

Legal Aid, Sentencing and Punishment of Offenders Bill

9 March 2012

Headline:

On Monday 12th March, there will be a debate on this Bill concerning legal aid for immigration cases. This should come up right at the beginning of the debate – i.e. long before peers may drift away to dinner or go home – and this is a vital opportunity. If you have an opportunity to email Lord Bach (the Labour peer who is to move the relevant amendment) before Monday (or at least before noon on Monday), that would be of great help. It would also be useful to email any other peer whom you know or think may take an interest. Lord Bach's email is bachw@parliament.uk and most other peers list their emails at <http://www.parliament.uk/mps-lords-and-offices/lords/>

The current state of the Bill:

The Bill will remove legal aid for nearly all non-asylum immigration work – both advice and representation. This includes for refugee family reunion, for removals and deportation (unless an asylum claim is made and pursued), for Article 8 (private and family life) cases, for victims of trafficking, unaccompanied children and many others (unless an asylum claim is made and pursued). This includes for claims and proceedings before the UK Border Agency, the immigration tribunals and the higher courts. Although legal aid is to be generally retained for judicial review, there are to be significant exclusions by which immigration judicial reviews may not be eligible for legal aid. For individuals who really cannot be expected to represent themselves without legal aid, the Bill includes provision for an 'exceptional cases' fund. However, Government has made clear that immigration cases are to be excluded from this fund.

Legal aid will remain for asylum claims, and pursuing appeals on asylum grounds, challenging immigration detention (e.g. seeking bail) and for applications made under the domestic violence rule or for a registration card as a victim of domestic violence (this latter under European Economic Area regulations). However, victims of domestic violence whose partners are not British or European citizens or settled persons or exercising European free movement rights will not have access to legal aid. Legal aid is to remain for damages claims against public authorities (like the UK Border Agency) for deliberate abuses of power that cause serious harm. However, there is concern that legal aid may not be available for such claims based on careless or negligent unlawful detention.

The Bill's passage through Parliament and implementation:

The Bill has already been through the House of Commons. It is nearing the end of its consideration by the House of Lords. It is expected to be enacted by April, and implemented in 2013.

However, there will be power for the Lord Chancellor to bring back into scope for legal aid areas that the Bill is excluding (such as immigration cases).

The Government's rationale

The Government says that immigration cases are generally not complex. People should not need legal advice or assistance to deal with immigration matters or the UK Border Agency. The Government says that where legal aid is not available, those who cannot pay for advice and assistance can go to a general advice agency or law centre.

The Government says that immigration tribunals are straightforward and user-friendly. People should not need legal advice or assistance to prepare for or present their cases before an immigration judge.

The Government says that even in those immigration cases which are complex, non-asylum cases are not so serious as to justify providing legal aid. Most immigration cases are a matter of personal choice.

The Government says that although judicial review is generally crucial for holding the state to account, immigration judicial reviews against removal directions brought within 12 months of a decision to remove or the conclusion of an appeal against such a decision have no merit. Legal aid should not therefore be provided.

The Government says that unaccompanied children can get immigration advice from their social worker. Other children can rely on their parents for advice or representation in court.

Regulation of immigration advice and services

Regulation was introduced by the Immigration and Asylum Act 1999 with cross-party support. Its aim was to protect migrants from unscrupulous and incompetent people holding themselves out as providing immigration advice. Often, such people do considerable and irretrievable damage in immigration cases.

It is a criminal offence to provide immigration advice or services in the course of a business, whether or not for profit, unless you are a designated professional person or within the scheme of the Office of the Immigration Services Commissioner (OISC). Designated professional persons include solicitors. They generally charge for providing advice or assistance, unless they are legal aid solicitors.

Very few not-for-profits in the OISC scheme are permitted to do work above the most basic (level 1). Those few that do work above level 1 include law centres, who may also be reliant on legal aid. Work that is not permitted at level 1 includes family reunion, cases of illegal entrants or overstayers, removals and deportation, applications outside the immigration rules, Article 8 (private and family life) cases, appeals (including lodging notices of appeal) and judicial review. Nobody in the OISC scheme is permitted to do judicial review work.

ILPA briefings

ILPA briefings on the Legal Aid, Sentencing and Punishment of Offenders Bill are available at: <http://www.ilpa.org.uk/pages/legal-aid-sentencing-and-punishment-of-offenders-bill-2011.html>