

## **Changes to the Immigration Rules General Grounds for Refusal**

1. This note has been written for an event to be held by Praxis on Saturday, 17<sup>th</sup> May 2008.

### **Introduction:**

2. On 6<sup>th</sup> February 2008, the Government published changes to the Immigration Rules. These changes included two changes to the general grounds for refusal in the rules (i.e. reasons for refusal that apply to most immigration applications, including applications to come or stay in the UK in order to study, work, visit or join family). The changes meant that:
  - An application would be refused if it included any false statement or false document.
  - Anyone who breached certain immigration laws would be banned from returning to the UK for a fixed period of time (a “re-entry ban”).
3. There was no consultation on these changes; and ILPA, lawyers and others had no warning of their introduction.
4. Following the publication of these changes, ILPA and others have worked hard to change the Government’s mind. ILPA has written to the Minister for Borders and Immigration (Liam Byrne MP) on two occasions, met with the UK Border Agency, provided several briefings (some available on our website) and lobbied hard for the changes to be reversed. We have had considerable success.
5. There have been two debates in Parliament on these changes. The first debate took place in the House of Lords on 17<sup>th</sup> March 2008. The second debate took place in the House of Commons on 13<sup>th</sup> May 2008. In both debates, the Government announced important concessions. The Minister also wrote to

ILPA on 4<sup>th</sup> April 2008. His letter includes important statements that make clear further limitations on the extent of these changes.

**False statements and false documents:**

6. The first of the two changes was to require the refusal of an application to come to or stay in the UK if the application included any false statement or false document. This change came into force on 29<sup>th</sup> February 2008.
7. The application must be refused in these circumstances. It does not matter that the applicant did not know that a statement or document was false. It does not matter that the statement or document was included in the application without the applicant's knowledge. It does not matter that the statement or document is irrelevant to the application. An application must also be refused if any relevant information has been omitted.
8. It is important to note what is said in the Minister's letter to ILPA of 4<sup>th</sup> April 2008:

*“The new Rules are intended to cover people who tell lies – either on their own behalf or that of someone else – in an application to the UK Border Agency. They are not intended to catch those who make innocent mistakes in their applications.”*

9. This change does not apply to applications for asylum, humanitarian protection or discretionary leave. However, it is important to note that any dishonesty in an application for asylum, humanitarian protection or discretionary leave may still lead to the application being refused. Making a false statement or submitting a false document is something that may well be relied upon by the Home Office as a reason to disbelieve what an asylum-seeker says.

**Re-entry bans:**

10. The second of the two changes was to introduce bans on returning to the UK for those who had breached certain immigration laws. This change came into force on 1<sup>st</sup> April 2008.

11. The bans apply to people who have:
- Overstayed
  - Breached a condition of leave to enter or remain
  - Entered the UK illegally
  - Used deception in a previous application
12. The changes mean that people who have breached immigration law in these ways will face the longer of any of the following bans that apply to their circumstances:
- 1 year from the time they left the UK voluntarily and at their own expense
  - 5 years from the time they left the UK voluntarily but at some expense to the UK
  - 10 years from the time they were removed or deported from the UK
  - 10 years from the time they used deception in an entry clearance application
13. The effect of a ban means that any application to return to the UK will be refused if the ban remains in place. However, following concessions made by the Government, there are now a number of exceptions to this:

***Voluntary departure within 28 days of overstaying:***

14. The changes included one exception. If someone overstays for no more than 28 days and leaves voluntarily at their own expense, no ban would be imposed.

***Human Rights reasons:***

15. If it would be contrary to human rights to refuse an application to return to the UK, it must be allowed – regardless of any ban. This is expressly recognised in the Entry Clearance Guidance (Chapter 26).

***Time limited concession for those who leave the UK voluntarily:***

16. On 17<sup>th</sup> March 2008, the Government announced a concession in the House of Lords. This concession means that anyone who was in the UK on that date

(without leave to enter or remain) will not face a ban if they leave the UK voluntarily before 1<sup>st</sup> October 2008.

***Grant of leave to enter or remain following breach of immigration laws:***

17. In his letter to ILPA of 4<sup>th</sup> April 2008, the Minister has confirmed that breaches of immigration laws will not lead to a ban if after the breach the Home Office has granted leave to enter or remain. **Examples of how this will work:** Someone who is granted refugee status, after having entered the UK illegally in order to claim asylum, will be able to leave the UK without the risk of a ban on their return. However, someone who is granted leave to enter as a student and claims public funds in breach of a condition of their leave, may face a ban on their return – unless they are granted a further period of leave to remain after they breached that condition.

***Children:***

18. On 13<sup>th</sup> May 2008, the Government announced a concession in the House of Commons relating to children. This concession means that nobody will receive a ban for any breach of immigration law when they were under 18 years of age.

***Returning to join family who are settled in the UK:***

19. On 13<sup>th</sup> May 2008, the Government announced a concession in the House of Lords relating to applications to join family who are settled in the UK. This concession applies to several types of application to come to the UK, where the purpose of the application is to join a family member here. The concession means that these types of application will not be affected by any ban.

***Victims of trafficking:***

20. The Government also announced on 13<sup>th</sup> May 2008 that they would introduce an exemption for victims of trafficking. However, they said they would do this later in the year – when the Government ratifies the Council of Europe Convention on Action against Trafficking in Human Beings. We do not, therefore, know how this exception will work.

### **Importance of good legal advice:**

21. It remains important to get good legal advice from a specialist immigration lawyer if you are thinking of making an application to come to the UK, or stay in the UK – including if you are thinking of leaving the UK but may want to return.
22. Even if one of the exceptions set out in this note applies to you, this does not mean that any application you make is guaranteed to be successful. If you have breached immigration laws, this may still be held against you – even if you are exempted from a ban on returning to the UK. In any case, you will need to satisfy other parts of the Immigration Rules if you apply to come to or stay in the UK.
23. Even if you are worried that these changes to the Immigration Rules will apply to you, it will do you no harm to get good legal advice. It may be that you do fall within an exception; or there is something else you can do. In any case, a good lawyer will tell you whether he or she can help; and if they cannot you are free to do nothing further and your situation will be unchanged.
24. **Please note:** ILPA does not provide legal advice to individuals. On our website at [www.ilpa.org.uk](http://www.ilpa.org.uk) you will find a “directory” of our members, with their contact details, who do give advice. You should check whether you are eligible for free legal advice (legal aid) before considering paying for advice. See [www.clsdirect.org.uk/](http://www.clsdirect.org.uk/) (Community Legal Service Direct) or call 0845 345 4345.

Steve Symonds

Legal Officer, Immigration Law Practitioners’ Association (ILPA)

16<sup>th</sup> May 2008

**Useful further information:**

**For individuals:-**

ILPA information sheets available at [www.ilpa.org.uk](http://www.ilpa.org.uk) in the “info service” section

**For legal advisers:-**

Immigration Rules (as amended) available at

<http://www.ind.homeoffice.gov.uk/policyandlaw/immigrationlaw/immigrationrules/>

Chapter 26, Entry Clearance Guidance available at <http://www.ukvisas.gov.uk/en/ecg>

Hansard, House of Lords debate on 17<sup>th</sup> March 2008, speech of the Lord Bassam of Brighton, Home Office Minister (17 March 2008 : Columns 96 ff) available at

<http://www.publications.parliament.uk/pa/ld200708/ldhansrd/text/80317-0014.htm>

Hansard, House of Commons debate on 13<sup>th</sup> May 2008, speech of Liam Byrne MP, Minister for Borders and Immigration (13 May 2008 : Columns 1352 ff) available at

<http://www.publications.parliament.uk/pa/cm200708/cmhansrd/cm080513/debtext/80513-0028.htm>

Letter of 4<sup>th</sup> April 2008 from Liam Byrne MP, Minister for Borders and Immigration to ILPA available in “latest news” section at [www.ilpa.org.uk](http://www.ilpa.org.uk)