

**House of Lords Committee Stage
Crime and Courts Bill (HL Bill 4)****Immigration Appeals: Lapsing Appeals****After Clause 24****LORD AVEBURY****148E**

Insert the following new Clause—

“Appeal in progress

In the Nationality, Immigration and Asylum Act 2002, in section 99(1), omit “96(1) or (2)”.”

Purpose:

To remove the ineffective and erroneous part of the provision in the Nationality, Immigration and Asylum Act 2002 whereby the Secretary of State may cause a properly initiated and extant appeal before the First-tier Tribunal (Immigration and Asylum Chamber) or onward appeal against a decision of that Chamber to be summarily terminated.

Briefing:

Section 99 of the National, Immigration and Asylum Act 2002 currently provides:

“(1) This section applies where a certificate is issued under section 96(1) or (2), 97, 97A or 98 in respect of a pending appeal.

(2) The appeal shall lapse.”

The amendment would remove the words underlined.

This amendment is in effect no more than a modest tidying and simplification of the highly complex statutory appeals provisions. The words underlined cannot have effect because section 96(7) expressly excludes a certificate issued under section 96(1) or (2) from having any effect if it is issued after an appeal has been instituted. This, and section 99 more generally, is explained further below.

Section 99(1) refers to four other sections of the 2002 Act. Sections 97, 97A and 98 concern matters of national security or certain cases where the Secretary of State has certified that a person’s presence in the UK is or would not be conducive to the public good. Certification in these cases excludes any right of appeal to the First-tier Tribunal (Immigration and Asylum Chamber). However, an appeal may lie to the Special Immigration Appeals Commission. A purpose of certification in these cases is to permit the Secretary of State to make use of the special procedures in the Special Immigration Appeals Commission whereby material related to national security or some other public interest may be relied upon in the appeal but kept secret from the appellant and his or her legal representatives. These procedures are currently the subject of consideration for the House of the Lords in the Justice and Security Bill (HL 27).

Section 96(1) and (2) concern situations where the Secretary of State asserts that the subject matter a person now relies upon could and should have been raised in previous appeal proceedings. However, the Secretary of State's opportunity to make such an assertion and issue a certificate to exclude a right of appeal to the First-tier Tribunal (Immigration and Asylum Chamber) is when she is making her decision in relation to the subject matter – not after she has rejected it and an appeal initiated. Indeed, section 96 expressly recognises this. Section 96(7) states:

“A certificate under subsection (1) or (2) shall have no effect in relation to an appeal instituted before the certificate is issued.”

Section 99 was commenced on 1 April 2003 by the Nationality, Immigration and Asylum Act (Commencement No. 4) Order 2003, SI 2003/754.

Section 96, however, was later revised and section 96(7) inserted on 1 October 2004 by the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (Commencement No. 1) Order 2004, SI 2004/2523. However, when this revision was made, section 99 was not amended so as to reflect the change introduced under the 2004 Act.

The ineffective and erroneous part of section 99, which the amendment seeks to remove, is another example highlighting the high degree of complexity in the statutory immigration appeals provisions. As ILPA has highlighted in other briefings concerning this Bill, such complexity remains one reason why the commencement of the legal aid provisions of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, anticipated in April 2013, is likely to cause particular harm to individuals deprived of legal advice and representation by reason of the general withdrawal of legal aid for immigration cases if they are not able to understand the statutory provisions and appeal rights for which Parliament has legislated.

For further information please contact:

Steve Symonds, Legal Officer, (020-7490 1553) steve.symonds@ilpa.org.uk or
Alison Harvey, General Secretary (020-7251 8383) alison.harvey@ilpa.org.uk.