**Response of the Immigration Law Practitioners' Association to the Department of Communities and Local Government consultation Tackling Rogue Landlords and improving the private rental sector**

The Immigration Law Practitioners' Association (ILPA) is a registered charity and a professional membership association. The majority of members are barristers, solicitors and advocates practising in all areas of immigration, asylum and nationality law. Academics, non-governmental organisations and individuals with an interest in the law are also members. Founded in 1984, 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 advisory and consultative groups convened by Government departments, public bodies and non-governmental organisations. ILPA worked very closely on the residential tenancies provisions of the Immigration Act 2014. ILPA has subsequently been represented at meetings with the Home Office on the topic, raised specific issues and responded to periodic surveys of the "pilot" in Birmingham.

ILPA's interest in responding to this consultation is the situation of persons under immigration control in the UK, including those who have never come to the attention of the authorities and what happens to them in the private rented sector. We have therefore not answered all the questions. We have set out below the questions to which we provide a response.

**Are the relevant housing offences listed appropriate (*answered in respect of* Continuing to let to an illegal immigrant)**

We understand the intention to be that the offence is targeted at those who make a "deliberate act or omission."

We do not consider it appropriate to make it a crime to rent property to a person who has no lawful status in the UK. Nor do we consider it to be straightforward to target such an offence at deliberate acts or omissions as proposed.

We consider it likely that to introduce such a crime would be to increase the risks of landlords or landladies illegally evicting or harassing a residential occupier, conduct that it is also proposed to make a crime. These risks are also of direct relevance to the discussion of extending rent repayment orders to those convicted of illegally evicting a tenant discussed in section 2.

These are risks that we examined in detail in the context of the Immigration Act 2014's civil penalty regime for those renting property to persons without a "right to rent" as defined therein and our views set out in our 20 August 2013 response to the Home Office consultation *Tackling illegal immigration in privately rented accommodation*[1], in our briefings on the bill that became the 2014 Act[2] and in our subsequent responses to consultations on the subject[3].
The proposal that the criminal offence targets those "continuing to rent" is a notion that provides a particular risk of unlawful eviction where a risk is perceived that the tenant has ceased, or is about to cease, to be lawfully in the UK.

[1] Available at http://www.ilpa.org.uk/resources.php/20798/ilpa-response-to-the-home-office-consultation-tackling-illegal-immigration-in-private-rented-accommo
[2] Available at http://www.ilpa.org.uk/pages/immigration-bill-2013.html
[3] Most recently ILPA response to Home Office request for comments on Right to Rent Code of Practice - acceptable documents, 31 July 2015.

Our concerns can be summarised under the following headings:

i) Landlords and landladies will let property to those in whom they feel most confidence. Certain British citizens, and persons under immigration control or exercising EU rights of free movement will be disadvantaged in rental markets thereby, in some cases to the point of being vulnerable to homelessness or to exploitative arrangements;

ii) Inaccuracies on the part of the Home Office and the complexity of immigration law will result in persons not being accepted as tenants or being wrongfully evicted. This is based on our experience of the Home Office employers' helpline;

iii) There are particular problems for those with applications outstanding, or who will in the near future have such applications. In these cases, if a person is awaiting a decision on an application then the landlord or landlady will know nothing of their prospects of success in that application but only that a decision entailing the possibility of change of status may be imminent.

**Re i) Reluctance to rent to certain potential tenants**

The prospect of going to prison is likely to be more frightening to a landlord or landlady than a civil penalty or fine. The subtleties of "deliberate acts or omissions" may be lost on many of them. In some cases, the landlord or landlady will lack confidence in the tenant's status from the outset. In others, they may think "…the person is lawfully here now, but has leave only for two years. At the end of that period, I may be continuing to rent to an "illegal immigrant". Therefore, best not rent to them in the first place."

Any stereotype or prejudice might weigh with a person with multiple offers on the property, not because they fear having a particular individual as a tenant, but because they fear a civil penalty or prison sentence. When does a landlord or landlady perceive a risk? 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. British citizens from black and ethnic minorities are likely to find it more difficult to rent property than the white population. British citizens without passports and without documents such as driving licences or birth certificates, cohorts likely disproportionately to include the elderly, the mentally ill and those who have fled domestic violence, are likely to find it more difficult to rent property than other British citizens. Those with indefinite leave to enter or remain, or permanent residence under European Union law, including those born in the UK, are likely to find it more difficult to rent property than British citizens.

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.

**Home Office inaccuracies and complexity**

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. There are significant ongoing problems with accuracy and efficiency.

Immigration law keeps changing; keeping up to speed and checking acceptable documents and entitlements is not a simple task, whether for a landlord /landlady or for the employers' checking service. When the Home Office subcontract to Capita PLC, to text and telephone persons allegedly with no leave telling them to leave the UK, British citizens, nurses, investors with a million pounds invested in the UK, were all recipients of these texts. This is no surprise. Capita was working from the Home Office database which both reflects the complexity of current immigration law and is not up to date[4]. Capita had itself to decipher what the Home Office information meant.[5]

Individuals and families are 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 in the case of those who do not have leave but have an outstanding application or appeal.

***Examples of problems***

These are for the most part drawn from the Home Office Employers' Checking Service. These are all examples of persons lawfully in the UK, who as a matter of law have rights to work. Problems arise when those providing the service are working on out of date or inaccurate information or when they give the wrong advice. We see no reason to expect that the same problems will not beset the checking service for landlords and landladies.

A person who had an appeal against a Home Office decision refusing further leave to remain. On 20 March 2015 the Home Office withdrew the decision to consider a further application that she had made. A person continues to have leave[6] whilst the Home Office is considering an application made "in time". The Employment Checking Service, however, told the employer that 'this person does not have the right to work in the UK' because 'an application for leave in the UK has been submitted by this person but it has been subsequently been rejected.' The notice said 'You should not employ this person or continue to employ them if they are an existing employer as they do not have the right to work in the UK. If you are found employing this person you could be prosecuted....' The woman's legal representatives wrote to the Home Office department who were dealing with this matter but they failed to respond. They then wrote a pre-action protocol letter setting out the case. In the meantime she lost her job. The response to the pre-action protocol letter was been that the Home Office were wrong and that they had mistakenly thought that the client had withdrawn her appeal when it was instead the Home Office that had withdrawn the original decision. It was confirmed that she had continuing leave under s 3C of the Immigration Act 1971 and is entitled to work. However this comfort came too late for her to retain her job.

In March 2014 a man made an application on form FLR(O) for further leave to remain. The application was rejected shortly afterwards as being invalid because the Home Office said that it

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[4] 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.*

[5] 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.*

[6] Immigration Act 1971 s 3C.

was made on the wrong form. It was however the correct form so, after correspondence failed to resolve the issue, his legal representatives issued a pre-action protocol letter. As a consequence of that letter the Home Office conceded the application had been made on the correct form and would be considered. However the Home Office computerised records did not show that the client's application was pending until the beginning of September by which time the man's employer had made a check with the Employment Checking Service which stated that he had no right to work. He lost his job.

A woman was exempt from immigration control as the wife of a diplomat. She had that that status for over ten years. She left her husband in January 2015 and went to live on her own. Under operation of section 8A of the Immigration Act 1971 this meant she was then deemed to be granted leave to remain for 90 days. She applied within those 90 days for indefinite leave to remain[7]. This application was rejected on the basis that she had overstayed her leave and it was claimed that it had expired on the day she left her husband, despite her lawyers having explained in their covering letter to the Home Office the effect of section 8A. When she received the refusal her lawyers wrote to the Home Office caseworker and lodged an appeal. She did not have any response from the caseworker. She then received a letter requiring her to report to an immigration reporting centre as she was a person with no leave and could be removed from the United Kingdom. This was not correct since she had lodged an appeal so she had continuing leave under section 3C of the Immigration Act 1971. Her legal representatives wrote a pre-action protocol letter to the Secretary of State challenging the reporting requirement and in August 2015 the Home Office conceded that their decision was wrong. It is being reconsidered.

A man had a Home Office "certificate of application" confirming that he had applied for residence documentation on the basis of his marriage to an EEA national. The application was refused. He appealed but the Home Office has failed to respond to requests to renew the certificate of application which has now expired. His employers have dismissed him.

A person aged 19 whose mother was an EEA national working in the UK had a card attesting to her right of residence under European Union law. Just prior to expiry of the card she applied for permanent residence on the basis that mother had completed five years of exercising EU Treaty rights as a worker in the UK. The application was rejected on the basis that there were gaps in her mother's employment and her daughter was told that she had no basis to remain in the UK despite evidence of mother's current continuing employment being submitted with the application. The Home Office did not consider granting her a new residence card even though, even if she did not have permanent residence, she continued to have an extended right of residence under EU law. An appeal was lodged a few days out of time. She then received phone calls and letters from Capita PLC acting on behalf of the Home Office informing her that she must leave because she was unlawfully in the UK. The Immigration and Asylum Chamber of the First-tier Tribunal has now agreed to accept the out of time appeal. She has a right to remain both as the daughter of an EEA national exercising EU Treaty rights and because she has appeal pending.

In 2014 a man who had leave to remain for two years on the basis of marriage to a British citizen applied for further leave to remain for two years as he had not passed his Life in the UK test. The caseworker wrote requiring further documents within 14 days and also stated that the EDEXCEL English language certificate he submitted which he had initially used to obtain Entry Clearance was no longer acceptable to the Home Office. He retook and passed the exam at the first available opportunity but the certificate was not available for another two weeks so his lawyers wrote

[7] Immigration Rules, HC 395, paragraph 276B.

within the initial two-week limit to the caseworker to inform the Home Office of this. The application was then refused because he had not provided evidence that he had taken and passed the English language exam within the two weeks specified. He lodged an appeal and a letter of complaint and the Home Office reconsidered and granted him further leave to remain for two years. However despite his having an appeal pending and not being a person liable to removal Capita wrote to him on the day after he had been granted leave informing him that he needed to leave the United Kingdom and they sent him a document containing a statement of intention to deport. Not only did he have leave at this point, at no point was he in the UK unlawfully because he had an application followed by an in-time pending appeal. A letter of complaint was written to the Home Office about the precipitous action taken by the Home Office caseworker and also about Capita but there was no response to this letter..

A woman's application was rejected because the Home Office stated that she had not sent the correct photographs with application. She remedied this by returning the form with the correct photographs but by then was an overstayer. She was subsequently granted leave to remain. However for the period of time between the rejection of the application and the subsequent grant of leave she was in the country unlawfully and would not have had a right to rent.

A man submitted an application for further leave to remain on 30 June 2006 on form FLR(IED) as a highly-skilled migrant and at the same time also applied to be accepted under the Highly Skilled Migrants Programme. The latter application was rejected; the former was never considered. He remained in continual contact with the Home Office for the next eight years about the failure to deal with the FLR application, which failure meant he had no right of appeal. The Home Office refused to accept that any application had been made. Ultimately following discovery via a subject access request his legal representatives found two references in the Home Office files to the application having been received. He then made an application in 2013 for indefinite leave to remain[8] which was again rejected as the Home Office continued to contend that he was not lawfully in the UK and continued to deny that he had made the FLR application. Ultimately he succeeded in the Upper Tribunal where it was found that his FLR application had been made and received and was outstanding and so he was granted indefinite leave to remain on the basis of his 10 years continuous lawful residence. Throughout the eight years battling the Home Office argued that he was an overstayer and threatened a variety of enforcement action against him. He was treated as being unlawfully in the UK whereas he was lawfully present. He would have been denied a right to rent during this time.

A family member of an EEA national was refused a certificate confirming permanent residence, in circumstances where there should have been no doubt that she had a right of residence under European Union law. She was told that she had no status.

The employer of a doctor, a non EEA spouse of a Dutch national exercising EU Treaty rights who submitted an application for permanent residence, which is expected to succeed, was told that for the last 6 years she had been working unlawfully, and moreover she was told by the Employers' checking service that she must cease working with immediate effect and await a confirmation from the Home Office that her application has been submitted. She had been treated (wrongly) as a person with leave under the immigration rules by the Home Office and by her employer. The online right to work tool does not cater for this situation.

[8] Immigration Rules HC 395 paragraph 276B.

A man with leave under s 3C of the Immigration Act 1971 (leave pending a Home Office decision or a decision on an appeal). He was suspended from his job because the employers' checking service did not record him has having permission to work despite his application for further leave having been made in that time. In that case his MP intervened and the Home Office provided a letter confirming that he had leave under s 3C, but because it was not on the list of acceptable documents the Home Office would not accept it. In the end it was necessary, through the good offices of the MP, to get the Home Office to update its records before the employer would reinstate the employee.

A dependant of a post-study worker whose relationship broke down had a British child and a derivative right of residence under EU law. Her application was refused but her appeal against refusal allowed. The Home Office sought to appeal this further but its application for permission to appeal was refused. The Home Office wrote to her employer saying, wrongly, that she was not allowed to work. She was dismissed from her job.

A person whose application for asylum had been outstanding for a very long time and had been given permission to work as a consequence. The Home Office visited his workplace. The enforcement team assumed he was working without permission. He was dismissed from his job. His MP made representations and he was given an acknowledgement that he was allowed to work and reinstated. Shortly afterwards he was given indefinite leave to remain from the Case Resolution Directorate that dealt with backlog clearance. But in the meantime he had lost some £1800, five weeks' earnings. The Home Office declined to compensate him, arguing that the employer had not followed the proper procedure.

A skilled worker whose application for further leave was refused on the basis that he had not attended an appointment to provide his biometrics. The Home Office had sent the invitation to the wrong address. The database against which the Employer Checking Service makes its checks is not updated to record that an application has been made until biometrics are submitted. That can take weeks. In the meantime, the employer is told by the Employer Checking Service that leave has expired and that the person has no permission to work.

A worker suspended because an application was still not showing on the database against which the Home Office makes its checks despite the payment having been taken more than three years previously. The employer was told that she did not have permission to work.

An application for further leave from an unaccompanied child who had been given discretionary leave to 17 ½ years of age following refusal of asylum got an acknowledgment of an application to extend leave saying that his entitlements continued. But the application for further leave remained pending after nearly three years. Employers simply could not comprehend that the applications could remain pending for so long. They checked with the Employer's checking service and were told that the young person did not have permission to work.

The Parliamentary and Health Service Ombudsman upheld a complaint by an EEA national who was unable to prove his right to work whilst UK Visas and Immigration dealt with his application for a permanent residence card after exercising EU treaty rights in the UK as a worker for five years. After submitting his application in May 2012, the individual was sacked from his job in July 2012 when the Employer Checking Service told his employer that it could not confirm his right to work. It did so on the basis that neither a letter confirming a decision to grant the residence card nor a certificate of acknowledging the application had been issued even though the issue of

certificates of acknowledgment had been discontinued by UK Visas and Immigration. He was unable to work until early 2013 when he finally received his residence card[9].

These problems give rise to different risks:

i) the prejudice to those trying to rent or who are unlawfully evicted;
ii) the risks that a landlord or landlady who is deliberately breaking the law will be able to escape conviction because it will not be possible to prove that they have deliberately continued to rent to a person without leave.

There is a risk that those whom the offence is designed to target will escape prosecution while the adverse consequences for potential tenants, community relations and local authority homeless services will all be felt.

## Cases where limited comfort can be given

A landlord or landlady may find it difficult to establish at the outset when the prospective tenant's leave is due to expire. A judgement as to when leave is due to expire will constitute immigration advice if provided in the course of a business, whether or not for profit, by a third party [10]. 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.

A person's documents may all be with the Home Office at the time when their leave expires and an application for an extension of leave is pending. Establishing that a person has lawful leave under section s 3C or 3D of the Immigration Act 1971 is not straightforward and, even where it is established, what is achieved? A landlord sees a person whose passport is with the Home Office. A Home Office checking service confirms that the person has section 3C leave. That may end at any time, when a decision is made on the application or when appeal rights are exhausted. The checking service cannot say whether, when it ends, the person will be granted further leave.

### *Burden on local authorities*

We consider that the measures contained in the Immigration Act 2014 and these new proposals give rise to a real risk of increased homelessness, including of families, and of exploitation. We consider that the cost to local authorities of manufacturing homelessness persons in this way has not been considered adequately. It is on local authority social services departments that the cost of housing and/or otherwise supporting persons unable to rent may fall, using, for example, their powers under section 17 of the Children Act 1989, under the Care Act 2014 and under the National Assistance Act 1948. Local authorities will be responsible for British citizens unable, in practice, to rent and for certain categories of person under immigration control. No adequate account has given as to how the extra cost will be met by local authorities.

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[9] http://www.ombudsman.org.uk/make-a-complaint/case-summaries/volume-1/parliamentary/man-compensated-for-loss-of-his-job

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

***Asylum***

We have raised with the Home Office our concerns about persons seeking asylum who wish to rent privately. Provision is made in Schedule 3 to the Immigration Act 2014 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. No provision is made for asylum seekers who make their own arrangements for accommodation. It was suggested at the integration subgroup that this will be addressed by the Secretary of State's exercising her discretionary powers on a case by case basis through the checking helpline: the landlord/landlady rings the helpline and, without being told that person X is seeking asylum, is given the green light to rent to person X. This is inadequate to address the problem because:

i) Discrimination is likely to occur at an earlier stage; you will not be offered the property at all. If I do not turn up with my British citizen passport (and photocopies of same) in my hand, there is a strong chance I shall not get offered the property. But even if I overcome this, why should the landlady/landlord pick up the helpline when all the available evidence is not ambiguous but points clearly to my not having a right to rent?

ii) The all clear from the helpline, without a clear rationale to back it up being explained to the landlord/landlady and at odds with what is said in the guidance (which will all point to the person's not having a right to rent) is unlikely to reassure a landlord/landlady. The duration of the right to rent for example will be unclear, there will be worries that the reply is an error; in short it will look too risky to take the person on as a tenant.

iii) There is a danger that landlords and landladies will seek to extrapolate from what the helpline has told them, assuming that because person X has a right to rent, so does person Y.

The Home Office, or local authorities, may end up having to house persons seeking asylum who have sufficient funds to rent privately, but are unable to secure accommodation, not because those persons cannot afford to rent, but because no one will rent to them. Local authorities will be responsible for dealing with British citizens unable to rent.

Among those at particular risk of an unlawful eviction because landlords and landladies become concerned that they have become an 'illegal immigrant' are a third country family member of an EEA national exercising treaty rights. Such a person is, as a matter of European Union law, not required to have a document issued by the country of residence evidencing his/her status as a third country family member of a person exercising treaty rights. It suffices as a matter of EU law to evidence the relationship and rights of the principal and, in the case of third country family members of EEA nationals with permanent residence, the length of stay.

Similarly for a person with a retained right of residence under EU law, for example following the breakdown of a marriage and subsequent divorce as a result of domestic violence, and subsequent divorce.

So to for a person with a derivative right under EU law, who is not required to have a document issued by the UK Home Office evidencing this.

The Home Office list of acceptable documents for civil penalty checks complicates matters still further; see our response to their consultation on these documents. For example a person requires a valid biometric immigration document indicating that the person is allowed to stay indefinitely or has no time limit on their stay. We do not understand why, if an expired passport is acceptable, it is not acceptable to have an expired biometric immigration document indicating that the person has no time limit on their stay. A biometric immigration document is valid for 10 years, but a person with indefinite leave to remain, whether they have such a document or not, is a person with leave to be in the UK and is permitted to rent under the legislation.

It is unclear how the proposed criminal offence would dovetail with the complexity that surrounds the civil penalty, where, for example, whether the property is a person's main residence,[11] is occupied for residential use, [12] or constitutes tied accommodation.[13] All are relevant to whether a landlord or landlady can be penalised for letting it to a person.

**Do you agree that there should be a blacklist of persistent rogue landlords and letting agents?**
***answered with* Do you think that it should be at the court's discretion as to whether to include an offender on the blacklist or should this be mandatory (*answered with respect to reasons for blacklisting including* 'where an offender has been found guilty on two occasions or more of a relevant housing office, and in respect of an offence of continuing to let to an illegal immigrant)'.**

We do not consider that a landlord or landlady should be blacklisted for having been found guilty on two occasions or more of the offence of continuing to let to an 'illegal immigrant.'

Our reasons are:

- The greater the penalty, the greater the risk of discrimination by risk-averse landlords and landladies as detailed in our response to the question above.
- The difficulty of getting a check right and the concern about unlawfully evicting a tenant, or simply about putting a person at risk out on the street, might mean that a person acquires more than one conviction without their being in any way in the same category as a person illegally harassing or evicting a residential occupier, providing false information to a local authority etc.

It follows from the above that**,** should our view not prevail, it should be at the court's discretion as to whether or not to include an offender on the blacklist. This would allow the judge in all possession of the facts of the case to judge of the seriousness of the conduct.

**Is the revised fit and proper person test sufficiently robust or any elements of it too stringent? *and* "Should other criteria be added?"**

Given the very high risks of discrimination entailed by the civil penalty scheme for landlords, landladies and their agents introduced under the Immigration Act 2014, and these proposals, we consider that it is important to retain the power of local authorities to refuse a licence if a landlord or landlady has discriminated on the grounds of sex, colour, race, ethnic or national

[11] Immigration Act 2014, s 20(4).
[12] Ibid., s 2092)(a).
[13] Ibid., schedule 3.

origins or disability. In the light of the civil penalty scheme, we consider that for the avoidance of all doubt, immigration status should be added to this list to remove any doubt that a landlord or landlady might evade blacklisting by alleging that they were not discriminating against a particular nationality but against all immigrants.

What constitutes proof that a landlord or landlady is not a "fit and proper person" on the grounds of discrimination? The prohibition on discrimination under Part IV of the Equality Act 2010 is very much less robust in the case of "small premises." 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 a civil partnership and thus their sexual orientation. A landlord or landlady in "small premises" could treat people differently on this ground.

Are these to be the applicable definitions of discrimination for the purposes of blacklisting? Discrimination on the grounds of race 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 have previously asked the Home Office to 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. They have not done so.

**Section 2 Rent repayment orders and civil penalties**

**Rent repayment orders**

We have not answered any of the questions here but comment that the question of whether a landlord or landlady has illegally evicted a tenant will be complicated if summary eviction of persons under immigration control is permitted.

**Civil penalties**

We have not answered any of the questions here but draw your attention to the civil penalty scheme introduced by the Immigration Act 2014 in respect of letting to persons who, because of their immigration status, do not have a "right to rent" as defined therein. This is a scheme run by the Home Office.

**Section 3 Abandonment**
No response provided.

## Other matters

### *Children*

Measures that increase the likelihood that families will be unlawfully evicted are not compatible with the duties of the Home Office under section 55 of the Borders, Citizenship and Immigration Act 2009, the duty to have regard to the need to safeguard and promote the welfare of children. Putting the Home Office at risk of breaching its duty under s 55 of the Borders, Citizenship and Immigration Act 2009 to safeguard and promote the welfare of children, in breach of its obligations under Article 8 of the European Convention on Human Rights and in certain circumstances in breach of its obligations under Article 7 of the Charter of Fundamental Rights of the European Union and other obligations under EU law.

### *Local authorities*

Local authority social services departments often bear the costs and responsibilities of accommodating otherwise homeless unlawfully present migrants.

## Public sector equality duty

The Government has yet to publish its evaluation of the West Midlands "pilot/phased roll-out" of the right to rent scheme. The then Government recognised during the passage of the Immigration Act 2014 that these checks could result in race discrimination and secured Parliamentary approval for a Code of Practice on avoiding discrimination in carrying out the check in an attempt to mitigate risks of discrimination.[14]

Ms Caroline Kenny of the UK Association of Letting Agents, giving oral evidence to the Public Bill Committee on the Immigration Bill,[15] made clear that the major concerns of her association about the provisions were concerns about the effect on ethnic minorities. She said:

> ***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…*

The latest proposal, the threat of a sentence of imprisonment, seems likely to make landlords all the more cautious letting properties to persons who do not fit their stereotype of a British citizen yet there is nothing to indicate that the Government has carried out an equality impact assessment over and above the evidence in the pilot. In matters relating to immigration control, public authorities carrying out immigration and nationality functions as defined do not have to have due regard to the need to advance equality of opportunity in respect of the protected characteristics of age, race or religion or belief, with race meaning race so far as relating to nationality, or ethnic or national origins.[16] They do, however, have a duty to have due regard to such a need as far as the other protected characteristics are concerned, including matters that may be detected from a person's immigration documents, such as sexual orientation, or matters that may affect a person's ability to produce documents such as disability, including on mental

[14] Immigration Act 2014, s 33.
[15] Immigration Bill, proceedings before the Public Bill Committee, HC 29 October 2013, col 54.
[16] Equality Act 2010, Schedule 18, paragraph 2.

health grounds.[17] The duty to have due regard to the need to eliminate discrimination and to foster good relations applies without exception. The new proposals carry clear additional risks, especially with regard to race, and therefore it would seem that a full equality impact assessment is required.

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20 August 2015

[17] *Ibid.*