

# Redrawing the border through the 'Right to Rent': exclusion, discrimination and hostility in the English housing market

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# **Redrawing the border through the ‘Right to Rent’: exclusion, discrimination and hostility in the English housing market**

## **Abstract**

The UK Immigration Act 2016 is central to the Conservative Government’s drive to create a more hostile environment for potential migrants and current ‘illegal’ migrants residing in the UK. The Right to Rent provisions of the Act, which require private landlords in England to conduct mandatory immigration document checks on prospective tenants, or face sizeable fines and criminal prosecution, have been highlighted as a key facet of the legislation.

Drawing on qualitative interviews with key experts and analysis of Home Office guidance documents, we argue the Right to Rent has turned the private rental market into a border-check, with landlords responsabilised to perform ‘everyday bordering’ on behalf of the State. This creates a potentially discriminatory environment for all migrants, as well as for British citizens who lack documentation and/or may be subject to racial profiling. It may also be forcing vulnerable, undocumented migrants into even more precarious housing situations.

## **Keywords**

Bordering, Housing, Immigration, Private Renting, Undocumented

## Introduction

Rex and Moore's (1967) seminal book 'Race, Community and Conflict' focused on Birmingham in England, documenting the racial discrimination and community tensions within the local Sparkbrook housing market. It had a particular focus on the challenges facing new migrants, and the punitive policies of the (local) State. A classic text for those interested in housing inequalities and the 'sociology of race relations' in the UK, several decades on its key themes remain as pertinent as ever, albeit the nuance of some of the language may have changed.

Whilst Rex and Moore drew attention to housing classes, in terms of differential access to, and experiences of, housing markets based on race, mechanisms of exclusion in the contemporary period work in somewhat different ways (Preece and Bimpson, 2019). Nonetheless, discrimination and disadvantage on the grounds of ethnic background remains a feature of the contemporary UK housing market (Lukes et al., 2018; Runnymede Trust, 2013; Harrison and Phillips, 2003). Census figures highlight that Black, Asian, Minority Ethnic and Refugee (BAMER) households are more likely than white households to live in overcrowded housing, to experience fuel poverty, to reside in poor quality damp housing, and to rent from a social or private landlord ([Gov.uk](https://www.gov.uk)). This is not uniquely a British phenomenon, with research in an international context also highlighting similar longstanding issues (Desmond, 2016; Rosenbaum, 1996; Wilson, 1990).

The Right to Rent (RtR) part of the UK Immigration Act 2016, is one of the most prominent contemporary mechanisms of housing exclusion in the UK context and provides the empirical foundation for this paper. The legislation augmented the existing powers of the 2014 Act, which emerged against a backdrop of heightened political focus on immigration, and the UK Conservative Party's wish to curb in-migration in absolute terms (Jones et al., 2017). Theresa May, when UK Home Secretary, asserted her desire to create a 'Hostile Environment': essentially an umbrella term for a range of policy measures designed to deter 'illegal' migrants from entering the UK, and to encourage those here already to leave voluntarily. The Immigration Acts introduced a range of mechanisms to achieve this, all of which have the common aim of limiting access to key public and private services including employment, housing, healthcare, banking, and driving licences (see House of Lords Library, 2018; Simenova et al., 2016). Scrutiny of the 2016 Act reverberates Powell and Robinson's

(2019: 188) observation that “housing is a key field around which popular and political debate about the impacts of migration coalesce”. A key facet of the legislation, and the focus of this paper, is the RtR provisions, which require private landlords to check the immigration status of their tenants (and potential tenants) if the tenancy started after 1<sup>st</sup> February 2016; it also prohibits them from providing a tenancy to those not living in the UK legally. Failure to conduct these checks, or to rent to someone without a legal RtR, can result in criminal prosecution against the landlord including sizeable fines and potential jail sentences of up to 5 years; also tenants without this paperwork can now be summarily evicted without following due legal process, thus undermining their security of tenancy and also the English legal system that requires a court order be obtained for the eviction to be legal (House of Commons Library, 2018; Mykkanen and Simcock, 2018).

Crucially, the RtR only exists in England, for this specific aspect of the Immigration Act has never been rolled out to the other parts of the UK – Northern Ireland, Scotland or Wales. This reflects the devolved nature of public policy making in the UK context (McKee et al., 2017). But it also highlights a critical point of political difference between the UK Government and the devolved administrations in the UK – for immigration policy (which is a reserved power of the UK Westminster Government in London), and housing policy (which is a matter for the devolved administrations in Scotland, Wales and Northern Ireland) are in clear tension here – with the RtR undermining housing rights in other parts of the UK, which other (devolved) governments have legislative responsibility for (see, Crawford et al., 2016). Importantly, the UK Government is now prevented from rolling out this legislation across the UK following action brought by the Joint Council for the Welfare of Immigrants, which resulted in a High Court judgment that deemed the RtR both discriminatory and in breach of human rights and equality law (Simcock, 2019). Whilst the future of this legislation now hangs in the balance, pending a Home Office appeal, what is significant about the RtR is its very aggressive stance towards the undocumented. This is an umbrella term that refers to those who lack the necessary authorisations or documents to prove their citizenship under national law. Such individuals are sometimes termed ‘illegals’; we however avoid the use of this term given it is both dehumanising and neglects the complex and shifting ways in which citizenship is defined, and people criminalised through changes in immigration law (Paspalanova, 2008). Interestingly, following the change in Home Secretary in 2018 there was an attempt by the Home Office to distance itself from the ‘Hostile Environment’, preferring instead the language of ‘compliance’ (House of Lords Library, 2018).

This change in terminology is significant, as it implies a shift from a period of adverse change in practice to an era of acquiescence and obedience. Despite the shift in rhetoric, the political focus on those with irregular immigration status seems here to stay, being a cornerstone of the Brexiteers' agenda (Virdee and McGeever, 2017). Whilst opposition political parties, civil society organisations, private landlords, the UN Special Rapporteur on Racism, and the Independent Chief Inspector of Borders and Immigration have all been united in their condemnation of the immigration powers embodied in the 2014 and 2016 Acts (see for example, Markkenen and Simcock, 2018; ICICB, 2018; Liberty, 2018; House of Lords Library, 2018; JCWI, 2015), there has been little academic research into this new mechanism of housing exclusion. Indeed, as Robinson (2018) has argued, this perhaps reflects the wider dearth of contemporary research into the housing inequalities experienced by BAMER groups in the UK, in contrast to the vibrancy of this field of academic study in decades' past (see for example, Somerville and Steele, 2002; Ratcliffe, 1999; Phillips, 1998; Harrison, 1995, Ginsburg, 1992; Karn, 1987), and also currently in an international context (see for example, Desmond 2016).

To advance knowledge on this topic, and address a significant research gap, this paper draws on qualitative interviews with housing professionals in England with expertise on the Right to Rent legislation, complemented with analysis of key Home Office guidance documents. The paper argues that the RtR responsabilises private landlords to perform 'border work' on behalf of the State, which in turn has both exclusionary and discriminatory effects for BAMER groups trying to navigate the private rental market.

### **Understanding the Housing Inequalities Facing Migrants in the UK**

Understanding contemporary patterns of housing exclusion requires some historical context. Not least as it is embedded in the mechanisms of differential inclusion that characterise UK citizenship law more broadly (Mezzdra and Neilson. 2011). The period in the UK between the Second World War to the early 1970s was characterised by significant levels of immigration from the former British colonies (Lukes et al., 2018; Somerville and Steele, 2002). The 1971 Immigration Act first introduced the notion that access to public funds, including local authority and homeless services, could be restricted due to immigration status. Until specifically tackled by the 1976 Race Relations Act, access to housing for migrant populations was restricted due to racial discrimination. Before this time, notices in boarding

room windows that read ‘No Blacks. No Irish. No Dogs’ were not uncommon. In the public sector, policy and practice also combined to exclude the non-white population from accessing council housing.

Ginsburg (1992) highlights three processes at the heart of these racial inequalities within housing: overt discrimination and prejudice by key individuals (e.g. landlords, estate agents); policy and administrative processes within local housing organisations (e.g. housing association, local authorities, building societies); and national and international processes that impact on the experiences of BAMER groups (e.g. national immigration and housing policies, workings of the labour market). These three aspects may be described as ‘subjective racism’; ‘institutional racism’; and ‘structural racism’ respectively – all of which are interwoven (Ginsburg, 1992: 109). Indeed, the housing literature of the 1980s was dominated by studies showing the interconnection between ‘subjective racism’ in the form of housing officer’s discretion in allocations, and a council housing<sup>1</sup> stock ill equipped to meet the needs of often larger BAMER families (Henderson and Karn, 1987; Phillips, 1986). Whilst the introduction of the Race Relations Act 1976 made some of the previous local authority allocation and dispersal policies illegal, as Ginsburg notes: “the effects of the old policies could be felt for several generations” (p116).

Consequently, many BAMER households found themselves concentrated in the private sector – both low cost homeownership and private renting (Ginsburg, 1992; Henderson and Karn, 1987; Rex and Moore, 1967). Yet they were not immune from processes of institutionalised racism here either. For example, Karn (1983) drew attention to the high mortgage refusal rate for black applicants in black neighbourhoods. This was linked to the practice of redlining, which Ginsburg defined as: “the drawing of a red line round a mortgage exclusion zone on a map, often coinciding with the areas where black people would afford to buy” (1992: 118). It resulted in informal finance developing within ethnic minority communities, but also the exploitation of BAMER groups through more expensive loans (Sarre et al., 1989). Karn (1983) also highlighted negative stereotyping of BAMER groups by lenders, which was compounded by reluctance to lend on certain types of properties that were more commonly inhabited by such groups (e.g. inner city properties, those with a low value). Moreover, the promotion of council house sales via the Right to Buy policy, which enabled sitting tenants to buy their home at heavily discounted rates, had what Ginsburg terms “important structural racist effects” (p123). It benefited primarily white working class households who gained

from racialised council house allocation policies decades earlier, whilst also reducing the availability of council housing for BAMER families on the waiting list.

The private rented sector (PRS) is now overwhelmingly the destination for new migrants to the UK, who tend to be concentrated at the bottom-end of the sector (Perry, 2012).<sup>2</sup> Such migrants are in a weak position to negotiate in the housing market (Powell and Robinson, 2019). Consequently, they tend to endure overcrowded, poor quality housing that is often spatially concentrated in particular neighbourhoods, and often accessed informally via word of mouth (Spencer et al., 2007). Yet migrants also continue to suffer the subjective racism first documented by housing researchers in the 1960s. Recent evidence underscores the important role of landlord judgement when it comes to accessing the PRS, and the resulting exclusionary processes including profiling, pre-tenancy screening and discrimination on grounds of ethnicity, amongst other characteristics (Preece and Bimpson, 2019; McKee et al., 2019). Despite this, the PRS remains difficult to regulate given the sheer number of individual landlords and lack of regulation in the English context. The majority of landlords own only one or two properties, with many entering this role on a part-time, and often ‘accidental’, basis (Soaita et al., 2017). The RtR was introduced to target the migrant sub-sector of the PRS, specifically those who were undocumented and do not have a legal right to remain. It represents the latest in a long lineage of exclusionary mechanisms that work to the disadvantage of migrant and BAMER groups, as the discussion of our empirical data will illuminate. First however, we turn to a discussion of the research methods used in this study.

## **The Research**

Our research involved analysis of Home Office guidance documents on the RtR, complemented with telephone interviews with 11 key actors selected due to their expertise on the workings of the RtR legislation in England (see Table 1). The time and resource constraints of this unfunded project meant we were unable to speak directly to private renters potentially affected. Our alternative approach was to interview professionals active in this field, which provided valuable insights into the experiences and expert knowledge of those tasked with supporting those affected by the RTR. Their interviews were recorded and transcribed.

**Table 1 – Participants’ Professional Expertise**

<b>Generic Job Role</b>	<b>Participant Number</b>
Immigration Law/Migrant Advice	2, 8, 10
Private Landlord Organisation	3, 9
PRS Housing Advice	5
Policy and Practice Organisations/Experts with focus on Migration	1, 4, 7
Housing Activist	6
Local Authority Enforcement	11

Fieldwork for our study occurred during 2018, complementing an earlier phase of RtR research, which focused specifically on the Scottish context (Crawford et al., 2019a, 2019b, 2016; Leahy et al., 2018). In line with our past experience of researching this topic, we found it challenging to engage advice and advocacy groups working directly with migrant and BAMER groups. We had similar difficulties engaging with landlords, and indeed are not able to present the results of the online landlord survey we also conducted due to the low response rate ( $n < 50$ ). Others working in this area have encountered similar recruitment challenges with surveys (JCWI, 2015). Research by the Residential Landlord’s Association has been more successful in eliciting a response from landlords about their perspectives. A clear gap however remains in understanding the issues from the perspective of private renters themselves, particularly those whose citizenship may be under scrutiny. Recruiting such participants will be a challenging task, but nonetheless a valuable continuation of the work we have already started, and something we wish to take forward in the future.

The project was granted ethical approval from the University of St Andrews, and all interview data has been anonymised with only generic job titles presented. This was to allow participants to speak freely. The qualitative data has been coded thematically in NVivo, with our analysis informed by our interest in post-structuralist theory and social and urban inequalities more generally.

## **Research Findings**

Rex and Moore’s (1967) classic study illuminated the segregation and discrimination facing Birmingham’s migrant population in the 1960s. Due to challenges in accessing mortgage



finance and council housing, migrants (who were mostly young single men) were typically concentrated in the bottom end of the PRS. The mechanisms of exclusion in operation were often quite explicit. More than 50 years on our data highlights that whilst exclusion might operate in a more subtle way, it continues to persist.

### *Policing the Border and the Responsibilisation of Private Landlords*

Balibar (2004: 109) stated that although borders “should be at the edge of territory, marking the point where it ends, it seems borders and institutional practices corresponding to them have been transported into the middle of political space”. Borders, Balibar claimed, are “wherever selective controls are to be found” (2004: 84). The RtR system functions as a process of routine bordering in a non-linear fashion that allows for pervasive checks on the individual. Yuval-Davis et al., (2018: 229) define bordering as “the everyday construction of borders through ideology, cultural mediation, discourses, political institutions, attitudes and everyday forms of transnationalism”. This is not only apparent in the realm of renting; it is now routine in many aspects of people’s day-to-day existence. Wemyss et al., (2018: 152), when discussing marriage registration, argue that “progressive legislation...have made unpaid bordering responsibilities central to contemporary citizenship duties as citizens are expected to monitor those whom they judge as not having the right to work or live in the UK.” They see this legislation as part of a broader political project that involves an array of citizens in the processes of bordering. This is only too evident in the housing field, where the Immigration Acts (and their supporting guidance) mobilises private landlords to ‘police’ the border through screening potential tenants to ensure they are British citizens and/or have the right to remain in the UK. This requires landlords to collect and check very personal information and retain copies of tenants’ identity documents. It provides a very real example of what Yuval-Davis et al. (2018) has labelled ‘everyday bordering’, and what Rose (1996) has traced as a broader process of responsibilisation of citizens following the re-territorialisation of governance. This involves a scalar shift in government downwards from the State to active, responsible citizens in their communities. These themes have already been noted in a UK social housing context through research on tenant empowerment and anti-social behaviour (McKee, 2011; Flint, 2003). But there has been little consideration of the responsibilisation of private landlords within these broader shifts in state-citizen relations.

It will come as no surprise that the landlord organisations we interviewed argued vociferously that this was not an appropriate role for landlords, most of whom were simply ‘ordinary citizens’, and thus lacking the professional skills to undertake this policing role:

I don’t think it’s appropriate for a landlord to be the person to turn around and say, no, your papers aren’t in order [...] to have to be the person to knock on the door of what is their home and say you’re no longer allowed to live here, which is the state at the moment with right to rent. I think it put landlords and tenants in a very, very awkward position (Participant 9).

I don’t think it’s right to turn private landlords, and housing associations, into border control agents (Participant 2)

RtR checks were regarded not only as a potential threat to tenant-landlord relationships, which is a relationship of power that is already imbalanced (McKee et al., 2019), but it also evokes, imagines and mobilises private sector landlords as the ‘border police’, requiring them to act to monitor and potentially restrict people’s access to housing. This was not a role that landlords welcomed, with their representatives highlighting that the legislation was too complex, given the sheer range of different identity documents acceptable for different categories of migrant. This was reverberated by our analysis of the RtR guidance documents.

The Government’s “Check your tenant’s right to rent” (<https://www.gov.uk/check-tenant-right-to-rent-documents/further-checks> ) is the primary site to outline how checks should be carried out and what procedures landlords should adhere to. This webpage leads to five links within this process. The front webpage clearly – and in emboldened text – iterates the consequences for failing to complete follow-up checks. The five steps involve 1) who you have to check, 2) how to do a check, 3) making copies of the documents, 4) follow-up checks, and 5) agents and subletting. Each step is linked to another webpage with additional detailed guidance and some external pdf links. This does not present itself as an easy five step process; as one clicks through the links, the intricate nature of the guidance becomes apparent.

This webpage also has two extensive guideline documents embedded within it, the Right to Rent Code of Practice (CoP), and the Document Checks User Guide. The Right to Rent Code

of Practice (<https://www.gov.uk/government/publications/right-to-rent-landlords-code-of-practice>) was released in February 2016. Over 33 pages, it details the reasons a CoP is required, by whom, and how it should be used. It outlines the unlimited and time-limited RtR status, the tenancies covered by the RtR, the penalties facing landlords who do not comply, the processes to object to such penalties, and how checks should be carried out, recorded, and administered. It is a weighty and detailed document. The guidance for documentation checks covers nine pages, while the liabilities detail and processes of objections towards these covers seven pages. This comprehensive document is further linked to a 39-page Document Check User Guide (<https://www.gov.uk/government/publications/right-to-rent-document-checks-a-user-guide>), which was released in December 2016 as a more user-friendly document. On first viewing, the use of colour and imagery in the User Guide makes for a more engaging document, in comparison to the grey and white of the CoP. This Guide provides a detailed “how to” guide for landlords to carry out a document check for their current or perspective tenants. This is outlined in a three-part process, to obtain, check, and, copy tenants’ documentation. It provides for three lists of documents. Each list is presented as an inventory of documents, with corresponding thumbnail images and embedded links of document types.

List A – Group 1 are documents that are listed as appropriate evidence for the unlimited RtR. These currently include UK/EEA/Swiss passports, EEA/Swiss permanence residence card, passports stamped with unlimited leave to remain, Biometric residence permits with unlimited leave to remain, UK immigration status documents with unlimited leave to remain, or a certificate of naturalisation or registration as a British citizen. List A – Group 2 showcases suitable combinations of documents that allow for unlimited right to rent. Any two or more of the following must be presented together to the landlord for inspection. These include; UK birth/adoption certificate, a driving licence, a letter of attestation from an employer, a letter of attestation from a UK passport holder working in an “acceptable profession”, a letter from a UK Government Dept or Local Authority, Benefits paperwork, a criminal record check, a letter from the National Offender Management Service, a letter from HM Prison Service, evidence of UK armed forces service (current or previous), a letter from a UK Higher Education Institution, a letter from a PRS access scheme, a letter from police confirming certain documentation has been reported stolen. This presents an extensive list of documents that are not regularly seen or reviewed by lay people. Many would have no previous experience of such documentation. List B outlines the documents that can be approved for a time-limited RtR. These include a valid passport with a dated stay

endorsement, biometric immigration document with time-limited permission to stay, a Non-EEA national residence card, UK Immigration Service status documentation with a time limited endorsement from the Home Office.

Corresponding to each of the three categories there is a printable checklist with tick boxes for the documents seen and the date on which they were reviewed. There is also a 4-page list of Frequently Asked Questions and an appendix showcasing the format that various acceptable letters (as listed above) should take. Copies of all documents must be taken and kept safely by the landlord. If follow up checks are required due to the expiration of a time-limited residency then these must be checked, or fines are incurred. If a tenant fails a follow-up check the website provides a link to the Home Office reporting page. This section on reporting is placed directly below the potential penalties for the landlord on failure to institute follow up checks. Each page in the 5-point procedure has three constant links for a) checking if someone can rent your residential property, b) reporting an immigration or border crime, and c) details on ending a tenancy due to immigration status.

Given all of this, it is perhaps unsurprising that clearer guidance from the Home Office was judged to be critical in supporting landlords to manage their responsibilities. Whilst landlord organisations have played a pivotal role in communicating legislative requirements to their members, with additional training also being offered, the vast majority of private landlords are not members of professional bodies. As such, they may be less than fully aware of their responsibilities. Moreover, the complexity and differing interpretations of immigration legislation may further undermine landlord confidence, and ultimately their ability to conduct these checks in a sensitive manner. As one participant (4) noted, “I’m a lawyer, and I barely understand it [the Immigration Act]”.

Yuval-Davis et al., (2018) point to the situated gazes of those who perform the border, and the ties between bordering and the reconstitution of citizenship rights and responsibilities. This situated gaze is evident where the path of least resistance is favoured to avoid the confusing and onerous checks required by the Home Office. Our participants emphasised how the responsabilisation of landlords was resulting in a reluctance to rent to those who do not hold a British or recognizable EU passport, for landlords did not want the hassle of dealing with the additional checks required, or the possibility of prosecution if they made a

mistake. Not least as the 2016 Act criminalised, as well as responsabilised, private landlords. This was a key point made by our respondents:

You've got effectively a large unskilled body of people who aren't used to looking at immigration documents who are then supposed to be able to distinguish between different kinds of documents of which there are dozens. So, I think it was a mistake from the beginning to impose that responsibility on private landlords [...] the fact that the penalties are severe is bound to deter people from exercising any flexibility (Participant 1)

It's such a complex duty really on landlords and I think what's happened, and again research seems to show this, is that they've just erred on the cautious and anybody who looks foreign or is of colour or whatever just gets rejected (Participant 6).

The fear of prosecution has not only made landlords more cautious, but also potentially discriminatory in their approach to lettings, for it encourages behaviours that work to the disadvantage of those perceived not to be British citizens. Just as Rex and Moore were critical of the role of the (local) State in these exclusionary and discriminatory processes in the 1960s, our participants also drew attention to the explicitly hostile approach of the current UK Government towards migrants:

The whole purpose of the Immigration Act is the biggest piece of discriminatory legislation I think I have ever seen [...] You are not going to rent to people if you think that the very act of renting to them is going to land you with either a civil penalty or a criminal offence if you get it wrong (Participant 5)

This legislation has sent another signal that in fact legislation will discriminate against people of colour and ethnic minorities in general, even though it's supposedly aimed at what the Government calls people here illegally (Participant 6).

### *Mechanisms of Exclusion and Discriminatory Outcomes*

The potential discriminatory effects of the Immigration Acts do not fall evenly. Rather, they structurally discriminate against people who do not appear to be British and/or who do not

have a British passport, which is more likely to be BAMER groups and/or those on low-incomes. This has been reverberated by survey data collected from landlords by the Residential Landlord Association (Mykkanen and Simcock, 2018). Responses from nearly 3000 members highlighted that 44 per cent were less likely to rent to someone without a British passport, 53 per cent less likely to rent to someone with limited time to remain in the UK, and 20 per cent less likely to rent to an EU or EEA national; 5 per cent also indicated they had refused a tenancy since these checks were introduced. The RtR therefore represents a key mechanism of exclusion in the English housing market. The impacts on tenants, and potential tenants, is real and visible, manifesting itself in three distinct ways.

Firstly, migrants (and those presumed not to be British) are at risk of not being able to find housing. This was seen to be particularly pertinent in urban areas with booming housing markets where demand is high. In this context, landlords can afford to be selective about who they let their property to; a finding noted in other research on the PRS (McKee et al., 2019). This geography of discrimination was a key theme emerging from our interviews:

The rental market is fairly competitive at present, particularly in large urban areas [...] They can always find somebody else to take the room, so why should they be bothered with all that? (Participant 6)

You can certainly imagine circumstances where you've got a high demand area [...] If you've got 10 applicants, eight of who have a passport, you immediately recognise as something that means you are definitely not committing a criminal offence and 2 that it would take you an hour to go away and check, I can imagine the property goes to people who are easy to process (Participant 9)

In turn this leaves those whose citizenship is under scrutiny at risk of homelessness, or being forced to seek housing from landlords at the very margins of the market who ask no such difficult questions in return for poor and over-crowded housing conditions. Webber (2019: 77) forcefully states that the 'hostile environment' policies were created with "the explicit intention...to weaponise total destitution and rightlessness, so as to force migrants without the right to be in the country to deport themselves, at low or no cost to the UK." Contrary to the stated aims of the legislation, restricting access in this way may not encourage the undocumented to leave Britain, rather it may simply force them into the arms of rogue

landlords and the more unscrupulous, criminal end of the markets. Those who have further vulnerabilities, in addition to their immigration status, are at even greater risk of harm:

Those who perhaps have children or who have health needs or have additional vulnerabilities in addition to their insecure immigration status, I think ultimately, yes, it could have an impact, more negative impact on them. I think maybe they would be at higher risk of looking towards more unsuitable living arrangements (Participant 8).

Instead of it tackling any perceived immigration problems, what it is actually doing is allowing that landlord to buy his third Mercedes. It's feeding a massive criminal market who they don't care about the council, they don't care about enforcement, because you can never point the finger at exactly who they are anyway (Participant 5).

Yuval-Davis et al (2018: 230) argue that “technologies of everyday bordering which are supposedly aimed at making people feel safe by keeping those who do not belong out, can undermine feelings of safety for everyone through raising a sense of precarity”. Our interviews demonstrate that this not only leaves vulnerable groups at risk of exploitation or being driven underground and/or onto the streets, but may also have wider, ripple effects. As one local authority key actor observed, it “could unsettle community cohesion, [...] and potentially hinder long-term integration” (Participant 8). The processes of marginalisation at play here may therefore not only affect individuals, but also communities that are host to higher proportions of BAMER and migrant households. The RtR, and the broader hostile environment, therefore, threatens to undermine decades of work around (migrant) integration.

Secondly, this issue of access becomes even more acute when we consider the growing role of the PRS in the UK. It is now the second largest housing tenure in England and in 2017 was home to more than 4.5 million households (ONS 2019). As a result, its tenant profile has diversified and it is now housing more families with children and low-income households who would previously have lived in social housing. At the bottom end of the market, challenges have already been well documented in terms of the insecurity, affordability, and poor quality properties that tenants have to contend with (McKee et al., 2019). The RtR compounds for some, what is already a challenging living environment. For example, letting agents typically charge landlords £20-30 to conduct the checks on their behalf, with these costs often passed on to tenants in the form of a higher rent now that letting agent fees are

banned. This exacerbates the affordability challenges facing renters, especially for those on the lowest incomes. Despite the cost and hassle of undertaking these checks, our participants were dubious as to the extent housing really was a key enabler that encouraged those with irregular immigration status to remain in the UK:

Potentially the lack of housing being available to them doesn't trigger them to leave, it ultimately puts them in more risky situations (Participant 8)

I think that the provision of accommodation comes quite a long way down people's list of what makes them think about staying (Participant 4)

Nonetheless, the impact on peoples' housing rights is unmistakable. The ending of a PRS tenancy is already a leading trigger for homelessness in England. The RtR has exacerbated this by introducing an additional mandatory ground for eviction, and one that is carried out summarily in contravention of English housing law. More generally the scheme effectively "removes tenants from the picture" (Participant 2), for whilst the landlord can make use of the Home Office's checking service, tenants have no comparable recourse. Indeed, key actors highlighted that immigration enforcement makes those with an irregular status "more wary" (Participant 2) of going to the local authority or other statutory agencies for support. Rogue landlords may also be exploiting tenants' fears of immigration enforcement by threatening to report tenants to the Home Office for complaining about their private accommodation, for example due to disrepair or overcrowding. In contrast to its intended purpose, the RtR may therefore be directly contributing to the growth of the migrant housing market at the bottom-end:

It's very often part of [...] modern day slavery, conditions [...] making it more difficult for people to get housing in the normal market actually is a further boost to that market (Participant 4)

What we find sometimes is we'll talk to tenants who are documented migrants and absolutely fine but the landlords have told them that if they talk to the Council, they'll end up getting deported, and that's not how it works at all, so they hold them hostage [...] so it's just feeding quite a terrible market [...] It's almost like they focus on a



particular type of tenant now and I think the Immigration Act, the right to rent has actually fed into that (Participant 5)

Thirdly, the issue of documented status is a complicated one. As the Windrush<sup>3</sup> scandal in the UK, and the situation of Dreamers<sup>4</sup> in the US context, underscore, citizenship and the rights and entitlements that come with it can change over time due to shifting government priorities and legislative change (Huber Perez, 2015). As Frances Webber (2019: 76) argues, migrants and refugees are “possessed of no rights but, at best, privileges that can be removed at any time”. This is exemplified by the workings of the RtR legislation. Crucially, the reason people cannot always prove their status is not always due to illegality; there can be a simpler explanation that they lack the necessary paperwork or are working towards their settled status. Some key actors were also keen to stress that certain vulnerable groups were more likely to lose documents (e.g. older people, the homeless, women fleeing domestic violence, victims of modern slavery), and therefore be unable to prove their immigration status:

Lots of people are affected by the difficulty of proving their status, and their status may be perfectly acceptable but they're at risk of landlords mistaking their status [...] because they have some problem about their documentation. It might be at the Home Office, they might be on a visa that expired but they're in the process of renewing it. There can be all sorts of reasons why they can have legitimate concerns about their documentation apart from them actually being illegal migrants (Participant 1)

Yet as one key actor noted there are assumptions around the entitlements of citizenship, which have an undeniable racial dimension. The RtR therefore perpetuates the othering of migrants, and the distinction drawn between ‘good’ and ‘bad’ migrants; those who can prove they have a settled, legal status and those that cannot:

Before we all got alerted to the Windrush thing [...] I've been asked about cases where older people especially have no documentation and some other aggravating factors sometimes, maybe drink problems, drugs or mental health problems, confusion, dementia that kind of thing [...] It did strike me with quite a lot of force once they asked, what if all of them were black? So, there's issues there about a hidden layer of race discrimination that's been going on. That's not been about so much refusing people, as about assuming that some people are entitled without necessarily needing documentation (Participant 4)

Furthermore, for those who lack settled accommodation it is much more difficult to engage and access the support and legal advice necessary to submit their leave to remain application. Brexit will widen even further the potential pool of people who will require further checks under the RtR.

## **Conclusion**

Our paper seeks to add to the growing body of evidence around the potential discriminatory impacts of the RtR part of the 2016 UK Immigration Act, which augmented the powers of the previous 2014 Act. By responsabilising and mobilising private sector landlords to police the border through their 'everyday borderwork' the legislation encourages behaviour that is likely to have a negative impact on those presumed not to be British, and who, for whatever reason, have an irregular immigration status and/or are unable to prove their right to remain in the UK. Moreover, our paper also contributes to the literature on housing and ethnicity, which has been a smaller field of study in the UK in recent years compared to a previous heightened focus on these issues from the 1970s to the 1990s. Whilst international literature has a strong focus on housing, race and, class, especially with regards to the PRS, (see for example, Desmond 2016), this has been less prominent amongst recent UK housing research (notable exceptions include, Powell and Robinson, 2019; Lukes. et al., 2018). This is a gap we seek to address. Yet our paper also has broader resonance beyond the British context connecting with international research and commentary surrounding 'borderwork', discrimination against ethnic minorities, and housing inequalities. Migration is a global issue, with governments increasingly adopting more unsympathetic approaches to immigration. The UK context therefore offers valuable policy and practice lessons for other places considering similar checks on citizens, not least the importance of evaluating the roll-

out of such schemes in order to be alert to any potential discriminatory outcomes against not only migrants, but also citizens from BAMER and low-income backgrounds who may also lack the necessary documentation.

Disappointingly, there seems to be a lack of corresponding interest from within the UK Government to listen to concerns expressed about the RtR from across the breadth of the housing sector. There has been no government backed in-depth evaluation of the scheme, even when independent reviews and legal judgements have highlighted causes for concern. Our paper therefore seeks to bring further vital qualitative evidence to bear on this key element of immigration legislation. It enhances the survey research conducted by landlord organisations and migrant groups, complementing their statistics with the voices and experience of key professionals working in the field confronted by these issues on a daily basis. They are unified in their condemnation of the RtR, and keen to highlight the potentially discriminatory impacts it is having and the housing exclusion it facilitates.

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## **Endnote**

<sup>1</sup> Council housing refers to public housing provided by local authorities in the UK. Social housing is a broader term that also includes homes provided by not for profit third sector organisation. In the UK social housing is home to 17 per cent of households.

<sup>2</sup> We recognise there are variations in how different migrant groups use the PRS (Perry, 2012).

<sup>3</sup> Windrush refers to the scandal of Commonwealth migrants who arrived in the UK before 1971 who have been denied rights and services in the UK, and even incorrectly deported, due to their undocumented status. Many have been told by the Home Office they are here illegally, despite having arrived as children and having lived and worked in the UK for decades.

<sup>4</sup> Dreamers are child migrants protected by the Deferred Action for Childhood Arrivals (DACA) legislation in the US, which was introduced by Obama to give temporary protection to undocumented migrants arriving under 16.

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