



ILPA Briefing for House of Lords Report March 2012

LEGAL AID, SENTENCING AND PUNISHMENT OF OFFENDERS BILL – HL Bill 129

Complexity in Immigration Cases

The Government generally says that immigration cases are not complex. While accepting that some immigration cases are complex, its position is that no provision is to be made in the Bill for these cases and these will be excluded from the exceptional cases fund. The Government's position that immigration cases are not generally complex is contradicted by the following:

- The statutory appeals scheme is highly complex. Part V of the Nationality, Immigration and Asylum Act 2002 sets out an intricate set of provisions to determine whether someone may appeal, on what grounds and what evidence may be relied upon in support of the appeal. There are numerous exclusions and limitations within this scheme. The UK Border Agency has often issued notices giving incorrect advice as to an individual's appeal rights.
- The Administrative Justice and Tribunals Council considers immigration to be an area of "extraordinary complexity".
- In November 2011, Lord Justice Jackson said of an issue affecting the situation of persons liable to removal: "...this area of immigration law has now become an impenetrable jungle of intertwined statutory provisions and judicial decisions..." (*Sapkota* [2011] EWCA Civ 1320)
- In July 2010, Lord Justice Longmore said of an issue applicable to all applications made under the immigration rules: "I am left perplexed and concerned how any individual whom the Rules affect... can discover what the policy of the Secretary of State actually is at any particular time if it necessitates a trawl through Hansard or formal Home Office correspondence as well as through the comparatively complex Rules themselves. It seems that it is only with expensive legal assistance, funded by the taxpayer, that justice can be done." (*AA (Nigeria)* [2010] EWCA Civ 773)
- The Immigration Services Commissioner's scheme to regulate immigration advice and services regards work on family reunion, removals and deportation, cases of illegal entrants and overstayers, Article 8 applications, lodging notices of appeal and applications outside the rules as too complex to be done by those who have attained competence at only Level 1 of her scheme. Very few not-for-profits have attained competence beyond Level 1.
- The UK Border Agency website section on "Staff guidance, instructions and country information" contains 20 distinct sets of guidance, many of which are broken down into voluminous chapters and sections making up a vast array of immigration policy and instructions, which is frequently subjected to revision and restructure.
- The Immigration Rules are frequently changed. For example, they were changed eight times in each of the last two years.

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