



House of Commons
Constitutional Affairs
Committee

**Further Government
Response to the
Second Report on
Asylum and
Immigration Appeals**

Third Special Report of Session 2003-04

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The Constitutional Affairs Committee

The Constitutional Affairs Committee (previously the Committee on the Lord Chancellor's Department) is appointed by the House of Commons to examine the expenditure, administration and policy of the Department for Constitutional Affairs and associated public bodies.

Current membership

Rt Hon Alan Beith MP (*Liberal Democrat, Berwick-upon-Tweed*) (Chairman)
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The following Member was a member of the Committee during the inquiry:
Mr Mark Field MP (*Conservative, Cities of London and Westminster*)

Powers

The committee is one of the departmental select committees, the powers of which are set out in House of Commons Standing Orders, principally in SO No 152. These are available on the Internet via www.parliament.uk

Publications

The Reports and evidence of the Committee are published by The Stationery Office by Order of the House.

All publications of the Committee (including press notices) are on the Internet at www.parliament.uk/parliamentary_committees/conaffcom.cfm

Committee staff

The current staff of the Committee are Roger Phillips (Clerk), Dr John Gearson (Second Clerk), Richard Poureshagh (Committee Assistant), Alexander Horne (Legal Specialist), Julie Storey (Secretary), Tes Stranger (Senior Office Clerk) and Adèle Brown (Committee Media Officer).

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Third Special Report

The Constitutional Affairs Committee published its Second Report of Session 2003–04 on Asylum and Immigration Appeals, on 26 February 2004, as HC 211–I. The Government response was published on 9 June 2004, as Cm 6236. The Chairman of the Committee wrote to the Lord Chancellor and Secretary of State for Constitutional Affairs requesting clarification of certain outstanding issues. The exchange of correspondence is appended below.

Appendices

Appendix 1

Correspondence between Rt Hon Alan Beith MP, Chairman of the Constitutional Affairs Committee and Rt Hon Lord Falconer of Thoroton, Lord Chancellor and Secretary of State for Constitutional Affairs

Thank you for your response to the Committee's Report on Asylum and Immigration Appeals.

There are some outstanding points which the response raises:

- I regret that you have not included a statement of the recommendations 3 to 12 in the Report and how the Bill has been changed to supersede those comments. For the general reader this makes the outcome of the Report unclear; it is particularly regrettable as the controversial points about the "ouster" clause were in that group. It would be helpful if you could provide the Committee with a summary of the changes made to Government policy and in particular to the Bill which make the previous recommendations 3 to 12 unnecessary. It may be that the Committee will wish to complete the record by publishing the summary, perhaps as a Special Report.
- When he gave evidence to us Mr Lammy said that he was minded to allow appeals to the House of Lords in immigration cases. What is Government policy on this now?
- In your introduction you regret the time lapse between the publication of the Report and the response. The reason for the delay is entirely reasonable in the circumstances. May I make a small procedural point? Although relations between your Department and the Committee on an official level are commendably close, I think that the proprieties would be better observed if you were to write to me about any delay in responding to a report in future.

It would be very helpful if you could write to me on the first two points by the end of June so that the Committee is ready to continue its work on scrutinising the Government's proposals relating to this Bill.

10 June 2004

Appendix 2

Correspondence between Rt Hon Lord Falconer of Thoroton, Lord Chancellor and Secretary of State for Constitutional Affairs and Rt Hon Alan Beith MP, Chairman of the Constitutional Affairs Committee

Thank you for your letter of 10 June.

Pages 1 and 2 of the Government's response contain a summary of the new policy that has superseded the judicial review ouster in the Asylum and Immigration (Treatment of Claimants, etc.) Bill. We did not think it necessary to go through all of your recommendations 3 to 12 in detail, as the changes to policy as outlined in the response are so fundamental that the points you raise, while valid, have now been overtaken by the new changes to the Bill.

In relation to recommendation 3, cases can at present take over a year to clear the appeals process. Under the new system, we expect that appeals in future will take 15 weeks, or 17 weeks when the filter is in place (although following the Lords' amendment of the Bill, these may be extended to 16 weeks and 19 weeks respectively). Meanwhile, a new collegiate structure for the judiciary merged into the Asylum and Immigration Tribunal will ensure that best practice is disseminated, and that suitable advice and guidance is given to ensure consistently high-quality decision-making.

Recommendation 4 has been answered by the establishment of a system of higher court oversight. This will ensure that if the Tribunal makes an error of law it will be subject to review in the High Court. If a party to the appeal is dissatisfied with the outcome of the reconsideration, he may appeal on a point of law to the appropriate appellate court (i.e. Court of Appeal).

While we understand the Committee's concerns in relation to recommendation 5, the new system is not going to impede in any way the ability of a genuine applicant to challenge a decision made by IND with which they disagree. The reforms to the system are concentrated on preventing those who seek to abuse the system to delay removal when they lack a meritorious case. There will be a right of appeal to the ALT which is then subject to review in the higher courts. In addition, there have been significant improvements in recent years in initial decision-making, which we considered further in our response to recommendation 1.

Recommendation 6 refers to a procedure that is no longer part of the Bill, while recommendation 7 has been answered by the new system of higher court oversight introduced by the Government amendments. Similarly, recommendation 8 refers to a procedure that is longer part of the Bill, and recommendation 9 has been answered by the ability of cases to proceed to the Court of Appeal and then to the House of Lords.

Recommendations 10 to 12 have been answered by the new system of higher court oversight. The possibility of judicial review is not excluded, but the new system has been designed so that it covers all the grounds covered by judicial review. In particular, while we note the point in recommendation 12 that we should wait before introducing further

change to the system, asylum and immigration is a fast-moving area of law and one in which we must respond rapidly to change. The abuse of the system has been clearly identified, and we are now reacting to prevent that abuse in future.

In relation to the second point in your letter, I would reiterate that new sections 103B and 103C confer jurisdiction upon the higher appellate courts, meaning the Court of Appeal, the Inner House of the Court of Session and the Court of Appeal in Northern Ireland. We have made no change to section 3 of the Appellate Jurisdiction Act 1876 which govern the right of appeal to the House of Lords from the Court of Appeal and Court of Session, so subject to the legal requirements for leave cases could go to the House of Lords.

I apologise for the delay to the publication of the Government response. As we noted in the introduction to the response, this delay was necessary to allow the response to make sense of the new Government policy as contained in the amended Bill. As you observe, our officials have a close working relationship, which is obviously welcome, and this delay was explained by my officials to yours, but we will try to ensure that you receive a letter if we anticipate any delays in future.

21 June 2004

Reports from the Constitutional Affairs Committee

The First, Second and Third Reports of Session 2002–03 were published by the Committee under its previous name, Committee on the Lord Chancellor's Department

Session 2002–03

First Report	Courts Bill <i>Government response</i>	HC 526 <i>Cm 5889</i>
Second Report	Judicial Appointments: lessons from the Scottish experience <i>No Government response expected</i>	HC 902
Third Report	Children and Family Court Advisory and Support Service (CAFCASS) <i>Government response</i>	HC 614 <i>Cm 6004</i>
Fourth Report	Immigration and Asylum: the Government's proposed changes to publicly funded immigration and asylum work <i>Government response (Second Special Report, Session 2003–4)</i>	HC 1171 <i>HC 299</i>

Session 2003–04

First Special Report	Protection of a witness – privilege	HC 210
First Report	Judicial appointments and a Supreme Court (court of final appeal) <i>Government response</i>	HC 48 <i>Cm 6150</i>
Second Special Report	Government Response to the Fourth Report on Immigration and Asylum: the Government's proposed changes to publicly funded immigration and asylum work	HC 299
Second Report	Asylum and Immigration Appeals <i>Government response</i>	HC 211 <i>Cm 6236</i>
Third Report	Work of the Committee 2003	HC 410
Fourth Report	Civil Legal Aid: adequacy of provision	HC 391