



## Impact of ‘Hostile Environment’ Policy Debate on 14 June 2018

### Summary

This Briefing has been prepared in advance of the debate due to take place in the House of Lords on the motion moved by Lord Bassam of Brighton (Labour) that “this House takes note of the impact of the Government’s ‘hostile environment’ approach towards illegal immigration on those with residency and employment rights”. The Briefing summarises the background to the policy, measures introduced in connection to it, commentary on the impact of the policy, and recent developments, including those relating to the ‘Windrush generation’.

The ‘hostile environment’ policy (which the Government now refers to as the ‘compliant environment’ policy) refers to a range of measures aimed at identifying and reducing the number of immigrants in the UK with no right to remain. Many of these were introduced by the Immigration Acts of 2014 and 2016, and include measures seeking to restrict illegal immigrants renting property in the UK, driving, having bank accounts and accessing benefits and free healthcare. Some of these measures included data-sharing between other government departments or external organisations and the Home Office, and the requirement for document checks by those providing certain services.

The Government has stated the policies are needed to deter illegal immigration. However, the Opposition has called for an end to the policy, believing it has had a negative impact on individuals’ lives, including those with a right to live in the UK. For example, there have been a number of reports of Commonwealth migrants who have lived in the UK since before 1973 (often referred to as the ‘Windrush generation’), who have a legal right to live in the country under the Immigration Act 1971, being denied access to services and being sent letters threatening them with deportation or detention due to their inability to provide documentation of their right to reside in the UK. The Home Office has confirmed that it has identified 63 individuals who may have been wrongfully deported. In addition, the Independent Chief Inspector of Borders and Immigration has stated that there are issues monitoring the overall impact of the policy, and has highlighted occasions of people being wrongly denied access to driving licences and bank accounts or being discriminated against by landlords. Further, some commentators, such as the UN Special Rapporteur on Racism, have claimed the policy measures can cause racism and discrimination.

The Government has recently legislated for and introduced a ‘Windrush scheme’ aimed at rectifying some of the issues suffered by the ‘Windrush generation’ individuals. In addition, the Home Secretary, Sajid Javid, stated on 3 June 2018 that many of the ‘compliant environment’ policy measures were now being reviewed.

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## 1. Introduction

This Briefing first summarises the background to the 'hostile environment' policy and a number of the measures introduced in connection to it. It then summarises some of the commentary concerning the impact of the policy on individuals with the right to live and work in the UK, and briefly covers recent developments in connection to the situation regarding the 'Windrush generation'. Overall, this Briefing uses the term 'hostile environment', as this reflects the title of the debate and the terminology used by the majority of people commenting on the policy. However, over the last year or so, the Government have instead referred to the policy using the term 'compliant environment'.<sup>1</sup>

When considering those with the 'right to live or work in the UK', it should be noted that these rights are often complex and can occur under a wide range of circumstances. For example, it includes: British citizens; EEA citizens<sup>2</sup>; those on certain visas; people with 'indefinite leave to remain'; and asylum seekers/refugees. Each category of individual may have different rights, and will also have a different background in terms of their documentation and how they obtained their right to live in the UK (for example, some will have passports indicating their right to live in the UK, whereas others may have very little or no official documentation demonstrating this right). This Briefing does not generally differentiate between these groups when discussing those with the right to live and work in the UK (except in so far as it refers to the documentation they may have). In addition, where this Briefing discusses 'illegal immigrants', it is in reference to individuals living in the UK without such rights.

## 2. 'Hostile Environment' Policy

### 2.1 Background

The 'hostile environment' policy is the wording often used to refer to a range of government measures aimed at identifying and reducing the number of immigrants in the UK with no right to remain. An overview of the policy has been set out by the House of Commons Home Affairs Committee, who stated:

Many of the measures designed to make life difficult for individuals without permission to remain in the UK were first proposed in 2012 as part of a 'hostile environment policy'. The aim of the policy is to deter people without permission from entering the UK and to encourage those already here to leave voluntarily. It includes measures to limit access to work, housing, healthcare, and bank accounts, to

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<sup>1</sup> Alan Travis, '[Post-Brexit Immigration White Paper Delayed Until Late Autumn](#)', *Guardian*, 2 October 2017.

<sup>2</sup> Gov.uk, '[Countries in the EU and EEA](#)', accessed 8 June 2018.

revoke driving licences and to reduce and restrict rights of appeal against Home Office decisions. The majority of these proposals became law via the Immigration Act 2014, and have since been tightened or expanded under the Immigration Act 2016.<sup>3</sup>

The Committee referred back to Theresa May's announcement in 2012, when she was Home Secretary in the Coalition Government.<sup>4</sup> Outlining the policy in an interview with the *Telegraph*, she stated: "The aim is to create here in Britain a really hostile environment for illegal migration [...] What we don't want is a situation where people think that they can come here and overstay because they're able to access everything they need".<sup>5</sup> In 2013, responding to criticism of the policy, Theresa May explained that the measures she was seeking to introduce were needed in the interest of fairness:

Most people will say it can't be fair for people who have no right to be here in the UK to continue to exist as everybody else does with bank accounts, with driving licences and with access to rented accommodation. We are going to be changing that because we don't think that is fair.<sup>6</sup>

More recently, the current Home Secretary, Sajid Javid, confirmed that the Home Office was now using 'compliant environment' (a rephrasing that appeared to start in 2017<sup>7</sup>). He explained:

I don't like the phrase hostile. So the terminology is incorrect and I think it is a phrase that is unhelpful [...] It is about a compliant environment and it is right that we have a compliant environment.<sup>8</sup>

In addition, speaking in early April, a spokesperson for the Prime Minister again defended the aim of the policy, stating it is:

Specifically designed to deal with the problem of illegal immigration and issues such as people working illegally and in the black market in

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<sup>3</sup> House of Commons Home Affairs Committee, [Immigration Policy: Basis for Building Consensus](#), 15 January 2018, HC 500 of session 2017–19, p 20.

<sup>4</sup> However, there have been claims that the ideology of the policy was present in the Home Office before then. For example, Emily Thornberry, Shadow Foreign Secretary, believed the former Labour Home Secretary, Alan Johnson, had used the term in a speech in 2010 (Politics Home, [Emily Thornberry Calls on Amber Rudd to Quit Over Windrush Scandal](#)), 22 April 2018).

<sup>5</sup> James Kirkup and Robert Winnett, [Theresa May Interview: 'We're Going to Give Illegal Migrants a Really Hostile Reception'](#), *Telegraph* (£), 25 May 2012.

<sup>6</sup> Alan Travis, [Immigration Bill: Theresa May Defends Plans to Create 'Hostile Environment'](#), *Guardian*, 10 October 2013.

<sup>7</sup> Alan Travis, [Post-Brexit Immigration White Paper Delayed Until Late Autumn](#), *Guardian*, 2 October 2017.

<sup>8</sup> Steven Poole, ["Compliant Environment": Is This Really What the Windrush Generation Needs?](#), *Guardian*, 3 May 2018.

conditions that are not suitable for anyone [...]

The system was put in place to deter illegal immigration and to prevent people who didn't have the right to be in the country to access public services. It's in the country's interests to have a secure immigration system in relation to these cases.<sup>9</sup>

However, there has been sustained criticism of the policy from others, including the Labour Party and campaign groups including Liberty. For example, the Leader of the Opposition, Jeremy Corbyn, recently called for an end to the policy, saying that it had shut people out from public life and that the Government had ignored repeated warnings of its possible impact.<sup>10</sup> In addition, a report published by Liberty, and co-authored by other campaign groups, described it as discriminatory and claimed it adversely affects vulnerable groups.<sup>11</sup>

## 2.2 Immigration Act 2014

The Immigration Act 2014, which received royal assent on 14 May 2014, contained a number of measures intended to tackle the number of illegal immigrants in the UK. These included:

- Extending authorities' powers to try to identify illegal immigrants (including those relating to the search of premises for documentation and the use of biometrics, such as fingerprints).
- Simplifying the removal of illegal immigrants, and limiting individuals' rights of appeal and access to bail.
- Ensuring courts and tribunals give greater weight to the 'public interest' considerations set out in the Act regarding immigration (including that immigrants can speak English and are "financially independent"), than the weight given to arguments presented under Article 8 of the European Convention on Human Rights: Right to respect for private and family life.
- Requiring landlords and banks to check the immigration status of their tenants/clients, and prohibiting them from providing such services to those not living in the UK legally.
- Refusing and revoking UK driving licences for those living in the UK illegally.
- Giving greater powers to the Home Office to investigate suspected 'sham marriages' involving a non-EEA national subject to immigration control.

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<sup>9</sup> Jessica Elgot, ['Theresa May's 'Hostile Environment' at Heart of Windrush Scandal'](#), *Guardian*, 17 April 2018.

<sup>10</sup> BBC News, ['Windrush: Corbyn Says PM Ignored Immigration Policy Warnings'](#), 22 April 2018.

<sup>11</sup> Liberty et al, [A Guide to the Hostile Environment](#), April 2018, p 6.

More detailed information on these measures can be found in the Act's [explanatory notes](#). The Act also enabled the Government to introduce regulations requiring non-EEA nationals (subject to certain exemptions) who already were or were planning to stay in the UK for longer than six months to pay an annual health surcharge.<sup>12</sup> The subsequent regulations came into force on 6 April 2015.<sup>13</sup> The current annual rates are set at £150 for students and £200 for other immigrants with clearance to remain in the UK.<sup>14</sup>

### 2.3 Immigration Act 2016

In the main, the Immigration Act 2016 built upon the powers contained in the 2014 Act and reinforced measures related to 'illegal working'. For example, the Act included:

- Stronger criminal sanctions to deter illegal working, targeted at both employers and employees, and powers to close premises.
- New criminal offences aimed at landlords (and letting agents) for where they know, or reasonably suspect, illegal immigrants are occupying or renting their property.
- New powers for landlords to obtain possession of their property where a tenant or other occupier no longer has a right to rent under the Immigration Act 2014.
- A new offence of driving when unlawfully in the UK, and new powers for police and immigration officers to search individuals or premises where they have reasonable grounds to suspect an illegal immigrant has a driving licence.
- Requirements for banks and building societies to periodically review existing accounts and to notify the Home Office if an account is found to be held by a person disqualified due to their immigration status (subsequent statutory instruments provided for the checks to be carried out on a quarterly basis<sup>15</sup> and provided for the information that must be provided to the Home Office).<sup>16</sup> Subject to conditions, the Home Office can then order the accounts to be frozen or closed.
- Increased powers for immigration officers and custody officers to search for and retain individuals' nationality documents, and for immigration officers to search premises for documents which might assist in the imposition of civil penalties relating to renting

<sup>12</sup> Further details are contained on the Gov.uk webpage, '[Pay for UK Healthcare as Part of Your Immigration Application](#)' (accessed 4 June 2018).

<sup>13</sup> Immigration (Health Charge) Order 2015 (SI 2015/792).

<sup>14</sup> Gov.uk, '[Pay for UK Healthcare as Part of Your Immigration Application](#)', accessed 4 June 2018.

<sup>15</sup> Immigration Act 2014 (Current Accounts) (Compliance &c) Regulations 2016 (SI 2016/1073).

<sup>16</sup> Immigration Act 2014 (Current Accounts) (Excluded Accounts and Notification Requirements) Regulations 2016 (SI 2016/1252).

- property to or employing illegal immigrants.
- The statutory authority for a wider range of public authorities to share information for immigration purposes, and a statutory duty for specified bodies (such as local councils and NHS trusts) to supply nationality documents to immigration officers upon their request, if they already hold that information (ie it does not require these bodies to 'collect' the information, just to pass it on if they do have it).

The Act also tightened the procedure for appeals, made on the basis of human rights grounds, introduced English language requirements for certain frontline public sector workers and legislated for an immigration skills charge which may be payable by employers for each worker on certain tier 2 visas (including the tier 2 (general) visa).<sup>17</sup>

## 2.4 Other 'Hostile Environment' Measures

In addition to the measures mentioned above, a report published by Liberty, and written in collaboration with other organisations and campaign groups, listed a number of other measures they believe have contributed to the 'hostile environment' agenda.<sup>18</sup> These include: data collection on the nationality and country of origin of school pupils through the school census<sup>19</sup>; restrictions on the benefits that both EEA and non-EEA citizens may claim<sup>20</sup>; and the requirement for the NHS to check the eligibility of patients for 'free' care and to request the payment of an upfront charge where necessary for certain treatment and services.<sup>21</sup>

The latter measure relates to the policy of requiring non-EEA migrants not 'ordinarily resident' in the UK to pay for certain healthcare (unless an exemption applies or if they have already paid the health surcharge), a policy which was first legislated for in 1977.<sup>22</sup> The author of that chapter, Doctors of the World, also noted that the Government had an agreement to share NHS Digital data on patients with the Home Office for immigration purposes,<sup>23</sup> although it has since been announced that this agreement has been suspended.<sup>24</sup>

<sup>17</sup> Further details on this can be found on the Gov.uk webpage, '[UK Visa Sponsorship for Employers: Immigration Skills Charge](#)' (accessed 4 June 2018).

<sup>18</sup> Liberty et al, [A Guide to the Hostile Environment](#), April 2018.

<sup>19</sup> Although they acknowledged this data is not currently being shared with the Home Office.

<sup>20</sup> Further information on these restrictions can be found in the House of Commons Library briefing, [What UK Benefits Can People from Abroad Claim?](#) (17 June 2015).

<sup>21</sup> Liberty et al, [A Guide to the Hostile Environment](#), April 2018, pp 8–11 and 17–18.

<sup>22</sup> Further information on this policy, and the background to it, can be found in the House of Commons Library briefing, [NHS Charges for Overseas Visitors](#) (23 October 2017).

<sup>23</sup> Liberty et al, [A Guide to the Hostile Environment](#), April 2018, p 18.

<sup>24</sup> Denis Campbell, '[NHS Will No Longer Have to Share Immigrants' Data With Home Office](#)', *Guardian*, 9 May 2018.

A further measure often referred to in relation to the 'hostile environment' agenda related to a Home Office policy to clamp down on EEA nationals who were sleeping rough in the UK.<sup>25</sup> This was framed under the Immigration (European Economic Area) Regulations 2016, and was specifically set out in the range of Home Office guidance published to accompany this.<sup>26</sup> The explanatory memorandum explained that, among other matters, the 2016 Regulations:

[C]larify the basis on which restrictive measures may be taken to restrict the free movement rights of people who pose a threat to the UK by setting out a non-exhaustive list of the 'fundamental interests of society'. This is a statement about a range of the circumstances in which the Government will seek to restrict a person's free movement rights by removing or excluding them from the UK because of the threat their conduct poses. The 2016 Regulations require courts or tribunals to take into account these interests when considering, for example, an EU national's appeal against a deportation decision.<sup>27</sup>

However, following a 2017 High Court case, the broad application of the policy in relation to rough sleepers was deemed unlawful, and the Home Office agreed to remove the references to rough sleepers from its guidance, pending future revision.<sup>28</sup>

## 2.5 Recent Statistics on Immigration Detentions and Returns

The Home Office published its latest set of immigration statistics on 21 March 2018. This included figures on:

- individuals held in immigration detention (solely under Immigration Act powers), which show those detained in immigration removal centres, short-term holding facilities, pre-departure accommodation and HM Prisons (from July 2017); and
- returns of people, by the Home Office, who do not have any legal right to stay in the UK.<sup>29</sup>

The following two tables show immigration detention and returns data since 2014.<sup>30</sup>

<sup>25</sup> Migrants' Rights Network, '[The 'Hostile Environment' and the Great Rough Sleepers Round-up](#)', 31 March 2017.

<sup>26</sup> UK Visas and Immigration, '[Considering Immigration Status and Deciding Enforcement Action](#)', 14 December 2017.

<sup>27</sup> [Explanatory Memorandum to the Immigration \(European Economic Area\) Regulations 2016](#), 3 November 2016, p 1.

<sup>28</sup> [Gureckis, R \(On the Application Of\) v Secretary of State for the Home Department \[2017\] EWHC 3298 \(Admin\) \(14 December 2017\)](#).

<sup>29</sup> Home Office, '[How Many People are Detained or Returned?](#)', 21 March 2018.

<sup>30</sup> *ibid.*

**Table 1: People Entering, Leaving and in Detention, 2014 to 2017**

| Year | Entering Detention | Leaving Detention | In Detention |
|------|--------------------|-------------------|--------------|
| 2014 | 30,364             | 29,674            | 3,462        |
| 2015 | 32,447             | 33,226            | 2,607        |
| 2016 | 28,903             | 28,677            | 2,738        |
| 2017 | 27,331             | 28,244            | 2,545        |

**Table 2: Returns from the UK, by Type of Return, 2014 to 2017**

| Year | Total Enforced Returns <sup>31</sup> | Total Voluntary Returns (excluding those from detention) <sup>32</sup> | Total Refused Entry at Port and Subsequently Deported |
|------|--------------------------------------|--|---|
| 2014 | 14,395                               | 25,784   | 15,993  |
| 2015 | 13,690                               | 28,189   | 17,636  |
| 2016 | 12,469                               | 27,157   | 17,567  |
| 2017 | 12,321                               | 18,928   | 17,977  |

However, due to the nature of the issue of 'illegal' immigration, there are no reliable estimates as to how many illegal migrants there are in the UK at any one time.<sup>33</sup>

### 3. Impact of the Policy on Individuals

#### 3.1 Recent Parliamentary Consideration of the Policy

On 23 April 2018, Lord Bassam of Brighton (Labour) tabled a written question asking the Government for its estimate of the number of individuals and families "adversely affected" by the 'hostile environment' policy. Responding for the Government on 4 May 2018, the Minister of State for Countering Extremism and Minister for Equalities, Baroness Williams of Trafford, explained that the potential impact was considered prior to the provisions' introduction, but that it was difficult to assess the actual impact on individuals of many of the measures:

Successive governments have brought forward measures to prevent illegal immigration and the misuse of public services and benefits. Impact assessments on the Immigration Acts 2014 and 2016 were published during the passage of the legislation, and key compliant

<sup>31</sup> The publication stated that "'enforced returns' cover enforced removals from detention, non-detained enforced removals and other returns from detention where the Home Office will have been required to facilitate or monitor the return".

<sup>32</sup> These included "assisted returns, controlled returns and other verified returns", and are "subject to significant upward revision as matching checks are made on travellers after departure".

<sup>33</sup> See, for example: House of Lords, '[Written Question: 'Undocumented Migrants'](#)', 8 December 2017, HL3773.

environment measures on immigration checks by employers and landlords have been the subject of public consultations.

Many checks, such as right to rent and right to work, are applicable to everyone in the UK on a non-discriminatory basis. Checks are often conducted independently of the Home Office and so it is not possible for the Government to accurately estimate the number of individuals who have been impacted by these measures.<sup>34</sup>

The difficulty of assessing the overall impact of the policy was also raised in the report on immigration policies published by the House of Commons Home Affairs Committee in January 2018.<sup>35</sup> For example, the Independent Chief Inspector of Borders and Immigration (ICIBI), David Bolt, told the Committee “the Home Office does not have in place measurements to evaluate the effectiveness” of the hostile environment measures, or of the impact of the provisions brought in by the Immigration Acts of 2014 and 2016.<sup>36</sup> The Committee also highlighted its concerns regarding the impact of the policy on those with a legal right to stay in the UK:

While the hostile environment is currently aimed at non-EU nationals without valid leave to be in the UK, there are regular reports of people with a lawful right to be here (including UK and EU nationals and non-EU nationals with valid leave) being caught up in the system, often via errors in an application process or problems with data retained by the Home Office. An inspection by the ICIBI of data provided by the Home Office to banks found that 10 percent of the 169 cases inspected had incorrectly been included on the list of ‘disqualified persons’. People wrongly identified as being in the UK without leave typically receive a letter stating they are liable to removal and must make immediate arrangements to leave the country. This traumatic experience is often compounded by difficulties in contacting the Home Office and a reluctance by the Department to accept that it has made an error. When we put these figures to David Bolt, he said there had been a “conscious shift towards encouraging compliance rather than enforcing”.<sup>37</sup>

The Committee claimed that those lawfully resident in the UK often experienced discrimination from bodies and individuals (such as banks, employers and landlords), in their efforts to avoid the risks and complications associated with dealing with immigrants in light of the ‘hostile environment’ provisions. For example, it stated:

In a survey by the Residential Landlords’ Association (RLA), 42 percent

<sup>34</sup> House of Lords, ‘[Written Question: ‘Undocumented Migrants’](#)’, 4 May 2018, HL7145.

<sup>35</sup> House of Commons Home Affairs Committee, [Immigration Policy: Basis for Building Consensus](#), 15 January 2018, HC 500 of session 2017–19.

<sup>36</sup> *ibid*, p 20.

<sup>37</sup> *ibid*.

of respondents stated that they were less likely to rent to people who do not have a British passport because they feared criminal sanctions if they made a mistake under the legislation. There are reports of employers restricting access to job vacancies, for example by insisting that all non-EU applicants provide a biometric residence permit—despite this only applying to recent arrivals; or by limiting the vacancy to applicants with British passports—which is illegal. ASSIST Sheffield and South Yorkshire Refugee Law and Justice charities report a reluctance from banks and building societies to open accounts for refugees with leave to remain. They contend that the hostile environment policy fosters social division and discrimination. The ICIBI also noted that the absence of indicators against which to judge the policy's impact made it harder for the Home Office "to answer concerns about the potential damage to communities and to individuals".<sup>38</sup>

As such, the Committee expressed its concerns about the policy, particularly stressing that provisions were often unclear and resulted in wide interpretation or inadvertent errors. It continued:

Not only can these errors be deeply damaging and distressing to those involved—as with letters being sent to EU nationals about their right to live in the UK—they also undermine the credibility of the system. Recent high-profile reports of the Home Office threatening to deport individuals based on inaccurate and untested information, and before an independent appeal process, risk undermining the credibility of the whole system. This is particularly worrying in advance of the need to register EU nationals in preparation for Brexit.<sup>39</sup>

In its response, published on 18 April 2018, the Government agreed that the 'compliant environment' policy needed to be applied with care, but argued that errors were rare and were promptly dealt with:

We agree that the compliant environment measures need to be applied with care. We regret that letters were mistakenly sent to 106 EU citizens in August 2017 and we made an immediate apology to that effect. Those affected were informed that they could disregard the notices that were issued to them, and we have met all reasonable associated costs that have been incurred as a result.

The Home Office deals with millions of visa, citizenship, passport and immigration status applications each year and errors are rare.<sup>40</sup>

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<sup>38</sup> House of Commons Home Affairs Committee, [Immigration Policy: Basis for Building Consensus](#), 15 January 2018, HC 500 of session 2017–19, pp 20–21.

<sup>39</sup> *ibid*, p 21.

<sup>40</sup> House of Commons Home Affairs Committee, [Immigration Policy: Basis for Building Consensus: Government and Office for National Statistics Responses to the Committee's Second Report](#), 18 April 2018, HC 961 of session 2017–19, p 8.

It also stressed that the policy was just one aspect, although an important one, of the Government's overall approach to immigration.

### **3.2 Independent Chief Inspector of Borders and Immigration Reviews**

The Independent Chief Inspector of Borders and Immigration (ICIBI) has signalled his intention to conduct a review of each of the measures announced under the 'hostile environment' policy.<sup>41</sup> To date, the ICIBI has published three reports on measures it considers to fall under the policy: one relating to measures to improve investigation and detection of 'sham' marriages; one relating to the driving and banking measures; and, most recently, a report on the 'right to rent' measures. This Briefing summarises the findings of the latter two reviews below. It does not cover the 'sham marriages' review, as this contained little to no comment on the impact of individuals with the right to live in the UK.

#### ***Driving Licences and Bank Accounts Review***

Published in October 2016, the first review of the 'hostile environment' policy conducted by the ICIBI considered the measures introduced limiting illegal immigrants' access to driving licences and bank accounts.<sup>42</sup> Summarising the overall success of the measures, the ICIBI noted that it was too early to tell how well they were working, but that it saw evidence of good communication between the Home Office and the other relevant agencies involved:

In summary, through good collaboration the Home Office and Driver and Vehicle Licensing Agency (DVLA) have succeeded in giving effect to the 'hostile environment' measures introduced by the 2014 Act in relation to the refusal and revocation of driving licences. The same holds true for the work with Cifas in relation to bank and building society current accounts.<sup>43</sup>

However, the ICIBI did raise the issue of incorrect data. For example, regarding driving licences, it stated:

In the case of driving licences, these record keeping failings were to some extent mitigated as the Home Office checks its records manually for new licence applicants and also to confirm that the DVLA should proceed with a revocation. However, it remains the case that some individuals were being wrongly flagged to DVLA as present in the UK

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<sup>41</sup> Independent Chief Inspector of Borders and Immigration, [An Inspection of the "Right to Rent" Scheme](#), March 2018, p 2.

<sup>42</sup> Independent Chief Inspector of Borders and Immigration, [An Inspection of the 'Hostile Environment' Measures Relating to Driving Licences and Bank Accounts](#), October 2016.

<sup>43</sup> *ibid*, p 8.

without leave, while others who were present without leave were being missed. During file sampling, the inspection identified a number of examples of individuals being wrongly listed as in the UK without leave [...]

The Home Office provided figures for revoked driving licences that had had to be reinstated. While these cases amounted to a small percentage of the total numbers of revocations, the Home Office did not appear to appreciate the seriousness of such errors for the individuals affected, and its proposed avenue of redress for individuals who had left the UK with valid leave outstanding, and had subsequently had their licence revoked, was inadequate.<sup>44</sup>

Regarding bank accounts, the ICIBI found that, of a test sample of 169 individuals flagged as 'disqualified persons', 17 should never have been listed as disqualified or should be removed from the list.<sup>45</sup>

The ICIBI also highlighted the usefulness of the data that could be retrieved by the measures, stating that both sets of measures could flag up up-to-date addresses of illegal immigrants. It stated that this had been used to inform local enforcement teams, and had led to some enforced removals and voluntary returns. The data also flagged up people that had absconded. The report stressed that a more "structured and determined" approach should be formulated to make even better use of the opportunities this data provided.<sup>46</sup>

In response to the report, the Home Office sought to address the concerns raised by the ICIBI regarding incorrect decisions.<sup>47</sup> Setting out a number of measures it had taken to attempt to prevent and rectify such errors, the Department stated:

We understand the importance of making the right decisions and the impact that incorrect decisions may have on individuals, so are developing a strategy for improving and managing data quality in the longer term. We have already taken prompt action to rectify errors identified during the course of the inspection. This will build on avenues of redress that the Home Office already has in place for applicants and partners who believe that a decision has been taken wrongly to deny services [...]<sup>48</sup>

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<sup>44</sup> Independent Chief Inspector of Borders and Immigration, [An Inspection of the 'Hostile Environment' Measures Relating to Driving Licences and Bank Accounts](#), October 2016, p 6.

<sup>45</sup> *ibid*, p 42.

<sup>46</sup> *ibid*, p 7.

<sup>47</sup> Home Office, [Response to the Independent Chief Inspector's Report: 'An Inspection of the "Hostile Environment" Measures Relating to Driving Licences and Bank Accounts'](#), 13 October 2016, p 2.

<sup>48</sup> *ibid*.

### **'Right to Rent' Review**

Published in March 2018, the latest report of the ICIBI considered the Government's provisions aimed at preventing "persons disqualified by immigration status" from renting accommodation (the 'Right to Rent' (RtR) scheme).<sup>49</sup> The policy was first piloted in certain areas in England from 1 December 2014, and applied to the whole of England from 1 February 2016. It has yet to be rolled out across Wales, Scotland and Northern Ireland. Reporting on the operation of the policy, the ICIBI stated:

At the time of the inspection, the RtR scheme had been in operation in the West Midlands for just over 3 years, and across the rest of England for approximately 18 months. Between February 2016 and July 2017, 468 referrals were made to the Home Office's Civil Penalties Compliance Team (CPCT), resulting in the issue of 265 civil penalties, and in the levy of £167,520. There had been no prosecutions.

In terms of the Home Office enforcement of RtR, since February 2016, its Immigration, Compliance and Enforcement (ICE) teams in England had gained entry to 10,501 residential properties, but had made a RtR referral to CPCT in only 3 percent of cases.

Overall, the ICIBI believed the scheme was suffering from poor communication (both internally in the Home Office, and regarding external communication to landlords), and that early signs had not shown the scheme was proving effective.<sup>50</sup> The ICIBI stated:

Overall, the RtR scheme is yet to demonstrate its worth as a tool to encourage immigration compliance (the number of voluntary returns has fallen). Internally, the Home Office has failed to coordinate, maximise or even measure effectively its use.<sup>51</sup>

Regarding its impact on individuals and families, the ICIBI highlighted external stakeholder concerns as to the impact of the policy in four areas:

- wrong RtR decisions;
- racial and other discrimination;
- exploitation; and
- homelessness.

Stakeholder views regarding these issues are summarised on pages 45 to 49 of the report. These included concerns raised by Crisis of the effect on

<sup>49</sup> Independent Chief Inspector of Borders and Immigration, [An Inspection of the "Right to Rent" Scheme](#), March 2018, p 5.

<sup>50</sup> *ibid*, pp 5–6.

<sup>51</sup> *ibid*, p 7.

other people in a household if a landlord repossesses a property due to one of the adult occupiers no longer having the right to rent (which they suggested impacted younger people wishing to live in shared accommodation),<sup>52</sup> and research by the Residential Landlords Association's Private Renting Evidence, Analysis and Research Lab (PEARL) and Crisis, suggesting that:

- 42 percent of landlords were now less likely to rent to someone without a British passport (which was stated to include 17 percent of British nationals);
- 49 percent of landlords were less likely to rent to someone with limited leave to remain; and
- 44 percent of landlords would only rent to those with documents familiar to them.<sup>53</sup>

Considering these four issues, the ICIBI highlighted an overall criticism from external stakeholders that the Home Office were not effectively monitoring the scheme.<sup>54</sup> The report then stated:

The Home Office did complete an evaluation of Phase I prior to RtR's wider roll out, although the Home Office conceded that the decision to roll RtR out in England had, in effect, already been taken, subject to not finding that the scheme was causing "significant discriminatory behaviour". The announcement of the roll out at the same time as the evaluation was published appeared to confirm this. Meanwhile, doubt was cast on the evaluation methodology, and it seemed that such evidence as there was of negative impacts (for example, 8 (out of 33) voluntary and charitable sector groups had reported that they had seen the exploitation of people who did not have the right to rent by landlords) was explained away.

In relation to further evaluation and monitoring, in January 2016 the Immigration Minister explained to Landlords Consultative Panel (LCP) members that there "were no formal plans ... but the department did keep all policies under review". The LCP itself was encouraged to "provide feedback about unexpected issues that may surface", and it was reported that the Government had informed the House of Lords that it would "continue to monitor the effects, particularly in relation to discrimination". However, the inspection found that the LCP had not met since November 2016, instead any contact with LCP members is conducted "offline", and there had been no Home Office evaluation of RtR since Phase I or any attempt to measure its intended impact,

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<sup>52</sup> Independent Chief Inspector of Borders and Immigration, [An Inspection of the "Right to Rent" Scheme](#), March 2018, p 49.

<sup>53</sup> *ibid*, p 45.

<sup>54</sup> *ibid*, p 6.

beyond some internal discussions of how this might be approached.<sup>55</sup>

Overall, the report stressed that the Home Office had done little to address these stakeholder concerns.<sup>56</sup> It therefore recommended a new Right to Rent Consultative Panel be set up, which would be made up of members of the LCP and those stakeholders concerned with the rights and interests of migrants.<sup>57</sup> It recommended this Panel could help the Home Office to:

Develop and make public plans for the monitoring and evaluation of the Right to Rent measures, including (but not limited to) the impact of the measures (where appropriate alongside other “compliant environment measures”) on “illegal migrants”, on landlords, and on racial and other discrimination, exploitation and associated criminal activity, and homelessness.<sup>58</sup>

In its response, published on 28 March 2018, the Home Office rejected the recommendation to set up a new Panel, but instead stated that it would reconvene the existing Landlords Consultative Panel for the remainder of 2018.<sup>59</sup> It stated the Panel would examine how to “drive up landlords’ compliance with the scheme and work on improving the existing guidance for landlords on avoiding unlawful discrimination”. It also stated that it accepted the need for further monitoring and evaluation of the Right to Rent measures, including the monitoring of “key related indicators”, such as homelessness figures.<sup>60</sup>

### 3.3 Statement by United Nations Special Rapporteur

On 11 May 2018, the UN Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, Professor Tendayi Achiume, published a statement on the situation in the UK following her official visit to the country.<sup>61</sup> Discussing the ‘hostile environment’ policy, she described it as a “web of policies”, including:

High profile enforcement campaigns, which saw controversial vans printed with the slogan ‘Go Home or Face Arrest’, as well as legislation which restricts access to basic services for a range of categories of foreign nationals and criminalises those who find

<sup>55</sup> Independent Chief Inspector of Borders and Immigration, [An Inspection of the “Right to Rent” Scheme](#), March 2018, p 7.

<sup>56</sup> *ibid.*

<sup>57</sup> *ibid.*, p 8

<sup>58</sup> *ibid.*

<sup>59</sup> Home Office, [Response to the Independent Chief Inspectors of Borders and Immigration’s Report: An Inspection of the Right to Rent Scheme](#), 28 March 2018, p 5.

<sup>60</sup> *ibid.*

<sup>61</sup> United Nations, ‘[End of Mission Statement of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance at the Conclusion of Her Mission to the United Kingdom of Great Britain and Northern Ireland](#)’, 11 May 2018.

themselves without status.<sup>62</sup>

She claimed the policies were not just affecting “irregular” immigrants, but also affected: “racial and ethnic minority individuals with regular status, and many who are British citizens and have been entitled to this citizenship as far back as the colonial era”.<sup>63</sup> She believed it was “destroying the lives and livelihoods” of ethnic minority communities, including people with rightful citizenship status, and those who had been in the country for “decades”. She also highlighted reports of discrimination by landlords, and the harassment of individuals labelled ‘illegal immigrants’, despite having British citizenship or settled status. In addition, she claimed that it effectively turned “hospitals, banks, and private residences into border checkpoints”.<sup>64</sup>

The Special Rapporteur then considered how the policies fitted within international human rights law, believing the broad nature of the policy could have resulted in violations of international human rights law:

To be clear, international law and even international human rights law protect national sovereignty, including in the area of immigration enforcement. However, where the strategy for immigration enforcement is so overbroad, and foreseeably results in the exclusion, discrimination and subordination of groups and individuals on the basis of their race, ethnicity or related status, such a strategy violates international human rights law, and the commitments that the UK government has made to racial equality.<sup>65</sup>

However, she did praise a number of other aspects of the Government’s policies to tackle racism, stating that, for example, Theresa May’s Race Disparity Audit (commissioned in August 2016<sup>66</sup>) was a “remarkable step towards transforming formal commitments to racial equality into reality”, and that it should be emulated by other governments around the world.<sup>67</sup> She also praised the UK’s framework of racial equality legislation, particularly its focus on both direct and indirect forms of racial discrimination.

Despite this, she “strongly” recommended the Government repeal the aspects of the immigration law and the policy framework which gave responsibility for “immigration enforcement” to private citizens and civil

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<sup>62</sup> United Nations, [‘End of Mission Statement of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance at the Conclusion of Her Mission to the United Kingdom of Great Britain and Northern Ireland’](#), 11 May 2018.

<sup>63</sup> *ibid.*

<sup>64</sup> *ibid.*

<sup>65</sup> *ibid.*

<sup>66</sup> Gov.uk, [‘Race Disparity Audit’](#), March 2018.

<sup>67</sup> United Nations, [‘End of Mission Statement of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance at the Conclusion of Her Mission to the United Kingdom of Great Britain and Northern Ireland’](#), 11 May 2018.

servants responsible for public and social services.<sup>68</sup> She argued this was needed to tackle the racism and discrimination she believed was being caused by the policy, and that the smaller steps being signalled by the Government were not enough:

Shifting from the rhetoric of a hostile environment to one of a compliance environment will have little effect if the underlying legislative framework remains intact. Efforts such as eliminating deportation targets can achieve only slight cosmetic changes to an immigration enforcement regime that has permeated almost all aspects of social life in the UK. I wish to underscore that a hostile environment ostensibly created for and formally restricted to irregular immigrants, is in effect, a hostile environment for all racial and ethnic communities and individuals in the UK. This is because ethnicity continues to be deployed in the public and private sector as a proxy for legal immigration status. Even where private individuals and civil servants may wish to distinguish among different immigration statuses many likely are confused among the various categories and thus err on the side of excluding all but those who can easily and immediately prove their Britishness, or whose white ethnicity confer[s] upon them presumed Britishness.<sup>69</sup>

Responding to the statement, a Government spokesperson welcomed the areas of the statement commending UK legislation and policy intended to tackle direct and indirect racial discrimination, stating that the Government was determined to take action on the issue.<sup>70</sup> However, regarding the criticism of the 'hostile environment' policy, the spokesperson stated that rules were being reviewed to ensure that people lawfully in the UK are not disadvantaged by measures in place to tackle illegal migration.

### 3.4 External Commentary

#### *Liberty and Others*

In April 2018, Liberty published a co-authored report (with contributors including the Migrants' Rights Network, the National Union of Students and Doctors of the World UK) considering the impact of the 'hostile environment' policy.<sup>71</sup> The authors considered the measures in a number of areas, including: schools and universities; health; banking; housing; employment; driving; social support; rough sleeping; and stops in the street.

<sup>68</sup> United Nations, ['End of Mission Statement of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance at the Conclusion of Her Mission to the United Kingdom of Great Britain and Northern Ireland'](#), 11 May 2018.

<sup>69</sup> *ibid.*

<sup>70</sup> BBC News, ['Austerity and Immigration Rules Concern UN Racism Official'](#), 12 May 2018.

<sup>71</sup> Liberty et al, [A Guide to the Hostile Environment](#), April 2018.

For example, regarding schools, the report highlighted the collecting of pupil data on nationality and country of birth under the school census.<sup>72</sup> Although it acknowledged this data was not currently being shared with the Home Office, it expressed concerns about the prospect of it being shared in the future. As such, the authors suggested:

Some parents will now fear that schools are not a safe place for their children—and may withdraw them from education entirely. This will have a huge impact on children's futures, as well as removing them from the protective influence of an institution that is supposed to protect them from harm.<sup>73</sup>

Regarding housing, and the checks needed to be made by landlords before renting a property, the report stressed the point that "housing is vital to ensuring that people can live a dignified life".<sup>74</sup> As such, the report expressed concerns about the impact the policy had on undocumented migrants, and also on those with the right to live in the UK, including British citizens:

By denying people access to housing on the grounds of their immigration status, the Government is likely to force many households out of the regular housing market and into overpriced, unsafe and unsuitable accommodation. But landlord immigration checks also affect people with the correct papers—and even British citizens. They incentivise landlords to rent to British citizens and people who do not 'appear foreign'.<sup>75</sup>

Turning to employment checks, the report noted that these had been in operation in some form since the late 1990s, but that the Immigration Acts of 2014 and 2016 had introduced some further measures (such as introducing the new criminal offence of illegal working).<sup>76</sup> The report believed that such measures risked pushing people into the "shadow economy", and expressed concerns that the links between immigration status and jobs (through employer-sponsored visas) can lead to exploitation and a state of precariousness for migrant workers:

Many people in the UK have an immigration status that is dependent on their employer sponsoring their visa. This means that—if they lose their job—after a short period of time they will have to leave the country, apply to change their immigration status to a non-work-related one, or become undocumented. Making people's right to live here contingent on their employer gives those employers a disproportionate amount of power over them—leaving workers vulnerable to exploitation. Workplace immigration raids can make all

<sup>72</sup> Liberty et al, [A Guide to the Hostile Environment](#), April 2018, p 10.

<sup>73</sup> *ibid.*

<sup>74</sup> *ibid.*, p 15.

<sup>75</sup> *ibid.*, p 26.

<sup>76</sup> *ibid.*, p 33.

migrant workers feel precarious, putting them off raising issues related to terms and conditions with their employer.<sup>77</sup>

The report also referred to the ICIBI's findings of driving licences and bank accounts being incorrectly refused. On the latter point, the report believed banks may look to avoid opening accounts for migrants who have limited leave to remain, "as the Home Office itself has acknowledged".<sup>78</sup> It also noted that bank accounts may take up to a year to be reopened. Considering the impact of these measures, the report stated:

Denying people access to bank accounts leaves them with nowhere secure to put their cash. This in turn leaves them vulnerable to robbery, reliant on employers and landlords who work 'cash in hand' and at the mercy of payday lenders.<sup>79</sup>

The report also considered the work of immigration officers, in relation to "street stops and raids" (which are connected to their powers to search individuals and premises).<sup>80</sup> The report claimed that these powers were often misused, were often based on "unlawful racial profiling", and were not being properly scrutinised.<sup>81</sup>

Considering the 'hostile environment' policy as a whole, the report argued that it encourages discriminatory behaviour, places an unwanted burden on people providing certain services (for example, by requiring them to carry out extra checks and to share data with the Home Office), and disproportionately affects young people and vulnerable people.<sup>82</sup> Regarding the latter two points, the report stated:

The requirement for people to show ID documents in their interactions with public services also disproportionately affects young people, homeless people and those on lower incomes, who are less likely to have a passport or other form of ID.

The hostile environment has a huge impact on people who run and deliver services too. By requiring frontline workers to check people's immigration status or share data with the Home Office, government policies are shattering the carefully cultivated relationships of trust they have built with the communities they serve.<sup>83</sup>

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<sup>77</sup> Liberty et al, [A Guide to the Hostile Environment](#), April 2018, p 34.

<sup>78</sup> *ibid*, p 22.

<sup>79</sup> *ibid*.

<sup>80</sup> *ibid*, pp 47–8.

<sup>81</sup> *ibid*, p 47.

<sup>82</sup> *ibid*, p 6.

<sup>83</sup> *ibid*.

The authors also stated that there were varying reasons people may be undocumented, and that it did not always reflect their immigration status. For example, it stressed that it is often because they are unable to afford to pay application fees, to challenge Home Office decisions, or to pay for legal advice.<sup>84</sup>

### **Lewisham Refugee and Migrant Network**

In March 2018, the Lewisham Refugee and Migrant Network (LRMN) published a report which included consideration of the impact of the 'hostile environment' policy in the Lewisham area.<sup>85</sup> The section on the 'hostile environment' policy included case studies from two individuals who had both been in the UK for over 40 years.<sup>86</sup> In both cases, the individuals had a right to remain in the UK, but had experienced hardship in recent years due to issues with documentation. One had experienced a stop in benefit payments, and the other had been unable to get a job due to the inability to provide employers with the documentation they required. The LRMN argued that the cases were evidence of the difficulties and discrimination caused by the policy to those immigrants who had been living in the UK for a number of years, and that these issues had often resulted in severe financial hardship.

The LRMN found that the policy had "drastically impacted" the lives of black and ethnic minority communities, who now faced higher immigration fees which often impacted their ability to settle in the country.<sup>87</sup> The report also found evidence of vulnerable clients suffering from access to poor legal advice and from confusion in communities as to how the policy, and its various measures, operates:

Advisers expressed concern that some clients have used immigration solicitors who lacked sufficient knowledge about their case or in some circumstances the law. Vulnerable clients were asked to pay for expensive applications that did not comply with immigration legislation or they had no realistic chance of being successful. Referrals to poor quality lawyers may be entrenched within communities of migrants, who are directed to lawyers via community organisations such as churches. Clients frequently rely on the advice of friends and family members, and often this advice can be a hindrance to an individual's case as it may be years out of date and relying on information about past legislation or be heavily case specific. This is exacerbated by the spread of misinformation about the immigration system within migrant communities that generates fear and can lead to people completing applications on their own.<sup>88</sup>

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<sup>84</sup> Liberty et al, [A Guide to the Hostile Environment](#), April 2018, p 6.

<sup>85</sup> Lewisham Refugee and Migrant Network, [Making Change Happen](#), March 2018, pp 17–20.

<sup>86</sup> *ibid*, p 19.

<sup>87</sup> *ibid*, p 5.

<sup>88</sup> *ibid*, p 8.

The LRMN called for government action to address policies (including those connected to the 'hostile environment') which are "effectively pushing people on the brink of destitution, and in many cases homelessness".<sup>89</sup> It believed this would also help people make a more positive contribution to their communities.

### ***Children's Society and Coram Children's Legal Centre***

In a briefing publishing on 30 April 2018, the Children's Society and Coram Children's Legal Centre considered the impact of the policy on undocumented migrant children.<sup>90</sup> The organisations claimed:

This package of measures designed to make life so difficult for individuals without papers that they will leave the UK, has also devastated thousands of children and young people who have grown up here in the UK, many from Commonwealth countries themselves having come here into established communities. These measures have left the 'Windrush' generation cut off from employment, housing and healthcare while also leaving a new generation of young people unable to work, unable to open a bank account or drive a car and effectively barred from college, university and secondary healthcare.<sup>91</sup>

The briefing includes case studies and analysis of the policy under a number of headings, including citizenship and healthcare fees and the complexity of individuals' immigration statuses.<sup>92</sup> For example, the briefing claimed some children would need specialist legal advice if their immigration status was sufficiently complex, and noted that a child under 18 would currently need to pay £1,012 to register as a British citizen.<sup>93</sup>

Presenting some of their other findings, the organisations claimed:

- There were an estimated 144,000 undocumented migrant children living in England and Wales, with the majority living in urban areas like London and the West Midlands.<sup>94</sup>
- Some children have been "threatened with forced removal to places that are foreign to them or where they have no connections to and where they would be destitute".<sup>95</sup>
- Some children have been subject to "destitution, domestic violence, social exclusion and exploitation as a result of their

<sup>89</sup> Lewisham Refugee and Migrant Network, [Making Change Happen](#), March 2018, p 36.

<sup>90</sup> Children's Society and Coram Children's Legal Centre, [Impact Of The 'Hostile Environment' On Children And Young People Today](#), 30 April 2018.

<sup>91</sup> *ibid*, p 1.

<sup>92</sup> *ibid*, pp 2–3.

<sup>93</sup> Home Office, [Fees with Effect from 6 April 2018 for Citizenship Applications and the Right of Abode](#), 6 April 2018, p 2.

<sup>94</sup> *ibid*, p 1.

<sup>95</sup> *ibid*.

precarious status and inability to rectify their situation".<sup>96</sup>

In addition, the report discussed how the problems with the policy could also affect young EU citizens once the UK leaves the EU. For example, it stated:

Many of these individuals came to the UK decades ago, as citizens, under free movement rules and without the need for regularisation and documentation. Many may have extensive gaps in their documentation, or lack documentation because they arrived in the UK as children (or are children separated from their families). In 2016, 679,000 European national children under the age of 18 resided in the UK, 38 percent of whom were born in this country. We have repeatedly raised concerns that some of these children will fall through the gaps to become undocumented.<sup>97</sup>

Although the report acknowledged government statements that EU citizens living in the UK would be able to gain 'settled status', it noted that this was still provisional.<sup>98</sup> It also stated that the success of this would rely on the Home Office avoiding errors it had made previously, referencing the erroneous letters sent to EU nationals about their right to live in the UK and the destruction of a large number of documentation papers relating to the 'Windrush generation'.

## 4. Windrush Situation and Other Recent Developments

### 4.1 Windrush Generation

The 'hostile environment' policy has received increased attention recently following a growing number of reports of issues faced by Commonwealth citizens, many of whom were minors, who arrived in the UK prior to 1973.<sup>99</sup> These are often referred to as the 'Windrush generation', named after the arrival of the SS Empire Windrush at Tilbury Docks on 22 June 1948.<sup>100</sup> The ship contained 492 passengers from the Caribbean who had been invited to come to the UK to address the post-war labour shortage. However, the Migration Observatory has estimated that there were around 524,000 Commonwealth citizens who moved to the UK before 1971, with around 15,000 coming from Jamaica, 13,000 coming from India and the rest coming

<sup>96</sup> Home Office, [Fees with Effect from 6 April 2018 for Citizenship Applications and the Right of Abode](#), 6 April 2018, p 2.

<sup>97</sup> *ibid*, pp 3–4.

<sup>98</sup> *ibid*, p 4.

<sup>99</sup> See, for example: Kevin Rawlinson, ['Windrush-Era Citizens Row: Timeline Of Key Events'](#), *Guardian*, 16 April 2018.

<sup>100</sup> BBC News, ['Windrush Generation: Who Are They and Why Are They Facing Problems?'](#), 18 April 2018.

from other Commonwealth countries.<sup>101</sup> In addition, it estimated that 467,000 had identified themselves as UK nationals, but that 57,000 had identified themselves as non-UK nationals (who would appear to be the most likely to experience difficulties). As the Migration Observatory explained:

These figures do not represent an estimate of the number of people who are now likely to have difficulty demonstrating their legal status in the UK. The key question in this regard is how many people have documentation that demonstrates their legal status, eg an Indefinite Leave to Remain document. People who do have such documentation should not face any problems related to immigration enforcement.<sup>102</sup>

As noted by the Migration Observatory, the issues experienced by these citizens relate to their documentation of their right to live in the UK. The Immigration Act 1971 provided that foreign nationals, such as Commonwealth citizens, who were 'ordinarily resident' in the UK on 1 January 1973 (when the Act came into force) were deemed to have 'settled status' (ie indefinite leave to remain).<sup>103</sup> However, many of these individuals have never obtained documentary proof of their right to live in the UK. This, it is argued, has become increasingly problematic in light of recent policies targeted at 'illegal' immigrants, such as those forming part of the 'hostile environment' policy. This issue with documentation was exacerbated by a 2009 UK Border Agency decision to destroy the landing cards of many of these Commonwealth citizens, a move which was subsequently carried out in 2010.<sup>104</sup>

Reported issues being faced by these citizens included Home Office letters threatening deportation or detentions, demands to pay for healthcare and problems connected to individuals' employment or benefit statuses.<sup>105</sup> In addition, it was confirmed by the Home Secretary, Sajid Javid, on 15 May 2018, that 63 Commonwealth citizens who entered the UK prior to 1973 "could" have been deported wrongfully.<sup>106</sup> This was further clarified by Baroness Williams of Trafford on 17 May 2018 in response to a written question:

The Home Office has been checking records back to 2002 when electronic records began, looking at all removals and deportations of Caribbean nationals aged 45 plus. So far there have been 63 cases

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<sup>101</sup> Migration Observatory, [Commonwealth Migrants Arriving Before 1971, Year Ending June 2017](#), accessed 7 June 2018.

<sup>102</sup> *ibid.*

<sup>103</sup> See: House of Commons Library, [Windrush Generation](#), 1 May 2018.

<sup>104</sup> BBC News, ['Windrush: Alan Johnson Says Landing Cards Decision Was Made in 2009'](#), 20 April 2018.

<sup>105</sup> Kevin Rawlinson, ['Windrush-Era Citizens Row: Timeline Of Key Events'](#), *Guardian*, 16 April 2018.

<sup>106</sup> House of Commons Home Affairs Committee, [Oral Evidence: Windrush Children](#), 15 May 2018, HC 990 of session 2017–19, p 9.

identified where Caribbean individuals could have entered the UK before 1973. This means of the total 8,000 deportation and administrative removal records that came up, so far there is a focus on 63, there is something in their record that indicates they could have entered before 1973. Of these, there are 32 Foreign National Offenders and 31 administrative removals.

We are now reviewing each of these cases carefully in more depth—including bringing paper files out of storage if necessary—to determine whether anyone who was protected under the 1971 Act was removed or deported unlawfully. This work will be independently assured. This does not mean that 63 people have been wrongfully removed or deported. It is the number of cases which merit further investigation.<sup>107</sup>

On 23 April 2018, the then Home Secretary, Amber Rudd, pledged the Government's support to help those affected gain their British citizenship or obtain naturalisation, and said the Government would waive any fees (or any need to do tests) that would normally apply.<sup>108</sup> She also announced a government taskforce focusing on the issues faced by the 'Windrush generation' and stated the Department would ensure compensation was available to those who been had affected.<sup>109</sup> She concluded:

I have set out urgent measures to help the Windrush generation document their rights, how this Government intend to offer them greater rights than they currently enjoy, how we will compensate people for the hardship they have endured and the steps I will take to ensure this never happens again. None of that can undo the pain already endured, but I hope that it demonstrates the Government's commitment to put these wrongs right going forward.<sup>110</sup>

Responding for the Opposition, the Shadow Home Secretary, Diane Abbott, welcomed aspects of the Home Secretary's speech (such as the statements relating to fees and compensation). However, overall, she criticised the Government for allowing it to happen, stating that the warning signs were clear, and that the possible issues were raised during the parliamentary passage of the Immigration Act 2014:

Ministerial maladministration sometimes occurs because officials act in error, and sometimes it is a question of unforeseen circumstances, but the problem with the plight of the Windrush generation is that it was foreseeable and it was foreseen. People inside the Department and Members of this House have tried to draw the Government's attention to it. The key was the Immigration Act 2014, which removed protections for Commonwealth citizens, who had up until then been

<sup>107</sup> House of Lords, '[Written Question: Deportation](#)', 17 May 2018, HL7363.

<sup>108</sup> [HC Hansard, 23 April 2018, col 630](#).

<sup>109</sup> *ibid*, cols 620–1.

<sup>110</sup> *ibid*, col 622.

exempt from deportation.<sup>111</sup>

She feared that, unless the overriding issues were resolved with the policy, the same issues could soon affect other generations of migrants, and highlighted problems which were now being experienced by certain migrants from south Asia (for example, with regards to applications for indefinite leave to remain<sup>112</sup>):

Coming up behind the Windrush cohort is a slightly later cohort of persons from south Asia. In the next few years, even though they have lived here all their life, even though their children are British and even though they have worked all their life, they will be asked for four pieces of data for every year they have been here, and they will be subjected to the same humiliation as the Windrush generation.<sup>113</sup>

Finally, having reiterated the issues faced by the 'Windrush generation' individuals (referencing "benefits cut; healthcare denied; jobs lost; and people evicted from their housing"<sup>114</sup>), Ms Abbott stated:

This is a generation with unparalleled commitment to this country, unparalleled pride in being British and unparalleled commitment to hard work and to contributing to society, and it is shameful that this Government have treated that generation in this way.<sup>115</sup>

Subsequently, on 24 May 2018, the Home Secretary, Sajid Javid, laid a statutory instrument before Parliament (which came into force on 30 May 2018) giving effect to many of the measures mentioned by the previous Home Secretary aimed at helping those from the 'Windrush generation' (referred to as the 'Windrush scheme').<sup>116</sup> For those applying under the scheme, the Regulations allow application fees to be waived for a range of documents confirming a person's right to live in the UK, and also allows eligible individuals to apply for British citizenship free of charge. In addition, applicants under the scheme would not have to take the knowledge of language and life in the UK test or attend a citizenship ceremony.<sup>117</sup> The scheme itself started on 30 May 2018, and the Government has published a suite of documents to accompany it, including:

- Information on how to apply and who is eligible to apply. For

<sup>111</sup> [HC Hansard, 23 April 2018, col 622.](#)

<sup>112</sup> Naomi Canton, '[Highly Skilled South Asian Migrants Say They Are UK's New Windrush Scandal](#)', *Times of India*, 3 May 2018.

<sup>113</sup> [HC Hansard, 23 April 2018, cols 623–4.](#)

<sup>114</sup> *ibid*, col 623.

<sup>115</sup> *ibid*, col 624

<sup>116</sup> Immigration and Nationality (Requirements for Naturalisation and Fees) (Amendment) Regulations 2018 (SI 2018/618). This is a negative instrument which came into force on 30 May 2018.

<sup>117</sup> Home Office, '[Home Secretary Launches Windrush Scheme](#)', 24 May 2018.

example, the scheme will consider the applications of Commonwealth citizens who were settled in the UK prior to 1 January 1973, children of such citizens if they were born in the UK or moved to the UK prior to the age of 18, and other nationals who have been lawfully settled in the UK and arrived prior to 31 December 1988.<sup>118</sup>

- Guidance on 'Right to Rent' checks for landlords for Commonwealth citizens who are long-term residents.<sup>119</sup>
- Guidance for employers on checking the right to work of Commonwealth citizens who are long-term residents.<sup>120</sup>

Speaking about the scheme, Sajid Javid has stated:

I am clear that we need to make the process for people to confirm their right to be in the UK or put their British citizenship on a legal footing as easy as possible. That is why I have launched a dedicated scheme which brings together our rights, obligations and offers to these people into one place. I want to swiftly put right the wrongs that have been done to this generation and am committed to doing whatever it takes to make this happen.<sup>121</sup>

However, there has been some criticism that the scheme does not set out a right to appeal, with the Home Office guidance for the Windrush taskforce (which considers applications under the scheme) stating:

Where a person is determined not to be issued with a document under the Windrush Scheme in accordance with this guidance, the decision will not attract a right of appeal or an administrative review.<sup>122</sup>

The chair of the House of Commons Home Affairs Committee, Yvette Cooper, expressed her concerns about this in a tweet, stating: "I'm extremely concerned they rule out any appeals or reviews of Windrush decisions. Given the history of this, how can anyone trust HO [the Home Office] not to make further mistakes?"<sup>123</sup> In addition, an article on the UK Human Rights Blog considered whether the denial of a right to appeal could leave the scheme open to legal challenge.<sup>124</sup>

<sup>118</sup> Home Office, [Windrush Scheme](#), 30 May 2018.

<sup>119</sup> Home Office, [Landlords: Guidance on Right to Rent Checks on Undocumented Commonwealth Citizens](#), 30 May 2018.

<sup>120</sup> Home Office, [Employers: Guidance on Right to Work Checks on Undocumented Commonwealth Citizens](#), 30 May 2018.

<sup>121</sup> Home Office, [Home Secretary Launches Windrush Scheme](#), 24 May 2018.

<sup>122</sup> Home Office, [Windrush Scheme Guidance](#), 24 May 2018, p 13.

<sup>123</sup> Yvette Cooper, [Personal Twitter Account](#), 24 May 2018.

<sup>124</sup> Jonathan Metzger, [Could the Windrush Scheme be Open to Legal Challenge?](#), UK Human Rights Blog, 29 May 2018.

A [full debate](#) on the Windrush issue was held in the House of Commons on 2 May 2018.<sup>125</sup> In addition, the House of Commons Home Affairs Committee is currently running an [inquiry on the subject](#),<sup>126</sup> and the Home Office has issued a [call for evidence on the proposed compensation scheme](#), which closed on 8 June 2018.<sup>127</sup>

## 4.2 Other Recent Developments

During the recent scrutiny of the situation regarding the 'Windrush generation', questions were also raised about the existence of internal Home Office targets for the annual removal of 'illegal' immigrants.<sup>128</sup> When asked about the existence of annual removal targets on 25 April 2018, the then Home Secretary, Amber Rudd, told the House of Commons Home Affairs Committee that the Home Office did not have targets for removals.<sup>129</sup> However, subsequently, she confirmed to the House of Commons that the Home Office did operate such targets, but these were only operated by the "immigration arm" of the Home Office and only on a local basis:

I have never agreed that there should be specific removal targets and I would never support a policy that puts targets ahead of people. The immigration arm of the Home Office has been using local targets for internal performance management. These were not published targets against which performance was assessed, but if they were used inappropriately, then I am clear that this will have to change. I have asked officials to provide me with a full picture of the performance measurement tools which were used at all levels, and I will update the House, and the Home Affairs Committee, as soon as possible.<sup>130</sup>

Ms Rudd stated that she had not been aware of the targets,<sup>131</sup> and subsequently said that she would not approve their future use.<sup>132</sup> Following further questions as to her knowledge of the targets, Ms Rudd resigned from her post on 29 April 2018.<sup>133</sup> Her successor in the Home Office, Sajid Javid, confirmed he will not be approving the use of removal targets.<sup>134</sup> The Opposition had expressed concerns that the targets had put pressure on

<sup>125</sup> [HC Hansard, 2 May 2018, cols 340–424](#).

<sup>126</sup> House of Commons Home Affairs Committee, '[Windrush Children Inquiry](#)', accessed 7 June 2018.

<sup>127</sup> Home Office, '[Windrush Compensation: Call for Evidence](#)', 10 May 2018.

<sup>128</sup> BBC News, '[Windrush: Home Office 'To Scrap Immigration Removals Targets'](#)', 26 April 2018.

<sup>129</sup> House of Commons Home Affairs Committee, [Oral Evidence: Windrush Children](#), 25 April 2018, HC 990 of session 2017–19, p 28.

<sup>130</sup> [HC Hansard, 26 April 2018, col 1017](#).

<sup>131</sup> *ibid*, cols 1017–18.

<sup>132</sup> Jessica Elgot and Heather Stewart, '[Amber Rudd Vows to Scrap Targets for Removing Immigrants from UK](#)', *Guardian*, 26 April 2018.

<sup>133</sup> Heather Stewart et al, '[Amber Rudd Resigns Hours After Guardian Publishes Deportation Targets Letter](#)', *Guardian*, 29 April 2018.

<sup>134</sup> House of Commons Home Affairs Committee, [Oral Evidence: Windrush Children](#), 15 May 2018, HC 990 of session 2017–19, p 12.

public officials, and had therefore contributed to the treatment of the 'Windrush generation'.<sup>135</sup>

In addition, it has recently been reported that a number of measures connected to the 'hostile environment' policy are being dropped, or are subject to legal challenges. For example, this included reports that:

- The 'Right to Rent' measures are being challenged by the Joint Council for the Welfare of Immigrants via judicial review, with the organisation claiming the measures are discriminatory against ethnic minorities and those without British passports.<sup>136</sup>
- The information sharing agreement between the NHS and the Home Office was being suspended.<sup>137</sup>
- The Home Office was reducing the scope of the immigration checks on bank accounts, pending a review of "existing safeguards" to ensure these did not inadvertently affect those in the country legally.<sup>138</sup>

Speaking on 3 June 2018, the Home Secretary confirmed that the Government would be reviewing the 'hostile environment' policy, and how measures were implemented.<sup>139</sup>

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<sup>135</sup> [HC Hansard, 2 May 2018, col 342.](#)

<sup>136</sup> Sky News, ['Government Facing High Court Challenge Over 'Hostile Environment' Immigration Policy'](#), 3 June 2018.

<sup>137</sup> Denis Campbell, ['NHS Will No Longer Have to Share Immigrants' Data With Home Office'](#), *Guardian*, 9 May 2018.

<sup>138</sup> Jamie Grierson, ['Home Office Suspends Immigration Checks on UK Bank Accounts'](#), *Guardian*, 17 May 2018.

<sup>139</sup> ITV News, ['Sajid Javid Says Home Office's 'Hostile Environment' Towards Immigrants To Be Reviewed After Windrush'](#), 3 June 2018.