

Minister for Housing and Welfare  
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Rt Hon James Brokenshire MP  
Minister of State for Immigration

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LEGACY 2014  
XX COMMONWEALTH GAMES  
SCOTLAND

24 September 2015

Dear James

I refer to the Immigration Bill 2015 introduced to the House of Commons on 17 September. In particular to the proposed measures relating to residential tenancies and to your intention to roll out the "right to rent" provisions in the Immigration Act 2014. Both pieces of legislation directly impact on matters that are fully devolved to the Scottish Parliament and yet consultation with the Scottish Government and with housing stakeholders ahead of the Bill being introduced was both rushed and extremely limited.

The Scottish Government is committed to creating a fairer Scotland, where we provide protection, safety and security to those who need it most and this Bill runs contrary to those aims and I have several significant concerns that need to be addressed.

First, the legislation allows for the measures on residential tenancies to be brought into effect in Scotland through a regulation making power. That power specifically prevents functions being conferred on Scottish Ministers and provides that the Regulations can amend, revoke or repeal any Act or Order made by the Scottish Parliament. This would enable the UK Government to use powers under secondary legislation to overturn primary legislation on matters that are devolved to the Scottish Parliament without the consent of the Scottish Parliament.

This runs counter to the important constitutional principle of the UK Government not normally legislating with regard to devolved matters in Scotland without the consent of the Scottish Parliament. It also runs counter to Clause 2 of the Scotland Bill that is currently being considered at Westminster which is intended to recognise that principle in statute.

I feel strongly that you cannot legislate for Scotland in these matters without the consent of the Scottish Parliament and urge you to amend the Bill to reflect the principle in clause 2 of the Scotland Bill to include in the regulation making powers at section 15, a duty on UK Ministers to consult Scottish Ministers and to seek the Scottish Parliament's consent to the Regulations before those measures are introduced. That will allow the Scottish Parliament to consult with relevant stakeholders in Scotland about your proposals.



Second, the proposals in the Bill and the 2014 Act may lead some landlords to operate in a discriminatory way against prospective tenants who are not UK citizens, marginalise vulnerable migrants and place additional pressures on local authorities.

One of the stated aims of the Bill is to tackle rogue landlords, but this legislation could drive vulnerable migrants who have the right to remain in the UK to rent from those landlords who are happy to flout the law. This could also prevent those migrants from maintaining contact with the Home Office and other authorities for fear of eviction.

Last year the Home Office undertook to carry out a full review of the pilot "right to rent" scheme that has been operating in the West Midlands since December 2014 before introducing it elsewhere. I am very disappointed that you are now proposing to roll this out without publishing the findings of this review and making the conclusions public.

Additionally, I ask you to clarify your intentions to introduce the "right to rent" scheme in Scotland and if you plan to do this even if it is against the will of the Scottish Parliament and the express wishes of the Scottish Government.

Finally, the draft legislation requires landlords to pursue legal proceedings against someone who does not have the right to remain in the UK. I believe that it should be the role of the Home Office and the Border Agency to take action following any such decision. Legislation should not force landlords to incur the costs of pursuing possession through the courts. I am therefore asking you to clarify why the onus is being placed on landlords.

I would welcome an early reply to my concerns and suggest that we meet to discuss your proposals and their impact on Scotland. I would be grateful if your office could make the necessary arrangements with my Private Secretary, Gavin McDougall, by contacting him on 0131 244 5027 or [MinisterforHousingandWelfare@gov.uk](mailto:MinisterforHousingandWelfare@gov.uk)

I am copying this letter to the Secretary of State for Scotland.

Kind regards

*Margaret Burgess*

**MARGARET BURGESS**