

Glossary of the Main Legal Words and Expressions Used In the Context of Asylum and Immigration

Legal: MW 174

December 2018 Revision

It is hoped that users of the Migration Watch website may find this glossary of assistance in reading other papers on the website or other relevant material. The definitions are not intended to be exhaustive or to carry the same authority as a legal practitioner's work of reference, but simply to be helpful. Any comments or suggestions of other words or expressions which might be added or other ways in which the glossary could be improved would be welcome.

For the first time, this paper includes a definition of sham marriage. All definitions in the paper are correct as at the time of writing. Legislation resulting from Brexit may necessitate some changes later.

Administrative Removal

Administrative removal is authorised under section 10 of the Immigration and Asylum Act 1999. A person who is not a British citizen may be removed from the United Kingdom in accordance with directions given by an immigration officer if:

1. having only a limited leave to remain, he fails to observe a condition attached to the leave or remains beyond the time limited by the leave, or
2. he uses deception in seeking leave to remain or
3. he had been granted indefinite leave to remain as a refugee but that leave was revoked under section 76(3) of the Nationality, Immigration and Asylum Act 2002, or
4. directions have been given for the removal of a person to whose family he belongs.

Unlike deportation, administrative removal does not prevent a person removed from applying for fresh leave to enter.

Asylum

Affording sanctuary to nationals of foreign countries in accordance with the requirements of the 1951 Geneva Convention on the Status of Refugees. Signatory states to the Convention undertake not to return to his country of origin any person who is able to show that in that country he is at risk of persecution on grounds of race, religion, nationality, membership of a particular social group or political opinion.

Asylum Seeker

A person who has applied for asylum but whose application is still pending, or a person whose application has been refused but whose appeal against refusal is still pending. Sections 77 and 78 of the Nationality, Immigration and Asylum Act 2002 prohibit the deportation or removal of an asylum seeker whose application or appeal against refusal of asylum is pending.

Part VI of the Immigration and Asylum Act 1999 is concerned with Support for Asylum Seekers and Part II of the Nationality, Immigration and Asylum Act 2002 is concerned with Accommodation Centres for destitute asylum seekers. Section 94(1) of the 1999 Act and section 18 of the 2002 Act both contain substantially identical definitions of “asylum seeker”, in each case limited by reference to the part of the Act in which they appear. Section 18 of the 2002 Act defines an asylum seeker as person who is:

- a. at least 18 years old,
- b. has made a protection claim, and
- c. the person’s claim –
 - i. has been recorded by the Secretary of State, but
 - ii. has not been determined.

This is a limited definition in that it does not refer to appeals by way of protection claims against refusal of applications and does not refer to children. There is no general statutory definition of “asylum seeker”.

Citizenship

British citizenship is acquired by birth, adoption, descent, registration or naturalisation in accordance with the provisions of the British Nationality Act 1981, which was substantially amended by the Nationality, Immigration and Asylum Act 2002.

Common Travel Area

The common travel area comprises the United Kingdom, Channel Islands, Isle of Man and the Republic of Ireland. Subject to a number of detailed exceptions, journeys within the area are not subject to immigration control. For practical purposes this means that British and Irish citizens are free to move and to settle within the common travel area. While Ireland and the United Kingdom are both members

of the European Union their citizens and citizens of all other Member States enjoy free movement rights under Treaty. After Brexit, citizens of EU Member States other than Ireland will no longer enjoy free movement rights and will be subject to immigration control on entering the United Kingdom. If there is an effective deal between the United Kingdom and the European Union there will be a transition period lasting 21 months during which free movement rights will continue. See section 9(2) and Schedule 4 of the Immigration Act 1971.

Deportation

In accordance with section 3(5) and (6) of the Immigration Act 1971 a person who is not a British citizen is liable to deportation from the United Kingdom if;

1. the Secretary of State deems his deportation to be conducive to the public good or
2. being over the age of 17 he is convicted of an offence which is punishable with imprisonment and on conviction for that offence is recommended for deportation by the court or
3. another person to whose family he belongs is or has been ordered to be deported.

A deportation order is of permanent effect unless revoked.

Entry Clearance

See "Leave to enter or remain."

European Economic Area (EEA)

All Member States of the European Union as well as Iceland, Liechtenstein and Norway. The importance of the EEA in relation to immigration is that any national of an EEA Member State does not need leave to enter or remain in another Member State and may take up employment or pursue studies in that other State. Although Switzerland is not a Member State of the EEA, Swiss citizens enjoy the same privileges. In relation to the United Kingdom the detailed provisions relating to the residence and other rights of such nationals and members of their families are set out in The Immigration (European Economic Area) Regulations 2006 (SI 2006 No.1003).

Humanitarian Protection

If a person's application for asylum is refused consideration must be given immediately as to whether he qualifies for humanitarian protection under paragraph 339C of the Immigration Rules. If he or she is to qualify he must show that there are substantial grounds for believing that if he or she is returned to his country of origin he will face a real risk of suffering serious harm and is unable, or owing to such risk, unwilling, to avail himself of the protection of that country. "Serious harm" consists of:

- i. the death penalty or execution;
- ii. unlawful killing;
- iii. torture or inhuman or degrading treatment or punishment; or
- iv. serious and individual threat to a civilian's life or person by reasons of indiscriminate violence in situations of international or internal armed conflict.

In practice (iv) is the commonest form of serious harm which gives rise to grants of humanitarian protection. For example, many Tamil civilians fled the civil war in Sri Lanka and were unable to show that they had any basis for fearing persecution if returned to Sri Lanka, but might be entitled to humanitarian protection because the fighting placed them at risk of death or serious injury.

Paragraph 339C of the Immigration Rules gives effect to an EU Directive 2004/83/EC, promulgated on 29 April 2004. Previously the practice of the Home Office in cases which would now be considered appropriate for humanitarian protection was to grant Exceptional Leave to Remain outside the Immigration Rules.

Human Rights

A reference to the rights set out in the European Human Rights Convention such as Article 3 (right not to be tortured) or Article 8 (right to respect for private and family life). The Human Rights Act 1998 brought these into domestic law and made them justiciable before courts in the United Kingdom in October 2000 when the Act came into effect. Section 6 of the Act makes it unlawful for any public authority to act in a way which is incompatible with a Convention right. Other Acts of Parliament and decisions of courts or public authorities can be judged as to whether they are compatible with particular provisions in the Convention. If the High Court, Court of Appeal, corresponding court in Scotland or Northern Ireland or the Supreme Court decides that there is a conflict it can make a declaration of incompatibility and it is then up to Parliament, if it so decides, to take such legislative measures as may be needed to remove the incompatibility.

Immigration Rules

Rules made by the Secretary of State in accordance with powers granted by Parliament under section 3(2) of the Immigration Act 1971 as to the practice to be followed in the administration of immigration controls over persons required to have leave to enter. Rules are to be laid before both Houses of Parliament and if disapproved by resolution of either House within 40 days of being laid, the Secretary of State shall make such changes in the rules as appear to be required and lay those changes before

Parliament within 40 days of the resolution. If there is no such disapproval, the Rules take effect without any specific parliamentary approval. This is different from the normal procedure for parliamentary approval of statutory instruments, which provide for approval or disapproval of the instrument as a whole but do not make provision for amendment. The Rules are detailed, running to more than 700 pages, and are frequently amended.

Indefinite Leave To Remain

As opposed to a limited leave to remain – a distinction made in section 3(1) of the Immigration Act 1971. A person who has indefinite leave to remain is settled - see “Settled” below. However, indefinite leave to remain may be revoked in the circumstances set out in section 76 of the Nationality, Immigration and Asylum Act 2002, e.g. if the leave was obtained by deception.

Judicial Review

This is a well-established procedure under which the High Court may examine any decisions of government departments, tribunals and other public authorities to see whether the particular decision which is being questioned was in conformity with relevant legal provisions. It is different from an appeal in that the High Court cannot in such a case reach any decision on the merits. If the High Court finds that the decision did not comply with the relevant legal provisions, it can quash the decision and order the department or other authority to reconsider the case in correct accordance with those provisions. In recent years failed asylum seekers have made ever increasing use of judicial review, particularly as a means of contesting orders for their removal, pleading the protection of provisions of the European Convention on Human Rights, especially Article 8, which protects the right to family life and is heavily relied on by applicants who have acquired children during their stays in the United Kingdom. On this subject see legal briefing papers [MW159: ‘Reform of the immigration appeals system’](#) and [MW225: ‘Judicial review in the tribunal’](#).

By the operation of sections 15 to 29 of the Tribunals, Courts and Enforcement Act 2007, the Upper Tribunal Immigration and Asylum Chamber has been granted a limited judicial review jurisdiction.

Leave To Enter Or Remain

Entry Clearance

Persons other than British citizens, citizens of other EEA Member States or Swiss nationals are subject to immigration control. In many cases, including a number of Commonwealth countries such as India and Pakistan, persons wishing to enter are required to obtain visas, which will normally be obtained from Entry Clearance Officers at British diplomatic missions abroad before such persons travel. Visas are obtainable under the Immigration Rules for visits, employment, studies, marriage and other reasons

Overstayer

A person who had limited leave to enter as visitor, student or whatever, but who has failed to leave the United Kingdom before the date of expiry of that leave. An overstayer is an illegal immigrant.

Points-Based System

See “WORK PERMITS”.

Protection Claim

This expression is defined by section 82 of the Nationality, Immigration and Asylum Act 2002 as substituted by section 15 of the Immigration Act 2014 with effect from 20 October 2014. It is a claim that removal of the claimant from the United Kingdom would breach the United Kingdom’s obligation under the Refugee Convention or its obligations in relation to persons eligible for a grant of humanitarian protection. See definitions of “Asylum”, “Refugee” and “Humanitarian protection” in this paper. See also legal briefing paper [MW130: ‘Deportation of foreign criminals a case for urgent action’](#).

Public Interest Considerations

This is an expression introduced by Part 5A of the Nationality, Immigration and Asylum Act 2002 inserted by section 19 of the Immigration Act 2014 with effect from 19 July 2014. Part 5A applies where a court or tribunal is required to determine whether an immigration decision relating to a person breaches that person’s right to respect for private and family life under Article 8 of the European Convention on Human Rights and as a result would be unlawful under section 6 of the Human Rights Act 1998. Section 117A(2) of the 2002 Act requires the court or tribunal in considering the public interest question to have regard to the considerations set out in sections 117B in all cases and section 117C in cases concerning the deportation of foreign criminals. “Public interest question” is defined by section 117A(3) as meaning the question whether an interference – i.e. the interference which the immigration decision entails – with a person’s right to respect for private and family life is justified by Article 8.2, which permits lawful interference by public authorities. For a full explanation of “public interest considerations” see Legal Briefing Paper [MW334: ‘Immigration Act 2014 - Article 8 ECHR - Public interest considerations’](#).

Refugee

A person whose application for asylum (see definition in this paper) has been accepted as having satisfied the UK Border Agency or a tribunal or court hearing an appeal against initial refusal that if he or she is returned to his or her country of origin there is a reasonable degree of likelihood that he or she may be at risk of persecution on account of his or her race, religion, nationality, membership of a particular social group or political opinion.

Settled

Defined by section 33(2A) of the Immigration Act 1971 – a person is settled in the United Kingdom if he is ordinarily resident there without being subject under the immigration laws to any restriction on his period of stay. See “Indefinite leave to remain” above.

Sham Marriage

A fraudulent practice used by some illegal immigrants, defined in section 24(5) of the Immigration and Asylum Act 1999 as follows:

“Sham marriage” means a marriage (whether or not void)-

- (a) entered into between a person (“A”) who is neither a British national nor a national of an EEA State other than the United Kingdom and another person (whether or not such a person or such a national) and
- (b) entered into by A for the purpose of avoiding the effect of one or more provisions of United Kingdom immigration law or the immigration rules.”

See “European Economic Area” above for the definition of EEA. “A” still has to obtain permission to stay under the Immigration Rules applicable to marriage, which include showing that the parties have met and intend to live together permanently as man and wife, that they have adequate accommodation for themselves and any dependants and will be able to maintain themselves and any dependants without recourse to public funds.

See the separate legal briefing paper on this subject, [MW228: ‘Sham marriages – the latest’](#).

Work Permits

Leave to enter the United Kingdom for the purposes of taking up employment is regulated in accordance with the requirements of paragraphs 128 – 199C of the Immigration Rules. These paragraphs contain detailed provisions about work permits generally and about permits for specific categories under sector-based schemes, such as journalists, airline crews, ministers of religion and domestic servants employed in diplomatic households. In 2006 the Points Based System (PBS) was introduced, with the aim of simplifying the system of work permits and replacing sector-based schemes. I quote the following from Jackson and Warr on “Immigration Law and Practice”, Fourth Edition, paragraph 10.3:

The PBS is based on the idea that entitlement to enter the UK and remain here for most purposes can and should be assessed by reference to objectively verifiable criteria, for which a certain number of points are allocated. Migrants will only be granted entry clearance or leave to remain if they can score sufficient points for the stipulated attributes, such as age, educational qualifications or previous earnings. For most parts of the PBS, applicants will also have to demonstrate a proficiency in English language and prove that they have enough money...

For the purpose of entry clearance and leave to remain the following categories have been created:

Tier 1 – highly skilled individuals who contribute to growth and productivity;

Tier 2 – skilled migrants

with a job offer to fill gaps in the UK labour force;

Tier 3 – low skilled workers to fill specific labour shortages-
(a closed category which is likely to remain closed for the foreseeable future)

Tier 4 – students; and

Tier 5 – youth mobility and temporary workers: people coming to the UK to satisfy primarily non-economic objectives.

The PBS does not affect EEA or Swiss nationals, as they do not require leave to enter or remain. Leave to enter or remain for the purpose of visits or family reunion is outside the PBS.

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11 December 2018