

Immigration Law Practitioners' Association
Lindsey House
40/42 Charterhouse Street
London
EC1M 6JN

Tel +44 (0)20 7035 8186
Email daniel.hartropp@homeoffice.gsi.gov.uk
Web www.ukba.homeoffice.gov.uk

CONSULTATION RESPONSE – INFORMATION REQUESTED

In your response to our consultation “Immigration Appeals: Fair Decisions; Faster Justice” ILPA made a number of requests for information. The requests can be summarised as follows :

1. On what basis the Working Group on Immigration work in the Administrative Court was formulated and why claimant’s representatives were not invited to join.
2. Further clarification of the basis on which the Home Office is denying sight of the minutes of the working group.
3. A copy of the advice that “except in the most exceptional circumstances, decisions of the Upper Tribunal will not be subject to judicial review.”
4. Information about what legislation is being considered.

We have considered your requests under the Freedom of Information Act 2000 and I will respond to each of your requests in turn.

1. The working group was formed in response to a suggestion from Sir Igor Judge, then President of the Queen’s Bench Division. The suggestion was made in a letter to the Lord Chancellor, the relevant section of which is at annex A.

2. The original request for the minutes of the working group was refused on the basis that it concerned information about the formulation of government policy and was therefore exempt under section 35 of the Freedom of Information Act 2000. Our position on this has not changed. I have repeated a section of the reasons we gave for refusing the original request below.

“We have considered whether in all the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosing the information. We have concluded that the balance of the public interests identified lies in favour of maintaining the exemption as there is a greater overall public interest in ensuring that officials have the necessary space to develop and assess policy in this area to ensure that policies are as robust and effective as possible.”

3. Policy advice is exempted from release under sections 35 (1) (a) of the Freedom of Information Act 2000, subject to the public interest test set out in section 2 of that Act.

4. We are considering a number of legislative options and we will be announcing the results of our consideration in due course. Information relating to the consideration of these options is exempted from release under section 35 (1) (a) of the FOI Act 2000, subject to the public interest test set out in section 2 of that Act.

We have considered the public interest test in respect of both 3 and 4 above. There is a public interest in being able to assess the quality of advice being given to Home Office Ministers by their officials and any subsequent decision making which arises from that advice. There is also a public interest in releasing the information concerned as greater transparency will enhance knowledge of the way policy is developed in this matter.

We have also considered the public interest there may be in maintaining the exemption to the duty to communicate. There is a public interest in withholding the information concerned as both Ministers and officials need to be able to conduct rigorous and candid risk assessments, including consideration of the reasons for and against developing policies.

We have concluded that the balance of the public interests identified lies in favour of maintaining the exemption as there is a greater overall public interest in preventing release of this information into the public domain.

If you are dissatisfied with this response you may request an independent internal review of our handling of your request. Internal review requests should be submitted within two months of the UK Border Agency sending a substantive reply to your original request and should be addressed to:

UK Border Agency
Central Freedom of Information Team
11th Floor
Lunar House, Short Corridor
40 Wellesley Road
Croydon
CR9 2BY

During the independent review the department's handling of your information request will be reassessed by staff who were not involved in providing you with this response. Should you remain dissatisfied after this internal review, you will have a right of complaint to the Information Commissioner as established by section 50 of the Freedom of Information Act.

Yours sincerely,

Dan Hartropp

Annex A

This problem [of the burden on the Administrative Court of reconsideration applications and fresh claims] needs urgent consideration, which must involve all the relevant interested parties. I believe that the best way to achieve this would be to establish a high-level working group, members of which should include the following:

- Court of Appeal Judge
- Nominated Judge of the Administrative Court
- Asylum and Immigration Tribunal Judge
- Senior Home Office Official
- Senior Ministry of Justice Official
- Senior HMCS and Tribunals Service Officials

I propose that the group should be chaired jointly by a senior judge and a senior official, and would suggest in particular Lord Justice Richards and Lin Homer. I have spoken to them both, and both would be willing to take this on.

I envisage that the working group would report to us, the Home Secretary and Carnwath LJ, the Senior President of Tribunals. I am happy to leave to you, the Home Secretary and your respective Departments how the group should be supported administratively.

Annex A

List of consultees for the immigration appeals consultation

1. Immigration Advisory Service
2. Legal Services Commission
3. Refugee Legal Centre
4. Immigration Law Practitioners Association
5. Administrative Law Bar Association
6. The Bar Council
7. United Nations High Commission for Refugees
8. The Law Society of England and Wales
9. The Public Law Project
10. The Council of Immigration Judges
11. Administrative Justice and Tribunals Council
12. The Scottish Executive
13. National Assembly for Wales
14. Refugee Council
15. Planning & Environment Bar Association (PEBA)
16. The Judges' Council
17. Local Government Association
18. Bar Association for Local Government
19. Local Authority solicitors (representative group/association to be identified)
20. National Association of Citizens Advice Bureaux
21. Medical Foundation for the Victims of Torture
22. Refugee Action
23. British Ports Association
24. UK Board of Airline Representatives
25. Equality & Human Rights Council
26. Confederation of British Industry
27. Employability Forum
28. English UK
29. International Bar Association
30. Trades Union Congress
31. Universities UK

Annex B

Dear Sirs

I refer to the consultation document entitled "**Consultation: Immigration Appeals - Fair Decisions; Faster Justice**", issued on 21 August 2008.

As you may be aware the senior judiciary in Scotland has previously been in contact with their counterparts in England and Wales regarding various matters concerning the implementation of the Tribunals, Courts and Enforcement Act 2007.

In particular, in relation to the treatment of asylum and immigration cases, Lord Hodge, who has been appointed to act as the Scottish liaison judge in relation to implementation of the 2007 Act, had previously spoken to the Senior President of Tribunals in early July and discussed a forthcoming consultation paper on the topic. At that stage, the consultation paper was not yet completed or available, but the understanding of the Scottish judiciary was that a paper would be issued in due course and that the Scottish judiciary would at that stage have the opportunity to respond as part of the consultation exercise.

In fact, although the consultation paper appears to have been finalised and issued on 21 August, neither this office nor members of the senior Scottish judiciary were made aware of that fact until this office was copied into an email which was sent last week from a policy official at the Scottish Government to a policy official at the Tribunal Service. That email contained a link to the consultation document. This office has now advised the Lord President and the senior Scottish judiciary that the consultation paper has been issued, but I note that the deadline for responding to the consultation exercise is 16 October.

The proposals contained in the consultation paper obviously have the potential to impact significantly on the work of the Court of Session. While efforts are now being made to consult and collate a response on behalf of all Court of Session judges as soon as possible, the Scottish judiciary has indicated that it may also wish to speak to representatives of the English judiciary on matters of common interest in this matter. In light of these factors, the Scottish judiciary considers that it would require further time beyond 16 October to provide a full and meaningful response to the consultation exercise.

I am therefore contacting you at this stage to request that the Scottish judiciary be provided with an extension of the consultation period by a period of four weeks.

Please do not hesitate to contact me if you have any queries regarding any of the above.

David Smith
Deputy Legal Secretary to the Lord President