law & practice

PRISONERS

Recent developments in prison law



Hamish Arnott, **Simon Creighton** and **Nancy Collins** continue the series of updates on the law relating to prisoners and their rights. This series of articles appears twice-yearly.

PAROLE AND LIFERS

The past six months have seen a number of significant cases seeking clarification on the extent of the application of article 5(4) of the European Convention on Human Rights ('the convention') to life sentenced prisoners. These cases have looked at issues ranging from the award of compensation to prisoners where there has been an acknowledged breach of article 5(4) rights, through to analysis of the obligations that the article places on the authorities in allowing for prisoners' potential release at the earliest opportunity. In general, the courts have taken a very restrictive approach to these issues, imposing far severer limitations on the ambit of the rights under scrutiny than had been anticipated. The first challenge to the interim arrangements for the parole reviews for mandatory lifers following the decision of the European Court of Human Rights (ECtHR) in *Stafford v UK* (2002) 35 EHRR 1121, has been dismissed.

■ **R (Murray) v Parole Board and Secretary of State for the Home Department**
[2003] EWHC 360 Admin
A lifer who had been recalled from life licence some years earlier had a parole review that concluded on 19 April 2002. Although the original decision was for the next review to commence 18 months later, after the proceedings were issued the Home Secretary brought forward the review date so that it would be concluded by September 2003. The claimant sought to challenge this decision, arguing that article 5(4) required the review to take place speedily, and that a delay of 15 months could not be considered 'speedy'. Pitchford J held that it was appropriate for the Home Secretary to have a reasonable period of time to implement the new arrangements and that, on the particular facts of the case, a period of 15 months was not unreasonable. The decision followed an earlier finding by the same judge.

■ **R (Middleton) v Secretary of State for the Home Department**
[2003] EWHC 315 Admin
A mandatory lifer had sought compensation for a delay on the part of the Home Secretary in authorising his release. The Parole Board ('the board') had recommended his release on 15 May 2002, but he was not released until 28 August 2002. He sought damages for unlawful detention for the period between the *Stafford* judgment (which was delivered on 28 May 2002) and his eventual release date. Pitchford J held that the detention was not unlawful in domestic law as the relevant statute, which left the discretion to release with the Home Secretary, remained in place until new legislation could be enacted, albeit that the existing legislation is incompatible with the convention. Given the major change in the law which had taken place and given minor changes in the claimant's personal circumstances during the relevant period, the Home Secretary had to be afforded a reasonable period in which to implement the new requirements imposed on him and had acted reasonably.

While this decision appears to limit severely the prospect of bringing damages claims for delays in the release of mandatory lifers following the *Stafford* judgment, there is still scope for such actions. Shortly after this decision was given, permission was granted to bring a claim in another, similar case where the delay had been for a much longer period. Furthermore, the *Middleton* claim was argued on the grounds that the detention was unlawful as opposed to it simply being a breach of the claimant's convention rights. An argument based on a breach of convention rights leaves open the prospect of a court being required to award compensation to give effect to those rights irrespective of the position in domestic law. Finally, Pitchford J relied heavily on the case of *Walden v Liechtenstein* App No 33916/36, 16 March 2000, ECtHR, as authority for the proposition that the domestic authorities should be given sufficient time to implement changes in domestic law brought about by ECtHR decisions. It is arguable that that case does not provide the authority for such lengthy delays as it concerned the issue of entitlement to pension payments rather than the liberty of the subject, and it was decided against the backdrop of a domestic regime which afforded the authorities a six-month period in which to make changes to domestic law.

The extent to which detainees can seek to recover compensation for detention in breach of article 5(4) was examined in some detail in the sphere of mental health detention in the following case.

■ **R (KB and others) v Mental Health Review Tribunal and Secretary of State for Health**
[2003] EWHC 193 (Admin)
This case was brought by a number of Mental Health Act (MHA) 1983 detainees who had previously been successful in claims that delays in the convening of their tribunals breached article 5(4). The detainees sought compensation for those delays under article 5(5), which imposes a requirement for there to be an enforceable right to compensation in cases where there has been a breach of article 5.

The judgment of Stanley Burnton J reviews in some detail the basis on which compensation should be awarded for breaches of convention rights. He expresses the view that the concept of 'just satisfaction' does not mean that there is an automatic right to compensation for a breach of article 5, simply that the right exists and that compensation should only be awarded, if necessary, on the individual facts of the case. He identified the following matters as being relevant to the decision about whether compensation is necessary to afford just satisfaction:

- if it can be shown that the release would have occurred if the tribunal had taken place on time;
- whether the detainees, as vulnerable people, suffered distress as a result of the cancellation of their tribunals, even though healthy persons may not be able to receive compensation under this head; and
- whether there is sufficient contemporaneous evidence to demonstrate the distress caused.

The prospect of damages being awarded for the loss of an opportunity of having the hearing take place was rejected, as was the argument that exemplary damages could be claimed for the breaches of article 5(4). Overall, the levels of awards made – where granted at all – are described as 'modest', and generally they are much lower than equivalent tortious awards for false imprisonment.

Although *KB and others* was concerned specifically with MHA detainees, the principles will be of great importance to lifers claiming compensation for breaches of article 5(4). Although the ECtHR has tended to make small financial awards when making findings of such breaches (eg, in the region of £1,000–£2,000 in most cases) it is clear that, as a result of this judgment, there is no automatic entitlement to the award of damages domestically.

■ **R (D) v Secretary of State for the Home Department**
[2002] EWHC 2805 (Admin)
This case confirmed that compliance with the key article 5(4) requirements is a matter of both form and substance. The claimant was a discretionary lifer who had served his minimum term (or 'tariff'), and had been detained in a special hospital under a transfer direction. When a Mental Health Review Tribunal decided that he was no longer detainable under the MHA, the referral of his case to the board – the only body which could then direct his release – was a matter of ministerial discretion rather than statutory right. Despite the fact that the Home Secretary's policy was always to make such a referral, the court held that the absence of an automatic right of access to a court-like body that could determine the legality of detention fell foul of article 5(4) (applying *Benjamin and Wilson v UK* App No 28212/95, 26 September 2000). In contrast, the question of whether article 5(4) imposes an obligation for an independent determination of matters falling short of whether to release, such as the period between parole reviews, has been examined in two cases.

■ **R (Spence) v Secretary of State for the Home Department**
[2002] EWHC 2717 (Admin)
A recalled mandatory lifer argued that the Home Secretary should be bound by a recommendation made by the board about the period between his parole reviews. The court rejected this on the grounds that the board has directive powers only in respect of the release of lifers. Any other matters pertaining to the detention of a prisoner, such as attendance on courses or the timing between reviews, fall within the discretionary powers of the Home Secretary. As such, providing the Home Secretary is able to justify the period set between parole reviews with reference to the principles applying to the requirement for reviews to be conducted speedily, there is no breach of article 5(4) in the actual decision remaining with him/her. The Court of Appeal heard an appeal on this case on 27 March 2003, but judgment has not yet been given.

■ **R (Clough) v Secretary of State for the Home Department**
[2003] EWHC 597 Admin
The approach in *Spence* was followed by the court where a discretionary lifer panel had recommended that the claimant should move to open conditions with a further review in nine months, but the Home Secretary had eventually set the review to take place 15 months after the transfer to an open prison. The court held that, as the relevant statutory provisions contained in Crime (Sentences) Act 1997 s28(7) provide that the Home Secretary has the power to refer cases to the board, it cannot therefore be argued that the board should set the period between the reviews. There is sufficient judicial control over the interval between reviews as a result of the two years' maximum period between reviews combined with the opportunity to take judicial review proceedings of any disputed decision. On the facts of this case, the period set by the Home Secretary was held to be reasonable.

The courts have, in the above cases, confirmed a long line of authorities that view the requirements of article 5(4) in fairly absolute terms. This approach is that the article requires that an independent tribunal has the power to direct release, but that any decisions ancillary to release remain a discretionary power of the executive. Although there is little authority from the ECtHR to undermine this interpretation, it remains problematic for lifers as it allows the executive effectively to undermine the potential for release by rejecting boards' recommendations for progressive moves and short review periods. This issue will be examined further by the Court of Appeal, which has granted permission to a challenge brought by an automatic lifer to a failure to provide a place on a course that was deemed necessary by the board to make him an acceptable risk for release on life licence. The issue turns on whether there is a duty on the Home Secretary to make relevant courses available to post-tariff lifers to enable the prospect of release, or whether the system for prioritising places on such courses is wholly discretionary. The application for permission was refused in the Administrative Court (**R (Cawser) v Secretary of State for the Home Department** [2003] EWHC 426 Admin) by MacKay J who considered himself bound by previous authorities, but was granted subsequently in the Court of Appeal which will hear the case in October 2003.

DETERMINATE SENTENCES

Extended sentences

Currently, the general rule is that the length of determinate sentences should be commensurate with the seriousness of the offence (Powers of Criminal Courts (Sentencing) Act 2000 s80(2)(a)). The exceptions are for violent and sexual offences where the court can either impose a longer than commensurate sentence if this is needed to protect the public from the risk of serious harm (s80(2)(b)), or an extended sentence (s85). The latter attaches an extended licence period, to be served after automatic release in the community subject to recall, to the custodial term that would be served otherwise. The power to impose an extended sentence arises where the court is of the opinion that the licence period for what would be the commensurate term would be insufficient to prevent the commission of further offences and to rehabilitate the offender (s85(1)(b)).

In relation to longer than commensurate sentences, the Court of Appeal has held that although the sentence includes a component imposed to protect the public, article 5(4) does not require a further review of the legality of the detention once an offender is no longer serving the punitive element (*R (Giles) v Parole Board* [2002] EWCA Civ 951, see January 2003 *Legal Action* 11). The rationale for the decision (which will be reviewed by the House of Lords in June 2003) was that the sentence remained a single determinate one, the whole period of which fell to be administered just like any other determinate sentence. Recently, the courts have examined for the first time the issues involved when an offender serving an extended sentence is returned to custody.

■ **R (Sim) v Parole Board and Secretary of State for the Home Department**
[2003] EWHC 152 (Admin)
The claimant was serving an extended sentence made up of a 30-month custodial term and a five-year extension period. After his release, he was recalled to prison because of concerns over his behaviour in the hostel where he was living and his drinking. The board that considered his case at an oral hearing decided that the decision to recall was correct. The statutory test required the board to direct release 'if satisfied that it is no longer necessary for the protection of the public that he should be confined' (Criminal Justice Act (CJA) 1991 s44A). The claimant sought a judicial review of the decision. The court considered four main issues, namely, whether:

■ article 5 of the convention was engaged when an extended sentence prisoner was recalled during the extension period;
■ the risk of any kind of offending could be used to justify recall;
■ the test for release unlawfully imposed a burden on a prisoner to show that s/he should be released; and
■ the board could take into account hearsay evidence, and if so had it considered correctly such evidence in this case.

On the first issue, the judge found that article 5 was engaged. *Giles* could be distinguished as the statute made a clear distinction between the custodial term and the extension period, and the latter authorised supervision in

the community rather than immediate custody. On the second issue, the judge held that it was only the risk of further violent or sexual offences, of the type for which the sentence was imposed, that would justify recall.

On the third issue, the judge held that, unlike the position with indeterminate sentences where 'burden of proof' arguments had been raised and failed (for example, *R (Hirst) v Parole Board* [2002] EWHC 1592 (Admin), see January 2003 *Legal Action* 12), during the extension period of an extended sentence the default position was liberty. This meant that for CJA s44A to be compatible with article 5 it had to be read down, in accordance with Human Rights Act (HRA) 1998 s3, so that the board had to be positively satisfied that further detention was necessary for public protection before confirming recall.

On the fourth issue, the judge held that neither article 5 nor the general requirements of fairness would prevent the board from considering hearsay evidence, although there would be occasions where fairness would require an offender to be able to challenge crucial evidence by cross-examination. On the facts of this case, he did not consider that the board had taken material into account improperly, even though it consisted of hostel records that were technically hearsay.

The Home Secretary has appealed against the judge's findings on the first and third issues, and the prisoner has done the same on the decision relating to the fourth issue. The Court of Appeal will be considering the case in October 2003.

Licence conditions

In two recent cases, the courts have considered the extent to which an offender's knowledge can affect a sentence's administration during the period on licence in the community.

■ **R (S) v Secretary of State for the Home Department**
[2003] EWCA Civ 426
This case has confirmed that when a licence is revoked, an offender is unlawfully at large whether or not s/he is aware of the revocation (see January 2003 *Legal Action* 12). Time spent unlawfully at large, within the meaning of Prison Act 1952 s49(2), is not taken into account in calculating release dates once an offender returns to custody.

■ **R (Rodgers) v Governor of HMP Brixton and another**
[2003] All ER (D) 156 (Mar)
In this case, by contrast, the licence given to the prisoner on release specified wrongly the date the licence conditions were due to expire. He was recalled to prison on the basis that he had breached the requirements of supervision after that date, but during the licence period as calculated properly. The court allowed an application for habeas corpus on the basis that the Home Secretary was not entitled to recall an offender during a period after which s/he had been told that supervision had ceased. It appears that this case was decided on the basis that, although the licence period was statutorily defined, the requirement of actual supervision derived from the licence as given to the prisoner (and so is different from the anomalous case of *R v Governor of HMP Pentonville ex p Lynn* 7 December 1999, unreported, HC, where the court held that a legitimate expectation could entitle a prisoner to an earlier release date than that authorised by statute).

■ **R (Uttley) v Secretary of State for the Home Department**
[2003] EWHC 950 Admin
The CJA replaced a parole system where long-term prisoners were released unconditionally at the two-thirds point of the sentence, with the current system where automatic release at the same point is on licence. The Act applied to all those sentenced after it came into force in October 1992, regardless of the date of commission of the offence.

A prisoner challenged this aspect of the legislation on the basis that it breached article 7 of the convention (that prohibits the imposition of a heavier criminal penalty at the time of sentencing than that which existed at the time of the offence). The court, in rejecting the claim, held that the imposition of a licence did not constitute a criminal penalty as its purpose was preventative not punitive, and there was therefore no breach of article 7.

PRISON DISCIPLINE

Following the ECtHR's decision in *Ezeh and Connors v UK* App Nos 39665/98 and 40086/98, 15 July 2002 (see January 2003 *Legal Action* 12), the Prison Service remitted all additional days given as punishment at prison disciplinary hearings since the coming into force of the HRA (2 October 2000). A challenge to the refusal to remit days imposed before that date failed at first instance (see January 2003 *Legal Action* 13). The Court of Appeal in **Rogers v Secretary of State for the Home Department** [2002] EWCA Civ 1944, has refused permission to appeal. The court accepted the argument that the claimant was seeking to circumvent the effect of *R v Lambert* [2001] 3 WLR 206, which decided that the HRA's provisions were not generally retrospective. The prisoner's only remedy is an application to the ECtHR, the Grand Chamber of which has now heard argument in *Ezeh and Connors v UK*, and hopefully will give its decision shortly.

PRISON CONDITIONS

Medical care

While the ECtHR has not found that prison conditions in England per se breach article 3 of the convention (the prohibition on inhuman and degrading treatment), it has made such findings in relation to the treatment of, or lack of proper facilities for, vulnerable groups such as those with mental health problems or disabilities (see *Keenan v UK* App No 27229/95, 3 April 2001 and *Price v UK* App No 33394/96, 10 July 2001). This approach is evident again in the next case.

■ **McGlinchey v UK**
App No 50390/99, 29 April 2003
The applicants were relatives of a woman who died following inadequate care in prison. She was a heroin addict whose nutritional state and general health were not good on detention, and who suffered serious weight loss and dehydration in prison prior to her admission to hospital and subsequent death. This was the result of a week of largely uncontrolled vomiting and an inability to eat or hold down fluids. This situation, in addition to causing her distress and suffering, obviously posed very serious risks to her health.

The court noted the failure of the prison authorities to provide an accurate means of establishing weight loss, and that there was a gap in the monitoring of her condition by a doctor over a weekend when there was a further, significant drop in weight. There was also a failure by the prison to take effective steps to treat her condition, such as by admission to hospital to ensure the intake of medication and fluids intravenously, or to obtain more expert assistance in controlling the vomiting. The court therefore found a breach of article 3. Article 13 (the right to an effective remedy) was also breached as there was (the facts arose before the coming into force of the HRA) no domestic right to compensation for treatment that caused neither physical nor psychological injury. The court awarded €11,500 to the deceased's estate as just satisfaction under article 41

Mother and Baby Units

The fact that the relevant Prison Service Order (PSO) governing Mother and Baby Units (MBUs) contains detailed procedures for admission, but none for exclusion was the subject of criticism by the court in a recent case.

■ **R (CD and AD) v Secretary of State for the Home Department**
[2003] EWHC 155 Admin
In particular, the mother in this case was not given a proper opportunity to respond to allega-

tions against her, and the prison authorities otherwise failed to take into account the best interests of the child. In considering the latter point, the judge stated that sometimes the authorities would have to obtain expert reports, including from social services, before coming to a view. The Prison Service's decision in this case was both unfair procedurally and disproportionate, in that it was not clear that the decision-maker had considered properly whether the legitimate aim of maintaining order in MBUs could be achieved by means short of exclusion. The judge also expressed a hope that the Prison Service would devise a procedure to deal with exclusion from MBUs promptly.

Smoking in cells

■ **R (Ntow) v Secretary of State for the Home Department**
[2003] EWHC 148 Admin
The issue of non-smoking prisoners being forced to share a cell with smokers was considered in this renewed application for judicial review of the prison authorities' decision to place the claimant, an asthma sufferer, in a cell with a smoker. Pitchford J had previously refused permission, having accepted an undertaking from the governor of HMP Wandsworth that the claimant would not be compelled to share a cell with a prisoner who smoked, or to remain in a smoke-filled room. However, the claimant renewed the application, complaining that he had been forced to stay in a smoke-filled cell with a heavy smoker for several days after the undertaking was given.

Henriques J noted that, due to the large amount of prisoner movements and the need for wing spaces to be used to capacity, it is often difficult for staff to accommodate and comply with instructions that a claimant should not be placed in a cell with a smoker. On the other hand, an undertaking given to the High Court was a solemn matter, and it was the governor's responsibility to ensure that it was honoured. Henriques J felt that, if an empty undertaken had been given to the claimant, there was an argument to be canvassed concerning his application. The oral application was adjourned for two weeks. If it proved impossible to honour the undertaking during that time, the court would wish to know why it was given in the first place. It was observed that, on a preliminary consideration of the matter, a person suffering with asthma and a chest condition ought not to be required to share a cell with a heavy smoker, and this was a matter that may be discussed at greater length, if necessary.

Transfers

■ **R (Gilbert) v Secretary of State for the Home Department**
[2002] EWHC 2832 Admin
The prisoner challenged the Home Secretary's refusal to grant him a temporary transfer from the Close Supervision Centre (CSC) at HMP Woodhill to HMP Garth for accumulated visits with his family. The claimant argued that he needed to be transferred to a prison closer to his family due to the medical difficulties suffered by his parents and brother, which prevented them from travelling to visit him at HMP Woodhill. His request for a transfer was refused on the basis that HMP Garth did not meet the levels of security and supervision he required.

Gibbs J rejected the argument that the decision not to transfer the claimant to HMP Garth was erroneous on the basis that the Home Secretary had not consulted the governor of HMP Garth, as required by Standing Order 5, before reaching that decision. Instead, he accepted that the CSC authorities had considered the claimant's transfer request properly. He went on to consider arguments put forward under article 8 of the convention (right to respect for private and family life). He accepted that article 8 was applicable and engaged in the claimant's case. However, he did not accept that the refusal to transfer the claimant was disproportionate or unlawful given the particular circumstances of the case.

In reaching this conclusion, Gibbs J applied the proportionality test set out in the House of Lords decision in *R (Daly) v Secretary of State for the Home Department* [2001] 2 AC 532. Applying this test, he noted that the CSC regime was tailored specifically to the claimant's needs, and that equivalent facilities would not be available at HMP Garth. Furthermore, he noted that CSC staff continued to monitor the claimant's needs and progress so that he could be transferred to a suitable prison for accumulated visits, when appropriate.

High security cells

■ **Van der Ven v The Netherlands**
App No 50901/99,
4 February 2003
The ECtHR considered when high security conditions will be found to breach article 3 (prohibition on inhuman and degrading treatment) as the applicant alleged that the detention regime to which he was subjected in a maximum security prison in the Netherlands (an Extra Beveiligde Inrichting (EBI) unit) infringed his rights under articles 3 and 8. In particular, the applicant complained that:
■ visits took place behind a glass partition once a month, during which physical contact was limited to a handshake;
■ telephone calls were limited to two ten-minute calls a week;
■ he was allowed only limited contact with other prisoners and staff, ie, he was allowed to associate with no more than three prisoners at a time, there was no out of cell work or education, and staff were separated from prisoners by armoured glass panels; and
■ systematic strip searches were in force, and he had been subject to intimate searches on a weekly basis, and often more frequently, for three and a half years.
In support of his arguments, he referred to a report by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, which concluded that prisoners held in the EBI units were subject to a very impoverished regime and suffered harmful psychological consequences.

In considering the applicant's case, the ECtHR observed that detention in a high security prison facility does not in itself raise an issue under article 3. However, article 3 does require that high security prisons detain prisoners in conditions that are compatible with their human dignity, and which do not subject such prisoners to distress or hardship of an intensity exceeding the levels inherent to detention.

The ECtHR found that the situation in the EBI units gave cause for concern especially for long-term prisoners and those subject to routine strip searches. The court was struck by the fact that the applicant was submitted to a weekly strip search, in addition to all the other strict security measures in the EBI. The ECtHR held that the systematic strip searching of the applicant required more justification than the government had provided and that article 3 had been breached. In reaching this conclusion, the court noted that psychological reports were available to the authorities demonstrating that the applicant was experiencing difficulties coping with the regime. Furthermore, it noted that no unauthorised items had been found during strip searches.

Regarding the alleged violation of article 8, the court accepted the government's argument that the restrictions imposed were inherent to the applicant's detention and necessary for the prevention of crime or disorder. The court noted that, in the past, it had been recognised that some measure of control over prisoners' contact with the outside world is called for and is not, of itself, incompatible with the convention: *Kalashnikov v Russia* App No 47095/99, 15 July 2002 (see January 2003 *Legal Action* 13).

Legal visits

■ **R (Canaan) v Governor of HMP Full Sutton and Secretary of State for the Home Department**

[2003] EWHC 98 Admin

A category A prisoner challenged a policy in a high security prison which required prisoners who wanted to hand out or receive privileged documents on legal visits to obtain prior authorisation no later than the day before. If documents were to be handed out they would be screened for illicit items and sealed in the prisoner's presence, and if documents were to be received prior authorisation would ensure that procedures were in place for screening the material entering the prison at the time of the relevant visit. The policy allowed for legal documents to be handed in or out without prior authorisation in exceptional circumstances.

The court held that such a policy was not a disproportionate interference with a prisoner's fundamental right to privileged communication with his/her lawyer in light of the security concerns involved in running a high security prison advanced by the Prison Service. The judge had concerns about a prisoner needing to show 'exceptional circumstances' to get approval on the day of the visit, but felt that if the policy was put in writing and notified to prisoners then such a high threshold would probably be unnecessary in practical terms. It appears from the judgment that the judge was willing to accept submissions on behalf of the Prison Service that the policy to be construed was to be pieced together at the judicial review hearing from contradictory parts of notices produced by the prison, actual practice and statements contained in witness statements produced for the hearing. It is hard to understand how this approach accords with the principle of legality that allows the curtailment of fundamental rights only by clear and express words, and then only to the extent necessary to meet reasonably the ends which justify the curtailment.

Access to cash

■ **Duggan v Governor of Full Sutton Prison and another**

(2003) Times 25 March

Under Prison Rules 1999 SI No 728 r43(3), any cash sent in or earned by a prisoner while in custody should be kept in an account under a governor's control. The court held that this duty created a relationship of debtor and creditor, and did not create a trust which required a governor to invest the money in an interest bearing account before its return a prisoner. There was no breach of article 1 of Protocol 1 of the convention as the public interest justified a rule preventing unrestricted access to cash in prison so long as an account was credited with the equivalent amount. Furthermore, there was no breach of the convention in prisons that maintained a system of privileges which allowed prisoners to have access to different amounts of cash depending on whether they were on the basic, standard or enhanced level of privileges.

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ASYLUM SUPPORT

Support for asylum-seekers update

Sue Willman continues her series of updates on welfare provision for asylum-seekers and other 'persons subject to immigration control' (PSIC), supplementing LAG's book *Support for asylum-seekers*. The previous update appeared in January 2003 *Legal Action* 16.

POLICY AND LEGISLATION

Nationality, Immigration and Asylum Act 2002

Explanatory notes to the Nationality, Immigration and Asylum Act (NIAA) 2002 have now been published: www.hmso.gov.uk/acts/en/2002en41.htm.

'Late asylum claims' (s55)

After NIAA s55 came into force on 8 January 2003, National Asylum Support Service (NASS) refused support to hundreds of asylum-seekers on the grounds that they had not applied for asylum 'as soon as reasonably practicable' after their arrival in the UK. Approximately 250 asylum-seekers applied for judicial review and were granted injunctions pending the lead case of *R (Q and others) v SSHD* (see May 2003 *Legal Action* 12 and 25). After the High Court found in favour of the six applicants in *Q*, s55 refusals were suspended pending the Court of Appeal's judgment (see below). NASS has changed its policy and procedures following the Court of Appeal's decision and is now refusing only a limited number of asylum-seekers on s55 grounds. NASS Policy Bulletin 75, version 3, reflects the court's decision. Note that NIAA s18 now amends the definition of 'asylum-seeker' to a person who has applied for asylum at a 'designated place'.

Failure to co-operate with enquiries (s57)

NASS may also rely on NIAA s57 to refuse an application for support if it is not satisfied that an asylum-seeker has provided complete or accurate information or co-operated with enquiries. The Asylum Support (Amendment) (No 3) Regulations 2002 SI No 3110 came into force on 8 January 2003, amending the Asylum Support Regulations 2000 SI No 704 (AS Regs). They also amend the NASS application form so that it includes new questions about an applicant's route to the UK and method of entry.

PSIC ineligible for community care help (s54 and Sch 3)

From 8 January 2003, local authorities' powers to provide assistance under Children Act (CA) 1989 s17, and various community care provisions, were restricted in the case of:

- European Economic Area (EEA) nationals;
- non-European refugees;
- asylum-seekers unlawfully present in the UK; and
- failed asylum-seekers who refuse to co-operate with removal directions.

At the same time, they acquired new powers to provide temporary accommodation and return travel with the Withholding and Withdrawal of Support (Travel Assistance and Temporary Accommodation) Regulations 2002 SI No 3078. These regulations empower local authorities to make travel arrangements for EEA nationals and refugees to return to their European country of origin. They introduce a new power to provide temporary accommodation to the family of a dependent child in the above two categories and a person who is unlawfully in the UK, provided s/he has not refused to co-operate with removal directions.

The Home Office has published statutory guidance[1] to local authorities and housing authorities entitled 'Nationality, Immigration and Asylum Act 2002 Section 54 and Schedule 3 and the Withholding and Withdrawal of Support (Travel Assistance and Temporary Accommodation) Regulations 2002'. The guidance describes how local authorities should approach decisions about when the schedule