



information sheet

Draft Bill – Expulsion

2nd December 2008

In July 2008, the Government published the draft (partial) Immigration and Citizenship Bill. This information sheet provides information about the new power of ‘expulsion’ which is proposed by the draft Bill. It is proposed that expulsion will replace administrative removal and deportation.

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

The current situation

There are broadly two circumstances in which immigrants are required to leave the UK; and if they do not leave voluntarily may be removed:

- someone who is not permitted to be in the UK or is in breach of immigration conditions may be subject to administrative removal
- someone whose continued presence in the UK is considered to be a danger or generally undesirable may be subject to deportation

Administrative removal

This is the process by which someone may be required to leave the UK or removed from the UK if he or she is in the UK unlawfully. Someone in any of the following circumstances may be subject to administrative removal:

- being in the UK without leave to enter or remain
- being in the UK with leave to enter or remain, but breaching a condition of that leave – e.g. working when a condition of the leave is that the person must not work
- remaining in the UK after leave to enter or remain has expired without having applied to extend the leave before it expired

Unlike deportation, administrative removal does not bar someone from applying to return to the UK if he or she can meet the requirements of the Immigration Rules for coming to the UK. However, please see the section on “Mandatory re-entry bans” below.

Deportation

This is the process by which someone may be required to leave the UK or removed from the UK if his or her continued presence in the UK is considered to be undesirable. Someone in any of the following circumstances may be subject to deportation:

- being convicted of an offence in the UK where the sentence judge has recommended the person’s deportation
- where the UK Border Agency considers that the person’s presence in the UK is undesirable (not conducive to the public good) – e.g. because the person constitutes a danger to national security or to the public, the person has been convicted of an offence in the UK or the person is associated with crime or other activity considered undesirable
- being a family member (i.e. spouse, civil partner or dependant child) of someone who is subject to deportation

Deportation does not merely require a person to leave the UK. It also constitutes a bar on the person’s return to the UK for so long as the deportation order (the decision that the person is to be deported) remains in effect. A person can only apply to return to the UK under the Immigration Rules if the deportation order has been revoked.

ILPA information service

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www.ilpa.org.uk/infoservice.html

Steve Symonds

ILPA legal officer

020 7490 1553

steve.symonds@ilpa.org.uk

[@ilpa.org.uk](mailto:steve.symonds@ilpa.org.uk)

Immigration Law Practitioners’ Association

www.ilpa.org.uk

T 020 7251 8383

F 020 7251 8384

Information sheets provide general information only.

ILPA members listed in the directory at www.ilpa.org.uk provide legal advice on individual cases. ILPA does not.

Automatic deportation

In the UK Borders Act 2007, the Government introduced what it called “automatic deportation”. This refers to circumstances in which the Government has abandoned any discretion to consider the individual facts of the case before making a decision to deport. This means that some individuals, who have been convicted and sentenced to imprisonment in the UK, must be deported. However, there are limited exceptions to automatic deportation. Some further information about automatic deportation is given in the “UK Borders Act 2007” and “UK Borders Bill” information sheets of March 2008 and March 2007 respectively.

Mandatory re-entry bans

In April 2008, the Government changed the Immigration Rules. The changes included that many individuals who had breached immigration laws, whether the breach was serious or minor, would be banned from the UK for a period of time. Information on this is available from the “Immigration Rules – General Grounds for Refusal”, “Immigration Rules – General Grounds Update” and “Immigration Rules – Concessions on General Grounds for Refusal” information sheets of February, March and May 2008 respectively. In June 2008, some of the concessions to which those information sheets refer, have been incorporated into the Immigration Rules.

The proposed new power – ‘expulsion’

The new power of expulsion replaces administrative removal and deportation. Historically, these have been very different concepts in immigration law. The differences between the two, described above, will disappear. Essentially, anyone who is subject to a decision requiring them to leave the UK in the future may face a ban on their return. This will be the case whether or not they have committed or been convicted of an offence.

For those who are sentenced to any period of imprisonment in the UK, the new powers would include, after completing their sentence, a presumption that they should continue to be detained.

For those who are sentenced to imprisonment for certain offences, or sentenced to terms of imprisonment of 12 months or more, the new powers would require expulsion. If they were at risk in their home country or had settled family life in the UK, which precluded their expulsion, they would remain at risk of expulsion indefinitely and could face expulsion if their circumstances changed.

There would be no appeal against an expulsion decision if the decision was made for any of the following reasons:

- the person had been imprisoned for a specified offence (i.e. the offence is listed by the Government)
- the person was sentenced to imprisonment for 12 months or more
- the person had breached a condition of his or her temporary permission (now called limited leave to enter or remain – see information sheet on “Permission”) – this could include failing to report on one occasion whatever the reason for that failure
- the person was the spouse, civil partner or dependant child of any of the above

European Economic Area (EEA) nationals and their families

The situation for EEA nationals and their families is governed by the European Parliament and Council Directive 2004/38/EC (often referred to as the Citizens’ Directive). The circumstances in which an EEA national or family member of an EEA national may be expelled from the UK are significantly more restricted than is the case for other immigrants.