



Response to the Home Office
Proposals for an Immigration Bill 2015 – Housing Measures
From the Association of Residential Letting Agents (ARLA)
August 2015

Background:

1. The Association of Residential Lettings Agents (ARLA) was formed in 1981 as the professional and regulatory body for letting agents in the UK. Today ARLA is recognised by government, local authorities, consumer interest groups and the media as the leading professional body in the private rented sector.
2. In May 2009 ARLA became the first body in the letting and property management industry to introduce a licensing scheme for all members to promote the highest standards of practice in this important and growing sector of the property market.
3. ARLA members are governed by a Code of Practice providing a framework of ethical and professional standards, at a level far higher than the law demands. The Association has its own complaints and disciplinary procedures so that any dispute is dealt with efficiently and fairly. Members are also required to have Client Money Protection and belong to an independent redress scheme which can award financial redress for consumers where a member has failed to provide a service to the level required.

Consultation Responses:

Question 1: How do you see the new measures working in practice?

4. ARLA has welcomed and actively supported the development and evaluation of the Right to Rent scheme's Phase One. We have engaged letting agents, landlords and tenants from across the West Midlands and worked to ensure that the aims of the scheme are met.
5. Responsible landlords and professional agents already carry out basic checks and references so in most cases when the scheme is rolled out nationally, adding ID and residency checks will not create significant additional administrative burdens. Indeed, anecdotal evidence from our members within the Phase One area indicates the Right to Rent has actually assisted in their pre-tenancy checks as identity checking is now a legal requirement rather than merely best practice.



6. Much of Phase One's success has been due to the collaborative approach taken by enforcement agencies and local authorities; devoting resources to support success under scrutiny. These conditions are unlikely to be replicated in an immediate national rollout.
7. For success to be extended across the country, ARLA believes a gradual rollout will be the most effective way forward. We would argue that Phase Two should cover other major cities with large private rented sector housing stock such as Bristol, Manchester, Newcastle, Nottingham, Leeds, Liverpool, Oxford, Portsmouth, Sheffield and Southampton with Phase Three reaching London, the remaining cities and rural locations. This will give landlords and letting agents time to learn and implement the new rules. It will also reduce pressure on the Landlord Checking Service, which has built a good reputation and credibility within in the industry and added to the success of Phase One in the West Midlands.
8. In terms of practical implementation, ARLA has significant concerns that if the exemptions and barriers suggested in this document are added to the proposed new possession ground, the process will be subject to loopholes which has the potential to undermine the ground and lead to it becoming ineffectual. For this possession route to be effective, it must be provide certainty that where a landlord commences action to regain possession of their property, they are guaranteed regain vacant possession.
9. ARLA also believes greater guidance is necessary on the procedure following a failed Right to Rent follow-up check or where the Home Office serves a notice on a landlord informing them that there is an illegal immigrant living in their property; particularly where an illegal immigrant refuses to leave a property at the end of the notice period and a bailiff is required to enforce an eviction. Without much greater guidance, discrimination against non-UK or non-EU citizens could increase.

Question 2: How often do you pursue court processes to remove illegal immigrants and do you think the new measures will make it easier to evict an illegal immigrant?

10. There has never been a possession route in place for these circumstances so no information has been recorded. However, we do expect the new measures to be an effective route for landlords to regain vacant possession of their properties but would reiterate that thorough guidance and set procedures with clearly defined timescales must be provided to assist landlords with this process.

Question 3: How much notice should the landlord be required to provide?

11. Landlord should be required to provide seven days' notice after serving the Home Office notice on the tenant. This is because landlords rely on stable rent payments in order to cover their own



mortgage repayments otherwise they risk their Buy-to-let lenders repossessing their properties. Drawn out possession proceedings is likely to result in significant rent arrears. Further, with the current shortage of good quality, affordable rented accommodation, it is essential these properties are made available to those with a legal Right to Rent as soon as practically possible.

Question 4: What guidance should we offer around protection issues – for both the landlord and the tenants?

12. This is an area of significant concern for ARLA. Landlords' home address details have to be made available to the tenant and best practice is to disclose such details in the tenancy agreement; and where a property is a Licensable HMO or in an area where a licensing scheme is in operation, those details are also on a public register. Where an illegal occupier perceives that the landlord has been working with the Home Office to deport them, this can make landlords and their families vulnerable to abuse and attack along with damage to property. Therefore, sufficient safeguards need to be put in place in order to protect landlords from the potential repercussions of complying with their statutory duties.

Question 5: In your estimate or knowledge, what proportion of evictions currently require court action in the UK?

13. According to Shelter, between October 2013 and September 2014 there were over 200,000 claims for possession made in England.
14. Whilst ARLA acknowledges the Government's aim of discouraging illegal immigrants from remaining in the UK, the government must take into consideration the implications on the court system. For instance, courts could face a backlog of complex cases from evicted migrants if guidance is not in place to help landlords understand anti-discrimination legislation and the procedures around what action they should take to lawfully remove an illegal immigrant from their property.

Question 6: What proportion of tenancies do you estimate may contain a mix of illegal and legal occupants and how can we minimise the impact on tenants who are lawfully in the UK?

15. We do not have any statistical data to provide an empirical response to this question.
16. However, in order to minimise the impact on tenants who are lawfully in the UK, it is our contention that it is essential that sufficient resources are devoted to raising awareness of the legislative requirements under the Immigration Act 2014. Hard to reach groups and tenants who



are subletting must be made aware of the importance of ID checks. Without this, a greater number of legal occupiers may be impacted by the processes.

17. Further, where joint tenancies are found to comprise legal and illegal occupiers the proposal is to end the joint tenancy and create a new tenancy agreement for the remaining tenants. A new tenancy cannot be established for less than six months therefore within these circumstances there is a danger that occupiers with a legal Right to Rent as well as landlords will be disadvantaged. Student tenancies are an example where this proposal could put both landlords and tenants in a difficult situation. Students generally sign their following academic year's tenancy agreement (usually starting in July or August) in January or February. Therefore, where a group of students are letting a property under a joint tenancy and it is discovered one of their number does not have the right to rent in March or April, they will already have their new tenancy arranged for later in the year and the landlord will have new tenants signed to move into the property for the next academic year. Signing a new six-month tenancy will mean that the students will lose their following year's tenancy and the landlord will lose their new student tenants. It will then put the tenancy out of synchronisation with the student tenancy market. Neither the landlord nor the tenants will want to do this. Further, joint tenancies mean that each tenant is jointly and severally liable for the rent; therefore if one leaves, the others have to cover their portion of the rent for the new tenancy. We would therefore recommend that in the case of joint tenancies, the existing tenancy should be allowed to continue after the illegal immigrant has been removed and the remaining tenants and landlords can agree to a Deed of Assignment allowing a new tenant to take up residence for the remainder of the tenancy; as is currently common practice.

Question 7: Do you think these proposals will reduce the costs for landlords of evicting illegal immigrants?

18. These proposals should reduce the costs for landlords of removing illegal immigrants as long as the tenant conforms to the Home Office notice and leaves the property. However, if the illegal immigrant refuses to leave the property, possession proceedings will be required.
19. Where a Home Office notice has been served on the illegal immigrant by the landlord and the illegal immigrant refuses to leave the property, the landlord should be able to immediately apply to the Courts for a Warrant for Possession in order to enable Bailiffs to remove the illegal immigrant.



Question 8: Do you have any information about what costs landlords currently face in a year if they try to evict a tenant (court costs, legal fees etc.)? Do you think these measures will result in savings?

20. The costs that landlords incur when removing a tenant from a property frequently include solicitor fees and bailiff charges, court costs as well as repairs to the property, ongoing maintenance and mortgage payments. This is combined with loss of rent. Standard possession proceedings often take upwards of six months and therefore, these costs often run into many thousands of pounds. By reducing the time it takes for landlords to regain vacant possession, these costs, especially rent arrears, will be dramatically reduced.

Question 9: What other costs or savings to local authorities do you envisage as a result of the new measures?

21. ARLA envisages that the new measures will significantly increase costs to local authorities through supporting the work of enforcement agencies and providing temporary accommodation for illegal immigrants awaiting removal from the country. Whilst we acknowledge that local authorities will receive income from an increase in civil penalties, we believe these are unlikely to outweigh the cost of effectively resourcing the proposed legislation.

22. We are particularly concerned around the proposals in the consultation document which state “[l]ocal authorities could be affected in a small number of instances where illegal immigrants require their support, particularly in occasions where they face a recognised barrier to returning home. On such occasions the Home Office will work closely with local authorities, as they do currently, in issuing permission to rent while these barriers are resolved and will not issue a notice to the landlord to evict”. It has been a common problem for the private rented sector over many years that local authorities do not have the resources to house people who are unintentionally homeless. Therefore, when landlords issue possession proceedings, tenants are told by local authorities to remain in the property until forcibly evicted by the bailiffs and should the tenant leave voluntarily, the Council will deem them intentionally homeless and they will not have recourse to public funds under the Council’s homelessness duties. This is incorrect and not in accordance with the Homelessness Code of Guidance for Local Authorities of July 2006 which was reiterated in the Homelessness Code of Guidance for Local Authorities: Supplementary Guidance on Intentional Homelessness of 2009. Therefore, we are concerned that adding this new burden to house illegal immigrants onto already under resourced local authorities will mean the same situation will occur with illegal immigrants in the situation described above as is currently occurring with homelessness. It is inequitable to expect private landlords to continue housing known illegal immigrants and with the issues around property damage, rent arrears and personal safety already raised in this response, ARLA would strongly urge that this proposal is not taken forward into legislation.