

JUSTICE CONFERENCE, OCTOBER 2017

ARTICLE 8 (FAMILY LIFE) AND IMMIGRATION

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BACKGROUND

1. Concerted executive attack since 2012 on seminal HL jurisprudence from 2007-8:
 - a. *Huang* [2007] 2 AC 167 (Lord Bingham: Rules do not strike the balance overturning Court of Appeal [2006] QB 1, and rejecting analogy with housing law; Rules cannot do so: immigrants do not enjoy the franchise; interests not represented in the Parliamentary process; exceptionality as a prediction but not a test);
 - b. *EB (Kosovo)* [2009] 1 AC 1159 (Lord Bingham: delay and Article 8, exceptionality not even a prediction where nuclear family will be split because not reasonable to expect family relocation: “rarely be proportionate”);
 - c. *Chikwamba* (Lord Brown: exceptional to insist on policy of rules viz entry clearance requirement where effect is to split a family: “only comparatively rarely”).
 - d. *Beokku-Betts* (Lady Hale: family is greater than sum of individual parts and family interests, not simply appellant’s, justiciable on appeal).
2. Why is family rupture (*EB*, *Chikwamba*) so important? Article 8 is not intended to require states to respect choice as to state of matrimonial residence *Abdulaziz* (1985) 7 EHRR 471 at §68. But family rupture means there is no “choice”. Hence Strasbourg court is “unsympathetic to actions which will have the effect of breaking up marriages or separating children from their parents”: *Razgar* [2004] 2 AC 368 at §50 (Lady Hale). *Sezen* (2006) 43 EHRR 30 at §49: “to split up a family is an interference of a very serious order.” Starting point.
3. Other important HL/SC cases include:
 - a. *EM (Lebanon)* [2009] 1 AC 1198 (Lord Bingham “no pre-determined model of family”; importance of right);
 - b. *Quila* [2012] 1 AC 621 at §32 (Lord Wilson: age-limit to right to marry in Rules: refusal of entry and protracted separation, or disruption to settled spouse, involves “colossal interference”; no lack of respect aspect of *Abdulaziz* to be consigned to history and not followed; “area of engagement ... is wider now”);
 - c. *ZH (Tanzania)* [2011] 2 AC 166 (Lady Hale: child’s best interests; sins of parent, with “appalling” immigration history not to visited on British citizen children).
4. Theme: individual rights adjudication, rather than macro-policy.

5. Limited judicial resistance in higher courts to concerted executive attack (eg. *Nagre* [2013] EWHC 720 (Admin) at §46: Lord Bingham in *EB* not “authoritative and canonical statement of the law”; Lord Bingham followed by eg. Supreme Court in *ZH*).
6. Focus of present talk:
 - a. Article 8 and the Immigration Rules (essentially HC 194, July 2012; subsequently also HC 532, July 2014). Three Supreme Court cases decided in late 2016-2017: *Ali and Makhlouf v SSHD* (criminal deportation); *Agyarko v SSHD* (leave to remain; precariousness and insurmountable obstacles); *MM (Lebanon)* (minimum income requirement and entry).
 - b. Article 8 and the 2014 Act, section 19, inserting sections 117A-D into the 2002 Act. Three Court of Appeal cases: *MM (Uganda)* (unduly harsh); *NA (Pakistan)* (exceptional circumstances); *Rhuppiah* (precarious status).

ARTICLE 8 AND THE RULES

(1) ALI and MAKHLOUF v SSHD, Supreme Court, heard January 2016

7. Criminal deportation and Article 8. Issues:
 - a. Correctness of *MF (Nigeria)*: Rule form a complete code? Relationship between Rules and Article 8?
 - b. Correctness of *SS (Nigeria)*: did UKBA 2007 Act (automatic deportation) contain a legislative policy in favour of deportation so as to tilt Article 8 balance?
 - c. Correctness of *N (Kenya)*: what is the public interest in criminal deportation: prevention; deterrence; condemnation?
- (a) ***The MF (Nigeria) issue: the Rules as a complete code for Article 8 requiring demonstration of exceptional circumstances?***

The Secretary of State's intention
8. Rules are statements of executive policy subject to legislative imprimatur: *Odelola* [2009] 1 WLR 1230 (Lord Brown at §34: “essentially executive, not legislative”). Aim of HC 194 was to (executively) overrule *Huang* by fully reflecting Article 8 factors in policy and so establishing “genuinely exceptional circumstances” test where rules are not met: *Statement of Intent: Family Migration*, 12.6.12, §11.
9. Ambitious: *Case of Proclamations* (1611) 1 Co Rep 74: “The King by his proclamation ... cannot change any part of the common law, or statute law, or the customs of the realm.”
10. Rules *inter alia* introduced hard-edged criteria for range of criminal offending failing demonstration of which “it will only be in exceptional circumstances that the public interest in deportation will be outweighed by other factors”: para 398.
11. Early UT cases reject Secretary of State's ambition: eg. *Izuazu* [2013] Imm AR 453 (Blake J).

MF in the Court of Appeal

12. Before Court of Appeal in *MF (Nigeria)* [2014] 1 WLR 544, Secretary of State changes tack: “The new rules do not seek to change the law”; they seek “properly to reflect the Strasbourg jurisprudence”. (This is a legal question.)
13. Court of Appeal accepts Secretary of State’s submission:
 - a. Rules are not a “perfect mirror”, but read compatibly they form a “complete code” (in deportation cases) (§§39.44);
 - b. “exceptional circumstances” involves “application of the proportionality test as required by the Strasbourg jurisprudence”: this is the “capacious basket” (Lord Wilson in argument in *Ali*) into which the plethora of mandatory relevant factors, not addressed by the Rules, must go (§44);
 - c. Rules do not “herald an exceptionality test”; “exceptional circumstances” indicate the “great weight” in deporting foreign criminals; Strasbourg has long recognised that there is “generally a compelling interest in deporting foreign criminals [who do not meet the Rules]”; “it is only exceptionally that such foreign criminals will succeed”; “the scales are weighted heavily in favour of deportation and something very compelling (which will be ‘exceptional’) is required” (§§38-42).
14. *MF* is with respect problematic, but established that (a) Strasbourg jurisprudence (law) to be given primacy over the Rules (policy); and (b) to form a complete code, the Rules had to be read compatibly. (Query why executive policy should be read compatibly to be saved: *Mahad* [2010] 1 WLR 48.)

Cases subsequent to MF

15. But subsequent Court of Appeal cases instead accorded primary to the Rules over the jurisprudence: *LC (China)* [2015] INLR 302 (Rules inform “exceptional circumstances”); *AJ (Angola)* [2014] EWCA Civ 1636 (Secretary of State or Tribunal must take account of Convention rights “though the lens of the new rules themselves rather than looking to apply Convention rights for themselves in a free-standing way outside the Rules”; guidance of Strasbourg Grand Chamber in *Maslov* to be subordinated to the Rules); *HA (Iraq)* [2015] Imm AR 2 (Rules go a “step further” and effect a “material change” to the jurisprudence); *AQ (Nigeria)* [2015] Imm AR 990 (“national policy as to the strength of the public interests ... is a fixed criterion”); *SS (Congo)* (“conscientious effort to use the new Immigration Rules to strike the fair balance”; “a strict test of exceptionality”)
16. *AJ Angola*: “lens of the rules” approach promotes consistency? But
 - a. “consistency, in the eye of the law, does not extend to being consistently wrong”: Sedley J as he then was in *Urmaza* [1996] COD 479, 484;
 - b. Strasbourg case law intended to promote consistency: *Boultif* “guiding principles”; *Maslov* GC [2009] INLR 47 criteria are for “domestic courts”; *AA* [2012] NILR 1 *guide domestic courts”.

3 routes to exceptional circumstances?

17. Route 1: Rules strike balance (Secretary of State's aim; *Huang* Court of Appeal): hopeless. Not a “perfect mirror”. Understatement: (a) Methodology: hard-edged

criteria contrary to open-textured approach required by HL and Strasbourg authority laying down “guiding principles”: *Huang, EB, Quila; Boultif* (2001) 33 EHRR 1179 at §48; *Uner* (2007) 45 EHRR 14 at §§57-60; *Maslov* [2009] INLR 47; (b) No reference to post-conviction conduct and risk of re-offending; (c) No reference to impact on partner or children (where four year or more prison term; otherwise exceptional circumstances); (d) Applicant’s status improperly reflected: 15 years with leave; (e) Requirement of insurmountable obstacles (**see also below under Agyarko**); (f) No reference to relevance of delay; (g) No recognition of cumulative nature of family and private life; (h) No recognition of impact of long residence; (i) No recognition of quality of private life; (j) No reference to child’s best interests.

18. Route 2: Precarious cases (**see also below under Agyarko**): Sales J (as he then was) holds in *Nagre* [2013] EWHC 720 (Admin) that in cases where immigration status is precarious, Strasbourg applies test of exceptional circumstances, involving insurmountable obstacles. Court of Appeal *MF* approves *Nagre*. But (a) *Nagre* is (at least) in tension with at least six HL/SC authorities, including *EB* where Lord Bingham had rejected the argument; (b) in tension with some Strasbourg cases; (c) in tension with consignment to history of *Abdulaziz* in *Quila*.
19. Route 3: Criminal cases. Strasbourg has never applied exceptionality in a criminal deportation case: *Maslov* GC: “weight to be attached to the respective criteria will inevitably vary according to the specific circumstances of the case.” Consider (apart from sentence length): nature and seriousness of offence, time elapsed and conduct; age of offender.
20. Margin? Secretary of State's case in Court of Appeal in *MF*, and written case in Supreme Court in *Ali* not put in terms of Rules being an expression of national policy within the margin of appreciation, to which courts should give deference (instead Printed Case argues that scheme in Rules “accurately reflects” Strasbourg, Case at §78, 80 – first time this is argued rather than simply asserted). Cannot be sustained in argument. Thereafter Secretary of State's oral case put in terms of policy. Lord Reed: this is an “utterly different” case.
21. Article 8 assessment conducted by reference to objective standards rather than vicissitudes of national policy: *Berrehab*: Court’s function is “not to pass judgment” on restrictive Dutch policy “as such”. Margin has narrowed: “wide” to “certain” margin, function of which is to permit court (not executive) to weigh relevant factors: *Maslov*, AA. Contrast *SS (Congo)* [2015] Imm AR 1036 citing *Draon v France* (2006) 42 EHRR 40 as giving “general guidance on the applicable principles”. *Draon* at §108 refers to the “direct democratic legitimation” of the national authorities. But *Draon* is not an immigration case; it concerns compensation for medical negligence which was the (§112) “result of comprehensive debate in Parliament” where “legal, ethical and social considerations, and concerns as to the proper organisation of the health service” taken into account. This was the approach rejected by Lord Bingham in *Huang*. Why has Strasbourg never held in Article 8 immigration cases that “the role of the [executive] domestic policy-maker should be given special weight” on grounds of democratic legitimacy? Perhaps because immigrants are an unpopular minority, unable to vindicate rights through franchise: *Huang, Chester* [2014] 2 AC 557. Hence margin is for the domestic court, not the executive.

The Court

22. Dismissing Mr Ali's appeal:

a. Lord Reid:

- §§15, 21: consistency (see §16a above).
- §17: rules made pursuant to democratically conferred powers and are subject, albeit to a limited extent, to democratic procedures of accountability (compare discussion of negative resolution procedure by eg Lord Hope in *Stellato* [2007] 2 AC 70 at §12); is all executive action pursuant to democratically conferred powers (prerogative aside)?
- §35: Margin: ECHR can accommodate within limits judgments made by national legislatures and governments in this area. (Is there any Strasbourg case law that supports this, in the area of criminal deportation?)
- §§46-50: appellate authority to attach considerable weight to Secretary of State's assessment in Rules (analogy with licensing); critical issue is whether Article 8 claim is sufficiently strong to outweigh public interest; in general "very strong claim indeed – very compelling" required. (Lord Bingham in *Huang*? Strasbourg case-law on importance of courts assessing weight as function of margin, in all the circumstances rather than *a priori*?)
- §52: dangers of regarding rules as complete code, and affording primacy to the Rules rather than the case law.

b. Lord Wilson:

- §§75-76: Secretary of State entitled to "borrow the phrase" 'exceptional circumstances' from precarious case law and apply to criminal deportation;
- §80: rules as complete code: insignificant but unfortunate error.

c. Lord Kerr (dissenting? – see apparent agreement with Lord Reid, but see Lord Wilson at §68, and Lord Kerr at §177).

(b) *The SS (Nigeria) issue: a legislative policy of deportation?*

22. *SS (Nigeria)* [2014] 1 WLR 998:

- a. UKBA contains a policy of deporting foreign criminals to which Parliament had attached "very great weight"; "vividly informed" by declaration in s.33(7) that deportation remains conducive to public good notwithstanding Article 8 success; therefore a "very strong claim indeed" is required (§§53-55);
- b. Cases show courts afford legislative policy a discretionary area of judgment (§§29-31);
- c. Subject matter of policy is "moral and political judgment" which is a further reason for respect to be afforded (Laws LJ at §52).

The Statute

23. Convention rights have primacy over any "policy of deportation", both at

administrative and appellate level:

- a. Secretary of State's duty to deport is subject to Convention rights (s.33).
 - b. UKBA preserves rights of appeal (creating a new right of appeal: s.35(3)).
24. UKBA is essentially procedural: it removes (a) any question as to whether deportation is conducive to the public good by a deeming provision (s.32(4)) and (b) any discretion as to whether to make a deportation order (s.32(5)). See notorious context of enactment: failure to consider deporting over 1000 foreign criminals following sentence completion. Section 33(7) is not directed at the tribunal. The UKBA does not disturb appellate protection of Convention rights.

The cases

25. Cases relied upon (*Brown v Stott*; *Lambert*; *Poplar Housing*; *Marcic*; *Lichniak*; *Eastside Cheese*):
- a. Concerned challenges to legislation and issues of social and economic policy.
 - b. Statutory provisions in those cases prevented the decision maker assessing proportionality.
 - c. *Poplar* was the very case relied on in *Huang* CA to support the idea that the Rules struck the Article 8 balance. Lord Bingham disagreed in HL.

Moral and political judgment

26. Neither Strasbourg nor HL decisions see Article 8 adjudication in individual cases as involving broad issues of social policy: *Huang*; *Chikwamba*; *Quila*; weight given to public interest varies with the circumstances of the case; Strasbourg review will embrace if necessary “both the legislation and the decisions applying it” (*Maslov* at §76).

The Court

27. Lord Reid: §§14-15: essentially approving *SS*; Lord Wilson §§69: ss 32-33 enacted in response to concern as to both procedures for and substantive decisions on deportation of foreign criminals.

(c) *The N (Kenya) issue*

28. What is the public interest? (Lord Kerr ALBA lecture)
- a. Primarily “prevention of disorder or crime”: *Boultif* §§50-55; *Maslov* §§67-70; 89-90 (compare EU law: *Straszewski v SSHD* [2016] 1 WLR 1173, CA).
 - b. Deterrence, eg drugs: *Huang* §16; or immigration offending: *Nunez* (2014) 58 EHRR 17, §§71-73.
 - c. Condemnation so as to build public confidence (exceptionally).

29. Domestic Court of Appeal case law (*N(Kenya)* onwards) has underplayed (a); overplayed (b); and wrongly regarded (c) as constant in all cases, which bears only a remote connection with Article 8(2) (“rights and freedoms of others”), and travels beyond Strasbourg jurisprudence.
30. The Court: Lord Wilson at §69 supporting (b); §70 defending (c): rationally-founded public concern relevant (albeit regretting reference to societal revulsion).

(2) AGYARKO

31. Article 8 and applications for leave to remain by overstayers. Key issue: what is a “precarious case”?
32. During hearing, Secretary of State asserts also that *Ali* is a precarious case: Lord Reed: this is a (yet further) different case. Secretary of State asserts that in all cases other than where applicant is settled, the case is precarious so that (a) positive obligation in Article 8(1) (only) in play; and (b) heightened test of exceptional circumstances and insurmountable obstacles required, with onus on individual to show right to respect for family life includes duty to grant leave.
33. Five points.
34. First, Secretary of State’s formal submission (positive obligation in play in all cases not involving settled migrants) is inconsistent with: *Razgar*; *Huang*; *Chikwamba*; *EB Kosovo*; *ZH Tanzania*; *Quila*; *Ali and Bibi*. Other contexts: negative obligation whenever there is deliberate state action, eg. *Limbuela* [2006] 1 AC 396 at §6 (Lord Bingham).
35. Second, Secretary of State's substantive submission (exceptional circumstances and insurmountable obstacles) is also inconsistent with these cases.
36. Third, insurmountable obstacles cannot be informed by state interests: misreads case law (*EB*, *ZH*, *Boultif*); conceptually unsound because double counting permitted (can spouse be expected to leave; can spouse’s emigration be justified?)
37. Fourth, *Jeunesse* GC presented as key to Secretary of State’s case. But *Jeunesse* reflects line of previous case law considered in HL cases: *Abdulaziz* and *da Silva* in *Huang*; *Mitchell* and *Ayaji* in *EB*; *Abdulaziz* in *Quila*.
38. Fifth, Strasbourg does not equate a “settled migrant” to ILR: many of the leading cases concern *refusal* of a residence permit: *Berrehab*; *Boultif*; *Alim* (not renewal of a student visa). Lord Reed in argument: distinction between settled and non-settled “may not translate into domestic law”. Where stay becomes but was not precarious, Strasbourg does not apply exceptional circumstances and insurmountable obstacles: *Mokrani* (2005) 40 EHRR 5 (considered in *EB*); *Sezen*.
39. The Court (Lord Reid):
 - a. §41: boundary between positive and negative obligations is difficult to draw and analysis is essentially the same (see also *Ali* at §§32, 47-49).
 - b. §§42-45: but approval of *Jeunesse* to non-settled migrants means “insurmountable obstacles”, understood in a practical and realistic way, but stringently: “very significant difficulties ... very serious hardship for the

- applicant or their partner.”
- c. §46: immigration rules as expression of margin.
- d. §49-51: precariousness relevant to enquiry, but note *Chikwamba* exception and “reasonable misapprehension” allowance, and yields “exceptional circumstances” as part of fair balance: §§54-60.

(3) MM (LEBANON)

- 40. Minimum income thresholds: social integration; margin; entry.
- 41. High Court (Blake J) upholds challenge in so far as applied to recognized refugees and British citizens.
- 42. Court of Appeal overturns:
 - a. Test for challenging a Rule: “...If the particular immigration rule is one which, being an interference with the relevant Convention right, is also incapable of being applied in a manner which is proportionate or justifiable or is disproportionate in all (or nearly all cases), then it is unlawful...” (§134).
 - b. Minimum income threshold not inherently disproportionate: §§136-153. Hands-off approach given policy element of judgment as to sufficiency of income.
- 43. Compare R(*Bibi and Ali*) v SSHD [2015] 1 WLR 5055:
 - a. English language certificate requirement; social integration; margin; entry.
 - b. Rule upheld because capable of being operated in human rights compatible manner even though likely significant number of cases where does not strike fair balance: §§54, 61, 69 and 101.
 - c. Incompatibility where compliance impracticable without incurring unreasonable expense to obtain tuition or take test: §74.
 - d. Note: Lady Hale and Lord Wilson do not refer to margin (contrast Lords Neuberger, Hughes and Hodge).
- 44. The Court: threshold not inherently disproportionate and rules not open to challenge under Article 8 (§83: MAC work a model of economic rationality); but declaration that rules and instructions unlawful, since broader approach required, taking into account the importance of best interests, third party sources of earnings or finance: “these are not matters of policy on which special weight has to be accorded to judgment of the Secretary of State”; “rigid restriction” in rules not permissible (§99-100).

ARTICLE 8 AND SECTION 19, 2014 ACT

The statutory provisions (see Annex to paper)

45. Section 19 of the Immigration Act 2014 inserts Part 5A into the 2002 Act, structuring Article 8 decision making by courts and tribunals.
46. Applies when court or tribunal required to determine whether a decision made under Immigration Acts breaches family or private life under Article 8.
47. In considering Article 8(2), Court “must (in particular) have regard” to considerations in s.117B and C (said to reflect Strasbourg case law). Legislative trespass?
48. S.117B (all cases): (1) maintenance of effective immigration control, (2) interests of economic wellbeing that applicant speaks English, (3) financial independence, (4) and (5) little weight to private life or relationship with qualifying partner (i.e. British/settled) when applicant present unlawfully and little weight to private life when status precarious. (6) removal not required genuine and subsisting relationship with a qualifying child (i.e. British/+7 years continuous) and unreasonable to expect child to relocate (reverses *EV Philippines* [2014] EWCA Civ 874 as to assumption made as to location of child when best interests assessed: eg. *Rhuppiah*, below, at §51?)
49. s117C: additional considerations in cases involving foreign criminals: (1) deportation is in public interest, (2) the more serious the offence, the greater the public interest in deporting, (3)-(6) exceptions with very high thresholds.
50. Definition of “foreign criminal”: s.117(D)(2).

UT cases

51. Series of Upper Tribunal cases on s.117B factors, including *Dube (ss.117A-D)*; *AM(s.117B)*; *Bossade (ss.117A-D-interrelationship with Rules)*; *Forman (ss117A-C consideration)*; *Deelah and ors s.117B – ambit*; *Treebhawon and ors (section 117B(6))*; and *Rajendran*.
 - a. No requirement to make express reference to statutory provisions: what matters is compliance with mandatory considerations as a matter of substance: *AM(s.117B)* [2015] UKUT 260 IAC at [7]-[8].
 - b. Not exhaustive (“*in particular*”; e.g. *Forman* at [17]).
 - c. *AM, Deelah and Rajendran*: “Precarious” status if continued presence depends on obtaining a further grant of leave.

Court of Appeal cases

52. *SSHD v MM (Uganda)* [2016] EWCA Civ 450: meaning of “unduly harsh” in exception 2 (genuine and subsisting relationship with qualifying partner or child and effect on partner or child would be unduly harsh): Laws LJ at §§23-24: the more pressing the public interest in removal, the harder it will be to show that the effect on the child or partner will be unduly harsh. Misreading of case law and permits double counting of state interest: **see above under Agyarko**.

53. *NA(Pakistan) v SSHD* [2016] EWCA Civ 662

- a. Drafting error in s.117C: exception ss.(6) “very compelling circumstances over and above those described in Exceptions 1 and 2” – expressed to apply only to serious offenders (4+ years) intended to apply to medium offenders too (+12 months).
- b. “very compelling circumstances” can relate to matters referred to in Exceptions 1 and 2. But no near miss principle.
- c. No exceptionality requirement, but it follows from statutory scheme that cases where “very compelling circumstances over and above those described in Exceptions 1 and 2” apply will be rare.
- d. Suggestion that the best interests of the child (i.e. separation from parent) would not usually be sufficient to amount to such very compelling circumstances;

54. *Rhuppiah v SSHD* [2016] EWCA Civ 803: (a) s.117B intended to achieve compliance with ECHR, (b) “precarious” is not a term of art; (c), but the concept extends “to include people who have leave to enter or remain which is qualified to a degree such that they know from the outset that their permission to be in the UK can be described as precarious”; (d) doubts Secretary of State submission that anything short of ILR means status is precarious; (e) “little weight” in ss.4 and 5 is a normative statement, overridden in exceptional case.

2002 ACT , PART 5A

ARTICLE 8 OF THE ECHR: PUBLIC INTEREST CONSIDERATIONS

117A Application of this Part

(1) This Part applies where a court or tribunal is required to determine whether a decision made under the Immigration Acts—

- (a) breaches a person's right to respect for private and family life under Article 8, and
- (b) as a result would be unlawful under section 6 of the Human Rights Act 1998.

(2) In considering the public interest question, the court or tribunal must (in particular) have regard—

- (a) in all cases, to the considerations listed in section 117B, and
- (b) in cases concerning the deportation of foreign criminals, to the considerations listed in section 117C.

(3) In subsection (2), "the public interest question" means the question of whether an interference with a person's right to respect for private and family life is justified under Article 8(2).

117B Article 8: public interest considerations applicable in all cases

(1) The maintenance of effective immigration controls is in the public interest.

(2) It is in the public interest, and in particular in the interests 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, because persons who can speak English—

- (a) are less of a burden on taxpayers, and
- (b) are better able to integrate into society.

(3) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are financially independent, because such persons—

- (a) are not a burden on taxpayers, and
- (b) are better able to integrate into society.

(4) Little weight should be given to—

- (a) a private life, or
- (b) a relationship formed with a qualifying partner,

that is established by a person at a time when the person is in the United Kingdom unlawfully.

(5) Little weight should be given to a private life established by a person at a time when the person's immigration status is precarious.

(6) In the case of a person who is not liable to deportation, the public interest does not require the person's removal where—

- (a) the person has a genuine and subsisting parental relationship with a qualifying child, and

(b) it would not be reasonable to expect the child to leave the United Kingdom.

117C Article 8: additional considerations in cases involving foreign criminals

- (1) The deportation of foreign criminals is in the public interest.
- (2) The more serious the offence committed by a foreign criminal, the greater is the public interest in deportation of the criminal.
- (3) In the case of a foreign criminal ("C") who has not been sentenced to a period of imprisonment of four years or more, the public interest requires C's deportation unless Exception 1 or Exception 2 applies.
- (4) Exception 1 applies where—
 - (a) C has been lawfully resident in the United Kingdom for most of C's life,
 - (b) C is socially and culturally integrated in the United Kingdom, and
 - (c) there would be very significant obstacles to C's integration into the country to which C is proposed to be deported.
- (5) Exception 2 applies where C has a genuine and subsisting relationship with a qualifying partner, or a genuine and subsisting parental relationship with a qualifying child, and the effect of C's deportation on the partner or child would be unduly harsh.
- (6) In the case of a foreign criminal who has been sentenced to a period of imprisonment of at least four years, the public interest requires deportation unless there are very compelling circumstances, over and above those described in Exceptions 1 and 2.
- (7) The considerations in subsections (1) to (6) are to be taken into account where a court or tribunal is considering a decision to deport a foreign criminal only to the extent that the reason for the decision was the offence or offences for which the criminal has been convicted.

117D Interpretation of this Part

- (1) In this Part—

"Article 8" means Article 8 of the European Convention on Human Rights;

"qualifying child" means a person who is under the age of 18 and who—

 - (a) is a British citizen, or
 - (b) has lived in the United Kingdom for a continuous period of seven years or more;

"qualifying partner" means a partner who—

 - (a) is a British citizen, or
 - (b) who is settled in the United Kingdom (within the meaning of the Immigration Act 1971 — see section 33(2A) of that Act).