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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 020-7251 8383 (t) 020-7251 8384 (f)

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Immigration Rules changes & family migration

On 13 June 2012, the Government published changes to the immigration rules (HC 194). Some of the changes took effect on 9 July 2012 and others are to take effect on 1 October 2012. The changes are wide-ranging:

- Some of the most significant changes affect family migration, and information sheets on “Family Migration – Changes in Immigration Rules” highlight some (but not all) of these changes.
- There are also particularly important changes affecting how the UK Border Agency intends to deal with Article 8 (private and family life) claims, deportation cases and cases involving children. Information sheets on “Article 8 – No. 2”, “Deportation” and “Best Interests of Children” provide further information.
- There are significant changes to long residence applications under the Rules, see the “Long Residence 2” information sheet.
- Other changes affect general grounds for refusal and overstayers (see the “General Grounds for Refusal – Updated” and “Overstayers” information sheets).

Many of these changes are highly complex, involve difficult and lengthy cross-referencing and are far from easy to understand. The Government has made several statements to suggest that the changes will, in the great majority of cases, set thresholds which will determine how Article 8 and the best interests of children will apply in immigration cases. ILPA considers that the Government is mistaken in these statements. However, it is clearly likely that the UK Border Agency will now apply a very restrictive approach to such cases.

There are important, and complex, transitional provisions which generally protect those who are already in the UK with leave on the basis of their family relationship.

On 18 July 2012, the Supreme Court ruled in *R (Alvi) v Secretary of State for the Home Department* [2012] UKSC 33 that requirements of immigration rules cannot be contained in guidance (i.e. outside the Immigration Rules) that is changed from time to time without being formally put before Parliament by the publication of changes to the immigration rules in the formal way that is set out in the Immigration Act 1971. On 19 July 2012, in response to this, the Government published further, lengthy changes to the immigration rules (Cm 8423) incorporating several more requirements relating to the changes introduced on 9 July 2012.

ILPA has met with and written to the Home Office about these changes, identifying what appear to be mistakes and examples of lack of clarity in the immigration rules as a result of these changes. Most of our concerns are yet to be resolved. It is not possible, even in as many as nine information sheets (which have been produced at this time), to set out all of our concerns or address all the changes that have been made. Those to whom the rules apply should seek legal advice, and legal advisers will need to read the rules thoroughly and carefully. In many cases, an appeal to the First-tier Tribunal (Immigration and Asylum Chamber) or judicial review application may be necessary.