

The Law on Immigration

Legal: MW 432

Immigration law governing the entry and right to remain in the United Kingdom of nationals of countries which are not Member States of the European Economic Area (EEA) is to be found in the following Acts of Parliament and subordinate legislation made under them:

Immigration Act 1971
Immigration Act 1988
Asylum and Immigration Appeals Act 1993
Special Immigration Appeals Commission Act 1997
Immigration and Asylum Act 1999
Nationality, Immigration and Asylum Act 2002
Asylum and Immigration (Treatment of Claimants, etc) Act 2004
Immigration, Asylum and Nationality Act 2006
UK Borders Act 2007
Tribunals, Courts and enforcement Act 2007
Criminal Justice and Immigration Act 2008
Borders, Citizenship and Immigration Act 2009
Immigration Act 2014
Immigration Act 2016

Two other Acts are important:

The British Nationality Act 1981 sets out the law on the acquisition of British nationality by birth, adoption, descent, registration and naturalisation.

The Human Rights Act 1998 makes the provisions of the European Convention on Human Rights (ECHR) justiciable in the courts of the United Kingdom, including the Immigration and Asylum Chamber. This has been particularly significant since the Act came into force in October 2000 in the large number of cases in which Article 8 of the ECHR has been considered. This Article confers the right to respect for private and family life and has frequently been invoked to prevent deportation of convicted foreign criminals.

Entry into the United Kingdom by citizens of other Member States of the EEA is regulated in general terms by rights arising under EU Treaties and in more detail by Directives and Regulations made by the

Council of Ministers of the EU. There is freedom of movement of nationals of Member States within the EEA and also freedom to take up employment.

Detailed provisions on the practice for permitting entry into and stay in the United Kingdom of persons who are subject to immigration control, i.e. who are not citizens of any EEA Member State and are required by law to have leave to enter or remain, are contained in the Immigration Rules, which are made by the Home Secretary under section 3(2) of the Immigration Act 1971. The Immigration Rules run to over 600 pages of detail and are frequently amended. Section 3(2) requires that new Rules must be laid before both Houses of Parliament and may be disapproved by either House. If a disapproving resolution is passed by either House within 40 days of the Rules being laid (excluding days on which Parliament is not sitting) the Home Secretary must make such changes as may appear to be required so that the statement of those changes is laid before Parliament within 40 days of the resolution (again excluding days on which Parliament is not sitting).

There is a statutory right of appeal against adverse decisions by the Home Office or by entry clearance officers at British Embassies or High Commissions abroad to the First Tier of the Immigration and Asylum Chamber and such appeals are normally heard by a single immigration judge. There is a right of further appeal on a point of law to the Tribunal's Upper Tier. By the operation of section 15 of the Immigration Act 2014, which from July 2014 amended Part 5 of the Immigration, Nationality and Asylum Act 2002, this right is now restricted to appeals against refusal of protection claims. Section 84 of the amended 2002 Act allows appeals on one or other of the following grounds:

Removal of the appellant from the United Kingdom would

- a. breach the United Kingdom's obligations under the Refugee Convention (see below)
- b. breach the United Kingdom's obligations in relation to persons eligible for a grant of humanitarian protection; or
- c. be unlawful under section 6 of the Human Rights Act in that there had been a breach of the United Kingdom's obligations under the ECHR.

Asylum is the subject of the 1951 Geneva Convention on the Status of Refugees, in accordance with which Contracting States accept an obligation to grant asylum to persons who can show that if they are returned to their countries of origin they face a reasonable degree of likelihood of risk of persecution on account of race, religion, nationality, membership of a particular social group or political opinion.

The Migration Watch UK website has a section of legal briefing papers dealing with many aspects of immigration and asylum law with the objective of keeping users informed on important current issues. Your attention is drawn in particular to the legal briefing paper containing a glossary of statutory definitions of words and expressions regularly used and necessary for an understanding of this branch of the law.

Brexit

This will involve a considerable upheaval in immigration law. There is at present before Parliament the European Union (Withdrawal) Bill which will repeal the European Communities Act 1972 pursuant to which Britain joined what was then the EEC and accepted the supremacy of its laws. Laws derived from EU legislation which it is necessary to retain will be re-enacted as provisions of UK law. However, EU laws include directives and regulations on immigration and asylum which will not be retained. EU legislation on immigration and asylum is based on EU Treaty rights of free movement. It is expected that rights of free movement allowing citizens of other EEA Member States to enter the UK freely and take up employment will cease and the UK will be at liberty to pass new legislation on the immigration and asylum rights of citizens from EEA Member States. As UK membership of the EU is expected to end abruptly on 29th March 2019 it will be necessary to have such legislation passed beforehand so that it can be brought promptly into force the following day. The continuing immigration status of citizens of other EEA Member States who are already resident in the UK or who may take up residency between now and 29th March 2019 is one of the topics which must be negotiated and settled before that date. The Bill now before Parliament is a major item of constitutional legislation and its passage is already proving contentious.

Consolidation

The list of Acts of Parliament which regulate immigration and asylum above is long and formidable. The current edition of the Immigration Law Handbook (published by Oxford University Press) is 2,000 pages long and does not include the Immigration Act 2016, so a new edition to be published in 2018 will be even longer. For comparison the fifth edition, published in 2007, ran to just 1,230 pages. The Immigration Rules at present occupy 650 pages against 420 pages in 2007. Consolidation of the Acts of Parliament and Immigration Rules is and has long been desperately needed in the interest of simplifying the law and making it more accessible. The Home Secretary has recently announced that she has invited the Law Commission to examine Acts of Parliament and subordinate legislation concerned with immigration and asylum with a view to simplification. This is already a huge task and will be made even greater and more complex by the need for new legislation arising from Brexit.

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