

**Liberty's Committee Stage Briefing on Part 3,  
Chapter 1 (residential tenancies) of the  
Immigration Bill in the House of Lords**

**February 2014**

## **About Liberty**

Liberty (The National Council for Civil Liberties) is one of the UK's leading civil liberties and human rights organisations. Liberty works to promote human rights and protect civil liberties through a combination of test case litigation, lobbying, campaigning and research.

## **Liberty Policy**

Liberty provides policy responses to Government consultations on all issues which have implications for human rights and civil liberties. We also submit evidence to Select Committees, Inquiries and other policy fora, and undertake independent, funded research.

Liberty's policy papers are available at

<http://www.liberty-human-rights.org.uk/policy/>

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### **Part 3, Chapter 1 – Residential tenancies**

1. Part 3, chapter 1 of the Immigration Bill introduces a new system of immigration control to be administered by private landlords. It forms part of a new regime of in-country immigration checks created by the Bill which, in addition to housing, will become a gateway requirement for access to banking, civil and religious marriage and driving.

2. Clause 17 sets out the duty that “*a landlord must not authorise an adult to occupy premises under a residential tenancy agreement if the adult is disqualified as a result of their immigration status*”. This will require landlords to check the immigration status of all those with whom they enter a tenancy agreement *and* all others who live in their property whether or not they are named in the tenancy agreement. Breach of this duty is punishable via hefty fines and may occur in two ways – if a landlord enters an agreement which allows a disqualified person to occupy a property *or* if he allows occupation by a person with limited immigration status whose status later lapses while they remain in occupation. Schedule 3 sets out a number of tenancy categories excluded from the regime, including social housing, care homes, hospitals, hospices, hostels, refuges, student accommodation, mobile homes etc.

3. This policy is offensive, unworkable and will lead to discrimination in practice. In addition the Government has produced no evidence that it will have a detectable impact on the number of undocumented immigrants. Government has similarly failed to cost the heavy financial burden on business and private tenants that the new administrative scheme will create. As the failing immigration service continues to flounder, the Government’s decision to outsource immigration control to citizens represents an abdication of responsibility.

4. The folly of landlord checks – in principle and in practice - was laid bare in numerous powerful contributions by Peers from across the benches during the Second Reading debate on the Bill on the 10<sup>th</sup> February 2014. Liberty urges Peers to continue their forensic examination of this policy at Committee stage and to vote that these clauses do not stand part of the Bill. In the alternative we urge Peers to support the “*Pilot of residential housing provisions*” amendment tabled by Baroness Smith of Basildon and Lord Rosser to be inserted after clause 15; nothing on the face of the Bill currently requires the scheme to be piloted as Government claims it will. We additionally urge Peers to push Government as to the assessments that an evaluation will contain. In order to be effective it is crucial that a pilot evaluation assesses the many and varied

concerns about the scheme and is, as Baroness Hamwee noted at Second Reading, “not simply the first phase of a predetermined rollout”.<sup>1</sup>

### **Resignation of Immigration Minister, Mark Harper MP**

*“In April 2007 I took on a cleaner for my London flat. In doing so, I was very mindful of my legal and financial obligations and undertook a number of checks beforehand. This included consideration of the HMRC tests as to whether the cleaner was performing her work under a contract for services on a self-employed basis which I concluded she was. However, even though there was no legal requirement for me to check her right to work in the UK, I felt that it was appropriate to do so. I therefore took a copy of her passport to verify her identity and also a copy of a Home Office letter, dated 26 January 2006, which stated that she had leave to remain indefinitely in the United Kingdom, including the right to work and engage in a business.*

*I considered the issue again when you appointed me as a Minister in the Cabinet Office in May 2010 and concluded that as I had performed a right to work check in 2007 and that my cleaner had indefinite leave to remain in the UK no further check was necessary. When you then appointed me as Immigration Minister in September 2012 I went through a similar consideration process and once again concluded that no further check was necessary. In retrospect, I should have checked more thoroughly.*

*As I took the Immigration Bill through Parliament in autumn 2013 I talked a lot about these matters in the context both of employers and landlords. What we do, and will, require of both is that they carry out reasonable checks and take copies of documents. We do not require them to be experts or spot anything other than an obvious forgery. Given this focus on these matters, I thought it prudent to check that all my documents were in order for my cleaner. I undertook an extensive search to locate the copies of documents I had taken but unfortunately I was unable to locate them.*

*As a result, in the week commencing 20 January 2014 I asked my cleaner for further copies of these documents which she provided on 4 February. On 5 February, I asked my private office to check the details with immigration officials to confirm that all was in order. I was informed on the morning of 6 February that my cleaner did not in fact have indefinite leave to remain in the*

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<sup>1</sup> Hansard, 10 February 2014: Column 424.

*United Kingdom. I immediately notified the Home Secretary and my Permanent Secretary. This is now a matter for Immigration Enforcement.”*

5. Immediately prior to the Second Reading debate the former Immigration Minister, Mark Harper MP demonstrated the unworkability of in-country, layperson, immigration control when he resigned from Government on discovering that was employing an undocumented migrant. In his resignation letter to the Prime Minister Mr Harper set out the meticulous thought he had given to the status of his cleaner over seven years and a number of thorough checks he had made during that period. Despite assiduous efforts Mr Harper was unable to accurately determine the immigration status of his employee for several years. If the Immigration Minister - with expert guidance and support at his disposal - is unable to accurately discharge a so-called ‘light touch’ and ‘proportionate’ duty it is inconceivable that millions of landlords, with no expertise or experience of immigration law, will fare any better.

### **Ineffective**

6. The Government has not produced any evidence of the predicted impact of this policy. While routine landlord checks will doubtless make the UK a more hostile environment for all migrants and some British citizens, the Government is unable to say with any certainty that it will have any impact on the number of undocumented migrants. The net impact of the policy may well be to push those with irregular status further under the radar, increasing vulnerability and exploitation by creating another black market in private rented property. The Home Affairs Select Committee sought to draw attention to this risk in its most recent report on the work of the UKBA:

*“The proposed new housing measures in the Immigration Bill must not produce a bonanza for unscrupulous landlords who already operate outside the law, driving more people into the twilight world of beds-in-sheds and overcrowded houses in multiple occupation.”<sup>2</sup>*

7. At best, it’s not hard to imagine how those with irregular status could join friends and family in rented accommodation without the landlord’s knowledge. At worst, the policy could

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<sup>2</sup> HASC, *The work of the UK Border Agency (January-March 2013) – Eighth Report of Session 2013-14*, paragraph 25.

create another black market in the immigration sphere whereby landlords or individuals seek to profit from providing or facilitating accommodation to those without legal status. In short, Part 3, chapter 1 proposes another layer of expensive bureaucracy for immigration enforcement with little or no guarantee of its effectiveness.

### **Discrimination and damage to race relations**

8. Regular and routine identity checking will affect the civil liberties of all members of the community, however these policies will be most keenly felt by ethnic minority individuals or those who appear to be from outside the EEC by reason of their name, skin colour or accent. It will encourage landlords and estate agents to discriminate against minority individuals; make it more difficult for minority ethnic and non-EEA individuals to access housing and cause damage to delicate race relations in the UK.

9. There is overwhelming consensus between landlord industry representatives that outsourcing immigration duties to private landlords and imposing severe financial penalties for breach will lead to discrimination in practice. Some landlords and letting agents seeking to protect themselves from possible liability will chose not to consider non-white tenants or those with non-European sounding names or accents on the assumption that they are more likely than their white or European counterparts to have irregular immigration status. During oral evidence to the Public Bill Committee in the House of Commons, the Chair of the National Landlords Association, Carolyn Uphill said:

*“We are concerned that [the Bill] might have an impact on ethnic minorities, irrespective of their immigration status. That is a major concern for us.”<sup>3</sup>*

She was joined in these concerns by Caroline Kenny of the UK Association of Letting Agents:

*“we can envisage a situation 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.”<sup>4</sup>*

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<sup>3</sup> Public Bill Committee consideration of the Immigration Bill, Tuesday 29<sup>th</sup> October 2013 (Afternoon), in answer to question 73.

<sup>4</sup> Public Bill Committee consideration of the Immigration Bill, Tuesday 29<sup>th</sup> October 2013 (Afternoon), in answer to question 98.

Baroness Hussein-Ece made the same point forcefully at Second Reading –

*“I have real concerns about the negative impact and effects on some of the checks...and I want to highlight housing, ...I have been told that many landlords who will be asked to do the job of immigration officials may well bypass taking part in the bureaucratic checks – they might be too expensive or time consuming...if someone looks or sounds like a person from an ethnic minority or a migrant we could well end up with a situation of ethnic profiling...this would be extremely damaging to race relations and community cohesion.”<sup>5</sup>*

The Government has not produced a credible answer to these acute concerns. Instead clause 28 of the Bill – requiring the Home Secretary to produce a code of practice on how landlords should avoid contravening the *Equality Act 2010* - tacitly accepts that the policy will encourage unlawful discrimination. During Second Reading of the Bill in the Lords, Home Office Minister Lord Taylor glossed over these concerns saying simply *“We will have a statutory non-discrimination code to ensure compliance with equality laws”*.<sup>6</sup> The Government’s failure to engage with the perverse incentive to discrimination that this policy creates reveals either a naiveté or cynicism. Contravention of the code of practice will not make a person liable to civil or criminal proceedings and residential landlord organisations are united in warning that discrimination will take place in practice.

## **Unethical**

10. The stated aim of these policies is to “encourage” those with irregular status to leave the country. While fair and proportionate enforcement of immigration control is the Government’s prerogative, a policy of forced destitution (through the combined effect of homelessness; lack of healthcare etc.) as a tool of immigration control - for those who may already be highly vulnerable and facing exploitation - has obvious grave ethical implications for any society. This was an issue of core concern to the JCHR, which concluded in its report on the Bill:

*“We do not feel that we have been provided with sufficient detail of how [the discretion to grant permission to occupy residential premises] will operate in practice to be confident*

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<sup>5</sup> Hansard, 10 February 2014: Column 494.

<sup>6</sup> Hansard, 10 February 2014: Column 418.

*that the provisions of the Bill will not give rise to beaches of Article 3 in practice where people who face a genuine barrier to leaving the UK are left effectively homeless...”<sup>7</sup>*

The Committee further considered the impact of Part 3 of the Bill on vulnerable migrant children, emphasising that the Government must do more to satisfy Parliament that children will not be exposed to homelessness or separation from family members.<sup>8</sup>

## **Unintended consequences**

11. Liberty has further concerns about the unintended consequences of the new regulatory schemes for vulnerable individuals that may have legal status but are unable – for whatever reason – to evidence it. The Bill somewhat naively assumes that all those with legal status to be in the UK will be able to produce timely evidence of this when they seek to rent property in the private sector. This ignores the situation of those who may not have documentation readily to hand. It is estimated that 17% of British citizens don't have a passport and even for those that do, it is unlikely that the vulnerable - for example those with chaotic lives or fleeing domestic abuse - will be able to produce documentation on demand. This was a point made strongly by homelessness charity, Crisis, during evidence to the Public Bill Committee:

*“People who are homeless are moving around a lot; they lead quite transient lifestyles, which are often quite chaotic. That applies to people who are homeless and, for example, women who are fleeing domestic violence. A lot of the people we work with do not have documents....The provisions of this Bill will make it even more difficult for homeless people to get out of homelessness and into accommodation.”<sup>9</sup>*

12. These proposals will also have obvious implications for all those whose immigration documents have been caught up in the notoriously ill-managed Home Office bureaucracy awaiting an application or appeal decision. These individuals who for whatever reason do not have access to documentation proving their right to be in the UK would not be able to access vital services until they have retrieved documents from past abusers or negotiated

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<sup>7</sup> JCHR, Legislative Scrutiny: Immigration Bill – Eighth Report of Session 2013-14, paragraph 74.

<sup>8</sup> JCHR, Legislative Scrutiny: Immigration Bill – Eighth Report of Session 2013-14, paragraph 77.

<sup>9</sup> Public Bill Committee consideration of the Immigration Bill, Tuesday 29<sup>th</sup> October 2013 (Afternoon), in answer to question 114.

administrative hurdles to obtain new documents. In the meantime they may well find themselves homeless, further exacerbating existing vulnerability.

13. The landlord consultation paper accepted “*a marginal risk that the policy may impact people seeking to quickly move accommodation because of domestic violence where availability of necessary identity documents may be an issue*”.<sup>10</sup> To deal with this, the paper suggests Guidance and Codes of Practice “*to take account of the need to provide for compassionate circumstances and flexibility in some exceptional cases*” and that the exemption of women’s refuges in Schedule 3 of the Bill will plug the remaining hole. This suggested approach reveals in equal measure a disturbing disregard for the needs of those fleeing abuse and a puzzling ignorance of the practical realities of the rental market. It is highly unlikely that those without documents will be prioritised for accommodation when competing with those whose documents are readily to hand. The consultation paper also proposed a helpline for landlords allowing them to check the immigration status of prospective tenants’ whose documents are in the immigration system. Given the chaotic administration and record keeping of the Home Office and UKBA, the idea that the helpline will be able to provide prospective landlords with timely information about the immigration status of all migrants whose decisions are pending is fanciful.

### **Unworkable and bureaucratic**

14. Liberty also believes the scheme will prove burdensome and unworkable in practice. The Government continues to defend this proposal on basis that it is “light-touch” and “proportionate” regime.<sup>11</sup> It also seeks to rely on purported similarities with the employer duties already in operation – “*The duty to check the status of new employees is now a well-established procedure, which is well understood by employers (including small businesses operating on a scale comparable to small private landlords)*”.<sup>12</sup> However it is misleading to suggest that the small businesses required to undertake employment checks are operating on a scale comparable to private landlords. In England, 78% of landlords in the private rented sector own

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<sup>10</sup> *Tackling illegal immigration in the privately rented sector*, Home Office consultation paper, paragraph 95.

<sup>11</sup> *Tackling illegal immigration in the privately rented sector*, Home Office consultation paper, paragraph 17.

<sup>12</sup> *Tackling illegal immigration in the privately rented sector*, Home Office consultation paper, paragraph 10.

just one rental property.<sup>13</sup> It is clear then that the regulatory burden will predominantly be felt by those who seek to bring in income by owning one extra property; generally a much smaller and more informal endeavour than those who run a small business.

15. Myriad complications and difficulties underpin the effective discharge of the duties and the enforcement of a new and vast administrative scheme. Given the complexity of immigration law, there are a vast number of documents that landlords will need to recognise and understand in order to discharge their duties. In the words of Richard Jones, Policy Director at the Residential Landlord's Association, landlords will be "*bewildered by the complexity of it*".<sup>14</sup> It is also difficult to imagine how the Home Office plans to prove (and how a landlord can therefore disprove) that someone has been living in a property when it comes to enforce the duty. Home Office experience in trying to enforce the employer's duty to check immigration status is instructive. In August 2013 a Freedom of Information request found that the Home Office has so far issued £80 million in fines but collected just £25 million.<sup>15</sup>

16. The glaring problems with this proposal have been widely acknowledged in the landlord and letting industry. The vast majority of landlords don't support the proposals to compel them to carry out immigration checks – 82% according to a survey by the Residential Landlords Association. The Chairman of the Residential Landlords Association, Alan Ward, has said –

*"The private rented sector is already creaking under the weight of red tape so it is little wonder that landlords are so clearly opposed to this flagship Government measure. Whilst the RLA fully supports measures to ensure everyone in the UK is legally allowed to be here, this proposal smacks of political posturing rather than a seriously thought through policy. For a Government committed to reducing the burden of regulation it is ironic that they are now seeking to impose a significant extra burden on landlords making them scapegoats for the UK Border Agency's failings."*<sup>16</sup>

The Royal Institution of Chartered Surveyors has said –

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<sup>13</sup> DCLG - Private Landlords Survey 2010.

<sup>14</sup> Public Bill Committee consideration of the Immigration Bill, Tuesday 29<sup>th</sup> October 2013 (Afternoon), in answer to question 88.

<sup>15</sup> Ibid at footnote 19.

<sup>16</sup> See, Landlords Oppose Government's Immigration Plans, 3<sup>rd</sup> July 2013, RLA newshub available at - <http://news.rla.org.uk/landlords-oppose-governments-immigration-plans/>

*“The Government has stubbornly refused to look at introducing better laws to protect both landlords and tenants – it is unacceptable that it expects the property industry to deliver its immigration policy.”<sup>17</sup>*

Lettings agents have also questioned the appropriateness and ability of landlords to accurately check immigration status and acknowledged the likelihood that landlords will attempt to protect against liability by discriminating against prospective tenants. Head of lettings at Sequence has said -

*“If it’s to be the responsibility of all landlords to check passports and visas of foreign tenants, that will lead to questions about how equipped an amateur landlord is at carrying out and verifying these checks. These proposals are just passing off the onus of implementation of the Immigration Act on to landlords.”<sup>18</sup>*

## **Costly**

17. Liberty is puzzled as to why the Government has not yet produced a costed analysis of this radical proposal. The consultation paper accepted that there will be new costs to landlords as a result of the checks and foresaw this cost being passed on directly to private tenants. Government has not felt it necessary to calculate the extent or impact of the cost.

## **Societal shift**

18. The British Government has traditionally undertaken immigration control at the point of entry and exit. Contrary to the approach taken elsewhere in Europe, it has not generally been British practice that the authorities or private sector service providers can demand that you prove your identity and legal status away from the border. This Bill proposes an unprecedented shift in this approach.

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<sup>17</sup> Stephen Thornton, director of external affairs for RICS available at [http://www.lettingagenttoday.co.uk/news\\_features/Landlords-as-border-control-officers-plans-under-fire](http://www.lettingagenttoday.co.uk/news_features/Landlords-as-border-control-officers-plans-under-fire).

<sup>18</sup> Stephen Nation, head of lettings at Sequence, available at [http://www.lettingagenttoday.co.uk/news\\_features/Landlords-as-border-control-officers-plans-under-fire](http://www.lettingagenttoday.co.uk/news_features/Landlords-as-border-control-officers-plans-under-fire).

19. While the Bill does not envisage a new national system of identification (such as the identity card scheme and accompanying National Identity Register, repealed in 2010)<sup>19</sup> it does, alongside other concurrent proposals, introduce a new system of routine identity checks for access to essential public and private services. For the first time immigration control will be brought within the private sphere – the home, the bank – and will become a routine feature of access to healthcare. Proposals in Part 4 of the Bill will for the first time bring immigration checks into the Church, requiring those who wish to have an Anglican marriage to first be referred to the Home Secretary. Parallel proposals elsewhere – including a 12 month residency test for access to legal aid - will mean that in a range of ordinary every day encounters people in the UK – foreign nationals and British citizens - will be required to produce identity documents in a manner not seen since the Second World War.<sup>20</sup> The Government is yet to acknowledge the full scale of checks that all individuals will now be subject to and the societal shift that will result. Liberty urges Peers to put this issue to Government during Committee consideration.

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<sup>19</sup> Identity Documents Act 2010.

<sup>20</sup> ID cards were first introduced in Britain two days after the outbreak of World War II and remained in force until 1952. They were originally issued for three functions only: conscription, rationing and national security. By 1950 this had mushroomed to 39 different functions.