

REGULATORY IMPACT ASSESSMENT

TITLE OF PROVISION

The Asylum and Immigration (Treatment of Claimants etc) Bill

1. Reform of the asylum, immigration and nationality appeals system.

PURPOSE AND INTENDED EFFECT OF MEASURE

(i) Objective

2. The key objectives are to streamline the appeals system, provide early finality to the appeals process and reduce public costs.

(ii) The Background

3. The Nationality, Immigration and Asylum Act received the Royal Assent in 2002. Most of the reforms it contained have now come into force and have had a significant impact upon the number of applications for asylum. The proposed Asylum and Immigration Bill, to be introduced when parliamentary time allows, includes proposals which seek to make further improvements to the asylum and immigration appeals process. The main objective of the proposals is to improve the speed and efficiency of the appeals system.
4. The Immigration Appellate Authority (IAA) is a two tier system, with adjudicators as the first tier and the Immigration Appeal Tribunal as the second tier. It hears asylum, immigration and nationality appeals.
5. Between 1 October 2002 and 30 September 2003, adjudicators promulgated a total of 101,117 appeals. Of these, 77,235 were asylum, 12,533 immigration (excluding visit visa) and 11,349 relating to a visit visa refusal. In the same period, a total of 33,196 applications for permission to appeal to the Tribunal (the second tier of the IAA) were promulgated. The Tribunal also promulgated 8,497 substantive appeal decisions.
6. The Nationality, Immigration and Asylum Act 2002 made a number of improvements to the appeals system. The early signs are that these legislative changes are resulting in real improvements to the appeals process. For example, the Non-Suspensive appeal provisions have contributed to significant falls in the number of applications from listed countries - applications from the 10 EU accession states have fallen from 555 in the last quarter of 2002 to 70 in the second quarter of 2003.
7. However, further work is needed for the Department for Constitutional Affairs and the Home Office to deliver the Public Service Agreement target to:

Focus the asylum system on those genuinely fleeing persecution by taking speedy, high quality decisions and reducing significantly unfounded asylum claims, including by:

- ◆ *Fast turnaround of manifestly unfounded cases;*
- ◆ *Ensuring by 2004 that 75% of substantive asylum applications are decided within 2 months; and that a proportion (to be determined) including final appeal, are decided within 6 months; and*
- ◆ *Enforcing the immigration laws more effectively by removing a greater proportion of failed asylum seekers.*

8. Improvements are being made to the current process but there is a limit to how much more can be achieved within the existing two tier process and improvements still need to be made to prevent people playing the system. The permission stage is a good example of how people can use the structure of the two tier process to frustrate finality. Between 1 October 2002 and 30 September 2003, around half of adjudicator determinations were subject to an application for permission to appeal to the Immigration Appeal Tribunal. Of these, around two thirds were refused permission to appeal. This level of refusal would seem to indicate that many people are making applications, usually at public cost, for permission to appeal against the adjudicator's determination, with little expectation of receiving permission to appeal.

(iii) Risk Assessment

9. The main risk that is being addressed in this Regulatory Impact Assessment (RIA) is that appealing to the Immigration Appellate Authority continues to be a lengthy and complex process and is a cost to the public sector.

10. In the period from 1 July 2003 to 30 September 2003, it took approximately 16 weeks for a decision on an asylum appeal at adjudicator level to be promulgated. In the same period, if an unsuccessful appellant applied for permission to appeal against that decision to the Immigration Appeal Tribunal, it took approximately 14 weeks for a decision to be promulgated. If the appellant's application was successful and a substantive appeal was made, it took 30 weeks for a decision to be promulgated by the Tribunal. If an appellant were to progress through all of the various stages of the appeal system therefore it would take, on average, 60 weeks before an unsuccessful appellant could become liable for removal from the UK.

11. As well as being lengthy and complex, there is a high refusal rate at the higher tiers of appeal. Nearly two thirds of those who apply for permission to appeal to the Tribunal are refused. This suggests that a significant number of appellants and their legal representatives may be pursuing fruitless appeals in an attempt to delay removal at a cost to public funds. Analysis of appeals in 2001 and 2002 indicates that only around 4% of asylum appeals determined by adjudicators were overturned by either the Tribunal or the Administrative Court (3% by the Tribunal, 1% by the Administrative Court). This statistically low figure is a reliable indicator that a single tier would provide appellants with an effective remedy in pursuing an appeal against an unfavourable decision taken by IND.

OPTIONS

12. Option 1

- ◆ Maintain the current position (i.e. do nothing)

Option 2

- ◆ Introduce a fair, fast and final single tier appeal tribunal for asylum, immigration and nationality appeals to replace the existing system. The creation of the single tier tribunal will involve the merging of the existing two tiers of the Immigration Appellate Authority (IAA). A party to an appeal may apply to the new Tribunal for a review of the determination. There is no onward right of appeal and no access to judicial review.
- ◆ This change applies to the UK.

COSTS AND BENEFITS

Business sectors affected

13. Legal firms and private sector landlords will be affected by the reforms of the appeals system.

Option 1

14. The do nothing option would be cost neutral to business, charities, and voluntary sector. The current appeals system would be retained.

Option 2

Cost to business charities and voluntary sector

15. Impact on legal firms and interpreters

In 2002/03, the cost of publicly funded representation before the Immigration Appeal Tribunal (IAT) was approximately £12m. The cost of funding for Judicial Review was £5.7m.

Moving to the new appeal process will reduce these costs but the reduction is unlikely to be as high as £17.7m because:

- There will be a limited right of review of the new Tribunal's determination.
- Executive decisions comprise approximately 45% of asylum and immigration JR's before the Administrative Court. It is not proposed to oust JR of executive decisions (£3.1m). This leaves £2.6m as the cost for judicial reviews of judicial decisions.
- In April 2003, SR replaced JR as the mechanism for challenging IAT's refusal to grant permission to appeal. It is estimated that SR is 35% less expensive than JR (£3.1m), leading to savings of £1.1m.
- The cost of legal advice and representation for the Tribunal review process is estimated to be £3.6m – based on the proportion of LSC spend on permission applications (30% of £12m - IAT funding).

(a) Cost of representation before the IAT **minus** cost of review before the new Tribunal = £12m - £3.6m = £8.4 million

(b) Costs of publicly funded advice and representation before the Administrative Court **minus** cost of representation for Judicial Review of executive decisions and anticipated saving from introduction of Statutory Review = £5.7 million - £2.6 million - £1.1m = £2m

Reducing the tiers of appeal within the process is likely to reduce the amount of publicly and privately funded work available in the asylum and immigration sectors. This will affect those legal firms engaged in this area, although the impact on these firms will depend on the size of the firm and the proportion of immigration and asylum work that they undertake.

The impact on firms will also depend on whether the cost of legal advice and representation for the single tier remains at comparable levels with the costs incurred at the adjudicator tier, which currently stand at £71.6 million per year. The Legal Services Commission are currently analysing responses to consultation on legal aid provision for asylum and immigration cases and this will significantly affect the impact of the change to the system on legal firms.

Interpreters will not be directly affected because appeals to the IAT are on a point of law and so appellants are not generally required to give evidence at the hearing. They currently interpret for the legal advisors where information and advice is given about the IAT. This will still take place in the form of advice about applications to the new Tribunal for a review of the determination.

Estimated loss of income in the range of £0 to £10.4m.

16. Impact on private landlords

Reducing the length of the appeals process will reduce the time that appellants need to be supported by the National Asylum Support Services (NASS). This will impact on private landlords who provide accommodation for asylum seekers.

Assumptions:

- ◆ There are 5016 appellants to the Immigration Appeal Tribunal who are supported by NASS and have no dependants.
- ◆ Support for appellants with no dependants stops after all appeal rights are exhausted. Moving to a single tier will reduce the length of the appeals process and the 5016 appellants who currently appeal to the second tier will no longer require support. However, they will be able to apply for the Tribunal to review their decision. This process is estimated to take 3 weeks in total.
- ◆ The estimated cost of accommodating a single person per month is £350.
- ◆ The length of time the single person would have been in accommodation is estimated at between 1 month and 6 months. This will be reduced to 3 weeks with the removal of the IAT and the introduction of the review process - a reduction of between 1 week and 23 weeks.
- ◆ The accommodation provided by private landlords estimated at between 5% and 25% of the total accommodation provided.

Minimum costs: 5016 appellants x (£350 per month / 4.3 weeks per month) x 1 week x 5%. = £0.02m

Maximum costs; 5016 appellants x £350 per month / 4.3 weeks per month x 23 x 25%. = £m

Estimated loss of income in the range of £0.02m to £2.3m

17. Estimated total cost to business £0.02m to 12.7m

Benefit to business, charities and voluntary sector

18. Charities and voluntary sector

The reduced length of time that asylum seekers are in the appeals system may reduce demands on charities and the voluntary sector

Costs to public sector

19. Setting up the single tier Tribunal

Some initial costs

Benefit to Public Sector

20. Public Funding for Legal Advice and Representation

The savings to the public sector will be the reduction in funding for legal firms as outlined above. Using the assumptions made in the previous section on costs to business, charities and the voluntary sector, savings may be in the region of £0 to £10.4m.

In addition there will be costs for LSC in conducting an in-house merits test for the Tribunal review process. This is estimated to be £1m in administrative costs.

Net impact - £1m costs to £9.4m savings

21. National Asylum Support Service

Reducing the length of the appeals process will reduce the time that appellants need to be supported by NASS.

Assumptions:

- ◆ That there are 5016 appellants to the Immigration Appeal Tribunal who are supported by NASS and have no dependants.
- ◆ Support for appellants with no dependants stops after all appeal rights are exhausted. Moving to a single tier will reduce the length of the appeals process and the 5016 appellants who currently appeal to the second tier will no longer require support. However, they will be able to apply for the Tribunal to review their decision. This process is estimated to take 3 weeks in total.
- ◆ The overall cost including support is estimated at £518 per month per person.
- ◆ The length of time the single person would have been in accommodation is estimated at between 1 month and 6 months. This will be reduced to 3 weeks with the removal of the IAT and the introduction of the review process - a reduction of between 1 week and 21 weeks.

Minimum costs; 5016 appellants x (£518 per month / 4.3 weeks per month) x 1 week = £0.6m

Maximum costs; 5016 appellants x (£518 per month / 4.3 weeks per month) x 23 weeks = £13.8m

Total savings of £0.6m to £13.8m.

22. Administration of the Appeals System

We do not anticipate savings in relation to the running of the single tier tribunal compared to the current IAA as the judiciary, staff and accommodation would be used within the new tribunal.

There will be some savings in relation to the Administrative Court. Based on the assumption that there are 1200 applications for Statutory Review per year, these are estimated to be £0.01m to £0.03m.

23. Estimated total savings of between £0.041m - £23.23m

RISKS

24. The key risk in implementing option 2 is that failing to manage the transitional period may lead to operational difficulties and potential costs. In the short-term, this will affect

expected improvements to the speed of the appeal process. This risk will be minimised by close working with operational colleagues before implementation.

ISSUES OF EQUITY AND FAIRNESS

25. The new appeals process will provide an effective, independent remedy against asylum, immigration and nationality decisions made by the Government. This will ensure compliance with the requirements of the European Convention on Human Rights and other international obligations.

SMALL FIRMS' IMPACT TEST

26. The Small Business Service believes that the change proposed is largely social. However whilst they recognise that there is some impact on part of two specific business sectors, this income only exists as a function of the current immigration appeals system and should not necessarily have been viewed by those businesses as sustainable income from the public purse.

COMPETITION ASSESSMENT

21. The proposal will impact primarily on legal firms and advice centres providing legal advice and representation on matters relating to asylum and immigration. In total there are over 1900 private firms working in the immigration and nationality field. This is approximately 20% of all legal firms practising in the UK. The majority of these have between two and four partners. As of 1 November 2003, there were 502 solicitor firms and 90 not for profit agencies with contracts to provide immigration and asylum work in the publicly funded arena. The majority of these firms are small businesses whose work is not restricted to the immigration field.

22. Reducing the tiers of appeal will be likely to reduce the volume of work available; the scale of any impact on individual firms will be dependent in part on its size and the degree of specialisation in this area. Whilst a reduction in the volume of work may result in some firms exiting the market potentially increasing competition for the remaining work, at this stage, it is not expected that the scale of any reduction in the number of firms competing would be sufficient to have a significant negative effect on competition in these markets

ENFORCEMENT AND SANCTIONS

23. There are no enforcement issues as this is simply a change to the appeals structure. The appeals authority will have powers to deal with any non-compliance during the appeals process. The Legal Services Commission has powers to deal with publicly funded legal representatives as appropriate.

CONSULTATION

24. The Home Office and the Department for Constitutional Affairs have worked together closely on the development of proposals for a single tier of appeal, involving other Government departments (e.g. Scottish Executive, Treasury Solicitor, UK Visas) where appropriate. On 27 October 2003, a targeted exercise seeking the views of key stakeholders was undertaken with responses due by 17 November.

MONITORING AND REVIEW

25. The provisions will be monitored and reviewed to see that intended effect has been achieved.

SUMMARY AND RECOMMENDATION

26. The proposal to introduce a single tier of appeal has major benefits as it will provide a faster and more efficient appeals system. The costs are generally redistributive (as they will provide Government savings) and are associated with a reduction in demand for legal representation and support services (e.g. accommodation) for asylum seekers. The benefits fall mainly on the appellants with well founded claims to asylum and managed immigration, who will see earlier finality to their appeal. A fair and fast system which brings early finality will reduce the scope for exploitative practices and current costs to the public purse. For these reasons, the proposal to reform the appeals system by introducing a single tier of appeal should be accepted.

DECLARATION

I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs.

Date

Minister's name

Title

Department

Contact point