



# information sheet

## Draft Bill – Permission

1<sup>st</sup> December 2008

In July 2008, the Government published the draft (partial) Immigration and Citizenship Bill. This information sheet provides information about the new status of ‘permission’ which is proposed by the draft Bill.

General information on the draft Bill is available from the “Draft (partial) Immigration and Citizenship Bill” information sheet.

### The current situation

British citizens have the right of abode in the UK. This means they are not subject to immigration control.

Certain Commonwealth citizens who had the right of abode before 1983, continue to have the right of abode following changes to UK law made by the British Nationality Act 1981. They too, therefore, are not subject to immigration control. For more information on the right of abode and the draft Bill, see the “Draft Bill – Right of Abode” information sheet.

Others who wish to enter or stay in the UK are subject to immigration control. Immigrants to the UK require leave. Leave may be granted for a limited or indefinite period. If leave is granted for a limited period, the grant of leave may be subject to any of the following conditions:

- a restriction on whether the immigrant may work
- a restriction on whether the immigrant may claim welfare benefits
- a requirement that the immigrant registers with the police
- a requirement that the immigrant reports to the UK Border Agency
- a requirement that the immigrant resides at a particular address

In order to travel to the UK, many immigrants first need to obtain entry clearance.

### Leave – leave to enter and leave to remain

Leave may be granted as leave to enter or leave to remain. Someone who wants to enter the UK will need leave to enter. Someone who has leave to enter (or leave to remain) for a limited period will generally need to obtain leave to remain if he or she wants to stay in the UK for a longer period.

Leave to enter may be granted on a person’s arrival in the UK, or in many cases before he or she arrives here.

Leave to enter may be granted by an immigration officer at immigration control at a port of entry to the UK. If an Entry Clearance Officer has already granted leave to enter (see below), the immigration officer may in certain circumstances cancel that leave to enter – e.g. if, when an immigrant arrives in the UK, the immigration officer has reason to believe that the leave to enter was obtained by deception.

Leave to remain may be granted by officials at the UK Border Agency.

### Entry clearance

Whether or not leave to enter has been granted before a person’s arrival, many immigrants are

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required to have entry clearance before they arrive in the UK. Entry clearance merely confirms that a person may lawfully travel to the UK in order to request leave to enter. Entry clearance can be granted by an Entry Clearance Officer in an overseas post – e.g. at a British Embassy overseas.

In the past, Entry Clearance Officers could not grant leave to enter. This could only be granted by an immigration officer. However, the Immigration and Asylum Act 1999 changed this position. Now, entry clearance officers may also grant leave to enter. Those who wish to come to the UK can make an application to an entry clearance officer for entry clearance and leave to enter. As indicated above, in certain circumstances an immigration officer may cancel leave to enter when examining an immigrant who has arrived in the UK.

### **The proposed new status – ‘permission’**

The draft Bill proposes to replace entry clearance, leave to enter and leave to remain with one status – permission.

Permission could be granted for a temporary period or be permanent. This is no different to the current position where leave can be granted for a limited or indefinite period.

Temporary permission could be subject to conditions. This is very similar to the current position for limited leave. However, an additional condition is proposed – a restriction on whether the immigrant may study.

### **Reasons for the new status**

The importance of the distinction between entry clearance and leave to enter has been greatly reduced by the changes introduced by the Immigration and Asylum Act 1999. This is one reason the Government gives for proposing the new status. However, this reason merely suggests that entry clearance is no longer a necessary status. It does not, of itself, support the merger of leave to enter or leave to remain; or the renaming of ‘leave’ as ‘permission’.

The other reason the Government gives for proposing the new status is that ‘permission’ is more easily understood than ‘leave’. This reason appears to be put forward on the basis that permission “*means what it says, and says what it means*”. However, this reasoning may be simplistic for two reasons:

- Permission will not simply mean what it says, because some immigrants will (under the current proposals) continue to be permitted to be in the UK but not have the ‘permission’ status – e.g. those on ‘immigration bail’ (see “Draft Bill – Immigration Bail” information sheet).
- Leave (leave to enter and leave to remain) is what lawyers sometimes refer to as ‘a term of art’. In other words, it has a very specific legal meaning. Leave is regarded by many lawyers as a useful term of art because it is not easily misunderstood for something else. Permission, however, would be a new term. It also has a very ordinary meaning in English. Since the status of ‘permission’ would not be granted to all immigrants who are permitted to be in the UK, this ordinary meaning is likely to cause confusion rather than make things simple.