ILPA IMMIGRATION LAW PRACTITIONERS' ASSOCIATION
PRESIDENT: IAN MACDONALD QC

Mrs S M Hadland
Immigration Policy Division
Immigration & Nationality Dept
Room 1102
Appollo House
Wellesley Road
Croydon CR9 3RR

24 January 1996

Dear Madam

EMPLOYMENT AND BUSINESS SUB-COMMITTEE OF ILPA
RESPONSE TO CONSULTATION DOCUMENT

We have been invited to consider your consultation document headed "Prevention of illegal working". The above mentioned committee has had an opportunity of considering the contents of your consultation document and have a number of observations to make:-

1. **General**

Historically, the question of immigration control has been exercised by HM Immigration Officers and the Police. The provisions of the Asylum and Immigration Bill are seeking now to make employers part of the enforcement process. This appears to be inconsistent with the Government's stated desire to minimise red tape and bureaucracy. It appears to be wholly inappropriate for an employer to act as policeman for this new offence and, in our opinion, the question of control should remain in the hands of central Government.

Whilst the measures contained in the legislation and referred to in the consultative document may be a relatively small burden for some businesses, they will represent a disproportionately large burden for other businesses. Those with a large staff turn-over will be required to recruit additional staff, merely to deal with this administrative requirement. In particular, businesses with part-timers, who may have no P45s (as they fall below the tax threshold) will suffer an additional heavy burden were this provision to become law.

Furthermore, legislation, despite its stated objective not to heighten racial tension, can only lead to racial tension and to discriminatory practices, quite out of proportion to the alleged problem. In paragraph 3 of the consultation document, the Government were unable to estimate the full extent of illegal immigration and the problem can be no more than one of a speculative nature.

We have the following observations to make on each of the numbered paragraphs contained in the consultative document:-

13. It is suggested that this offence should not be one of strict liability, as an employer should not be punished unless he took certain steps knowingly.

The way the proposed offence is currently drawn will catch those who had no direct control over the recruitment process. For example, in the event that an employer uses a recruitment agency to recruit an employee, they will have left the administrative detail (and eligibility to work) to that consultancy. The consultancy is not the employer and therefore cannot be prosecuted. In the circumstances, we consider that if the employer has taken reasonable precautions in the recruitment process and instructed a known and competent consultancy, they should not be penalised for their default.

Furthermore, the way in which the proposed offence is currently drawn, will catch employers who have discovered the fact that the employee has no national insurance number and has dismissed him. A prosecution would then still lie.

The proposed offence gives no assistance to an employer who engages an employee who subsequently acquires permission to work in this country. A prosecution would still lie in these circumstances. Our proposed amendment to the clause deals with these inadequacies.

16. Whilst the consultative document may suggest that all new employees have checks made against them, this belies human nature, which will inevitably mean that only individuals who appear to be subject to immigration control should be checked, thereby worsening racial tension.

17. The National Insurance system is a flawed system if this is to be one of the pieces of evidence which an employer can go to, to assert his or her statutory defence. There are many individuals eligible to work legally in this country, such as dependents of work permit holders reaching 16, whilst their parents live in this country, who would not automatically have a national insurance number. P45s or P46s are equally flawed, as providing

evidence of an employees National Insurance number, as there may be cases where an employer fails to give an employee such a document at the ending of the employment and, until confirmation of the ending of employment is obtained and a P45 or P46 issued to the employee is unlikely to be able to obtain work, despite the eligibility so to do.

National insurance numbers do not give an entitlement to work at their time of examination.

18. A British birth certificate post 31/12/82 is not prima facie evidence that the person is a British Citizen by birth.

A foreign passport, which an employer is expected to review, means that the Government is expecting an employer to become an expert on immigration endorsements and does not necessarily merely involve a cursory glance, as is indicated in the alternate consultative document, Compliance Cost Assessment.

A Certificate of Registration or Naturalisation contains no photograph on it and therefore can be used fraudulently.

20. It is stated that the checks are not compulsory. It is clear that the checks will be compulsory if the employer is to avail himself of the defence and to avoid claims of racial discrimination.

Employment + Business sub-committee