



Draft Bill & Right of Abode

19th September 2008

In July 2008, the Government published the draft (partial) Immigration and Citizenship Bill. General and background information is provided in the “Draft (partial) Immigration and Citizenship Bill” information sheet.

The draft Bill includes provisions which, if implemented, would have serious consequences for those non-British citizens who currently enjoy the right of abode.

The right of abode

The right of abode is currently provided by the Immigration Act 1971. Anyone who has the right of abode is generally free to enter or stay in the UK. Those who do not have the right of abode may only enter or stay in the UK according to regulations made by the Government. The right of abode essentially means to be free from immigration control. (Almost all references in the Immigration Act 1971 to ‘British citizens’ include all those with the right of abode, whether or not they are British citizens.)

Someone with the right of abode does not need permission to enter or stay in the UK. Someone with the right of abode may not be deported. Someone with the right of abode may not be subjected to immigration detention – except that he or she may be detained on arrival in the UK if this is necessary to complete an examination to establish whether the person has the right of abode.

Two types of individual currently have the right of abode:

- British citizens
- certain Commonwealth citizens who had this right before January 1983 (when the British Nationality Act 1981 came into force, amending the Immigration Act 1971) and who remain Commonwealth citizens

In January 1983, the British Nationality Act 1981 made fundamental changes to British nationality law, which nevertheless remains a complex area of law covering a varied range of British nationality categories with differing entitlements. The inclusion of Commonwealth citizens, at that time, within the scope of the right of abode effectively preserved the entitlement of these individuals to enter or stay in the UK, as it existed prior to January 1983. It did not grant any new entitlements, or extend the entitlement to people who had not held it previously. However, since 2006, it has been possible to deprive Commonwealth citizens of the right of abode.

Having the nationality of one of the European Economic Area countries does not provide someone or his or her family with the right of abode. However, there are special arrangements in European law for these individuals.

How the draft Bill would change this

The draft Bill would get rid of the right of abode.

Under the draft Bill, British citizens and EEA nationals and their families (benefiting from European law) would be free from immigration control.

However, those Commonwealth citizens who now have the right of abode would lose this, and

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references to 'British citizens' in immigration law would no longer include them. They would become subject to immigration control. These Commonwealth citizens would need permission to enter or stay in the UK. They could be deported under the expulsion powers in the draft Bill. They could be excluded from the UK under those same powers. They could be subjected to immigration detention.

The Government has indicated in notes on the draft Bill that its current intention is to grant permission to these Commonwealth citizens to stay in the UK. However, this is not reassuring. Firstly, intentions may change. Secondly, having permission would mean being subject to immigration control. Conditions may be placed on permission. Penalties may be imposed for breaching any conditions. Permission may be cancelled. The powers to cancel permission proposed in the draft Bill are very much wider than the current power to deprive someone of the right of abode.

They could also be subjected to recent developments in UK law, from which they are currently exempt:

- the so-called automatic deportation regime, whereby the Home Office is required to deport certain individuals from the UK regardless of the individual facts of their case
- the special immigration status regime, where some individuals may be subjected to a status of limbo (indefinitely precluding them from working or accessing ordinary welfare benefits)

Further information on these two developments is available from the information sheets on "UK Borders Bill" of March 2007 and "Special Immigration Status" of August 2007.

What to do if you object to these changes

The draft (partial) Immigration and Citizenship Bill is currently under consideration by two select Committees. Further information is available in the "Draft (partial) Immigration and Citizenship Bill" information sheet.

The Government intends to introduce the full Bill to Parliament in early 2009. At this stage, it is possible to influence the Government to change the provisions in the draft Bill before it introduces the full Bill.

Individuals or organisations can lobby their individual constituency MP about the contents of the draft Bill now. This can be done by writing to the MP or arranging to see him or her at the MP's constituency surgery. The MP may be able to bring pressure on the Government in order to persuade the Government to change the provisions in the draft Bill. If the Government do not change these provisions before introducing the full Bill, the MP will have an opportunity to vote against the provisions in the Bill as it passes through Parliament.

To find out who is your local MP, you can use the search facility at:
http://www.parliament.uk/about/how/members/mps_contact.cfm

If you know who your local MP is, you may find further information about how to contact him or her at:
<http://www.parliament.uk/directories/hciolists/alms.cfm>