

IMMIGRATION, ASYLUM AND NATIONALITY BILL – BILL 70

HOUSE OF COMMONS REPORT 16 NOVEMBER 2005

New Clause 2

ILPA is a professional association with some 1200 members, who are barristers, solicitors and advocates practising in all aspects of immigration, asylum and nationality law. Academics, non-government organisations and others working in this field are also members. ILPA exists to promote and improve the giving of advice on immigration and asylum, through teaching, provision of high quality resources and information. ILPA is represented on numerous government and appellate authority stakeholder and advisory groups. For further information contact Alison Harvey, Legal Officer, alison.harvey@ilpa.org.uk, 0207 490 1553

New clause 2 would mean that people in detention centres did not have to be paid the national minimum wage for work done under the detention centre rules.

Current position in prisons

- Convicted prisoners working under prison rules are not paid the national minimum wage. Overcrowding tends to mean that there is less work than people wanting to do it. Priority for work is given to convicted prisoners and those with long sentences.
- Remand prisoners do not have to work. If they do, they are not paid the national minimum wage. Again, there may not be work for those who want to do it.
- Those in open prisons, who go out to work in the community, get paid the national minimum wage for work that they do.
- Prisoners who work are subject to health and safety legislation.
- Prison Service Order 4460 addresses prisoners' pay (see http://pso.hmprisonservice.gov.uk/PSO_4460_prisoners_pay.doc) and provides protection, for example specifying that prisoners must not lose pay for disciplinary reasons.

Question for government:

- **What happens to people detained under immigration act powers who have completed their sentence? Do they work, or not? If so, are they paid the national minimum wage or not?**

Applying this to detention centres

- Detainees at Haslar, which was a prison, for instance used to be able to cook in kitchens etc when it was under prison service, which it is reported that many liked. When transferred to immigration service opportunities to work stopped as no exemption for minimum wage.
- It is our understanding that the Association for Visitors to Immigration Detainees have raised the possibility of detainees being able to undertake purposeful activity, including work.
- Most detention centres are run by private contractors. There are concerns that detainees could be used as a source of cheap labour as these contractors seek to cut costs to be commercially competitive. Detainees may want to do something, anything, to relieve the tedium of their days, but this sets up a situation ripe for exploitation.

Questions for government:

- **Will health and safety legislation apply to detainees as to prisoners?**

- **Will the equivalent of PSO 4460 be produced to ensure that there are standardised safeguards across the whole detention estate?**
- **How long is it intended that people, who have been charged with no crime, spend in detention centres?**
- **When will the government publish robust statistics on length of detention, rather than just snapshots?**
- **How will the government ensure that detainee labour is not exploited by private contractors running prisons, and that work is purposeful and not mere skivvyng?**
- **Will the government consider the possibility that detainees be allowed to work in the community, with the protection of the national minimum wage, as is done for people in open prisons?**
- **Will there be power to make deductions from pay?**
- **What will detainees be paid?**

ANNEXE – EXTRACTS FROM PSO 4460

1. POLICY ON PRISONERS' PAY

1.1 It is Prison Service Policy that prisoners receive payment if they participate constructively in the regime of the establishment. The pay schemes and rates of pay which operate within establishments, are a matter for local management subject to the criteria below.

1.2 *Governors and Directors of contracted-out prisons must have a local pay structure which:*

- *reflects Prison Service priorities*
- *supports and encourages constructive participation in regime activities*
- *does not provide disincentives to participation in constructive activities which are part of a prisoner's sentence/training plan or learning plan, intended to reduce the risk of re-offending*
- *complies with the parameters of this PSO and the Service's Incentives and Earned Privileges policies*
- *rewards good performance and penalises poor performance*
- *is fair, open, balanced and affordable.*

1.3 *Governors and Directors of contracted-out prisons must ensure that:*

- *the prisoner pay structure in their establishment is reviewed annually as part of the business planning process, to ensure compliance with paragraph 1.2 above*
- *information on the pay structure is available to all prisoners*
- *prisoners are paid correctly and promptly each week*
- *procedures are in place for monitoring all aspects of prisoners' pay*
- *appropriate records are kept in accordance with the Finance Order PSO 7500*

1.4 Whatever scheme an establishment operates, it is essential that it is reasoned and structured, the requirements of the scheme are clear to both prisoners and staff, and it is not applied in an arbitrary or discriminatory way.

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5. PAY IN SPECIAL CIRCUMSTANCES

5.1 Prisoners who are Short-Term Sick

5.1.1 Prisoners who are unable to work for short periods of time up to four weeks are defined as short-term sick. Prisoners who are sick for four weeks and over are to be treated as long-term sick.

Mandatory:

Establishments must pay the minimum rate of pay for short-term sickness as set out at Annex B

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5.5 Transfers

5.5.1 On transfer, prisoners in previously paid purposeful activity will receive not less than the minimum employed rate for the first two weeks at their establishment. After two weeks the prisoner must either continue to receive their new standard rate of pay appropriate to the activity or return to the unemployed rate of pay if no employment is available. Other prisoners will receive immediately on transfer the rate appropriate to their activity (if any) in the new establishment.

5.5.2 Prisoners who are transferred between establishments for accumulated visits will be paid if they work satisfactorily, while so transferred, either at the rate they were receiving prior to transfer (based on their average earnings over the previous four weeks) or at the rate that is appropriate to the activity on which they are employed after transfer, whichever is the higher. Prisoners for whom no work can be found will be paid at their standard rate prior to transfer.