



Home Office

**Border &
Immigration Agency**

**SIMPLIFYING IMMIGRATION LAW:
AN INITIAL CONSULTATION**

June 2007



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FOREWORD



Since last July, we have made real and important progress in implementing our plans to reform and build confidence in our immigration system. To support and deepen that reform, the Border and Immigration Agency has now established a Simplification Project which will take forward our commitment to radically simplify the Agency's legal framework, from primary legislation through to rules and guidance.

The current legal framework is very complex. This complexity reduces the efficiency of decision-making processes, resulting in delay and the risk of mistakes. It can make it difficult for applicants to understand how they can come to or stay in the UK legitimately. It increases the likelihood of protracted legal challenge of refusals and it contributes to a lack of public confidence in the overall effectiveness of the system. This project will support the work of our operational business and the frontline by creating a more user friendly and clearer decision-making process.

In taking this work forward we are very keen to hear the views of external stakeholders and the wider public.

This is an opportunity for ideas, comments, criticism and discussion of the law as it is now and as it could be. It is your opportunity to shape how we take forward these important changes.

A handwritten signature in black ink that reads "Liam Byrne". The signature is fluid and cursive, with a long horizontal stroke underneath.

Liam Byrne MP

Minister of State for Nationality, Citizenship and Immigration

SECTION 1

HOW TO RESPOND

- 1.1 The aim of this consultation paper is to seek a range of views to inform a fundamental overhaul of the legal framework within which the Border and Immigration Agency operates.
 - 1.2 We want radically to simplify immigration law, rules and guidance. Subject to the Parliamentary timetable, we are looking to be ready to introduce new primary legislation in 2008. At the same time, we are developing plans for reform of the complicated system of rules, regulations and operational instructions which currently sits below the statutory provisions.
 - 1.3 **The consultation period for responding to this document ends on 29 August 2007.** We will publish the results of the initial consultation within three months of the deadline for responses.
 - 1.4 This is very much an initial consultation to inform the scoping, planning and early work of the simplification project. We intend to provide a range of other opportunities for comment and discussion as the work progresses. The Government is committed to pre-legislative scrutiny of the planned legislation. We also intend to produce a fuller consultation document later this year, setting out more detailed proposals for reform.
 - 1.5 Regulatory impact and race equality impact assessments will be prepared to support these later stages of the consultation process.
 - 1.6 A pro forma is available in electronic format on the Border and Immigration Agency website: www.bia.homeoffice.gov.uk/lawandpolicy/consultationdocuments
 - 1.7 Responses should be sent electronically to: immigrationsimplification@homeoffice.gsi.gov.uk
 - 1.8 Responses can also be sent by post to:
- 1.9 You should contact the address above if you require a copy of this consultation paper in any other format, e.g. Braille, large font or audio.
 - 1.10 Individual responses will not be acknowledged unless specifically requested.

RESPONSES: CONFIDENTIALITY & DISCLAIMER

- 1.11 The information you send us may be passed to colleagues within the Home Office, the Government and related agencies. Furthermore, information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).
- 1.12 If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a Statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with the obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, by itself, be regarded as binding on the Department.
- 1.13 Please ensure that your response is marked clearly if you wish your response and name to be kept confidential.
- 1.14 Confidential responses will be included in any statistical summary of numbers of comments received and views expressed.
- 1.15 The Department will process your personal data in accordance with the DPA - in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

Simplification Project
Border and Immigration Agency
4th Floor, 165 Fleet Street
London EC4A 2DY

SECTION 2

CONTEXT

2.1 Following the Home Secretary's review of the immigration system last year ('Fair, effective, transparent and trusted: rebuilding confidence in our immigration system', Home Office, July 2006 available at:

www.bia.homeoffice.gov.uk/6353/aboutus/indrev.pdf) a major programme of work is underway to focus the business around its four strategic objectives:

- **Strengthen our borders;** use tougher checks abroad so that only those with permission can travel to the UK; and ensure that we know who leaves so that we can take action against those who break the rules.
- **Fast-track asylum decisions,** remove those whose claims fail and integrate those who need our protection.
- **Ensure and enforce compliance with our immigration laws,** removing the most harmful people first and denying the privileges of Britain to those here illegally.
- **Boost Britain's economy** by bringing the right skills here from around the world, and ensuring that this country is easy to visit legally.

and to transform delivery against those objectives, restoring public confidence in the system.

2.2 We have already taken a number of important steps forward in implementing our new strategy. These include:

- the introduction of the UK Borders Bill,
- the publication of a cross-government enforcement strategy (available at www.bia.homeoffice.gov.uk/6353/aboutus/enforcementstrategy.pdf),
- the publication of the borders and visa strategy (available at www.bia.homeoffice.gov.uk/6353/aboutus/Securing_the_UK_Border_final.pdf)
- the establishment of the new Border and Immigration Agency in shadow form, with a regional structure,
- and major reform of processes, including a new approach to asylum casework and for a points based system for managed migration.

2.3 Much of the programme of work to develop the capability of the Agency is designed to make its business processes more efficient and more consistent, and thereby more straightforward and comprehensible for our customers. The wider public will also have greater confidence in a system where there is more transparency about the obligations and entitlements of temporary and longer term residents - and particularly about the way in which permanent settlement and the acquisition of citizenship are earned.

2.4 A key and early element of our programme of change will come through the roll-out of the points based system. This represents a systematic overhaul of our migration arrangements for those coming to the UK to work or study. It entails:

- consolidating more than 80 existing work and study routes into five tiers:

- tier 1 highly skilled, e.g. scientists or entrepreneurs;
- tier 2 skilled workers with a job offer, e.g. nurses, teachers, engineers;
- tier 3 low skilled workers filling specific temporary labour shortages, e.g. construction workers for a particular project
- tier 4 students; and
- tier 5 youth mobility and temporary workers, e.g. working holiday makers or musicians coming to play a concert.

- points will be awarded to reflect aptitude, experience, age and also the level of need in any given sector, to allow the UK to respond flexibly to changes in the labour market;
- a system of sponsorship by employers and educational institutions to ensure compliance with the immigration rules. In order to sponsor migrants institutions will need to be registered on a list of approved sponsors operated by the Border and Immigration Agency.

SECTION 2 CONTEXT (CONTINUED)

- 2.5 The new system will offer caseworkers a clearer and more straightforward basis for decision-making. It will also enable potential applicants to assess the strength of their cases for themselves and have a clear view of their likelihood of success before paying their fee and making an application. As was announced in April, the new system will be put into place in stages during 2008 and into 2009. The schedule includes the following targets:
- tier 1 of the system, which affects highly skilled workers including scientists and entrepreneurs, launches at the beginning of 2008
 - tier 2, affecting workers with a job offer, and Tier 5, for young people and temporary workers, both launch in the third quarter of 2008
 - tier 4, which includes students, launches at the beginning of 2009.
 - no timetable has been set for tier 3 while restrictions are still in force on the labour market access of Romanian and Bulgarian nationals.
- 2.6 The points based system forms part of an overall re-evaluation and re-engineering of the business, designed to produce a seamless, end-to-end process for handling all our cases. Last year's review made clear that an important enabler for this programme of transformation would be a radical simplification of the legal framework. We said:
- ‘We will ensure that IND has a clear and simplified legal framework. This will give people in IND the powers they need to do the job and ensure they exercise them fairly, consistently and effectively. This will produce more objective decision making within clear, codified frameworks and an end to concessions. We want the public and those who seek to come here to be clear about the rules, and about the rights and responsibilities that go with them. We want to signal that criminals and cheats are not welcome and highlight the consequences to those who abuse our hospitality. We plan a fundamental overhaul and we recognise that this will take some time. We will consult during 2007, with a view to bringing forward proposals in 2008.’
- 2.7 At present the legal framework is very complex. The Immigration Act 1971 is still its foundation - although that Act was clearly passed in a very different world. Subsequent Acts have provided vital additions and strengthening measures to respond to the enormous changes there have been over thirty five years. The UK Borders Bill which is currently before Parliament is the tenth in a series of measures which have been overlaid on the 1971 Act. It is not always straightforward to see - reading between these different statutes - what the law currently provides on a particular issue. The time is now ripe for consolidation and rationalisation of this structure.
- 2.8 But the primary legislation does not tell the whole story. There are also the Immigration Rules made under the 1971 Act; a range of secondary legislation - with over thirty statutory instruments currently in force; and internal guidance and instructions. And all of these measures must be applied consistently with the Human Rights Act, equality legislation, European Union law and other relevant international instruments.
- 2.9 This complexity causes a number of problems. It reduces the efficiency of decision-making process, resulting in delay and a risk of mistakes. It can make it difficult for applicants to understand how they can come to or stay in the UK legitimately - or recognise quickly that they do not qualify to do so. It increases the likelihood of protracted legal challenge of refusals, making enforcement more difficult. And it contributes to a lack of public confidence in the overall effectiveness of the system.
- 2.10 The Simplification Project aims to produce a single, consistent and coherent framework of primary and secondary legislation, together with any further guidance and instructions that are strictly necessary. Its focus is the legal framework, rather than a review of immigration policy or operations. But it is not a purely legal

exercise: it will link closely to many other strands of reform in the Border and Immigration Agency to ensure that the organisation's developing structures, processes and systems are properly supported and work together as effectively as possible.

SECTION 3

SIMPLIFICATION PRINCIPLES

3.1 The key principles which we believe should underpin the simplification process are that it should **maximise**:

- **transparency**, for staff within the Border and Immigration Agency, for applicants, for other stakeholders and for the wider public
- **efficiency**, with a system friendly to all its users, within which it is quicker and easier to make the most appropriate decision
- **clarity and predictability** for applicants and sponsors, reducing the need to rely on advisers to navigate the system
- **plain English**, avoiding technical jargon wherever possible
- **public confidence** in a comprehensible system

and that it should minimise:

- the need for **further legislation**
- reliance on **concessions outside** the normal rules
- the need for decision-makers to exercise **discretion**
- **inconsistencies** between different parts of the system
- **duplication**, including parallel provisions in different areas for broadly comparable circumstances
- **gaps** in powers to resolve cases fairly, speedily and effectively.

3.2 Our starting assumption is that these key principles should underpin all the work of the Border and Immigration Agency, focusing its systems and processes around its three functions:

- Firstly, receiving applications from those who want to come to or stay in the UK.
- Secondly, deciding those applications.
- Thirdly, implementing those decisions.

3.3 A further starting assumption is that we will in the future continue to require a **broadly three-tier framework**:

- essential overarching provision set out in a **single focused piece of primary legislation**
- more flexibility below that level with **shorter, sharper and consistent immigration rules**, which are capable of quick adjustment in response to changing circumstances, alongside any other necessary secondary legislation
- shorter, sharper and consistent **operational guidance**, but only where that is necessary.

3.4 These principles and assumptions will be developed and refined as the project progresses. But from now on we will test new policy proposals against them to ensure that necessary shorter term changes are as consistent as possible with our longer term objectives.

SECTION 4

QUESTIONS

- 4.1 The Government would welcome comments on any aspects of the simplification agenda - from the overall process to the identification of specific issues which a revised legal framework might address.
- 4.2 We would be particularly interested at this stage in responses to the following questions:
- Q1 Are the simplification principles which are set out in the previous section the right ones?
- Q2 What specific problems would you hope that the Simplification Project can resolve?
- Q3 What particular issues need to be addressed in reducing reliance on concessions and the exercise of discretion?
- Q4 Do you agree with the proposed three tier structure of primary legislation, immigration rules and operational guidance?
- Q5 Are there particular models for simplification, internationally or in other regulatory areas, which have been successful and could provide a model?
- Q6 Nationality law is largely separate from immigration law. The gateway from migration processes to citizenship is clearly part of this project. But should the technical details of nationality law be included in the present simplification process, or left alone? Or would it be better to consolidate nationality law separately?
- Q7 Can we use the simplification process to help make clearer the distinction between temporary residents in the UK, those seeking settlement, those settled here with no time limit on their stay and those who go on to become British citizens? Can we make clearer their respective obligations and rights, and how these different statuses need to be earned?
- Q8 Do you have any other comments on, or suggestions for, the process?

ANNEX A

CONSULTATION CRITERIA

1. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.
2. Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.
3. Ensure that your consultation is clear, concise and widely accessible.
4. Give feedback regarding the responses received and how the consultation process influenced the policy.
5. Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.
6. Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.

These Consultation Criteria are taken from The Code of Practice on Consultation that can be found on the Cabinet Office website at: www.cabinetoffice.gov.uk/regulation/consultation

ANNEX B

CONTACT FOR COMMENTS AND COMPLAINTS

CONSULTATION CO-ORDINATOR

If you have any complaints or comments specifically about the consultation process only, you should contact the Home Office consultation co-ordinator Christopher Brain by email at:
christopher.brain2@homeoffice.gsi.gov.uk

Alternatively, you may wish to write to:
Christopher Brain
Consultation Co-ordinator
Performance and Delivery Unit
Home Office
3rd Floor Seacole
2 Marsham Street
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