

ILPA BRIEFING
House of Lords – Committee
January 2012**LEGAL AID, SENTENCING AND PUNISHMENT OF OFFENDERS BILL –**
HL Bill 109**Immigration**
Amendments: 62, 63, 64, 65, 66, 67, 69A, 70A

These Amendments have been grouped as at 20th December 2011:

Amendments 62 to 67 (in the name of Baroness Gould of Potternewton) would retain civil legal aid in relation to immigration for victims of domestic violence whose immigration status is dependent on their abuser.

Amendments 69A and 70A (in the name of Baroness Gould of Potternewton) would retain civil legal aid in relation to immigration for specified 'vulnerable' persons. Those specified persons are children, those whose claim to entitlement to enter or stay in the UK arises from gender-based violence, those whose capacity to represent themselves is significantly impaired by reason of physical or mental disability or illness or age, and such other persons as the Secretary of State may specify in regulations.

Victims of Human Trafficking
Amendments: 61A and 90A

These Amendments have been grouped as at 20th December 2011:

Amendments 61A and 90A (in the name of Baroness Butler-Sloss) would retain civil legal aid for victims of human trafficking in relation to immigration, and other proceedings relating to their experience of trafficking: criminal injuries compensation claims, employment claims (including appeals before the Employment Appeal Tribunal) and damages claims.

Briefing Note:

ILPA supports the various amendments in these two groups, each of which concerns persons who may face particular hardship if without civil legal aid for advice and representation in relation to immigration. Additionally, the amendments in the second group concern a specified class of such persons, victims of human trafficking, in relation to compensatory and damages claims.

General observations:

As highlighted by the Administrative Justice and Tribunals Council¹ in its response to the legal aid consultation:

¹ The Council was established by the Tribunals, Courts and Enforcement Act 2007 and replaced the Council on Tribunals, but with a wider remit to keep under review the system of administrative justice, constitution and workings of tribunals and statutory enquiries. In
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- the provision of legal aid “*in administrative justice is a highly successful product*” leading to high success rates for legally-aided clients including in the area of immigration²;
- immigration is an area of “*extraordinary complexity*”³;
- immigration “*raises matters of fundamental concern*”⁴;
- a substantial driver of legal aid (and other) costs is the poor decision-making and general conduct of the UK Border Agency⁵;
- regulation of immigration advice and representation precludes general advisers simply filling any gap left by the withdrawal of legal aid⁶; and
- “*Removal of legal aid will leave vulnerable people even more prey to unregulated and illegal advisers than they are already*”⁷.

The persons (children, victims of domestic violence, victims of trafficking, the mentally ill etc.), to whom these two groups of amendments relate, are each among those most likely to be vulnerable to the concerns highlighted by the Council. Without legal aid, many will face a heightened risk that no advice or representation is available to them because they cannot afford to pay and there is an absence of any alternative legitimate source of such advice and representation. Alternatively, they will face a heightened risk of exploitation whether at the hands of incompetent advisers or in their seeking to secure funds to pay for advice (e.g. by sexual or labour exploitation) or both. Any business, including a charity or other not for profit, is prohibited from providing immigration advice or representation unless within the regulatory scheme operated by the Office of the Immigration Services Commissioner⁸, save for solicitors, barristers and legal executives.

Domestic violence (Amendments 62-67):

The Government has acknowledged that victims of domestic violence are at particular risk of being trapped in an abusive relationship where their immigration status is dependent on their abuser, and that this risk will be seriously exacerbated if immigration legal aid is not available to them. This includes situations where escaping an abusive relationship could lead to separation from children if the victim of abuse is removed from the UK. However, the Bill (as amended at Commons’ Report⁹) is deficient in failing to fully protect those whose immigration status is dependent in this way. A case example of someone not provided for by the Bill is provided below; and a short briefing is available at <http://tinyurl.com/7j74cl2> with further examples.

Case Example:

A (a non-European citizen) is married to B (a European citizen), who has come to the UK under European free movement laws to work. Neither is

December 2011, the Government announced its intention to abolish the Council. More information on the Council is available at: <http://www.justice.gov.uk/ajtc/>

² See paragraph 21 of the Council’s response, which is available at:

http://www.justice.gov.uk/ajtc/docs/Legal_Aid_Response.pdf

³ See paragraph 75, *ibid*

⁴ See paragraph 76, *ibid*

⁵ See paragraphs 74 & 77 (see also paragraphs 9-11 of Annex A), *ibid*

⁶ See paragraph 76, *ibid*

⁷ See paragraph 76, *ibid*

⁸ Established under the Immigration and Asylum Act 1999

⁹ Introducing paragraph 25 in Part 1, Schedule 1

subject to immigration control, but both have a right to reside in the UK under European law. A's right is dependent on that of B. If A seeks to escape the relationship by reason of B's abuse, A's immigration status in the UK is at risk.

Children (Amendments 69A & 70A):

In relation to private family law proceedings the Government revised its original proposals because "*children are not able to represent themselves*"¹⁰. However, the Government expects children, including separated children, to do precisely that in immigration proceedings. The short ILPA briefing at <http://tinyurl.com/bwcrev9> relating to Amendments **33 & 34** is relevant to children and immigration proceedings, and includes case examples. That briefing also highlights how child asylum-seekers may be affected by the proposed withdrawal of legal aid for non-asylum matters. The briefing at <http://tinyurl.com/4x8lrz9> by the young people and children of Refugee Youth highlights the importance of legal aid in immigration proceedings.

Gender-based violence (Amendments 69A & 70A):

The Amendments draw particular attention to domestic workers and victims of trafficking. As regards the latter, please see below on Amendments **61A & 90A**. Domestic workers may find themselves in a very similar position to victims of domestic violence, in that their immigration status is dependent upon their employer and the household in which they work. In part by reason of their work being 'live-in', many domestic workers are especially isolated with little knowledge of their rights and hence are especially vulnerable to being trapped in an abusive situation by reason of their immigration status and fears about this. Some domestic workers are also victims of trafficking.

Case Example:

M came to the UK with her employer on a domestic worker visa. After working here for about 6 years, M had almost no English. Her employer demanded she work many more hours than her contract required, and she was paid no additional wages for this work. When she sought to question this, her employer used her dependent immigration status against her. However, with legally-aided representation, M was able to escape this abusive situation while regularising her immigration status permitting her to find alternative employment and maintain the remittances on which her children's education in her home country depended.

For more detailed information about domestic workers, see pp23-35 of ILPA's response at <http://tinyurl.com/7v3rz4u> to the UK Border Agency consultation on *employment-related settlement, Tier 5 and overseas domestic workers*.

Other 'vulnerable' persons (Amendments 69A & 70A):

Generally, the Government has responded to concerns about particularly vulnerable groups by suggesting that legal aid may be available under clause 9 of the Bill via exceptional cases funding. However, in Commons' Committee, the Legal Aid Minister said that to access this would require "*convincing evidence that [] absence of public funding would make the*

¹⁰ See paragraph 50, page 21 of the Government's response to the legal aid consultation (Cm 8072), which is at: <http://www.justice.gov.uk/downloads/consultations/legal-aid-reform-government-response.pdf>

assertion of a civil claim practically impossible or lead to an obvious unfairness in the proceedings.”¹¹ How will e.g. children or the mentally ill be enabled to identify, obtain and present the necessary evidence? Given that such persons can be readily identified as generally unable to assert their civil rights unassisted (and given the prohibition against general advisers in immigration), what is the purpose of requiring the bureaucracy of an exceptional case funding application rather than simply designating such persons as within legal aid scope? The case examples below relate to persons who would not be within legal aid scope.

Case Examples:

V was referred to legal aid lawyers by social services as one of London’s 250 most deeply embedded homeless people. He has been in the UK since 1969, initially coming as a student and working in various jobs thereafter until 1997 when he became homeless, remaining on the streets from that time. He lost contact with his family in 1994. He was of the view that he may have been granted indefinite leave to remain in 1978 but was unable to verify this having only a badly damaged, expired national passport and the UK Border Agency would not confirm this. Social services had contacted the UK Border Agency, who had recommended that he instruct a solicitor to make an application to regularise his status. An application on the basis of his long residence is now pending.

E travelled to the UK when a baby and has lived here for over 40 years. When still a minor, her mother applied to register her as British. E has learning difficulties but, although she can barely read or write, tried to deal with the Home Office by herself over many years without success. She persisted until faced with eviction and needing to prove her immigration status. Legal aid lawyers were able to obtain her Home Office file and discovered that the registration application had lapsed because her mother had failed to provide all the necessary documents. They persuaded the Home Office to reopen the application, and in due course E was registered as British; and was able to keep her home.

Human trafficking (Amendments 61A & 90A):

Victims of human trafficking experience sexual and labour exploitation, often of the most shocking kind. However, the Bill by excluding these victims from legal aid to address their immigration problems (and to seek compensation or damages for the abuse they have experienced) risks driving those that have escaped their abuse into other abusive situations as the only means to secure funds to obtain advice or representation. The short ILPA briefing at <http://tinyurl.com/dxzqz1z> relating to Amendment 71 is relevant and provides some case examples.

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¹¹ *Hansard* HC, Public Bill Committee, 8 Sep 2011 : Column 418

Annexe – Amendments addressed by this briefing

61A & 90A

BARONESS BUTLER-SLOSS

(61A)

Page 128, line 20, at end insert—

“Victims of trafficking of human beings

Civil legal services provided to a victim of trafficking in human beings (“V”) in relation to—

(a) rights to enter or remain in the UK;

(b) an employment claim relating to the experience of trafficking;

(c) a claim for damages relating to the experience of trafficking; or

(d) compensation relating to the experience of being trafficked under the criminal injuries compensation scheme.”

(90A)

Page 139, line 42, at end insert—

“Advocacy for victims of trafficking in human beings in proceedings in the Employment Appeal Tribunal.”

Presumed Purpose

To provide for civil legal aid to victims of trafficking in relation to immigration, employment, damages and criminal injuries compensation.

Briefing Note

Amendment **90A** would permit civil legal aid for advocacy on behalf of such a victim in proceedings before the Employment Appeal Tribunal (being the higher tribunal dealing with error of law appeals against decisions of the decision of an employment tribunal at first instance). ILPA supports these amendments, as victims of trafficking by reason of their experience of exploitation are likely to be among the most vulnerable to being deterred by or incapable of dealing with these legal proceedings; and similarly likely to be deterred by the bureaucracy surrounding any application process to an exceptional cases funding scheme (under clause 9). See also Amendments **69A & 70A** and **71**.

62, 63, 64, 65, 66 & 67

BARONESS GOULD OF POTTERNEWTON

(62)

Page 129, line 14, leave out “indefinite”

(63)

Page 129, line 15, after “Kingdom” insert “, or a claim by the individual to a right to reside in the United Kingdom,”

(64)

Page 129, line 17, after “individual” insert “, or had a right to reside in the United Kingdom as a partner of another individual,”

Page 129, line 17, leave out “present and settled in the United Kingdom” (65)

Page 130, leave out lines 1 to 3 (66)

Page 130, leave out lines 4 and 5 (67)

Purpose

To extend the provision of legal aid in paragraph 25, Part 1, Schedule 1 to all victims of domestic violence whose immigration status is dependent on their abuser.

Briefing Note

The amendments are necessary to meet the concern recognised by the Government in introducing paragraph 25 that victims of domestic violence, whose immigration status is dependent on their abuser, are at serious risk of remaining trapped in the abusive relationship for fear of the immigration consequences of escaping the relationship on which their immigration status is dependent. Currently, however, paragraph 25 only provides for victims whose immigration status is dependent on a British citizen or someone who has indefinite leave to remain. This does not protect, for example, the partner of a European citizen or the partner of a refugee. ILPA supports these amendments. A full briefing is available at: <http://tinyurl.com/7j74cl2>

69A & 70A

BARONESS GOULD OF POTTERNEWTON

(69A)

Page 130, line 12, at end insert—

“() Civil legal services provided to a specified person in relation to rights to enter, and to remain in, the United Kingdom.”

(70A)

Page 130, line 39, at end insert—

““specified person” means a person—

(i) under the age of 18;

(ii) who claims an entitlement to enter or remain arising from having been subjected to gender-based violence (including domestic violence and trafficking);

(iii) whose ability to represent himself or herself is significantly impaired through physical or mental disability or illness, through old age or otherwise; or

(iv) any other cases of person as may be specified by the Secretary of State in regulations.”

Presumed Purpose

To provide for civil legal aid in relation to the immigration matters of children, victims of gender-based violence (including domestic violence and trafficking), those whose capacity to represent themselves is significantly impaired through physical or mental disability or illness, old age or otherwise, and any of persons as may be specified by regulations.

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