

ILPA briefing for the debate Westminster Hall debate: asylum seekers and the right to work, in the name of Alison Thewiss MP, Wednesday 11 January 2017

The Immigration Law Practitioners' Association (ILPA) is a professional membership association, the majority of whose members are barristers, solicitors and advocates practising in all aspects of immigration, asylum and nationality law. Academics, non-governmental organisations and individuals with an interest in the law are also members. Established in 1984, ILPA exists to promote and improve advice and representation in immigration, asylum and nationality law through an extensive programme of training and disseminating information and by providing evidence-based research and opinion. ILPA is represented on many Government and other consultative and advisory groups.

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The case for the persons seeking asylum to be given the right to work has been forcefully made on many occasions, in work led by the Still Human Still Here coalition,¹ most recently during the passage of the Immigration Act 2016.² Amendments tabled during the passage of the Bill would have placed an obligation on the Secretary of State to make immigration rules to give persons seeking asylum permission to work if they had been waiting for more than six months³ for their application for asylum to be decided by the Home Office, or had been waiting more than six months for a decision on whether to treat further submissions,⁴ as a fresh claim for asylum. The amendments would have required the Secretary of State to make rules to grant permission to persons seeking asylum on terms no less favourable than the terms on which permission is given to recognized refugees, which is currently that they are not restricted as to the employment they can undertake.

The amendment on these terms was pressed to a vote and carried in the Lords,⁵ but was defeated when the Bill returned to the Commons.⁶

Still Human Still Here has argued that allowing asylum seekers who have been waiting six months for a decision on their cases to work has several benefits. We summarize their arguments here:

¹ Still Human Still Here is a coalition of some 80 organisations which includes nine City Councils the Red Cross, Crisis, the Children's Society, Mind, Citizens Advice Bureau, Doctors of the World, National Aids Trust, and the main agencies working with asylum seekers in the UK. For details, see: www.stillhuman.org.uk.

² Amendment 228 debated in the Public Bill Committee, 13th sitting (morning), *Hansard*, cols 460–463 (10 November 2016); Amendment 2 debated at Commons' Report *Hansard*, HC cols 227–246 (1 December 2016); Amendment 134 debated in Lords' Committee *Hansard*, HL col 850–851 (20 January 2016); Amendment 57 Lords' Report Immigration Bill *Hansard* HL Report cols 1320–1336.

³ Nine months in a later version of the amendment, Amendment 59B, debated at Ping-Pong, *Hansard* HL Vol 771 (26 April 2016).

⁴ Made in cases where they remained in the UK following conclusion of all their appeals and their circumstances changed.

⁵ Amendment 57 *Hansard* HL Report cols 1336, division, amendment carried by 280 votes to 195.

⁶ Debate on Lords amendment 59, *Hansard*, HC, Vol 608. Lords' amendment disagreed, 303 votes to 60. See further Amendment 59B, debated *Hansard* HL Vol 771 (26 April 2016).

- *It provides persons seeking asylum with a route out of poverty.*
- *Persons seeking asylum who are able to work will not need to be supported for extended periods and instead can contribute to the economy through tax revenues and consumer spending.*
- *Being able to work safeguards the health of persons seeking asylum and also safeguards them from exploitation and from resorting to irregular work. It thus protects their health.*
- *It avoids the negative consequences of prolonged economic exclusion and forced inactivity (e.g. poverty, detrimental impact on mental health and self-esteem, break up of marriages and families, etc.).*
- *Other EU countries allow persons seeking asylum to work after nine months and eleven of them grant permission to work after six months or less if a decision has not been made on their asylum application.*
- *For those who are eventually given permission to stay, avoiding an extended period outside the labour market is key to ensuring their long term integration into UK society and encouraging them to be self-sufficient.*

The UK government is currently bound by the EU Reception Directive in its original form,⁷ which requires persons seeking asylum to be given permission to work if their initial application (exclusive of any appeals) has not been decided within 12 months. A person may be kept out of working for very much longer: for example they get the initial decision within 10 months but it then takes a further year for their first appeal to be heard and then have to wait for onward appeals to be concluded. By the time they are recognized as refugees, they may have been out of the labour market for years. Further, the UK limits the persons seeking asylum to skilled work in occupations on the shortage occupation lists.

The then Minister, the Rt Hon James Brokenshire MP, in Commons Committee on the Immigration Bill defended the Government's decision not to opt in to the recast reception conditions directive requiring member states to grant automatic access to the labour market for persons seeking asylum after nine months, saying that it considered that the Commission's proposal could undermine the asylum system "by encouraging unfounded claims from those seeking to use the asylum system as a cover for economic migration."⁸ It was observed in the debate that the Minister was unable to point to any evidence in support of his fears that this would be a pull factor.

Mr Brokenshire did not address that if the Home Office decided cases within its (already generous) six months target time no permission would arise, as Mr Paul Blomfield MP pointed during the debates.⁹ Sir Keir Starmer QC MP identified that some 3600 cases are currently not decided within the Home Office target time of six months. The Home Affairs Committee in its report of the work of the Immigration Directorates published during the passage of the Bill on 4 March 2016 commented on the lack of improvement in tackling immigration backlogs,

We are concerned that the department may not be able to maintain the service levels it has set itself on initial decisions for new asylum claims within 6 months. To do so may require further funding and resources. (Paragraph 15)

Our predecessor Committee regularly expressed its concern about the immigration backlogs. The current backlog of cases reached 358,923 in Q3 2015, an increase of 7,000 from a year earlier. It is deeply

⁷ Directive 2003/9/EC.

⁸ Public Bill Committee Col 461

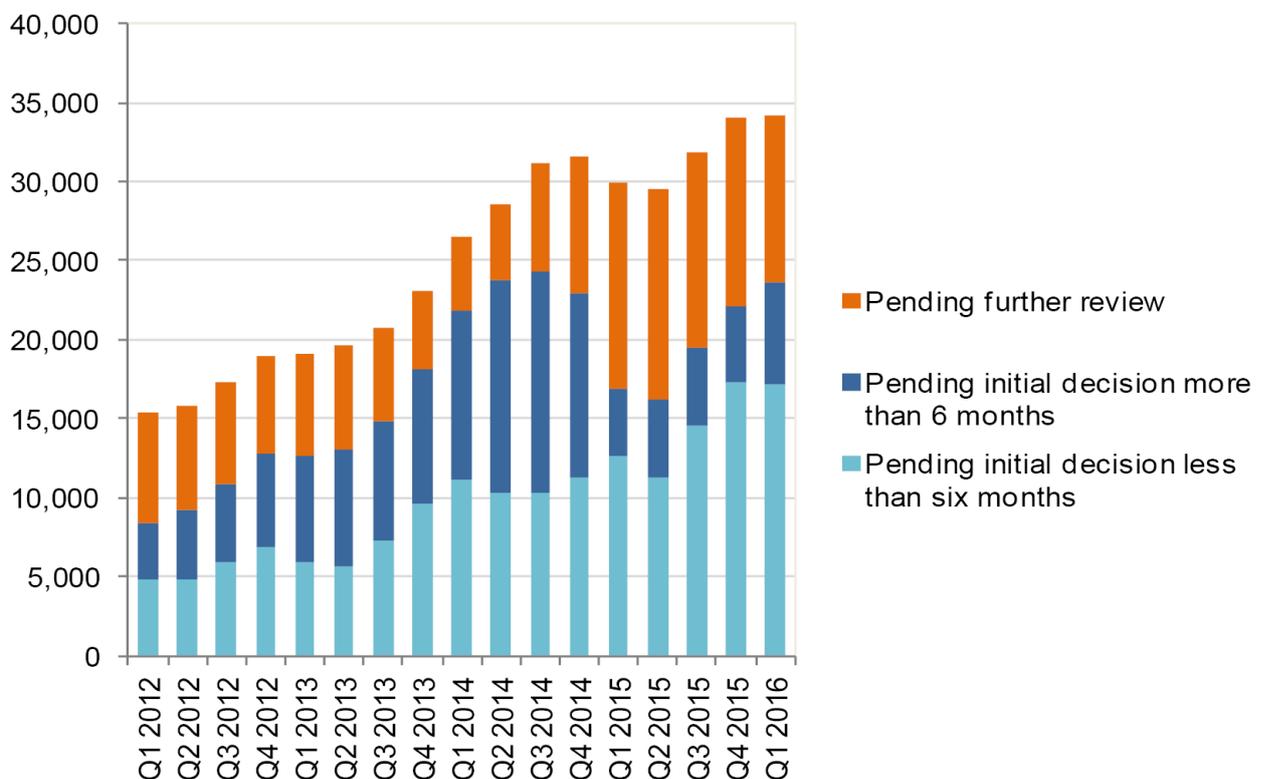
⁹ Col 462.

concerning that there has been so little improvement and we have to return and restate the issue again. (Paragraph 97)¹⁰

Its subsequent report in July 2016,¹¹ the most recent report on the work of the immigration directorates from the Committee, identified that the trend of the number of applications received outstripping the number of decisions made continued and that there has been a slight fall in the number of cases pending an initial decision within six months from 17,287 in Q4 2015 to 17,173 in Q1 2016, although the figure was still higher than it had been a year before in Q1 2015 (12,586).¹²

It is necessary to treat these figures with extreme caution the target applies only to applications made after 1 April 2014 and does not apply to all cases considered to be ‘non-straightforward’. as the Home Office regards ‘non –straightforward’ cases as sitting outside its target. The Home Affairs Committee published a table in its July 2016 report, which we reproduce here:

Figure 5: Asylum applications from main applicants and their dependants pending initial decision and further review



Source: Home Office, [Immigration Statistics](#), January to March 2016, AS_02q

Mr Brokenshire suggested during debates on the Bill that persons could manufacture delays by not engaging with the process. This is incorrect, as persons can be refused for non-compliance.

¹⁰ <http://www.publications.parliament.uk/pa/cm201516/cmselect/cmhaff/772/772.pdf>.

¹¹ 6th Report - The work of the Immigration Directorates, HC 151 , published 27 July 2016

¹² Home Office, [Immigration Statistics](#), January to March 2016, Table AS_02q

Mr Brokenshire argued that if a person seeking asylum is given the right to work this denies a job to a person with permission to work in the UK. This is an oversimplification. The person seeking asylum is allowed to compete for the job. It may be a job that British citizens and those settled in the UK do not wish to do and that is usually filled by an EEA national other than a British citizen or by . If they work in those jobs then as well as the benefits to them this reduces the support budget, something the Government is trying to do.

The restriction of persons seeking asylum to jobs on the shortage occupation lists is worthy of challenge independent of whether the government is prepared to reduce the period that persons seeking asylum must wait before they are allowed to work, The shortage occupation list is confined to skilled jobs and given the difficulties of refugees evidencing their qualifications and getting those qualifications recognized in the UK it means that the opportunity to work in a job on the skilled occupation list is theoretical rather than real. The current shortage occupation list can be read at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/308513/shortageoccupationlistapril14.pdf

We extract examples below.

2461 Quality control and planning engineers	<p>ONLY the following jobs in this occupation code:</p> <ul style="list-style-type: none"> <input type="checkbox"/> the following jobs in the electricity transmission and distribution industry: <ul style="list-style-type: none"> - planning / development engineer - quality, health, safety and environment (QHSE) engineer 	<p>New entrant: £22,500 Experienced worker: £27,000</p>
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For Scotland only, the following are considered shortage occupations:

2113 Physical scientists	<p>ONLY the following jobs in this occupation code:</p> <ul style="list-style-type: none"> <input type="checkbox"/> jobs on the UK Shortage Occupation List <input type="checkbox"/> staff working in diagnostics radiology (including magnetic resonance imaging) 	<p>New entrant: £21,000 Experienced worker: £27,000 [Source: Evidence from partners who responded to Migration Advisory Committee in 2011, uplifted based on national changes in earnings]</p>
2211 Medical practitioners	<p>ONLY the following jobs in this occupation code:</p> <ul style="list-style-type: none"> <input type="checkbox"/> jobs on the UK Shortage Occupation List <input type="checkbox"/> ST3, ST4, ST5 and ST6 trainees in paediatrics or anaesthetics <input type="checkbox"/> SAS staff doctors in paediatrics or anaesthetics <input type="checkbox"/> consultants in paediatrics or anaesthetics <input type="checkbox"/> non-consultant, non-training doctors in the specialty obstetrics and gynaecology 	<p>Speciality registrar (StR) and equivalent: £30,002 Speciality doctor and equivalent: £37,176 Salaried General practitioner (GP) and equivalent: £54,319 Consultant and equivalent: £75,249 [Source: NHS Employers Medical and Dental Pay Circular 2013]</p>

In any event, persons seeking asylum are unlikely to get the skilled jobs on the shortage occupation lists given that their period of stay in the UK is uncertain. The restriction of persons seeking asylum to the shortage occupation lists should be ended, whether or not the time before they are permitted to work is shortened and any shortening of the period within which they are permitted to work should be accompanied by a lifting of the limitation to the shortage occupation lists.