

**POLICY EQUALITY STATEMENT (PES)****Immigration Bill 2015 – Appeals**

**(Extension of the power in section 94B of the Nationality Immigration and Asylum Act 2002 to certify human rights appeals to be heard outside the UK where this will not cause serious irreversible harm or otherwise breach human rights (often referred to as “deport first, appeal later”))**

**Aims and background**

The Immigration Act 2014 reduced the number of rights of appeal against immigration decisions from 17 to 4. It also created a new power to require those subject to deportation, primarily foreign criminals, to appeal only after their removal – i.e. from outside the UK - where this does not cause a real risk of serious irreversible harm or otherwise breach human rights. The government believes this power should be extended to apply to all human rights cases, provided this does not breach their human rights. Clause 31 of the Immigration Bill, as introduced to the House of Commons, seeks to achieve this.

There is no legal requirement for appeals to be heard in-country where there would not be a real risk of serious irreversible harm or other breach of human rights resulting from removal pending appeal. The government takes the view that where there is no such legal requirement (eg in some Article 8 private and family life cases) such an in-country right of appeal should not normally be provided. A power to certify that such an appeal should be heard out-of-country is in line with our international obligations, will bring forward the date of removal and will help reduce the opportunities for abuse of the appeals system.

A person will normally only be able to appeal in the UK where an asylum claim has been refused (provided it is not clearly unfounded) or where a human rights claim has been refused (provided it is not clearly unfounded) and there is a real risk of serious irreversible harm or other breach of human rights if the person were removed pending their appeal.

If someone has an arguable claim that removal pending appeal is a breach of their human rights that can be challenged by judicial review proceedings before the individual is removed.

This Policy Equality Statement considers the impact of these proposals on different groups and on human rights more widely.

**Summary of the evidence considered in demonstrating due regard to the Public Sector Equality Duty.****Public sector equality duty**

The public sector equality duty under section 149 of the Equality Act 2010 requires public bodies to have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Equality Act 2010;
- Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and

- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

The equality duty covers the following nine protected characteristics: age; disability; gender reassignment; marital and civil partnership status; pregnancy and maternity; race (including ethnic or national origins, colour or nationality); religion or belief; sex; and sexual orientation.

Schedule 18 to the 2010 Act sets out exceptions to the equality duty. In relation to the exercise of immigration and nationality functions, section 149 (1)(b) – advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it – does not apply to the protected characteristics of age, race or religion or belief.

The rest of this document concerns the equality duty. The government has separately considered the consistency of the Bill with the European Convention on Human rights and has published a memorandum here:

<https://www.gov.uk/government/publications/immigration-bill-2015-overarching-documents>

#### **Consultation:**

The views of a range of business areas within the Home Office have been sought in developing this policy and in the preparation of this PES and no adverse impacts on particular groups have been identified. Equality issues will continue to be subject to close scrutiny in preparing for implementation. Home Office Legal Advisers have been consulted on the legal issues arising.

#### **Equality impact assessments – specific groups:**

##### Race

These proposals affect only migrants who are not EEA nationals. Impacts by nationality are necessary and permissible in the exercise of immigration and nationality functions under the Equalities Act 2010. Consequently, the impact on grounds of nationality will be in accordance with our statutory duty to comply with human rights and equality legislation.

##### Disability

It is not anticipated that there will be an adverse impact on grounds of disability arising from these proposals. Whether to certify a claim will be decided on a case-by-case basis after consideration of the individual circumstances. The test of whether to apply the power will be whether there is a real risk of serious irreversible harm or other breach of human rights. Issues of physical and mental health and vulnerability will be relevant to this consideration.

##### Religion and Belief

There will be no adverse impact on grounds of religious belief arising from these proposals. They are aimed at providing a power to certify that an appeal against a refusal of a human rights claim must be made from outside the UK where this will not cause a real risk of serious irreversible harm or otherwise breach human rights. Decisions on whether to certify will be made on a case-by-case basis taking into account the individual circumstances. Consequently, where a person's religion, belief or non-belief means that there would be a real risk of removal pending appeal causing serious irreversible harm or otherwise breaching their human rights, this power will not be used in respect of that person.

##### Age

It is not anticipated that there will be an adverse impact on grounds of age arising from these proposals. Where it is proposed to certify a claim on the grounds that this will not cause a real risk of serious irreversible harm or would otherwise breach human rights

from requiring the appeal to be heard out of country, the decision maker will be required to consider potential harm arising from a temporary separation from family. Issues relating to physical and mental vulnerability, including the effects on the very young or of advanced age, will be relevant to this consideration.

#### Pregnancy and Maternity

It is not anticipated that there will be an adverse impact on grounds of pregnancy and maternity arising from these proposals. Where it is proposed to certify a claim on the grounds that there would not be a real risk of serious irreversible harm or otherwise breach human rights from requiring the appeal to be heard out of country, the decision maker will be required to consider potential harm arising from a temporary separation from family. Issues relating to pregnancy and maternity may be relevant to this consideration.

#### Gender

It is not anticipated that there will be an adverse impact on grounds of gender arising from these proposals. The decision whether to certify a claim following refusal will always be made on the individual circumstances of the case. The test of whether to apply the power will be whether there is a real risk of serious irreversible harm or other breach of human rights in the particular circumstances of an individual case.

#### Marriage and Civil Partnership

There will be no adverse impact on grounds of marriage or civil partnership from these proposals. They do not change the tests or thresholds by which family life, including marriage or civil partnership, is judged to confer a right to remain in the UK.

#### Gender Reassignment

There will be no adverse impact on grounds of gender identity from these proposals. They are aimed at providing a power to certify that an appeal against a refusal of a human rights claim must be made from outside the UK where this will not cause a real risk of serious irreversible harm or otherwise breach human rights. Decisions on whether to certify will be made on a case-by-case basis taking into account the individual circumstances.

#### Sexual Orientation

There will be no adverse impact on grounds of sexual orientation from these proposals. They are aimed at providing a power to certify that an appeal against a refusal of a human rights claim must be made from outside the UK where this will not cause a real risk of serious irreversible harm or otherwise breach human rights. Decisions on whether to certify will be made on a case-by-case basis taking into account the individual circumstances.

#### Welfare of Children

This power will apply to unaccompanied children and to family units that include children.

We recognise the potential harm to children which could result from a removal taking place only for the appeal to succeed or from the splitting of a family unit.

Decisions on whether to certify an Article 8 claim involving children will be taken on a case-by-case basis and will have regard to the need to safeguard and promote the welfare of children and the potential for harm to family life and the child's development (under section 55 of the Borders, Citizenship and Immigration Act 2009). The best interests of children are a primary consideration in any immigration decision although not determinative of the outcome.

#### Human Rights

There will be no adverse impact on human rights arising from these proposals. The legislation is in line with our obligations under ECHR and the Human Rights Act and the provision provides for certification only where there is not a real risk of serious irreversible harm or other breach of human rights. This includes procedural protections

**Evaluation:**

Following implementation, the Home Office will monitor the use of this power internally and will work with the Ministry of Justice and the courts to evaluate the operation of the extended certification power, and to seek to monitor and evaluate any disproportionate impact within the categories detailed in this assessment. This data may be drawn from data systems, dip sampling or other qualitative research.

<b>SCS sign off</b>		<b>Name/Title</b>	Sally Weston
<b>I have read the available evidence and I am satisfied that this demonstrates compliance, where relevant, with Section 149 of the Equality Act and that <u>due regard</u> has been made to the need to: eliminate unlawful discrimination; advance equality of opportunity; and foster good relations.</b>			
<b>Directorate/Unit</b>	<b>Legal Strategy Team, Immigration and Border Policy Directorate</b>	<b>Lead contact</b>	Sam Worby, Legal Strategy Team
<b>Date</b>	<b>27.10.2015</b>	<b>Review Date</b>	