IMMIGRATION BILL
ILPA BRIEFING FOR HOUSE OF COMMONS COMMITTEE STAGE

PART III 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.

Chapter 1 RESIDENTIAL TENANCIES

Key interpretation

Clause 15

Mr David Hanson
Helen Jones
Phil Wilson

AMENDMENT 49

Clause 15, page 15, line 7, after 'Chapter', insert 'subject to the provisions set out in section [Consultation with the devolved administrations]'.

NEW CLAUSE 1 Consultation with the devolved administrations

To move the following Clause:—
'(1) Prior to the implementation of sections 15 to 32 the Secretary of State shall consult with the Scottish Government, the Northern Ireland Executive, and the Welsh Government on the implementation and principles of these sections.'.

Presumed purpose

New Clause 1 would require consultation with the devolved administrations before the provisions of part III Chapter 1 came into force. Their consent is not required. Amendment 49 is a peg on which to hang a debate on the new clause.

Briefing

Checks by landlords and landladies would be a new stage in the privatisation of immigration control, a step change from the current system of checks by employers and educational institutions. We consider that the proposals are not workable. Checking immigration status is not a simple task. Individuals and families would be prejudiced as a result of problems with record keeping and delays in the Home Office, the First-tier Tribunal and the Upper Tribunal. For example, the proposals

take no account of those who do not have leave but have an outstanding application which clearly meets the provisions of the Immigration Rules.

We consider that the proposals give rise to a real risk of increased homelessness, including of families, and of exploitation. 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 who often bear the burden and cost of accommodating otherwise homeless unlawfully present migrants. We consider that the cost to local authorities and the devolved administrations of manufacturing homelessness persons in this way has not been considered adequately. It is on them that the cost of housing migrants unlawfully present often falls. Even if the local authority or devolved administration has no obligation to provide housing or shelter, it must still process an application for this. Obligations vary across the country; they are different in the devolved administrations. No adequate account has given as to how the extra cost will be met at a local level.

Schedule 3 illustrates the complexity of the scheme. Insofar as any scheme would make it more difficult for British citizens, persons lawfully present and others to find accommodation in the private rented sector, these are the types of alternative accommodation likely to be put under pressure.

AMENDMENT 50

Mr David Hanson
Helen Jones
Phil Wilson

Clause 15, page 15, line 7, after 'Chapter', insert 'subject to the provisions set out in section [Pilot of residential housing provisions]'.

AND

NEW CLAUSE 2 Pilot of residential housing provisions

Mr David Hanson
Helen Jones
Phil Wilson
Mr David Hanson

To move the following Clause:—

'(1) Sections 15 to 32 shall not come into force until—
  (a) a pilot of these measures has been undertaken in—
    (i) one London borough;
    (ii) one local authority in a county in England;
    (iii) one local authority in a county in Wales;

(iv) one local authority in a county in Scotland; and
(v) one local authority in a county in Northern Ireland.

(2) Each pilot shall last for a period of six months

(3) At the conclusion of each pilot, the Secretary of State must prepare and publish a report and must lay a copy of the report before Parliament.

(4) Each report shall contain an evaluation of the effects of sections 15 to 32 on the level of discrimination in the private rental housing sector.

(5) A Minister of the Crown must, not later than three months after the report has been laid before Parliament, make a motion in the House of Commons in relation to the report.

(6) If a motion under subsection (5) has been approved by the House of Commons, the provisions of sections 15 to 32 come into force on whatever day or days the Secretary of State appoints by order made by statutory instrument.'.

Presumed purpose

New clause 2 requires the scheme set out in chapter one to be piloted in five areas, including one in each of the devolved administrations. A pilot must be for at least six months after which reports will be laid before parliament, one for each pilot. The report must focus in particular upon discrimination. Each report must be the subject of a vote in the House of Commons. I If the vote approves a motion from the Minister then Part III chapter 1 can come into force. It appears that there would need to be six separate votes on six separate motions; it is unclear whether they would all have to be carried or whether one will suffice. Amendment 50 simply serves as a peg on which to hang a debate on the new clause.

Briefing

The amendment and new clause appear to prove an opportunity to probe whether the scheme is workable.

A local pilot can never be a perfect replica of a national scheme as many people affected can move from the area. This is particularly the case where the pilot is in one part of a town or city but is true wherever there is somewhere just outside the area to go.

We welcome both the focus on whether the scheme is workable and the focus on discrimination.

What is proposed is very different to the system for employers. The civil penalty scheme for employers is, in its current incarnation, backed by the sponsor licensing system (whether the person subject to immigration control is also sponsored)and in practice the two are interlinked. It is not proposed to licence all private landlords and landladies (the government rejected proposals made by the previous government to have such a register[1]) and the costs and bureaucracy involved in so doing would be prohibitive. But this creates enormous challenges even in communicating with them. Landlords and landladies are no longer permitted to hold deposits other than via bond companies, see the Deposit Protection Scheme and the Housing Act 2004 as amended, but not all of them take deposits. As to those that do, case law on tenancy deposit schemes, where the landlord must place the deposit

[1] HC Report, 3 June 2013, col. 1232.

in an authorised scheme and provide information to a tenant, is instructive as an illustration of the practical difficulties in many cases of making landlords and landladies aware of new regulatory obligations and of ensuring compliance with them[2].

Employees and would-be employees have routes of redress if they are treated badly, including if they are victims of discrimination. It is much more difficult to challenge discrimination, victimisation and harassment by a private landlord or landlady under Part 4 of the Equality Act 2010. Private landlords and landladies come in all shapes and sizes and many manage the letting of their property with a minimum of formality. They may be relaxed about matters such as subletting or persons succeeding to the tenancy. According to the Department of Communities and Local Government, in 2010 individual private landlords and landladies had responsibility for 71% of all private rental properties in England[3]. That survey showed that 78% of all landlords and landladies in England had only one rental property.

In 2013 Shelter estimated that some nine million people in England rent[4]. Tenancies are often granted for a short period, typically six to 12 months, and then renewed. Many persons will rent more than one property in the course of a year. Persons with sub-tenancies change perhaps more rapidly.

It was but a few short months ago, on 28 March 2013, that the Home Secretary abolished the UK Border Agency. She said[5]

> *However, the performance of what remains of UKBA is still not good enough. The agency struggles with the volume of its casework, which has led to historical backlogs running into the hundreds of thousands; the number of illegal immigrants removed does not keep up with the number of people who are here illegally; and while the visa operation is internationally competitive, it could and should get better still. The Select Committee on Home Affairs has published many critical reports about UKBA's performance. As I have said to the House before, the agency has been a troubled organisation since it was formed in 2008, and its performance is not good enough.*
>
> *…. I believe that the agency's problems boil down to four main issues: the first is the sheer size of the agency, which means that it has conflicting cultures and all too often focuses on the crisis in hand at the expense of other important work; the second is its lack of transparency and accountability; the third is its inadequate IT systems; and the fourth is the policy and legal framework within which it has to*

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[2] See for example *Boyle v. Musso*, 25 October 2010, Bristol County Court; *Soens-Hughes v. Lewis* 22 December 2010, West London County Court; *Green v Sinclair Investments Limited* Clerkenwell and Shoreditch County Court, 11 June 2010; *Shepley v. Yassen,* Tameside County Court, 13 January 2011; *Woods v Harrington*, Haverfordwest County Court 19 May 2009; *Delicata v Sandberg*, Central London County Court. 2 June 2009. We have concentrated here on a selection of cases in the lower courts the facts of which illustrate what happens in practice, rather than cases in the higher courts on the correct legal interpretation of the very complex applicable provisions.

[3] *Private Landlords Survey 2010,* Department of Communities and Local Government, October 2011.

[4] See http://england.shelter.org.uk/campaigns/fixing_private_renting (accessed 12 August 2013).

[5] Hansard HC Deb 6 Mar 2013 : Column 1500.

operate. I want to update the House on the ways in which I propose to address each of those difficulties.

…the third of the agency's problems is its IT. UKBA's IT systems are often incompatible and are not reliable enough. They require manual data entry instead of automated data collection, and they often involve paper files instead of modern electronic case management. …

The final problem I raised is the policy and legal framework within which UKBA has operated. The agency is often caught up in a vicious cycle of complex law and poor enforcement of its own policies, which makes it harder to remove people who are here illegally. …

UKBA has been a troubled organisation for so many years. It has poor IT systems, and it operates within a complicated legal framework that often works against it. All those things mean that it will take many years to clear the backlogs and fix the system, ..."

ILPA considers all the remarks quoted above to be fair and accurate and concurs that it will take many years to clear the backlogs and fix the system. At the moment we experience a demoralised management and workforce floundering.

We do not consider that the Home Office is in a position to take on a challenge of this scale. We urge caution. This project sets the Home Office up to fail. Again.

We have seen in the past year the Home Office subcontract to Capita Plc. to text and telephone migrants allegedly with no leave telling them to leave the UK. British citizens, nurses, investors with a million pounds invested in the UK, all have been recipients of these texts. This is no surprise. Capita has been working from the Home Office database which both reflects the complexity of current immigration law and is not up to date[6].

Both the Capita exercise and the Go HOME campaign involving vans have been of questionable legality and the subject of widespread condemnation[7]. Both are object

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[6] See further *Capita's work for the UK Border Agency*, Oral and written evidence *29 January 2013, Paul Pindar, Chief Executive, Andy Parker, Joint Chief Operating Officer, and Alistair MacTaggart, Managing Director, Secure Border solutions, Capita Plc* , report of the Home Affairs Select Committee HC 914-I, published on 11 April 2013.and ILPA's August 2013 response to the Home Office consultation ***Strengthening and simplifying the civil penalty scheme to prevent illegal working.***

[7] Examples include: *Capita's work for the UK Border Agency, op.cit, supra. 'You are required to leave the UK': Border Agency contractor hired to find illegal immigrants sent them TEXTS* Daily Mail 11 January 2013, available at http://www.dailymail.co.uk/news/article-2260667/UK-Border-Agency-contractor-hired-illegal-immigrants-send-TEXTS-warning.html#ixzz2bm4JCfg2 (accessed 12 August 2013); ICO to investigate SMS messages sent to immigrants by Capita, Computer World 15 January 2013; *Nigel Farage attacks Home Office immigrant spot checks as 'un-British'*, The Telegraph, 2 August 2013; *Vince Cable MP*, BBC 28 July 2013, available at http://www.bbc.co.uk/news/uk-politics-23481481 (accessed 12 August 2013), *Bishops condemn Home Office 'go home' campaign*, Ekklesia, 12 August 2013, available at http://www.ekklesia.co.uk/node/18785 (accessed 12 August 2012), non-governmental organisations such as Show Racism the Red Card (see http://www.srtrc.org/news/news-and-events?news=4511 accessed 12 August 2013) and Liberty *"Go Home" vans, nasty racist and likely unlawful* 1 August 2013, see https://www.liberty-human-rights.org.uk/news/2013/go-home-vans-nasty-racist-and-likely-unlawful.php (accessed 12 August 2013).

lessons in how difficult it is to produce a workable and efficient system against the backdrop of an enormously complex immigration system and longstanding problems and delays in Home Office immigration casework and record keeping. Both are object lessons in the extent to which there is at best a cavalier attitude to promoting equality or ensuring that the actions of the Home Office do not leave people, be they persons under immigration control or British citizens, vulnerable to abuse and victimisation.

The consultation paper stated:

> *34. Many landlords will meet a number of prospective tenants. There is no requirement to check the immigration status of all of them – only the people with whom the landlord actually proceeds. Checks should be performed on a non-discriminatory basis (i.e. without regard to race, religion or other protected characteristics as specified in the Equality Act 201020) on all adults who will be living at the property.*

This paragraph perfectly encapsulates the risk that racial profiling will take place before a tenancy is offered.

Three thousand pounds is a considerable sum and will cover the cost of many properties standing empty for months. It will cover a considerable amount of repair. In other words, a landlord or landlady would have an incentive not to accept a person who otherwise appears to be a model tenant if there is any risk of having to pay the fine. Any stereotype or prejudice might weigh with a person with multiple offers on the property, not because they feared having a particular individual as a tenant, but because they feared a fine, making the assumption that that person was more likely to be a person under immigration control whose documents would be complicated to check. When will a landlord perceive a risk of a fine? When will a landlady start worrying that a person's passport is false or otherwise unsatisfactory? All too often this is likely to depend on what people look like, what they sound like, what their names are and how those names are spelt, and what place of birth is identified in their passports. We recall the problems when in 2006 when attempts were made to identify foreign national prisoners. Prison records showed place of birth. British citizens born overseas, for example those who were children of members of the armed forces, were frequently wrongly identified. People from black and ethnic minorities would be likely to find it more difficult to rent property than the white population. Those with indefinite leave to remain, or permanent residence under European Union law, including those born in the UK, would be likely to find it more difficult to rent property than British citizens.

Were the proposals implemented, a landlord or landlady would be aware of the immigration status of their tenants and would know, and hold on file, all information that is contained in their passports or other acceptable documents. Will they keep that information confidential? Or store the documents safely? Or destroy them safely? There are risks to having private citizens hold such data on each other.

Need for letting agents to register with the Office of the Immigration Services Commissioner

One option for a landlord or landlady is to work through a letting agent. If landlords and landladies are companies, or if they do not check the status themselves but contract with a third party company to do this on their behalf then that company 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 Act 1999. For all save regulated or exempt persons to give such advice is a criminal offence[8].

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[9]. 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, they still have to comply with the Commissioner's Code of Standards. The requirements of the Code include:

- Professional Indemnity Insurance
- Continuous Professional Development
- Acting in the best interests of the client
- Not acting where there is a potential conflict of interests[10].

Landlords do retain liabilities when they instruct a letting agent. Under the Equality Act 2010, section 109 the principal is vicariously liable for the prohibited conduct of their agent. Thus the landlord is liable if the letting agent refuses to let to a particular prospective tenant because of race, sex, sexual orientation, etc. or treats a prospective tenant less favourably, regardless of whether the landlord instructed the letting agent to discriminate or knew that the agent was discriminating. Section 110 of the Act makes the agent liable if they do something which would be prohibited conduct if done by the principal.

The higher the stakes on compliance the more landlords and landladies are likely to take a risk adverse approach and discriminate against migrant tenants, black and ethnic minority tenants and persons, including British citizens, who do not hold a UK passport.

On 3 July 2013 the Residential Landlords Association issued a news release with the results of a survey showing that 82% of landlords and landladies opposed the plans:

[8] Immigration and Asylum Act 1999 s 84 read with s 91.
[9] Immigration and Asylum Act 1999 s 82(1).
[10] 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.

Landlords oppose Government's immigration plans[11] The Chair of the Association, Alan Ward said:

> *The private rented sector is already creaking under the weight of red tape so it is little wonder that landlords are so clearly opposed to this flagship Government measure.*
>
> *"Whilst the RLA fully supports measures to ensure everyone in the UK is legally allowed to be here, this proposal smacks of political posturing rather than a seriously thought through policy.*
>
> *"For a Government committed to reducing the burden of regulation it is ironic that they are now seeking to impose a significant extra burden on landlords making them scapegoats for the UK Border Agency's failings.*

The article describes the Home Office as giving assurances that it will take a "light touch" approach to regulation. This terminology is familiar to us from the employers' civil penalty and sponsor licensing schemes. In our experience it means different treatment for different employers with no objective basis for this. That is a climate in which discrimination can flourish.

Sub-tenancies and licences

The clause envisages these being part of the scheme. We anticipate that if this sort of agreement were made subject to the duty to check lodgers or subtenants' records this would lead to a large number of these arrangements going undeclared, being hidden and, if discovered, presented as friendly, non-commercial transactions, with the consequent evasion both of tax and of obligations under legislation designed to protect standards of accommodation.

The prohibition on discrimination under Part IV of the Equality Act 2010 is very much less robust in the case of "small premises" into which category these arrangements appear to us to fall.

Small premises are defined as premises where the person or their relatives reside and intend to continue to reside in another part of the premises and the premises include parts shared with residents who are not members of the first person's household. The premises must include accommodation for at least one other household and be let or available for letting on separate tenancy agreement(s), and not normally sufficient to accommodate more than two other households. The premises are also small if they are not normally sufficient to provide residential accommodation for more than six persons in addition to the first person and their relatives.

The prohibition of discrimination, harassment and victimisation under the Equality Act 2010 applies to the characteristic of race in the let of small premises but otherwise it will be lawful to discriminate in the disposal (etc.) of tenancies in small premises. A visa may reveal other things about a person, for example that they are in

[11] Available at http://news.rla.org.uk/landlords-oppose-governments-immigration-plans/ (accessed 12 August 2013). The report defines "recent" as having arrived within the last five years.

a civil partnership and thus their sexual orientation. A landlord or landlady in "small premises" could treat people differently on this ground.

As to discrimination on the grounds of race, this may be very difficult to prove unless advertisements bar particular nationalities as there are a multitude of reasons that an individual can advance for not sharing their home with another person and the burden of proving that it was not one of the these but the lodger's nationality that led to the refusal of a particular lodger or licensee (or tenant) is a heavy one. A claim against a landlord or landlady for discrimination is brought in the county court but no statistics are available to show how often such cases succeed. We suggest the Home Office obtain and publish information on whether there have been any and/or any successful claims against landlords and landladies of small premises under the Equality Act 2010.

Arrangements where an owner occupier takes in a paid lodger are often very informal. The sums of money changing hands can be very low. The arrangements are often at the lower end of the rental market. Lodgers or licensees have less protection from eviction under the Protection from Eviction Act 1977 than those who are sole occupants of property under a formal tenancy. The chances of a landlord or landlady's taking fright and putting lodgers who are ill-placed to find alternative accommodation onto the street, retaining deposits including money deposited against payment of any possible fine under these measures, are high.

An approach that includes sub-tenants would be unworkable. How would responsibility be assigned, and how would it be aligned with having knowledge of, and responsibility for, a person's being in the property? However, an approach that excluded sub-tenants might result in subtenancy becoming the preferred arrangement, with the role of head tenant becoming a specific paid job. Landlords and ladies often impose restrictions on subtenancies; this would encourage them to do the reverse.

Checks are difficult

ILPA is familiar with dealing with persons under immigration control and makes the following comments. These are in part based on our experience of the civil penalty system for employers, see further our August 2013 response to *Strengthening and simplifying the civil penalty scheme to prevent illegal working*[12]

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

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

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.

Family members of EEA nationals are not required to obtain EEA family member residence cards, etc. The introduction of these checks would force such family members to obtain documents if they wish to rent accommodation and raises questions under European Union law.

What of 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?

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 required. Large numbers of additional staff (or subcontractors) would be needed. They would have to be trained and quality control would be required. The online guidance mentioned at paragraph 54 would have to be drafted. If wrong information were given, there would need to be schemes for redress and compensation. How is all this to be paid for at a time when cuts are being made to government expenditure?

It is stated in paragraph 99 of the consultation paper that while landlords and landladies need not check children they may have "to satisfy themselves that the people concerned are children." It is a complicated matter, with potentially grave consequences, to have professional social workers call into question a child's age, as is set out in ILPA's *When is a child not a child Asylum, age disputes and the process of age assessment*[13]. To set up a scheme where private landlords and landladies are doing so can only run counter to the Home Office's duties under section 55 of the Borders Citizenship and Immigration Act 2009 to safeguard and promote the best interests of a child.

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 who often bear the burden and cost of accommodating otherwise homeless unlawfully present migrants.

[13] Heaven Crawley for ILPA, May 2007.

AMENDMENT 25

Mr David Hanson
Helen Jones
Phil Wilson

Clause 15, page 15, line 24, leave out 'order' and insert 'regulations'.

AND

AMENDMENT 26

Clause 15, page 15, line 27, at end add—
'(8) Regulations under subsection (6)—
(a) shall be made by statutory instrument, and
(b) may not be made unless a draft has been laid before, and approved by resolution of, each House of Parliament.'.

Presumed purpose
We are not entirely clear. If "(6)" is a misprint for (7) then these concern the power of the Secretary of State to add, remove or amend a description of excluded agreement by order and requires it to be subject to the affirmative procedure. But it already is (see Clause 63(2)(a) If "(6)" relates to proposed new clause 2 then the amendment would require the affirmative procedure to bring Part II chapter 2 into force. However, it appears to us that new clause 2 already achieves this.

Briefing
No briefing .

Schedule 3

AMENDMENT 30

Mr David Hanson
Helen Jones
Phil Wilson

Schedule 3, page 55, line 22, after 'hostel', insert 'night shelter or domestic women's refuge'.

Presumed Purpose
To exclude night shelters and refuges for women (from the Part II chapter 2 scheme.

Briefing
A person who flees domestic violence may well leave documents that prove their nationality behind. Those using night shelters are often persons with no home and no place to store papers.
It is not infrequent for persons with lawful leave and British citizens leading chaotic lives, including those who have mental health problems, to find it extremely difficult

to lay their hands on documents evidencing entitlements. These are people who already find it difficult to secure private rented accommodation.

The amendment also provides an opportunity to try to understand what the definition of "hostel" in schedule 3 might encompass. We have a particular interest in this because of the question of Approved Premises, managed by the National Offender Management Service are excluded from the scheme.

We have raised concern that Approved Premises have not been excluded from the scheme with the Bill and have been told that the discretion provided to the Secretary of State (presumably under clause 16(3) in relation to foreign nationals disqualified from occupying premises under a rental tenancy agreement can be used in this situation to the extent that it is necessary. It is necessary and 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. If discretion, presumably under section 16(3) were the way to go, then there would be no schedule 3 at all.

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.

Is the definition of a hostel wide enough to cover Approved Premises? If not, then separate provision is needed for no provision has been made for rental accommodation dealing with ex-offenders despite 32% of deportation appeals being successful[14] and a proportion of foreign nationals being released to the community from detention. There is no provision in the bill to exclude from these provisions those foreign nationals required by the National Offender Management Service to live in Approved Premises for the purpose of effective risk management.

Approved Premises operated by the National Offender Management Service must be excluded from the scheme otherwise detainees who are required under the terms of their release licence to reside in Approved Premises (because bail accommodation under s 4(1)(c) of the Immigration and Asylum Act 1999 is not suitable) will not be able to apply for release on bail. Immigration detainees needing a bed in Approved Premises have no other option. This is likely to be unlawful.
See further http://www.justice.gov.uk/about/noms/noms-directory-of-services-and-specifications/approved-premises

We anticipate that hostel accommodation would come under considerable pressure from those unable to rent elsewhere. Shortages in such accommodation would hit hardest the very people for whom it is designed.

AMENDMENT 31

Mr David Hanson
Helen Jones
Phil Wilson

[14] Home Office 15/7/12 *Impact Assessment of Reforming Immigration Appeal Rights,* p7 http://bit.ly/1cygmWm

Schedule 3, page 56, line 35, leave out paragraph 8.

Presumed purpose
Removes the exclusion for premises to which the Mobile Homes Act 1983 applies.

Briefing

As explained in our briefing to new clause 1, Schedule 3 illustrates the complexity of the proposed scheme. Insofar as any scheme would make it more difficult for British citizens, persons lawfully present and others to find accommodation in the private rented sector, the types of accommodation listed in Schedule 3 se are the types of alternative accommodation likely to be put under pressure. Mobile homes constitute just one example.

AMENDMENT 59

Paul Blomfield
Meg Hillier

Schedule 3, page 57, line 4, leave out from 'building' to the end of line 26 and insert 'between—

(a) a landlord, as defined in Clause 15(3); and

(b) one of the following—

(i) an applicant for a Tier 4 visa holding a certificate of acceptance of studies issued by an authority-funded educational institution;

or

(ii) an applicant for a student visitor visa for a period longer than six months.'

Presumed Purpose
To exclude from the scheme persons with a certificate of acceptance for studies issued by public educational institutions and applicants for student visas. Replaces the current exclusion for halls of residence managed by specified institutions.

Briefing

We are unclear why the amendment refers to an "applicant" for a Tier 4 visa/student visitor visa as opposed to a person holding such a visa.

This may be to highlight the position of students attempting to secure accommodation before they arrive in the UK. Many workers and students secure accommodation before they arrive in the UK. Students will have the number of their Certificate of Acceptance for Studies which they will use during the visa application process. Checks prior to agreeing to tenancy are not possible in these cases. Where a person is confident that a visa will be awarded, or is prepared to take the risk, they may secure accommodation before they have leave. The provisions of the bill would make this impossible. While it was suggested in the consultation paper that an agreement could be made conditional upon a satisfactory check on arrival, neither the person letting the property nor the person renting is likely to be enthusiastic about an agreement that could be voided at such a late date.

Or it may be because the amendment is concerned with the student /student visitor establishing his/her right to rent in the initial period after arrival. A Certificate of Acceptance for Studies is only valid for six months from the date it is issued. Students applying for entry clearance from outside of the UK are supposed to apply no earlier than three months of the course start date. But students can apply for their Tier 4 visa from inside the UK, provided they do not do so any earlier than 28 days before the course start date. At this stage they will have only their Certificate of acceptance for studies.

We consider that the amendment points the way to a broader exclusion from the scheme for student issued a Certificate of Acceptance for Studies. The educational institution sponsoring the student will be complying with all the (onerous – see the 104 pages of guidance http://www.ukba.homeoffice.gov.uk/sitecontent/documents/employersandsponsors/pbsguidance/guidancefrom31mar09/sponsor-guidance-t4.pdf?view=Binary) requirements of a sponsor licence. They are likely to be a "Highly Trusted Sponsor"[15]. They will check the individual student and the student will go through the visa application process. Therefore why not extend the exclusion to cover all accommodation arranged through the university and not just halls of residence?

CLAUSE 15 AND SCHEDULE 3 STAND PART

Clause 15 defines a residential tenancy agreement. It is defined broadly to include a lease, licence sub-lease or sub-tenancy made with any adult. The clause introduces Schedule 3 which sets out the properties excluded from the arrangements. The Secretary of State is empowered to include in the scheme agreements formerly excluded, exclude those formerly included or amend a description of an exclusion. This is problematic. 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.

We have identified apparent omissions to the schedule, but the response has been that they can be dealt with by an exercise of discretion, giving the impression that the hard work on the schedule is considered over. If an exercise of discretion were the way to exclude properties from the scheme, why include Schedule 3 at all.

We highlight some our concerns here.

Persons seeking asylum do not have a right to rent under this Bill. Provision is made in Schedule 3 paragraph 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

[15] See http://www.ukba.homeoffice.gov.uk/business-sponsors/education-providers/HTS/

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. 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 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.

We have concerns about the provision that is made in the schedule.

As to "social housing " (Schedule 3, paragraph 1) , what would happen if it turned out that as a matter of law no duty was owed to the person under the homelessness legislation? Would the landlord be liable for having failed to carry out the check? What happens where the duty is discharged and the person continues to be a tenant of that same accommodation? Has consideration been given to the subtle and various ways in which s 193(5)-(12) of the Housing Act 1996 regulates the cessation of duties owed to homeless persons?
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As to "hospices"" and "care homes ", what would be intended to happen in a non-commercial arrangement where a person takes a dying friend or family member into

their own home to care for them? Would they be expected to check that person's documents?

Notable omissions in the Schedule include:

- Accommodation provided under the Children's Act 1989 (see paragraph 6, although this is accommodation from or involving local authorities it is not provided under homelessness legislation;
- Accommodation in which persons are housed under mental health legislation.