

Immigration Bill

Factsheet: Article 8 (clause 14)

Immigration Minister Mark Harper:

“It is in the public interest that foreign criminals are deported.

“It is in the public interest that migrants who want to establish family life in the UK do not become a burden on the taxpayer.

“Parliament and the public are fed up with cases where foreign criminals are allowed to stay, or our family rules are undermined, because of an over generous interpretation of Article 8 by the courts. Under the current system the winners are foreign criminals and immigration lawyers and the losers the victims of those crimes and the law-abiding public.

“The Bill will ensure that the courts are in no doubt about Parliament’s view on what the public interest requires.”

Background

- Article 8 ECHR (right to respect for private and family life) is a qualified right and must be weighed against the public interest, including the need to have effective immigration controls and protect the public.
- It is for Parliament to decide what the public interest requires and that the courts must have proper regard to Parliament’s views.
- The Government first sought to address this issue, and the wider interpretation of Article 8, by changing the Immigration Rules (the new Rules) in July 2012, with the intention of shifting the approach of the courts in the weight given to the public interest.
- For example, the new Rules set out both factors weighing in favour of deportation and factors weighing against deportation, including the circumstances when the best interests of a child would outweigh deportation.
- The courts accept that the new Rules provide a complete code for considering Article 8 and the deportation of foreign criminals¹.
- The courts also accept that the new Rules cannot cover every eventuality, but where the foreign criminal does not qualify under the specific provisions in the Rules it is only exceptionally that Article 8 will prevent their deportation.
- However, many of the appeals allowed by the court do not adequately reflect the strong public interest in the deportation of foreign criminals.

¹ [*MF \(Nigeria\) v SSHD*](#) EWCA (2013).

- In 2011-2012, of the 409 successful appeals against deportation by foreign criminals, 177 – that is around 40% of the successful appeals (10% of all appeals by foreign criminals) – were allowed on Article 8 grounds.
- Also, many of the appeals allowed by the courts do not reflect the wider public interest reflected in the family Immigration Rules.²

What are we going to do?

- Make it clear what the public interest requires.
- Ensure that a court considering Article 8 in an immigration case has proper regard to what the public interest requires.

How are we going to do it?

- The Bill sets out what the public interest requires in cases involving foreign criminals and in other cases raising Article 8.
- The Bill requires a court when considering Article 8 in an immigration case to have regard, in particular, to the public interest.

The Bill will benefit

- The Bill will benefit the taxpayer, the law-abiding public and the victims of crime.

Q & A

Will the Bill make any difference?

The role of the courts is to apply the law but the courts have said that the changes we made to the Immigration Rules did not have democratic approval in the same way as primary legislation³. We believe that setting out in primary legislation what the public interest requires will result in the courts giving proper weight to Parliament's views.

Why does the Bill not say that all foreign criminals will be deported?

The Bill makes it clear that unless the Exceptions in the Bill apply, the public interest requires the deportation of a foreign criminal⁴. However, our obligations under the Human Rights Act 1998 (HRA) and the European Convention on Human Rights (ECHR) require consideration to be given to whether there are any exceptional circumstances in the case which should prevent deportation. Our expectation is that such cases will be extremely rare.

² [MM, R v SSHD EWHC \[2013\]](#) (Admin)

³ [Izuazu \(Article 8 – new rules\) Nigeria \[2013\]](#) UKUT 45 (IAC)

⁴ Foreign criminal is defined in clause 14 (new section 117D(2)) of the Bill.

Does the Bill mean the Immigration Rules will be revoked?

No. The Bill sets out Parliament's view of what the public interest requires but there will still be the need for Rules which set out the detailed policy which reflects those principles, such as the level of English language and the income threshold to be met by family migrants.

Won't the European Court of Human Rights (ECtHR) over-rule the Bill?

No. We believe that the statements of the public interest are consistent with the ECtHR case law. The Izmir Declaration on the future of the ECtHR made clear that the ECtHR should not normally intervene where the domestic Courts in a Council of Europe state had themselves fairly assessed whether deportation breached Convention rights.⁵

Further reading

House of Commons debate on family immigration Rules 19 June 2012⁶.

Home Office

October 2013

⁵ <http://www.justice.gov.uk/downloads/about/cbr/izmir-declaration.pdf>

⁶ <http://www.publications.parliament.uk/pa/cm201213/cmhansrd/cm120619/debtext/120619-0001.htm#12061972000001>