

# **ILPA** information sheet

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## **Legal Aid Bill**

*24<sup>th</sup> June 2011*

On 21<sup>st</sup> June, the Government published the Legal Aid, Sentencing and Punishment of Offenders Bill. The Bill contains many measures relevant to criminal justice. However, a large part of the Bill is concerned with Legal Aid. This information provides general information about the Bill, and some information about immigration cases. Some further information, specific to immigration cases, is provided by the “Legal Aid Bill 2” information sheet.

This Bill is to receive its first full consideration and debate by Parliament at its Second Reading in the House of Commons on 29<sup>th</sup> June 2011.

### **Background**

The Legal Aid part of this Bill relates to the proposals made by the Government in November 2010. Previous information sheets provided information about those proposals – see e.g. the December 2010 “Legal Aid 6 – The Latest Proposals” and “Legal Aid 7 – Immigration Proposals” information sheets.

In November 2010, the Government announced a consultation about these proposals. The December 2010 “Legal Aid 8 – The Consultation” information sheet provided information about that. The Government has now published a lengthy response to the many responses it received to its consultation. The Government’s response is available (with the original consultation papers) at: <http://www.justice.gov.uk/consultations/legal-aid-reform.htm>

### **Areas of law to be generally excluded from Legal Aid**

In its November 2010 consultation the Government proposed that Legal Aid would generally not be available for advice or representation to assist with asylum support, debt, education, employment, housing, immigration, private family disputes and social welfare. The “Legal Aid 6 – The Latest Proposals” information sheet briefly explained these proposals.

The Government’s response to the consultation and the Legal Aid Bill now confirm that the Government intends to proceed with most of the proposals and generally exclude Legal Aid in these areas.

Asylum support and immigration are referred to below (under the heading “Immigration”). As for the other areas listed here, the Government has said that it intends to slightly modify its original proposals so that Legal Aid will be available in a wider range of cases where someone is at risk of losing his or her home and for cases concerning Special Education Needs.

## **Immigration and Legal Aid**

The “Legal Aid 7 – Immigration Proposals” information sheet set out the Government’s proposals on Legal Aid in immigration cases. The Government’s response to the consultation and the Legal Aid Bill now confirm that the Government intends to remove Legal Aid for immigration cases and keep Legal Aid for asylum and immigration detention cases as described in that information sheet.

However, the Government has made changes to its proposals on asylum support and judicial review; and these are included in the Bill. These changes are described below.

### **Asylum support**

On asylum support, the Bill would keep Legal Aid for advice and assistance on claims for support provided the claim includes a claim for accommodation. As now, there would continue to be no Legal Aid available for representation at an appeal against a refusal of support. Different to now, there would also not be Legal Aid available for someone claiming financial support only.

### **Judicial review**

On judicial review, the Bill would generally keep Legal Aid for judicial review cases but with some specific exceptions in immigration cases. These specific exceptions are:

- where the issue in the case relates to whether a person is entitled to enter or remain in the UK, and within the last 12 months the same or a similar issue was decided by a previous judicial review or appeal
- where the case relates to judicial review of removal directions and a decision to remove the person was made or an appeal against the decision to remove was decided (or withdrawn) within the last 12 months

Where either exception applies, Legal Aid would ordinarily not be available. However, these exceptions would not prevent Legal Aid being provided in a judicial review case if that case:

- relates to a refusal of asylum; or
- is brought against a decision by the UK Border Agency to prevent an appeal on the basis that the subject matter of the appeal has or could have been dealt with by an earlier appeal

### **Other matters of note**

While the Bill would keep Legal Aid for asylum claims, it would generally exclude Legal Aid for refugee family reunion cases.

While the Bill would keep Legal Aid for victims of domestic violence involved in certain family law proceedings, it would generally exclude Legal Aid for immigration cases relating to domestic violence.

The Bill would permit Legal Aid to be provided in some ‘exceptional’ cases, even though these relate to matters (e.g. immigration) that the Bill generally excludes from Legal Aid. For Legal Aid to be provided, there would have to be a decision by the Director of Legal Casework (an official in the Ministry of Justice) that it is necessary to provide Legal Aid in the case so as to avoid a breach of the UK’s obligations to the individual under the 1950 European Convention on Human Rights or European Union law. However, it is unclear how this will work; and it is understood that the Government intend that this provision will generally not allow Legal Aid in cases relating to someone’s human rights or rights under European Union law.