



## Special Immigration Status

1<sup>st</sup> August 2007

The Criminal Justice and Immigration Bill was announced on 26 June 2007. It contains provisions for a new immigration status. This status is intended for a small number of individuals, whose presence in the UK will, if the Bill becomes law, be subject to severe restrictions.

The Bill sets out provisions for this new status at clauses 115 to 122. Second Reading in the Commons will be in October. A copy of the Bill is available at:  
<http://www.publications.parliament.uk/pa/cm200607/cmbills/130/2007130.pdf>

### **Government's reasons for wanting to introduce this status**

In 2006, in the Court of Appeal, the Home Office lost a judicial review challenge brought by the Afghan men who had been prosecuted for hijacking a plane in order to flee the Taliban in 2000. These men had been found to be excluded from the protection of the Refugee Convention but won their appeals against deportation on human rights grounds because they faced torture or other serious ill-treatment if returned to Afghanistan. The Home Office, however, failed to grant them leave to remain. The Court of Appeal ruled this failure was unlawful.

The Government were highly critical of the courts. They indicated they would legislate to avoid having to grant leave to remain in such cases in the future. The special immigration status is the Government's response. It avoids the need to grant leave to remain by creating a wholly new status, expressly stated not to be a form of leave to remain, and provides the Home Office a wide discretion to set severe restrictions upon any person given this new status.

It should be noted that the Afghans' convictions had been and remain quashed.

### **Who would be restricted to this new status if the Bill becomes law?**

A person may be given special immigration status:

- if they cannot be removed from the UK because to do so would violate their human rights; and
- depending upon their behaviour, whether before or after their arrival in the UK

Behaviour that may mean a person is given special immigration status includes:

- a crime against peace, war crime or crime against humanity
- a serious non-political crime outside the UK
- an act contrary to the principles or purposes of the UN
- a crime in the UK leading to a sentence of imprisonment of 2 years or more
- a crime outside the UK leading to a sentence of imprisonment of 2 years or more where a 2 years sentence might have been applied if the act was done in the UK
- a crime in the UK where the crime is listed by the Particularly Serious Crimes Order
- a crime outside the UK where the crime is similar to one listed by the Particularly Serious Crimes Order

The types of behaviour listed are those which would either preclude a person from all or some of the protection of the Refugee Convention.

The same status may also be given to the person's spouse or dependent children, even though there is no suggestion that their own behaviour is cause for concern.

### **ILPA information service**

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[www.ilpa.org.uk/infoservice.html](http://www.ilpa.org.uk/infoservice.html)

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Information sheets provide general information only.

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.

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### **Particularly Serious Crimes Order**

Article 33.2 of the Refugee Convention provides that a refugee shall generally not be protected against being returned to his or her country of origin if he or she:

- has been convicted of a particularly serious crime; and
- is a danger to the community.

The Particularly Serious Crimes Order lists those crimes, which the Government says are so serious as to fall within Article 33.2. The full title of this statutory instrument is the Nationality, Immigration and Asylum Act 2002 (Specification of Particularly Serious Crimes) Order 2004. It lists more than 300 criminal offences. Criminal damage and theft both appear on the list.

### **Key restrictions of special immigration status**

A person given special immigration status will be refused:

- permission to work
- ordinary state benefits (and restricted to something similar to NASS support as currently provided for asylum-seekers)
- leave to remain
- family reunion

A person given special immigration status may be subject to:

- restrictions on where they live
- reporting conditions
- electronic monitoring (including tagging)
- curfews

A failure to comply with any of these conditions or restrictions will be a criminal offence, with a 51 weeks maximum prison sentence. In Scotland or Northern Ireland, the maximum sentence will be 6 months.

### **For how long will the status last?**

No time period is envisaged. There is no particular time period after which a person can apply for indefinite leave to remain or British citizenship. A person given this special immigration status will continue with that status until either:

- he or she can be removed from the UK because a change of circumstances means would no longer be a human rights violation to do so; or
- a decision is taken to grant leave to remain

It seems the Government intend that a person given special immigration status will rarely ever be granted leave to remain unless it is conceded that the decision to grant special immigration status had been made in error.