

Immigration Bill briefing for House of Lords: The implications of landlord checks for migrants in the UK

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Migrants Rights Network

1. Migrants' Rights Network (MRN) is a registered charity set up in 2006 to strengthen civil society campaigns and advocacy work in support of a progressive, rights-based approach to immigration. MRN is now a leading UK network on migrants' rights issues, regularly contributing our perspective to public debate through the media and other policy fora. MRN supports evidence-based parliamentary debate on migration through our role as secretariat of the All Party Parliamentary Group on Migration.

Briefing summary

2. This briefing on the potential impacts of the introduction of landlord immigration checks has been drafted by the Migrants Rights Network to inform debate on the Immigration Bill in the House of Lords¹.
3. In our view the introduction of landlord immigration checks would have negative implications for many migrants living in the UK and would increase the pressures on local authorities and charities. This policy could generate problematic social consequences, including:
 - Negative impacts on the housing options for some legally resident migrants, potentially leading to higher demand for properties run by criminal landlords;
 - Incidents of unlawful discrimination and harassment of migrants;
 - Further vulnerability of some migrant groups, in particular children and people with temporary or insecure immigration status.

Recommendations to peers:

4. We believe that the government should abandon its proposal to introduce landlord immigration checks: this is likely to severely reduce the housing options for migrants and make them more vulnerable to homelessness. It also seems highly unlikely that the scheme can be effectively administered.
5. If Parliament decides to implement the landlord immigration checks, we urge peers to call for the scheme to be piloted, prior to any wider roll-out. Peers could also call for the pilot to include a full assessment of the impacts on migrant communities, including:
 - Equality impact assessment, including impacts on lawfully and unlawfully resident migrants in accessing accommodation, and any increase in homelessness among migrants as a result of the checks. This should be carried out through direct consultation with migrant community members, support organisations and housing/homelessness charities.

¹ Contributors to the paper are Sue Lukes, John Perry and Ruth Grove-White (MRN).

- Assessment of any consequent extra demand on local authority and other statutory services arising from the landlord checks;
 - Clear review of how far the Government has met its obligations under the public sector equality duty to eliminate unlawful discrimination and advance equality of opportunity between those who have a protected characteristic and those who do not.
6. We also urge peers to call for an amendment to the Bill that ensures that any Code of Practice to assist landlords in avoiding unlawful discrimination is meaningful. In particular, the Secretary of State should ensure that the code and any subsequent revisions are widely publicised in order to come to the attention of all landlords and persons likely to act as landlords' agents. The landlord immigration checks should not enter into force until the Code of Practice has been approved by both Houses.

Full assessment of impacts on migrants

Impact 1: Reduced housing options for legally resident migrants

7. Part 3 Chapter 1, clauses 15 – 32 of the Immigration Bill would introduce immigration checks for landlords in the private rented sector (PRS) in the UK. The aim of this policy is to create a 'hostile environment' for irregular migrants, but would inevitably generate negative impacts for other legally resident migrants.
8. We believe that the majority of landlords in the UK would wish to carry out immigration document checks responsibly. However, lessons can be learned from the introduction of employer immigration checks in February 2008 on which the landlord checks are being modelled. According to research in this area carried out by the Migrants Rights Network in 2008, some employers were confused about their responsibilities under new rules whilst others viewed this as an opportunity to have greater leverage over migrant workers².
9. Some employers, including some larger employers with human resources departments responded to the new rules in a systematic way. Others, including some smaller employers and those with a more flexible workforce, including employment agencies, did not. Accounts from trades unions and migrant groups in 2008 suggested that some employers, although not required to carry out retrospective document checks on their existing workforce, did so anyway following introduction of new rules. This reportedly resulted in some incidents of harassment, unnecessary dismissals of legally-employed migrants, and unlawful discrimination.
10. Evidence suggests that it has been difficult for some employers to verify immigration status of prospective workers, even where they do have the right to work in the UK. Recent, anecdotal accounts from the Free Representation Unit (FRU) in London, which supports people bringing claims to the employment tribunal, suggest that particular difficulties are experienced by a small number of their clients who have made an application to extend their leave to remain in the UK at the time of a repeat document check by their employer. In some cases where the Home Office has not been able to verify

² Migrants Rights Network, Papers Please report, 2008

the migrant's right to work, even migrants have been dismissed from their job. Similar reports have come from charities working with migrants and refugees.

Case study 1

Amad, a refugee from Liberia, was granted further leave to remain in the UK in 2007, demonstrated by a letter from the UK Border Agency (UKBA). In 2008 he applied for a security job through his local job centre. The job centre contacted the UKBA to check his status and was told that he did not have the right to work in the UK. When the Refugee Council later checked with the UKBA on his behalf they acknowledged that he did have the right to work, and apologised for their prior mistake. Following this, however, Amad remained unable to secure a job as the UKBA letter was not accepted by many employers.

(Reported in MRN, Papers Please, 2008)

11. Private landlords will have a more difficult task than employers (most of whom can access some kind of HR support) to verify immigration status. Most landlords do not have the back-up of a human resources department to support them. Landlords would be required not only to verify a prospective tenant's identity (which many of them already do), but also confirm their continuing entitlement to long-term residence – a much more difficult task. The argument that if landlords do the first they can easily do the second is highly misleading.
12. The wide range of valid immigration documentation, much of it not easily recognised or verified, means that some migrants with the legitimate right to live in the UK, including migrant workers, family migrants, international students, asylum seekers and refugees, and EEA nationals and their family members will struggle to have their documents accepted by a private landlord. Particular difficulties could be expected for people applying to extend their leave to remain in the UK or to switch immigration status, whose documents may be with the Home Office³.
13. The framework for the landlord checks includes lodgers in the definition of tenants, including those taken in by council or housing association tenants who are currently being encouraged to do so by social landlords (often advised as to best practice by government funded bodies) concerned about the likelihood of arrears caused by the "bedroom tax". Those advising homeowners facing debt also often suggest lodgers as an option. This, of course, provides a solution to the tenant/homeowner's problems while also increasing housing supply for people who may otherwise find it difficult to find suitable accommodation. Whilst landlord bodies cover a significant part of the private landlord sector, most people offering lodgings in their own homes are not members of organisations who could provide them with assistance. They are also likely to suffer disproportionately if fined, since they are already, by definition, facing financial problems. Private tenants also often include people in their households who are not actual tenants (family members, partners, friends) who may make some contribution and so be de facto lodgers or tenants. We anticipate that more restrictive contracts may be drawn up, on the advice of letting agents, for migrants who may be more likely to take in a

³ Figures according to 8th Report - The work of the UK Border Agency (January–March 2013) Home Affairs Select Committee report, January to March 2013. Available online at: <http://www.publications.parliament.uk/pa/cm201314/cmselect/cmhaff/616/61602.htm>

non-British lodger. These, combined with fear of breaking the law, could in time severely reduce the numbers of lodgers at a time when it is clearly in the interests of public policy to increase the supply of available accommodation.

14. Ministers have indicated that the Home Office will provide limited support to landlords with queries about the immigration status of prospective tenants⁴. Yet the scale of the scheme is such that over 10,000 status checks per day may be required. Rather than waiting for the Home Office to verify the immigration status of a prospective tenant about which they may have doubts, many landlords may well choose not to rent to migrants or anyone without a UK passport⁵.
15. The landlord checks will reduce the ability of some legally resident migrants to secure decent rented accommodation, and in particular in London where competition for housing is particularly high. This could increase the demand for accommodation provided by criminal landlords and thereby adding to the problems that the government is seeking to tackle through its 'rogue landlords' initiative⁶.

Case study 2

A recent Home Office raid in inner London, reported on by the council's enforcement officer, illustrates that legally resident migrants can already be liable to exploitation by criminal landlords¹. Informed that a landlord was illegally accommodating 27 "illegal" migrants working for an unregistered gangmaster in a disused pub, the Home Office conducted a raid. They found 27 Spanish citizens living, with their children, in what was described as a "deathtrap" for which the landlord was receiving £4000 a week in rent.

(Reported in Landlord Law Blog, 27 November 2013)

16. Local authorities will be impacted by legally resident migrants who experience difficulties in securing housing in the PRS. The Bill exempts direct referrals by local authorities to private landlords in homelessness cases. However, because of the government's emphasis on preventing homelessness, many cases will be diverted to the private sector before such checks are made by the authority itself. Many of these are now likely to 'bounce back' to local authorities if landlords do not wish to conduct immigration checks or simply refuse people who look like migrants.
17. Local authorities also find themselves facing increased demand for homelessness provision, and for advice on housing problems. Local authority advice services are not usually equipped to advise on discrimination, yet there will be increased demand for advice of this kind from prospective tenants refused private lettings and potentially faced with homelessness. Local authorities are also likely to face significant demands for advice from people wishing to accommodate lodgers or family members, who are also covered by these proposals. This will include council tenants and leaseholders as acknowledged in the consultation process.

⁴ Apparently just ten Home Office staff will run a telephone enquiry line and an online advice service

⁵ It should be noticed that the checks will affect British citizens too: landlords who choose not to discriminate will ask them for proof of their right to be in the UK which many, especially the more vulnerable or those in crisis will not be able to provide.

⁶ See www.gov.uk/government/uploads/system/uploads/attachment_data/file/7575/2206919.pdf

Impact 2: Unlawful discrimination and harassment

18. Landlords would be required to check all prospective tenants (including British citizens) in order to avoid discrimination. We expect, however, that some migrants would be targeted for document checks by landlords, in a manner which may amount to unlawful discrimination under the Equality Act 2010⁷. Existing evidence demonstrates that some landlords in the PRS already discriminate against migrants of different national and ethnic origins⁸. Negative political and media coverage of some migrant groups (e.g. Eastern European migrants, Roma, 'bogus students', asylum seekers) will increase the likelihood of landlord discrimination.
19. It will be hard for tenants to challenge incidents of unlawful discrimination, which are far more difficult to prove in the housing context than in employment. Under current legal provisions, migrants or British citizens would only be able to challenge discrimination by landlords in the county courts (as opposed to the employment tribunal for unlawful discrimination cases brought against employers). Legal aid for this remains in scope, but the Government now proposes a residence test for legal aid that would exclude anyone who had arrived within the last 12 months.
20. Thus far Government has not taken adequate steps to reduce the scope for unlawful discrimination or harassment of tenants by landlords in conducting the checks. The Code of Practice which has been proposed as an anti-discrimination measure is likely to be inadequate as it is not enforceable. Given the sheer numbers of landlords to be contacted and advised about the scheme, most of whom have a single property or a single lodger, it is highly likely that many will not bother to read guidance or indeed will remain unaware that the scheme exists. If the checks are introduced, Government should be required to ensure that the Code of Practice is meaningful, whilst also developing a system for monitoring and addressing unlawful discrimination within its plans for landlord checks.

Impact 3: Impacts on particular migrant groups

21. In our view, certain groups of migrants are likely to be at particular risk of poor housing conditions or homelessness as a result of the checks. The burden of supporting them will fall to charities and local authorities (the latter will have an obligation to find them emergency accommodation). This could result in local tensions relating to housing allocation. We would particularly point to the following groups:
22. **Migrants receiving protection in the UK** may find it difficult to secure a property as a result of difficulties in having their documents accepted by landlords, including asylum seekers and refused asylum seekers receiving Section 4 and Section 95 support, and migrants with discretionary leave, humanitarian protection and exceptional leave to remain in the UK.
23. **Migrant women**, particularly those with insecure immigration status, may be more vulnerable to sexual or physical harassment by landlords in relation to the threat of being reported to the Home Office. This is a concern that has

⁷ The Equality Act 2010 makes discrimination by landlords in letting out accommodation (except, largely, in their own home) unlawful

⁸ See www.bbc.co.uk/news/uk-england-london-24372509

been raised by organisations working with migrant women in the UK, including the All African Women's Group, Black Women's Rape Action Project, and Women Against Rape. Incidents of this kind are known to have arisen from the employer document checks, where some employers used the new rules to further exploit vulnerable migrant workers⁹.

24. **Migrant children** will be impacted in a number of ways. Landlords will firstly need to satisfy themselves that any children who would be accommodated in the rental property are not adults – this is a potentially complicated assessment, as is well-documented in relation to asylum applicants. Where a migrant child's parents are affected by landlord immigration checks and the family is either unable to secure a rental property or is asked by their landlord to leave a property, that child would be made homeless along with their parents. This would be in conflict with the Government's responsibilities under Section 55 of the Borders, Citizenship and Immigration Act to safeguard and promote the welfare of children.
25. **Migrants making in-time applications to extend their stay or switch immigration status** may well find it difficult to prove this to a landlord, as their documents will be with the Home Office.
26. **Irregular migrants** – the target of the policy – will not behave as hoped by the Government. Currently, many irregular migrants are accommodated by criminal landlords. Local authorities already struggle to identify these landlords and take enforcement action against them. The proposed checks will provide a boost to this market in misery. The vast majority of irregular migrants would continue to live in the UK, potentially in more clandestine and substandard accommodation than previously, and with some exposed to a greater risk of becoming destitute and/or homeless.

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⁹ Papers Please report, Migrants Rights Network, 2008