



## Withdrawal of Seven Year Child Concession – DP5/96

27<sup>th</sup> January 2009

On 9<sup>th</sup> December 2008, the Government announced the withdrawal of the seven year child concession (DP5/96) from that date.

Before that date DP5/96 had for several years allowed some families with dependent children (i.e. children under 18 years who are not leading an independent life) to be granted indefinite leave to remain if the child or children had been living in the UK for at least 7 years. This information sheet provides further information about the concession, and the consequences of its withdrawal

### History of DP5/96

DP5/96 was first published in March 1996. At that time it related to cases, where a parent or parents faced deportation and each of the following circumstances applied:

- they had a child, under 18 years, living with them in the UK
- the child had been living continuously in the UK for 10 or more years

If these circumstances applied, deportation action would normally not be taken; and families were granted indefinite leave to remain.

On 24 February 1999, the Government amended DP5/96. From that date the period of time for which the child had been living continuously in the UK was reduced from 10 to 7 years. The remainder of DP5/96 remained the same.

In 2003, during the case of *R(Dabrowski & Ors) v SSHD* [2003] EWCA Civ 580, the Home Office explained that DP 5/96 was no longer in practice limited to deportation cases. Where a parent or parents faced deportation or removal from the UK, DP5/96 would apply if the circumstances (described above) applied.

The reasons behind DP5/96 were explained in the Ministerial statement of Mike O'Brien MP on 24 February 1999 where he said:

*“...Children who have been in this country for several years may be reasonably settled here and may, therefore, find it difficult to adjust to life abroad. In future, the enforced removal or deportation will not normally be appropriate where there are minor dependent children in the family who have been living in the United Kingdom continuously for 7 or more years. In most cases, the ties established by children over this period will outweigh other considerations and it is right and fair that the family should be allowed to stay here.”*

### The withdrawal of DP5/96

DP 5/96 was withdrawn on 9 December 2008 by a Ministerial statement by Phil Woolas MP. That statement is recorded in Hansard (9 Dec 2008 : Column 49-50WS). In his statement, the Minister said:

*“The United Kingdom Border Agency is withdrawing DP5/96... The original purpose*

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### **Steve Symonds**

ILPA legal officer

020 7490 1553

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

[ilpa.org.uk](http://ilpa.org.uk)

### **Immigration Law Practitioners' Association**

[www.ilpa.org.uk](http://www.ilpa.org.uk)

T 020 7251 8383

F 020 7251 8384

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*and need for the concession has been overtaken by the Human Rights Act and changes to immigration rules. The fact that a child has spent a significant period of their life in the United Kingdom will continue to be an important factor to be taken into account by case workers when evaluating whether removal of their parents is appropriate... “The withdrawal of DP5/96 and replacing it with consideration under the Immigration Rules and article 8 of the ECHR [European Convention on Human Rights] will ensure a fairer, more consistent approach to all cases involving children, whether accompanied or unaccompanied, across UKBA. Withdrawing the policy will also prevent those overstaying or unlawfully present in the UK having the benefit of a concession which does not apply to those persons who comply with the Immigration Rules and remain in the UK lawfully.”*

#### **Cases where DP5/96 will continue to apply**

Chapter 53 of the Enforcement Instructions and Guidance explains when DP5/96 will continue to apply after 9 December 2008. This will be the case if before 9 December:

- DP5/96 has been considered in an appeal which remains outstanding
- an appeal relying on DP5/96 has been allowed
- a court or tribunal has directed the UK Border Agency to apply (i.e. consider) DP5/96
- the UK Border Agency has acknowledged receipt of an application relying on DP5/96
- the UK Border Agency has begun to consider DP5/96

Chapter 53 of the Enforcement Instructions and Guidance is available at:

<http://www.ind.homeoffice.gov.uk/sitecontent/documents/policyandlaw/enforcement/detentionandremovals/chapter53?view=Binary>

#### **The effect of the withdrawal of DP5/96**

The Minister’s statement on 9 December 2008 makes clear that the withdrawal of DP5/96 is because the Government thinks it is no longer needed. The reference to the Human Rights Act 1998 relates to the European Convention on Human Rights, which that Act adopts into UK domestic law. In particular, it relates to Article 8 of the Convention – the right to private and family life.

In many cases where DP5/96 would have applied, it will be possible to rely on Article 8.

However, two important differences between the DP5/96 and Article 8 must be noted:

- Article 8 is not restricted to children who have been in the UK for 7 years or more. There may be cases where a child has been in the UK for less than 7 years in which removal will not be proportionate.
- Where it is decided that removal should not proceed because of Article 8, this usually leads to a grant of 3 years Discretionary Leave. Nevertheless, under paragraph 395C of the Immigration Rules there remains power for the UKBA to grant indefinite leave to remain in cases where it would previously have granted indefinite leave to remain under DP5/96. The Minister’s statement refers to the Immigration Rules, and makes no suggestion of any intention to change the type or period of leave to be granted in these cases. It may be useful in future cases to refer to both paragraph 395C of the Rules and to Article 8.

#### **Further information**

For more information on Article 8, please see the “Article 8” information sheet of August 2008.

Some further information on paragraph 395C of the Immigration Rules is given in the “Legacy Cases 4” information sheet of July 2008.