Statement of concern on the impact of the Immigration Bill on Scotland's communities

In this statement, representatives[i] from Scotland's housing, health and migrants' rights and refugee sectors outline their key concerns regarding the housing and health proposals[ii] in the UK Government's Immigration Bill.

Immigration has for decades enriched UK and Scottish life through increased social diversity, economic growth and competitiveness and an enhanced cultural life. Migrants have and continue to be central to delivering some of our valued public services, especially the NHS.

Although immigration and asylum are reserved to the UK Parliament, housing and health are in the legislative and executive competence of the Scottish Parliament and the Scottish Government, respectively.

Housing

The Bill will require[iii] private and registered social landlords to check the immigration status of prospective and current tenants under penalty of up to £3,000. The private rented and non-council social housing sectors in Scotland account for 527,000 tenancies or 22.2% of all households[iv] in Scotland, with private tenancy levels highest in Aberdeen, Dundee, Edinburgh, and Glasgow[v]. The Bill proposes that the immigration status of all these tenancies be checked, with private and registered social landlords acting as proxy immigration officials.

Health

The Bill also proposes that universal access to the NHS[vi] be restricted through statute to apply only to those with indefinite leave to remain in the UK. Despite reassurance from the UK Immigration Minister that any devolved arrangements for charging overseas visitors will not be affected[vii], there remains the possibility that UK Ministerial orders can make primary and emergency care chargeable. Indeed, the UK Government recently announced its intention to charge some migrants and overseas visitors for A & E care[viii]. The Bill also proposes a UK-wide pre-entry immigration health charge for non-EEA temporary migrants and students.

Constitutional Issues

The Sewel Convention[ix] requires that the UK Parliament should not normally legislate with regard to devolved matters except with the agreement of the Scottish Parliament. Both the regulation of the landlord-tenant relationship and the delivery of NHS services are devolved matters. The provisions in Part 3 of the Bill relating to landlords and tenants and to the NHS affect devolved matters. Therefore, they should be the subject of formal discussions between the UK and Scottish Governments, followed by appropriate steps being taken so the Scottish Parliament may discuss and take a view on whether to give legislative consent or not to these provisions.

Key concerns

We regard the proposals as inappropriate in principle, unworkable in practice, and lacking in proper evidence. Moreover, we anticipate they will be ineffective in their own terms, for example, they will not reduce the number of people with irregular status in the UK.

1. **It is inappropriate in principle** to require private and non-council social landlords to undertake immigration document checks on prospective and existing tenants, especially under threat of a potential, hefty fine. Similarly, it is inappropriate to require health professionals to undertake immigration document checks on patients. Health settings are not the place to check immigration status, and this Bill, as the Royal College of GPs told the Westminster Parliament must not "turn GPs into border agents"[x]. The recent commitment from the UK Government that access to GP consultations will not be chargeable is welcome, but it remains at best unclear and at worst of concern, as to what immigration-related checks GPs will be expected to carry out[xi].

2. **There is potential for discrimination and exacerbating inequality** in private tenancies and housing association stock, arising from the Bill's tenant checking scheme, with disadvantage potentially greatest for prospective legitimate tenants with unclear residence status, those not able to produce the requisite documents quickly, and people in visible minority communities that are seeking accommodation.

3. **There is concern about burdening landlords and health professionals**. Landlords wishing to rent out a property or room will be required to liaise with existing and potential tenants on immigration matters. Meanwhile NHS staff may have to carry out immigration checks due to proposed statutory criteria that limit automatic free NHS care to people with indefinite leave to remain. This may render already marginal groups more vulnerable[xii].

4. **The proposals may be self-defeating**:

(a) Rather than targeting so-called 'illegal' migrants the tenant checking scheme may drive both those with irregular status and prospective legitimate tenants with unclear status or documents to unscrupulous landlords, boosting the rogue market[xiii], and potentially undermining continuing efforts to weaken such practice in Scotland[xiv].

(b) Health professionals interpreting more restrictive qualifying rules which, unless exempted, can make eligibility to free NHS services dependent on having indefinite leave to remain. Despite a policy in Scotland to minimise charging for overseas visitors[xv], perceptions of fees and document-checks may deter irregular and resident migrants and those with chaotic lives at the margins from accessing care.

5. **The proposals lack evidence** with neither the proposal for landlord checking or on regulating and charging for access to the NHS, supported by research or pilots. The

impact assessments for each[xvi] set out the problem perceived but not as known nor is there any evidence supporting the specific measures or that they need to be or are best implemented through legislation rather than via guidance or policy.

Recommendations

The proposals on residential tenancies and access to the NHS not only impact on devolved competence, but negatively so, and we call on The Scottish Government to act by initiating a full Chamber Debate at the earliest opportunity on the devolved implications, at the very least, of the housing and health provisions in the Bill.

Furthermore, we urge a wider public debate in Scotland on the implications of the proposals for Scotland's diverse communities, particularly to inform the recommended future deliberations and decisions in the Scottish Parliament on whether legislative consent should be given to these provisions.

Co-Signatories

John Blackwood, Chief Executive, Scottish Association of Landlords;
Graeme Brown, Director, Shelter Scotland;
Mary Taylor, Chief Executive, Scottish Federation of Housing Associations;
Alan Ferguson, Director, Chartered Institute of Housing;
Dr John Gillies, Chair, Royal College of GPs in Scotland[xvii] (health aspects only);
Professor Tom Mullen, University of Glasgow (in personal capacity);
John Wilkes, Chief Executive, Scottish Refugee Council;
Sarah Craig, Convenor of GRAMNet, University of Glasgow (in personal capacity);
Nazek Ramadan, Director, Migrant Voice;
Pat Elsmie, Director, Migrants Rights Scotland;

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[i] Chartered institute of Housing (Scotland), Migrants' Rights Scotland, Migrant Voice, Professor Tom Mullen (personal capacity), Royal College of GPs (health aspects only), Sarah Craig (personal capacity), Scottish Association of Landlords, Scottish Federation of Housing Associations, Scottish Refugee Council, and Shelter (Scotland)

[ii] Part 3 of the Bill, specifically Chapter 1: "Residential Tenancies" (clauses 15 to 32) and that part of Chapter 2 on "National Health Service" (clauses 33 and 34).

[iii] The main parts of the Bill's proposals on "residential tenancies" are (i) a requirement that a landlord may not authorise an adult to occupy premises under a residential tenancy agreement if that person is disqualified from doing so as a result of their immigration status - "disqualified immigration status" - (clause 17); (ii) arrangements for the imposition of penalty notices up to £3,000 to landlords or, if specific conditions apply, letting agents, for each time they are judged to have authorised a person with "disqualified immigration status" to occupy (e.g. enter or remain in) premises under a residential tenancy agreement (clauses 18 and 20); and (iii) a framework around the penalty notices of statutory excuses (clauses 19 and 21), objections (clause 24), and appeals (clause 25) against imposition, as well as arrangements for the enforcement and recovery of the penalties (clause 26).

[iv] pp.42-45, "Statistical Bulletin: 2011 Census: Key Results on Population, Ethnicity, Identity, Language, Religion, Health, Housing and Accommodation in Scotland - Release 2A", (Edinburgh: National Records of Scotland).

[v] p.45, Ibid.

[vi] The Bill proposes (i) furnishing the Home Secretary with an order-making power to make an immigration health charge on those applying for leave to enter or remain in the UK or for entry clearance into the UK, for a limited period (including those applying for a variation of existing leave where the application would result in limited leave to enter or remain) - "immigration permissions"; *or* to make such an immigration health charge on any description of such persons (clause 33); and (ii) statutory direction and clarification that for the purposes of the four NHS charging provisions listed in that part of the Bill, that the category "persons not ordinarily resident" shall include those who require but do not have leave to enter

or remain in the UK or those who have such leave but it is for a limited period; thereby making such persons potentially liable for NHS charging under the legislation specified (clause 34).

[vii] Mark Harper MP, Immigration Minister, said at the 2nd Commons Reading of the Immigration Bill on 22nd October 2013: "We are not proposing to change the way in which the devolved Administrations can charge under the overseas visitors' arrangements. Those aspects of charging are of course devolved. We will talk to the devolved administrations to make sure that there are no unforeseen consequences from different parts of the UK having different regimes for visitor charging."

[viii] Department of Health, (2013) "Sustaining services, ensuring fairness: Government response to the consultation on migrant access and financial contribution to NHS provision in England". In particular, see the UK Government's statement at pp.26-27: "We believe there is a good case for visitors to pay. In parallel we recognise that A&E services are currently under considerable strain, receiving more than one million visits per year. It will be crucial that any new systems for the identification of chargeable patients and recovering their healthcare costs in such a high-pressure environment be designed in such a way as to minimise the impact on patients, staff and services. However, charging visitors might reduce the number of unnecessary A&E attendances. We therefore intend to charge for A&E care when we are confident that the new systems will work efficiently and effectively, without compromising rapid access to emergency care." The British Medical Association (the BMA) set out its concerns on charging some for NHS accident and emergency care, with Dr Mark Porter, Chair of the BMA's Council, stating: "There is particular confusion over access entitlements to emergency care services, given that the proposals introduce charging for A&E visits, yet say that no patient will be turned away if they need care".

[ix] "The Sewel Convention" (2005), House of Commons Library, SN/PC/2084, which states: "The Sewel Convention applies when UK bills make provision for a devolved purpose (e.g. a matter on which the Scottish Parliament is competent to legislate), when they vary the legislative competence of the Scottish Parliament, or when they vary the executive competence of Scottish Ministers", and see: http://www.parliament.uk/documents/commons/lib/research/briefings/snpc-02084.pdf.

[x] p.22, Oral Evidence by Clare Gerada (Chair at the Royal College of GPs at Public Bill Committee for the Immigration Bill, First Sitting (Morning), 29th October 2013, available at http://services.parliament.uk/bills/2013-14/immigration/committees/houseofcommonspublicbillcommitteeontheimmigrationbill201314.html. Ms Gerada said: "What the Royal College has said is two main things. One is that we do not want to turn GPs into border agents. That is absolutely clear. Secondly, we should not turn people away at the front door because of their inability to pay."

[xi] Department of Health, (2013) "Sustaining services, ensuring fairness: Government response to the consultation on migrant access and financial contribution to NHS provision in England". In particular, see the UK Government's statements at p.26, in relation to the role of GPs: "However, the GP consultation process is also the gateway to subsequent treatment that is chargeable for those who are not exempted" (para., 108) and "We will therefore retain free access to GP consultations but expect GP practices to participate actively in the administration of this new system" (para., 109). In response the Royal College of GPs whilst welcoming the UK Government's commitment not to charge for GP consultations but registered its serious concern that "we still need reassurances that GPs are not going to be pressed into acting as an arm of the Border Agency and we remain unconvinced that the proposals will work across the NHS".

[xii] p.26, Oral Evidence by Professor Vivienne Nathanson (Director of Professional Activities at the BMA) at Public Bill Committee for the Immigration Bill, First Sitting (Morning), 29th October 2013, available at http://services.parliament.uk/bills/2013-14/immigration/committees/houseofcommonspublicbillcommitteeontheimmigrationbill201314.html. Professor Nathanson said: "We have been talking to a number of people. The real concern is that people who are not well and who might have a contagious disease may not turn up. There will inevitably be misunderstandings about whether people are eligible. Regardless of whether the system is the current one or the proposed one, there will be a small group of people who are not eligible, and do not have a right to treatment, who will fail to come forward. There is a real worry, therefore, about including primary care in particular, because that is where we "catch" most of the contagious and infectious diseases. I know those diseases are meant to be exempt, but the fact that there is a new system may stop people from coming forward. That is enormously important. There are broader public health concerns, not in terms of infectious disease, but in terms of the cost of changes in disease. I would also be very worried about people who live on the margins of society, who do not have an organised lifestyle and will find it difficult to present to GPs' surgeries if their identity is being questioned. If they have not been registered, there is an inevitability, to a certain extent, that they might get questioned. The question then is whether we would worsen health inequalities. Given that health inequality is quite rightly a major strand of all our work in health at the moment, as well as a major strand of policy, I think that is an extraordinarily worrying consequence."

[xiii] p.2, "Response to the Home Office consultation on tackling illegal immigration in privately rented accommodation", Scottish Association of Landlords, 21st August 2013: "We believe it will lead to discrimination against legitimate tenants whose residency status is in any way unclear or who are unable to obtain the required paperwork immediately at the point of applying for a tenancy. It will increase the already oppressive legislative burden on landlords thereby making it difficult for well-intentioned landlords to stay above the law while at the same time potentially acting as a barrier to prospective landlords who are considering entering the private rental sector and providing much needed rental accommodation. *We believe that illegal immigrants and criminal landlords will find loopholes in the system and it will not, therefore, make any significant difference to the number of illegal immigrants in the UK*" (our emphasis).

[xiv] In May 2013, The Scottish Government published a wide-ranging strategy, "A Place to Stay, A Place to Call Home: a Strategy for the Private Rented Sector in Scotland". This strategy includes an action against "bad landlords", with CoSLA, individual local authorities, and landlords to refine the landlord registration regime to identify new means of targeting tougher enforcement action on the worst landlords in the sector".

[xv] The Scottish Government's guidance to NHS healthcare providers on overseas visitors' liability to pay charges for NHS care and services is available at http://www.sehd.scot.nhs.uk/mels/CEL2010_09.pdf

[xvi] Impact assessments by the Home Office on: (a) Regulating Migrant Access to Health Services in the UK, 11th October 2013 and (b) Tackling Illegal Immigration in Privately Rented Accommodation 25th September 2013, both available at http://services.parliament.uk/bills/2013-14/immigration/documents.html.

[xvii] Please note that the support of the Royal College of GPs in Scotland is limited to the health aspects of the statement and summary letter.