



Immigration Act 2014
Article 8 ECHR
Public interest considerations

1 There has been much concern in recent years about the number of cases in which convicted foreign criminals have been able to frustrate decisions to remove or deport them from the United Kingdom by reliance in appeals against such decisions on Article 8 of the European Convention on Human Rights (ECHR), which provides:

1 Everyone has the right to respect for his private and family life, his home and his correspondence.

2 There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in the interests of national security, public safety or the economic well being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedom of others.

Section 19 of the Immigration Act 2014, brought into force as from 14 July 2014, now adds to the Nationality, Immigration and Asylum Act 2002 a new Part 5A entitled “Article 8 of the ECHR: public interest considerations” comprising four new sections, 117A, 117B, 117C and 117D. Section 117A states that Part 5A applies where a court or tribunal has to determine whether a Home Office immigration decision breaches a person’s right to respect for private and family life under Article 8 and as a result would be unlawful under section 6 of the Human Rights Act 1998. In such a case the court or tribunal must have regard to the “public interest question” which means the question whether an interference with a person’s right to respect for private and family life is justified under Article 8.2.

2 Section 117B sets out the public interest considerations which the court or tribunal must treat as applicable in **all** cases. Subsection (2) states that it is in the public interest and particularly in the interest 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 and are therefore less of a burden on taxpayers and better able to integrate into society. Subsection (3) states that it is in the public interest and economic well-being of the United Kingdom that such persons are financially independent and are therefore not a burden on taxpayers and better able to integrate into society. These two subsections are a clear instruction to courts and tribunals on how the reference in Article 8.2 to the economic well-being of the United Kingdom is to be interpreted.

3 Subsection (4) of section 117B states that in considering the public interest question in the case of an illegal immigrant little weight should be given to a private life or to a relationship formed by an illegal immigrant with a partner who is either a British citizen or has settled status. Subsection (5) states that little weight is to be given to a private life established by a person “at a time when the person’s immigration status is precarious”. This is curious and novel expression; the word “precarious” is not defined in the Act.

4 Subsection (6) provides for the exceptional case where the public interest does not require the *removal* of a person who is *not* liable to *deportation* (i.e. the Home Secretary does not deem his deportation to be conducive to the public good) in a case where (i) he has a genuine and subsisting parental relationship with a child who is either a British citizen or has settled status and (ii) it would not be reasonable to expect the child to leave the United Kingdom. For an explanation of the difference between removal and deportation see Legal Paper MW 174.

5 Section 117C sets out the additional matters which must be taken into account in considering the public interest question in relation to foreign criminals. “Foreign criminal” for this purpose 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.

Subsections (1) and (2) of section 117C state that the deportation of foreign criminals is in the public interest and the more serious the offence committed, the greater the public interest in deportation. Subsection (3) provides for the case of a foreign criminal who has not been sentenced to a period of imprisonment of four years or more. The public interest requires the deportation unless one of two specific exceptions applies. The first exception is the case where the individual has been resident in the United Kingdom for most of his life, is socially and culturally integrated and would face significant obstacles to integration in the country to which it is proposed that he be deported. The second exception is where the foreign criminal has a genuine and subsisting relationship with a partner who is settled in the United Kingdom or with a qualifying child and the effect of his deportation on the partner or child as the case may be would be unduly harsh.

6 These sections are intended to reduce the more baleful effects of Article 8 by obliging the courts and tribunals to have more regard for the exceptions set out in 8.2 than may have been the case in the past. In 2013 the Home Office sought to achieve a similar objective by including detailed rules in the Immigration Rules, discussed in Legal Paper MW 270, but these were not found to be effective, hence the decision to resort to an Act of Parliament. Care has been taken not to contradict in any way the rights conferred by Article 8, as any such contradiction would fall foul of section 6 of the Human Rights Act 1998 and could lead to a finding by a court that the new Part 5A of the 2014 Act was incompatible with the United Kingdom's obligations under the ECHR.

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