



# immigration update

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## Immigration Act 2016

On 31 October 2016, the Government issued a second commencement order bringing many further provisions of the Immigration Act 2016 into force. These include new appeals provisions and new provisions enabling landlords to evict those who are disqualified from renting accommodation due to their immigration status, both of which came into force on 01 December. ILPA's series of information sheets on the Immigration Act 2016 has been updated to take into account the commencement of the new provisions and can be accessed here:

<http://www.ilpa.org.uk/pages/immigration-act-2016-information.html>

## Best practice guide on statelessness and applications for leave to remain

ILPA has published a best practice guide to advising and representing clients considering or making an application for statelessness leave in the UK: [Statelessness and applications for leave to remain: a best practice guide, Dr Sarah Woodhouse and Judith Carter, ILPA and University of Liverpool Law Clinic](#). ILPA has produced a short [information sheet on statelessness and applications for leave to remain](#) explaining what statelessness is and how the guide can assist those who may identify stateless persons and make referrals for legal advice and representation, as well as legal practitioners advising on applications for leave to remain as a stateless person. The guide is available on the ILPA [website](#) and in hard copy from ILPA.

## Statement of Changes to the Immigration Rules

A new [Statement of Changes in Immigration Rules \(HC 667\)](#) was published on 03 November 2016 and announced a large number of changes to the rules.

There is a significant change to how applications made by **overstayers** will be treated. The provision under which the Home Office will disregard overstaying of 28 days when considering applications for leave to remain in the UK has been abolished and more restrictive provisions have been put in place. ILPA's information sheet on [Overstayers: New Immigration Rules](#) explains the change in detail.

There are a number of changes to the provisions for applications made by **family members** under the Immigration Rules. The Statement of Changes introduces a new requirement for those applying for further leave to remain as a partner or parent under Appendix FM to the Immigration Rules after completing 30 months leave in the UK. They will need to demonstrate English language speaking and listening skills at level A2 of the Common European Framework of Reference for Languages in order to qualify for further leave to remain in these categories and continue on a five-year route to settlement. The new requirement will be applied to applicants whose original leave to enter or remain as a partner or parent expires after 01 May 2017. ILPA's information sheet, [Family migration: new English language requirements for partners and parents applying for further leave under Appendix FM \(5-year route\)](#) provides further details. For all leave to enter or remain applications by family members under Appendix FM, the Home

Office may (not must) decide to refuse the application on the basis that the person owes money to the NHS for medical care. With effect from 24 November 2016, debts of over £500, rather than £1000 as before, will be taken into account when deciding whether to refuse an application.

There are also changes to the provisions regarding the minimum level of income required to bring a family member to the UK under the immigration rules. Income requirements are imposed in respect of all children of the family coming to the UK who are not British or settled, rather than, as previously, children of the main applicant only.

The changes in the Immigration Rules also brought in the first phase of changes to **Tier 2 of the Points Based System** which deals with migration to the UK from outside the European Economic Area to undertake skilled work. These changes were announced by the Government on 24 March 2016 (for details, see: <https://www.gov.uk/government/news/migration-advisory-committee-reviews-of-tier-2>) and follow a review of this immigration route that was undertaken by the Migration Advisory Committee and published earlier that year. In particular there are changes to the minimum salaries that Tier 2 workers must be paid and to the circumstances in which companies can transfer persons working for them overseas to the UK.

### **Immigration (European Economic Area Regulations) 2016**

The Home Office has made new regulations for dealing with applications made under European free movement law, available at: <http://www.legislation.gov.uk/uksi/2016/1052/made>. The regulation dealing with family members joining British Citizens able to benefit from European Union law because of their previous residence in the European Economic Area is amended from 25 November 2016. All the other changes come into force on 01 February 2017.

A number of the provisions are not compatible with European Union law. European Union law takes precedence over domestic law and continues to apply until the UK formally leaves the European Union once negotiations under the Article 50 process are completed. ILPA will be publishing a series of information sheets on European free movement law soon.

### **Appeal fees for the First-tier Tribunal (Immigration and Asylum Chamber)**

On 25 November 2016, the Government announced that it was reviewing its decision to introduce increased immigration and asylum Tribunal fees. See the announcement here: <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2016-11-25/HCWS284>

The Government had introduced a 500% increase, with some exemptions, in the fee for bringing an appeal in the First Tier Tribunal (Immigration and Asylum Chamber) on 10 October 2016. This was strongly criticised by ILPA and many others. In its announcement of 25 November 2016, the Government confirmed that fees would be charged at the previous levels and anyone who had been charged at the higher level of fee would be eligible for a refund. The First-tier Tribunal (immigration and Asylum Chamber) Fees (Amendment) (No.2) Order 2016, SI 2016/1149 gives effect to the changes. The Government stated that it would carry out a further consultation on fees for the asylum and immigration Tribunal.

### **Supreme Court decision on '3C leave' and invalid applications**

The Supreme Court has given its judgment in the case of *R (Mirza & Ors) v Secretary of State for the Home Department* [2016] UKSC 63 (14 December 2016). This case was concerned with whether leave is extended under section 3C of the Immigration Act 1971 if it later turns out that there was a mistake in the application for further leave to enter or remain making it invalid. The Supreme Court concluded that, because of the way in which the provision was drafted, leave is not extended. The decision is explained in ILPA's information sheet on [3C leave](#).