

ILPA immigration update 56

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A three-pronged attack on access to justice

(1) Immigration Bill

The new Immigration Bill continues to creep towards becoming law, having finished its Committee stage in the Commons, with the Report stage to follow. The Bill contains clauses that would – among other things – severely curtail rights of appeal to the Tribunal, removing all rights in immigration cases save for those concerning asylum and human rights. Other appeals would be replaced with an internal Home Office review, leaving judicial review in the High Court the only means of challenge thereafter. Further information on the range of worrying measures contained within the Bill is available from ILPA's website, which has a dedicated Briefings page on the [Bill](#) and an Information Sheet: [New Immigration Bill](#).

(2) Changes to Judicial Review

At the same time as pushing forward with an Immigration Bill which will funnel legal challenges towards the High Court, the Government intends to bring in changes via secondary legislation to make it more difficult for charities and other organisations to bring judicial reviews in the public interest. The costs risks for lawyers acting in such cases are also set to be increased, making it less likely that these types of challenges will get off the ground. This is a concerning assault on the remedy of judicial review, which is the primary means by which government and public bodies are held to account by the public. Further information is available from ILPA's Information Sheet: [Changes to Judicial Review](#).

(3) Restrictions on Legal Aid

Legal Aid provision continues to be eroded. The Government proposed more changes, hot on the heels of the last set of cuts brought about by the Legal Aid Sentencing and Punishment of Offenders Act 2012. The new measures are likely adversely to affect migrants the most. In particular, a new residence test would mean that legal aid across all areas of law will only be available to persons who can demonstrate lawful residence in the UK (both at the time of application, and for a period of 12 months some time previously). This would be an unprecedented move to link legal aid eligibility to immigration status and its obvious discriminatory effects mean that it could well be unlawful; the outcome of a pending legal challenge to the residence test is awaited. For more see our recent Information Sheet: [Legal Aid](#).

When viewed overall, all three sets of proposed changes reinforce each other to represent a serious attack on access to justice. Immigration appeal rights are being taken away, poorer individuals will struggle to access legal aid to pursue the only remedy left to them in many cases: judicial review. And as a final assault, the proposed changes to judicial review will mean that charities and NGOs will be prevented from stepping in to assist those

who cannot otherwise vindicate their rights. The rule of law risks being undermined as a consequence of these far-reaching changes.

You can read more about recent and upcoming changes in immigration law as they affect foreign nationals in prison in ILPA's Legal Director's paper for the Detention Advisory Service conference, available on our website [here](#).

New rules for European nationals

On 1 January 2014 nationals of Bulgaria and Romania will no longer be subjected to restrictions on their access to the labour market. To coincide with this, the Government has pushed through amendments¹ to the European Economic Area (EEA) Regulations 2006, which will come into force on the same date. The amendments will among other things restrict the period for which unemployment benefits are payable to European nationals. See our Information Sheet on this topic: [New European Economic Area Regulations](#).

European migrants will also face a new 100-question habitual residence test when claiming benefits. The test, brought in this month, means that European migrants will for first time be quizzed on what efforts they made to find work prior to coming to the UK, and whether their English language skills are a barrier to finding employment here.

More new regulations: 'Dublin III'

The Dublin Regulations are the EU laws dealing with which country is responsible for deciding an asylum claim, where an asylum seeker has crossed the border from one EU state to another. States can rely on these rules to transfer asylum seekers to another EU State in which they had previously been present. A new ('recast') version of the Regulations, known as 'Dublin III', will become applicable to the UK from January 2014. The new rules contain improved protection for asylum seekers, for example granting them rights to personal interviews, legal assistance and the right of appeal against a transfer decision.

Recent reports of interest

- UNHCR's report "*Considering the best interests of a child within a family seeking asylum*" Full report available [here](#).
- Medical Justice's report "*Mental Health in Immigration Detention*". Initial report available [here](#).
- UNHCR's credibility study "*Beyond Proof: credibility assessment in EU asylum systems*" Full report and summary available [here](#).

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¹ Immigration (European Economic Area) (Amendment) (No.2) Regulations 2013 (SI 2013/3032).