

STATEMENT OF CHANGES IN IMMIGRATION RULES, HC 1113 – POINTS-BASED SYSTEM: SUPPLEMENTARY BRIEFING

In its 5 November 2008 briefing, ILPA urged both Houses of Parliament to pray against the Statement of Changes in Immigration Rules, laid before Parliament on 4 November 2008 and due to come into force on 25 to 27 November 2008¹. The response from Parliamentarians of all parties, as well as from many outside Parliament, has been extremely positive. Some people who commented have also asked us to cover other aspects of concern in this Statement of Changes in immigration rules and therefore we have produced this supplementary briefing.

Migrant Domestic Workers in Diplomatic Households

The government had originally intended to abolish the protections contained in the existing migrant domestic worker visa as part of its introduction of the Points-Based System. There was a storm of protest against this proposal². Existing protections allow migrant domestic workers to change employer, and provide them with a route to settlement. These are important protections against abuse for a part of the workforce that is extremely vulnerable to exploitation behind the closed doors of a private home and their abolition appeared incompatible with the government's stated intention to ratify the Council of Europe Convention on action against trafficking in human beings by the end of 2008. On 25 June 2008, in its response to the consultation on visitors, the government announced that it had changed its mind and made a commitment to retain the existing rights and protections for migrant domestic workers indicating that there would, if necessary, be a separate review of the protection for migrant domestic workers after the Points-Based system had been operating for two years.

But, under HC 1113, migrant domestic workers in diplomatic households will lose the very limited protection they currently enjoy. These workers are dealt with under a separate category of the UK immigration rules, because entitlements for diplomats to bring domestic workers with them to the UK derive from international treaties, the Vienna Convention on Diplomatic Relations 1961. In HC 1113 it is proposed that these workers will be included in Tier 5 of the Points-Based System. New migrant domestic workers coming to work in diplomatic households will thus have no route to settlement. Their vulnerability to exploitation, particularly acute because they are not permitted to change to an employer outside the diplomatic mission in which they already work and their employers may enjoy diplomatic immunity from prosecution in the UK, will thereby be increased. Under the transitional arrangements proposed in HC 1113, existing domestic workers in diplomatic households have only until 27 November 2008 to make an application to

¹ See www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/statementsofchanges/2008/hc1113.pdf?view=Binary

² See in particular *The New Bonded Labour*, by Kalayaan the organisation working for the rights of migrant domestic workers and Oxfam, produced in June 2008.

renew their visa for a period that will then allow them to apply for indefinite leave to remain in the UK, and no way of knowing about this change. It would be in line with the commitments made in June to give these workers the same rights and protections as other migrant domestic workers and be able to change employer to work in any private household. Nothing in the Vienna Convention on Diplomatic Relations would prohibit this³ and no justification is given for the change.

Transitional Arrangements

Many concerns have been raised about the transitional arrangements set out in HC 1113. As discussed in the context of domestic workers above, the periods for applying to extend one's stay are extremely short and it seems likely that many people will fail to make such an application because of lack of knowledge.

Of particular concern is the position of those granted six months leave to enter the UK in a category being abolished (of which the main example will be work permits). Under the transitional arrangements, after 27 November 2008 when the rules are due to come into force such people will not be able to re-enter the UK on their existing leave⁴ but will have to qualify under the Points-Based System. The rules are poorly drafted; it is unclear whether the provision is supposed to affect those granted leave for less than 6 months, or for exactly six months (a not infrequent occurrence). One can envisage people who have leave that they have no reason to doubt is still in force (unless they are fond of reading the small print of Statements of Changes in immigration rules) going home, for example for Thanksgiving in the United States, only to find themselves refused entry on their return.

Retired persons of independent means

A category exists in the current immigration rules whereby retired persons who have enough funds to support themselves and who have close connections with the UK can apply to enter to retire and indeed to live out their lives in the UK. There is a separate category in the immigration rules for elderly dependent relatives living alone abroad in compelling compassionate circumstances. This latter category is for those dependent, including financially dependent, on their relatives in the UK. Thus it cannot be used by those who would have qualified under the category of Retired Persons of Independent Means. In neither category is the person coming to the UK permitted to have recourse to UK public funds. HC 1113 abolishes the category of retired persons of independent means⁵. The result? If you are supporting your elderly relatives they may apply to join you in the UK, to live out their lives where you can assist and care for them. But if your elderly relatives have their own means, then there will be no prospect of their coming to the UK to live out their lives close to you and cared for by you. When, in its consultation on the Path to Citizenship, the UK Border Agency mooted abolition of this category, 58% of respondents were against. And yet the category is to go.

These are some of the further reasons why Parliament should pray against this Statement of Changes, scrutinise and challenge them.

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³ See http://untreaty.un.org/ilc/texts/instruments/english/conventions/9_1_1961.pdf

⁴ See the UK Border Agency's explanation at <http://www.ukba.homeoffice.gov.uk/workingintheuk/aboutthechanges/>

⁵ For the UK Border Agency explanation, see <http://www.ukvisas.gov.uk/en/aboutus/newsroom/?view=News&id=8742299>