

# ILPA information sheet

Information sheets provide general information only, accurate as at the date of the information sheet. Law, policy and practice may change over time.

ILPA members listed in the directory at [www.ilpa.org.uk](http://www.ilpa.org.uk) provide legal advice on individual cases. ILPA does not do so.

The ILPA information service is funded by the Joseph Rowntree Charitable Trust.

An archive of information sheets is available at [www.ilpa.org.uk/infoservice.html](http://www.ilpa.org.uk/infoservice.html)

**Steve Symonds** ILPA Legal Officer 020-7490 1553 [steve.symonds@ilpa.org.uk](mailto:steve.symonds@ilpa.org.uk)

**Immigration Law Practitioners' Association** [www.ilpa.org.uk](http://www.ilpa.org.uk) 020-7251 8383 (t) 020-7251 8384 (f)

---

## Deportation

26<sup>th</sup> July 2012

On 9 July 2012, the Immigration Rules (“the Rules”) changed. More information about these changes is provided by the “Family Migration – Changes to Immigration Rules 1” information sheet [<http://tinyurl.com/blz7zg6>]. This information sheet includes information about the changes in the Rules relating to deportation.

### Deportation and removal

Deportation is not the same as removal from the UK. Deportation is where the Home Secretary (or an official of the UK Border Agency on her behalf) decides a person’s continued presence in the UK is not in the public interest (i.e. not conducive to the public good) and makes an order that the person is to leave the UK and is barred from returning to the UK while the order remains in force (i.e. while it is not revoked). Other people not lawfully in the UK may be removed. Their removal does not of itself bar their applying to return to the UK lawfully. However (see the “General Grounds for Refusal – Update” information sheet [<http://tinyurl.com/bwldwtm>]), some people may be barred from returning to the UK for up to 10 years. See also the “Overstayers” information sheet [<http://tinyurl.com/ca9l3ph>].

### Deportation

For many years, the Immigration Act 1971 has set out the basis on which a person’s deportation could be ordered and the basis for deportation proceedings. Under the Act’s provisions, the UK Border Agency is first required to give notice of the intention to make a deportation order. A person who receives such a notice may appeal. If an appeal is successful, no deportation order should be made. If an appeal is unsuccessful or the person does not appeal, a deportation order may be made. A person can request that a deportation order is revoked (i.e. that it ceases to be in force). If that request is refused, the person may appeal against the refusal.

In August 2008, provisions for “automatic deportation” set out in the UK Borders Act 2007, took effect. These provisions did not replace the provisions of the 1971 Act, which remain in force. The 2007 Act provisions are additional and mean that where a person is sentenced to a term of imprisonment of 12 months or more for a single offence the Home Secretary’s discretion as to whether to make a deportation order is replaced by a requirement to make such an order. There are exceptions. For example, no deportation order should be made if it would be contrary to European Union law, or to the 1951 Refugee Convention or to a person’s human rights to deport the person. There is a right of appeal if a deportation order is made under the provisions of the 2007 Act.

### Appeals in deportation cases

As in other immigration cases, appeals in deportation cases are made to the First-tier Tribunal (Immigration and Asylum Chamber). Tribunals Service statistics show that for the year 2010/11, the First-tier Tribunal decided 1,100 appeals in deportation cases and allowed 27% of these.

Appeals in deportation cases will generally be brought on Article 8 grounds because where the UK Border Agency has decided to deport a person it will often only be possible to challenge that on the basis that the decision will interfere disproportionately with a person's private and family life.

### **The new Immigration Rules relating to deportation cases**

The new Rules state in paragraphs 396 and 397 that, where the provisions for deporting someone apply (see above), "*it will only be in exceptional circumstances that the public interest in deportation is outweighed.*" Paragraphs 398, 399 and 399A then set out circumstances in which the UK Border Agency may accept that deportation would be contrary to Article 8 and may grant the person 30 months leave to remain. Those circumstances apply where a person has been convicted and sentenced to imprisonment for at least 12 months but less than four years (or where the Secretary of State decides the person's offending has been particularly bad because of the harm it has caused or its persistence), and any one of the following applies:

- The person is the parent of a child under the age of 18 years; and
  - (i) the child is a British citizen or has lived in the UK for at least seven years; and
  - (ii) it would not be reasonable to expect the child to leave the UK; and
  - (iii) there is no other family member in the UK who can care for the child.
- The person's partner is in the UK; and
  - (i) the partner is a British citizen or has indefinite leave to remain, refugee leave or humanitarian protection; and
  - (ii) the person (not his or her partner) has lived in the UK lawfully for a continuous period of at least 15 years (discounting any period in prison); and
  - (iii) there are "*insurmountable obstacles*" to the couple's family life continuing outside the UK
- The person has lived in the UK continuously for at least 20 years (and has no ties to the country to which he would be deported).
- The person is aged under 25 years of age and has lived continuously for at least half of his or her life in the UK (and has no ties to the country to which he would be deported).

The Rules make no provision for other cases (e.g. where a longer sentence of imprisonment is imposed, or the person has lived in the UK for fewer years than are specified in the Rules, or the person's child has not lived in the UK for seven years or there is another family member that can take care of the child). If a person is granted leave to remain because his or her circumstances fall within those described above, paragraph 399C says that further leave to remain may be granted at the end of this period "*subject to such conditions as the Secretary of State deems appropriate.*" The Rules, therefore, leave the person's situation very uncertain as to what may happen after an initial grant of leave to remain for up to 30 months.

A person's deportation may still be contrary to Article 8 and/or the best interests of children even though the requirements of the Rules are not met. This is likely to be important in many cases because the Rules set out general thresholds which cannot properly reflect the significance of private and family life or the interests of children in all cases. For example:

- That a child, who cannot reasonably be expected to leave the UK, could be cared for by another family member is unlikely to diminish the best interests of the child in not being separated from his or her parent by that parent's deportation.
- Where a child faces deportation, the UK is obliged under Article 40 of the 1989 UN Convention on the Rights of the Child to take steps to help the child's reintegration into society, whether or not he or she has lived in the UK for half of his or her life or has some remaining ties to his or her country of origin.

More information is given in this month's "Article 8 No. 2" and "Best Interests of Children 3" information sheets [<http://tinyurl.com/cezhhjh>] and [<http://tinyurl.com/c3tv92b>].