ILPA proposed amendments for the Immigration Bill (Part 3)
House of Lords Committee 3 March 2014 ff

The Immigration Law Practitioners' Association (ILPA) is a charity and a professional membership association the majority of whose members are barristers, solicitors and advocates practising in all aspects of immigration, asylum and nationality law. Academics, non-governmental organisations and individuals with an interest in the law are also members. Established over 25 years ago, ILPA exists to promote and improve advice and representation in immigration, asylum and nationality law through an extensive programme of training and disseminating information and by providing evidence-based research and opinion. ILPA is represented on numerous government committees, including Home Office, and other consultative and advisory groups and has provided briefing on immigration Bills to parliamentarians of all parties and none since its inception.

ILPA's briefings to date on this bill can be read at http://www.ilpa.org.uk/pages/immigration-bill-2013.html. For House of Lords' Committee ILPA is providing a separate paper on proposed amendments for each part of the Bill. ILPA is happy to provide further briefing to amendments tabled. All references are to HL Bill 84.

For further information please get in touch with Alison Harvey Legal Director on 0207 251 8383, Alison.harvey@ilpa.org.uk. 0207 251 8383 is now the sole telephone number for the ILPA Secretariat.

PART 3 ACCESS TO SERVICES ETC

LL. AMENDMENT ALREADY LAID

Before Clause 15 *Pregnancy exemption* in the name of the Earl of Listowel.

Presumed purpose
Provides that none of the restrictions on eligibility for services or charges to be imposed under Part III (which covers residential tenancies, health, work, bank accounts and driving licences) shall be imposed on a person who is pregnant.

Briefing
ILPA supports this amendment which serves to highlight the range of practical problems suffering and hardship these proposals will cause. Pregnant women, whether British or immigration control, may be denied services if they cannot prove their status. This may put them and their babies at risk of harm.

CHAPTER 1 (RESIDENTIAL TENANCIES)

Residential tenancies

Clause 15 Residential Tenancy Agreement and Schedule 3

LL. MM. OO. AMENDMENTS ALREADY LAID

Page 15, line 10 and new clause after clause 15 *Pilot of residential housing provisions* in the names of Baroness Smith of Basildon and Lord Rosser

Presumed purpose:

Gives the Secretary of State power to pilot the provisions of Part III Chapter 1 on residential tenancies and provides that the provisions of that Chapter can only come into force after the pilot has been evaluated and both houses of parliament approved a result on it. Such approval would have to take place before the end of the 2014-2015 session of parliament.

Baroness Smith of Basildon and Lord Rosser have also given notice that they will oppose clause 15's standing part of the bill. This we understand to be notice of opposition to the provisions on residential tenancies as a whole. ILPA supports such opposition.

Briefing

The amendment to line 10 and the new clause are in identical terms to those laid at Commons Report. The residential tenancies provisions affect us all. Every one of us will be required to provide evidence of our immigration status before renting private accommodation from each other, be it only for a peppercorn. Private landlords will face fines of up to £3000 if they rent to a person without the requisite status.

The class of persons who will no longer be entitled to rent will be broad. It will include all those unable to prove their status, for example because they have no passport. Those who live chaotic lives, for example because of mental health problems, will be among those affected.

On the face of the Bill there is absolutely no penalty for discrimination by a landlord, landlady or other person letting accommodation. Employees and would-be employees have routes of redress if they are treated badly, including if they are victims of discrimination. It is possible to challenge discrimination, victimisation and harassment by a private landlord or landlady under Part 4 of the Equality Act 2010. Under the Equality Act s.136, in the county court the burden of proof shifts from the claimant to the defendant once the claimant has established a *prima facie* case that discrimination has taken place. Giving the code publicity will assist tenants in establishing this prima facie case, although we still consider that they will struggle. The Government 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.

A fine of three thousand pounds for letting to a person with no right to rent 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. Ms Caroline Kenny of the UK Association of Letting Agents, giving oral evidence to Public Bill Committee (see http://www.publications.parliament.uk/pa/cm201314/cmpublic/immigration/131029/pm/131029s01.htm) made clear that the major concerns of her association about the provisions were concerns about the effect on ethnic minorities. She said (col 54):

> **"Caroline Kenny:** It is illegal and abhorrent, but we can envisage a stage where more landlords will ask their agents not to show their properties to people of ethnic minorities. That is what we are extremely worried about…"

PP. PROPOSED AMENDMENT

Clause 15, page 15, omit line 28

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.

QQ. PROPOSED AMENDMENT

Schedule 3, page 61, line 31 leave out from 'building' to the end of page 62, line 12 and insert 'between—

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

(b) one of the following—

(i) an applicant for or a person holding a Tier 4 visa or 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.'

Purpose
To exempt students and student visitors from checks.

Briefing
ILPA supports this amendment which originates from Universities UK. It raises the question of whether accommodation arranged through a University, albeit not in halls of residence could be exempt from the checking given that universities already carry out checks on students. It is a variation of the amendment as amendment 59 in the Public Bill committee by Mr Paul Blomfield MP and Ms Meg Hillier MP. See http://www.publications.parliament.uk/pa/cm201314/cmpublic/immigration/131107/pm/131107s01.htm col 256. We have made one amendment to it, broadening it to cover those holding Tier 4 visas as well as those applying for such visas. Ms Hillier MP said:

> *The Bill proposes an exemption for halls of residence and buildings where an agreement is in place with the university that the majority of occupants are students, but there is no similar provision for accommodation arranged through the university but which is outside the halls of residence. The Minister Mr Norman Bake MP said (col 259) that a student should be treated like any other tenant.*

Students have been checked by their university. The student who arranges accommodation through the university will thus be checked twice, once by the University for the purposes of the course of study, once by a landlord or landlady. Given that a checking system is in place, run by a large institution which is far better placed to handle and store data safely than private individuals, why should it not be relied upon?

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

RR. AMENDMENT ALREADY LAID

To Clause 16, page 16, line 2 in the name of the Earl of Listowel to provide an exemption from disqualification for pregnant women.

Briefing
ILPA supports this amendment which serves to highlight the range of practical problems suffering and hardship these proposals will cause. Pregnant women, whether British or immigration control, may be denied services if they cannot prove their status. This may put them and their babies at risk of harm.

SS. PROPOSED AMENDMENT

Clause 16, page 16 line 4, after "if" insert
"P is
(a) an asylum seeker or the dependant of an asylum-seeker as defined in section 94 of the Immigration and Asylum Act 1999 (c.33)
(b)a person provided with accommodation under section 17, 20, 23C, 24A and 24B of the Children Act 1989 or otherwise under that Act;

(c) a person provided with support under Schedule 3 of the Nationality, Immigration and Asylum Act 2002 to avoid a breach of the European Convention on Human Rights
(d) (i) an applicant for or a person holding a Tier 4 visa or holding a

certificate of acceptance of studies issued by an authority-funded educational institution;
or
(ii) an applicant for or a person holding a student visitor visa for a period longer than six months.'
(e)a person who is resident outside the UK and is studying English in the UK who is accommodated in Homestay accommodation
(f)"

Purpose
To provide that there will be no prohibition upon renting to persons in the categories specified. To highlight omissions from Clause 15 and Schedule 3.

Briefing
Clause 15 and Schedule 3 deal with persons who are (Clause 15) treated as having a right to rent or (Schedule 3) exempt from the requirement to have such a right. But there are significant gaps in the system of exemptions. The gaps above ILPA and others have highlighted, including to the Bill team although there are no doubt others and this highlights the difficulties with how the scheme would operate in practice. In brief:
Re (a) – while provision is made in Schedule 3 paragraph 7 for those accommodation by the Home Office no provision is made for asylum seekers who make their own arrangements for accommodation. Unless this is addressed, the State will be forced to provide for those who could otherwise provide for themselves
Re (b) and (c) while provision is made in paragraph 6 of Schedule 3 for accommodation from or involving local authorities it is drafted in terms of homeless legislation and will not cover other accommodation, e.g. that provided under the Children Act 1989. Section 17 of that Act is used primarily to support children with their families, section 20 to support unaccompanied children and sections 23C, 24A and 24B to support care leavers. Where a person is without leave to remain they will not be entitled to social housing or homelessness assistance from the local authority However, in limited circumstances a person at particular risk may be accommodated by social services under community care legislation because of their disability or ill health where restricting this support would constitute a breach of an individual's humans rights.
Re (d) Students not in halls of residence. See the amendment below.
Re (e) Young people accommodated in homestay accommodation while undertaking language courses.

The Government amended the Bill at House of Commons Report following to make provision for refuges for survivors of domestic violence – an omission in this respect having been highlighted see http://www.publications.parliament.uk/pa/cm201314/cmpublic/immigration/131107/pm/131107s01.htm col 251ff. It is probable that there are other omissions and this amendment serves to highlight the general complexity of excluding people from accommodation and the likely hardship that will result.

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

TT. PROPOSED AMENDMENT

Clause 17, page 16, omit lines 36-41

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 Public Bill Committee.

Clause 18 Penalty Notices: landlords

UU. PROPOSED AMENDMENT

Clause 18, page 17, line 33, 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?

Clause 19 Excuses available to landlords

VV. PROPOSED AMENDMENT

Clause 19, page 18, leave out lines 24-31

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.

WW. PROPOSED AMENDMENT

Clause 19, line 34, leave out lines 39 to 40.

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

XX PROPOSED AMENDMENT

Clause 20, page 19, line 8, 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].

[1] Immigration and Asylum Act 1999 s 84 read with s 91.

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].

Clause 22 Eligibility period

YY. PROPOSED AMENDMENT

Clause 22, page 20, line 32, 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.

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[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.

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

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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 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

ZZ, AAA PROPOSED AMENDMENTS

Clause 23, page 20, line 41 leave out from "without" to the end of line 42

Clause 23, page 20, line 44 leave out from "without" to the end of line 44

Purpose

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

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

Briefing
These subclauses 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

BBB PROPOSED AMENDMENT

Clause 26, page 23, line 19, leave out lines 19-35 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

CCC, DDD PROPOSED AMENDMENTS

Clause 28, page 24, line 43, leave out lines 43-44 and replace with

(6)The code—

(a)shall not be issued unless a draft has been laid before Parliament, and

(b)shall come into force in accordance with provision made by order of the Secretary of State.

(7)The Secretary of State shall from time to time review the code and may revise and re-issue it following a review; and a reference in this section to the code includes a reference to the code as revised.

Purpose

To ensure that the Code must be laid in draft before parliament when first published and when changed. This could be combined with amendments to Clause 68 as to the procedure to be followed (affirmative or negative). See the report of the Delegated Powers Committee at http://www.publications.parliament.uk/pa/ld201314/ldselect/lddelreg/136/13603.htm#a1

Clause 28, page 24, line 44, at end insert

( ) The Secretary of State shall take all reasonable steps to bring the code of practice, and any subsequent revisions of the code of practice to the attention of all landlords and all persons likely to act as landlords' agents."

Purpose

To place the Secretary of State under a duty to bring the Code to the attention of landlords and ladies and those acting on their behalf and thus to probe how they are to made aware of the Code of Practice, let alone forced to comply with its terms.

Briefing

Under clause 28, there must be two stages of consultation on the Code of Practice, one with the Equality and Human Rights Commission, with the Equality Commission for Northern Ireland and with representatives of landlords and landladies and of tenants and then a consultation on a published draft code. No pilot should take place without the Code being in place.

The Committee on delegated powers said (see http://www.publications.parliament.uk/pa/ld201314/ldselect/lddelreg/136/13603.htm#a1)

8. Clause 28 requires the Secretary of State to issue a code of practice setting out *what a landlord or landlord's agent should or should not do to ensure that, while avoiding the liability to pay a penalty, they do not contravene equality legislation so far as it relates to race. The code must be laid before Parliament but otherwise there is no parliamentary scrutiny. Again, this contrasts with the position under the employment provisions in the Immigration, Asylum and Nationality Act 2006, where the equivalent code under section 23 of that Act must be laid in draft and the order bringing it into force is subject to the negative procedure.*

> *9. The Home Office explains in its memorandum that laying the code before Parliament is considered sufficient because of the stringent consultation requirements that apply. For our part, we do not accept that consultation is an alternative to parliamentary scrutiny. In any event we note that similar consultation requirements apply to the code under section 23 of the Immigration, Asylum and Nationality Act 2006. The fact that a breach of the code under clause 28 is a matter that a court or tribunal may take into account suggests that the code is liable to affect the circumstances in which a landlord or agent will be found to have infringed equality legislation.* ***This in our view makes the negative procedure more appropriate, and accordingly we recommend that the same procedure should apply to the code under clause 28 as applies to the equivalent code under section 23 of the Immigration, Asylum and Nationality Act 2006.***

We recommend that parliament be vigilant as to whether matters emerge during the debate that cause it to conclude, as we have, that an affirmative procedure is more appropriate, given that the code is the sole attempt to ensure that British citizens and persons under immigration control do not face discrimination because of this clause.

On the face of the Bill there is absolutely no penalty for discrimination by a landlord, landlady or other person letting accommodation. Employees and would-be employees have routes of redress if they are treated badly, including if they are victims of discrimination. It is possible to challenge discrimination, victimisation and harassment by a private landlord or landlady under Part 4 of the Equality Act 2010. Under the Equality Act s.136, in the county court the burden of proof shifts from the claimant to the defendant once the claimant has established a *prima facie* case that discrimination has taken place. Giving the code publicity will assist tenants in establishing this prima facie case, although we still consider that they will struggle. The Government 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.

A fine of three thousand pounds for letting to a person with no right to rent 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. Ms Caroline Kenny of the UK Association of Letting Agents, giving oral evidence to Public Bill Committee (see http://www.publications.parliament.uk/pa/cm201314/cmpublic/immigration/131029/pm/131029s01.htm) made clear that the major concerns of her association about the provisions were concerns about the effect on ethnic minorities. She said (col 54):

> ***"Caroline Kenny:*** It is illegal and abhorrent, but we can envisage a stage where more landlords will ask their agents not to show their properties to people of ethnic minorities. That is what we are extremely worried about…"

In all these circumstances we are under no illusion whatsoever that a Code of Practice will resolve the problem of discrimination to which this clause will give rise. However, for the lucky few who are able to bring a challenge, a clear, accurate Code of Practice targeted specifically at landlords and landladies and their obligations under the Immigration Act might encourage country court judges, who must sit with lay assessors who are knowledgeable about race discrimination, at least in some cases, to consider awarding aggravated damages as well as compensation for loss and injury to feelings.

Clause 29 Orders

EEE PROPOSED AMENDMENT

> Clause 29, page 25, line 14, leave out lines 14-22

Purpose
To remove the power to treat the Bill as though it were not hybrid Bill, should it turn out to be one.

Briefing
The Committee on Delegated Powers said (see http://www.publications.parliament.uk/pa/ld201314/ldselect/lddelreg/136/13603.htm#a1)

> ***Clause 29 (2) - "De-hybridising" provision***
>
> *10. Clause 29(2) provides that, where the draft of an instrument containing an order under or in connection with Chapter 1 of Part 3 would be a hybrid instrument under the standing orders of either House, it is to proceed in that House as if it were not a hybrid instrument. It is not immediately clear which particular affirmative order making power this is intended to apply to, and nothing is said in the memorandum to indicate the reasons for its inclusion.* ***It is the usual practice of this Committee to draw de-hybridising provisions to the attention of the House so that it can satisfy itself that other mechanisms are available to protect the private interests that would otherwise be protected by the hybrid instrument procedure. In this particular case we also recommend that the Minister be asked to explain why a de-hybridising provision is considered necessary.*** *There is no obvious reason for its inclusion and we do not consider it is appropriate for such a provision to be included unless the*

powers to which it relates can reasonably be expected to be exercised in a way that would trigger the hybrid instruments procedure.

The inadequacy of reasoning may be one reason why the Committee said in that report:

In a number of respects the quality of the memorandum fell short of the standard the Committee expects. We repeat, therefore, the hope that we expressed in our 12th Report (HL Paper 72) that, in future, the Government will devote greater care to the preparation of these important explanatory documents.

Clause 32 Interpretation

FFF PROPOSED AMENDMENT

Clause 32, page 25, line 38, 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 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.

GGG, HHH PROPOSED AMENDMENTS

Clause 32, page 26, line 40, leave out "is, or is not," and replace with "is not"

Clause 32, page 26, line 42, leave out "is, or is not," and replace with "is not"

Purpose
The first 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.

The second 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 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. Similarly,

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.

OTHER RELEVANT AMENDMENTS

- An amendment to Clause 67 to provide that the Code of Practice (concerning levels of penalty) to be laid under Clause 27 shall be subject to the affirmative procedure in parliament. A recommendation of the Committee on delegated powers, see http://www.publications.parliament.uk/pa/ld201314/ldselect/lddelreg/136/13603.htm#a1
- An amendment to Clause 67 to provide that the provisions of Part 3 Chapter 1 cannot come into force until the Code of Practice on discrimination has come into force
- An amendment to Clause 68 to provide that the Code of Practice (concerning discrimination) to be laid under Clause 28 shall be subject to the affirmative procedure in parliament.
- An amendment to Clause 68 *Commencement* to provide that provisions of Part 3, Chapter 1 shall not come into force until such time as an order has been made under section 9(2)(a) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 to provide that a person whose housing is put at risk because of their immigration status shall be eligible for legal aid.

CHAPTER 2: OTHER SERVICES ETC

National Health Service

Clause 33 Immigration Health Charge

GGG, HHH III AMENDMENTS ALREADY LAID (and a proposal)

ILPA supports the amendment to page 27 line 13 in the name of the Lord Patel that would mean that no health levy could be imposed on students under Tier 4 of the Points-Based System or persons in the UK as skilled workers currently in full time study.

ILPA supports the amendment to page 27 line 24 in the names of the Earl of Listowel and Baroness Cumberlege that would exempt persons who are pregnant from the health charge. **ILPA recommends that a version of this amendment be laid to Clause 34, to protect persons who are pregnant from charges for health care.**

ILPA supports the amendment to page 27 line 32 in the name of the Lord Patel that would exempt pregnant women and children under 18 from any charge. **ILPA recommends that a version of this amendment be laid to Clause 34, to protect persons who are pregnant and children from charges for health care.**

ILPA supports the amendment to page 27 line 36 in the names of Baroness Smith of Basildon and Lord Rosser that a report on the sums collected under clause 33, and the costs of collection, be laid before parliament. **ILPA recommends that a version of this amendment be laid to Clause 34, charges for health care. Those health professionals who gave evidence to the Public Bill Committee drew particular attention to the risks of the costs of such charges outweighing the benefits.**

Briefing
The amendments provide an opportunity to debate how a health charge is intended to work in practice and what undesired consequences, whether social or economic are likely to flow from it. They provide an opportunity to debate the Department of Health proposals and also the evidence given to the Public Bill Committee about the proposals

Clause 34 Related provision: charges for health services (PRIORITY)

JJJ KKK LLL MMM PROPOSED AMENDMENTS

See notes to amendments to Clause 34 above. It would be necessary for some of the variations to deal with England only because health is devolved.

NNN PROPOSED AMENDMENT

Clause 34, page 28, line 13, at end insert

( )No charge may be made or recovered under the NHS charging provisions in respect of any accident and emergency services provided to overseas visitors, whether provided at a hospital accident or emergency department, a minor injuries unit, a walk-in centre or elsewhere but not including any services provided

(a) after the overseas visitor has been accepted as an in-patient; or
(b) at an outpatient appointment.'.

( ) NHS charging provisions concerning persons not ordinarily resident must make reference to the need to safeguard public health with particular reference to the prevention of infectious diseases, maternal death and infant mortality.'.

Purpose
Combines, with minor modifications, two amendments tabled for Commons Report. The second part of the amendment is a version of an amendment laid by Meg Hillier MP as amendment 97 in Public Bill Committee but too late to have been called. Prohibits charging for walk in accident and emergency services in all settings although charges for subsequent treatment in these settings is not prohibited. Means that NHS charging provisions on overseas visitors must address the prevention of infectious diseases, maternal death and infant mortality.

Briefing
There is evidence, including from the report *Treatment of Asylum Seekers* by the Joint Committee on Human Rights, that charges deter pregnant women from getting medical help or lead to their being denied help[6]. There is evidence that starting antenatal care after 20 weeks gestation is a risk factor for maternal death, as is not attending antenatal appointments,

[6] *The Treatment of Asylum-Seekers,* Tenth report of session 2006-07, HC 60-I and II, HL 81-I and II. Joint Committee on Human Rights, 2007, London, The Stationery Office Maternity Action and Medact (2009); *First do no harm: denying healthcare to people whose asylum claims have failed*, Kelly, N. & J. Stevenson, 2006, London, Oxfam and Refugee Council; *Money and Maternity: charging vulnerable pregnant women for NHS care* UK Public Health Association Conference, Brighton

and screening[7]. There are also risks to the health of the child, and of increased infant mortality[8]. We recall the words of Aneurin Bevan:

> *One of the consequences of universality of the British National Health Service is the free treatment of foreign visitors. This has given rise to a great deal of criticism, most of it ill-informed and some of it deliberately mischievous. Why should people come to Britain and enjoy the benefits of the free Health Service when they do not subscribe to the national revenues? So the argument goes. No doubt a little of this objection is still based on confusion about contributions … The fact is, of course, that visitors in Britain subscribe to the national revenues as soon as they start consuming certain commodities…*[9]

OOO PROPOSED AMENDMENT

New clause after Clause 34 ***Exemption of charging for primary medical and accident and emergency services***

(1) Section 175 of the National Health Service Act 2006 is amended as follows.
(2) After subsection (4), insert-
(5) Regulations under this section may not provide for charges to be made for the provision of primary medical or accident and emergency services.

Purpose
To provide an exemption for primary medical and accident and emergency services. This could also be laid as two separate amendments.

Bank Accounts

Clause 35 Prohibition on opening current accounts for disqualified persons

PPP PROPOSED AMENDMENT

Clause 35, page 28, line 36 at end insert-

"or has made a claim for asylum which has not yet been determined by the Secretary of State or has been refused and an appeal against that refusal is pending
( ) claim for asylum has the same meaning as in section 94 of the Immigration and Asylum Act 1999;
( ) an appeal is pending for the purposes of this section when it is pending under the Nationality, Immigration and Asylum Act 2002, s 104"

Purpose
Removes from the ambit of the definition of a disqualified person a person whose asylum claim has not yet been finally determined.

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[7] Lewis, G., J. Drife Why mothers die 2000-2003, *Sixth report of the Confidential Enquiries into Maternal Deaths in the UK London*: Royal College of Obstetricians and Gynaecologists , 2003. See also Centre for Maternal and Child Enquiries, 2011, *Perinatal Mortality 2009: United Kingdom*, London.
[8] Health Inequalities Unit (2007) Department of Health *Review of Health Inequalities Infant Mortality* PSA Target
[9] *In Place of Fear*, Bevan, A (1952), chapter 5.

Briefing
The clause as drafted appears to exclude persons on temporary admission from its ambit. Those most likely to be on temporary admission for very lengthy periods are persons seeking asylum. Many will be very poor, but some, for example those whose claims have been pending for more than a year and who can find work in a shortage occupation may be allowed to work. Some persons seeking asylum may be able to get some money out of their country of origin when they flee or even subsequently. It is rare, but it does happen. Those persons should be able to have a bank account.

There are other ways of achieving this result, for example the Secretary of State could indicate that she will exercise her discretion under subclause 25(3)9c) in their favour. But they should not be forgotten.

QQQ PROPOSED AMENDMENT

Clause 35, page 28, line 44, after "Secretary of State" insert "reasonably"

Purpose
To require the Secretary of State's belief that a bank or building society should not open a current account for a person to be reasonable. To probe the baroque structure of this clause.

Briefing
Clause 35 is very strangely drafted. In our experience parliamentary counsel find tidy forms of words to give effect to the intent behind a clause and therefore the drafting alerts us to difficulties with the intent behind the clause.

The clause starts with a negative, a status check must illustrate that a person is "not a disqualified person" (subclause 35(1)(a)). If it does, a bank cannot open an account for that person.

We then expect to find out what a disqualified person looks like. But we do not. Sub-clause 35(2) is wholly self-contained. It defines a person falling within sub-clause 35(2). It defines that person as in the UK, requiring leave and not having it, in other words a person with no leave, including an illegal entrant and an overstayer, or a person on temporary admission, such as a person seeking asylum.

We turn to subclause 35(3). There we learn that disqualified persons are a subset of persons within subclause 35(2). They are persons in the UK, requiring leave and not having it, "for whom the Secretary of State considers that a current should not be opened. We search in vain in the Bill for any criteria on which that decision could be based. We look to the Explanatory Notes. These state:

> *The Secretary of State therefore has discretion as to who should be barred from opening current accounts. This is because there will be some individuals who face legitimate barriers which prevent them from leaving the UK, even though they do not have leave. The Secretary of State may enable these persons to open a current account.*

This looks benign. But the amendment provides an opportunity to ask:

- **Where will the criteria on which the Secretary of State bases her decision be set out?**
- **What options are open to a person unable to open a bank account who wants to challenge the Secretary of State's refusal to let him/her do so?**

Clause 36 Regulation by Financial Conduct Authority

RRR PROPOSED AMENDMENT

Clause 36, page 29, line 24 omit "may" and insert "must"

Purpose
Replaces the power of the Treasury to make regulations to enable the Financial Conduct Authority to make arrangements for monitoring and enforcing compliance with the prohibition, with a duty to do so. A probing amendment.

Briefing
An opportunity to probe the circumstances in which the Government might think it proper to bring the scheme into force but not make such arrangements.

SSS PROPOSED AMENDMENT

Clause 36, page 29, line 232 leave our "in particular those"

Purpose
Ensures that regulations can only make provisions corresponding to those made in the Financial Services and Markets Act 2000 set out in subclause 36(3) rather than make provisions corresponding to any in the Act.

Briefing

A probing amendment. Subclause 36(3) adds nothing to the bill as by subclause 36(2)(b) regulations may make provisions corresponding to any provision whatsoever of the Financial Services and Markets act 200. Such a broad power suggests that how this scheme will work has not been thought through.

Work

CLAUSE 39 Appeals Against Penalty Notices

TTT AMENDMENT ALREADY LAID

ILPA supports the of the Baroness Smith of Basildon and Lord Rosser that Clause 39 should not stand part of the Bill.

Purpose

To maintain the status quo whereby an employer can opt to go straight to civil court to appeal against a penalty rather than being forced to exercise their right to object first

Briefing
ILPA considers that there should be an option to waive the objection and move straight to an appeal. There is no point in spending time and money on an objection in circumstances where the Home Office disagrees with the analysis of law or fact and will not change its mind. Nor should a person be obliged to incur the costs associated with an objection including legal fees.

In the event of an appeal, where the respondent concedes the appellant is right (e.g. because a civil penalty was wrongly imposed), an order has to be drawn up that addresses costs. The Civil Procedure Rules Practice Direction 52 and Costs Practice Direction are in point. The former provides that where a settlement has been reached disposing of the application or appeal, the parties may make a joint request to the court for the application or appeal to be dismissed by consent. If the request is granted the application or appeal will be dismissed. Where the Home Secretary has conceded the issue, she has no basis to resist a costs order. When the appeal is settled so that it is withdrawn as the underlying decision is accepted to be wrong, the default position that costs follow the event applies.

Clause 40 Recovery of sums payable under a debt

UUU AMENDMENT: STAND PART

Page 31 line 27, leave out Clause 40

Purpose
To maintain the status quo whereby the Secretary of State must first make an application to a court for a substantive order for payment before enforcing a debt.

Briefing
ILPA opposes the proposal to change the rules on enforcement of a penalty to allow enforcement as though the penalty were a debt due under a court order. 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. Here, efforts are being made to avoid such a stage (at which it is possible to contest the making of the order), or the equivalent stage of seeking a civil judgment that a debt is owing, and move directly to the equivalent of the post-making-of the-liability-order stage, where all that remains is for the debt to be enforced as if under court order.

The change is likely to make the system easier for the Secretary of State but more difficult for employers including those on whom a penalty has been wrongly imposed.

OTHER RELEVANT AMENDMENTS

Clause 66 and Schedule 9: Transitional and Consequential Provision

Provisions relating to employment

- To amend paragraph 46 provide that a penalty given to an employer must explain how to object to a penalty and how to appeal against it, rather than one or the other.

New Clauses after clause 40

VVV NEW CLAUSE ALREADY LAID *Permission to work*

ILPA supports the inclusion of the new clause in the name of the Lord Roberts of Llandudno

Purpose
To give permission to work to persons seeking international protection who do not receive a decision on their asylum application within six months.

Briefing
The text of this amendment currently forms a private members Bill that is before the House of Lords sponsored by Lord Roberts of Llandudno. Currently those seeking asylum are only allowed to work after 12 months without an initial decision and then only if they can qualify for a limited list of skilled jobs. The integration of those recognised as refugees is made more difficult by their inability to work during the, often all too-lengthy, asylum determination procedure, while those whose claims for asylum do not succeed return to their country without having maintained or improved skills that could benefit that country. The State bears the cost of supporting persons who would be happy to support themselves.

WWW, XXX, YYY, ZZZ NEW CLAUSES AFTER CLAUSE 40 *Recruitment Agencies: local workforce; Review of the Labour Market housing and equality; employment of an adult subject to immigration control: penalty; Gangmasters: licensing of activites*

There are a range of new clauses after clause 40, all in the names of Lady Smith of Basildon and Lord Rosser. ILPA supports efforts to improve the protection of migrant workers from exploitation and would welcome further efforts in this regard, for example allowing migrant domestic workers to change employers and to settle. Options for migrant workers and the ability to enforce their rights are in our opinion the most important protections. We should be happy to answer further questions about these clauses if required.

We do not support the clause *Employment of an adult subject to immigration control: penalty.* The effect of the clause is to set a minimum sum for any civil penalty and we are unpersuaded that this increases the protection of migrant workers from exploitation or the protection of all workers from discrimination. It is more likely to make employers fearful of hiring a migrant. We consider that the individual circumstances of the employer should be taken into account. For example, it is a requirement that documents be checked before employment commences and therefore a person who only checked the documents on the day the employee started work falls foul of it. That does not appear to us the type of situation that should be subject to a mandatory fine.

OTHER RELEVANT AMENDMENTS

Clause 66 and Schedule 9: Transitional and Consequential Provision
Provisions relating to employment

- To amend paragraph 46 provide that a penalty given to an employer must explain how to object to a penalty and how to appeal against it, rather than one or the other.

Driving licences

AAAA PROPOSED AMENDMENT

Clause 41, page 32, line 34, at end insert

"unless that person has made a claim for asylum which has not yet been determined by the Secretary of State or has been refused and an appeal against that refusal is pending

( ) claim for asylum has the same meaning as in section 94 of the Immigration and Asylum Act 1999;

( ) an appeal is pending for the purposes of this section when it is pending under the Nationality, Immigration and Asylum Act 2002, s 104"

Purpose

To allow persons seeking asylum whose claim has yet to be determined to drive.

Briefing

While debating driving licences parliament should consider the position of persons seeking asylum, who may have a lengthy wait for a decision and in the meantime lose skills that will help them integrate as refugees, or help them on return.

Clauses 41 and 42 are among the measures by which the Government seeks make the UK "*a more hostile place for illegal migrants.*"[10] Clause 41 amends section 97 of the Road Traffic Act 1988 so as to add to the circumstances, in which a British driving licence must be provided, the new requirements of new section 97A (to be added by clause 41). The new requirements essentially require lawful residence on the part of the applicant, who must not be a person requiring but not have leave to enter or remain (new section 97(A)(2)). However, as the shadow Home Secretary alluded to at Second Reading, the current position is that, save for nationals of a European Economic Area country, six months' leave is required to obtain a British driving licence.[11] The clause makes provision for Northern Ireland.

Placing the scheme on a statutory footing risks adding to the workload of the already much overstretched former UK Border Agency.

As to an inspiring story of how driving can promote integration, see the 2013 winner of the Big Society award, UR4Driving at The Upper Room. UR4Driving is not a project for refugees or migrants but for ex-offenders, although in its more general work the charity works with British citizens and migrants together. See http://www.theupperroom.org.uk/ur4-driving/background/

[10] Home Secretary, Second Reading, Hansard, 22 Oct 2013 : Column 163
[11] Hansard, 22 Oct 2013 : Column 171

Clause 42 Revocation of driving licences on the grounds of immigration status

BBBB, CCCC PROPOSED AMENDMENTS

Clause 42,page 33 line 29 after "it" insert unless that person has made a claim for asylum which has not yet been determined by the Secretary of State or has been refused and an appeal against that refusal is pending

( ) claim for asylum has the same meaning as in section 94 of the Immigration and Asylum Act 1999;

( ) an appeal is pending for the purposes of this section when it is pending under the Nationality, Immigration and Asylum Act 2002, s 104"

Clause 33, page 34, line 12 after "it" insert unless that person has made a claim for asylum which has not yet been determined by the Secretary of State or has been refused and an appeal against that refusal is pending

( ) claim for asylum has the same meaning as in section 94 of the Immigration and Asylum Act 1999;

( ) an appeal is pending for the purposes of this section when it is pending under the Nationality, Immigration and Asylum Act 2002, s 104"

Purpose

To ensure that the licences of persons seeking asylum whose claim has yet to be determined are not revoked. The first amendment addresses the Road Traffic Act 1988, the second the Road Traffic (Northern Ireland) Order 1981 (SI 1981/154).

Briefing

See briefing to a similar amendment for Clause 41.

DDDD, EEEE PROPOSED AMENDMENTS

Clause 42, page 33 line 38, leave out lines 38 to 47.

Clause 42, page 34, line 16, leave out lines 16 to 25

Purpose

Remove the prohibition on a judge of the County Court or sheriff, to whom a person can appeal the revocation of their licence, considering the merits or otherwise of the refusal of leave or the person's having been granted leave.

The first amendment addresses the Road Traffic Act 1988, the second the Road Traffic (Northern Ireland) Order 1981 (SI 1981/154).

Briefing
We consider that the limitations imposed on the appeal are not adequate to ensure a fair trial. The Home Office could make a wholly erroneous decision and revoke a person's driving licence on the basis of this. They might have reconsidered that decision the very next day (although admittedly this is unlikely), still the revocation would stand.

Clause 42 amends section 99 of the Road Traffic Act 1988 to empower the revocation of a British driving licence where "*it appears to the Secretary of State*" a person is not lawfully in the UK. The clause makes provision for Northern Ireland.
At Second Reading, the shadow Immigration Minister cautioned: "*I still think that someone who is here illegally is not going to worry too much about not having a driving licence, but we can test that idea in Committee.*"[12] It may be that those who intentionally and knowingly evade immigration controls will be equally willing to drive without a licence. It is, however, far from clear how this can be tested. No evidence was taken on the matter, and there may be no direct evidence available by which to test this. Nonetheless, there is evidence that a significantly disproportionate number of driving accidents involve those who are without a licence. In 2007, the Department of Transport presented evidence that:

> "*Young male drivers (17-29, by no means all novices) are about three times more likely to be involved in a crash than all drivers, but unlicensed young male drivers are between 3.25 and 11.6 times more likely to be involved in a crash than all drivers. For all unlicensed drivers the increased risk is between 2.7% and 8.9%.*"[13]

Others are permitted to drive on a valid (i.e. genuine and not expired) driving licence from within the European Economic Area, or on a valid driving licence from any other country. While in the latter case, the additional stipulation that the person is within the period of 12 months of his or her arrival in the UK, for all practical purposes it is clear that many of those without leave to enter or remain in the UK nonetheless may hold or be in a position to obtain a driving licence validating or on its face validating his or her driving in the UK.
Some will continue to drive on their overseas licence for as long as possible. Others may drive without a licence. This invalidates their insurance. The Government factsheet states "We will also send a message to uninsured drivers that it is not worth the risk. The net is closing in on uninsured drivers, be they UK residents or illegal immigrants..." But is it? The "dire consequences" the factsheet describes are dire consequences for all of us, not just for those who drive without a licence. The potentially adverse consequences resulting from someone driving without valid insurance by virtue of these provisions are obvious and serious. As with other measures, the Government will surely succeed by clauses 41 and 42 in creating a more hostile environment, but those who may suffer from this hostility may turn out to be British citizens or lawful migrants. By contrast, it is far from clear what impact, if any, these clauses will have in deterring or reducing illegal entry or overstaying.
If a person is wrongly refused leave, and has no right of appeal, they lose their licence while they pursue any judicial review.

The Home Office's human rights memorandum (para 141) states that this measure is 'partially intended to have a deterrent effect on those who are unlawfully in the UK.' It would be worth asking the Minister what are the other intentions?

[12] Hansard, 22 Oct 2013 : Column 253
[13] Memorandum submitted by the Department of Transport to the Transport Select Committee, paragraph 3.17, reproduced with the Select Committee's Seventh Report of Session 2006/07