

# **The Home Office consultation on “Tackling illegal immigration in privately rented accommodation”**

Response submitted by  
Scottish Refugee Council

**August 2013**

## **About Scottish Refugee Council**

Scottish Refugee Council is Scotland’s leading refugee charity with a vision to ensure that all refugees seeking protection in Scotland are welcomed, treated with dignity and respect and are able to achieve their full potential. We provide advice and information to people seeking asylum and refugees in Scotland. We also campaign for the fair treatment of refugees and asylum seekers and to raise awareness of refugee issues.

## Summary

Scottish Refugee Council considers that, overall, the Home Office proposals are rushed, ill thought-through and are unlikely to succeed. The proposals will also present significant challenges to our client-group which are likely to cause detriment and hardship to them. In summary, Scottish Refugee Council considers that the proposals:

- require the consent of the devolved governments;
- are unlikely to meet the government's stated aim;
- create additional barriers for all migrants and refugees to access suitable housing;
- raise the potential for indirect discrimination against refugees and other migrants;
- will aggravate an already serious problem of homelessness and destitution amongst refugees;
- will reduce the housing options for refugees and other migrants;
- are impractical and unrealistic to manage; and
- present unnecessary additional burdens on private and social landlords.

Scottish Refugee Council therefore does not support the measures proposed by the UK Government. Based on the evidence available to us through our Refugee Integration Service, we expand upon these points below, referencing alternative sources where necessary.

## Introduction

1. Living in suitable and secure housing is a key step in refugees' journeys towards integration and enables them to contribute positively to our communities. Scottish Refugee Council, therefore, welcomes the opportunity to respond to the Home Office's consultation on "Tackling illegal immigration in privately rented accommodation". Our response is based on evidence from research and from our Refugee Integration Service which especially assists newly granted refugees to access suitable housing options, welfare, education and to secure employment. We have chosen not to use the pro-forma questionnaire because it and the tick boxes provided are unsuitable to provide any satisfactory response to the proposals set out in the consultation document.

### I. Need for legislative consent by the Scottish Parliament

2. The proposals included in the consultation documents give power of law enforcement to Scottish private and social landlords who are regulated by Scottish housing legislation. Housing is a competence devolved to the Scottish Parliament and based on the Sewel Convention; Scottish Refugee Council understands that Westminster will normally legislate on devolved matters only with the express agreement of the Scottish Parliament, after proper consideration and scrutiny of the proposal in question. In this context, the Scottish Government interprets devolved matters as not only referring "*to matters that are within the legislative competence of the Scottish Parliament and could, therefore, potentially be included within an Act of the Scottish Parliament. It additionally is taken to refer to matters which, although reserved, affect the breadth of the devolved institutions' powers - i.e. the legislative competence of the Scottish Parliament or the executive competence of the Scottish Ministers.*"<sup>1</sup>
3. Scottish Refugee Council is disappointed that the consultation period is short and more importantly occurs while the Scottish Parliament is in recess. It is also unsure what has been the level of communication between the UK and Scottish Governments. Scottish Refugee Council strongly recommends that the Home Office formally consults with devolved authorities and seeks their express agreement if it continues to wish these proposals to be applicable across the whole of the UK.

### II. A policy unlikely to reach the stated aim

4. The aim of the proposed policy is to create a tighter control on illegal immigration because of a number of economic and social problems and the Home Office hopes that imposing controls by landlords will deter illegal migrants from coming or staying in the UK. The

<sup>1</sup> <http://www.scotland.gov.uk/About/Government/Sewel/KeyFacts>

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document presents no evidence that such controls would create effective barriers for illegal migrants to find accommodation. What it is more likely to achieve is to push illegal and legal migrants closer to rogue or even criminal landlords which may put them at more risk of exploitation. The document itself mentions that rogue landlords and even criminal landlords deliberately target tenants in vulnerable positions, which include illegal migrants. Illegal migrant and other non-UK nationals perceived by landlords to be in the UK illegally will be more likely to access poor housing, with higher rents, and less security of housing, leading to increased homelessness and destitution. Local authorities have limited resources and legal powers to tackle rogue landlords and it is therefore unlikely that the policy will actually help to reach the landlords who will not implement the controls properly.

5. In addition, the document presents no evidence that landlords are best placed to implement those controls. Research by the LSE in 2009 estimated that 618,000 irregular migrants lived in the UK in 2007. Even if they were all privately renting, this would still be less than 1% of the 8.5 million people known to live in private rented accommodation in England alone (Shelter, 2012).
6. The policy document compares the controls of immigration documents by landlords as being the same as controls carried out by employers whose aim is to deter illegal work. The Home Office presents no evidence to support its position that this has been an effective and successful policy. There is evidence however in several authoritative reports (from the TUC's Commission on Vulnerable Employment, and from charities and academics) that they have actually exacerbated the problems of extreme exploitation of undocumented migrants.
7. As the Government has no evidence that landlords are the best vehicle to tackle illegal immigration and that we know from the employers scheme that such controls do not have an effect on tackling illegal immigration, Scottish Refugee Council struggles to understand the basis of the proposal and is extremely sceptical about its future success.

### **III. Giving power of law enforcement to private citizens increases the risk of indirect discrimination, homeless and poor housing.**

8. Expanding immigration control into the hands of thousands of private citizens across the UK as this policy seeks to do is gravely worrying and unsettling. Moreover, it will undoubtedly lead to cases of indirect discrimination
9. Immigration legislation (and documentation) is complex and changes regularly. Despite the declared intention to make the process clear and easy for landlords by publishing checklists and developing enquiry lines, these are no guarantees that the policy will be implemented

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correctly. Furthermore, in the experience of Scottish Refugee Council, refugees are very poorly placed to enforce their rights, often coming into an unfamiliar situation in troubling circumstances. Refugees will, therefore, be disproportionately affected by these proposals.

10. Scottish Refugee Council regularly receives testimony from refugees who seek work and present a Biometric Resident Permit as a proof of their right to work but are still required by employers to provide a Travel Document. The latter looks more like a passport and employers tend to trust it more as a result. This is despite the fact that Biometric Resident Permits are marked clearly with the statement "WORK PERMITTED". This demonstrates that even when clear documentation is available, private individuals who are not trained in immigration law find it difficult to make the correct assessment, therefore creating barriers to refugees and other migrants who are in the UK legally to access employment.
11. Recently, we found that even bigger employers are confused about what constitutes a proof of the right to work in the UK. Glasgow Commonwealth Games<sup>2</sup> published wrong information on their website about the type of documents required and therefore wrongly discouraged refugees who could not provide Travel Documents from applying for both volunteer and job opportunities. What is even more concerning is that, by providing guidance that did not include the Biometric Residents Permit as an acceptable form of identification, they were effectively advised by the Home Office to do so.
12. It is important to state that a Travel Documents is only available to people with certain types of leave to remain<sup>3</sup>, it has a high cost (£72.50 plus cost for postal order) and is issued sometimes up to 12 months after an application is sent. Scottish Refugee Council understands that those cases of indirect discrimination are motivated by the fact that employers fear civil penalties. This is likely to increase even further if other proposals to double the level of civil penalties imposed on employers proceed.
13. Scottish Refugee Council is concerned that despite clear guidance given by the Home Office, landlords will have the same doubt and apprehension; and to avoid any civil penalty will chose not to rent their properties to migrants, no matter whether they are in the UK legally or illegally. The policy proposed by the Home Office, although requiring the checking of all prospective tenants, is likely to create many instances of indirect discrimination that will be almost impossible to challenge due to the tight timescales prospective tenants are facing. With intensive competitive pressure on the private rented accommodation market, it is likely that landlords who will be in the position to choose between tenants will always choose those who they perceive to be less risky or to involve less work. As a consequence,

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[http://www.scottishrefugeecouncil.org.uk/news\\_and\\_events/latest\\_news/1919\\_our\\_statement\\_on\\_glasgow\\_2014\\_commonwealth\\_games\\_and\\_volunteering](http://www.scottishrefugeecouncil.org.uk/news_and_events/latest_news/1919_our_statement_on_glasgow_2014_commonwealth_games_and_volunteering)

<sup>3</sup> For example, people who are granted Discretionary Leave to Remain are not entitled to apply for a Travel Document

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the proposals create unreasonable barriers to refugees and other migrants to access the privately rented housing sector.

14. The plans will also have a detrimental impact on housing options available to refugees who are at high risk of homelessness<sup>4</sup> as a result of being granted leave to remain and losing support from the Home Office 28 days after notification of their decision. This is particularly important given the Scottish and UK Government's promotion of a "Housing Options" approach to housing and homelessness and the critical work by the DWP/Home Office to reduce serious instances of refugee destitution in the 28-day 'move-on' period.

### IV. Unrealistic measures for implementing the policy

15. Scottish Refugee Council is concerned by the practical arrangements proposed by the Home Office to implement the policy and to support landlords to complete the controls of immigration documents correctly.

- Landlords' enquiry service

16. The consultation document suggests that a dedicated team will be created to respond to landlords' enquiries by phone or by email. This will have significant cost implications and it is not clear how Home Office staff will be able to advise landlords over the phone on the type of documents people present, especially in cases when landlords are unsure if they are looking at forgeries. Will landlords have to take copies of documents and scan them before they can be given advice?

17. The consultation document suggests that if landlords' enquiries are sent by email, the Home Office will have up to 6 days to provide an answer. We know that, in the private rented accommodation market, the level of demand is higher than the level of supply and private landlords are keen to secure new tenants as early as possible. We therefore consider that legal migrants are very likely to miss out on opportunities to find suitable accommodation because of the delay that these enquiries create. From the point of view of social landlords renting to applicants who have not been nominated by a Local Authority this will create an increased period of void which will in turn create added pressure on their income.

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<sup>4</sup> On average, 95% of refugees who access services from our Refugee Integration Service experience homelessness as a result of being granted leave to remain and having support from the Home Office terminated.

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- Transitional situations

18. Most migrants will be granted limited leave to remain for a limited period of time. When applying for renewal, they will need to send the original of their immigration documents to the Home Office. This is the case for all refugees who are granted leave to remain for 5 years, people granted Discretionary Leave to Remain from 1 month to 2.5 years, or Humanitarian Protection granted from 3 to 5 years. According to what is stated in the document, the Home Office plans to respond to that need by providing letters confirming the legal situation of the person.
19. Scottish Refugee Council has serious doubt that this mechanism will be efficient. When assisting refugees who have to send their documents to the Home Office, we have contacted the Home Office to ask for such letters. In our experience, we were told that Home Office staff were not able to provide such letters and advised to tell refugees to ask their potential employers to contact the Home Office for confirmation of status. This proved to be no help for refugees in that situation.
20. If the UK Government was to pursue this proposal, any enquiry service would need to be very accessible, extremely efficient and such situations and relevant correspondence should be clearly described in guidance made available to landlords. We are not convinced that this will be achieved, particularly in light of the cuts being made to the Home Office.

### V. Additional and unnecessary burden put on landlords

21. Although the consultation document is entitled “Tackling illegal immigration in privately rented accommodation” the measures proposed are also aimed at social landlords when allocating properties to tenants who have not been referred by the local authority’s homeless services. The title is therefore extremely misleading and, as a result, some social landlords and their representative organisations only realised the relevance of the proposals when it was almost too late to contribute their views to the consultation, and certainly too late to be able to submit a carefully considered response.
22. Scottish Refugee Council believes that the proposals will put additional bureaucratic burdens on social and private landlords and will impact negatively on housing options available to refugees and other legal migrants.
23. 82% of landlords surveyed by the Residential Landlords Association said that they opposed the plan and were concerned about the introduction of further, burdensome ‘red tape’<sup>5</sup>.

<sup>5</sup> *Landlords oppose government’s immigration plans*, 3 July 2013, Residential Landlords Association. Available online at: <http://news.ria.org.uk/landlords-oppose-governments-immigration-plans/>

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24. Scottish Refugee Council has developed good relationships with social landlords in Scotland and their representative organisations such as the Glasgow and West of Scotland Forum of housing associations and the Scottish Federation of Housing Associations. Through our work with them, we understand that social landlords too have serious concerns about this proposal.

- Cost implications for staff training, IT systems to record checks, staff time in completing follow ups and increased voids.

25. Social landlords recognise the complexity of immigration legislation and that they will therefore need to train their staff to make sure they do not exclude anyone who would be entitled to be allocated a property. An investment will also be required to record that controls have been done and to then ensure that annual checks are also implemented. These added tasks will be completed by housing staff who already have heavy workloads.

26. If housing staff need further information from the Home Office this will increase periods of void and, therefore, losses in rent income. All of these problems would be created by time lost waiting for responses from the Home Office and also through the cancellation of offers and reselection of applicants where needed.

- Reputation and impact in the community

27. Although there will be no duty to report illegal migrants if their immigration status is not confirmed at the offer stage, the consultation document states that landlords can choose to share this information with the Home Office. If appropriate the Home Office will act on intelligence about suspected cases of illegal immigration and those found to be here illegally will be arrested and removed from the UK.

28. If illegal migrants are found to be living in any of their properties then landlords would have a duty to report this to the Home Office. Although the Home Office states in the consultation that all information passed on to them is treated in confidence, if the legislation is passed then it is a matter of public record that landlords have a duty to provide information if they think any illegal migrants are living in their property. If any of their tenants were to be detained or deported this could possibly result in bad publicity for landlords. This would also create tension in the community in which landlords operate and where they develop numerous activities to promote community cohesion and foster good relations.

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- Restrictive list of documentation

29. The list of documents mentioned in the consultation document is more restrictive than what landlords would currently accept as ID and some applicants (and their household members) could have difficulties producing these documents. This includes many British applicants, who may not have a passport or who may struggle to find their birth certificate. This could lead to delays in being able to offer housing to people in genuine housing need.

For further information please contact:

**Jamie Stewart**

Housing Development Officer

Scottish Refugee Council

[Jamie.Stewart@scottishrefugeecouncil.org.uk](mailto:Jamie.Stewart@scottishrefugeecouncil.org.uk)