

# ILPA immigration update 62

---

The ILPA information service is funded by the Joseph Rowntree Charitable Trust

Shauna Gillan ILPA Legal Officer 020-7490 1553 [shauna.gillan@ilpa.org.uk](mailto:shauna.gillan@ilpa.org.uk)

Immigration Law Practitioners' Association [www.ilpa.org.uk](http://www.ilpa.org.uk) 020-7251 8383 (t) 020-7251 8384 (f)

---

July 2014

## **Immigration Act 2014**

The first set of provisions of the Immigration Act 2014 came into force this month, including a requirement that anyone applying for a driving licence must evidence their lawful residence, that bail applications cannot be made within 14 days of a person's planned removal from the UK, and that appeals against deportation will be in many cases now be heard after the person is removed from the country. A provision requiring Courts to have regard to certain, specified matters in cases concerning Article 8 of the European Convention on Human Rights (family and private life) also came into force. Further Information is available from our Information Sheet: [Immigration Act 2014 – Provisions in force July 2014](#).

## **Litigation Update**

Four important judgments were handed down this month.

### **1. Proposed Residence Test for Legal Aid: ruled unlawful**

The Government's controversial Residence Test for legal aid was ruled unlawful by the High Court this month in a unanimous [ruling](#) from a three-judge Court in the case of *The Public Law Project v The Secretary of State for Justice the Office of the Children's Commissioner* [2014] EWHC 2365 (Admin). The test is explained in our Information Sheet: [Legal Aid 18 – the Residence Test](#). In light of the judgment, the Regulations which contain the test (approved by the House of Commons this month) have been withdrawn. This judgment comes a month after the Government's exceptional funding scheme under the Legal Aid, Sentencing and Punishment of Offenders Act 2012 was also ruled unlawful. The Government are appealing both judgments. For Further information on both of these cases see our Information Sheet: [Legal Aid 19 – Litigation Update](#).

### **2. Detained Fast Track System: ruled unlawful**

The Detained Fast-Track system was ruled unlawful in a public interest case brought by the charity Detention Action: *Detention Action v Secretary of State for the Home Department* [2014] EWHC 2245 (Admin). This system is used by UK Visas and Immigration to detain asylum seekers for administrative convenience if it is believed that their case is capable of being decided quickly. Its usage by UK Visas and Immigration has steadily increased over the years since its introduction. The Court observed in its [judgment](#) that survivors of torture and trafficking victims are often detained in error due to inadequate

screening and ultimately ruled that the system as operated “carries an unacceptably high risk of unfairness” and was unlawful.

### **3. Family Migration rules: upheld**

In a case called [MM \(Lebanon\) v Secretary of State for the Home Department \[2014\] EWCA Civ 985](#) the “income threshold rules” for family members were upheld as lawful by the Court of Appeal (overturning the High Court). These rules, introduced in July 2012, prescribe that a British person must have a minimum annual income of £18,600 before their non-EEA spouse or partner can join them in the UK, with additional income requirements for any children (explained in our previous Information Sheet: [Family Migration – Changes to the Immigration Rules 2](#)). This was a disappointing result for the roughly 4,000 applicants whose cases were on hold awaiting the judgment. The rules are resulting in the separation of families and the campaign to have them changed continues. Those representing the claimants in this case intend to appeal to the Supreme Court.

### **4. Detention found to have caused mental illness**

*MD v Secretary of State for the Home Department* [2014] EWHC 2249 (Admin) is another example of the Home Office’s use of immigration detention powers being unlawful – something that is regularly found to be the case. The High Court held that the claimant’s detention had caused her to suffer a mental illness, not only exacerbated a pre-existing condition (as is more common).

### **Modern Slavery Bill**

The Modern Slavery Bill is now at Committee stage in the House of Commons and the Committee of MPs considering it (the Public Bill Committee) have commenced hearing evidence. The Anti-Trafficking Monitoring Group, a coalition of non-governmental organisations has created an [Alternative Bill](#) to highlight the lack of protection measures for trafficked persons in the Bill, something that ILPA and others wish to see addressed in the course of passage of the Government’s Bill. ILPA’s Briefings on the Bill are available here: <http://www.ilpa.org.uk/pages/briefings-on-the-modern-slavery-bill-2014.html>

### **EEA Rule Change in Force**

A change to the rules about European free movement came into force on 1 July 2014, tightening the definitions of a “worker” or “job seeker”. These definitions are important, as European Economic Area nationals will only get certain rights if they fall within those categories, for example the right to access State benefits or the right to have family members join them in the UK. This change the latest in a series of moves to impose restrictive interpretations of EU law in domestic law..