

IMMIGRATION BILL- STATEMENT OF INTENT

Administrative review in lieu of appeals (clause 11)

1. Who will be able to apply for administrative review?
 - Individuals who will no longer have a right of appeal as a result of changes to the appeals system.
2. What will be the scope of administrative review?
 - Administrative review will only be available if the alleged error could have made a difference to the decision.
 - Administrative review will resolve case-working errors:
 - Where it is alleged the Home Office has applied the wrong immigration rules.
 - Where it is alleged the Home Office has not applied the immigration rules correctly.
 - Where it is alleged the Home Office has added up points to be awarded under the immigration rules incorrectly.
 - Where it is alleged there has been an error in calculating the correct period of immigration leave.
 - Where it is alleged the Home Office has granted the wrong type of immigration leave.
 - Where the Home Office has not considered all the evidence that was submitted.
 - Where a challenge is made to the exercise of discretion or where credibility is an issue. The test on review would be only whether the original decision was unreasonable/perverse not a new credibility decision.
 - Where the application is refused on the basis that the documents supporting the application did not meet the requirements of the Immigration Rules or were not genuine.
 - Where the Home Office has not applied the evidential flexibility policy correctly (a process by which an applicant is asked to correct minor omissions in an application before the application is decided).
3. Can new evidence be submitted as part of the administrative review?
 - New evidence cannot be submitted. This mirrors the current appeal process for in country Points Based System appeals. The only exception to this will be where the new evidence is relied upon to demonstrate that a previously submitted document is genuine or meets the requirements of the Immigration Rules.

4. Can human rights or asylum be raised as part of the administrative review?
 - No it will not be possible to ask for a decision to be reviewed on the basis that leave should be granted on the basis of asylum or human rights.
5. What happens if a customer requests an administrative review and raises human rights or asylum grounds or EU rights?
 - They will be informed that they must make a human rights or asylum claim in the manner specified in the Immigration Rules or EEA Regulations.
6. Will there be a charge for administrative review?
 - There will be a charge. This will not be more than £80, the cost of having an appeal heard on the papers. The fee will be refunded where the decision is overturned.
7. Will there be a time limit for requesting an administrative review?
 - Yes, the time limit will be 10 days from receipt of the refusal decision, or 2 days for those in detention. This mirrors the current time limits for appeals.
 - The completed standard form for administrative review and payment must be received within the time limits to be eligible.
8. Will there be a time limit for completing an administrative review?
 - The Home Office will have a service standard of 28 days to complete an administrative review. This is faster than the current average 12 weeks (published statistics for first quarter 2013) it takes for a managed migration appeal to be heard.
9. How many times can someone apply for administrative review?
 - An individual will be permitted one administrative review of each decision that falls within the scope of this policy. The exception to this will be where, following an administrative review, the Home Office maintains its refusal on different grounds. In those circumstances, the individual will be entitled to a further administrative review in relation to the new grounds.

10. Will it be possible to vary an existing application or make a new application under the Immigration Rules using administrative review?
 - No. Individuals who wish to vary or make a new application will have to do so in accordance with the Immigration Rules by submitting the specified form accompanied by the correct fee.
11. Will the Home Office take removal action against those individuals in the UK while administrative review is being carried out?
 - No. Individuals who have requested an administrative review before the time limit for doing so expires will not be removed until the administrative review has been completed.
 - However, an administrative review request that does not fall within the scope of administrative review, because its outcome will not make a difference to the decision, will not prevent removal taking place. Automatic deportation and national security cases will therefore not be able to prevent removal by requesting administrative review.
12. What about those whose leave at the border is cancelled?
 - People who currently have an in country right of appeal where they are refused leave to enter will continue to be able to have an administrative review in the UK. Where there is no in country right of appeal then administrative review will only be available from abroad.
13. What about those refused entry clearance who will no longer have a right of appeal?
 - There is an existing administrative review process for those who do not have a right of appeal from abroad and those who no longer get a right of appeal will be able to use this.
14. Will existing leave continue while an administrative review is conducted?
 - Yes where an individual with leave applies for further leave before their current leave expires and, following a refusal, applies for administrative review; their current leave will be extended until their administrative review has been concluded.
15. How will you ensure that administrative review will capture all the case working errors that you currently make and improve quality?
 - The reviewer will be a different person from the decision maker. We will have a separate dedicated team of reviewers in each specialist area. Sampling

suggests we currently lose approximately 60% of Points Based System appeals due to case working error. We will monitor the overturn rate on administrative review and compare it with the 60% figure currently down to casework error. Where there is a discrepancy we will investigate this. We will also have regular sampling of reviews by team managers which will ensure that any performance or quality issues are identified promptly.

- Regular reports on the performance of the administrative review process as a whole will be sent to senior management.
- Within a year of the administrative review process being established, the Home Secretary will ask the independent chief inspector to include a review of the administrative review process in his inspection plan.
- We will establish feedback mechanisms to ensure that lessons learned are fed back to caseworkers.

16. How can the Home Office be confident that you will be able to operate Administrative Review effectively?

- Administrative Review already operates overseas where we have a strong record with over 90% of reviews completed within the target of 28 days for the quarter ending June 2013. The proposed process in-country mirrors the approach taken overseas.
- Administrative Review does make a difference. In Entry Clearance cases in 2012 the initial decision was overturned in 21% of cases.