



CIH Submission on Expanding the Right to Rent scheme beyond the West Midlands

July 2015

Submitted by email to the Home Office

This submission is one of a series of consultation responses published by CIH. Further consultation responses to key housing developments can be downloaded from [our website](#)

‘Shaping Housing and Community Agendas’



Introduction

The Chartered Institute of Housing (CIH) is the independent voice for housing and the home of professional standards. Our goal is simple – to provide housing professionals and their organisations with the advice, support and knowledge they need to be brilliant. CIH is a registered charity and not-for-profit organisation. This means that the money we make is put back into the organisation and funds the activities we carry out to support the housing sector. We have a diverse membership of people who work in both the public and private sectors, in 20 countries on five continents across the world.

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Background

The Prime Minister has announced the government's intention to expand the Right to Rent scheme, currently being operated in five local authorities in the West Midlands. The scheme requires landlords to carry out checks on the immigration status of all adult applicants for lettings in the private rented sector; the requirement also applies to some social sector lettings and to all tenants who take in lodgers. The West Midlands phase of the scheme began last December and is being evaluated by the Home Office. This is a submission by CIH to the evaluation process. CIH has been involved in making representations on and monitoring the scheme since it was first proposed in 2013, and has received feedback from members and others about the scheme's initial phase.

Purpose of the initial phase

CIH acknowledges the intentions of the scheme and the urgency with which the government wants to pursue them, and indeed we have given advice to our members about how to comply with it and help ensure that it works. But it is vital to bear in mind that – at national level – the scheme has to work for literally tens of thousands of lettings made each week, many by landlords who own only one or two properties and who are not members of national bodies like ours, or indeed who are tenants themselves and are now expected to vet any lodgers. In our view the purpose of the first phase was to test whether the scheme could operate satisfactorily in a sample area, providing evidence about the issues and obstacles that inevitably arise. Even running the scheme for six months has given very limited time to do this and indeed the consultants appointed by the Home Office only began their work fully in May this year. It is vital to learn lessons from the scheme and these will only be of value if the pilot shows that the large majority of lettings in the five authorities are now properly being preceded by immigration checks and that the outcome in terms of tackling 'illegal' immigration is shown to be worth the significant extra costs and effort that the scheme requires.



Scope of this submission

In a joint letter to the Immigration Minister from CIH and three bodies representing landlords and agents (NLA, RLA and ARLA) we suggested there were four tests of the scheme. To these (following feedback) we would add a further test, and these are:

1. the checks are operating comprehensively and satisfactorily from landlord and tenant viewpoints and difficulties are being quickly resolved
2. the scheme is working across the whole sector, including among small landlords and in the poorer parts of the sector with problematic or unscrupulous landlords who already ignore the law
3. it is doing so without any significant incidence of discrimination against legitimate applicants for lettings
4. the whole enterprise has been shown to be worthwhile through evidence that it is preventing lettings taking place to migrants who have no 'right to rent'
5. there are no serious 'knock on' effects in terms of homelessness, access to the private rented sector and further stretching of already limited local authority and social landlord resources.

Our submission is set out under these five headings. However, it needs to be preceded with a word of caution: all of the effects discussed below are taking time to develop and will take even longer to show their long-term consequences. In reality the Home Office has set itself an almost impossible task to carry out a satisfactory evaluation in such a short time. We return to this point in our Conclusions.

1. Are the checks operating properly?

The available evidence suggests that many of the 'better' landlords – often those who are members of national bodies or who use agents that are members of national bodies – are implementing the scheme, albeit with continued reluctance in some cases that they are expected to 'be immigration officers'. However, it is also apparent that charges are being made in many cases for the documentation checks involved: figures of £100 or more appear to be typical. Landlords' unwillingness to bear the costs themselves is understandable but when passed on to the applicant this becomes yet a further obstacle to getting a tenancy, in addition to the several £100s required for a deposit. And of course charges may be made yet the tenancy may be awarded to someone else, leaving the applicant to go elsewhere and potentially pay again. If the landlord recovers costs through the rent, this will in many cases be an addition to housing benefit costs if the higher rent is within LHA limits.

There is clearly an issue about how immigration checks are enforced, given that across England there are 1.5 million new lettings each year and obviously an unknown, much higher number of applications for lettings. The Home Office made clear at the start of the scheme that it had no extra resources for enforcement (as opposed to the resources for



assisting with the checks themselves). Local authorities have extremely limited resources – on average their expenditure on all enforcement work in the private rented sector is only about £10 per year per tenancy – and they therefore mainly concentrate on the worst landlords or on responding to tenant complaints. Given that there has been only one reported fine resulting from the initial phase, what evidence does the Home Office have that effective and sufficiently widespread enforcement action is taking place? Is it convinced that this can be put in place for a much bigger roll-out of the scheme?

2. Do the checks cover the whole of the private rented sector?

Because of limited enforcement and indeed publicity for the scheme, there are severe doubts that immigration checks are actually taking place in the poorer parts of the sector or by small landlords (the vast majority in the sector) who are not members of a trade body or do not use an accredited agent. It is of course the poorer parts of the sector which tend to house recent migrants;¹ this was acknowledged by the Home Office before the scheme began. A key test is therefore to show that the scheme is functioning, or can be made to function, in these parts of the sector. Although the limited responses from tenants to the joint survey co-ordinated by JCWI (to which CIH contributed) make it difficult to generalise, few were aware of the immigration checks and only around half had been asked to prove their permission to be in the UK. This pattern is confirmed in other responses, notably that from the Refugee and Migrant Centre (RMC) in Wolverhampton.

This raises several issues. One is obviously the effectiveness of the scheme if gaps in coverage coincide with the parts of the sector most likely to be accessed by recent migrants. Another is the effectiveness of an evaluation taking place now, since if such gaps only close slowly, the impacts in this part of the sector will take time to become evident. A third is the issue that was raised by many bodies before the legislation was implemented: the risk of the scheme emphasising the two-tier nature of the sector, where a proportion of landlords comply with rules and offer a good service but a significant proportion – not necessarily all to be described as ‘rogue landlords’, as it is often through ignorance or lack of resources – do not follow rules and are poor at meeting other requirements like gas safety inspections, and will be equally negligent or inconsistent in doing immigration checks.

3. Is there any significant evidence of discrimination?

The risk that the scheme would encourage or excuse discrimination (not necessarily overtly racist) was also pointed out beforehand and indeed was acknowledged to be a risk by the landlord bodies themselves. As the Discrimination Law Association has advised, it is very difficult to get evidence of discrimination and this is also an effect which may not be apparent for some time after the scheme starts. In addition to the problem of applicants being turned away, there is already some evidence from the RMC of onerous conditions

¹ See Perry, J. (2012) *UK Migrants and the Private Rented Sector*. York: JRF.



being applied if applicants only have limited leave or have documents lodged with the Home Office. In such cases it will be practically impossible to prove discrimination but nevertheless people with leave to remain, or whose leave is likely to be renewed, may well be affected even though they have a legitimate right to be in the UK.

Local authority staff have also said that they believe discrimination will become more widespread, with landlords finding excuses to reject applicants who look like (or whose names sound like) migrants, or who do not have straightforward documentation. Landlord bodies have warned that migrants could end up in poorer parts of the sector as a result, even in potentially dangerous properties.

Given that migrants are already known to encounter many barriers to getting secure accommodation, it is vital that the scheme is *shown* not to be adding another significant barrier, otherwise even more people (who are legitimately in the UK) will turn to local authorities for help. This creates conflict with DCLG policies to encourage local authorities to concentrate their assistance on housing applicants with strong local connections.

4. Is the scheme producing worthwhile results?

At the time when the scheme was originally announced, the government was committed to cutting red tape and promised that a 'One-in, Two-out' rule would apply to new regulations. The government's approach to regulation was spelled out by the Department for Business Innovation and Skills (see box).²

The Government's Principles of Regulation

The Government will regulate to achieve its policy objectives only:

- (i) having demonstrated that satisfactory outcomes cannot be achieved by alternative, self-regulatory, or non-regulatory approaches
- (ii) where analysis of the costs and benefits demonstrates that the regulatory approach is superior by a clear margin to alternative, self-regulatory or non-regulatory approaches
- (iii) where the regulation and the enforcement framework can be implemented in a fashion which is demonstrably proportionate; accountable; consistent; transparent and targeted.

There will be a general presumption that regulation should not impose costs and obligations on business, social enterprises, individuals and community groups unless a robust and compelling case has been made.

The Government will adopt a One-in, Two-out approach.

In 2013, CIH urged government to follow the rules which it had set itself, and now believes that compliance with these rules should be part of the Right to Rent evaluation. In

² BIS (2013) *Better Regulation Framework Manual*.



particular, it should show a clear analysis of the costs and benefits of this regulatory approach before it is extended. It should also make a 'compelling case' for the extra costs and obligations imposed on business and individuals. It should demonstrate how the One-in, Two-out test has been met.

CIH believes that the 'costs' of the scheme include not only the financial costs to landlords and hence to tenants, but the additional disadvantages created for tenants who are legitimate migrants or simply appear to be migrants but are long-standing residents. They also include extra costs for government, both central (through HB) and local (see below).

Against these costs there should be a robust assessment of the real benefits. Have significant numbers of migrants with irregular documentation been identified? Is there evidence that they are being deterred from entering the sector and if so what happens to them if they stay in the UK? – for example, if they end up sleeping rough the costs in terms of health and other services may appear elsewhere. To what extent are those with irregular documentation simply people with resolvable issues, such as limited leave which will be renewed if they apply? – in other words, could the scheme be a sledgehammer to crack a nut?

CIH is very concerned that the evaluation may either overlook these issues, even though they are part of government commitments to business, or will not be able to assess them adequately in the time available.

5. What are the 'knock on' effects for local authorities?

Government is aware that the private rental market is very competitive, that it already serves many tenants on low incomes or who are vulnerable, and that the termination of assured shorthold tenancies is the biggest (and rising) cause of homelessness. If as a result of Right to Rent there is any significant impact on access to the private sector then this will drive more applicants to seek social housing, a sector already under intense pressure. Clearly, as already noted, such effects will build up over time rather than being immediately apparent. But given that homelessness acceptances, cases dealt with through the homelessness prevention route, and use of temporary accommodation and B&B lettings by local authorities are all increasing, there is bound to be considerable concern that the scheme might add to these already considerable pressures. In many cases this could be because people who would have solved their own accommodation problems turn to the council because they are no longer able to do so.

Right to Rent checks may *increase* homelessness referrals since councils are already making more use of private lettings to meet their obligations, and a landlord can avoid having to make an immigration check if the case is referred back to them (because when landlords accept local authority nominees they do not have to do the checks). If a family rejected by a landlord has children or vulnerable adult members, then they may request



assistance under the Children Act (or the Care Act) and add to local authority costs in those ways.

These are all issues which should be considered in a comprehensive evaluation and must be assessed over a reasonable time frame. They are also issues which will not necessarily be known about in detail by local authority enforcement staff who have been involved in the West Midlands initial phase, and may not yet have become fully apparent to homelessness and other staff if immigration checks are as yet only covering part of the sector. It is vital, however, that they are not ignored.

Conclusions

CIH urges the government to bear in mind that while better landlords, including those represented by landlord bodies, may be operating the scheme with few problems, this does not mean that the tests set out above have been met. This can only be shown by rigorous research across the whole sector, which we hope is in progress.

We therefore urge the government to await the research, make it public and have a further consultation period, before extending the checks beyond the West Midlands. If the research suggests the checks are working, we further recommend that another phase be run and fully evaluated, in a high-pressure and diverse area such as one or more London Boroughs, before any national roll-out takes place.

CIH does of course remain committed to assisting with the Home Office research and willing to discuss the government's plans and how they can be made to work. We are however very keen that policy changes which affect millions of landlords and tenants should be made on the basis of proper evidence of their likely impact, and call for your reassurance that this will be the case.