IMMIGRATION BILL

ILPA PROPOSED AMENDMENTS FOR HOUSE OF COMMONS COMMITTEE STAGE

PART III ACCESS TO SERVICES ETC. Chapter 1 Residential Tenancies

For further information please get in touch with alison.harvey@ilpa.org.uk 0207 490 1553. ILPA is happy to provide further briefing to specific amendments if these are laid/and or selected or to assist members of the Committee in deciding whether to lay them. We shall also be providing briefings for stand part debates.

ILPA responded to the consultation on residential tenancies and its response is available at http://www.ilpa.org.uk/data/resources/20798/13.08.20-ILPA-response-private-rented-accommodationpdf.pdf

Clause 15 Residential Tenancy Agreement

PROPOSED AMENDMENT

Clause 15, page 15, omit line 26

Purpose
Limits the powers of the Secretary of State so that she will no longer be able to include in the scheme agreements formerly excluded, but only exclude those formerly included or amend a description of an exclusion.

Briefing
A variation on this amendment would be to omit lines 26 and 27 thus removing the power to amend any description as well. See also amendments to clause 32.

If the status of a type of housing in relation to the scheme is precarious that could cause problems of its own. Landlords and landladies may be reluctant to rent excluded property to persons who cannot prove their relevant nationality or right to rent for fear that they might not be able to keep them as tenants.

The amendment also puts pressure on the Secretary of State to think Schedule 3 through carefully, which does not appear to us to have been done. When we identify apparent omissions, we are told that they can be dealt with by an exercise of discretion, giving the impression that the hard work on the schedule is considered over.

Clause 15 Residential Tenancy Agreement

PROPOSED AMENDMENT

Clause 15, page 15, omit line 26

Purpose
Limits the powers of the Secretary of State so that she will no longer be able to include in the scheme agreements formerly excluded, but only exclude those formerly included or amend a description of an exclusion.

Briefing
A variation on this amendment would be to omit lines 26 and 27 thus removing the power to amend any description as well.

Clause 16 Persons disqualified by immigration status or with limited right to rent

PROPOSED AMENDMENTS

Clause 16, page 16, line 2, after "if" insert (a)

Clause 16, page 16, line 4, after "agreement" insert

> "(b) P has made a claim for asylum and has been temporarily admitted to the United Kingdom, temporarily released or granted bail within the meaning of under Schedule 2 to the Immigration Act 1971 or
> (c) P is detained under the Immigration Acts or has been detained under the Immigration Acts but has been temporarily released or granted bail under Schedule 2 to the Immigration Act 1971
> (c) Claim for asylum has the same meaning as in section 94 of the Immigration and Asylum Act 1999

Purpose
To include asylum seekers and immigration detainees within the list of people to be treated as though they have a right to rent.

The definition of claim for asylum being used is that the person has made a claim under the 1951 UN Convention Relating to the Status of Refugees or a claim that removal would breach their rights under Article 3 of the European Convention on Human Rights.

Briefing

Persons seeking asylum do not have a right to rent under this Bill. Provision is made in Schedule 3 for accommodation for persons seeking asylum provided by the Secretary of State under section 95 of the Immigration and Asylum Act 1999 to be excluded from the scheme and similarly for accommodation provided for those whose claims have failed and who are accommodated under section 4 of the 1999 Act. But the bill will force all asylum-seekers and failed asylum seekers into this accommodation. This would greatly increase both destitution and public expenditure on asylum support.

We raised the omission with the Bill team and were told that it could be dealt with by an exercise of discretion, presumably under the existing Clause 16(3). This does not

seem to us good enough when it has been identified at this stage that the provision made in the Bill is inadequate.

The second group about whom we are concerned are immigration detainees seeking release on bail, some after many months or years in detention. The majority currently use rented accommodation with friends and family as a bail address, typically residing as a lodger on release. The Bill at clause 17(1) provides that "A landlord must not authorise an adult to occupy_premises under a residential tenancy agreement if the adult is disqualified as a result of their immigration status". Family and friends in rental accommodation, especially local authority or other housing where permission to take in lodgers is required, will no longer be able to offer bail accommodation to detainees who will be "disqualified as a result of their immigration status from occupying premises under a residential tenancy agreement". The combination of making provision for those on bail, temporary admission and temporary release should ensure that persons currently detained are able to apply for bail and that if they get it, they are allowed to reside at the address to which they have been bailed.

Bail for immigration Detainees estimates that the majority of their detained clients have no leave to enter or remain in the UK. Disqualified from occupying rental accommodation they would instead need to apply to the Home Office for Section 4 (1)(c) bail accommodation to apply for release from detention, at a cost to the Home Office where previously there was none.

There is currently a provision to seek Section 4 (1)(c) bail support if bailed to a private address if that arrangement later breaks down, i.e. from the community rather than detention, which would continue to offer a safeguard).

There are many potential variations on this amendment. For example there are concerns that the provisions will be problematic not only for people who cannot prove on leaving prison or other type of establishment that they are not disqualified by the provisions of the bill. People, whether British or not, tend not to have the right documentation on them when they are being prepared for discharge from prison.

Clause 17 Persons disqualified by immigration status not to be leased premises

PROPOSED AMENDMENT

Clause 17, page 16, omit lines 29-30

Purpose
This amendment would mean that there would be no contravention of the section where a person not named in the tenancy agreement was disqualified because of their immigration status. This is a probing amendment.

Briefing
It is suggested that a landlord check a tenant's immigration status at the time of entering into a tenancy and at certain points thereafter.

PROPOSED AMENDMENT

Clause 17, page 16, omit lines 31-36

Purpose
This amendment would mean that there would be no contravention of the section in cases where, subsequent to the tenancy agreement having been entered into, the tenant becomes a person who is disqualified because of their immigration status. It thus obviates the need for repeat checks. This is a probing amendment.

Briefing
Repeat checks were the subject of particular criticism by those landlords' associations who gave oral evidence to the Committee. This amendment provides an opportunity to discuss repeat checks.

Clause 18 Penalty Notices: landlords

PROPOSED AMENDMENT

Clause 18, page 17, line 24, omit "£3000" and replace with "one peppercorn"

Purpose
Would make the maximum penalty for contravening the scheme, the sum of one peppercorn. The purpose of the amendment is to probe how the scheme would work in practice.

Briefing
ILPA suggests that the only way in which this scheme can work is if it not enforced: if landlords are rarely if ever be penalised for renting to persons who are forbidden from renting because of their immigration status and if everyone turns a blind eye to those who discriminate against potential tenants on the grounds of whether they consider that those tenants look or sound "foreign" according to their lights. The landlords' associations giving oral evidence to the Committee suggested a mere 10 Home Office staff would be employed to work on the scheme; this sounds all too plausible. It will be insufficient. Those landlords who are prepared to rent to persons under immigration control may greatly prefer the security of checking with the Home Office that their tenant is a person to whom they can rent, than carrying out checks themselves. This will make large demands on the helpline. The scheme appears to us intended to rely upon the misery private citizens will inflict upon each other to create a "hostile environment" rather than be operated by the Home Office at all.

How does the Government envisage that a landlord would be identified as having contravened this section? If it were identified that a person who could not prove y are a relevant national or their right to rent were in the property, how would it be established that the landlord, rather than some other person, was responsible? Were it so established, how would the sum due be collected? What would happen if a landlord repeatedly breached the rules on renting, but paid up each time? Or indeed, did not pay up? Would not a peppercorn fine, or no fine, simply a stated prohibition on letting to persons with no leave, be just as effective/ineffective as the scheme planned?

PROPOSED AMENDMENT

Clause 18, page 17, omit lines 34-40

Purpose
A probing amendment. Under clause 18(5) a landlord and a superior landlord can arrange between themselves who will be liable in the event of all or some contraventions of this part. The amendment provides an opportunity to probe the problems that might arise in practice.

Briefing
A landlord and a superior landlord may agree between themselves who is to be liable for contraventions as a matter of contract law. ILPA supports their being able to contract freely and thus this is simply a probing amendment. It provides an opportunity to look at the difficulties that may arise in practice if there is a contravention. What if, for example, the Home Office alleges a contravention but this is disputed, in a case where the superior landlord is responsible? Will the landlord who enters into the tenancy indemnify the superior landlord for the costs of disputing that a contravention has occured? Or be required to do all the work to establish this? Who will be responsible for establishing whether the requisite checks were carried out? A contract shifting liability looks like a document of some complexity. What will be the effect on the relationship between the superior landlord and the landlord who entered into the tenancy?

Clause 19 Excuses available to landlords

PROPOSED AMENDMENT

Clause 19, page 18, leave out lines 19-26

Purpose
A probing amendment. Removes subclause 19(6) which provides three excuses to landlords that will mean that they do not have to pay the penalty. A chance to probe whether the scheme will work in practice.

Briefing
The three proposed excuses are: notifying the Home Office of the contravention as soon as possible; where an agent is responsible, and where "the eligibility period in relation to the limited right occupier whose occupation caused the contravention has not expired". The latter translates roughly as the landlord last having checked the documents less than a year ago or within the currency of the tenant's leave. It is more complicated than that, but because the whole scheme is very complicated.

As to the first excuse, landlords worried that they may in breach may be very quick to reach for notification as a shield. This could soon lead to the Home Office staff working on these cases becoming overwhelmed. It could lead to tenants lawfully present, including persons with a right of abode or indefinite leave in the UK, being investigated because their landlord has not understood their documents.

As to the second excuse, the question of establishing whether landlord or agent was responsible does not appear straightforward. Nothing suggests that this is a reference

to letting agents working in the course of a business; the more general notion of agency appears to be at play. The arrangement between landlord and agent may be informal and there could be protracted disputes about liability, about whose fault the contravention is, and where responsibility lies as a matter of the agreement between them.

As to the third excuse, it requires landlords to understand the period for which an immigration document is valid, or for how long a person has been granted leave. This is not straightforward. If you want to extend your leave you send your passport, with visa stamp in it, and application form to the Home Office no more than a month before your leave expires. Your leave continues on the same terms and conditions until the Home Office makes its decision, but you are unlikely to have any documents to prove this. If refused, your leave then continues on the same terms and conditions for the period in which you can lodge an appeal. If you appeal, your leave continues on the same terms and conditions until your appeal, and any onward appeals, are finally determined. All that time you will have no passport, no visa and probably nothing but a letter from your lawyer if you have one. If during the anniversary of your landlord or landlady having checked your documents falls during this period, they will need to check them again. There is a risk that they will conclude that you have no right to rent, or that the risk of a fine is too great for them to take the chance.

PROPOSED AMENDMENT

Clause 19, line 34, leave out lines 34 to 35.

Purpose
A probing amendment. Removes the requirement that if a landlord notify the Home Office of a contravention that they do so in the prescribed form and manner. Provides an opportunity to probe the bureaucracy associated with the scheme and the capacity of the Home Office to run it.

Briefing
If a landlord fears s/he is guilty of a contravention and wishes to notify the Home Office of this to benefit from the protection offered by clause 19(6), s/he may pick up the phone. Or write a letter. But this is not good enough to excuse him/her from paying the penalty. Instead the notification is required to be made in the prescribed form or manner. This seems designed to encourage landlords not to notify the Home Office of a contravention. Is this to make the scheme manageable for the Home Office? Or for some other reason? What will the prescribed form or manner be? What record will be kept of it? If there is no contravention and a landlord is simply trying to get rid of tenant they do not like, and use the Home Office to do this, how will this be identified? What record will exist in the case of a dispute?

Clause 20 Penalty notices: agents

PROPOSED AMENDMENT

Clause 20, page 19, line 3, after "business," insert

( ) the agent is regulated by the Office of the Immigration Services Commissioner to give immigration advice and provide immigration services"

Purpose
The effect of the amendment is that a landlord can only pass on liability to an agent who is regulated by the Office of the Immigration Services Commissioner. An opportunity to probe how this scheme fits with the requirements that those who give immigration advice in the course of a business, whether or not for profit, must be regulated by the Office of the Immigration Services Commissioner.

Briefing
This was a matter that ILPA raised in its response to the Home Office consultation, but it is nowhere mentioned in the Government response to the consultation. If landlords and landladies are companies, or if they do not check the status themselves but contract with a letting agent or other third party company to do this on their behalf then that letting agent will need to ensure that the checks are being done by a solicitor, barrister, legal executive or person registered with the Office of the Immigration Services Commissioner because advice on a person's status will fall within the definition of immigration advice under Part V of the Immigration and Asylum Act1. For all save regulated or exempt persons to give such advice is a criminal offence[1]. That the advice is given to the landlord or landlady rather than the person under immigration control matters not for the purposes of the Act; it is given in respect of a particular individual[2].

If would be possible to give landlords and landladies an exemption. But, even if an exemption is given, we recall the matters aired in the discussions on whether social workers should be given an exemption to advise separated children (which ended in consensus that they should not – the Home Office, the Ministry of Justice, the Local Government Association, ILPA and the
Office of the immigration Services Commissioner were among those involved in the discussions). Even if an exemption is given in the form of a Ministerial Order under s 84 (4)(d) of the Immigration and Asylum Act 1999, under Schedule 5 paragraph 3 (3) of the Act, exempted persons still have to comply with the Commissioner's Code of Standards. The requirements of the Code include:

- Professional Indemnity Insurance
- Continuing Professional Development
- Acting in the best interests of the client
- Not acting where there is a potential conflict of interests[3]14.

Nationality checking services run by local authorities, who take in documents for the Home Office and check them (in much the same way as the Post Office does passport applications) have to be registered with the Office of the Immigration Services Commissioner and letting agents will be in a similar position[4].

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[1] Immigration and Asylum Act 1999 s 84 read with s 91.
[2] Immigration and Asylum Act 1999 s 82(1).
[3] This was discussed at length in the context of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 in the specific context of whether social workers could be given an exemption under the Act. See the letter of 5 October 2012 from Clyde James, Office of the Immigration Services Commissioner to Rebecca Handler of the Legal Strategy Team in the Immigration and Border Policy Directorate of the Home Office.
[4] See http://oisc.homeoffice.gov.uk/how_to_become_a_regulated_immigration_adviser/local_authority_nationality_checking_services/ for more information about the scheme, e.g. http://oisc.homeoffice.gov.uk/servefile.aspx?docid=242 for an example of a form for continued regulation for a Nationality Checking Service.

Clause 22 Eligibility period

PROPOSED AMENDMENT

Clause 22, page 20, line 24, omit "of a prescribed description"

Purpose
Means that any document can be used to prove that a person from outside the EEA has a right under European law to be in the UK or in the case of other persons that any document granting leave can be used. Removes the need for the Home Office to prescribe which documents will do. To probe exactly how immigration status is to be proven

Briefing
It Is all very well writing prescribed in a statue and hoping that inspiration will strike, but parliament should have an opportunity to scrutinise how the scheme is to work in practice.

The first attempt at a proposed list of acceptable documents, in Table 1 on page 17 of the Home Office consultation (see http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/consultations/33-landlords/consultation.pdf?view=Binary) was woefully incomplete

European nationals who are for example working or studying in the UK, or are self-sufficient, may bring family members with them, including persons from outside the European Union. Those persons have a right to be in the UK. They are under no obligation whatsoever to possess a document issued by the Home Office evidencing that right. However, if they want one, they can apply to the Home Office for one and the Home Office must provide it within six months. The Home Office has really struggled to meet this target. Since being warned by the European Commission that it was breaching European law to keep people waiting more than six months it has made efforts to meet the target, some helpful, others not, such as keeping people waiting five and a half months then writing to say a document is missing from the application and it is being treated as invalid. The Home Office will be overwhelmed if all third country national family members with rights under European law apply for a document. But what is to happen during the period when an application is pending or if they do not apply? What is the Home Office going to permit landlords to accept as proof? A marriage certificate (which could potentially be from any country in the world)? In combination with what? The third country national's passport? We can think of no simple check way to check eligibility. Simple combinations of documents have the potential to yield the wrong answer.

Community preference is a matter of EU law. EEA nationals should as a matter of law be treated as well as any third country national. Nationals of a country should not be worse off after joining the EU than they were before. Yet it seems that they will be, for their third country family members are going to find it harder to prove their entitlement to be in the UK than those from a family composed entirely of non-EEA citizens who have visas.

As to other persons, what of the British citizen who does not have a passport? If you were born in the UK before 1983, your birth certificate suffices to show that you are British, but how is the landlord or landlady to know that the birth certificate is yours. After 1983, an immigration lawyer would be looking not only at a birth certificate, but parents' passports and marriage or civil partnership certificates, at records of adoptions etc. to establish nationality.

The guidance for employers on checking documents was reissued on 28 October 2013. It is now 84 pages long. See http://www.ukba.homeoffice.gov.uk/sitecontent/documents/employersandsponsors/preventingillegalworking/currentguidanceandcodes/full-guide?view=Binary

The first attempt at a proposed list of acceptable documents, in Table 1 on page 17 of the Home Office consultation (see http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/consultations/33-landlords/consultation.pdf?view=Binary) was woefully incomplete

The range of documents that prove a right to work is much smaller than the range that prove a relevant nationality or right to rent under this part of the Bill. Not everyone lawfully in the UK is entitled to work.

See further our August 2013 response to Strengthening and simplifying the civil penalty scheme to prevent illegal working[5]. A "UK passport" does not mean that a person is a British citizen. There are many types of UK passport and some people who hold a UK passport are not exempt from immigration control. A naturalisation certificate does not prove that a person has British citizenship. The person may have renounced that citizenship subsequently or have had it taken away. A person with a right of abode certificate is not necessarily a British citizen. Many EEA nationals and non-EEA nationals who are lawfully present are still reliant on leave to remain that is endorsed in passports, e.g. those who applied for indefinite leave to remain before the end of February 2012 when Biometric Residence Permits were introduced for all. The Home Office does not issue letters saying that a person has an outstanding appeal. Communications come from the Tribunals There are currently very severe delays at the Tribunals. It can take over two months or even longer to receive a Notice of Hearing.

The proposals do not make any provision for those who have made in-time but invalid applications and then resubmitted them within 28 days as permitted by the Immigration Rules or those who overstay without making an in-time application but fit within the Immigration Rules and the 28-day concessions for overstayers.

Getting in touch with the Home Office enquiry services can be time-consuming. They may give different answers at different times. This can be as a result of their understanding of a person's status or because the Home Office database has not been updated, the latter is a problem that can last for considerable periods.

A very much larger operation than the employers' checking service would be

[5] Available at http://www.ilpa.org.uk/data/resources/19317/13.08.20-ILPA-response-to-strengthening-civil-penaltiespdf.pdf

required. Large numbers of additional staff (or subcontractors) would be needed. They would have to be trained and quality control would be required. How is all this to be paid for at a time when cuts are being made to government expenditure?

Provision needs to be made for those without leave. If an employee becomes an overstayer s/he can stop work. The equivalent in this regime is to become homeless. Inter alia, we do not consider that making the children of those here without leave homeless is compatible with the duties of the Home Office under section 55 of the Borders, Citizenship and Immigration Act 2009. Nor has any adequate consideration been given to the result burden on local authority social services departments.

Clause 23 Penalty notices general

PROPOSED AMENDMENT

Clause 23, page 20, leave out lines 33 to 37

Purpose
Removes the power of the Secretary of State to issue a penalty notice without having established that the landlord or landlady has a statutory excuse

Briefing
This subclause suggests that the intention is that the Secretary of State can simply issue a penalty notice as soon as she establishes that person who cannot prove a relevant nationality or right to rent is in the property. This will create stress and distress for landlords and landladies. It may contribute to disputes between landlords and superior landlords, agents and principals, head tenants and landlords as disputes about liability spring up even before it is established that there is a defence. Again the intention seems to be a scheme on the cheap rather than one in which there is careful consideration of whether it is appropriate to accuse a private citizen of having broken the law before making any effort to investigate the circumstances.

Clause 26 Enforcement

PROPOSED AMENDMENT

Clause 26, page 23, line10, leave out lines 10-26 and replace with

(2) The sum may be recovered by the Secretary of State as a sum due to him.
(3) Money paid to the Secretary of State by way of penalty shall be paid into the consolidated fund.

Purpose
To require the Secretary of State to issue a substantive claim which gives the landlord or landlady an opportunity to raise a defence before the matter is determined and judgment is given.

Briefing
In other cases where debts accrue under a statutory scheme, such as child support or council tax debts, there is a prior stage where a liability order is made. At that stage it is possible to contest the making of the order.

Section 18 of the Immigration and Asylum Act 2006 in respect of employers, which clause 40 of this Bill amends to make it look more like clause 23, is in similar terms to the above save that we have omitted the provisions that prevent an employer from contesting liability or the amount of the penalty.

Parliament has a choice between that which is cheaper and simpler for the Home Office and that which provides greater protection to landlords and landladies.

Clause 28 Discrimination

PROPOSED AMENDMENT

Clause 28, page 24, line 29, leave out lines 29 to 31 and replace with

( ) A landlord commits an offence if he breaches
  (a) The Equality Act 2010
  (b) The Race Relations (Northern Ireland) Order 1997 (SI 1997/869 (N.I.6)

in the course of agreeing to or refusing to enter into a residential tenancy agreement or in proposing terms to form part of that agreement
() A person guilty of an offence under this section shall be liable –
  (a) On conviction on indictment –
    (i) To imprisonment for a term not exceeding two years
    (ii) To a fine or
    (iii)To both, or
  (b) On summary conviction –
    (i) to imprisonment for a term not exceeding 12 months in England and Wales or 6 months in Scotland or Northern Ireland
    (ii) to a fine not exceeding the statutory maximum or
    (iii) to both
() the Code may be taken into account by a court or tribunal

Purpose
To make it a criminal offence to discriminate against a person in refusing to rent to them or in renting to them under a residential tenancy agreement under this chapter.

Briefing
The penalites are drawn from the offence an employer commits in employing a person with no permission to work as set out in section 21 of the Immigration, Asylum and Nationality Act 2006.

We do not pretend that the proposed offence is perfectly drafted. The very difficulty of drafting it illustrates how difficult it will be to catch a landlord in the act of discriminating against a person.

The proposals are a recipe for discrimination against black and ethnic minority people, whether British or under immigration control, and will make it more difficult for anyone who does not hold a British passport (including many British citizens) to rent properties. Demand for rented accommodation frequently outstrips supply. It is normal if renting a property to be risk adverse and to prefer to let as quickly as possible to the person whom it is simplest to check: the British passport holder who, according to your own image of who is British, seems to you least likely to be presenting fake documents.

It is not difficult to tell a prospective tenant that a flat or house has gone and to succeed in letting it the same day. There are all sorts of legitimate reasons for preferring one tenant over another that can be used to mask discrimination.

What is proposed is unworkable, resource intensive and beyond the capacity of the former Agency to deliver. It will not be implemented or administered successfully. If this system is enforced with all due checks it will make onerous demands on private landlords. We urge MPs to ask businesses in their constituencies whether they find checking immigration status for employment purposes straightforward and how long they spend on this. The guidance for employers comprises seven documents, the longest of which is 89 pages[6]. The Home Office employers' helpline frequently gives the wrong answer, including because the Home Office database is not up to date because of delays in putting information on to it.

If the system is not enforced, which seems more likely given the complexity of the proposals and the reference in the papers accompanying the Bill to "light touch" regulation, discrimination and unfairness will be allowed to flourish unchecked.

Clause 32 Interpretation

PROPOSED AMENDMENT

Clause 32, page 23, line 25, after "18" insert "or whom the landlord authorising that person to occupy premises under a residential tenancy agreement reasonably believes to be under 18"

Purpose
To protect the landlord or landlady from a penalty in the event that a person who appeared to him/her to be a child turns out to be an adult.

Briefing
As the Bill is drafted, if a person whom a landlord or landlady thought was a child turns out to be an adult, a fine can be levied. The amendment would prevent that. It

[6] See http://www.ukba.homeoffice.gov.uk/sitecontent/documents/employersandsponsors/preventingillegalworking/

might also go some way, although we doubt far enough, for landlords and landladies may be risk adverse, to preventing intrusive enquiries being made of tenants.

Clause 32 Interpretation

PROPOSED AMENDMENT

Clause 32, page 26, line 26, leave out "is, or is not," and replace with "is not"

Purpose
The amendment would ensure that the Secretary of State can only increase the range of agreements not treated as falling within the scheme she cannot bring agreements that would otherwise fall outside the scheme into the scheme.

Briefing
This provision appears to us further evidence that the scheme has not been adequately thought through. The Government may wish to retain a power to exclude agreements that would otherwise fall within the scheme, so that it can be modified in the light of experience, but should understand to whom the scheme is intended to apply at the outset.

PROPOSED AMENDMENT

Clause 32, page 26, line 26, leave out "is, or is not," and replace with "is not"

Purpose
The amendment would ensure that the Secretary of State can only increase the range of persons treated as not occupying premises, she cannot bring agreements that would otherwise fall outside the scheme into the scheme.

Briefing
This provision appears to us further evidence that the scheme has not been adequately thought through. The Government may wish to retain a power to exempt certain persons, so that the scheme can be modified in the light of experience, but should understand to whom the scheme is intended to apply at the outset.

Schedule 3

Hostels

PROPOSED AMENDMENT

Schedule 3, page 55, line 36 after "charity" insert

"(d) it is managed by the National Offender Management Service as Approved Premises

Purpose

To ensure that Approved Premises, managed by the National Offender Management Service are excluded from the scheme. The amendment will also serve to test whether they are within the existing definition of "hostel".

Briefing
We have raised concern that Approved Premises have not been excluded from the scheme with the Bill and have been told that discretion can if necessary be exercised to ensure that people residing in approved premises fall within the scheme. We consider that if a form of accommodation is identified for which no provision has been made, then its exclusion from the scheme should be addressed in the Bill.

Numbers are small but the omission of this type of accommodation has implications for offender management of person who cannot prove that they have a relevant nationality or a right to rent. They may be British. People tend not to have the right documentation on them when they are being prepared for discharge from prison. Immigration detainees needing a bed in Approved Premises have no other option. See further http://www.justice.gov.uk/about/noms/noms-directory-of-services-and-specifications/approved-premises

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