CATHOLIC BISHOPS' CONFERENCE OF ENGLAND AND WALES

Office for Refugee Policy

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LATE CHANGES TO THE ASYLUM & IMMIGRATION (TREATMENT OF CLAIMANTS) BILL 2004

[This Briefing does not cover the immigration aspects of the changes][1]

INTRODUCTION

On 8 June, the Government tabled a number of last minute amendments to the **Asylum and Immigration (Treatment of Claimants) Bill 2004**. Churches and organisations across the NGO sector, including many members of the House of Lords and MPs, criticised the government not only for the timing of these changes (two days before the local government elections), but also for the severity of the amendments proposed. The Government insisted however that the timing was purely for procedural reasons and that these measures were meant to introduce "speed and finality" to its asylum reform programme.

Earlier on the 6 June, Lord Rooker, the Government's Home Office minister in the House of Lords admitted that he had not been briefed about the report of the Joint Committee on Human Rights (Lords and Commons) which has been so critical of much of the Bill. In frank language, Lord Rooker said, *"…I did not even know that the report was being published yesterday. Before coming back on the scene, I have obviously tried to get briefed on the amendments that we are discussing today and on some of the issues that were not in the recommitted part of the Bill. I wanted to be updated but I did not know that the report had been published. I clearly could not come with a response in 24 hours. I hope that this is the last time that happens…I always speak at this despatch box on behalf of the government, unless I am speaking for myself. At the moment I am speaking for myself and for the government in apologising to your Lordships' House. The Government's treatment of the committee could be bordering on contempt in not allowing sufficient time for scrutiny because I cannot respond…This situation puts me in a position where I cannot do my job of representing the Government to this House…That situation has to be corrected in future".*

THE AMENDMENTS AND CHANGES IN BRIEF:

Community work for unsuccessful asylum seekers

At present, under **Section 4 of the Immigration and Asylum Act 1999**, unsuccessful asylum seekers who cannot be immediately returned to their countries of origin would be given "hard case" welfare support in the form of basic board and lodgings. The new amendment states that failed asylum seekers, who cannot be returned, would be compelled to do "community work" in exchange for welfare support. The government argues that people in such a situation should:

a) contribute towards the costs in accommodating them by doing community work and

[1] e.g. New restrictions on people "subject to immigration controls" wishing to marry in the UK; new powers for the Home Secretary to remove appeal rights of entry clearance applicants; new powers for the Home Secretary to start immediate deportation of an individual, as soon as s/he has deprived that individual of citizenship, for reason of national security etc.

b) be engaged in community projects, allowing the local community to see them contributing to society; such projects would help dispel myths about "refugee sponging".

The Joint Committee on Human Rights however said that there was a "significant risk" that such a measure would breach **Article 4 (2) of the European Convention on Human Rights (ECHR),** which states that "no one shall be required to perform forced or compulsory labour".

Withdrawal of back payments to successful asylum seekers

Currently, asylum seekers who have been granted refugee status can apply for a backdated lump sum of the difference between National Asylum Support System (NASS) support[2] (70% of income support) and the amount of full income support. The new amendment replaces the current back payment with a loan system. This change is necessary, the Government argues, to meet the costs of integration.

Restricting refugees the right to move

The Government argues that it acted to relieve the pressure of refugees (successful asylum seekers and those given humanitarian status) from moving to London and the south east. A new clause was added to restrict the right of refugees, and others granted permission to stay, to apply for local authority housing, only in the areas to which they have been dispersed. **Section 199 of the Housing Act 1996** accepts that an asylum seeker will have 'local connection with any area in which s/he has been accommodated by NASS. NASS power to disperse asylum seekers is covered by **Section 95 of the Immigration and Asylum Act 1999**.

This amendment is meant to counteract a House of Lords ruling[3] that dispersed accommodation arranged by NASS is not an asylum seeker's choice. Therefore it did not constitute 'local connection'; asylum seekers, on gaining refugee status, should have a right to move.

Related issues

The destitute Clause, Section 55 of the Asylum and Immigration Act 2002 which denied welfare support to those who did not apply for asylum within 3 days was finally reformed with a new NASS policy introduced on 28 June 2004.[4] The new policy which reinstates welfare support to all asylum seekers "unless it [NASS] is positively satisfied that the individual concerned has some alternative form of support available to him/her". The change in policy is in response to a Court of Appeal ruling[5] that "adequate food and basic amenities such as washing facilities and night shelter" are basic rights and denying them amounts to a breach of **Article 3 of the ECHR**.

The Department for Constitutional Affairs has proposed new arrangements for publicly funded immigration and asylum work. The new scheme will limit claims to 5 hours work for initial applications, 4 hours for appeals, and 2 hours for bail hearings. In addition, the new arrangements

[2] NASS: an office within the Home Office that decides welfare entitlement for asylum seekers and arranges their dispersal.

[3] See Al-Ameri v Kensington & Chelsea RLBC [2004] 2 WLR 354

[4] See the joint statement of Bishop Patrick O'Donoghue (CBCEW) and Bishop John Mone of the Scottish Bishops' Conference criticising Section 55 issued on 19 April 2004.

[5] SSHD v Limbuela, Tesema & Adam [2004] EWCA Civ 540

will be put in place a **"no-win-no-fee" legal aid remuneration scheme,** giving the newly appointed "immigration judges" the power to award payments to lawyers only in "successful" and "near-miss" asylum cases.

This Bill is most likely to face stiff opposition long after it has been placed on the statute books. Royal Assent is expected before Parliament's summer recess towards the end of July 2004.

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