

# The Right to Rent Scheme and the Impact on the Private Rented Sector

Noora Mykkanen & Dr Tom Simcock  
December 2018

## About the Residential Landlords Association

### The home for landlords

The RLA represents the interests of landlords in the private rented sector across England and Wales. We're home to over 50,000 landlords nationwide, with a combined portfolio of over a quarter of a million properties. A growing community of landlords who trust and rely on us to deliver day-to-day support, expert advice, government campaigning, plus a range of high-quality services relevant to their needs.

At the RLA, we understand the challenges faced by a landlord - after all, we've been fighting their corner for over 20 years. Providing the expertise, support and tools they need, so they can do the right thing – for themselves, their tenants and the industry as a whole.

We campaign to improve the private rented sector for both landlords and tenants, engaging with policymakers at all levels of Government. Our vision is to make renting better for everyone involved in the private rented sector. We will go the extra mile to deliver a better informed, more educated and more supported membership community.

For more information about the RLA, please visit <https://www.rla.org.uk>

You can also call us on 0161 962 0010, email [info@rla.org.uk](mailto:info@rla.org.uk) or tweet us @RLA\_News

## About the RLA Private Renting Evidence, Analysis and Research Lab

### The home for research

PEARL, the RLA's research lab, was set up to provide high-quality research and analysis on the economic, social, and political issues facing the private rented sector.

The RLA believes in the importance of policymakers considering the evidence and the potential consequences in their decision-making. Through PEARL, we provide the expertise, evidence, and research, to enable evidence led policy making in the private rented sector.

Our ultimate aim is to influence decision makers in order to translate our research findings into an improved renting experience. Enabling landlords to do the right thing - for their businesses, their tenants, and the industry as a whole.

For more information about the RLA's Private renting Evidence, Analysis & Research Lab (PEARL), please visit [research.rla.org.uk](http://research.rla.org.uk)

You can also call us on 0161 495 9317, email [research@rla.org.uk](mailto:research@rla.org.uk) or tweet us @RLA\_PEARL

## About the Author

This report is written and researched by Noora Mykkanen and Dr Tom Simcock of the Residential Landlords Association.

Noora Mykkanen is the Research Assistant for the RLA. Her research focus is on local authority enforcement and wider regulation of the private rented sector. She holds an LLM International Law degree from University of Edinburgh where she previously worked in a research capacity and is interested in mixed-methods research, comparative law, and languages.

Dr Tom Simcock MBPsS CMRS is the Senior Researcher for the RLA. Tom leads the RLA's research arm; the Private renting Evidence, Analysis and Research Lab (PEARL). His expertise lies in researching change in society, public policy, and quantitative and qualitative research methodologies. Tom's research on housing has received national media coverage, featuring on the front page of The Times, has influenced government policymaking, and has been cited in debates in the House of Commons, House of Lords and by the London Mayor.

## Disclaimer

This research report has been written to inform and stimulate policy debate. While effort has been made to ensure that the data and other information are accurate, some errors may remain. The purpose of the report is to provide information, analysis and background regarding the issues affecting landlords and the private rented sector. It is neither intended for use in advertising and promotions nor for market forecasting, and no liability is accepted in either regard.

## Copyright

Intellectual copyright resides with the Residential Landlords Association. However, we want to encourage the circulation of our work as widely as possible while retaining the copyright. We, therefore, have an open access policy which enables anyone to access this report online for free. Anyone can download, save, and distribute our work. Extracts may be quoted by the media with appropriate credit to the report author and the RLA. All copyright and registered trademarks remain the property of their owners.

## Preferred citation

To cite this report, we would prefer that you use the following:

Mykkanen, N., & Simcock, T.J, (2018). *Right to Rent and the Impact on the Private Rented Sector*. Manchester: UK. Residential Landlords Association. Retrieved from: <https://research.rla.org.uk/wp-content/uploads/right-to-rent-impact-private-renting-2018.pdf>

# Contents

Executive Summary.....	4
1. Introduction .....	6
2.Right to Rent Checks and the Impact on Landlord Behaviour.....	9
3. Enforcement of the Right to Rent Scheme in the Private Rented Sector.....	13
4. Conclusions and Recommendations.....	20
5. References .....	22

# Executive Summary

The UK private rented sector has grown significantly over the past few years, increasing from 3.8 million households in 2011/12 to 4.7 million households in 2017/18 (MHCLG, 2018). At the same time, the PRS has seen increasing political focus and regulative changes (Simcock, 2018), and these changes at a policy level have not been necessarily joined-up (Whitehead & Williams, 2018). One specific policy change has been introduction of the Right to Rent checks under the *Immigration Act 2014*, which has essentially made landlords border agents (Crawford, Leahy & McKee, 2016). These changes have placed further duties upon landlords, especially when they now have to navigate a more complex and rapidly transforming regulatory landscape. The Right to Rent checks have the potential to lock vulnerable individuals out of the private rented sector and to cause discrimination (JCWI, 2017; Simcock, 2017).

Over the past few years, we have monitored the impact of this policy, and we have undertaken this research to further the understanding of how this policy is being implemented in the private rented sector. The responses from 2,963 landlords reveal that their behaviour is changing due to the fear of prosecution under their obligations of this policy. Yet, enforcement challenges of the scheme underline lack of effectiveness in deterring irregular migration. Our research provides a timely review of the impact of the policy on the private rented sector and we explore the wider implications of this scheme. The findings clearly show that the scheme is impacting vulnerable citizens and migrants, while hardly having any significant enforcement outcome (JCWI, 2017).

## Key findings

- The majority of landlords are aware of the Right to Rent scheme, our findings show that 92% landlords are aware of the scheme, and 86% reported they were aware of the criminal sanctions introduced by the *Immigration Act 2016*. However, further work is needed to ensure all landlords are aware of their responsibilities under this policy.
- 44% of landlords reported they are less likely to consider letting to individuals without a British passport. This is likely to lock vulnerable individuals out of accessing a home in the private rented sector, especially as at the last census 17% of the population of England and Wales reported they did not have a passport (ONS, 2012a).
- Furthermore, this policy is likely to have implications for migrants that currently have the right to rent and are living in the UK. 53% of landlords are less likely to consider letting to people with limited time to remain and 20% are less likely to consider renting to EU or EEA nationals.
- Information from the Home Office shows that Civil Penalty powers have been used significantly more than the power to prosecute criminal landlords. To date there have been no prosecutions of landlords for Right to Rent breaches. In comparison, the Home Office issued 391 Civil Penalties during 2016/17 and 2017/18.

- In 2016/17 the Home Office levied £102,000 in Civil Penalty notices, and £149,000 in 2017/18. Plausibly, an average penalty of around £600 is unlikely to deter landlords who knowingly let to irregular migrants. We believe the contribution the Civil Penalties have on creating the 'hostile environment' is negligible. On the other hand, the Right to Rent scheme is creating a fearful environment for landlords and tenants alike.

## Key Recommendations

To address the issues identified in the research, we believe the following key recommendations improve policy-making and regulation of the private rented sector:

1. Based on the research findings we believe the government needs to review and address the consequences Right to Rent scheme has on the private rented sector.
2. There has been a considerable lack of evaluation by the Home Office on the effectiveness of this policy. The Independent Chief Inspector of Borders affirms that the Home Office has failed to carry out further evaluation, which is particularly pertinent before the scheme is further rolled out in Wales and Scotland. We believe the Home Office needs to evaluate the scheme urgently before the scheme is rolled-out further and assess the unintended consequences of the policy in England.
3. Concerningly, two years on after the introduction of the criminal sanctions, 14% of landlords remain unaware of criminal sanctions if they fail to undertake their responsibilities under the legislation. There needs to be a significant communication campaign by the Home Office to improve the awareness of landlords of their duties under the Right to Rent scheme and to ensure that landlords have access to appropriate resources on the Government website that enables them to check the different documentation from across the Globe.
4. There has been a significant policy focus on the private rented sector from across multiple Government departments, and this policy is another example of increasing regulation. There needs to be a greater focus on joined-up evidence-based policy making to ensure that regulations are compatible and do not create severe unintended consequences. Furthermore, we believe it is in the government's interest to ensure policies are not causing further division in the society and restricting access to safe housing for all.

# 1. Introduction

## 1.1 Background and Method

The research presented in this report was conducted by the Residential Landlords Association's Private Renting Evidence, Analysis & Research Lab (RLA PEARL) to increase understanding and evidence on the private rented sector in the United Kingdom. This report builds on existing knowledge on state enforcement and how landlord behaviour changes as a result, with serious consequences on the housing and provision of homes for all. In the aftermath of the introduction of Right to Rent scheme by the *Immigration Act 2014*, the 2016 Act extended the policy to include criminal penalties against private sector landlords for not carrying out document checks of tenants' right to legally rent out accommodation in the UK, alongside the already existing Civil Penalty notices. The private rented sector was made an arm of immigration control without the need to necessarily involve the Home Office in the checks, while the authority now has comprehensive rights to target landlords for failures in immigration duties in order to create a hostile environment, however now dubbed as 'compliant environment'. In effect, the landlords are "proxies" for the immigration agency and also potential offenders (Amodu, 2018). The findings of this report are based on responses from 2,963 landlords in response to RLA PEARL's 'State of the PRS' quarterly survey for Q2 2018 and information gathered directly from the Home Office using a Freedom of Information request.

The responses from 2,478 landlords in the UK were collected between June and August 2018. To recruit participants for this survey an opportunity sampling approach was utilised to ensure that a large representative sample of landlords participated. For this, the RLA's database of landlords (including over 30,000 members and associate members, and over 35,000 RLA non-member service users) with an email requesting participation in the research. The landlords were sent a further two direct emails during the survey period. The research was also advertised to the wider landlord community across multiple third-party websites, advertised on the RLA website, the RLA Campaigns and News Centre, and was advertised on social media by the RLA and partner organisations

These sampling methods were used to ensure the opportunity to take part in the research was available to as many landlords as possible. However, there are a number of limitations over using an opportunity sampling approach that need to be highlighted, as with all sampling approaches there is the possibility of introducing bias. As the survey and associated advertising was online, this could have biased the sample and excluded those who do not use computer regularly or have limited access to the internet. While we are currently making progress in identifying trends in demographics of landlords across the sector, there is still very little known about the general demographics of landlords across the sector and because of this it is not possible to demonstrate whether this sample is truly representative of all landlords. This should be taken into account when interpreting the results. Yet, the size of the sample in this instance and the multiple streams of attracting participants, provides us with confidence that a wide spectrum of the sector is represented in the sample

The information from the Home Office was obtained using a Freedom of Information request sent to the Home Office in two parts during July and August 2018. After review

and feedback from the Home Office, the request for information was narrowed down to exclude the years when the scheme was initially rolled out across West Midlands only in Birmingham, Dudley, Sandwell, Walsall and Wolverhampton local authorities in 2014/15 and 2015/16 as 'phase one'. While specific data provided directly by the Home Office on the phase one years is crucial for evaluation of the impact on landlords, we believe that the data is sufficient to show how the scheme is being enforced and potential issues. In addition, narrowing down the years was a condition to avoid the entire request being rejected by the Home Office. Although the Home Office was unwilling to release information directly regarding the phase one, evidence and analysis from other published research was available to supplement the findings of our research. The first FOI focussed on collecting information on the use of Civil Penalty notices and the following questions were asked:

1. The number of civil penalties issued against landlords in 2016/17 and 2017/18.
2. The total yearly amount (£) of these fines in 2016/17 and 2017/18.
3. The average yearly amount (£) of these fines in 2016/17 and 2017/18.
4. The number of appeals by landlords within 28 days against the Right to Rent Civil penalties in 2016/17 and 2017/18.

The second FOI focussed on gathering information on prosecutions of private landlords and asked the following questions:

1. The number of prosecutions under the *Immigration Act 2014* in 2014/15-2017/18.
2. The number of criminal charges issued against private sector landlords for Right to Rent offences in 2017/18.
3. The number of failed Right to Rent checks reported by landlords in 2014/15-2017/18.
4. The number of notices issued to landlords informing that some tenants in the property have no Right to Rent 2014/15-2017/18.
5. The number of individuals removed from the United Kingdom due to failed Right to Rent checks 2014/15-2017/18.

Since the scheme crucially involves landlords as enforcers of immigration policy it delegates a policing duty to individuals who are not equipped (nor should need to) carry out expert-level immigration checks with a risk of a serious penalty. The findings add valuable understanding on the impact of policy changes on the wider sector and regulatory conditions for individual good landlords, especially leading up to the judicial review of Right to Rent by the Joint Commission for the Welfare of Immigrants (JCWI). In the light of the worrying discriminatory impact of the scheme and lack of enforcement, a contemporary, comprehensive evaluation by the Home Office is urgently needed.

## 1.2 Structure of the Report

The findings of this research present the impact of the Right to Rent scheme on private rented sector. The policy continues to impact the private rented sector in England in

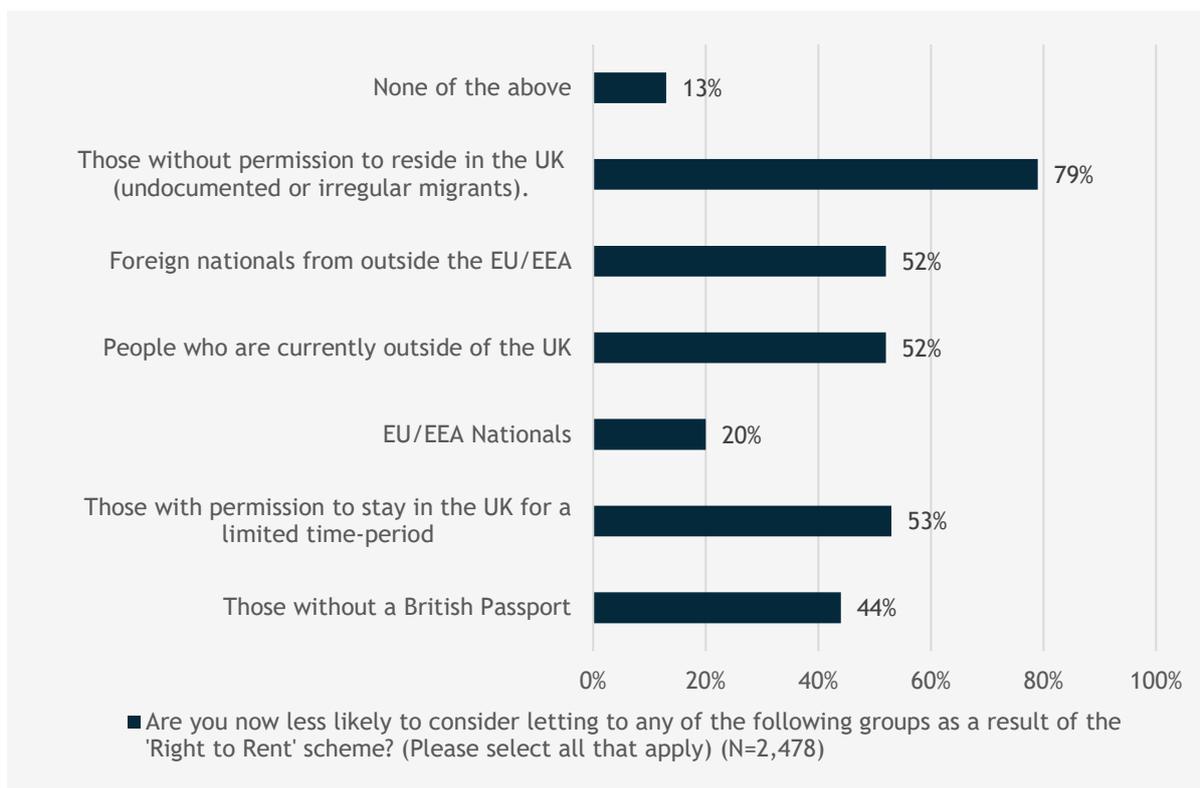
significant and unexpected ways, causing greater uncertainty for landlords, tenants and the sector. First section explores how the Right to Rent checks affect landlord behaviour, based on responses from 2,963 landlords in response to the state of the PRS quarterly survey in 2018. The subsequent section covers the enforcement of the scheme by Home Office and discusses wider implications on the sector. Finally, we make key recommendations we believe will improve private renting.

## 2. Right to Rent Checks and the Impact on Landlord Behaviour

This section explores how the Right to Rent checks are impacting the sector. Section 22 of the *Immigration Act 2014* prohibits landlords in England from letting their properties to those without permission to live in the UK. Landlords are required to carry out checks on tenants' permission to rent if the tenancy started on or after 1st February 2016, and failure to do so may result as a civil penalty. Extension of the legislation by *Immigration Act 2016* introduced additional penalties including a prison sentence up to five years after 1 December 2016 for landlords who do not check the immigration status. Our previous research in 2017 of almost 2,800 landlords found that 42% of landlords were reluctant to rent to anyone except British passport holders and 49% are less likely to rent to a person with a limited time permission to stay in the UK (Simcock, 2017).

### Key findings:

- 92% of landlords reported that they are aware of the Right to Rent scheme. Around 8% of the landlords, however, remain unaware, which is concerning especially since the scheme rollout is not a recent development. This leads to the question has enough been done by the Home Office to increase awareness of this duty?
- Although 86% of landlords or agents are aware of the criminal sanctions under the *Immigration Act 2016*, 14% of those surveyed remain unaware of the extended penalties.
- Around 44% of landlords reported that they are less likely to consider letting to someone without a British passport. In contrast, in 2017 42% of the landlords reported that they were now less likely to consider letting to someone without a British passport.
- 53% of landlords are less likely to consider letting to people who have permission to stay in the UK for a limited time-period. In comparison this was 49% in 2017.
- 20% of landlords are less likely to consider letting to EU or EEA nationals, up from 17% in 2017.
- Around 5% of those surveyed have refused a tenancy application since 1<sup>st</sup> February 2016 as a result of the Right to Rent checks.

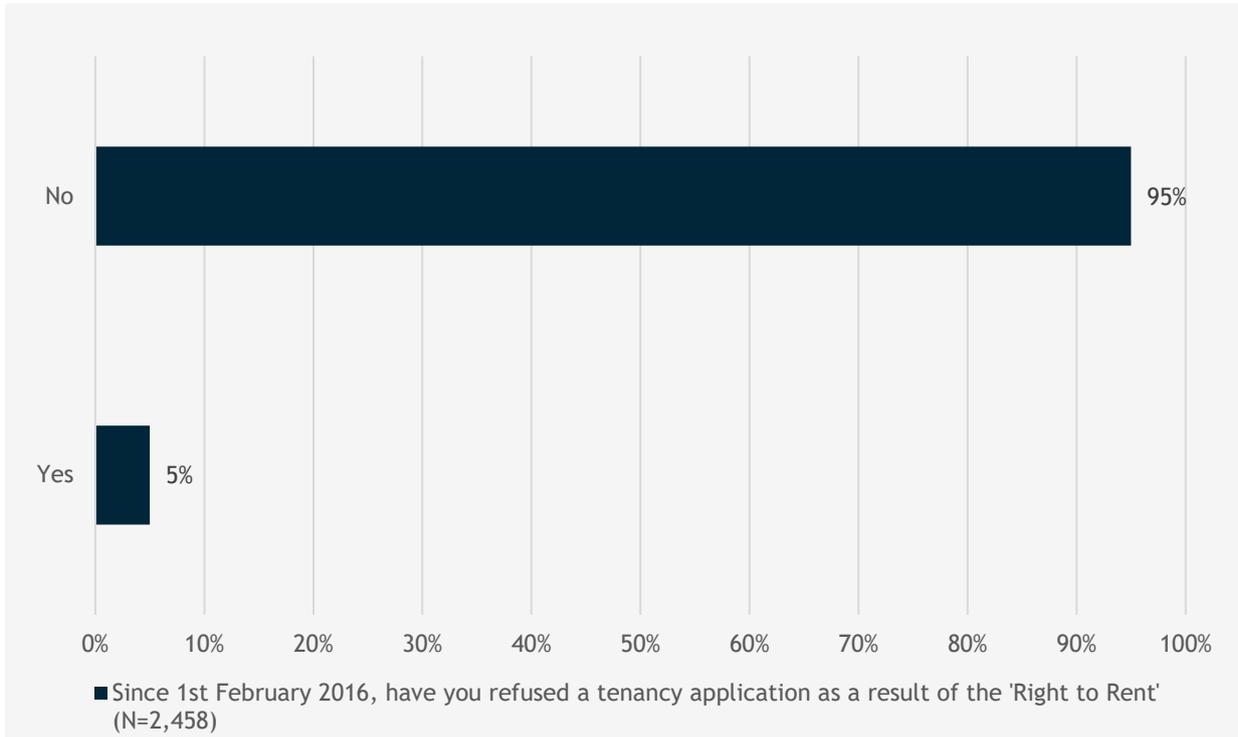


**Figure 1. Landlord's willingness to consider different tenant types due to the 'Right to Rent' checks**

The responses from landlords and letting agents suggest that the Right to Rent scheme continues to have an impact on landlord behaviour and hence affecting the whole sector: 44% of landlords responded that they are now less likely to consider letting to anyone without a British passport. This is 2 percentage points up from the previous survey in 2017. Worryingly, the behaviour trend is likely to have implications for the many British nationals without a passport, many who may also be vulnerable. Current estimates show that 17% population, or 9.5 million individuals in England and Wales do not have a British passport (ONS, 2012a). Twenty percent of landlords are less likely to consider letting to EU or EEA nationals, which is up from 17% in 2017, suggesting that the feeling of uncertainty caused by Brexit is having an impact on renting.

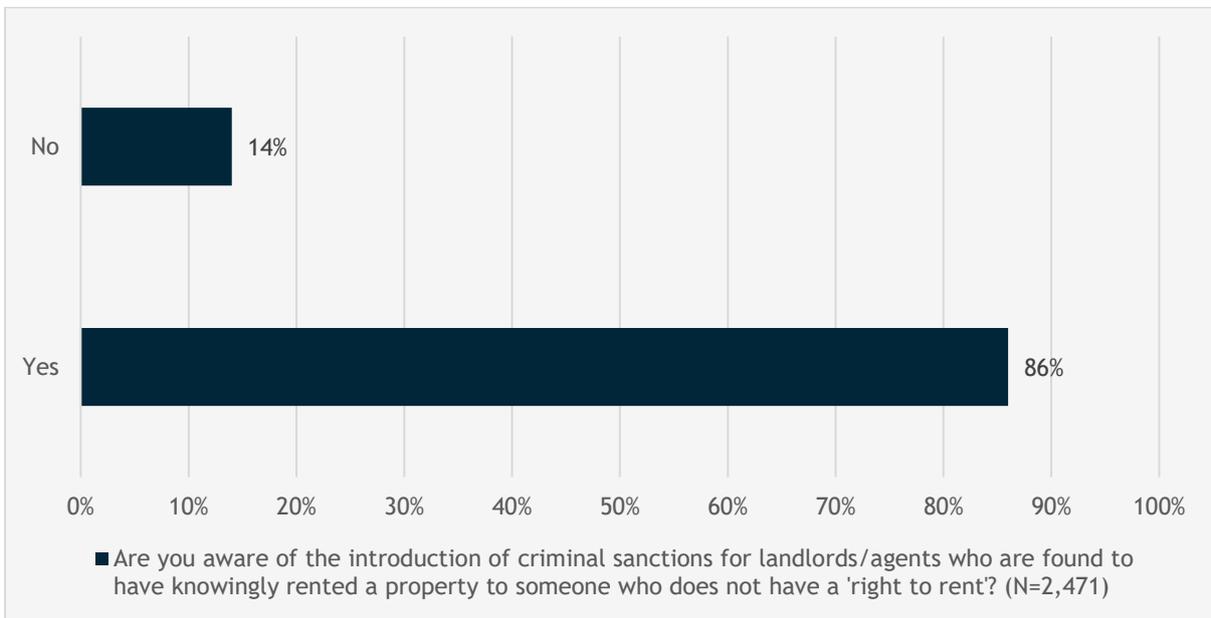
Alongside this, 53% of landlords were less likely to let to people with limited time to remain in the UK, up from 49% in 2017. This suggests that landlords have become incrementally more cautious in the light of further criminal sanctions brought in by *Immigration Act 2016* and consolidation of the hostile environment. The cautiousness potentially means that those with right to rent but without a passport are unable to access a home, and inability of migrants and workers could continue to result as a loss of skilled workers.

We continue to call on the UK government to urgently review the policy and assess and mitigate any unintended consequences.



**Figure 2.** Proportion of landlords who have refused a tenancy application as a result of the right to rent checks

Secondly, the research shows that 5% of landlords would refuse a tenancy application because of the Right to Rent checks since February 2016. This is only a slight decline from 6% in the 2017 regulation survey.



**Figure 3.** Proportion of landlords who are aware of the criminal sanctions for landlords/agents that were introduced on 1<sup>st</sup> December 2016.

Notably, nearly 9 in 10 or 86% of landlords reported that they are aware of the introduction of criminal sanctions for landlords or agents after December 2016. In 2017, 89% of landlords reported to be aware of the criminal sanctions, however the number of

landlords surveyed was also slightly higher, balancing the 3-percentage point difference between those in 2018 and 2017.

This survey of the landlords and agents reveals how immigration legislation is inevitably shaping private renting in the UK. This helps us and stakeholders to better understand the challenges and monitor developments and enable evidence-informed policy making.

### 3. Enforcement of the Right to Rent Scheme in the Private Rented Sector

This section covers the enforcement of the 'Right to Rent' policy by the Home Office and discusses how this impacts the private rented sector. The first part covers the key findings, followed by a section on the Civil Penalty notices, notices to and from Home Office and landlords informing about tenants without Right to Rent and prosecutions of landlords, notably which there have been none to date. Information on the use of the Home Office Landlord Checking Service is also included.

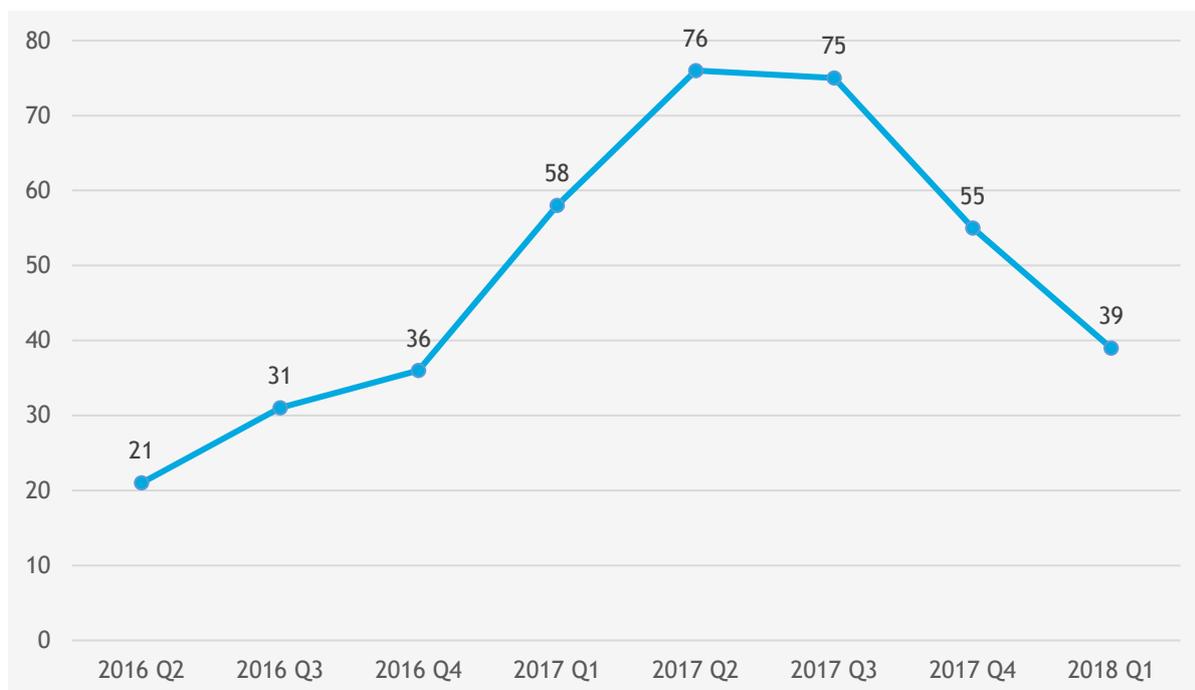
Together, the findings and evidence from other research show that the enforcement of the scheme remains low, despite the disproportionate stress it causes to landlords and tenants, effectively making landlords an arm of immigration enforcement.

#### *Key findings:*

- During 2016/17 and 2017/18 the Home Office issued 391 Civil Penalties, with the highest number issued in Q2 2017. On average, the Home Office issued 20 Civil Penalty notices monthly in 2017/18 in England.
- The Home Office levied £251,200 in Civil Penalties for right to rent breaches between 2016/17 and 2017/18. In 2016/17 the Home Office levied £102,000 in Civil Penalties notices and £149,200 in 2017/18. £76,980 was levied between December 2014 and December 2016, of which only around £29,575 had been collected up to December 2016 (Parliament question, 2017). The impact of a single fine of around £600 is likely to be insignificant in deterring the minority of landlords who continue to knowingly let to irregular migrants or alternatively they have developed ways to avoid immigration detection (Duvell, Cherti & Lapshyna, 2018), and hence is not contributing significantly to the 'hostile environment'.
- In 2016/17 the Home Office received 81 reports from landlords about tenants not having right to rent based on the landlord's follow-up checks and in 2017/18 this was 417. During December 2016 to August 2018 the Home Office issued 412 notices to landlords informing that some in their property have no right to rent. The figures suggest that the reporting service is being used to a degree by landlords albeit reluctantly, but the figure is low compared to the volume of private renting.
- The Home Office does not have records of criminal charges against or prosecutions of landlords for breaching the Right to Rent policy. However, compared to anecdotal estimates of irregular migration and the size of the PRS, lack of prosecutions suggests that the Home Office is reluctant to enforce the policy against criminal landlords, while good landlords are fearful of the sanctions, altering their letting behaviour accordingly.
- The Home Office was unable to provide information on the number of individuals removed from the UK as a result of right to rent checks since information leading to the removal of foreign national offenders is not attributable to one source of

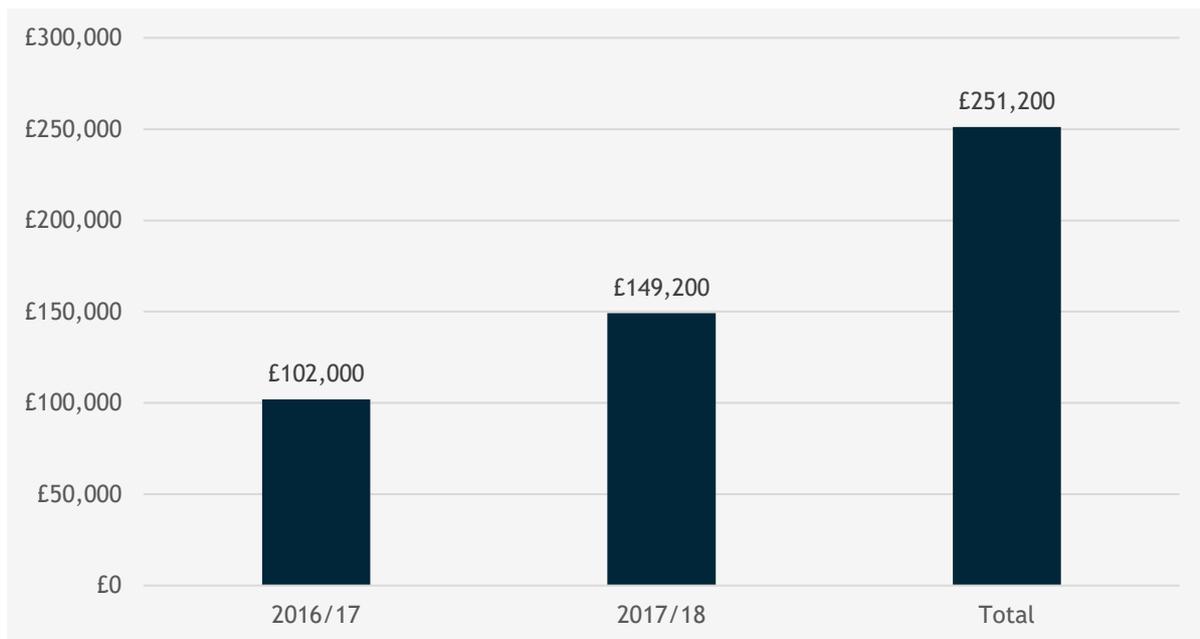
information. However, even the most positive estimates show that the policy has an insignificant impact on the number of removals from the UK, and it is unlikely to deter individuals from staying in the UK.

### 3.1 Civil Penalty notices to Landlords

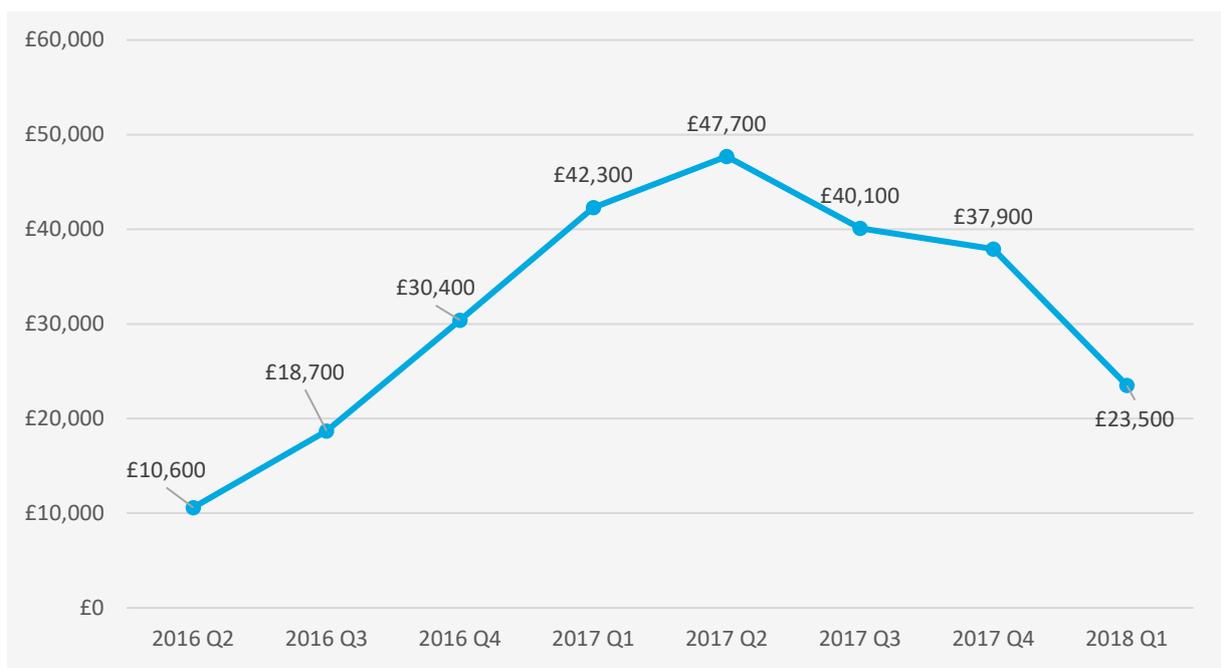


*Figure 4.* The number of Civil Penalties issued against private landlords between Q1 2016 and Q1 2018.

The number of Civil Penalty notices has risen steadily since Q2 2016 until Q2 2017 and declined after until the first quarter of 2018. In 2016/17 the Home Office issued 146 notices and 245 notices in 2017/18. This means that in a month in 2016/17 landlords in England were levied 12 Civil Penalty notices on average and 20 in 2017/18. Notably, a single penalty can cover multiple tenants. Figures 5. and 6. below show the value of the levied Civil Penalty notices by year and quarterly against private sector landlords.



**Figure 5.** The value of Civil Penalties issued against private sector landlords in 2016/17 and 2017/18.



**Figure 6.** The value of Civil Penalties issued against private sector landlords by quarter.

In addition to Figure 6 fines, on the first quarter of 2016 Home Office levied £13,800 Civil Penalties. The peak was reached in the second quarter of 2017, when the Home Office issued £47,700 in Civil Penalty notices. Alongside this, there were zero appeals of Civil Penalties within 28 days in 2016/17 and three appeals in 2017/18. The Civil Penalty notices are capped at maximum £3,000 while an average penalty was £699 in 2016/17 and £609 in 2017/18. All the penalties in Figure 6. above may be subject to adjustments according to objections or appeals or reduced as part of the faster payment option.

During the phase one of right to rent in West Midlands during December 2014 and May 2015 £3,480 was issued in Civil Penalty notices to 15 landlords (Home Office, 2015; Parliament questions, 2016). In terms of penalties collected, only £29,575 was collected up to 13 December 2016 (Parliament questions, 2016) out of the £76,980 issued up to December 2016.

The volume and amount of the fines is low in comparison to the anecdotal estimates of people currently entering and living in the UK illegally. Unwillingness of landlords to rent to people without a British passport, whether irregular migrants or UK nationals without passport to prove their right to rent or prospective tenants without “local accents” (Foster & Bellis, 2017) may result as some being pushed to the lower-end, informal housing market (Bolt, 2018). This risk was acknowledged by the Home Office, but no mitigation attempts of the risk have been put into place (Bolt, 2018). An average fine of barely £600 is unlikely to deter some landlords, who are used to navigate regulations and detection of the immigration authorities.

Landlords and other civil society actors made to enforce immigration policy have created ways to avoid detection and have become resilient to the threat of enforcement (Duvell, Cherti & Lapshyna, 2018, p.12). Besides this, rather than successfully creating a hostile environment, it is contributing to an atmosphere of fear and uncertainty for landlords as well as prospective tenants who have a right to rent in the UK. Irregular migrants may be pushed further into the shadows and exploitative living conditions (Duvell, Cherti & Lapshyna, 2018) or vulnerable citizens without passport denied access to adequate housing (Simcock, 2017). Although the most vulnerable tenants are at the receiving end of the unintended consequences of the scheme, the Home Office disagrees that significant enough evidence of discrimination exists based on one evaluation carried out by the agency. Yet other sources refer to substantial evidence of discrimination of prospective tenants without a British passport, while greater discrimination was faced by BME British tenants without a British passport (JCWI, 2017). Plausibly and supported by the landlord responses even the possibility of a fine or criminal prosecution is enough to influence landlord behaviour and have indirect consequences on the sector and additional regulatory burden on landlords and tenants. However, without urgent and transparent evaluation by the Home Office the justifications for the continuation of the policy is thinly grounded.

The Home Office does not have a record of having prosecuted any landlords for letting residential property to occupiers who do not have the right to rent nor criminal charges against private sector landlords. However, criminal sanctions were introduced only on 12 May 2016, and the cycle from identification to prosecution is inherently time consuming in ensuring fair treatment of all suspects and does not necessarily prove a shortcoming by the Home Office. However, a special operation aiming to identify and prosecute criminal landlords highlighted by the Chief Independent Investigator of Borders exemplifies intra-organisational disagreements of targeting priorities between the Home Office units with differing and sometimes conflicting enforcement priorities. The Home Office’s Criminal and Financial Investigations (CFI) team viewed the use of civil penalties as a priority rather than prosecution and deemed that none of the Right to Rent cases had enough merit for a criminal investigation (Bolt, 2017, p.34). Divergence of enforcement priorities could result as no enforcement against the potential worst offenders who have been identified. While one repeat offending landlord has been

identified for civil penalty purposes, the critics point out that regulation without enforcement is “meaningless” (Madge-Wyld, 2016, para. 11).

*Table 1.* The number of reports received by Home Office from landlords and the number of notices issued to landlords by Home Office informing about tenants in the property without Right to Rent (RtR).

	<i>Number of reports received by Home Office from landlords about tenants without RtR*</i>
<i>2016/17</i>	81
<i>2017/18</i>	417
<i>Q2 2018 – October 2018</i>	196

	<i>Number of notices issued to landlords by Home Office informing about tenants in the property without RtR</i>
<i>December 2016 – March 2017</i>	97
<i>April 2017 – March 2018</i>	294
<i>April 2018 – August 2018</i>	21

\*Reports were made using ‘making a report’ e-form online and the figures reflect the number of forms, not individuals

The number of reports received by the Home Office from landlords reflect data collection responsibility on the Home Office, and landlords are not expected to report every check they have carried out (Bolt, 2018). Although the Home Office does not expect professional- level recognition of forged documents by landlords, the view of what is reasonable or apparent forgery may be different for the Home Office (Bolt, 2018, p.48), and this might become a legal issue as higher quality fake documents continue to surge (Adesina & Brennan, 2017). Also, a number of landlords outside landlord associations may not be fully informed of the scheme (Foster & Bellis, 2017) and more work is required to reach all landlords and agents about the changes in legislation (Simcock, 2017).

The Landlords Checking Service (LCS) was created to assist landlords by providing a ‘yes’ or ‘no’ answer to the requesting landlord when the tenant has their documents with the Home Office (Bolt, p.40). During 1 February 2016 and 31 May 2017 the LCS received 9,757 requests for checks (Bolt, 2018, p.16), while the Home Office concluded that “very few” out of the 114 landlords surveyed for the evaluation needed to use the LCS (Home Office, 2015). However, it is likely that the landlords who respond to the survey in the first place are well positioned to be aware of the scheme, and unlikely to feel a need for the checking service support. In contrast some landlords with a small portfolio and less accustomed to using technology may be unaware of the legal requirements and more

dependent on the LCS, and the low sample of 114 landlords may not have included and taken into account the needs of landlords who require particular assistance with the Right to Rent checks.

On balance, the estimate number of private landlords in England is around 1.75 million and the number of new tenancies and associated right to rent checks carried out annually by landlords will also be significant. However, any delay in the Home Office confirmation could result as an incorrect immigration status being given and wrongly refusal of a tenant (Bolt, 2018). This may put landlords into uncomfortable and uncertain situations having to refuse tenants, who, in reality, have a right to rent but the Home Office has provided an outdated reply and the telephone checking service has been reported to be misleading (JCWI, 2017). This begs the question whether the landlord service is fully fit for its purpose to give a clear answer to landlords and what is the impact on the wrongly refused tenants, and until these questions are answered and the policy properly evaluated the costs of the policy continue to be passed onto both landlords and tenants (JCWI, 2015).

### **3.2 Prosecutions and immigration removals under the Right to Rent scheme**

Under the Freedom of Information Request, the Home Office was unable to provide information on the number of individuals removed from the UK under Right to Rent. While information from Right to Rent checks is an essential part of Immigration Enforcement's efforts to "locate and remove individuals found to be illegally in the UK, it is only one part of the overall picture" (Home Office FOI response, 2018). Many different sources of information are used to locate and remove immigration offenders so attributing removal or departure directly to one source is not possible (Home Office FOI response, 2018). In perspective, the Home Office encountered 654 individuals through Right to Rent inspections, and 31 were removed from the UK, which constitutes just 0.28% out of all 12,056 enforced removals in 2015 (JCWI, 2017).

Between 1 February 2016 and 31 August 2017, seven out of the 9,127 people on the Voluntary Returns Scheme, who provided a reason for their departure, indicated the inability to rent property affecting their wish to leave the UK (Bolt, 2018).<sup>1</sup> The Home Office remains unwilling to recognise or release any estimates of individuals attempting to enter the UK illegally (Duvell, Cherti & Lapshyna, 2018, p.40), which further complicates assessment of impact of irregular migration on landlords. For example, during phase one in West Midlands 109 irregular migrants were identified and for six of individuals no enforcement action was possible due to limited details (Home Office, 2015). In the case of 103 individuals identified as a result of Right to Rent enforcement their statuses included nine removals from the UK and five pending removal in a detention centre or through the assisted voluntary returns process on September 2015 (Home Office, 2015, p. 20). The literature and Home Office figures suggest that the

---

<sup>1</sup> Internal management information provided to the Independent Chief Inspector of Borders. The research and analysis team at Home Office recognises that the data is unusable for drawing relationship between sanctions and its impact on voluntary returns. For comparison, the overall voluntary departures from the UK were 25,306 in 2016 and 20,691 in 2017 (see <https://www.GOV.UK/government/collections/immigration-statistics-quarterly-release>).

scheme is adding a burden on landlords while doing little to stop renting by people who are illegally in the country nor seriously contributing to deter irregular migration to the UK.

The Home Office evaluation of phase one in West Midlands was reportedly carried out after the further roll out in England had already been decided. Notably, the sample size of 114 landlords in the evaluation (Home Office, 2015) is low in comparison to around 15% of households (or 345,000) renting from a private landlord in the West Midlands (ONS, 2012b). In Wales, around 14% or 180,000 properties are in the PRS (Welsh Government, 2017) and 15% (370,00 households) in Scotland (Scottish Government, 2016). Rapidly growing, the PRS in England has more than doubled since 2002, to 4.7 million (MHCLG, 2018). Significant size and the role of the PRS underline the need for a comprehensive evaluation of the scheme's impact before it is rolled out in Wales and Scotland. Furthermore, the pilot's timing, location and duration made policy impact assessment impossible prior to national roll-out (JCWI, 2015), which is highly concerning. Scottish Housing Minister has expressed the need for clarification of the intended roll out in Scotland from the UK government despite the policy being "against the will of the Scottish Parliament" (Lukes, 2016; for Scotland see Crawford, Leahy & McKee, 2016).

Concerningly, the Home Office is not adequately monitoring the Right to Rent policy, discrimination caused by it, enforcement action and the impact on both agents and landlords (JCWI, 2017), the evaluation methodology was doubted and the decision to roll out the scheme nationally in England was already taken despite the scheme was found to be causing discrimination (Bolt, 2018, p.7). The policy aim of the Right to Rent scheme is to make access to privately rented accommodation more difficult for "illegally resident individuals" (Home Office, 2015, p.8) and aiming to deter remaining in the UK illegally. In some cases, refugees have to wait weeks for right to rent documents, leading to homelessness because private rented nor social rented sector housing is a viable option (Perry, 2017).

The impact of discrimination has been touched in more depth by previous comprehensive studies (see JCWI, 2017 and Duvell, Cherti & Lapshyna, 2018). With regard to the legal implications, and while the right to rent under the *Immigration Act 2014* is not in breach of the EU law (Lukes, 2016) it has negative impacts on the most vulnerable people. Yet, in not allowing a court to consider the proportionality of eviction it may be contrary to the European Convention of Human Rights (Madge-Wyld, 2016). Rather, surveillance and exclusionary policies "cause high level of stress while not succeeding in stimulating return" (Duvell, Cherti & Lapshyna, 2018, p.54) and divide the society. Instead it may be pushing vulnerable people into the fringes but fail to create a 'hostile environment' which would seriously deter irregular migrants (Duvell, Cherti & Lapshyna, 2018). A legal challenge is likely to scrutinise the purpose of the policy as the Home Office has failed to carry out further evaluation of the national roll-out (Bolt, 2018). The government is repeatedly urged to scrap the policy (London Mayor, 2018; JCWI, 2017) and to urgently get a "grip" (Bolt, 2018) while the scheme had yet to "demonstrate its worth as a tool to encourage immigration compliance, with the Home Office failing to coordinate, maximise or even measure effective its use, while at the same time doing little to address the concerns of stakeholders" according to the Independent Chief Inspector of Borders (Bolt, 2018, p.2).

## 4. Conclusions and Recommendations

This research has explored key changes in landlord behaviour as a result of the Right to Rent scheme and how the enforcement of the scheme is shaping the sector, building on our previous research on the impact of this policy change and exploring the enforcement of the scheme against private sector landlords. While majority of landlords (92%) are aware of the scheme while some landlords remain unaware, leaving them at greater risk of enforcement due to lack of understanding and awareness of their responsibilities. Of those who are aware, a significant 44% are less likely to consider renting to people without a British passport, which could lock out the nearly 10 million of British citizens without a passport and others with right to rent from a home to rent in the private rented sector. The discriminatory impact of the scheme has been found to be significant in our previous and other research, while it has worryingly been played down by the Home Office. Especially in the light of the unknowns of Brexit and its implications on the private rented sector, the Right to Rent scheme deepens the uncertainty for landlords and insecurity for more tenants. While the government is keen to create a hostile environment at all costs, the cautiousness of landlords to rent to citizens and migrants alike is restricting access to homes based on nationality or ability to obtain an expensive passport.

The volume of enforcement action and the deterring results of the scheme remain relatively low in terms of Civil Penalty notices, considering the size of the PRS in England but higher than use of prosecutions of landlords, which there were none. Less than half of the fines levied in two years during December 2014 and 2016 had been collected by December 2016. This alone does not warrant criticisms about the operation of the scheme, since the Home Office and individual landlords may have agreed on payment plans over time. However, an average fine of around £600 is unlikely to deter anyone seriously committed to avoid detection and determined to continue to benefit from renting out illegally. If enforcement of the policy is not significantly contributing to reducing irregular migration and border control as envisaged, the policy remains a fantasy while locking in scarce Home Office resources and doubted within the agency (Duvell, Cherti & Lapshyna, 2018). At the same time, the Home Office declines to release figures of illegal migration into the UK, hindering quantitative assessments, despite the intended roll out in Wales and Scotland.

Evidence from the landlords and agents strongly suggest that the scheme is having significant consequences on the sector, manifesting as unwillingness to rent to migrants and UK nationals without passports and resulting as refusal of tenancies. This has implications on the economy dependent on provision of homes for migrant workers and personal consequences for individuals struggling to access adequate housing. While causing stress and division, the scheme is not adequately enforced, and onus of the measures is on envisaged, estimated results rather than material outcomes (Amodu, 2018). Lack of coherent enforcement and evidence-based decision making reflects wider issues in regulation of the private rented sector. Plagued by piecemeal legislation, the sector is yet again collateral damage of poorly planned and assessed policy-making. This is best exemplified in the way the current regulation by different government bodies targets landlord behaviour through increased penalties rather than collectively

addressing the underlying causes and fully recognising and better supporting the crucial role of private renting. This lack of joined-up policy making is having a negative impact on millions of landlords and tenants.

## Key Recommendations

In order to address the issues resulting from the Right to Rent scheme, we have key recommendations which we believe help evidence-based decision making and to improve regulation of the private rented sector:

1. Based on the research findings we believe the government needs to review and address the consequences Right to Rent scheme has on the private rented sector.
2. There has been a considerable lack of evaluation by the Home Office on the effectiveness of this policy. The Independent Chief Inspector of Borders affirms that the Home Office has failed to carry out further evaluation, which is particularly pertinent before the scheme is further rolled out in Wales and Scotland. We believe the Home Office needs to evaluate the scheme urgently before the scheme is rolled-out further and assess the unintended consequences of the policy in England.
3. Concerningly, two years on after the introduction of the criminal sanctions, 14% of landlords remain unaware of criminal sanctions if they fail to undertake their responsibilities under the legislation. There needs to be a significant communication campaign by the Home Office to improve the awareness of landlords of their duties under the Right to Rent scheme and to ensure that landlords have access to appropriate resources on the Government website that enables them to check the different documentation from across the Globe.
4. There has been a significant policy focus on the private rented sector from across multiple Government departments, and this policy is another example of increasing regulation. There needs to be a greater focus on joined-up evidence-based policy making to ensure that regulations are compatible and do not create severe unintended consequences. Furthermore, we believe it is in the government's interest to ensure policies are not causing further division in the society and restricting access to safe housing for all.

## 5. References

- Adesina, Z. & Brennan, C. (2017). 'Forged IDs: Landlord laws 'fuelling black market'', *BBC*, 16 October [Online]. Available from: <https://www.bbc.co.uk/news/uk-england-london-41593684>
- Amodu, T. (2018). Regulating the private rented sector: millennial themes. *Journal of Property, Planning and Environmental Law*, Vol. 10 (2), pp.154-168. Retrieved from: <https://www.emeraldinsight.com/doi/abs/10.1108/JPEL-03-2018-0010>
- Beaumont, K. (2016). 'Immigration Act 2016 - residential tenancies', *LexisNexis*, 23 June [Online]. Retrieved from <https://www.lexisnexis.com/uk/lexispsl/immigration/docfromresult/D-WA-A-YEZE-AUUU-MsSWYWZ-UUW-UZEYAAUUW-U-U-U-U-U-ACVVZWDDW-ACVWWUYCDW-YUAEUCCEE-U-U/5/412012> (Accessed: 1 November 2018)
- Bolt, D. (Independent Chief Inspector of Borders and Immigrations). (2018). *An inspection of the "Right to Rent" scheme*. London, UK: Independent Chief Inspector of Borders and Immigration. Retrieved from [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/695273/An\\_inspection\\_of\\_the\\_Right\\_to\\_Rent\\_scheme.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/695273/An_inspection_of_the_Right_to_Rent_scheme.pdf)
- Crawford, J., Leahy, S. & McKee, K. (2016). The Immigration Act and the 'Right to Rent': exploring governing tensions within and beyond the state (Policy Commentary). *People, Place and Policy*, 10 (2), 114-125. Sheffield, UK: Sheffield Hallam University. Retrieved from: <https://extra.shu.ac.uk/ppp-online/the-immigration-act-and-the-right-to-rent-exploring-governing-tensions-within-and-beyond-the-state-policy-commentary/>
- Duvell, F., Cherti, M. & Lapshyna, I. (2018). *Does Immigration Enforcement Matter (DIEM)? Irregular Immigrants and Control Policies in the UK*. Oxford, UK: University of Oxford. Retrieved from <https://www.compas.ox.ac.uk/wp-content/uploads/DIEM-Irregular-Immigrants-and-Control-Policies-in-the-UK.pdf>
- Foster, D. & Bellis, A. (2017). *Right to Rent: private landlords' duty to carry out immigration status checks*. London, UK: House of Commons Library. Retrieved from <https://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN07025>
- Home Office. (2015). *Evaluation of the Right to Rent scheme: full evaluation report of phase one*. London, UK: Home Office. Retrieved from [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/468934/horr83.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/468934/horr83.pdf)
- (JCWI) Grant, S. & Peel, C. (2015). *No Passport Equals No Home: An Independent evaluation of the 'Right to Rent' scheme*. London, UK: Joint Council for the Welfare of Immigrants. Retrieved from <https://www.jcwi.org.uk/sites/default/files/documets/No%20Passport%20Eq>

[uals%20No%20Home%20Right%20to%20Rent%20Independent%20Evaluation\\_0.pdf](#)

- (JCWI) Patel, C. & Peerl, C. (2017). *Passport Please: The impact of the Right to Rent checks on migrants and ethnic minorities in England*. London, UK: Joint Council for the Welfare of Immigrants. Retrieved from [https://www.jcwi.org.uk/sites/jcwi/files/2017-02/2017\\_02\\_13\\_JCWI%20Report\\_Passport%20Please.pdf](https://www.jcwi.org.uk/sites/jcwi/files/2017-02/2017_02_13_JCWI%20Report_Passport%20Please.pdf)
- Lukes, S. (2016). 'Immigration Act 2016—residential tenancies', *LexisNexis*, 23 June [Online]. Retrieved from: [https://www.lexisnexis.com/uk/lexispsl/immigration/document/412012/5K2V-DMF1-DYW7-W26Y-00000-00/Immigration\\_Act\\_2016\\_residential\\_tenancies](https://www.lexisnexis.com/uk/lexispsl/immigration/document/412012/5K2V-DMF1-DYW7-W26Y-00000-00/Immigration_Act_2016_residential_tenancies)
- MHCLG. (2018). *English Housing Survey: headline Report*. London, UK: Ministry of Housing, Communities & Local Government. Retrieved from: <https://www.gov.uk/government/statistics/english-housing-survey-2016-to-2017-headline-report>
- ONS. (2012a). 2011 Census: Key Statistics for England and Wales, March 2011. Retrieved from: <https://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/populationestimates/bulletins/2011censuskeystatisticsforenglandandwales/2012-12-11>
- ONS. (2012b). 2011 Census: Tenure, local authorities in England and Wales, table KS402EW. Office of National Statistics. Retrieved from <https://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/populationestimates/bulletins/2011censuskeystatisticsforenglandandwales/2012-12-11#accommodation-and-tenure>
- (Parliament questions) Written Answer from Robert Goodwill MP to Parliamentary Question 57109 asked by Stuart McDonald MP, received 31 January 2016. UK: Houses of Parliament. Retrieved from <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2016-12-12/57109/>
- Perry, J. (2017). 'Right to rent immigration checks put vulnerable people at risk', *The Guardian*, 1 February [Online]. Available at: <https://www.theguardian.com/housing-network/2017/feb/01/right-to-rent-immigration-checks-vulnerable-people-risk> (Accessed 20 October 2018)
- Scottish Household Survey. (2017). *Scottish household survey 2016: annual report*. The Scottish Government. Retrieved from <https://www.gov.scot/publications/scotlands-people-annual-report-results-2016-scottish-household-survey/pages/3/>
- Simcock, T.J., (2017). *State Intervention into Renting: Making sense of the impact of policy changes*. Manchester: UK. Residential Landlords Association. Retrieved from <https://research.rla.org.uk/wp-content/uploads/state-intervention-into-renting-2017-report.pdf>

- Simcock, T.J., (2018). *Longer-Term Tenancies in the Private Rented Sector*. Manchester: UK. Residential Landlords Association. Retrieved from <https://research.rla.org.uk/wp-content/uploads/Longer-Term-Tenancies-and-the-Private-Rented-Sector.pdf>
- The Welsh Government. (2013). *Dwelling stock estimates percentages by year and tenure*. The Welsh Government Available from: <https://statswales.gov.wales/Catalogue/Housing/Dwelling-Stock-Estimates/DwellingStockEstimatesPercentages-by-Year-Tenure>
- Whitehead, C. & Williams, P. (2018). *Assessing the evidence on Rent Controls from an International Perspective*. Manchester: UK. Residential Landlords Association. Retrieved from <https://research.rla.org.uk/wp-content/uploads/LSE-International-Evidence-on-Rent-Control-Report-2018-Final.pdf>



The home for research

+44 (0)161 495 9317

[research@rla.org.uk](mailto:research@rla.org.uk)

[@RLA\\_PEARL](https://www.instagram.com/RLA_PEARL)

[research.rla.org.uk](http://research.rla.org.uk)