

Shelter Scotland briefing for debate on Motion S4M-15116 Impact of the UK Immigration Bill on Scotland

21 January 2016

Shelter Scotland helps over half a million people every year struggling with bad housing or homelessness through our advice, support and legal services. We believe that everyone has the right to a safe, secure and affordable home and that housing is vital to people and families being able to flourish in their communities. We provide direct services to people facing bad housing and homelessness and we campaign to prevent it in the first place.

Shelter Scotland welcomes this debate about the implications for Scotland of the UK Immigration Bill. We have serious concerns about the potential impact of this Bill across the UK, and particularly that the impact on devolved housing policy in Scotland has not been fully considered.

As it stands, the legislation risks:

- Unintentionally excluding households with a right to rent from the private rented sector. We have called on the UK Government to commit to a fuller evaluation after full implementation in England, and to halt the proposed roll-out to Scotland until the impact has been more fully considered.
- Leaving even those families *with* a right to rent at risk of eviction without any forewarning. We have therefore supported amendments allowing the tenant to apply to the court to challenge the landlord's notice to quit and scope to challenge the eviction.
- Leaving families and care leavers destitute, with little scope for Shelter Scotland or others to assist them. We have supported amendments that ensure the continuation of support for homeless families until they leave or are removed from the UK and a right of appeal against removal of support.

Right to Rent Scheme – increasing discrimination against non-British tenants

The Right to Rent scheme was introduced under the Immigration Act 2014. It has been implemented in the West Midlands, and from 1st February 2016 is due to be rolled out across England. The scheme requires landlords to check immigration status documents

to avoid unlawfully letting people without a Right to Rent. This current Bill will create new criminal offences for landlords and letting agents who don't comply with the Right to Rent scheme or fail to evict tenants who don't have the right to rent, with a maximum sentence of five years' imprisonment.

Shelter Scotland is concerned that the severity of the legislation combined with landlords' lack of expertise in immigration law, alongside evidence of existing discrimination will have unintended consequences meaning that people who *do* have the Right to Rent are excluded from tenancies.

The decline of homeownership and social housing in Scotland mean that a quarter of tenants renting privately are families with children, but some families struggle to find private landlords to take them on. Shelter Scotland is very concerned that the Right to Rent scheme will lead to increased discrimination within the private rental market, making it very difficult for certain households who do have a Right to Rent to access a tenancy.

The risk of discrimination is strongest for prospective tenants who are perceived as non-British nationals and those less likely to have or produce requisite documents, either because of homelessness, domestic violence or difficulty in managing their affairs. The UK Government acknowledged this risk and introduced a statutory code of practice for landlords to avoid unlawful discrimination.

In July 2015, Shelter/YouGov polling of over 1,000 private landlords revealed that over a third (37%) already admit that 'It's natural that stereotypes and prejudices come into it when I decide who to let to', even before the 'Right to Rent' is rolled out UK-wide. Among landlords who make decisions on who to let to, around half say the Immigration Act 'Right to Rent' checks are going to make them less likely to consider letting to people who don't hold British passports or who 'appear to be immigrants'

In addition to the Right to Rent scheme in itself exacerbating existing discrimination, making a breach of the Right to Rent Scheme a criminal not a civil matter increases the likelihood of landlords becoming more risk-averse and discriminating against prospective tenants perceived as non-British.

Right to Rent scheme – increasing evictions and overriding Scottish tenancy law

The Immigration Act makes provision for landlords whose tenant's Right to Rent has been revoked or expired to evict the tenant (and any member of their household) without the need for a court order. We share the view of Homeless Action Scotland and others

that it is a matter of fundamental right that anyone threatened with loss of their home should have recourse to a Tribunal or court to establish or challenge the legitimacy of the action.

The proposals in the Bill are that if the Home Office becomes aware that a person without a Right to Rent occupies the property, they will serve a notice on the landlord. The landlord can then serve a notice on the tenant, giving 28 days' notice, bringing the tenancy to an end.

Our concern is that 28 days is not enough time to regularise a person's immigration status or correct an error made by the Home Office. Tenants may have a legitimate reason to challenge the Home Office notice, e.g. mislaid documents at the Home Office or a fresh application. Or they may be waiting to obtain legal advice to apply to regularise their immigration status (e.g. application for leave to remain under Article 8 of the European Convention on Human Rights because their children are British born and bred).

Shelter has supported amendments to the Bill so that the occupier has a right to apply to the court to challenge the landlord's notice to quit. This would allow tenants (including families) who believe they have a right to rent or who need to regularise their status, a chance to avoid eviction and destitution.

Potential impact on Scottish tenancies

It is not yet clear how the UK Government will extend this provision to Scotland through regulation, but in doing so they will either have to amend or overrule Scottish tenancy law. In England, the Immigration Bill has been drafted to place these duties on private landlords and on Registered Social Landlords who share the same tenancy. In Scotland, enabling eviction without a court order would require amendment to the Housing (Scotland) Act 1988 for assured tenancies used by private landlords, the Housing (Scotland) Act 2001 for Scottish Secure tenancies used by RSLs, and to the Private Housing (Tenancies) (Scotland) Bill which is currently being considered by the Scottish Parliament and will replace the Assured Tenancy Regime. It is not clear whether and how the UK Government will replicate these provisions in Scotland. **We urge MSPs and the Scottish Government to seek some clarity on whether and how these provisions will be extended to Scotland**

Deliberate destitution of children

Shelter Scotland is particularly concerned about the implications of the Bill for children whose families lose their Right to Rent status, and the implications of other measures in the Bill to withdraw financial support from families with no immigration status that will leave children in destitution. Under the revised criteria for support there is a real concern that there will be families who do not meet the very restrictive conditions for support under either provision and become destitute, and the potential for families and children to fall through the gaps in support provision with serious consequences.

Lack of scrutiny of these measures in Scotland

We share the very serious concerns of the Scottish Refugee Council and others about the legislative approach the UK Government are taking with the Immigration Bill. The Bill grants the Home Secretary very wide powers to make regulations to extend or give similar effect to provisions in the Bill, to Scotland. These powers impact significantly on matters devolved to the Scottish Parliament, and we have particular concerns about the implications for Scotland's law on both tenancy and homelessness. We strongly believe that the Scottish Parliament should be accorded legislative consent and the time to scrutinise the aspects of this Bill that relate to devolved powers.

Contact

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