

# STATEMENT OF CHANGES IN IMMIGRATION RULES

*Laid before Parliament on 19 July 2006 under section 3(2) of  
the Immigration Act 1971*

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*Ordered by The House of Commons to be printed  
19 July 2006*

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*(This document is accompanied by an Explanatory Memorandum)*

## STATEMENT OF CHANGES IN IMMIGRATION RULES

The Home Secretary has made the changes hereinafter stated in the Rules laid down by him as to the practice to be followed in the administration of the Immigration Act 1971 for regulating entry into and the stay of persons in the United Kingdom and contained in the Statement laid before Parliament on 23 May 1994 (HC 395), as amended. The amending statements were laid before, or presented to, Parliament on 20 September 1994 (Cmnd 2663), 26 October 1995 (HC 797), 4 January 1996 (Cmnd 3073), 7 March 1996 (HC 274), 2 April 1996 (HC 329), 30 August 1996 (Cmnd 3365), 31 October 1996 (HC 31), 27 February 1997 (HC 338), 29 May 1997 (Cmnd 3669), 5 June 1997 (HC 26), 30 July 1997 (HC 161), 11 May 1998 (Cmnd 3953), 8 October 1998 (Cmnd 4065), 18 November 1999 (HC 22), 28 July 2000 (HC 704), 20 September 2000 (Cmnd 4851), 27 August 2001 (Cmnd 5253), 16 April 2002 (HC 735), 27 August 2002 (Cmnd 5597), 7 November 2002 (HC 1301), 26 November 2002 (HC 104), 8 January 2003 (HC 180), 10 February 2003 (HC 389), 31 March 2003 (HC 538), 30 May 2003 (Cmnd 5829), 24 August 2003 (Cmnd 5949), 12 November 2003 (HC 1224), 17 December 2003 (HC 95), 12 January 2004 (HC 176), 26 February 2004 (HC 370), 31 March 2004 (HC 464), 29 April 2004 (HC 523), 3 August 2004 (Cmnd 6297), 24 September 2004 (Cmnd 6339), 18 October 2004 (HC 1112), 20 December 2004 (HC 164), 11 January 2005 (HC 194), 7 February 2005 (HC 302), 22 February 2005 (HC 346), 24 March 2005 (HC 486), 15 June 2005 (HC 104), 12 July 2005 (HC 299), 24 October 2005 (HC 582), 9 November 2005 (HC 645), 21 November 2005 (HC 697), 19 December 2005 (HC 769), 23 January 2006 (HC 819), 1 March 2006 (HC 949), 30 March 2006 (HC 1016) and 20 April 2006 (HC 1053).

These changes shall take effect on 20 July 2006.

1. For paragraph 364 there shall be substituted the following paragraph:

“364. Subject to paragraph 380, while each case will be considered on its merits, where a person is liable to deportation the presumption shall be that the public interest requires deportation. The Secretary of State will consider all relevant factors in considering whether the presumption is outweighed in any particular case, although it will only be in exceptional circumstances that the public interest in deportation will be outweighed in a case where it would not be contrary to the Human Rights Convention and the Convention and Protocol relating to the Status of Refugees to deport. The aim is an exercise of the power of deportation which is consistent and fair as between one person and another, although one case will rarely be identical with another in all material respects. In the cases detailed in paragraph 363A deportation will normally be the proper course where a person has failed to comply with or has contravened a condition or has remained without authority.”.

2. In paragraph 367, for the words “the factors listed in paragraph 364 as well as the following” there shall be substituted the words “all relevant factors, including”.

3. In paragraph 395C, for the words “as listed in paragraph 364” there shall be substituted the following “including:

- (i) age;
- (ii) length of residence in the United Kingdom;
- (iii) strength of connections with the United Kingdom;
- (iv) personal history, including character, conduct and employment record;
- (v) domestic circumstances;
- (vi) previous criminal record and the nature of any offence of which the person has been convicted;
- (vii) compassionate circumstances;
- (viii) any representations received on the person’s behalf”.

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**EXPLANATORY MEMORANDUM TO  
THE STATEMENT OF CHANGES IN IMMIGRATION RULES  
LAID ON 19 JULY 2006 (HC 1337)**

1. This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

**2. Description**

2.1 This Statement of Changes in Immigration Rules amends paragraph 364 to make it clear that where a person is liable to deportation then the presumption shall be that the public interest requires deportation and that it will only be in exceptional circumstances that the public interest in deportation will be outweighed in a case where it would not be contrary to the European Convention on Human Rights and the Refugee Convention to deport.

**3. Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 None.

**4. Legislative Background**

4.1 The Immigration Rules are the rules made under section 3(2) of the Immigration Act 1971. These constitute a statement of practice, as laid before Parliament by the Home Secretary, to be followed in regulating entry into, and stay of persons in, the United Kingdom. Under section 3(2) the Secretary of State is obliged “.. from time to time (and as soon as may be) lay before Parliament statements of the rules, or any changes in the rules, laid down by him as to the practice to be followed in the administration of this Act ..”.

4.2 This Statement of Changes in Immigration Rules will be laid on 19 July 2006 taking effect from midnight that day.

4.3 This Statement of Changes in Immigration Rules will be incorporated into a consolidated version of the Immigration Rules which can be found under the ‘Laws & Policy’ page at: [www.ind.homeoffice.gov.uk](http://www.ind.homeoffice.gov.uk), where there are also copies of all the Statement of Changes in Immigration Rules issued since May 2003.

**5. Extent**

5.1 This Statement of Changes in Immigration Rules applies to all of the United Kingdom.

**6. European Convention on Human Rights**

6.1 As this instrument is not subject to affirmative procedures and does not amend primary legislation, no statement is required.

**7. Policy background**

7.1 The 1971 Immigration Act makes a person who is not a British citizen liable for deportation if – the Secretary of State deems his deportation to be conducive to the public good; or another person to whose family he belongs is or has been ordered to be deported; or if after he has attained the age of seventeen, he is convicted of an offence for which he is punishable with imprisonment and on his conviction is recommended for deportation by a court. Paragraph 364 deals with the practice as to whether deportation is the right course of action on the merits of the case.

7.2 Paragraph 364 of the Immigration Rules states that the public interest will be balanced against any compassionate circumstances of the case. It does not however articulate where the public interest lies.

7.3 In line with the Home Secretary's written ministerial statement of the 23 May (*Official Report*, Column 80WS) in relation to foreign national prisoners, this Rules change makes clear that the presumption shall be that the public interest requires deportation and that it will only be in exceptional circumstances that the public interest in deportation will be outweighed in a case where it would not be contrary to the European Convention on Human Rights and the Refugee Convention to deport.

7.4 This rules change is being made with immediate effect in order to clarify what constitutes the public interest as soon as possible and to maximise the protection of the public.

## **8. Impact**

8.1 A Regulatory Impact Assessment has not been prepared for this Statement of Changes in Immigration Rules as it has no impact on business, charities or voluntary bodies.

## **9. Contact**

9.1 Queries should be addressed to IND's Enforcement Policy Unit on telephone: 0208 7602481 or by email: [EPU.enquiries@homeoffice.gsi.gov.uk](mailto:EPU.enquiries@homeoffice.gsi.gov.uk)