



Simplification Project

3rd August 2007

On 6 June, the Government announced a project to simplify immigration law. At the same time, they launched a consultation on this simplification project. The consultation paper is available at: <http://www.ind.homeoffice.gov.uk/6353/6356/17715/immigrationlawconsultation>

This information sheet gives some basic information about this simplification project; and some thoughts on a couple of issues, which are relevant to the consultation.

Background

UK immigration law has become very complex. In just the last ten years there has been:

- Immigration and Asylum Act 1999
- Nationality, Immigration and Asylum Act 2002
- Asylum and Immigration (Treatment of Claimants, etc.) Act 2004
- Immigration, Asylum and Nationality Act 2006
- UK Borders Bill (expected to become law at the end of this year)
- Criminal Justice and Immigration Bill (expected to become law next year)

Of course, there is much more immigration law than these Acts including:

- other immigration Acts
- hundreds of statutory instruments relating to immigration law
- the Immigration Rules
- various Home Office policies and guidance to Border and Immigration Agency (BIA) staff

The Government's simplification project aims to simplify all this immigration law.

The purpose of simplification

The Government say that simplification will improve immigration law, because it will be easier to understand. They say this will lead to more consistent and efficient decision-making. One way by which they intend to achieve this, is to reduce discretion available to decision-makers.

It is not yet clear what precisely the Government means by simplification and what they intend to do. However, they say they are looking at the whole of immigration law. It may well turn out that simplification is mentioned in other work or projects of the Border and Immigration Agency.

Reducing discretion and consolidation may be two aims of simplification. Some further information about these aims is given below.

The need for discretion

A concern with the Government's approach is this aim to reduce discretion.

If discretion is too wide, this can lead to inconsistency and it is easy to understand why a system which is highly inconsistent is one in which nobody has any confidence.

However, the UK immigration system deals with millions of applications. A system that is inflexible cannot properly deal with the many differences between individual applications. It treats the people making these applications the same if they share certain defined characteristics, but ignores the fact that these same people have other characteristics that clearly distinguish them

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one from the other. This is one reason why immigration law has developed various concessions over the years, because concessions have enabled the system to deal fairly with circumstances that were not foreseen when rules were made.

In the area of business migration, a points-based system is planned. The only points-based part of the current system is the Highly Skilled Migrants Programme (HSMP). This scheme is an example of reducing discretion; and it has already run into difficulties. For instance, it has been bureaucratic and unfair in requiring some people to produce particular documents, which they do not have or which simply demonstrate something that is obvious from other documents they have produced.

Consolidation

Consolidation means to bring all relevant pieces of legislation together in one Act.

ILPA, and many others, have been calling for consolidation for several years. It would be a major step forward if the many immigration Acts were consolidated. It would make it much easier for everyone (whether lawyers or not) to find what was the relevant piece of legislation if it was contained in one Act. At present, the various Acts must be considered and read alongside each other so as to understand how one part of one Act operates in relation to one part of another Act. There are also hundreds of statutory instruments that relate to immigration, and many of these could be usefully consolidated.

Consultation

The current consultation is an initial consultation only. It closes on 29 August 2007.

At section 4 of the consultation paper, there are eight questions. If you are responding to the consultation, however, it is not necessary to answer all of these questions in order to respond. If a question does not seem relevant, or is outside your expertise or interest, you do not need to answer it. The last question is plainly open-ended so any points not made in reply to the previous questions could easily be made in reply to this question.

Further details of how and where to respond can be found in the consultation paper.

After this consultation

The current consultation is an initial consultation only. It is intended that more detailed information about what the Government expect to do through simplification will be published towards the end of the year. At this time, they will publish a further consultation. However, what appears in the more detailed information at the end of the year may, in part, be influenced by responses to this initial consultation.

Current intentions are to publish a new immigration Bill towards the end of 2008. In the meantime, however, the Government may consider further changes to the Immigration Rules and the policy guidance in order to simplify these. Again, any changes that are made may be influenced by responses to this initial consultation.