. The codes of practice are not clear and landlords have not understood them. This is extremely concerning, especially considering that the Code of Practice on Avoiding Discrimination is the only safeguard currently in place to mitigate the very real risk of discrimination.

- **Due to the timing, location and duration of the 'pilot', it cannot capture the impact of the policy if rolled out nationwide.**

The 'pilot' has taken place during the quietest seasonal period for new private residential lettings. Therefore, the impact of the scheme at times when the private rental market is more competitive cannot be foreseen and any data generated for the Home Office's evaluation will be correspondingly low. The impact on certain groups, such as international students who rent privately, will also not be possible to ascertain. Furthermore, any evaluation will not be able to foresee the far more considerable impacts in a high pressure rental market such as London, where the majority of the migrant, BME and foreign born population live and work. It is these groups who will be worst affected by the scheme. Lack of evidence of detrimental effects cannot and should



not be taken as indicative of the fact that the scheme has worked well or that it will not cause discrimination on a larger scale if rolled out in other areas. Our findings indicate that the opposite is the case, and these negative impacts are likely to increase over time.

- **The policy has not and will not achieve its stated aim to deter irregular migration or prevent irregular migrants from settling in the UK.**

Data received through our Freedom of Information request demonstrates that enforcement during the 'pilot' has been extremely low with only two civil penalties issued. Furthermore, JCWI's own data demonstrates that the majority of irregular migrants do not enter into private tenancy agreements, but instead stay with friends or 'sofa-surf'. This questions whether the aims of the Right to Rent scheme justify the gravity of discrimination caused to individuals living legally in the UK.

## Recommendations

- **Based on the evidence received during our independent evaluation, we urge the Government to reconsider the Right to Rent policy, which will increase the bureaucratic and financial burden on tenants and landlords as well as causing discrimination against migrants and BME groups. The government must assess whether this is proportionate considering the low enforcement rate and the gravity of discrimination caused to legal residents.**
- **In light of the commitments given during the last parliament, the Government must ensure that the Home Office evaluation of the 'pilot' is made public. Sufficient time must be given so that Parliament, as well as individuals and organisations, have an opportunity to respond to the findings before a decision on any further stages of the roll-out takes place.**
- **Given the fundamental necessity of housing and the gravity of discrimination in this sphere we urge the Government to undertake a full and proper Equality Impact Assessment and consultation which will allow individuals and organisations nationwide dealing with the private rented sector and vulnerable groups, as well as individual landlords, to provide input on the scheme.**





- **We recommend that the Home Office assesses whether, in evaluating the proven discriminatory impact of the Right to Rent scheme as evidenced in our evaluation, issuing a code of practice on how to avoid discrimination is sufficient in meeting their obligations.**
- **In order to ensure that individuals who suffer from discrimination as a result of the Right to Rent scheme have their rights recognised, the Government should provide additional resources to the Equality & Human Rights Commission in order for them to monitor instances of discrimination and take up complaints against landlords and agents who transgress the Code of Practice.**
- **The Government should provide resources to ensure that Local Authorities are equipped to tackle discrimination and provide advice in the form of leaflets and other resources explaining how people can have their rights protected and encouraging them to do so through legal action if necessary.**
- **If landlords contravene the 'Code of Practice on Avoiding Discrimination', there is currently no civil or criminal penalty under the Code. If any decision for a further roll-out is taken, policies should be put in place to mitigate the adverse impact on certain groups and ensure proper redress where discrimination does take place. Civil litigation under the Equality Act 2010 is costly, difficult and time-consuming and not a proper redress for those who have been discriminated against under the scheme. Given the gravity of discrimination the Government should ensure that penalties for discrimination equal those of non-compliance with the Right to Rent checks.**
- **Any further roll-out must include additional phased geographical roll-outs in different locations in order to address area-specific problems which will not have been captured during this 'pilot'. This should include a London borough to test the policy in a high-pressure rental market. Each phase must be fully, publicly and transparently evaluated.**
- **Any further rollout must include a 12 month evaluation period in order to monitor problems at times of high demand for properties, as well as seasonal variation in the rental market and among different groups, such as students.**





- **Following the announcement on 3 August 2015 that further provisions on the Right to Rent policy are set to be included in the forthcoming Immigration Bill (including new measures to evict tenants without the Right to Rent, as well as criminal sanctions for landlords who fail to comply with the provisions – see page 30-31) we urge the Government to undertake a thorough Equality Impact Assessment; this should include an evaluation of the discriminatory impact of the scheme so far, as well as a thorough assessment of the discrimination which is likely to occur as a result of the new measures. For the purpose of this assessment, the Government should consult with and draw on the experience of relevant organisations. The assessment should be made public in order to allow its findings to be discussed.**
- **The Government should halt any plans to increase the penalties and scope of the Right to Rent policy until the 'pilot' has been fully, transparently and publicly evaluated and issues of discrimination against certain groups of tenants, as well as other adverse impacts on landlords and tenants, have been properly addressed.**



## Appendix A

### FOI request reference 35463

#### Information requested:

1. From 1 December 2014 to present,
  - a. How many enquiries have come through to the Home Office 'Right to Rent' online checking tool?
  - b. Please provide a breakdown of the numbers of enquiries relating to each of the pilot areas of i) Birmingham, ii) Dudley, iii) Sandwell, iv) Wolverhampton and v) Walsall.
  - c. How many of the enquiries in question 1a related to individuals with an ongoing case with the Home Office, where the landlord/agent was informed that the applicant does have the 'right to rent'?
  - d. How many of the enquiries in question 1a related to individuals with an ongoing case with the Home Office, where the landlord/agent was informed that the applicant does not have the 'right to rent'?
  - e. How many enquiries related to individuals with valid leave to remain in the UK?
  - f. How many enquiries related to EEA nationals (including British nationals)?
  - g. How many enquiries related to non-EEA family members of EEA nationals?
  - h. How many enquiries related to refused asylum seekers?
  - i. Please provide a breakdown of the nationalities of all applicants who were referred to the 'Right to Rent Checking Tool'?
  - j. How many enquiries in total resulted in a landlord/agent being informed that the applicant does not have the 'right to rent'?
  - k. How many enquiries in total resulted in a landlord/agent being informed that the applicant does have the 'right to rent'?
  - l. How many enquiries received an answer specifying whether or not the applicant has the 'right to rent' within 48 hours?
  - m. How many enquiries did not receive an answer specifying whether or not the applicant has the 'right to rent' within 48 hours?
2. Irregular migrants
  - a. How many irregular migrants came to the attention of the Home Office as a result of information provided through the 'Right to Rent' checking tool?
  - b. How many times was enforcement action instigated against an irregular migrant as a result of information provided through the 'Right to Rent' online checking tool?
  - c. How many irregular migrants have left the UK since 1 December 2015 as a result of not being able to rent a property in the pilot areas?
3. Civil Penalty Notices
  - a. How many landlords have been issued with a civil penalty as a result of renting a property to someone who does not have the 'Right to Rent'?
  - b. How many estate agents have been issued with a civil penalty as a result of allowing someone who does not have the 'Right to Rent' to rent a property?
  - c. Since 1 December 2015, how many times, following intelligence gathered through enforcement action, did the Home Office subsequently contact landlords to inform them that they have rented a property unlawfully to someone without the 'right to rent'?



d. In how many of the instances outlined in 3c above was the landlord subsequently issued with a civil penalty notice?

**Response:**

1.

a. Between 1 December 2014 and 30 April 2015, 90 Right to Rent checks were requested through the 'Right to Rent' online checking tool.

b. Cost limit exceeded under Section 12 of the Freedom of Information Act 2000.

c. 60 checks requested related to applicants with an outstanding application.

d. In no cases where applicants had an outstanding application with the Home Office were landlords/agents advised that the applicants did not have the right to rent.

e. 17 checks requested related to applicants with valid leave.

f. 1 request for a check related to an EEA national.

g. 12 requests for a check related to non-EEA family members of EEA nationals.

h. No requests for a check related to applicants who had been refused asylum.

i. The breakdown of nationalities of applicants on behalf of whom a check was requested is as follows:

India	14
Pakistan, Nigeria	13 each
Ghana, Jamaica	5 each
Iran	4
Kuwait, China	3 each
Hong Kong, Sri Lanka, USA, Somalia, South Africa	2 each
Thailand, Cameroon, Zimbabwe, Democratic Republic of Congo, Afghanistan, Central African Republic, Russia, Philippines, Nepal, Vietnam, Angola, Indonesia, Malaysia, Brazil, Barbados, Botswana, South Korea, Gambia, British Indian Ocean Territory and Portugal.	1 each

j. 13 requests for a check resulted in the landlord/agent being informed that the applicant did not have the right to rent.

k. 77 checks requested resulted in the landlord/agent being informed that the applicant had the right to rent.

l. 90 requests for a check received an answer specifying whether or not the applicant had the right to rent within two working days.

m. No requests for a check did not receive an answer specifying whether or not the applicant had the right to rent within two working days.

2. Up to 30 April 2015,

a. 17 irregular migrants came to the attention of the Home Office as a result of information provided through the Right to Rent checking tool.



b. Enforcement action was instigated against irregular migrants 14 times as a result of information provided by the Right to Rent checking tool.

c. Information not held.

3.

a. 2 landlords have been issued with a civil penalty as a result of renting a property to someone who does not have the Right to Rent.

b. No lettings agents have been issued with a civil penalty as a result of renting a property to someone who does not have the 'Right to Rent'?

c. Since 1<sup>st</sup> December 2014, 14 Civil Penalty Referral Notices were served on landlords to inform them that they were potentially liable to a civil penalty for renting a property to an irregular migrant.

d. 2 landlords have been issued with a civil penalty as a result of renting a property to someone who does not have the Right to Rent.

### **FOI Request reference 35199**

#### **Information requested:**

1. Since 1 December 2014, how many irregular migrants in total have been identified by the Home Office in the pilot areas of Birmingham, Dudley, Sandwell, Wolverhampton and Walsall?

2. During the same period, in how many cases where an irregular migrant has been identified by the Home Office have the individuals' living arrangements been noted? Please provide a numbers for:

a. the United Kingdom and

b. the pilot areas.

3. During the same period, in how many of the cases where the living arrangements of irregular migrants identified by the Home Office have been noted has the individual in question found to be renting privately? Please provide numbers for:

a. the United Kingdom and

b. the pilot areas

4. During the same period, in how many of the cases in question 3b has the landlord subsequently been issued with a civil penalty as a result of renting the property to someone who does not have the 'Right to Rent'?

#### **Response:**

1. Cost limit exceeded under Section 12 of the Freedom of Information Act 2000.

2. Cost limit exceeded under Section 12 of the Freedom of Information Act 2000.

3. Cost limit exceeded under Section 12 of the Freedom of Information Act 2000.

4. Since 1 December 2014, 2 landlords have been issued with a civil penalty.



## Appendix B

### Opposition to the Right to Rent provisions during the passage of the Immigration Act 2014

House of Commons					
Parliamentarian	Party	Constituency	Opposition expressed	Debate	Hansard reference
Yvette Cooper	Labour	Normanton, Pontefract and Castleford	The 'Right to Rent' checks will not fulfill their stated aims	2 <sup>nd</sup> Reading	Volume 569, Column 172
			Landlords will be unable to understand and identify complicated immigration documents and will therefore be likely to make mistakes	2 <sup>nd</sup> Reading	Volume 269, Column 172
Keith Vaz	Labour		Landlords will be unable to understand and identify complicated immigration documents and will therefore be likely to make mistakes	2 <sup>nd</sup> Reading	Volume 269, Column 180
			People will find it difficult to prove their 'right to rent'	2 <sup>nd</sup> Reading	Volume 269, Column 180
Heidi Alexander	Labour	Lewisham East	The 'Right to Rent' checks will not fulfill their stated aims	2 <sup>nd</sup> Reading	Volume 569, Column 194
			Landlords should not be expected to undertake a bureaucratic burden which asks them to perform duties of immigration officials	2 <sup>nd</sup> Reading	Volume 569, Column 193
			The checks is likely to foster discrimination in the rental market	2 <sup>nd</sup> Reading	Volume 569, Column 194
Sarah Teather	Liberal Democrat	Brent Central	The Home Office will be unable to offer advice to landlords and agents within a suitable timeframe	2 <sup>nd</sup> Reading	Volume 569, Column 187
			People will find it difficult to prove their 'right to rent'		
			Discrimination is likely to be made worse by a 'heated' rental market		
Fiona Mactaggart	Labour	Slough	The Home Office will be unable to offer advice to landlords and agents within a suitable timeframe	2 <sup>nd</sup> Reading	Volume 569, Column 189



			People will find it difficult to prove their 'right to rent'		Volume 569, Column 190
			Discrimination is likely to be made worse by a 'heated' rental market		
			Landlords should not be expected to undertake a bureaucratic burden which asks them to perform duties of immigration officials		
			The checks is likely to foster discrimination in the rental market		
Barry Gardiner	Labour	Brent North	The Home Office will be unable to offer advice to landlords and agents within a suitable timeframe	2 <sup>nd</sup> Reading	Volume 569, Column 201
			Landlords should not be expected to undertake a bureaucratic burden which asks them to perform duties of immigration officials		
Pete Wishart	SNP	Perth and North Perthshire	Landlords should not be expected to undertake a bureaucratic burden which asks them to perform duties of immigration officials	2 <sup>nd</sup> Reading	Volume 569. Column 204
Simon Hughes	Liberal Democrat	Bermondsey and Old Southwark	Landlords will be unable to understand and identify complicated immigration documents	2 <sup>nd</sup> Reading	Volume 569, Column 219
			Landlords are likely to make mistakes when checking the documents of potential tenants		Volume 569, Column 219
Chris Bryant	Labour	Rhondda	Landlords will be unable to understand and identify complicated immigration documents	2 <sup>nd</sup> Reading	Volume 569, Column 160/ 161
			Landlords are likely to make mistakes when checking the documents of potential tenants		Volume 569, Column 160/ 161
Paul Blomfield	Labour	Sheffield Central	Landlords will be unable to understand and identify complicated immigration documents	2 <sup>nd</sup> Reading	Volume 569, Column 233
			The 'rent checks' will increase the bureaucratic burden on landlords	2 <sup>nd</sup> Reading	Volume 569, Column 233



Dianne Abbott	Labour	Hackney North and Stoke Newington	The checks is likely to foster discrimination in the rental market	2 <sup>nd</sup> Reading	Volume 569, Column 222
			Landlords will be unable to understand and identify complicated immigration documents	3 <sup>RD</sup> Reading	Volume 574 Column 1124
David Lammy	Labour	Tottenham	The 'rent checks' will foster discriminatory practices in the rental market.	2 <sup>nd</sup> Reading	Volume 569, Column 216
John McDonnell	Labour	Hayes and Harlington	The 'rent checks' will foster discriminatory practices in the rental market.	2 <sup>nd</sup> Reading	Volume 569, Column 228
			This is likely to worsen unsafe conditions, overcrowding and poor standards of housing		
Meg Hillier	Labour	Hackney South and Shoreditch	The 'Right to Rent' checks will not fulfill their stated aims	Committee Stage- 7 <sup>th</sup> Sitting	Volume 570 Column 232
			The 'rent checks' will foster discriminatory practices in the rental market.	Committee Stage- 7 <sup>th</sup> Sitting	Volume 570 Column 239
			The rent checks would (in combination with other immigration measures) discourage prospective international students	Committee Stage- 8 <sup>th</sup> Sitting	Volume 570 Column 256
			The Home Office will be unable to offer advice to landlords and agents within a suitable timeframe	Committee Stage- 8 <sup>th</sup> Sitting	Volume 570 Column 269
Julian Huppert	Liberal Democrat	Cambridge	The Home Office will be unable to offer advice to landlords and agents within a suitable timeframe	Committee Stage- 7 <sup>th</sup> Sitting	Volume 570 Column 236
			Landlords should not be expected to undertake a bureaucratic burden which asks them to perform duties of immigration officials	Committee Stage- 7 <sup>th</sup> Sitting	Volume 570 Column 236
			The 'rent checks' will foster discriminatory practices in the rental market.	Committee Stage- 7 <sup>th</sup> Sitting	Volume 570 Column 236
			Landlords will be unable to understand and identify complicated immigration documents	Committee Stage- 7 <sup>th</sup> Sitting	Volume 570 Column 236
			The rent checks would (in combination with other immigration measures)	Committee Stage- 8 <sup>th</sup> Sitting	Volume 570 Column 258





			discourage prospective international students		
David Hanson	Labour	Delyn	Landlords will be unable to understand and identify complicated immigration documents	Committee Stage- 7 <sup>th</sup> Sitting	Volume 570 Column 231
			This is likely to worsen unsafe conditions, overcrowding and poor standards of housing		
			Landlords should not be expected to undertake a bureaucratic burden which asks them to perform duties of immigration officials	Committee Stage- 7th Sitting	Volume 570 Column 235
			The Home Office will be unable to offer advice to landlords and agents within a suitable timeframe	Committee Stage- 8th Sitting	Volume 570 Column 264
Helen Jones	Labour	Warrington North	Landlords should not be expected to undertake a bureaucratic burden which asks them to perform duties of immigration officials	Committee Stage- 7th Sitting	Volume 570 Column 227
Pat McFadden	Labour	Wolverhampton South East	Landlords will be unable to understand and identify complicated immigration documents	Committee Stage- 8th Sitting	Volume 570 Column 262
			The Home Office will be unable to offer advice to landlords and agents within a suitable timeframe		
Jeremy Corbyn	Labour	Islington North	Landlords should not be expected to undertake a bureaucratic burden which asks them to perform duties of immigration officials	3 <sup>rd</sup> Reading	Volume 574 Column 1129
House of Lords					
Parliamentarian	Party		Opposition Expressed	Debate	Hansard Reference
Lord Best	Crossbench		Landlords will be unable to understand and identify complicated immigration documents	2 <sup>nd</sup> Reading	Volume 752 Column 426-427
			The ‘rent checks’ encourage discrimination		
			People will find it difficult to prove their ‘right to rent’		
			Landlords should not be expected to undertake a		





		bureaucratic burden which asks them to perform duties of immigration officials		
		The 'rent checks' will increase the burden on local services		
Lord Clement Jones	Liberal Democrat	The 'rent checks' will foster discriminatory practices in the rental market.	2nd Reading	Volume 752 Column 441-442
		The rent checks would (in combination with other immigration measures) discourage prospective international students		
Lord Bilimoria	Crossbench	Landlords should not be expected to undertake a bureaucratic burden which asks them to perform duties of immigration officials	2nd Reading	Volume 752 Column 438
Baroness Prashar	Crossbench	People will find it difficult to prove their 'right to rent'	2nd Reading	Volume 752 Column 505
		The 'rent checks' will foster discriminatory practices in the rental market.		
		Landlords will be unable to understand and identify complicated immigration documents		Volume 752 Column 506
Lord Dubs	Labour	Tenants who are rejected due to their immigration status (rightly or wrongly) would be forced underground into the hands of 'rogue landlords'	2nd Reading	Volume 752 Column 509
Lord Stevenson	Labour	The rent checks would (in combination with other immigration measures) discourage prospective international students	2nd Reading	Volume 753 Column 501
Lord Watson of Invergowrie	Labour	Landlords should not be expected to undertake a bureaucratic burden which asks them to perform duties of immigration officials	2nd Reading	Volume 752 Column 517
Lord Cormack	Conservatives	Landlords should not be expected to undertake a bureaucratic burden which asks them to perform duties of immigration officials	Committee 3rd Sitting	Volume 752 Column 500



Baroness Smith of Basildon	Labour	Landlords should not be expected to undertake a bureaucratic burden which asks them to perform duties of immigration officials	Committee 3 <sup>rd</sup> Sitting	Volume 752 Column 1633
		The 'Right to Rent' checks will not fulfil their stated aims		Volume 752 Column 1632
		Landlords will find it difficult to carry out the checks and therefore are likely to make mistakes		Volume 752 Column 1634
		The checks is likely to foster discrimination in the rental market		Volume 752 Column 1635
Lord Hope Craighead	Crossbench	The 'rent checks' will foster discriminatory practices in the rental market.	Committee 3 <sup>rd</sup> Sitting	Volume 752 Column 1639
Baroness Neville-Rolfe	Conservative	Landlords should not be expected to undertake a bureaucratic burden which asks them to perform duties of immigration officials	Committee 3 <sup>rd</sup> Sitting	Volume 752 Column 1640
Baroness Lister of Burtersett	Labour	The 'rent checks' will foster discriminatory practices in the rental market.	Committee 3 <sup>rd</sup> Sitting	Volume 752 Column 1643
Baroness Meacher	Crossbench	Landlords should not be expected to undertake a bureaucratic burden which asks them to perform duties of immigration officials	Committee 3 <sup>rd</sup> Sitting	Volume 752 Column 1644
		The 'rent checks' will foster discriminatory practices in the rental market.		Volume 752 Column 1645
		Tenants who are rejected due to their immigration status (rightly or wrongly) would be forced underground into the hands of 'rogue landlords'		Volume 752 Column 1645
Baroness Warwick of Undercliffe	Labour	The rent checks would (in combination with other immigration measures) discourage prospective international students	Committee 3 <sup>rd</sup> Sitting	Volume 752 Column 1649
Lord Watson of Invergowrie	Labour	Landlords should not be expected to undertake a bureaucratic burden which asks them to perform duties of immigration officials	Committee 3 <sup>rd</sup> Sitting	Volume 752 Column 1647



		<p>People will find it difficult to prove their 'right to rent'</p> <p>The 'rent checks' will foster discriminatory practices in the rental market.</p>		
Lord Hylton	Crossbench	People will find it difficult to prove their 'right to rent'	Committee 3rd Sitting	Volume 752 Column 1648
Lord Rosser	Labour	<p>Landlords will be unable to understand and identify complicated immigration documents</p> <p>Tenants who are rejected due to their immigration status (rightly or wrongly) would be forced underground into the hands of 'rogue landlords'</p>	Report 2 <sup>nd</sup> Sitting	1083
The Earl of Caithness	Conservative	Landlords should not be expected to undertake a bureaucratic burden which asks them to perform duties of immigration officials	Report 2 <sup>nd</sup> Sitting	1088