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# Article: A Brief Overview of the United Kingdom's Immigration System By Patti Kemp and Edward C. Corrigan

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## A Brief Overview of the United Kingdom's Immigration System

by *Patti Kemp and Edward C. Corrigan*

### Introduction

Immigration Law in the United Kingdom is a dynamic and rapidly-shifting field where changes to legislation and policies occur at breakneck speed, often as a knee-jerk response to public sentiment driven by a sensationalist daily press[1]. Both economic and humanitarian immigration areas can be complex and fraught with uncertainty. Practitioners can feel embattled, particularly with drastic reductions in the scope of Legal Aid and the government's constant drive to "get immigration under control"[2]. The current Conservative/Liberal Democrat Coalition government has stated that its aim is "to reduce the level of net migration back down to the levels of the 1990s-tens of thousands each year, not hundreds of thousands."[3]because of the alleged negative impact of migration on public services, resources and public confidence. This constant drive towards reducing migration underpins all area of immigration policy in the UK.

### Background

Immigration in the United Kingdom falls under the mandate of the Home Office, a ministerial office that also looks after the justice system, policing, citizenship and national security[4]. The United Kingdom Border Agency (UKBA) is an executive agency of the Home Office that monitors immigration and controls the borders. UKBA was created in 2008 as a merger of different government agencies. However, in an example of the constantly shifting landscape of immigration law, on 1 April 2013, the Home Office announced that UKBA will once again divide into two separate agencies[5].

Immigration law in the United Kingdom is set out under the basic framework of the Immigration Act 1971, which has been supplemented and amended by other sets of primary legislation such as the UK Borders Act 2007 and the Borders, Citizenship and Immigration Act 2009. However, the Immigration Rules set out the detailed administration of the immigration system. The Rules are not primary legislation; they are set out in House of Commons Papers and come into force unless they are disapproved of by Parliament. The most recent major changes came into force on 1 October 2013[6], with more minor changes being made on 1 November 2013[7], 9 December 2013[8] and 31 December 2013[9]. There were twelve Statements of Changes to the Immigration Rules released in 2013[10] alone. UKBA issues guidance notes, instructions, policy bulletins and country information reports that guide staff in their day-to-day operations. These are mostly[11] accessible on the UKBA website.[12]

Initial applications for visas are made directly to UKBA if the applicant is in-country, and if out-of-country, to the commercial partner WorldBridge. Once an application is refused, there are varying degrees of appeal rights. For instance, as of July 2013, family visitor applications lost the right of appeal unless on the limited grounds of human rights or race discrimination. UKBA also practices a "One Stop Notice" procedure[13] where applicants are required to disclose all information that may affect their immigration status so that all issues can be dealt with at one appeal. Appeals in England and Wales are heard at the First Tier Tribunal of the Immigration and Asylum Chambers (IAC).

Decisions from the First Tier Tribunal are challenged at the Upper Tier of the IAC. Further appeals can be made to the Court of Appeal on a point of law only. The Court of Appeal can send the case back to the IAC for rehearing. Cases involving national security are heard at the Special Immigration Appeals Commission (SIAC). If a case does not have a right of appeal, it can be challenged by way of Judicial Review at the Administrative Court of the High Court of England and Wales. In Scotland, judicial reviews are heard at the Court of Session and in Northern Ireland at the Supreme Court of Judicature. The highest court in the UK is the Supreme Court, which replaced the judicial authority of the

House of Lords in 2009. Some cases can be appealed to the European Court of Human Rights.

The UK is a member of the European Economic Area (EEA) which allows for the free movement of people within EEA member states. A national of an EEA state can in theory enter the UK without the need to show a passport, although in practice, it is much easier to produce a passport as evidence of that right. EEA members can take up residence in the UK if they are exercising treaty rights. Family members of EEA nationals can also have the right of residence in the UK and this right is distinct from any right granted under UK law. The EEA in effect creates a separate system of immigration law running parallel to the UK's own immigration system.<sup>[14]</sup> However, unlike many continental European countries, the UK is not a Schengen State<sup>[15]</sup>, so travel between the continent and the UK still requires passing through UK border control.

European law also has a significant impact on UK law, arguably, the most important of which was the enactment of the Human Rights Act in 1998, which codified the European Convention of Human Rights into UK law. It imposes a requirement that all legislation is compatible with the Act<sup>[16]</sup>. If legislation is not compatible, a superior court can declare it to be incompatible<sup>[17]</sup> and issue a remedial order to remove that incompatibility<sup>[18]</sup>. The Articles with the most impact on immigration law include Article 2, Article 3 and Article 8. Article 2 defines the right to life and provides that:

Everyone's right to life shall be protected by the law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.<sup>[19]</sup>

Article 2.2 provides for exceptions if the deprivation of life results from use of no more force than absolutely necessary if defending against unlawful violence<sup>[20]</sup>, effecting lawful arrest or preventing the escape of a person lawfully detained<sup>[21]</sup> or taking lawful action to quell a riot or insurrection<sup>[22]</sup>.

Article 3 sets out the prohibition of torture: No one shall be subjected to torture or degrading treatment or punishment<sup>[23]</sup>. This right is absolute and not subject to any exceptions.

Article 8 provides for the right to family and private life: Everyone has the right to respect for his private and family life, his home and his correspondence<sup>[24]</sup>. This right is limited by any lawful interference by a public authority that is deemed in accordance with the law and is:

necessary in a democratic society 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 freedoms of others.<sup>[25]</sup>

## Visitors

Visitors to the UK for tourism purposes are generally granted a 6 month visa. There are several different categories of visitors: family visitors, business visitors, sports visitors, entertainment visitors and "other" visitors. On 1 October 2013, the prospective student visitor route was removed and temporary visas were introduced for certain visitors involved in the Commonwealth Games 2014. The UK operates a list of visa nationals who must apply for visitor visas in advance of travelling to the UK<sup>[26]</sup>. As London, England is an international air transit hub with five major airports, it is important to know that passengers with a layover may require a visa as a visitor in transit, even if they do not leave the airport. Passengers from particular countries may need either a visa for transiting airside (remaining in the airport and not passing through immigration control) or transiting landside (passing through immigration control). These visas are valid for up to 48 hours.<sup>[27]</sup>

## Points-Based System

In 2008, the UK introduced a points-based approach to managed migration in a specific set of broad categories, or "tiers", using a sponsor/sponsorship basis, with an employer or the educational institution acting as sponsor. Tier 1 refers to highly skilled individuals who can contribute to growth and productivity. Tier 2 refers to skilled workers who can fill gaps in the UK workforce. Tier 3 refers to low-skilled workers who can fill temporary work shortages. Tier 4 refers to students and Tier 5 refers to temporary workers and young people who work for limited periods of time for non-economic objectives.<sup>[28]</sup> In line with ongoing immigration reforms, the stated reason for the new system was to demonstrate that the government could get immigration "under control"<sup>[29]</sup>. While the government still wanted to attract the "very best talent"<sup>[30]</sup> to the UK, it continued to play on the public's reported fears about immigration by introducing further hurdles and limits on managed migration, often accompanied by great concern from immigration

practitioners and the business and education communities.

At this stage, as with all areas of UK immigration law, it is important to note that there are groups that fall outside the Points Based System, such as Turkish workers who fall under a separate set of agreements and therefore have different avenues of migration<sup>[31]</sup> or domestic workers in private households.<sup>[32]</sup> Of particular interest to some Canadians, individuals from the Commonwealth who have a grandparent born in the UK may be able to apply for an ancestral visa. This category is particularly attractive because, unlike most categories in the Points-Based System, an ancestral visa grants 5 years of leave and an eventual possibility of settlement.<sup>[33]</sup>

## **Tier 1**

Tier 1 most clearly demonstrates the government's drive to recruit only the "very best talent" by singling out categories for Exceptional Talent, Entrepreneur, Investor, General and Graduate Entrepreneur.

To qualify under Exceptional Talent, individuals must be endorsed by one of four "competent bodies": the Royal Society, the Royal Academy for Engineering, the Art Council England and the British Academy. The individuals must be "internationally recognised as world leaders or potential world-leading talents in the fields of science and the arts"<sup>[34]</sup> or who demonstrate exceptional promise in the arts. The number of visas in this category is limited to 500 from 6 April 2013 to 30 September and another 500 from 1 October 2013 to 5 April 2014. These visas are allocated between the four listed competent bodies.

Two of the other subcategories, Entrepreneur and Investor, are not restricted in number but are certainly restrictive in scope. Entrepreneur applicants must either have access to at least £200,000 or £50,000 with an additional set of criteria. Applicants wishing to extend this visa must meet criteria such as having created new jobs in the UK. As an Investor, applicants must be able to invest £1,000,000 in the UK.

The Graduate Entrepreneur subcategory is aimed at non-European students graduating predominantly from MBA programs in the UK so that they can extend their stay to establish businesses in the UK, or if they are identified by UK Trade Investment (UKTI) as "elite global graduate entrepreneurs"<sup>[35]</sup> who intend to establish a business in the UK. Again, this category is limited in number. From April 2013 to April 2014, there are only 2000 of this type of visa available.

A further restriction is that the General category is now closed to applicants applying from outside of the UK and is limited to those already in the UK who fulfil strict criteria. Clearly, Tier 1 is a very limited avenue for those wishing to work in the United Kingdom.

## **Tier 2**

Tier 2 covers skilled workers who must already have a job offer from a licensed sponsor. The sponsor must apply to the Home Office for a licence and be granted a certificate of sponsorship. The subcategories under Tier 2 are: Ministers of Religion, Sportspeople or Intra company transfers and General. Recently, the Home Office introduced a controversial cap to the General subcategory. From April 2013 to April 2014, there are only 20,700 visas available for this subcategory; however, this cap does not apply to those who will make a salary of greater than £152,100.

The Immigration Law Practitioners Association (ILPA) expressed the overall concerns of the profession towards Tier 2 and, in particular, the introduction of limits on these types of visas. Of major concerns were: "Constant changes to immigration law, policy and procedures, excessive bureaucracy, poor quality initial decision-making, delays in processing and the increased cost of compliance [which practitioners feel] are creating a harsh climate and a perception that the UK is 'closed for business'"<sup>[36]</sup> They submitted that the cap would lower the UK's reputation as an international business leader, lead to decreased investment and have a negative impact on the economy. Furthermore, they noted that with the higher skills threshold, certain occupations were excluded, leading to shortages of key skills in certain areas of the UK's workforce.

At the time of ILPA's submission, the 2011-2012 cap had not been met. The overall impression from clients was that the caps, along with the onerous application procedure, meant that the UK was indeed closed for business and migrants were considering migrating to other countries, including Canada. Several changes made on 1<sup>st</sup> October 2013 purported to allow for greater flexibility for UK businesses, such as allowing Intra company transfer holders to extend their stay beyond 3 years without meeting the English language test and allowing Tier 1 Graduate Entrepreneurs to switch into Tier 2 General without requiring their sponsors to carry out the Resident Labour Market Test. It remains to

be seen whether these changes will lead to any significant change in perception or ease of implementation.

### **Tier 3**

Tier 3 purports to be an avenue of migration for low-skilled workers who could fill temporary labour shortages. As noted above, the current government views low-skilled workers as undesirable, as clearly evidenced by the fact that Tier 3 remains suspended and shows no sign of being put into force[37].

### **Tier 4 - Students**

To reduce "bogus students"[38] migrating to the UK, Tier 4 introduced much more onerous requirements and a more complex application procedure. Education providers must be approved by the Home Office. Students are limited in their ability to stay on and work after their degree finishes and options for settlement are now more limited.

To obtain a visa, students hold a CAS, or Confirmation of Acceptance for Study, which is issued by the approved education provider. They must also meet English language requirements and they must have sufficient funds at their disposal, which could be as much as £9,000 in addition to their first year tuitions fees. There are restrictions on working hours and, if applying to renew a student visa, they must show evidence of academic progression. There are also restrictions on the level of study undertaken, which essentially limits access to pre-degree preparation courses and ESL (English as a second language) courses.

Significant concerns about these changes were voiced by immigration practitioners, the education sector and the business community. They felt that reducing the number of international students would lead to a reduction in international student fees paid to education institutions, leading to a marked reduction in income, plus a reduction in the associated spending in the UK economy, particularly in some smaller towns and cities with large academic institutions. It was felt that the government's goals in reducing overall migration and preventing non-genuine migration failed to take into account that most international students leave when their studies have finished. Furthermore, with limits to the post-study work scheme, students are limited in their experiences outside study, will have a poorer overall experience and be less likely to develop future advantageous links to the UK such as business dealings. In a submission to UKBA, ILPA suggested that the serious economic and social impact would mitigate the government's other goals of improving the UK's economy.[39]

The national statistics released in May 2013 by the Home Office confirmed that student migration figures have declined since mid-2011. They noted that "study related admissions for the year ending June 2012 fell 30% compared with the previous 12 months (from 303,000 to 212,000)"[40]. For the period of January to March 2013, the number of student visas issued dropped by 9% and sponsored student visa applications dropped by 10% in comparison with the same period in 2012. The report notes that these changes are consistent with the "large-scale changes to the student visa system from April 2011."

In July 2012, John Vine, Independent Chief Inspector of Borders & Immigration, released 'An Inspection of Tier 4 of the Points Based System (Students)'[41]. He noted problems with Tier 4, including long processing times and frequent policy changes and suggested that the system needs a period of stability. He also suggested that the goal of reducing non-genuine migrants exploiting the student visa system for entry into the UK had been achieved, but that non-genuine migrants were now using the student visitor category. As noted above, the student visitor category has now been removed entirely.

By way of comparison, Canada has the Canadian Experience Class which allows students who have graduated from an approved academic institution and have a post-graduate work permit or who have worked in Canada for one year to apply for landing in Canada[42]. Canada has recently imposed some limitations in the Canadian Experience Class, including a cap on the number of applications accepted and a list of eligible and non-eligible occupations[43].

### **Tier 5**

Tier 5 applies to temporary workers in several categories: charity workers, religious workers, government authorized exchanges, international agreements and the Youth Mobility Scheme. Criticism for this tier includes the government treating of immigrants as "do your job and then go" because of the lack of options for settlement.[44] The Youth Mobility Scheme, which replaced the Working Holiday Visa scheme, is of particular interest to younger Canadians. The purpose of the visa is to allow youth to experience life in the UK. The countries eligible for the scheme are limited to Canada, Australia, Japan, Monaco, New Zealand, the Republic of Korea, Taiwan and, from 1 January 2014, Hong

Kong. There are annual caps on the number of visas granted each year. In 2014, there are 5,500 places available for Canadians[45]. The reciprocal arrangement for British nationals coming to Canada is known as the International Experience Canada (IEC) program[46].

The changes introduced on 1 October 2013 also allow Tier 4 graduates who have completed their degree in the UK to switch into the Tier 5 Government Authorised Exchange category, for a 12-month supernumerary internship, as long as it relates directly to their degree.

### **Points Based System - Criticism**

The Points Based System has been subject to large amounts of criticism. One criticism is that points are given only for qualifications and not for skills and so in effect is not a true points-based system.[47] In fact, it is easier to view the points as a list of requirements rather than a spectrum. Sponsor obligations for both for employers and educational institutions are onerous and costly. Uncertainty in the system means that sponsors cannot be certain that their employees or students will continue to meet the shifting criteria and may not qualify for leave in the medium or long-term. The responsibility for immigration control has shifted and moved towards sponsors being responsible for informing UKBA of non-compliance with visa conditions.

The requirements set out under the Points Based System were initially interpreted in an exceedingly strict manner and, given the complexity of the application process and the evidential requirements, resulted in a large number of refusals. The Court of Appeal instructed the Home Office to use a common-sense approach, rather than the overly rigid approach[48] and UKBA has apparently since operated a hidden "evidential flexibility" policy[49] setting out the circumstances where applications will not be refused on the grounds of missing, incomplete or incorrectly formatted evidence. However, the courts have reiterated that new evidence cannot be adduced on appeal[50] and, in combination with inconsistent decision making and policy implementation by UKBA, concerns over the rigidity of the system persist.

The most recent Immigration Rule changes introduce a 'genuineness' test for all tiers that are in force. This test purports to introduce flexibility into the decision making process, but also allows for applications to be refused even when they have met all of the stated requirements. Practitioners have indicated that this movement away from the objective criteria of the Points Based System seems to be a return to a more subjective type of decision making that existed prior to the Points Based System.[51]

The restrictions imposed by the Points Based System fail to address the long-term need for immigrants to fulfil labour shortages. The importance of this argument has been recognised in Canada. Figures released by Statistics Canada in 2005 show that the Canadian fertility rate of 1.5 children per female means that Canadians are not reproducing at a rate sufficient to replace the aging population. If this figure persists, in 20 years time, the population of Canada will start to decrease[52]. The Canadian government's immigration policies must address the goal of supporting "the development of a strong and prosperous Canadian economy." [53] As a result, immigration will become increasingly important to Canada's population growth and may even become the sole source of population growth by 2025[54].

It has been noted that "Europe faces an even worse demographic problem than Canada. When the median age in Canada hits 42.5 in 2020, in Europe it will be 52. The competition for capable immigrants is going to be fierce." [55] However, according to the World Bank, the UK's fertility rate in 2011 was 1.98 children per female[56], and in 2011-2012, the UK recorded more births in any year since 1972. The Office for National Statistics (ONS) noted that the UK's growth in absolute terms was the highest in Europe. The UK government uses these figures to support its drive to reduce immigration levels[57], including the restrictions imposed by the Points Based System.

One must take into account that the ONS's figures for population growth include net migration numbers[58] and in 2012, 25.9% of live births belonged to immigrant mothers[59]. Despite having such a strong birth rate, by 2050, the UK is projected to have one in four adults over the age of 65, leading to significantly increased spending levels on state benefits and pensions[60]. British commentators, including the independent financial watchdog, have noted the medium to long-term positive impact of immigration and higher birth rates on pensions and public services. Contrary to the government's position, they have expressed the view that the British economy is reliant on immigration.[61]

### **Family Migration**

Part 8 of the Immigration Rules sets out the requirements for family immigration. Family members are limited to partners (including civil and same-sex partners), dependent children or children under 18, dependent adults or

parents of a child in the UK. The family member must be joining someone who is a British citizen and someone who is settled (holds Indefinite Leave to Remain). If the individual is not settled or does not hold British citizenship, then the rules governing that individual's visa will determine if family members are permitted to travel as dependants on that visa.

In keeping with its drive to limit migration, the current Coalition government has placed great emphasis on reducing family migration and balancing it with "public interest in safeguarding the economic well-being of the UK"[62] although these changes have met with criticism[63]. Recently introduced measures include imposing an increased minimum income level for sponsors (currently at £18,600 per year or a minimum savings of £62,500 in a bank account for at least 6 months) and introducing pre-entry English language tests for spouses, partners, fiancées and proposed civil partners[64]. Applicants used to be granted an initial 2 years leave to remain, following which they could apply for settlement (Indefinite Leave to Remain). The initial grant of leave has now been raised to 5 years, thus decreasing access to settlement. The government has also attempted to limit the use of the Article 8 HRA right to family life argument, although this limit has so far been rejected by the courts[65]. As noted above, family visitor appeal rights have also been limited.

## General Overview of UK Refugee Procedure

Refugee law is a contentious area in the UK and the government's desire to drive down migration is also evidence in its goal to drive to reduce humanitarian immigration. However, it is important to note that asylum applications peaked in 2003 with 84,130 application and has steadily decreased. In 2011, there were 19,865 applications[66].

As part of New Labour's drive under Tony Blair to reduce migration and asylum applications[67], UKBA implemented the New Asylum Model (NAM) in 2006 in an attempt to revamp and streamline the refugee claim process. The NAM model lays out the process by which asylum claims will be considered. Individuals are first screened either on arrival at their port of entry or, if claiming in-country, at the Asylum Screening Unit in Croydon (southern England). The screening interview covers basic questions such as name, nationality, language method of entry into the UK and route of travel. UKBA provides an interpreter if required. The interview is not meant to delve into the asylum claim itself. The claimant will be assessed for whether they need housing and support. At this point, the individual can be detained if they meet the criteria for detention. If detained, they will most likely be "fast-tracked" and have their claim considered under an expedited procedure.

Under NAM, each case receives a designated case owner who should follow the case through every stage of the claim process, from the asylum interview to writing and issuing a decision. Applicants can request a case owner of a specific gender if there are special circumstances, such as a background of rape. Interpreters are provided at the asylum interview. There are special procedures to follow if the applicant is a minor or is identified as a potential victim of human trafficking.

The asylum interview is not covered by the code governing police interviews[68] so the interviewee is not protected by the same procedural safeguards. If they do not answer a question or provide a full answer, or if they provide more information later, it will invariably be considered as unreliable evidence. There is no right to silence in an asylum interview. If an applicant fails to attend their interview, a negative decision will almost inevitably be made against them unless they can provide compelling reasons as to why they did not attend.

Asylum seekers are subjected to stringent restrictions. If applicants are not detained, they are issued with reporting conditions and must report to a UKBA reporting centre on a regular, often very frequent basis. They must adhere to any other conditions, such as residence restrictions. Asylum seekers are not permitted to work. They may receive very limited benefits if they are considered destitute. If they are homeless, they will be dispersed to an area that has an excess of public housing, normally in deprived areas in the north of England.

If the asylum claim is successful, the applicant is granted 5 years leave to remain. During this five year period, they are permitted to work, they have access to healthcare and they can attend school as a local student and thus avoid foreign student fees. They have access to certain financial initiatives geared for refugees. They have the right to reunion with pre-flight family members. If unable to obtain a passport, they can apply for a Convention Travel Document which will enable them to travel to countries that accept this type of document. After five years, they are eligible to apply for settlement, unless they have triggered an automatic review of their file by engaging in questionable conduct, such as having received a criminal conviction or having travelled to the country from which they sought asylum.

If their claim is refused, the applicant will have a limited number of days to submit an appeal. The majority of asylum claims in the UK are refused[69]. According to The Migration Observatory at the University of Oxford, 67% of initial decisions in 2011 were refusals. From 2004 – 2011, 75% of refused applicants appealed their initial refusal and, in 2011, 28% of those appeals were successful. Many factors throughout the application process can lead to a refusal, such as if the individual fails to attend their asylum interview. Asylum seekers are expected to claim asylum as soon as possible upon entering the United Kingdom. If they do not, they risk having negative credibility findings made against them, which are a difficult hurdle to overcome at the appeal stage.

If an individual does not qualify as a refugee, they may be eligible for Humanitarian Leave which also leads to a grant of 5 years leave to remain. Humanitarian Leave provides protection to those who are at real risk of suffering serious harm and cannot avail themselves of protection from their country of origin. Serious harm can arise from the death penalty, unlawful killing, torture or inhuman or degrading treatment or serious and individual threats to the applicant's life "by reason of indiscriminate violence in situations of international or internal armed conflict".[70] Again, upon completion of five years leave to remain, applicants may apply for settlement.

In certain limited circumstances, individuals may be granted Discretionary Leave To Remain (DL), which, as the name implies, is discretionary in nature and not regulated by the Immigration Rules. Currently, individuals are granted 2.5 years leave but in some circumstances, they may be granted less. The scope has recently been limited, but it can still be granted to individuals receiving medical treatment where it would be inhuman to return them to their country of origin[71] or to trafficked individuals in compelling circumstances who do not meet the criteria for Humanitarian Leave or Refugee Leave. Settlement options have been reduced, with eligibility arising after 10 years, although individuals who were granted DL prior to 9 July 2012 may be able to obtain settlement after 6 years under transitional arrangements[72] .

In 2009, less than 1% of initial applicants were granted Humanitarian Leave (95 individuals) and 10% of initial applicants were granted Discretionary Leave (2,480 individuals). 17% were granted asylum (4,175 individuals) and 73% were refused (17,805 individuals)<[73] .

## **Detention**

The UK continues to operate immigration detention facilities. According to UKBA policy, detention should be for the shortest time possible. Certain individuals should not be detained, such as individuals at risk of suicide or victims of torture.[74] The UK government has stated that it intends to end the detention of children and, according to UKBA policy, should only occur in exceptional circumstances[75] .

## **Settlement**

As noted above, the route to settlement is becoming increasingly limited. If individuals fall into the categories listed above as being eligible for settlement, in most cases, they will still need to pass the Life in the UK test and meet good character and sound mind requirements. From 28 October 2013, all applicants, unless exempt, will need to demonstrate proficiency in the English language by obtaining a speaking and listening qualification.[76] Obtaining British citizenship is a notoriously complicated area of law and goes well beyond the scope of this article.

## **Conclusion**

As can be seen, immigration law in the UK is a constantly shifting playing field and immigration practitioners must contend with uncertain policies, frequent new legislation and negative public opinion. The government's obsession with limiting immigration was even evident in last year's Queen's speech, which outlined new proposed laws to further limit immigration.[77] The issue looks set to take centre stage in the 2015 elections, particularly after the results of a recent public survey purporting to show a "hardening" of public sentiment against immigration[78] . The constant changes to the policies and procedures governing immigration law in the UK look set to continue and can only have a negative impact on those seeking to immigrate there.

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[1] For examples, see: "Sickly immigrants add £billion to NHS bill"<http://www.dailymail.co.uk/health/article-185768/Sickly-immigrants-add-1bn-NHS-bill.html>; "How the invasion of immigrants into every corner of England has made a mockery of the PM's promise to close the door";<http://www.dailymail.co.uk/news/article-2301743/How-invasion-immigrants-corner-England-mockery-PMs-promise-close-door.html> ;"Immigration may lead to 'TB

timebomb' <http://www.express.co.uk/news/uk/386687/Immigration-may-lead-to-TB-time-bomb>;"Immigration: the British public is close to despair"<http://www.express.co.uk/comment/columnists/leo-mckinstry/395471/Immigration-The-British-public-is-close-to-despair>; "On immigration, welfare and crime, cynical Britain just does not believe politicians anymore"<http://www.telegraph.co.uk/news/politics/10096817/On-immigration-welfare-and-crime-cynical-Britain-just-does-not-believe-politicians-anymore.html>

[2] Statement by Damian Green, then shadow immigration minister, quoted in "Response to the UK Border Agency Consultation on Limits on Non-EU Economic Migration", Immigration Law Practitioners Association (ILPA), 17 September 2010,<http://www.ilpa.org.uk/data/resources/13018/10.09.511.pdf>

[3] Ministerial statement to House of Commons, Hansard, 28 June 2010, col 585:

[4] <https://www.gov.uk/government/organisations/home-office>

[5]<http://www.ukba.homeoffice.gov.uk/sitecontent/newsarticles/2013/may/11-transition>

[6] Immigration Rules

HC628<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/statementsofchanges/2013/hc628.pdf?view=Binary>

[7] Immigration Rules

HC803<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/statementsofchanges/2013/hc803.pdf?view=Binary>

[8] Immigration Rules

HC887<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/statementsofchanges/2013/hc887.pdf?view=Binary>

[9] Immigration Rules HC901 <http://www.official-documents.gov.uk/document/hc1314/hc09/0901/0901.pdf>

[10]<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/statementsofchanges/>

[11] UKBA has been known to operate secret policies, such as the secret detention policy regarding foreign national prisoners, *Abdi & Others v SSHD* [2008] High Court of England and Wales (EWHC) 3166 (Admin)

[12] <http://www.ukba.homeoffice.gov.uk/policyandlaw/>

[13] s120 Nationality, Immigration and Asylum Act 2002

[14] The details of which are beyond the scope of this article.

[15] The Schengen States are a group of European countries that have abolished passport and immigration control between those states.

[16] Section 3, Human Rights Act 1998, Act of Parliament of the United Kingdom

[17] *Ibid*, Section 4

[18] *Ibid*, Section 10

[19] *Ibid*, Article 2.1, Schedule 1

[20] *Ibid*, Article 2.2(a), Schedule 1

[21] *Ibid*, Article 2.2(b), Schedule 1

[22] *Ibid*, Article 2.2(c), Schedule 1

[23] *Ibid*, Article 3, Schedule 1

[24] *Ibid*, Article 8.1, Schedule 1

[25] Ibid, Article 8.2, Schedule 1

[26] <http://www.ukba.homeoffice.gov.uk/visas-immigration/general-info/non-visa-nationals/>

[27] The requirements and list of countries requiring these visas are found at Paragraphs 47-50 of the Immigration Rules <http://www.ukba.homeoffice.gov.uk/visas-immigration/transitthroughtheuk/>

[28] <http://www.ukba.homeoffice.gov.uk/visas-immigration/working/>

[29] Green op. cit.

[30] Ministerial statement op. cit.

[31] <http://www.ukba.homeoffice.gov.uk/visas-immigration/working/turkish/>

[32] <http://www.ukba.homeoffice.gov.uk/visas-immigration/working/othercategories/domesticworkers/>

[33] <http://www.ukba.homeoffice.gov.uk/visas-immigration/working/uk-ancestry/>

[34] <http://www.ukba.homeoffice.gov.uk/visas-immigration/working/tier1/exceptional-talent/>

[35] <http://www.ukba.homeoffice.gov.uk/visas-immigration/working/tier1/graduate-entrepreneur/>

[36] Submission to Migration Advisory Committee (Tier 2 annual limit), Immigration Law Practitioners Association, 22 December 2011, <http://www.ilpa.org.uk/data/resources/14038/11.12.21-MAC-Tier-2-cap.-pdf.pdf>

[37] <http://www.ukba.homeoffice.gov.uk/bu...oyingmigrants/>

[38] Foreign student visas: Home Secretary's statement, Oral Statement to Parliament, 21 March 2011 <https://www.gov.uk/government/speeches/foreign-student-visas-home-secretarys-statement>

[39] Submission to the UK Border Agency consultation (Student Immigration System), Immigration Law Practitioners Association, 31 January 2011. <http://www.ilpa.org.uk/data/resources/13001/11.01.508.pdf>

[40] Immigration Statistics, January to March 2013, Statistics – national statistics, Home Office, 23 May 2013. <https://www.gov.uk/government/publications/immigration-statistics-january-to-march-2013/immigration-statistics-january-to-march-2013>

[41] An Inspection of Tier 4 of the Points Based System (Students), John Vine, April – July 2012 <http://icinspector.independent.gov.uk/wp-content/uploads/2012/11/An-inspection-of-Tier-4-of-the-Points-Based-System-29.11.2012.pdf>

[42] Applying for Permanent Residence under the Canadian Experience Class, Edward C Corrigan, Immigration Law Reporter, 76 Imm. L.R. (3), p8-15

Opening residency to foreign student grads, Western News, The University of Western Ontario, Edward C. Corrigan, 21 May 2009; Work visa changes help international students, Western News, the University of Western Ontario, 8 May 2008

[43] Changes to Canadian Experience Class immigration program introduce new eligibility provisions, Rabble.ca Edward C Corrigan, 5 December 2013 <http://rabble.ca/columnists/2013/changes-to-canadian-experience-class-immigration-program-introduce-new-eligibilit>

[44] Response to UK Border Agency consultation (Employment-related settlement, Tier 5 and Overseas Domestic Workers), Immigration Law Practitioners Association, 5 September 2011 <http://www.ilpa.org.uk/data/resources/13678/11.09.05-ILPA-response-Employment-related-settlement-Tier-5-domestic-workers.pdf>

[45] <http://www.ukba.homeoffice.gov.uk/visas-immigration/working/tier5/youthmobilityscheme/>

[46] International Experience Canada (IEC): Opportunities Abroad for Students and Youth, Edward C Corrigan,

- <[47] Submission to National Audit Office (Points Based System – employment routes), Immigration Law Practitioners Association, 15 October 2010 <http://www.ilpa.org.uk/data/resources/13012/10.10.505.pdf>
- [48] Secretary of State for the Home Department v Pankina, [2010] ECWA Civ 719
- [49] Details about the policy can be found at: <http://www.freemovement.org.uk/wpcontent/uploads/2013/03/FOI-1656-Response-2013-02-22v1-0.pdf>
- [50] s85A Nationality Immigration and Asylum Act 2002 (into force on 17 May 2011); Alam & Others v SSHD [2012] EWCA Civ 960
- [51] <http://www.doyleclayton.co.uk/blog/posts/new-immigration-rule-changes-coming-into-force-1october-2013>; <http://www.carterthomas.co.uk/2013/09/06/an-important-statement-of-changes-in-the-immigration-rules-has-been-laid/>; <http://www.mcgillandco.co.uk/Blog/2013/09/06/statement-of-changes-hc628/>
- [52] Why Canada Needs Immigration, Ed Corrigan, ImmQuest, Vol 3 Issue 1, January 2007
- [53] Oh Canada! We Stand on Guard for Thee: Bill C-50 and the Negative Impact it "May" Have on Immigrant Hopes, Immigration Objectivity, and the Immigration and Refugee Protection Act of 2002, George Jordan Ashkar, Southwestern Journal of International Law, Vol. 17 2010, p104.
- [54] Why Canada Needs Immigration, Ed Corrigan, ImmQuest, Vol 3 Issue 1, January 2007
- [55] *Ibid.*
- [56] <http://data.worldbank.org/indicator/SP.DYN.TFRT.IN>
- [57] More UK births than any year since 1972, says ONS, BBC News UK 8 August 2013 <http://www.bbc.co.uk/news/uk-23618487>
- [58] Annual Mid-year Population Estimates, 2011 to 2012, Statistics Bulletin, Office for National Statistics, 8 August 2013 [http://www.ons.gov.uk/ons/dcp171778\\_320900.pdf](http://www.ons.gov.uk/ons/dcp171778_320900.pdf)
- [59] *Ibid.*, page 10.
- [60] The aging population, Richard Cracknell, Key Issues for the UK Parliament 2010, House of Commons Library Research <http://www.parliament.uk/business/publications/research/key-issues-for-the-new-parliament/value-for-money-in-public-services/the-ageing-population/>
- [61] Immigration benefits UK economy, say Treasury independent advisors, The Guardian, 14 January 2013 <http://www.theguardian.com/uk-news/2014/jan/14/immigration-beneficial-uk-economy-treasury-independent-advisers>
- [62] Statement of Intent: Family Migration, para 33, Home Office, June 2012, [www.ukba.homeoffice.gov.uk/sitecontent/documents/news/soi-fam-mig/pdf](http://www.ukba.homeoffice.gov.uk/sitecontent/documents/news/soi-fam-mig/pdf)
- [63] Immigration policy tearing families apart, report shows" <http://www.guardian.co.uk/uk/2013/jun/10/immigration-rules-separating-thousands-families>; "UK families speak of visa rules pain" <http://www.bbc.co.uk/news/uk-22806941>
- [64] Held by the courts to be justified. Bibi v SSHD [2013] EWCA Civ 322
- [65] See Paragraph 399(a) Immigration Rules (HC194) and most recently, Ogundimu (Article 8 - new rules) Nigeria [2013] UKUT 60 (IAC)
- [66] Briefing: Migration to the UK: Asylum, The Migration Observatory at the University of Oxford, Dr Scott Blinder, 13 February 2013
- [67] Tony Blair's asylum policies: The narratives and conceptualisms at the heart of New Labour's restrictionism, Refugee Studies Centre, Univeristy of Oxford, Bethany Maughan, December

2010 [http://www.rsc.ox.ac.uk/publications/working-papers-folder\\_contents/RSCworkingpaper69.pdf](http://www.rsc.ox.ac.uk/publications/working-papers-folder_contents/RSCworkingpaper69.pdf)

[68] Police and Criminal Evidence Act 1984

[69] Briefing: Migration to the UK: Asylum, The Migration Observatory at the University of Oxford, Dr Scott Blinder, 13 February 2013

[70] para 339C Immigration Rules

[71] N (FC) v SSHD [2005] UKHL 31

[72] Family Members Under Appendix FM of the Immigration Rules, Chapter 8, Transitional Provisions, Immigration Directorate Instructions

<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/IDIs/idischapter8/001transitional/trans-guide.pdf?view=Binary>

[73] Practices in the UK Concerning the Granting of Non-EU Harmonised Protection Statuses and Leave to Remain, UKBA, Home Office, Linda Rice and Kiren Vadher [http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european\\_migration\\_network/reports/docs/emn-studies/non-eu-harmonised-protection-status/27.\\_united\\_kingdom\\_national\\_report\\_non-eu\\_harmonised\\_forms\\_of\\_protection\\_final\\_version\\_30mar10\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/emn-studies/non-eu-harmonised-protection-status/27._united_kingdom_national_report_non-eu_harmonised_forms_of_protection_final_version_30mar10_en.pdf)

[74] Chapter 55, Enforcement Instructions and Guidance, UKBA

[75] Ibid par 55.9.3. For an example of a child's successful unlawful detention claim, see AAM v SSHD [2012] EWHC 2567 (QB)

[76] "Knowledge of language and life in the UK for settlement and naturalisation: Statement of Intent, Changes to the requirements from October 2013" Home Office, April

2013 [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/182545/statement-of-intent-koll.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/182545/statement-of-intent-koll.pdf)

[77] <http://www.bbc.co.uk/news/uk-politics-22437884>

[78] Three quarters of Britons want less immigration - survey <http://uk.reuters.com/article/2014/01/07/uk-britain-immigration-survey-idUKBREA0600F20140107>

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