

The residential tenancies provisions in the Immigration Bill 2015/16 and the review of the Right to Rent scheme [Briefing: October 2015]

1: Introduction and overview

1.1 Overview

The Immigration Act 2014 included provisions restricting the right to rent for migrants without the right to reside in the UK.¹ In response to profound concerns about the Right to Rent scheme, the Government agreed that the scheme would be piloted and fully evaluated before any national roll-out. This briefing critiques the Home Office's evaluation of the pilot scheme, part 2 of the Immigration Bill 2015/16 (Residential tenancies) and associated provisions in the Immigration Act 2014 (part 3, chapter 1).²

- Part 1.2 summarises race equality and associated concerns expressed about the Government's Right to Rent scheme during the passage of the 2014 Act. Part 1.3 raises concerns about the Home Office's ongoing failure to properly address these concerns.
- Part 2.1 questions the Government's decision to include new criminal penalties, search, seizure and other powers and sanctions in the Immigration Bill 2015/16. Part 2.2 identifies that these residential tenancies provisions (clauses 12-14 of the Immigration Bill 2015/16) are not supported by the evidence presented in the Home Office's evaluation of the Right to Rent pilot and are contra-indicted by available evidence (see appendix 2)..
- Part 3.1 identifies pivotal failings and flaws in the Home Office's evaluation of the Right to Rent scheme pilot. It also questions the Home Office's failure to consider the concerns raised in JCWI's recent independent evaluation of the Right to Rent pilot. Part 3.2 overviews key concerns about the Home Office's failure to pay due regard to the requirements of the Public Sector Equality Duty (PSED). Supporting information is provided in appendices 1 & 2.³

1.2 Race equality and associated concerns raised about the Right to Rent Scheme

In 2013 and 2014, during the passage of the Immigration Act 2014, the Race Equality Foundation, CORE, the race equality coalition and a wide range of migrants' rights organisations, Crisis and other housing charities as well as civil society and civil liberties organisations raised concerns about the proposed immigration restrictions on renting in the private rented sector. Central concerns included that the new fines would deter landlords from renting to people who **were not** the intended target of the restrictions, increase racial profiling and racial discrimination in the private rented sector and increase homelessness

¹ Immigration Act 2014, Part 3, Chapter 1, Residential Tenancies, sections 20 – 37. The 2014 Act introduced 'a disqualification from renting or occupying property in the private rented sector on grounds of immigration status. A person who is not a British citizen or EEA or Swiss national, and has no right to be present in the UK, is disqualified from occupying premises under a residential tenancy agreement. The disqualification is given effect by a prohibition on landlords renting property to disqualified people, enforced by a civil penalty of up to £3,000 for a contravention of the prohibition.' Source: Joint Committee on Human Rights, December 2013, Eighth Report - Legislative Scrutiny: Immigration Bill paras 66 – 74.

² The Immigration Bill 2015/16 was published on 17 September 2015.

³ "No passport Equals No Home" – An independent evaluation of the 'Rights to Rent scheme: JCWI, 3/9/15

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within BME communities.⁴ In short, rather than creating a hostile environment for illegal migrants, these provisions would encourage a hostile environment for migrants and BME communities generally. At the end of 2013, the Joint Committee on Human Rights (JCHR) concurred and said that: *'Provisions in the Immigration Bill barring some people from renting or occupying property in the private rented sector on the basis of their immigration status could give rise to homelessness and to discrimination.'*⁵ During the House of Lords report stage debate on the Bill on 3/4/14, peers expressed significant disquiet about:

- how workable the Right to Rent scheme would be;
- the potential for race discrimination and the adverse impact on vulnerable people;
- the proposed enforcement provisions and associated civil fines;
- the need for a proper pilot or pilot schemes before any national roll-out.

1.3. The failure of the Home Office to address key concerns

In response to the extensive concerns raised about the Right to Rent scheme, during and following the passage of the Immigration Act 2014, assurances were given to the House of Lords and others that the Government would properly evaluate the Right to Rent scheme pilot in the West Midlands before any national rollout. The Government said that it would *"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."*⁶ The Race Equality Foundation is profoundly concerned about the deficiencies in the Home Office's evaluation of the Right to Rent scheme pilot, the lack of an evidence base for the new clauses with respect to residential tenancies in the Immigration Bill 2015/16 and the associated adverse human rights and equalities impacts of the proposals. We believe that clauses 12–14 of the 2015/16 Bill are disproportionate, discriminatory and should be removed from the Bill. We note that the House of Commons' debates on the Immigration Bill 2015/16, on 13 October and since, confirm that serious flaws in the Right to Rent scheme have not been resolved. We urge the Home Office, and the Government, to properly consider the findings and recommendations in JCWI's independent review of the Right to Rent pilot (see appendix 2).

2. Concerns about the provisions on residential tenancies

2.1 Residential tenancies and associated provisions in the Immigration Bill 2015/16

The Immigration Bill 2015/16 published on 17 September 2015 proposes:

- the introduction of new criminal offences and fines for landlords/others for renting to migrants disqualified from renting due to their immigration status (clause 12);⁷
- eviction provisions enforceable as if there had been a High Court Order (clause 13);⁸

⁴ *'A landlord or landlady would have an incentive not to accept a person who otherwise appears to be a model tenant if there is any risk of having to pay the fine. Any stereotype or prejudice might weigh with a person with multiple offers on the property, not because they feared having a particular individual as a tenant, but because they feared a fine, making the assumption that that person was more likely to be a person under immigration control whose documents would be complicated to check.'* ILPA March 2014, Lords briefing access to services

⁵ Joint Committee on Human Rights' Eighth Report - Legislative Scrutiny: Immigration Bill

⁶ Response from the Home Office on Q&A submitted by interested parties at meeting on 3 November 2014

⁷ Clause 12 creates four new offences related to letting private residential premises to adults disqualified from renting as a result of their immigration status.

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- new possession order provisions (clause 14);⁹
- new search and seizure provisions (clauses 20 and 21).¹⁰

The Equality and Human Rights Commission (EHRC) briefing for the Immigration Bill's second reading in the Commons set out serious concerns about clauses 13 and 14 and the potential for these provisions to undermine individuals' human rights; REF shares these concerns.¹¹ REF believes that these provisions will disproportionately impact on BME tenants and increase homelessness amongst those most dependent on private rented housing, the poor, the vulnerable and those who do not know their rights. We note, and share, the EHRC's assessment that clause 14 will place '*lawful tenants and occupiers of the same property at risk of eviction because the court will order possession of the entire property rather than the eviction of the unlawful tenant or occupant.*'¹² We note that the Housing Law Practitioners Association has identified a raft of serious flaws in the legislative shape, form and content of clauses 13 and 14 in its [briefing](#) on the Immigration Bill 2015/16.

2.2 No evidence base for the residential tenancies clauses and contra-indications

As the senior member of the previous Coalition Government, the Conservatives promised that the pilot of the Right to Rent Scheme would be fully reviewed **before** any national roll-out. On 13 October 2015, the Home Secretary confirmed that '*we will ensure that evaluation results are published before the debate in Committee, so that people will be able to see what is happening.*'¹³ However, in May 2015, the newly elected Government announced that there would be new housing provisions in the planned Immigration Bill 2015/16. This announcement was made before the evaluation of the Right to Rent scheme had been concluded and six months before the Home Office actually published the evaluation report on 20 October 2015.¹⁴ Having reviewed the Home Office's evaluation of the pilot, we note that the report does not provide evidence that supports the introduction of clauses 12, 13, 14 or 20. Moreover, there is no evidence that the Home Office has considered available evidence of race discrimination or other serious problems with the Right to Rent Scheme. Nor has the Home Office addressed the findings of, or the recommendations made by, JCWI even though: the Home Office was made aware of this research; and JCWI's research was published on 3rd September 2015 more than six weeks before the publication, of the Home Office's own evaluation of the Right to Rent scheme (see appendix 2). An objective analysis of the Home Office report identifies, but does not propose solutions to, a significant number of problems anticipated by peers, the JCHR and civil society organisations. Data provided in the Home Office's evaluation and JCWI's independent evaluation of the Right to Rent scheme pilot, identifies that the national roll-

⁸ Clause 13 provides new powers for landlords to evict illegal migrants from private rented accommodation.

⁹ Clause 14 provides for a new mandatory ground for a landlord to obtain possession of a property following receipt of notification that an occupant is a disqualified person from the Secretary of State.

¹⁰ Clause 20 gives immigration officers, who are already lawfully on premises, a power to search for documents which might assist with imposing a civil penalty on a person including relating to renting employing an illegal migrant or renting premises to them

¹¹ [EHRC briefing](#) on the Immigration Bill, House of Commons, Second Reading, 13 October 2015

¹² EHRC briefing page 3, <http://www.equalityhumanrights.com/legal-and-policy/our-legal-work/parliamentary-briefings/immigration-bill-house-commons-second-reading-13-october-2015>

¹³ Column 201, House of Commons [debate](#) (13/10/15) on the Immigration Bill 2015/16

¹⁴ On 17 September 2015 new provisions on residential tenancies were published, as clauses 12 to 15 of the Immigration Bill 2015/16, five weeks before the Home Office published its evaluation of the Right to Rent pilot. Page 3 of 8

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out of the Right to Rent scheme is contra-indicated as are the new provisions and sanctions (clauses 12, 13, 14 and 20) in the Immigration Bill 2015/16 (see part 3 and appendix 2).

3. Concerns about the Home Office's Evaluation of the Right to Rent Scheme

3.1 Central concerns about the Home Office's evaluation report

The terms of reference for the Home Office's review, the research questions, research methodology, research methods, the evidence base and the review report itself are deficient (see appendix 1). Furthermore, the Home Office evaluation report fails to pay due regard to the requirements of the Public Sector Equality Duty (PSED) (Equality Act 2010, section 149). The analysis of the pilot fails to properly address the concerns raised by peers, the Joint Committee on Human Rights and civil society organisations.¹⁵ The report fails as an evaluation report. Evaluation is not just about documenting the data gathered and the research methods deployed. Crucially an effective evaluation report provides a coherent and objective analysis of the research undertaken data gathered that identifies: any key limitations to the research; whether a policy initiative is working or will work as intended; key themes and issues; and what changes, if any, are supported by the evidence. Researchers are expected to present the research findings clearly, without bias and objectively (see appendix 1). In September 2015, JCWI published an independent evaluation of the 'Right to Rent' scheme ("No Passport Equals No Home") (see appendix 2). It is a matter of regret that the Home Office appears to have paid no regard to this important independent evaluation which identifies central flaws in the design of the Right to Rent scheme and provides evidence of race discrimination and racial profiling.

3.3 A failure to show due regard to the PSED and tackling race discrimination

A number of important failures suggest that in practice the Home Office has paid scant regard to addressing the requirements of the Public Sector Equality Duty¹⁶ or the associated equality, race equality and race discrimination issues posed by the Right to Rent Scheme provisions.¹⁷ Moreover, the Home Office evaluation report fails to consider whether action should be taken to ensure that the Scheme is introduced in a manner that advances race equality and good race relations and does not encourage race discrimination or other forms of discrimination. We are also disturbed by the dismissive approach taken to concerns raised by respondents about the pilot scheme and by the Home Office's failure to make recommendations or identify any actions to address these concerns; despite evidence that the Codes of Practice are deficient, confusing, inaccessible and not fit for purpose.

¹⁵ Concerns raised about the potential for the Right to Rent scheme to encourage race discrimination and racial profiling, undermine race equality and the Public Sector Equality Duty and increase homelessness amongst BME communities lawfully resident in the UK.

¹⁶ Section 149 of the Equality Act 2010 states that (1) A public authority must, in the exercise of its functions, have due regard to the need to— (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act; (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

¹⁷ The provisions set out in the Immigration Act 2014 (part 3) and the Immigration Bill 2015/16 (clauses 12-14).

Appendix 1: Home Office's review of the Right to Rent Pilot

1. Deficiencies in the terms of reference and the structure of the report

The review of the Right to Rent scheme pilot states that: *'The evaluation reports primarily on the impact of the scheme (on illegal migrants' access to housing, actions against landlords who rent to illegal migrants, the impact on landlords and agents, impacts on the rental market and any unintended consequences) and includes content on the process of implementation.'* The terms of reference fail to adequately address central concerns and questions raised by the House of Lords, the Joint Committee on Human Rights (JCHR) and race and other equality campaigners about: the potential for the scheme to encourage racial profiling and race discrimination; the scheme's potential to increase homelessness in BME communities; or the workability of the scheme and the adequacy of the proposed codes of practice to support the scheme. Although described as a 'full evaluation of phase one', the structure of the report is flawed, it: fails to clearly answer the research questions posed; and fails to provide clear findings or recommendations. It also fails to identify key research limitations for example those associated with the research methods adopted, the timing of the research, other factors specific matters (e.g. equality considerations or human rights issues).

2. The failure to pay due regard to the Public Sector Equality Duty (PSED)

No reference is made to the PSED, section 149 (1) of the Equality Act 2010, which requires the Home Office, inter-alia, to give due regard to three equality aims.¹⁸ Although reference is made to assessing whether the Right to Rent scheme has led to discrimination (Research questions 3 a – 3d), these research questions are not clearly addressed within the Home Office's report. Furthermore, the report makes no reference to whether the Rent to Rent Scheme could be introduced in a manner that properly addresses the PSED's requirements. The report fails to:

- a. acknowledge or make direct reference to the requirements of the PSED in the Right to Rent Scheme's terms of reference, the research questions or the evaluation report;
- b. acknowledge the relevance to the scheme of the PSED's equality aims including the need to give due regard to advancing equality of opportunity or fostering good relations;
- c. properly address concerns raised by research respondents about race discrimination and BME tenants and discrimination and adverse impacts on vulnerable people;¹⁹
- d. acknowledge that there is evidence of race discrimination in the private rented sector (e.g. the 2013 report by [the BBC](#), [evidence presented by the Runnymede Trust](#)) and consequently fails to examine whether the Rent to Rent provisions might feed into or encourage such discrimination in the private rented sector;
- e. acknowledge or consider the [research](#) that suggests that percentage of young people and adults who are homeless in amongst BME communities is higher than in the

¹⁸ (1) A public authority must, in the exercise of its functions, have due regard to the need to—
(a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act; (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it. Equality Act 2010, section 149

¹⁹ For example people who have been trafficked, faced domestic violence and/or have learning disabilities.

- population as a whole, making some BME groups more reliant on the private rented sector and more likely to have to deal with the Right to Rent provisions;
- f. fails to seriously consider or down plays or concerns raised by respondents about race discrimination and the potential for race discrimination and adverse impacts on vulnerable groups;²⁰
 - g. fails to identify further lines of investigation or clear recommendations.

3. Deficiencies in the research questions, methodology, methods and external data

- a. The pilot was conducted during the first 6 months of the scheme's roll-out (December 2014 to 31 May 2015). Whilst many of the research questions were relevant, the time lags associated with rolling out a new scheme and seeking to assess impact meant that key research questions were not be answered meaningfully in the evaluation report.
- b. The poorly structured report does not allow readers to easily assess the extent to which the research team has or has not been able to address the research questions posed.
- c. No reference is made in annex C – External data exploration – or in the body of the main report to relevant data and/or research on race discrimination in the private rented sector, any disproportionate dependence by some BME communities on the private rented sector.
- d. Annex B purports to describe the research methodology but instead only describes the research methods adopted not the research methodology. A proper research methodology would: a) explain why the various research methods had been selected; and b) explain why the research methods selected were the most appropriate to address the research questions. In short, we know the research methods that were deployed but why these were considered appropriate is unclear.
- e. The approach taken to the mystery shopper 'method' is of particular concern. Whilst mystery shopper exercises can be exceptionally helpful in identifying discrimination, the design of this particular mystery shopper exercise was confusing as was the analysis of the findings. We are not convinced that the headline issues reported in the main report properly reflect key matters reported in the Mystery Shopper report. Nor are we satisfied that the Mystery Shopper research method adopted provided an adequate evidence base for answering key research questions and in particular the questions about discrimination and the impact on vulnerable groups.
- f. The Home Office evaluation and the findings from the JCWI independent evaluation both provide evidence that the scheme is not working as intended. However the deficiencies in the Home Office' report suggests that further properly structured and funded Home Office and independent research are required before the Rent to Rent Scheme is rolled out nationally or any additional legislative provisions, including those proposed in the Immigration Bill 2015/16, are introduced.
- g. The Home Office Team were aware of the independent evaluation being conducted by JCWI. Although JCWI's report was published on 3rd September 2015 and the Home Office's report was not published until 20th October 2015, no reference is made in the Home Office report to the independent evaluation by JCWI.

²⁰ 'In total, 52 per cent (59 of 114) of respondents to the landlords survey said they had concerns about the scheme. These concerns included: the additional work for them (45 out of 59); checks delaying tenancy start dates (30 out of 59); not understanding the immigration system (29 out of 59); vulnerable groups being disadvantaged because they did not have the required information (25 out of 59); properties being left empty (22 out of 59).' Home Office evaluation report page 30.

Appendix 2: JCWI's independent evaluation of the Right to Rent Pilot

1. Research aims

Due to concerns raised during the passage of the Immigration Bill and the remit of the Home Office evaluation, JCWI, under the umbrella of the Movement Against Xenophobia (MAX), brought together a group of representatives from various organisations who had shared concerns about the potential impacts of the Right to Rent scheme. JCWI conducted an independent evaluation of the Right to Rent 'pilot'. The findings are drawn from research undertaken by JCWI between December 2014 and July 2015. The research aims 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.

2. Key findings

- a. The policy has resulted in instances of discrimination against tenants, including BME tenants, who do have the Right to Rent in the UK.
- b. There is evidence that landlords are prepared to discriminate against those with complicated immigration status and those who cannot provide documentation immediately.
- c. Many landlords have found the checks confusing and have therefore undertaken them incorrectly.
- d. The 'Code of Practice on Avoiding Discrimination' and the 'Code of Practice on Avoiding Discrimination' are difficult for landlords and agents to understand.
- e. Due to the timing, location and duration of the 'pilot', it cannot capture the impact of the policy if rolled out nationwide.
- f. The policy has not and will not achieve its stated aim to deter irregular migration or prevent irregular migrants from settling in the UK.

3. JCWI's recommendations

- a. 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.
- b. 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.
- c. 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.

- d. 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.
- e. 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.
- f. 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.
- g. 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.
- h. 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.
- i. 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.
- j. 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.
- k. 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.