

ILPA immigration update 64

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

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November 2014

Immigration Act

Some of the more controversial provisions of the Act were brought into force in late October, including the new provisions restricting appeal rights and on removal. However these provisions will only apply to selected groups, namely “foreign criminals” as defined and students (and their families). There is no indication when the provisions will be rolled out more generally. New [procedure rules](#) have been issued for the Immigration Tribunal, which take account of the changes. A [code of practice](#) for landlords, who are now, if resident in particular regions, required to carry out immigration checks on tenants, has also been issued. These housing checks were commenced in parts of the West Midlands (Birmingham, Walsall, Sandwell, Dudley and Wolverhampton) on 1 December 2014, with no date set as yet for when the checks will become nationwide. See further ILPA’s Information Sheet: [Immigration Act – Housing](#).

ILPA’s full series of Information Sheets on the Bill may be accessed [here](#). The most recent sheets published are: [Immigration Act: Article 8](#); and [Deprivation of Citizenship](#).

Modern Slavery Bill

This Bill has entered Committee stage in the House of Lords which continues until 10 December 2014. Charities, including ILPA, continue to brief Parliamentarians on the need for stronger victim protection measures, including an extension of legal aid so that all trafficked and enslaved persons have access to legal representation at the earliest possible stage. See here for ILPA’s Briefings on the Bill: <http://www.ilpa.org.uk/pages/briefings-on-the-modern-slavery-bill-2014.html>.

The Parliamentary debates to date have included a focus on matters such as the need for independent legal guardians for trafficked children, for a separate offence of child exploitation, the role of the Anti-Slavery Commissioner, the need for measures to reduce the wrongful prosecution of victims and the provision of a statutory defence for victims who are prosecuted. A vote on improving the situation of Overseas Domestic Workers was very narrowly lost in the Commons, but the matter will be taken up again in the Lords. Meanwhile the review of the National Referral Mechanism, the process for identifying victims of trafficking, has released an initial report, available here:

<http://www.ilpa.org.uk/resources.php/30195/interim-report-of-the-home-office-review-of-the-national-referral-mechanism-for-victims-of-trafficki>

Criminal Justice and Courts Bill

This Bill was debated in the House of Lords last month, where the government had three significant defeats on parts of the Bill proposing to alter the remedy of judicial review. The three issues on which votes were won were: (i) blocking a change which would mean that judges could not grant judicial review if it was “highly likely” that the outcome would have been the same even without the unlawful act complained of (at the moment it can be granted unless it is “inevitable” that the result would have been the same); (ii) preventing a new requirement for applicants for judicial review to provide extra financial information and (iii) stopping new powers to award costs against interveners. The Bill returned to the House of Commons where the amendments made in the Lords were debated on 1 December, and rejected. The Bill now returns to the Lords, who will decide whether or not to continue their opposition to the Government’s proposals. This stage of a Bill is known as ‘ping pong’. The House of Lords debate considering the amendments in question is available here:

<http://www.publications.parliament.uk/pa/ld201415/ldhansrd/text/141027-0001.htm#14102714000824>

New country guidance on Somalia

A new, lengthy, country guidance case has been issued by the Tribunal concerning the question of returning people to Mogadishu. The guidance given in the case, *MOJ & Ors (Return to Mogadishu) (CG)* [2014] UKUT 442 (IAC), effectively gives the go ahead for enforced returns to that city in future as the Tribunal found that the level of violence does not reach the requisite threshold of severity for removals to be in breach of the UK’s international obligations. This changes the position that has applied since the previous country guidance case in 2011: *AMM and others (conflict; humanitarian crisis; returnees; FGM) Somalia CG* [2011] UKUT 445 (IAC). The new guidance will mainly affect persons who originally came from Mogadishu, and there will still be some scope to argue that return is not appropriate in an individual case.

Conservative plans to repeal Human Rights Act

Last month the Conservative party announced proposals to repeal the Human Rights Act 1998 by providing that the rulings of the European Court on Human Rights do not bind the UK, among other changes. The full proposals are set out here:

<https://s3.amazonaws.com/s3.documentcloud.org/documents/1308198/protecting-human-rights-in-the-uk.pdf>

Detained Fast-Track litigation

The case concerning the lawfulness of the detained fast-track system, *Detention Action v Secretary of State for the Home Department* [2014] EWCA Civ 1270 had another ruling from the Court of Appeal last month. The Claimant was seeking a suspension of this system, on the strength of the High Court judgment handed down in the Summer. The Court of Appeal declined to do this. The litigation continues with another judgment awaited in the near future on the question of the lawfulness of detaining asylum seekers who are awaiting appeals (as opposed to those who have yet to receive a decision).