Immigration Law Practitioners' Association Response to the October 2018 Statement of Changes to the Immigration Rules

There is much in the Statement of Changes, dated 11 October 2018, which ILPA agrees with and has long been calling for. Nonetheless, ILPA is concerned about several other changes which have occurred.

Dropping the requirement for original documents

ILPA welcomes the move by the Home Office to drop the requirement for original documents. The goal of this requirement appears to have been to ensure documents are legitimate. However, if the Home Office considers that a document, original or copy, may not be genuine, they can still conduct document verification checks. In such circumstances, removing the requirement for original documents is in line with common sense. Furthermore, it should lead to greater ease of application by migrants who cannot easily obtain original documents – thereby saving Home Office time and money.

Fee waiver provisions

ILPA further welcomes the new fee waiver provisions, which protect migrants applying for a fee waiver. This system will operate in a similar way to leave under section 3(c) Immigration Act 1971. Under current rules, individuals must apply for a fee waiver and send in their application at the same time. They would only find out whether their fee waiver application had been successful at the date of decision, or the date of printing the biometric residence permit. This has led to worry and uncertainty amongst applicants.

The new system aims to decide fee waiver applications before the applicant must send in the main application. If granted, the applicant will have ten days within which to send their full application to the Home Office. If they do so, then their application for the purposes of section 3(c) Immigration Act 1971 will be deemed to have been made on the date they applied for the fee waiver. This is excellent news for anyone who requires a fee waiver, and in particular for vulnerable migrants in such a position.

'Surinder Singh' family members

ILPA additionally is pleased to see the confirmation that 'Surinder Singh' family members are able to apply for settled status in the same way as EU nationals, which is reflected in changes to Appendix EU.

Calais leave

While Calais leave is a small step in the right direction, it is both too little too late and not generous enough.

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Too little too late

The Government should have allowed refugee children into the UK well before the Dubs amendment was enacted. Even afterwards the Government failed to act lawfully in refusing hundreds of applications by children under the Dubs scheme with "patently inadequate" reasons, in the words of the Court of Appeal in *R (Help Refugees)*. As such, this scheme is too little too late.

Not generous enough

Those granted 'Calais leave' will only be able to apply for indefinite leave to remain (ILR) in ten years. This is entirely out of sync with those who have been granted refugee status or humanitarian protection, who can apply for ILR after five years. We call on the Government to amend the rules so that the children granted 'Calais leave' can apply for ILR after five years.

Lack of administrative review for refusals of settled status on grounds of suitability

Furthermore, ILPA questions why there is no possibility of administrative review of a decision to refuse settled status on grounds of suitability under paragraphs EU15 and 16. Poor decisions under these paragraphs are likely to be made in various circumstances, such as difficult cases where a victim of trafficking was convicted for crimes they committed under duress when they were trafficked. ILPA understands that there may well be the right to appeal such decisions after the UK leaves the EU upon no deal, or after the transition phase of a deal. Nonetheless, this is not guaranteed. So during the transition phase, and afterwards if no appeal right emerges, the only resort for such individuals would be judicial review. Bringing a judicial review is financially and mentally taxing for applicants, and is much more limited in scope than an appeal or an administrative review. This may well cause unjust outcomes in many cases. Furthermore, judicial review costs the Home Office much more money than if a decision is overturned on administrative review.

Treating an application as withdrawn where an applicant requests their passport to travel out of the Common Travel Area

Finally, it is a welcome clarification that the Home Office will return an applicant's passport when requested where possible, during consideration of an application. ILPA notes that this does not change the following basic position:

- An application will be treated as withdrawn where the applicant, upon return of their passport, travels outside the Common Travel Area; or
- An application will be treated as withdrawn where the applicant, upon notice that the Home Office deem it necessary to retain the passport, request the passport in order to travel outside the Common Travel Area.

Inherent in treating an application as withdrawn in such circumstances is the cancellation of leave under section 3(c) Immigration Act 1971.

ILPA continues to question the fairness of these provisions. There are several instances where this course of action would be unjust: for example, if the applicant needs to urgently travel to their country of origin because their parent or sibling is seriously ill or has passed away. In such circumstances the applicant is likely to request their passport and travel outside the

Common Travel Area. The applicant should not have to worry about being barred from re-entry to the UK, or the effect caring for their dying parent will have on a future application for indefinite leave to remain or British citizenship.

ILPA

17 October 2018