



# Immigration Act 2014

## 2014 CHAPTER 22

### PART 2

#### APPEALS ETC

#### 19 Article 8 of the ECHR: public interest considerations

After Part 5 of the Nationality, Immigration and Asylum Act 2002 insert—

#### “PART 5A

#### ARTICLE 8 OF THE ECHR: PUBLIC INTEREST CONSIDERATIONS

##### 117A Application of this Part

- (1) This Part applies where a court or tribunal is required to determine whether a decision made under the Immigration Acts—
  - (a) breaches a person’s right to respect for private and family life under Article 8, and
  - (b) as a result would be unlawful under section 6 of the Human Rights Act 1998.
- (2) In considering the public interest question, the court or tribunal must (in particular) have regard—
  - (a) in all cases, to the considerations listed in section 117B, and
  - (b) in cases concerning the deportation of foreign criminals, to the considerations listed in section 117C.
- (3) In subsection (2), “the public interest question” means the question of whether an interference with a person’s right to respect for private and family life is justified under Article 8(2).

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*Status: This is the original version (as it was originally enacted).*

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**117B Article 8: public interest considerations applicable in all cases**

- (1) The maintenance of effective immigration controls is in the public interest.
- (2) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are able to speak English, because persons who can speak English—
  - (a) are less of a burden on taxpayers, and
  - (b) are better able to integrate into society.
- (3) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are financially independent, because such persons—
  - (a) are not a burden on taxpayers, and
  - (b) are better able to integrate into society.
- (4) Little weight should be given to—
  - (a) a private life, or
  - (b) a relationship formed with a qualifying partner,that is established by a person at a time when the person is in the United Kingdom unlawfully.
- (5) Little weight should be given to a private life established by a person at a time when the person's immigration status is precarious.
- (6) In the case of a person who is not liable to deportation, the public interest does not require the person's removal where—
  - (a) the person has a genuine and subsisting parental relationship with a qualifying child, and
  - (b) it would not be reasonable to expect the child to leave the United Kingdom.

**117C Article 8: additional considerations in cases involving foreign criminals**

- (1) The deportation of foreign criminals is in the public interest.
- (2) The more serious the offence committed by a foreign criminal, the greater is the public interest in deportation of the criminal.
- (3) In the case of a foreign criminal ("C") who has not been sentenced to a period of imprisonment of four years or more, the public interest requires C's deportation unless Exception 1 or Exception 2 applies.
- (4) Exception 1 applies where—
  - (a) C has been lawfully resident in the United Kingdom for most of C's life,
  - (b) C is socially and culturally integrated in the United Kingdom, and
  - (c) there would be very significant obstacles to C's integration into the country to which C is proposed to be deported.

- (5) Exception 2 applies where C has a genuine and subsisting relationship with a qualifying partner, or a genuine and subsisting parental relationship with a qualifying child, and the effect of C's deportation on the partner or child would be unduly harsh.
- (6) In the case of a foreign criminal who has been sentenced to a period of imprisonment of at least four years, the public interest requires deportation unless there are very compelling circumstances, over and above those described in Exceptions 1 and 2.
- (7) The considerations in subsections (1) to (6) are to be taken into account where a court or tribunal is considering a decision to deport a foreign criminal only to the extent that the reason for the decision was the offence or offences for which the criminal has been convicted.

### **117D Interpretation of this Part**

- (1) In this Part—
  - “Article 8” means Article 8 of the European Convention on Human Rights;
  - “qualifying child” means a person who is under the age of 18 and who—
    - (a) is a British citizen, or
    - (b) has lived in the United Kingdom for a continuous period of seven years or more;
  - “qualifying partner” means a partner who—
    - (a) is a British citizen, or
    - (b) who is settled in the United Kingdom (within the meaning of the Immigration Act 1971 — see section 33(2A) of that Act).
- (2) In this Part, “foreign criminal” means a person—
  - (a) who is not a British citizen,
  - (b) who has been convicted in the United Kingdom of an offence, and
  - (c) who—
    - (i) has been sentenced to a period of imprisonment of at least 12 months,
    - (ii) has been convicted of an offence that has caused serious harm, or
    - (iii) is a persistent offender.
- (3) For the purposes of subsection (2)(b), a person subject to an order under—
  - (a) section 5 of the Criminal Procedure (Insanity) Act 1964 (insanity etc),
  - (b) section 57 of the Criminal Procedure (Scotland) Act 1995 (insanity etc), or
  - (c) Article 50A of the Mental Health (Northern Ireland) Order 1986 (insanity etc),has not been convicted of an offence.
- (4) In this Part, references to a person who has been sentenced to a period of imprisonment of a certain length of time—

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- (a) do not include a person who has received a suspended sentence (unless a court subsequently orders that the sentence or any part of it (of whatever length) is to take effect);
  - (b) do not include a person who has been sentenced to a period of imprisonment of that length of time only by virtue of being sentenced to consecutive sentences amounting in aggregate to that length of time;
  - (c) include a person who is sentenced to detention, or ordered or directed to be detained, in an institution other than a prison (including, in particular, a hospital or an institution for young offenders) for that length of time; and
  - (d) include a person who is sentenced to imprisonment or detention, or ordered or directed to be detained, for an indeterminate period, provided that it may last for at least that length of time.
- (5) If any question arises for the purposes of this Part as to whether a person is a British citizen, it is for the person asserting that fact to prove it.”