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Legal Aid Bill 7 – Update

24th January 2012

The Legal Aid, Sentencing and Punishment of Offenders Bill is currently at Committee stage in the House of Lords. This stage is the first opportunity for the House of Lords to consider a Bill clause by clause, and to debate amendments to the Bill. However, amendments are rarely put to a vote at this stage. Votes on amendments usually come at the next stage (Report).

The Lords are in the middle of Committee stage. This stage is due to be completed on 9 February 2012. On the fourth day of Committee stage (18 January 2012), the Lords considered several immigration-specific amendments relating to legal aid. This information sheet provides information about the debates on these immigration-specific amendments. It highlights two important statements that were made during these debates, and provides some further information about the amendments that were debated.

Immigration cases and exceptional cases funding

Clause 9 of the Bill provides for exceptional cases funding. In the House of Commons, Jonathan Djanogly MP, Minister for Legal Aid, had said:

...we recognise that in some circumstances people will be unable to represent themselves, but we think that those cases will be the exception. The exceptional funding arrangements will ensure that legal aid will be available where required. (Hansard HC, 31 Oct 2011 : Column 648)

However, the spokesperson for the Government in the House of Lords, Lord Wallace of Tankerness, explained the Government position in relation to immigration cases:

The position in the Bill is that exceptional funding should be granted only where it is required by law; that is that denying legal aid would risk a breach of an individual's rights under EU [European Union] law or the ECHR [European Convention on Human Rights]. Case law has been consistent: that immigration cases do not... involve such a determination and, as such, exceptional funding would not be available. (Hansard HL, 18 Jan 2012 : Column 668)

By this statement, the Government has made clear its position that it considers immigration cases will not qualify for exceptional cases funding – even where the individual is unable to represent themselves (e.g. because he or she is too distressed, is mentally ill or the case is too complex).

Labour party position on immigration and legal aid

Lord Bach set out the position of the Labour party during the debates. He said:

The position of the Official Opposition on legal aid for immigration matters is clear; we believe that immigration law should remain within the scope of legal aid. It is an important, if qualified, check on poor decision-making by the UK Border Agency and other agencies, and it ensures that immigrants, many of whom are vulnerable, disorientated and scared, are able to assert their rights by accessing what may be a confusing new judicial system. Moreover, it keeps the machinery of justice working efficiently as well. (Hansard HL, 18 Jan 2012 : Column 616)

He, and his colleague Baroness Gale, spoke in support of several of the immigration-specific amendments in the debates.

The amendments that were debated

Many of the immigration-specific amendments were tabled by Liberal Democrats. Lord Thomas of Gresford and Lord Avebury led the debates on many of these, including those to retain legal aid for immigration judicial review claims, refugee family reunion applications, those who are at risk of immigration detention and appeals against the decision of an immigration judge.

Baroness Gould of Potternewton (Labour) also tabled amendments. These included amendments to retain legal aid for migrant victims of domestic violence and migrant domestic workers.

Amendments were also tabled by two crossbenchers – Lord Ramsbotham and Lady Butler-Sloss. A crossbencher is a member of the House of Lords who is not allied to any particular party. Their amendments included amendments to retain legal aid for children, victims of trafficking and for those bringing claims against the UK Border Agency for unlawful detention.

Lord Wallace, for the Government, responded to these amendments. In doing so, he did little more than repeat what the Government has said on previous occasions – see e.g. the November 2011 “Legal Aid Bill 6 – Update” information sheet at <http://tinyurl.com/6necr3v>.

Other matters of interest

Several reports relevant to the legal aid debates have been published recently. These include the following reports published in January 2012:

- Kings College London has published a report by Dr Graham Cookson, *Unintended Consequences: the cost of the Government’s Legal Aid Reforms*. The report seeks to assess whether the Government’s projected savings by removing various areas from the scope of legal aid will be realised, and sets out several reasons why the Government will not achieve its projected savings. The report is available at: <http://www.kcl.ac.uk/schools/sspp/mgmt/news/cookson>
- Legal Action Group has published a report by Fiona Bawdon and Steve Hynes, *London Advice Watch*. The report seeks to assess the future for not for profit advice agencies in London. The report indicates that there are serious risks for the future of these agencies. The report is available at: <http://www.lag.org.uk/files/93986/FileName/LondonSWLReportFinal.pdf>

The debates on the Bill in the House of Lords (and House of Commons) are available at:

<http://services.parliament.uk/bills/2010-11/legalaidsentencingandpunishmentofoffenders/stages.html>