



Immigration Rules – general grounds update

21st March 2008

On 6 February 2008, the Government published HC 321, Statement of Changes in Immigration Rules. This introduces several changes to the Immigration Rules – some have come into force on 29 February; others are to come into force on 1 April.

Among the changes in HC 321 are requirements that applications to come to or stay in the UK must be refused in certain circumstances; and, in some cases, bans upon a person's returning to the UK within a fixed period after he or she has left. Details of these changes are given in the "Immigration Rules – general grounds for refusal" information sheet.

This information sheet provides an update on developments since 6 February when the changes to the Immigration Rules were first published.

Joint Committee on Human Rights

On 19 February 2008, Liam Byrne MP, the Home Office Minister with responsibility for immigration, gave evidence before the Joint Committee on Human Rights. ILPA provided the Committee with a briefing about the changes in HC 321. That briefing is available in the "Submissions" section of our website at www.ilpa.org.uk

During his evidence, the Minister indicated that there may need to be exceptions for children and trafficked victims. As yet, no exceptions for these groups have been introduced. A transcript of Liam Byrne's evidence is available at:

<http://www.publications.parliament.uk/pa/jt200708/jtselect/jtrights/uc357-i/uc35701.htm>

Path to Citizenship Green Paper

On 20 February, the Prime Minister announced the publication of the *Path to Citizenship* Green Paper. In Chapter 7 of that paper, there are some vague proposals about changes to the immigration rules. These appear to include the changes already made by HC 321.

Prayer against HC 321

The Home Secretary is empowered to make and change the Immigration Rules. Any changes she makes can be rejected by Parliament if either the House of Commons or the House of Lords chooses to debate the changes (a prayer against) and votes to reject them.

There was a prayer against HC 321 in the House of Lords on 17 March 2008. ILPA provided briefings to a number of peers for that debate. After the debate, the Lords did not demand a vote; so HC 321 was not rejected. However, some concessions and undertakings (see below) were given during the course of the debate, which can be read at:

<http://www.publications.parliament.uk/pa/ld200708/ldhansrd/text/80317-0013.htm#0803183000002>

It is hoped that there may be a further prayer against HC 321 in the House of Commons shortly. This may be an important opportunity to seek further concessions or changes to HC 321.

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Steve Symonds

ILPA legal officer

020 7490 1553

steve.symonds@ilpa.org.uk

Immigration Law Practitioners' Association

www.ilpa.org.uk

T 020 7251 8383

F 020 7251 8384

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Concessions and undertakings

The Government announced some concessions and undertakings during the debate in the House of Lords on 17 March 2008.

The significant concession made by the Government was that anyone who voluntarily left the UK before 1 October 2008 would not receive a mandatory re-entry ban. If someone leaves the UK before this date, they may apply to come back to the UK. If so, they will need to satisfy the Immigration Rules. However, any previous breach of UK immigration laws will not, as would have been the case without the concession because of the effect of HC 321, lead to the automatic refusal of their application – though it may still be taken into account. During the debate, the Government said that this concession would apply to those currently in the UK. ILPA is seeking further clarification, but as the concession stands it seems that those who left the UK on or before 17 March 2008 may still be caught by a re-entry ban.

The Government also confirmed that a simple inaccuracy or mistake in a document submitted with an application would not mean the document was treated as a false document. There would need to be some element of deceit (e.g. forgery). As explained in the “Immigration Rules – general grounds for refusal” information sheet, a false statement or false document included with an application will mean it is refused, whether or not the falsity is known to the applicant and whether or not it is relevant to the application. Although no explanation of what is meant by “false statement” was given, it would be consistent if the Government also intend that there must be some element of deceit for a statement to be false.

The Government also confirmed that a student or points-based application to extend stay in the UK made within 28 days of expiry of the applicant’s previous leave, will still be considered by the Border and Immigration Agency (BIA). In the case of a student the BIA may, in exceptional circumstances, consider an application within 6 months of the applicant’s previous leave having expired. How this concession can be reconciled with HC 321 remains unclear. A student who chooses to make a late application would, it seems, risk facing a ban on returning to the UK if the application is refused and he or she have to leave the UK.

These concessions and undertakings are welcome. However, there remain serious problems with the changes to the Immigration Rules; and in ILPA’s view further changes or concessions ought to be made to ensure that:

- minor or inadvertent breaches of UK immigration law do not lead to a person receiving a re-entry ban
- children, trafficking victims and refugees are not penalised by their method of entry to the UK
- those who have left the UK before 17 March 2008 are not subjected to re-entry bans
- those who are pursuing legitimate claims and appeals in the UK are not required to leave the UK before these claims or appeals are complete in order to escape a re-entry ban
- those who have been granted leave to enter or remain in the UK since a breach of immigration law will not face a re-entry ban if they leave the UK because of that previous breach
- applicants are not automatically penalised for the mistakes or deceptions of third parties
- discretion is reintroduced so that applicants to stay in or return to the UK are not treated in an arbitrary way