IMMIGRATION BILL ILPA DRAFTING GROUP PROPOSED AMENDMENTS PART TWO: ACCESS TO SERVICES

Residential tenancies

CLAUSES 12 TO 15

PROPOSED AMENDMENT /STAND PART AND AMENDMENT

Page 8 line 10, leave out from line 10 to page 16 line 31 (Clauses 12 to 15) and replace with

12 ***Residential tenancies: repeal of provisions of the Immigration Act 2014***
(1) In the Immigration Act 2014, part 2, Chapter 1 *Residential Tenancies* omit clauses 20-37 and Schedule 3.

(2) In consequence of the repeals made by this section, the following are repealed
(a) In section 74 of the Immigration Act 2014, subsection (2)(a)

Purpose
This amendment removes the residential tenancies provisions from both the 2014 Act and the current Bill.

Briefing
This 2015 Bill creates two new criminal offences for landlords and two new criminal offences for agents who are found to have rented a property to someone who does not have the 'right to rent' and not to have notified the relevant authority (the Secretary of State in the case of landlords and the landlord in the case of agents) within a reasonable amount of time. The criminal offence carries a charge of up to five years in prison.

The Bill would give landlords and landladies new powers to evict persons whose immigration status means that they have 'no right to rent.' It would be an implied term of a residential tenancy agreement that a landlord or landlady could terminate a tenancy if an adult occupying the premises did not have a right to rent. Powers of eviction could be used is where all occupiers do not have a right to rent.

The basis for the extension of the 'right to rent' provisions contained in the Immigration Act 2014 has no factual or evidential basis. On the contrary, there is clear evidence that the provisions have already caused discrimination and have not achieved their stated aims. They should be repealed and the extension of the scheme, which will worsen the discrimination already caused, should be removed from the Bill.

Both the Home Office evaluation[1] of the right to rent scheme introduced by the Immigration Act 2014 and the independent evaluation undertaken by the Joint Council for the Welfare of Immigrants (JCWI)[2] have shown that the provisions have caused discrimination against BME tenants and people with whose names or accents are not perceived as "British" or who do not have a British passport. Furthermore, the Home Office evaluation does not adequately assess the duty of public authorities to combat discrimination under the public sector equality duty.

In addition, the Home Office's own evaluation of the scheme demonstrates that enforcement as a result of the provisions has been extremely low and any evidence that the scheme has achieved its stated aims is inconclusive.

The threat of criminal penalties in this Bill will only serve to heighten discrimination against those from a black and ethnic minority (BME) background as well as British nationals who do not own a passport. Landlords will not want to risk a prison sentence as a result of renting to someone with the incorrect immigration status, as has already been the case under the civil penalty scheme. This will result in many landlords and landladies taking the 'easy' option of accepting white, British tenants over others perceived as more of a 'risk'.

The Immigration Act 2014 (the 'Act') contained provisions to make it compulsory for private landlords to check the immigration status of all new adult tenants, sub-tenants and lodgers in order to assess whether they have the 'right to rent' in the UK.

Background

Under these provisions all individuals in the UK who are subject to immigration control and require permission to enter or remain in the UK but do not have it are disqualified from entering into a residential tenancy agreement. Landlords, landladies and their agents have a duty to check the immigration status of potential tenants or lodgers before entering into a residential tenancy agreement with an individual. If a landlord or agent fails to complete the checks and rents a property to someone who does not have valid 'leave to remain' (and therefore does not have the right to rent) they could be fined up to £3,000 per adult by way of a civil penalty notice. Due to concerns about the potential for discrimination under the provisions, the scheme was first piloted in five West Midlands local authorities. The scheme went live on 1 December 2014.

On 18 September the Government published the Immigration Bill 2015, which contains an extension of the provisions to include a criminal sanction, the subject of this amendment. This is despite clear evidence in an independent evaluation published on 3 September that the provisions have caused discrimination; do not meet the government's obligations under the equality duty; and have not met their stated aims. Over a month later, on 20 October, the Government published their evaluation of the scheme and announced a roll out of the Immigration Act 2014 provisions in England from February 2016.

---

[1] Home Office (2015) "Evaluation of the Right to Rent scheme: Full evaluation report of phase one", available online: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/468934/horr83.pdf

[2] Joint Council for the Welfare of Immigrants (2015) "No Passport Equals No Home: an independent evaluation of the 'right to rent' scheme", available online: http://jcwi.org.uk/sites/default/files/documets/No%20Passport%20Equals%20No%20Home%20Right%20to%20Rent%20Independent%20Evaluation_0.pdf

Evaluation of the scheme

An independent evaluation of the 'right to rent' pilot found that in the first six months, the scheme resulted in discrimination against people whose names and accents were perceived as "foreign" and those without British passports. People with complicated immigration status, unclear documents and those who require time to provide relevant documents are less likely to be considered and accepted for a property as a result of the scheme, despite having the 'right to rent' and there is evidence that individuals with the 'right to rent' have been wrongly refused tenancies.[3]

On 20 October 2015, following the publication of the Immigration Bill on 18 September which seeks to extend the scheme with the introduction of criminal sanctions, the Home Office published its own evaluation of the 'right to rent' scheme. The report itself states that sample sizes are low and findings must be seen as indicative rather than definitive.[4] While the authors describe the evaluation as 'comprehensive', they do not claim that the results are representative. A lack of definitive evidence cannot be seen as evidence that the scheme has met its aims or worked as intended without causing discrimination. Furthermore, the report downplays its own findings on discrimination and clearly documents that discrimination has occurred as a result of the 'right to rent' scheme.

Limitations of the Home Office evaluation of the 'right to rent' scheme

- The sample sizes relied upon as evidence are in many places very small. For example, results based on responses to the online surveys (completed by landlords, agents, tenants, local authorities, housing associations and charity and voluntary sector organizations) are for some questions based on as few as five responses and only four volunteer and charity sector organizations and five housing associations were interviewed for the research.
- Only 62 landlords and landladies surveyed had taken on a new tenant since the implementation of the scheme. Of those, only 26 had conducted the checks on a prospective tenant themselves. Therefore, there is a lack of evidence of how landlords who conduct the checks will be impacted.
- The majority of tenants involved in the research had not moved property since the start of the pilot, and therefore would not have any experience of the scheme. Any evidence of the impact on tenants is therefore limited.
- The report inadequately addresses the risk of discrimination. The analysis is based primarily on a mystery shopper exercise with an unclear methodology, unclear aims and small sample size. The exercise only looked at discrimination on the grounds of race, which is limited.
- There is no adequate assessment of the Government's obligations or the obligations of Local Authorities under the Public Sector Equality Duty to have due regard to the need to eliminate discrimination and foster good relations in carrying out their functions.

[3] Joint Council for the Welfare of Immigrants (2015) "No Passport Equals No Home: an independent evaluation of the 'right to rent' scheme"
[4] Home Office (2015) Evaluation of the Right to Rent scheme: Full evaluation report of phase one, p.11

- Evidence of discrimination reported is downplayed, despite having occurred. Given the gravity of discrimination in this sphere, and the risk of discrimination acknowledged by the Government, these issues must be addressed and evaluated properly before any extension of the scheme.

Landlords and agents remain confused about the scheme

The report claims that landlords, agents and housing associations intended to and were carrying out the checks. However:

- Only 42% of landlords and landladies surveyed had read the code of practice on illegal immigrants and the private rental sector and only 29% had read the code on avoiding discrimination. These are vital documents which are intended to explain to landlords how to undertake checks, as well as how to avoid discriminating against tenants in the course of their duties.
- Of the 109 checks undertaken on the online Landlords Checking Service Tool, just 15 resulted in the landlord being informed that the tenant did not have the right to rent. The other 94 referrals related to individuals who did have the right to rent, highlighting widespread confusion about checking immigration documents, which is incredibly complicated and should not be made the responsibility of landlords, who are not immigrations officials.

Awareness of the scheme remains low

The report claims that landlords and agents felt aware of the scheme, however:

- Less than a third of tenants felt informed and many were unaware of the scheme. Most of those who were aware were students, a group specifically targeted by way of an information campaign during the pilot.

- Although the report claims that there is 'arguably less need' for tenants to be informed about the scheme, this is extremely important; so that tenants can inform themselves of their rights; understand why the checks are being undertaken; prepare themselves for the checks so that they are not at a disadvantage if they have complicated immigration status; and understand if they are discriminated against and how to seek redress.
- Almost 60% of landlords/landladies with only one property felt poorly informed or uniformed about the 'right to rent' scheme. Small-scale landlords/landladies make up 78% of landlords. This is the key group that must be made informed of the scheme and the Home Office has not done so adequately.
- More than half of landlords/landladies were members of landlord/landlady membership bodies. This is not representative as the majority of landlords/landladies in the UK are not members of professional bodies, as was described in oral evidence to the Public Bill Committee and members are more likely to feel informed of and able to comply with the scheme than non-members, as demonstrated by the independent evaluation.
- There is therefore no clear evidence provided that the Home Office has adequately disseminated information about the scheme, which undermines any intention to roll the scheme out further nationwide.

The evaluation does not demonstrate that the scheme has achieved its aims

The aims of the 'right to rent' scheme are 1) to reduce the availability of accommodation for those residing illegally in the UK. 2) to discourage those who stay illegally and encourage those who are resident in the UK illegally to leave by making it more difficult to establish a settled lifestyle through stable housing. 3) to reinforce action against rogue landlords who target vulnerable tenants by putting people who are illegally resident in overcrowded accommodation. The Home Office report does not demonstrate that these aims have been met during the first six months of the scheme.

1) *There is no evidence that the scheme has reduced the availability of accommodation for those residing illegally in the UK*
   - There is no conclusive evidence that the private rental market had been restricted for irregular migrants as a result of the scheme
   - The only evidence cited in the Home Office report is that during focus groups with landlords and agents a small number of participants stated that they had turned down tenants as a result of the landlord/agent not being satisfied that they had the right to rent, and that some prospective tenants had hung up the phone when enquiring about a property and being told about the requirement to undertake immigration status checks. However, this evidence is anecdotal, from a small number of individuals, and there is no evidence that those individuals did not have the right to rent.

   2) There is no evidence that irregular migrants have been encouraged to leave the UK as a result of the scheme
   - The report claims that 109 irregular migrants came to the attention of the Home Office as a direct result of the 'right to rent' scheme. An examination of the results shows that this number is made up of referrals provided by internal Home Office teams, external organizations including government departments, police referrals and public allegations. This number therefore appears to be made up of irregular migrants identified result of normal enforcement activity, and not as a result of the scheme.
   - Elsewhere, the report states that just 26 referrals of irregular migrants were specifically related to the scheme.
   - Just 15 irregular migrants came to the attention of the Home Office as a result of the online referral system created by the Home Office.
   - Of the cases of irregular migrants where enforcement activity was instigated, only 9 have since left the UK, the same amount as have been granted status in the UK as of September 2015.
   - 46% (47 out of 103) of those identified by the Home Office now have outstanding legal cases (four judicial review, 15 family cases, 28 asylum claims) – this means that at this moment they have the right to remain in the UK.
   - This shows that many individuals identified by the government's 'hostile environment' do often have a valid claim to remain in the UK, or face real barriers to removal from the UK, for a number of reasons.
   - Whether the scheme has impacted the ability of irregular migrants to access the private rental sector, a key aim of the policy, is inconclusive.

3) There is very little evidence that the scheme has reinforced action against rogue landlords who target vulnerable tenants by putting people who are illegally resident in overcrowded accommodation.

- Only five civil penalty notices were issued to landlords a result of the scheme. This undermines the Government's aim to tackle rogue landlords, a key purpose of the scheme.
- However, eight voluntary and charity sector organizations stated that they found evidence of exploitation by landlords/landladies of people without the right to rent as a result of the scheme.

The 'right to rent' scheme has caused discrimination

The Home Office report states that 'verbatim comments… suggest that there were a small number of instances of potentially discriminatory behaviour'. These results are largely based on a mystery shopper exercise with unclear aims. Furthermore, the exercise only looked at discrimination 'on the grounds of race'. This is limited, as there are many more grounds for discrimination as a result of the scheme. The independent evaluation conducted by JCWI found evidence of discrimination due to having a foreign accent or name, or not having a British passport. The potential for discrimination on these grounds have not been analyzed. Nonetheless, the report finds clear evidence of discrimination:

- The BME members of the 'mystery shopper' group in the pilot area were less likely to receive a 'prompt response' from a landlord/agent.
- The BME group was asked to provide more information than 'white' group
- Landlords and agents made discriminatory comments to BME mystery shopper participants, for example stating that they do not want to take the time to undertake the checks.
- Evidence of discriminatory behaviour among landlords was reported by landlords themselves, as well as agents and tenants, including a tenant refused when they had time-limited leave; preference for tenants where their 'right to rent' was easy to check; and preference for tenants with local accents or who don't appear foreign.
- The report cites evidence that British citizens without documentation have been adversely affected
- Evidence was reported by charities and voluntary organizations of increased homelessness as a result of the scheme (6 organizations); difficulties findings accommodation among those with the right to rent but complicated documentation (seven organizations); and discrimination on the basis of nationality (seven organizations). These are serious allegations and must be adequately addressed.

CLAUSES 12- 15

PROPOSED AMENDMENT /STAND PART AND AMENDMENT

Page 8 line 10, leave out clauses 12 to 15 and replace with

(*) *Amendment to the Immigration Act 2014*

(1) The Immigration Act 2014 is amended as follows:

(a) In section *21 Persons disqualified by immigration status not to be leased premises*

(i) leave out subsection 21(2)(a) and replace with:

(a) P requires leave to enter or remain in the United Kingdom but does not have it; and

(aa) paragraph 2A does not apply

(ii) After section 21(2) insert –

(2A) – P retains a right to rent under this section:

(a) for 90 days after P's leave to enter or remain comes to an end; or

(b) until the end of the one year beginning with the date on which P's landlord last complied with the prescribed requirements in respect of P

whichever is longer

(iii) After section 21(4) (b) insert –

(c) is a person who has a retained a right to rent under subsection (2A)

Purpose

To remove the provisions as to residential tenancies in the current Bill and to amend the Immigration Act 2014 to provide protection for landlords and landladies from prosecution when their tenant's leave comes to an end.

Briefing

For reasons to omit the provisions of the current bill, see briefings above.

In the case of the civil penalty, what matters is to carry out an annual check. However, a landlord or landlady commits a criminal offence the moment they are knowingly renting to a person with no right to rent. If I find out on Monday but do not evict until Tuesday, I have committed a crime. If I receive a notice under, for example, new s 33D inserted by clause 13, I cannot evict for 28 days but during those 28 days I am committing a crime (on which point see further the amendment to clause 13 below).

The period also gives those who are privately renting when their leave to enter or remain a period which will allow them to make arrangements to leave the UK or make a fresh application (in accordance with the Immigration Rules, within 28 days of leave ending) .

Briefing

The Government's background briefing to the Queen's Speech states:

> '*We will build on the national roll-out of the landlord scheme established in the Immigration Act 2014, and make it easier to evict illegal migrants.*'

When the provisions on residential tenancies were introduced in the 2014 Act, provision was made for landlords and agents to have a statutory excuse to the payment of a penalty notice

where the eligibility period in relation to the limited right occupier had not yet expired. The eligibility period was set out at section 27(4) of the Act:

> *(4) The length of an eligibility period established or renewed under this section in relation to a limited right occupier is the longest of the following periods—*
> *(a) the period of one year beginning with the time when the prescribed requirements were last complied with in relation to the occupier;*
> *(b) so much of any leave period as remains at that time;*
> *(c) so much of any validity period as remains at that time.*

This period recognised the importance of allowing landlords and, arguably tenants, a period of time after leave may have expired to make arrangements to either resolve their status or leave the UK. This provision specifically enabled landlords to benefit from the 'longest' of the relevant periods.

The new provisions on evictions will empower a landlord to evict a person within the eligibility period if they have been notified by the Secretary of State that a person or persons who are occupying their premises are disqualified from renting under the 2014 Act. Where the person's leave has only just come to an end, the landlord or landlady is likely to receive the notice when the tenant has no leave, and thus to be committing a criminal offence the moment they receive the letter.

Once a person's leave to enter or remain in the UK has ended they have 28 days in which to lodge a fresh application. Where a valid application is made within this time frame, their overstaying will not impact the substantive consideration of their application.

With the removal of appeal rights for most application types and the limited nature of administrative review, an individual may find themselves without leave to remain following the refusal of an application where they are able to show they satisfy the requirements of the Immigration Rules but have made a mistake in their application leading to the refusal.

It is these people who will most commonly utilise the 28 day 'grace period' incorporated into the immigration Rules to rectify this mistake with a fresh application. Although individuals only have 28 days within which to make such an application, those submitted by post will likely not be decided within that 28 day period.

By way of example, UK Visas and Immigration advises on the gov.uk website that a decision on most points based system application will take eight weeks to be made.

This amendment provides a period in which tenants can seek legal advice, take steps to rectify their immigration status by the submission of a further (permitted) application and/or make arrangements to leave the UK should they determine that they have no further basis to remain.

In the absence of such protection, individuals will, in practice, be unable to seek the legal redress foreseen by the 28 day application grace period as it will not be practical to await the outcome of an application without a home.

In the Evaluation of the Right to Rent scheme prepared in response to the pilot scheme in the West Midlands, 109 'illegal migrants' were identified. Of this number, four had an outstanding judicial review, one had made further representations that were being considered, fifteen were

being progressed as family cases, twenty eight had outstanding cases, including asylum claims and nine had been granted leave to remain in the UK. This represents 57 of the 109 'illegal migrants' which is 52% of the total. This is a significant figure. As these people are not subject to removal during this period and many may, and indeed some did, obtain the right to remain, it is unclear why they should be subject to eviction proceedings while awaiting the outcome of their legal challenges and/or fresh applications. This amendment provides a buffer period while these applications and challenges proceed.
Further, under the administrative review provisions introduced by the 2014 Act, a person's leave extended under section 3C of the Immigration Act 1971 automatically ends where an administrative review is rejected. They therefore find themselves automatically without leave to enter or remain. Individuals need a period of time in which to seek legal advice where appropriate and thereafter either make arrangements to leave the UK or to make an application to regularise their status.

PROPOSED NEW CLAUSE BEFORE CLAUSE 12

Page 8 line 10, at end insert the following new clause

(*) Amendment of the Immigration Act 2014: Premises shared with the landlord or a member of his family

(1) The Immigration Act 2014 is amended in accordance with subsection (2).

(2) In Clause 20 (Residential tenancy agreement), omit the "and" at the end of subparagraph (b), and insert –

(ba) is not an agreement granting a right of occupation of premises shared with the landlord, licensor or a member of his family, and

Purpose

To exclude from the definition of a residential tenancy agreement those agreements relating to accommodation shared with a landlord or a member of his family, so that individuals who rent out rooms or take lodgers into their homes, as opposed to renting out a whole flat or house, are not part of the right to rent provisions.

Briefing

The Immigration Act 2014 made it compulsory for all landlords and landladies to check the immigration status of those to whom they rent property. This wide provision included individuals who might rent out a room or take in a lodger in order to meet the rent or mortgage on their home. Individuals who rent out a room in this way will be private citizens rather than commercial landlords and often such arrangements are more informal in nature.

People who rent out a room or take in a lodger may be living on a low income. For example, the Government has advised that individuals in receipt of housing benefit and affected by the under-occupancy charge, more commonly known as the 'bedroom tax', should take in lodgers to mitigate its effects.

In 2014, the Secretary of State for Communities and Local Government made the following statement to Parliament:

> ***Graeme Morrice (Livingston) (Lab):*** *Nine in 10 disabled people are cutting back on household bills in order to pay the bedroom tax, and many are now falling into rent arrears. If the Secretary of State were in their position, would he fall into debt or cut back on heating or even eating?*
> ***Mr Pickles:*** *There is no evidence of any increase in arrears. A number of things can be considered, including taking in a lodger, obtaining a job and getting help from local authorities, which have, by and large, dealt with the issue in a reasonable way. The Labour party lumbered the taxpayer with an enormous bill as far as the growth in housing benefit was concerned, and it is entirely wrong to pretend that it would not have introduced similar constraints*[5].

The Parliamentary Under-Secretary of State, Department for Work and Pensions answered a parliamentary question on the bedroom tax in similar terms:

> ***Lord Freud:*** *We are encouraging people to take in lodgers when appropriate for them. Housing associations and local authorities are looking at that and tend to accept that that is a way of doing it. There is some confusion between strictures against subletting, which is a different matter entirely, but lodging tends to be accepted around the country*[6].

The Government evaluation of the 'right to rent' scheme does not provide sufficient information to evaluate the impact of the scheme on individuals who take in lodgers or rent out rooms in their own home. The evaluation has however found lower levels of awareness of the requirements under the scheme among smaller-scale and informal landlords:

> *The qualitative research with landlords tended to support the evidence from the survey, with more professional landlords having heard about the scheme, but with many smaller-scale landlords being unaware of it. This was also raised as an issue by other respondent groups in terms of reaching 'hidden landlords' to make them aware of the scheme. This group includes landlords with smaller property portfolios, people with lodgers, landlords who are not members of a landlord association, non-compliant landlords or landlords outside of the pilot area or living overseas. Strategies for reaching these groups might be considered as part of wider roll-out. The mystery shopping research found that informal landlords had some awareness that a scheme had been introduced, but were not always aware of its details*[7].

People who rent out rooms or take in lodgers face fines or, under this Bill a criminal penalty if they do not comply with the requirements of the 'right to rent' scheme. This is an onerous obligation to place on private citizens. It is also extremely difficult to detect

i) whether anyone is renting a room in a property, for money (it is easy to hide evidence of occupancy and/or payment
ii) Discrimination – there are a host of reasons why you might chose to share your home with one person rather than another and it may be extremely difficult to detect prohibited discrimination

---

[5] Hansard, 07 April 2014, http://www.publications.parliament.uk/pa/cm201314/cmhansrd/cm140407/debtext/140407-0001.htm
[6] Hansard, 24 June 2014, http://www.publications.parliament.uk/pa/ld201415/ldhansrd/text/140624-0001.htm#14062437000444
[7] Home Office, *Evaluation of the Right to Rent Scheme: Full evaluation report of phase one*, October 2015, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/468934/horr83.pdf, p.17

Enforcement against those who take in lodgers is likely to be arbitrary and small scale (enormous resources would be required for any meaningful enforcement). The right to rent scheme is brought into further disrepute if it cannot be enforced.

PROPOSED NEW CLAUSE BEFORE CLAUSE 12

At page 8, line 10, before section 12, insert

(*) Persons disqualified by immigration status or with limited right to rent

(1) The Immigration Act 2014 is amended in accordance with subsections (2) to (3).

(2) Leave out section 21(3).

(3) After section 21(2) insert:

(3A) But P is to be treated as having a right to rent in relation to premises (in spite of subsection (2)) if:

(a) the Secretary of State has granted P permission for the purposes of this Chapter to occupy premises under a residential tenancy agreement; or

(b) P has been granted immigration bail; or

(c) P is to be treated as having been granted immigration bail.

Purpose

To ensure that persons seeking asylum who can afford to rent privately, persons with outstanding applications and persons with outstanding appeals or judicial reviews are able to rent.

Briefing

ILPA has 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.

If a person cannot find a landlord/landlady prepared to rent to him/her, even though in theory this should be possible, s/he is likely to satisfy the definition of destitution under the 1999 Act and thus become the responsibility of the Home Office, an outcome the Home Office is unlikely to desire both in itself and for the precedent it sets.
The response we were given by Parvaiz Asmat of the Home Office was that the Home Office is reluctant to provide persons seeking asylum with a document that would confirm their right to rent because of concerns about fraud. The Home Office has (understandable) concerns about identifying persons, whether explicitly or indirectly, as seeking asylum. However, he saw our point that a person seeking asylum is in a very different position from a person whose documents are with the Home Office because they are applying for an extension of leave. A person seeking asylum does not have leave, and everything the landord/landlady is reading about the scheme is telling him/her that such persons do not have a right to rent.
Other persons on immigration bail are entitled not to be removed from the UK whilst their applications or appeals are outstanding. These people include those whose fresh applications are being considered by the Home Office and people whose appeals or judicial reviews are outstanding.

If the Bill is enacted, these persons would be classed as being on 'immigration bail' rather than having leave to stay in the UK. Without leave, they would not have the 'right to rent'.

The upshot is that all these persons, under the new Bill, would be unable to rent a property to accommodate themselves and their families, despite not being liable to be removed from the UK. Landlords who do rent to them would face fines and criminal sanctions, and would be given power to evict them.

The practical outcome of the 'right to rent' provisions as they stand is that those who are participating in legal proceedings and who have made valid applications to stay in the UK may be found homeless, or renting from unscrupulous or exploitative landlords/landladies.

The proposed amendment is for people who have been granted immigration bail and "those treated as being granted immigration bail". The latter is intended to include those persons who will be so treated by virtue of Paragraph 10 of Schedule 5 to the current Bill which deals with transitional provisions.

Applications for leave to remain can take up to six months to process, sometimes even longer, particularly where a complex human rights claim is made. After a decision by the Home Office, an appeal or Judicial Review may be lodged to challenge any potential unlawful decision.

By the time an application is decided and appeal rights are exhausted, a person could have been left homeless for years.

It is trite to say that those without anywhere to live will be unable to participate effectively in the application process or in their own legal proceedings.

Clause 12 Offence of leasing premises

PROPOSED AMENDMENT

Page 10 line 27, leave out lines 25 to 32 and replace with

(4) Sections 33A to 33C do not apply in relation to a residential tenancy agreement or a renewed agreement entered into before the coming into force of section 12 of the Immigration Act 2014.

Purpose
To ensure that none of the criminal offences are committed in respect of tenancies entered into (or, in the case of renewed tenancies, first entered into) before the offences come into force and thus to ensure that there is no retrospective element to these criminal penalties.

Clause 13 Eviction

PROPOSED AMENDMENT

Page 11 line 19, after "them," insert
(*) confirm that no occupier is a child of the premises is under 18 years of age

Purpose

To protection families with children from summary eviction under these provisions.

Briefing

Clause 13 gives landlords the power to evict occupiers of their premises where the Secretary of State has given notice to the landlord that the occupiers are disqualified from occupying premises as a result of their immigration status.

The provisions are bizarre and appear unworkable. The Secretary of State must name the occupiers in her notice, yet the persons to be named are (in accordance with Government

amendment 16) the persons whom the landlord/landlady as opposed to the Secretary of State, knows to be occupying the premises.

The criminal offences proposed in the Bill give landlords and landladies an additional incentive not to rent to persons without a right to rent or indeed to persons whom they perceive might not have a right to rent. The provisions on eviction do something new; they create new powers in housing law of summary eviction without proper safeguards. ILPA is thus inclined to regard them as the provisions in this part of the Bill likely to have the most grave consequences.

The power to evict under this provision allows for a rapid and summary eviction process and, by new clause 33E(4), excludes the residential tenancy agreement from the safeguards of the Protection from Eviction Act 1977.

Government amendment 15 changes the wording of those named in a residential tenancy agreement who may be occupiers from 'adult' to 'person' with the effect that children named in a residential tenancy agreement may be 'occupiers' and evicted under these provisions. Government amendment 16 retains the use of 'person' for those 'otherwise occupying the premises' and this means that children may be evicted as occupiers under this provision.

The purpose of this amendment is to ensure that children are not identified as 'occupiers' under this provision so that families with children are not subject to a summary eviction process without the normal safeguards that protect against unlawful eviction. This is to ensure that families with children are protected against being made homeless with the associated risks to the safeguarding and protection of children.

The eviction of children and families under these provisions is also likely to have a significant impact on children's social services, housing and homelessness departments. Local authorities will bear the responsibility of supporting and housing families where they are evicted by landlords who are not required to follow the normal eviction processes with the safeguards that these include.

It is not intended by this amendment to make landlords liable for either a civil or criminal penalty whilst proper eviction procedures are pursued for families with children identified by the Secretary of State as being disqualified from occupying premises under a residential tenancy agreement. However, this may be more properly achieved by ensuring that landlords are not subject to civil or criminal penalty whilst appropriate eviction procedures are followed. There are currently no provisions whatsoever in the Bill that protect landlords against penalty whilst they undertake appropriate action following notification by the Secretary of State that the occupiers of their premises are disqualified to do so by their immigration status so this would need to be addressed in any event should these penalties remain.

Clause 13 Eviction

PROPOSED AMENDMENT

Page 11, line 33 at end insert

() A landlord does not commit an offence under s 33A of this Act during the period of 28 days specified in subsection 4

Purpose
To protect a landlord/landlady from prosecution for renting to a person without a right to rent during the period for which they are prohibited from evicting the tenant under subsection 33D(4).

Briefing

In the proposed amendment above we have suggested that a landlord or landlady should have protection for at least 90 days after a tenant's leave comes to an end.

This amendment deals with a different situation. The tenant might never have had leave, or the tenant's leave might have come to an end years ago, but the landlord or landlady had no reasonable grounds to know this. Having performed the statutory checks, s/he cannot be made liable for a civil penalty. This could happen if, for example, the landlord or landlady were presented with and checked a forged document and could not have detected the forgery.

When the landlord or landlady receives the Secretary of State's notice, s/he has, it is suggested, reasonable grounds to believe that the occupiers of the property do not have a right to rent. At that point s/he is committing a criminal offence. Yet s/he is not allowed to stop committing the offence for 28 days, because eviction cannot be carried out within 28 days.

What will the landlord /landlady do? Evict summarily, to avoid committing a crime, but thus violate 33D(4)? Wait 28 days to evict losing sleep and fearful of prosecution? It may be said that the Crown Prosecution Service would not prosecute in these circumstances. That is, however, unlikely to provide any comfort to those caught by the provisions. The provisions in the Bill simply do not fit together. This is suggestive of haste and makes for bad law.

PROPOSED AMENDMENT

Page 12, line one, leave out from line 1 to line 3 on page 13 (section 33E)

Purpose

To remove the provision which implies into any residential tenancy agreement that the landlord or landlady may terminate the tenancy if the premises are occupied by an adult who is disqualified from renting because of their immigration status

Briefing

The result of this provision will be forced evictions and homelessness. If an adult in the premises does not have a right to rent, the agreement can be terminated and adults and children made homeless, or forced to turn to those who are prepared to rent to them , whether under exploitative conditions or not, or forced to turn to a local authority for emergency support. Of all the housing provisions in this Bill, this is perhaps the one that should cause the greatest concern.

Clause 14 Order for possession of a dwelling house

Page 13, line 6 leave "must" and insert "may"

Purpose

To provide a court with a discretion as to whether or not it orders possession of a dwelling house on the grounds that the Secretary of State has issued a notice confirming that a person does not have a right to rent.

Briefing

This provision has parallels with new s 33D and 33E inserted by Clause 33 and is equally grave. All the same problems arise. That a person is before a court could provide some protection, but given that the ground for possession is mandatory the court has no choice but to order possession. The amendment offers an opportunity to raise all the points raised in briefings above, on protection of children, on summary eviction, on landlords and landladies being made criminals the moment they receive a notice, etc.

New Clause after Clause 14

Proposed amendment

Page 16, line 2, after Clause 14 insert the following new clause

(*) **Eligibility for housing and homelessness assistance**
The Secretary of State shall make provision by regulations to ensure that a person granted leave to enter or remain under section 3 of the Immigration Act 1971, whether under rules made under that section or otherwise, who is eligible for public funds shall also be eligible for housing and homelessness services.

Purpose
A probing amendment to elicit an assurance from the Minister that regulations in England will be amended to reverse changes that have produced the unintended consequence that young people and households with children given leave to remain in the UK which allows them recourse to claim all relevant benefits have unintentionally been made ineligible for local authority housing and homelessness services. Also to alert the devolved administrations to the problem.

Briefing
As the result of changes to immigration law and practice, some young people and households with children given leave to remain in the UK that allows them to claim all relevant benefits have unintentionally been made ineligible for local authority housing and homelessness services. This leaves them disadvantaged but also creates a problem for social services who must house them in emergencies if housing departments cannot.

The problem can be solved by small amendments to the housing eligibility regulations and this amendment is designed to elicit an assurance from the Minister that such amendments will be made in respect of England and to alert the devolved administrations to the problem.

The eligibility rules for people "subject to immigration control" have been framed so that they ensured that people who have leave that allows "recourse to public funds" are generally eligible for council housing and homelessness services. Benefits rules do the same, but are framed differently. That has been confirmed as the policy intention by various governments and the relevant departments (Home Office, DCLG, DWP).

The housing/homelessness eligibility rules name "classes" of people who are eligible for housing and homelessness services, and, since 1996, have covered people with indefinite leave, refugee status, humanitarian protection, and, in class B, people with "discretionary leave": limited leave given outside the immigration rules. Leave outside the rules was generally granted to all sorts of people, but leave that allowed recourse to public funds has generally been for people (including children) who had applied for asylum or for leave on human rights grounds and had not been given refugee status or humanitarian protection.

In 2012, the Supreme Court ruled that the Home Secretary could not use discretionary leave so freely, and that generally leave should be given within the Immigration Rules.[8] The Home Office then started bringing a range of cases within the rules. These included people given leave to remain because of long residence (such as families where children had lived seven years or more in the UK) and unaccompanied asylum seeking children[9].
The problem is that the housing eligibility rules have not kept pace: the Housing and Homelessness (Eligibility) (England) Regulations 2006 SI 1294[10] define eligibility for people subject to immigration control by "classes" (regulations 3 and 5). Define class B as: "a person—

- who has exceptional leave to enter or remain in the United Kingdom granted outside the provisions of the Immigration Rules; and
- whose leave to enter or remain is not subject to a condition requiring him to maintain and accommodate himself, and any person who is dependent on him, without recourse to public funds;"

The Welsh eligibility rules[11] are similar (regulations 3 and 5 again):

Class B – a person—

(i) who has exceptional leave to enter or remain in the United Kingdom granted outside the provisions of the Immigration Rules; and

(ii) whose leave to enter or remain is not subject to a condition requiring that person to maintain and accommodate themselves, and any person who is dependent on that person, without recourse to public funds;

Scottish and Northern Irish regulations follow the same pattern.

This leaves many children and young people and, where relevant, their families or carers ineligible for housing although able to claim public funds. They are also ineligible for homelessness a service, which means that they have to rely on relevant social services provision to get emergency accommodation or longer term housing in emergencies.

---

[8] R (on the application of Alvi) (Respondent) v Secretary of State for the Home Department (Appellant) [2012] UKSC 33

[9] They came into effect on 6th April 2013 via HC1039. Among others, they amend the Rules to "include the requirements to be met for limited leave to remain as an unaccompanied asylum seeking child to be granted". These children are now granted leave under para 352ZC-352ZE of the Immigration Rules

[10] http://www.legislation.gov.uk/uksi/2006/1294/pdfs/uksi_20061294_en.pdf

[11] The Allocation of Housing and Homelessness (Eligibility) (Wales) Regulations 2014 No. 2603 (W. 257)

In England the change largely went unnoticed, because it was a change to immigration rules, not housing, but recently some housing authorities have started refusing homeless applications from affected households and this may now be challenged in the courts because it clearly was not the intention of parliament when the eligibility rules were passed.

The Home Office has confirmed that it was an oversight and in 2013 it was understood that the Department for Communities and Local Government would bring forward an amendment to put it right. However, since then the eligibility regulations have been amended at least once without addressing this problem.

The Welsh Housing Act was due to come into force at the end of April 2015 with new eligibility regulations issued under Schedule 2 but the Welsh Government simply repeated the current eligibility regulations as quoted above.

There is a need to tidy up the regulations so as to remove this unintended effect and also future proof them so that any more Home Office or case law changes do not cause unintended effects for housing and social services authorities[12].

The necessary change is very simple: the relevant regulation would now describe Class B as

(b) Class B — a person—

(i) who has leave[13] to enter or remain in the United Kingdom; and

(i) whose leave to enter or remain is not subject to a condition requiring him to maintain and accommodate himself, and any person who is dependent on him, without recourse to public funds;

The effect of this is very simple: whether a person is granted leave within or outside the Immigration Rules, if they have recourse to public funds then they will be eligible. If they do not have recourse they will not be eligible. It removes the need to amend the regulations every time the Home Office creates a new category, and brings the housing and homelessness eligibility rules in line with the Home Office rules on recourse to public funds and eligibility for benefits.

Clause 15 Extension to Wales, Scotland and Northern Ireland

PROPOSED AMENDMENT

(1) Immigration Act 2014 is amended as follows:

(2) In section 76 *Extent* after subsection (2) insert

(2A) Sections 20 to 37 and Schedule 3 extend to England only unless an order is made under this section but no order may be made under this section: -

(a) Extending the provisions to Scotland without the consent of the Scottish Ministers;

(b) Extending the provisions to Wales without the consent of the Welsh Assembly;

(c) Extending the provisions to Northern Ireland without the consent of the Northern Ireland Assembly.

[12] For example, the English regulations recently had a new class added, to cover the small numbers of people who will come to the UK under the "Afghan interpreters resettlement programme". The proposed change would have made this unnecessary.

[13] Or "who has limited leave to remain or enter.."

Purpose
To remove the power to extend by regulation the provisions of this Act on residential tenancies beyond England and to restrict the provisions of the Immigration Act 2014 pertaining to England unless the devolved administrations consent to their further extension.

Briefing
The right to rent provisions have so far only been extended to Birmingham and the surrounding areas so there is no difficulty in restricting the "extent" section of the 2014 Act at this time. The provisions in the current Bill do not extend beyond England but there is power for the Secretary of State to extend them by secondary legislation. The advantage of this is that insofar as they are incompatible with human rights they could be struck down, rather than just declared incompatible, but the disadvantage is that they are not subject to the same detailed scrutiny by parliament as the provisions for England and Wales. The way the provisions have been written is perhaps the sign of a rushed Bill. The Explanatory Note records the view that a legislative consent motion would not be required for this. If, contrary to ILPA's view, it is desired to extend these provisions this should be done on the face of primary legislation
Although immigration is a reserved matter the right to rent scheme impacts upon areas within the competence of the devolved administrations including matters pertaining to housing, town and country planning and economic development. It is therefore desirable that the devolved administrations can control the extension of the right to rent scheme, in its entirety to their areas.

Driving

PROPOSED AMENDMENT/STAND PART

Page 16 line 32, leave out clauses 16 and 17

Purpose
To remove from the Bill the provisions on driving licences and thus maintain the status quo

Briefing

The Bill would create a new strict liability criminal offence of driving whilst not lawfully resident in the UK is proposed, Immigration officers and constables will have powers to impound vehicles which are owned by the person suspected of not having leave or vehicles which that person has driven. Vehicles can be disposed of.

Powers that would enable police, immigration officers and other persons (unspecified) authorised by the Secretary of State to enter premises to search for and seize driving licenses and to search persons for these would sit as well in the enforcement section of the Bill. The test is one of reasonable grounds for believing, rather than knowledge that a person is in possession of a driving licence and that the person is not lawfully resident in the UK. Premises owned or occupied by the person could be searched, but so could the premises in which they were encountered, either without prior authorisation from a senior officer. The authorised person

could seize and retain driving licences. There is an obligation to return them only where it is decided not to revoke the licence or the person wins their appeal against revocation of the licence. Normal powers to have access to and copy seized material do not apply. The Explanatory Note states that this is so that a person cannot make use of a photocopy to secure goods and services, but there are also questions about whether there can be a fair appeal when a person cannot examine the evidence held against them.

The case for the extension of the provisions as to driving licences has not been made out.

Bank accounts

Clause 18

PROPOSED AMENDMENT/STAND PART

Page 22 line 24, leave out line 24 to line 33, and leave out Schedule 3

Purpose

To remove from the Bill the restrictions on access to bank accounts and thus maintain the status quo.

Briefing

Banks and building societies will be required periodically to check the immigration status of holders of some 76 million existing accounts and to notify the Home Office if an account holder does not have the correct legal status. In the absence of legal status accounts can then be frozen or closed.

Banks are already required to perform checks on the identity and residence,[14] and the effect of the 2014 Act on new accounts is that an individual cannot open an account if she or he requires leave to remain in the UK but does not have it.[15]

What is new in the Bill is that these checks will be made on existing accounts with all the existing linkages that will have built up around them (e.g. rent, mortgages, utilities, benefits, child maintenance, disability support, salaries, savings etc).

Shortcomings in Home Office information, with the out of date databases and problems of manual data entry previously described by the Home Secretary, and poor quality decision-making, will inevitably result in mistakes. In addition a person may also become an overstayer by a minor mistake in an application or over a deadline, or being unable to apply for further leave

[14] By virtue of the Third and, now, Fourth, Money Laundering Directives; with the Proceeds of Crime Act 2002 (POCA) as amended by the Serious Organized Crime & Police Act 2005 supplementing the 'anti-terror' measures already in place.

[15] Section 40 of the Immigration Act 2014, supplemented by Immigration Act 2014 (Bank Accounts)(Amendment) Order 2014; the Immigration Act 2014 (Bank Accounts)(Prohibition on Opening Current Accounts for Disqualified Persons) Order 2014; and the Immigration Act 2014 (Bank Accounts) Regulations.

due to exploitative individuals having control over their immigration status document or passport.

An overstayer attempting to fix these mistakes with a new application will be prevented from doing so because immigration forms require payment and invite applicants ("visa customers" in the new lingo) to use debit and credit cards. Where no fee is paid the application is declared invalid. With frozen or closed accounts, this encourages the creation of a subclass of people in the UK who will become dependent on criminal loan sharks, and other exploitative individuals exercising control to migrants caught in these situations.

The impact assessment has recognized at paragraph 64 that firms are more risk adverse, that certain categories of customers find it difficult to open bank accounts.[16] These provisions will have a disproportionate impact on certain racial groups, with severe consequences for individuals whose bank accounts are wrongly closed or frozen mistakenly creating many other associated problems such as homelessness and adverse impact on children. Such measures could contribute to a climate of misunderstanding and ethnic profiling.[17]

There are provisions for appeals against freezing orders but there are no similar appeal provisions against the decision to close accounts. There are also no safeguards to retrieve funds from accounts subsequently found to be closed in error; no provisions for loss of interest on those funds, and no compensation provisions for the associated problems arising from closed accounts (e.g. loss of salary/benefits that could not be credited to the account; repossession of a house due to failure to keep up with mortgage payments etc.).

While an account holder can appeal a freezing order, there is no compensation for losses that arise should the freezing order be overturned. There should be strict timetables for appeals to be heard and, as the individual would not have access to her or his funds, provisions should be made for legal aid funding to cover representation at the appeal.

While these provisions focus on those who do not have legal status, the definition of disqualified persons does not exclude, and therefore provide protection, to those who have an outstanding immigration appeal or continuing legal challenge to their legal status.

The provisions also do not protect individuals who choose to leave the UK after their leave has run out. Such individuals may have saved up funds derived during periods of lawful employment. These individuals will find themselves prevented from accessing their lawfully derived money.

According to the impact assessment, in which it is acknowledged that numbers of are very rough estimates indeed, numbers of genuinely affected accounts are anticipated to be small, c 900 matches per year after the first year are anticipated. The rewards of the procedure appear disproportionately small compared to the effort involved.

This measure will instead have a substantial negative impact in practice, impeding or excluding the access of lawful migrants and citizens to accounts, to add further to problems of

[16] Immigration Bill: tackling existing current accounts held by illegal migrants, 03 August 2015 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/462233/Immigration_Bill_bank_accounts_impact_assessment.pdf

[17] Alabama's HB56 2011 has very similar powers and brought with it a huge increase in discrimination. The most high provide examples include the false arrest of a Mercedes Benz executive and a Japanese Honda worker (http://www.msnbc.com/msnbc/undocumented-workers-immigration-alabama).

exploitation and criminal activity. Those determined to evade controls are likely to circumvent these provisions by establishing and accessing overseas accounts.

With the associated consequences of freezing or closing an account, the proposals may potentially engage Articles 6 (the right to a fair trial), 8 (right to respect for private, home and family life), and Article 1 Protocol 1 (protection of property) as well as Article 14 (right to non-discrimination in the enjoyment of Convention rights) of the European Convention on Human Rights.

Bank accounts

Schedule 3 Paragraph 40G Closure of accounts not subject to freezing orders

PROPOSED AMENDMENT

Page 72, Line 7, at end insert –

(8A) The Secretary of State shall provide any individual she determines to be a disqualified person with the information resulting from her checks under 40C(1) that led to this determination.

(8B) The Secretary of State shall provide an individual she determines to be a disqualified person, and any person or body by or for whom the relevant account is operated, with compensation in accordance with **[new clause (*)],** where that determination is found to have been incorrect.

PROPOSED NEW CLAUSE

Page 72, Line 13, insert the following new clause

(*) Compensation

(1) This section applies where:

(a) a person is determined by the Secretary of State (following a check under 40C(1)) to be a disqualified person;

(b) the Secretary of State provides notification to the bank that the person is a disqualified person under section 40C(3) or 40D(7);

(b) the bank closes an account or prevents an account being operated in compliance with section 40G; and

(c) the determination by the Secretary of State under 40C(1) is found to have been incorrect.

(2) Where subsection (1) applies, the Secretary of State shall pay compensation to:

(a) a person incorrectly determined to be a disqualified person;

(b) any person or body by or for whom the relevant account is operated.

(3) No payment of compensation under this section shall be made unless an application for such compensation has been made to the Secretary of State before the end of the period of two years beginning with the date on which the information resulting

from its checks under 40C(1) is provided to the person incorrectly determined to be the disqualified person.

(4) But the Secretary of State may direct that an application for compensation made after the end of that period is to be treated as if it had been made within that period if the Secretary of State considers that there are exceptional circumstances which justify doing so.

(5) The question whether there is a right to compensation under this section shall be determined by the Secretary of State.

(6) If the Secretary of State determines that there is a right to such compensation, the sum of £10,000 is paid.

Purpose

To make provision for statutory compensation from the Secretary of State to compensate the holder of a bank account where their account is closed or suspended by their bank in reliance on incorrect information provided by the Secretary of State as to the status of the account holder as a disqualified person.

Briefing

These provisions are designed to ensure that individuals are compensated for losses and harm caused by the closure or suspension of their bank accounts as a result of mistakes made by the Secretary of State in identifying the account holder as a disqualified person.

Under 40C(3) the Secretary of State may choose not to apply to the Court for a freezing order in respect of an account and instead notify the bank that the account holder is a disqualified person placing the bank under a duty to close the account or to prevent that account from being operated. There will therefore be no independent oversight by a Court or any other mechanism of the notification by the Secretary of State that leads to an account being closed or prevented from being operated. There will therefore be no opportunity for an individual to challenge the closure of their account or to challenge incorrect or unreliable information that has led to the closure of that account.

Throughout the Bill, it is assumed that Home Office information databases are consolidated, correct and up-to-date and that Home Office staff will provide correct information to banks as to whether an individual is a 'disqualified person' for the purpose of holding a current account.

In ILPA's experience, however, these remain significant and ongoing problems within the Home Office. The following case examples, drawn from experience of the Home Officer Employers' Checking Service, highlight some of the problems in Home Office record-keeping and in the accuracy or reliability of information provided by the Home Office:

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

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 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 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 by the Home Office that she had no status.

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.[18]

Under the provisions of the Bill, individuals whose bank accounts are closed by the Secretary of State will have no means of preventing the closure or the suspension of their account and, at the same time, no form of redress against the Secretary of State if their account is closed or suspended by their bank in reliance on inaccurate information provided to it by the Secretary of State.

The new paragraph 40G(8A) proposed enables the person identified by the Secretary of State as a disqualified person to receive the information that formed the basis of that assessment so that the individual has the opportunity to correct any inaccuracies. The individual concerned would not otherwise receive this information from the bank. Without this duty, the Secretary of State may delay in responding to enquiries and rectifying mistakes made, causing increased disruption to the individual whilst their bank account is closed or suspended.

The new clause proposed, allowing for the provision of compensation, enables some form of redress and restitution for persons affected by the closure or suspension of the bank account and incentivises good administration on the part of the Secretary of State.

The statutory compensation scheme proposed above is based on the provisions under s.133 Criminal Justice Act 1988 for compensation for miscarriages of justice. The sum of £10,000 is proposed for the purposes of debate and could be changed.

[18] Examples excerpted from: *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*, 20 August 2015, http://www.ilpa.org.uk/resources.php/31308/ilpa-response-to-the-department-of-communities-and-local-government-consultation-on-tackling-rogue-l