

**ILPA BRIEFING FOR DEBATE ON HC 194 STATEMENT OF CHANGES IN IMMIGRATION RULES: TO AMEND THE MOTION**

***Date not yet confirmed but we understand Tuesday 19 June is intended, at least for the House of Commons and possibly for the House of Lords***

We understand the motion to be laid before the House to read:

***"This House supports the Government in recognising that the right to family or private life in Article 8 of the ECHR is a qualified right and agrees that the conditions for migrants to enter or remain in the UK on the basis of their family or private life should be contained in the immigration rules."***

**Proposal to amend the motion**

ILPA proposes that the motion be amended with the insertion of the words

*"...insofar as this can be done in a manner that reflects the UK's international obligations, in accordance with which obligations the Immigration Rules must be applied and interpreted. This House looks forward to studying the rules that the Home Secretary has laid before the House and debating them in due course and in particular to ascertaining whether they are comprehensible and accessible to unrepresented applicants."*

**Briefing**

On Sunday 11 June the Home Secretary announced the Government's decisions following the consultation on family immigration on the Andrew Marr Show. On Monday 12 June the Home Secretary announced the changes to parliament (HC Report Jun 2012: Column 48)<sup>1</sup>.

The Home Secretary stated, at columns 49-50

*"Article 8 is clearly a qualified right, but Parliament has never set out how it should be qualified in practice. So, for too long, the courts have been left to decide cases under article 8 without the view of Parliament, and to develop public policy through case law. It is time to fill the vacuum...I will shortly ask the House to approve a motion recognising the qualified nature of article 8 and agreeing that the new immigration rules should form the basis of whether someone can come to or stay in this country on the basis of their family life. For the first time, the courts will have a clear framework within which to operate, and one that is on the side of the public, not foreign criminals. I commend this statement to the House."*

That is the motion that we understand is put before the House.

That the right to private and family life is a qualified right is indubitable. This the courts have explained in numerous judgments. The conditions for migrants to enter or remain in the UK on the basis of their private and family life will be contained in the immigration rules insofar as those rules reflect UK's international obligations, as overseen first by the domestic courts and then by the European Court of Human Rights.

The Home Secretary made her announcement on Sunday 11 July and the consultation response and a written description of what she intended to do<sup>2</sup> were published on 12 July. The rules were published on 13 July.<sup>3</sup> The written description runs to some 70 pages the

<sup>1</sup> <http://www.publications.parliament.uk/pa/cm201213/cmhansrd/cm120611/debtext/120611-0002.htm>

<sup>2</sup> <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/news/soi-fam-mig.pdf>

<sup>3</sup> <http://www.official-documents.gov.uk/document/hc1213/hc01/0194/0194.pdf>

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rules to some 44 pages, which take the form of a series of instructions to amend the existing immigration rules. A Keeling Schedule would assist, and indeed a version of that is what will be produced on 9 July in the form of the consolidated Immigration Rules on the UK Border Agency website. Parliamentarians should ask for a Keeling Schedule in advance of the debate.

In the circumstances, it would be unfortunate in the extreme if a vote in favour of the motion were taken, for example by the media, to imply endorsement of the contents of HC 194 or that the debate on the motion comes anywhere near Parliament's giving its views on Article 8 in any informed and considered manner. It would be unfortunate if a vote on the motion were taken to imply parliament's agreement that it is its role to provide the court with such views as a separate statement as opposed to through the body of legislation that it produces in the course of its work, let alone as its providing the courts with any expression of its views.

Hence ILPA's proposal to amend the motion.

ILPA invites parliamentarians to use the debate as an opportunity to challenge the removal of immigration cases, which is what these cases are, from the scope of legal aid.

A glance through HC 194 reveals that at issue is whether a child can join parents in the UK, or spouses and partners be together. These are matters of the most fundamental importance not only to the migrants in question but to the British or settled people they seek to join and to the families of those people in the UK.

A glance through HC 194 also highlights the fiendish complexity of immigration legislation. A random example, which deals with identifying which rules apply to an application depending on the date on which it made and are thus the first thing that must be addressed by an applicant may tempt parliamentarians to read further in the Statement of Changes.

### **Transitional provisions and interaction between Part 8 and Appendix FM A277**

From 9 July 2012 Appendix FM will apply to all applications to which Part 8 of these rules applied on or before 8 July 2012 except where the provisions of Part 8 are preserved and continue to apply, as set out in paragraph A280.

A278 The requirements to be met under Part 8 after 9 July 2012 may be modified or supplemented by the requirements in Appendix FM.

A279 The requirements of sections "S-EC: Suitability – entry clearance" and "S-LTR: Suitability – leave to remain" of Appendix FM shall apply to all applications made under Part 8 and paragraphs 276A-276D and paragraphs 398-399A shall apply to all immigration decisions made further to applications under Part 8 and paragraphs 276A-276D where a decision is made on or after 9 July 2012, irrespective of the date the application was made."

After the definition of 'a valid application' insert "'refugee leave' means limited leave granted pursuant to paragraph 334 or 335 of these rules and has not been revoked pursuant to paragraph 339A or 339B of these rules."

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