

Unit 8



<b>Title:</b>	<b>Immigration Law</b>
<b>Level:</b>	<b>6</b>
<b>Credit Value:</b>	<b>15</b>

<b>Learning outcomes</b>	<b>Assessment criteria</b>	<b>Knowledge, understanding and skills</b>
<b>The learner will:</b>	<b>The learner can:</b>	
<b>1 Understand the framework of immigration control in the UK</b>	<p><b>1.1</b> Identify the sources of immigration law</p> <p><b>1.2</b> Explain the exclusionary nature of immigration control</p> <p><b>1.3</b> Analyse the operation of immigration control</p>	<p><b>1.1</b> In particular, Immigration Act 1971, Nationality, Immigration and Asylum Act 2002, Immigration, Asylum and Nationality Act 2006, UK Borders Act 2007 and Borders, Citizenship and Immigration Act 2009; immigration rules in HC 395, Home Office policy documents (IDIs, APIs etc)</p> <p><b>1.2</b> Right of abode; concepts of subject to immigration control, leave to enter and remain; the significance of the common travel area; access to public funds and housing by those seeking to live in the UK; application and nature of immigration rules</p> <p><b>1.3</b> Legal basis: Immigration Act 1971; operation of entry clearance, leave to enter, leave to remain; personnel of immigration control; enforcement of immigration control through civil and criminal law including the main offences and civil penalties for employers</p>

	<p><b>1.4</b> Analyse the role of discretion in immigration law</p> <p><b>1.5</b> Apply an understanding of the framework of immigration control to a given situation</p> <p><b>1.6</b> Critically evaluate a given issue or situation to predict probable legal implications</p>	<p><b>1.4</b> Discretion to allow entry outside the rules; key Home Office policies including carers; legitimate expectation; abuse of power</p> <p><b>1.5</b> Application of understanding to a complex scenario</p> <p><b>1.6</b> A reasoned opinion of likely legal implications, including remedies and defences, where appropriate</p>
<p><b>2 Understand the routes to admission for the purposes of employment or self-employment</b></p>	<p><b>2.1</b> Classify the different routes to employment and self-employment</p> <p><b>2.2</b> Describe the features of and criteria for the principal categories for entry for employment and self-employment</p> <p><b>2.3</b> Analyse the benefits of different routes for a person who potentially qualifies for several routes</p>	<p><b>2.1</b> An explanation of the rationale for the Points Based System (PBS) and a clear differentiation of the categories within it</p> <p><b>2.2</b> Nature of categories within Tier 1 PBS (general, entrepreneur, post study work); basis of award of points under Tier 1; basis of award of points under Tier 2 PBS, requirement to be sponsored, applicability of the 'resident labour test'; criteria for entry under Tier 5 PBS routes (temporary workers: creative and sporting, charity workers, religious, government authorised exchange and international agreement; and youth mobility scheme)</p> <p><b>2.3</b> Eg, Tier 1 more flexible than Tier 2 for the employee by allowing any form of economic activity rather than a specific job for a specific employer; Tier 1 does not require sponsorship by an employer (which is onerous for the employer and therefore unattractive to that employer); can qualify for settlement under Tiers 1 and 2 but not Tier 5</p>

	<p><b>2.4</b> Explain the rights of family members of economic migrants</p> <p><b>2.5</b> Summarise the stages an economic migrant goes through on the road to settlement</p> <p><b>2.6</b> Analyse the recent and forthcoming changes to this area of law</p> <p><b>2.7</b> Apply an understanding of the routes to admission to a given situation</p> <p><b>2.8</b> Critically evaluate a given issue or situation to predict probable legal implications</p>	<p><b>2.4</b> Right to join principal migrant; rules that are applied (eg, maintenance and accommodation); right to work once in UK</p> <p><b>2.5</b> Unified application under PBS; leave to enter; leave to remain; indefinite leave to remain application fees; knowledge of life in the UK</p> <p><b>2.6</b> Knowledge of life in the UK test; extended period before can apply for settlement; creation of PBS; basic awareness of previous routes to employment/self-employment and how to switch into PBS; plans for Tiers 3 and 5</p> <p><b>2.7</b> Application of understanding to a complex scenario</p> <p><b>2.8</b> A reasoned opinion of likely legal implications, including remedies and defences, where appropriate</p>
<b>3 Understand the rules on the admission of family members</b>	<b>3.1</b> Identify the rules for entry, stay and settlement for spouses and partners, children and other relatives	<b>3.1</b> Knowledge of HC 395 immigration rules 277 to 295O, 296 to 316F, 317 to 319 covering spouses, civil partners, unmarried partners, fiancé(e)s/proposed civil partners; probationary period or immediate settlement; domestic violence and bereaved spouse rules; children; adopted children; dependent relatives; knowledge of the rules includes the criteria/qualifications for entry under these rules, the rules on entry clearance and switching into these categories within the UK

	<p><b>3.2</b> Explain the application process from visa to settlement</p> <p><b>3.3</b> Analyse the rules for maintenance and accommodation without recourse to public funds</p> <p><b>3.4</b> Apply an understanding of the immigration rules for family members to a given situation</p> <p><b>3.5</b> Critically evaluate a given issue or situation to predict probable legal implications</p>	<p><b>3.2</b> Entry clearance; leave to enter; periods of leave granted; leave to remain; settlement; fees payable throughout; knowledge of life in UK test</p> <p><b>3.3</b> Understanding of 'adequate' being equivalent to income support; overcrowding policy; one room is sufficient if there is exclusive use; additional recourse to public funds issue; relevant case law egs: <i>ex p Arman Ali, Uvovo, KA (Pakistan) (2006) UKAIT 00065, MK (Somalia) (2007) EWCA Civ 1521</i>; relevant parts of Home Office Immigration Directorate Instructions, eg Annex F to Chapter 8</p> <p><b>3.4</b> Application of understanding to a complex scenario</p> <p><b>3.5</b> A reasoned opinion of likely legal implications, including remedies and defences, where appropriate</p>
<p><b>4 Understand the other key UK immigration categories and rules</b></p>	<p><b>4.1</b> Identify the categories of entry and stay for students and their families</p> <p><b>4.2</b> Explain the rules for the different categories of visitor</p>	<p><b>4.1</b> HC 395 immigration rules 57 to 87F and 56K to 56M; covering students, prospective students, specialist students (nurses, doctors, writing up a thesis, sabbatical officers), exam re-sits, prospective students, family members of students</p> <p><b>4.2</b> Immigration rules 40 to 56M covering visitors, transit, private medical treatment, parents of children at school, marriage visitors, student visitors; an understanding of rules and policy on</p>

	<p><b>4.3</b> Explain the rules for returning residents</p> <p><b>4.4</b> Analyse the general grounds for refusal</p> <p><b>4.5</b> Apply an understanding of these other key UK immigration categories and rules to a given situation</p> <p><b>4.6</b> Critically evaluate a given issue or situation to predict probable legal implications</p>	<p><b>4.3</b> conducting business as a visitor Knowledge of rules and policy on returning residents, ie, immigration rules 18 to 20 and Immigration Directorate Instructions chapter 1, section 3 and annexes K, L, N, M, O and P</p> <p><b>4.4</b> Covering immigration rules 320 and 321: mandatory and discretionary refusals (particularly rules 320(7A) and (7B) and associated policies and concessions set out in UK Visas' Entry Clearance Guidance chapter 26); refusal of leave to those with entry clearance by immigration officers</p> <p><b>4.5</b> Application of understanding to a complex scenario</p> <p><b>4.6</b> A reasoned opinion of likely legal implications, including remedies and defences, where appropriate</p>
<b>5 Understand modern British nationality law</b>	<p><b>5.1</b> Identify the different forms of British nationality</p> <p><b>5.2</b> Differentiate between the different forms of British nationality</p> <p><b>5.3</b> Explain acquisition of British citizenship by birth and by descent</p>	<p><b>5.1</b> British citizens; British Overseas Territories Citizens; British Overseas Citizens; British subjects; British Protected Persons</p> <p><b>5.2</b> Right of abode; adult registration rights; good character test; benefits to BOTC citizens under British Overseas Territories Act 2002; amended definition of 'parent'; rules on transmission to next generation</p> <p><b>5.3</b> Post-British Nationality Act1981 transmission by birth and by descent; definition of father</p>

	<p><b>5.4</b> Explain acquisition of British nationality by registration (adults and minors) and naturalisation</p> <p><b>5.5</b> Analyse the application of the provisions on deprivation and renunciation of citizenship</p> <p><b>5.6</b> Apply an understanding of modern British nationality law to a given situation</p> <p><b>5.7</b> Critically evaluate a given issue or situation to predict probable legal implications</p>	<p><b>5.4</b> Requirements for registration of adults and minors; criteria for naturalisation; life in the UK</p> <p><b>5.5</b> Circumstances which may lead to deprivation of British Citizenship (eg, s40 and 40A BNA 1981); the process; right of appeal; renunciation and re-acquisition law and process (eg, s12-13 BNA 1981)</p> <p><b>5.6</b> Application of understanding to a complex scenario</p> <p><b>5.7</b> A reasoned opinion of likely legal implications, including remedies and defences, where appropriate</p>
<b>6 Understand the law governing the free movement of persons in the EEA</b>	<p><b>6.1</b> Explain the free movement rights of European Economic Area citizens</p> <p><b>6.2</b> Analyse the free movement rights of third country family members</p> <p><b>6.3</b> Analyse protection against deportation</p>	<p><b>6.1</b> Which countries are members of the EC/EU and the EEA respectively and the role of Switzerland; different types of qualified person; identify rights under EC Treaties and Immigration (European Economic Area) Regulations 2006; right of initial residence; extended residence; permanent residence; right to be accompanied by family members; interpretation of these rights by UK courts</p> <p><b>6.2</b> Family members; application of provisions on extended family members; rights of entry; residence; permanent residence; different circumstances where rights can be retained independently of the EU national exercising Treaty rights: relevance of <i>Metock v Ireland</i> [2008]</p> <p><b>6.3</b> Different periods of residence; different</p>

	<p>under EU free movement law</p> <p><b>6.4</b> Explain the free movement rights of nationals of the Accession States</p> <p><b>6.5</b> Explain the benefits to Turkish nationals of the Turkish Association Agreement</p> <p><b>6.6</b> Apply an understanding of the law governing the free movement of persons in the EU to a given situation</p> <p><b>6.7</b> Critically evaluate a given issue or situation to predict probable legal implications</p>	<p>permissible considerations</p> <p><b>6.4</b> Different rights of A8 (2004 new members other than Malta and Cyprus) and A2 (2007 new members) nationals; right to self-employment; terms of workers' registration scheme; creation of scheme for A2 nationals</p> <p><b>6.5</b> Benefits of Ankara Agreement; freezing of immigration law in 1973 (more generous terms for business persons, more generous switching rules); right to renew work permit with same employer once granted after 1 year; same profession but different employer after 3 years; free access to labour market after 4 years</p> <p><b>6.6</b> Application of understanding to a complex scenario</p> <p><b>6.7</b> A reasoned opinion of likely legal implications, including remedies and defences, where appropriate</p>
<p><b>7 Understand the law of refugee status and asylum application process</b></p>	<p><b>7.1</b> Explain the legal definition of a refugee</p>	<p><b>7.1</b> Article 1A(2) of 1951 UN Convention Relating to the Status of Refugees as amended by the 1967 Protocol including 'well founded fear' (standard of proof, personal credibility and future risk elements); 'of being persecuted'; 'Convention reasons'; 'protection'; with reference to the terms of the EU Qualification Directive and also relevant key case law, eg, <i>Ravichandran (1996)</i>, <i>Karanakaran (2000)</i>, <i>Demirkaya (1999)</i>, <i>Shah and Islam (1999)</i>, <i>K and Fornah (2006)</i>; Temporary Protection Directive and its implications</p>

	<p><b>7.2</b> Analyse the requirements of a claim for refugee status</p>	<p><b>7.2</b> A clear understanding of factors affecting credibility/truthfulness; use of country information with regards to credibility and proving future risk; and more sophisticated concepts emerging from case law, eg, risk based on future activities, internal relocation, sufficiency of protection, conscientious objection, civil war and differential impact, persecution by state and non-state actors</p>
	<p><b>7.3</b> Analyse the cessation and exclusion clauses of the Refugee Convention</p>	<p><b>7.3</b> Circumstances where cessation and/or exclusion may arise and potential triggers for both; terms and application of s72 of Nationality, Immigration and Asylum Act 2002 and accompanying regulations</p>
	<p><b>7.4</b> Explain the process and relevant stages of making a claim for asylum in the UK</p>	<p><b>7.4</b> Screening; asylum interview; decision; appeal structure; New Asylum Model; awareness of asylum support for welfare; type of status granted; travel documents; refugee family reunion rules and policy</p>
	<p><b>7.5</b> Analyse the law on third country removals</p>	<p><b>7.5</b> Basic awareness of 'Dublin II' (Council Regulation (EC) No 343/2003) and the hierarchy of criteria; challenges to decisions through judicial review; scheme of third country removals in Immigration and Asylum (Treatment of Claimants etc) Act 2004</p>
	<p><b>7.6</b> Apply an understanding of the law of refugee status and asylum application process to a given situation</p>	<p><b>7.6</b> Application of understanding to a complex scenario</p>

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	<b>7.7</b> Critically evaluate a given issue or situation to predict probable legal implications	<b>7.7</b> A reasoned opinion of likely legal implications, including remedies and defences, where appropriate
<b>8 Understand the law of human rights claims for protection and humanitarian protection</b>	<b>8.1</b> Explain the application of human rights law in an international protection context	<b>8.1</b> An understanding of the European Convention on Human Rights and Human Rights Act 1998 (applicability to Home Office and Asylum and Immigration Tribunal decisions; requirement to interpret; free standing right to challenge under section 7 HRA 98); human rights appeals and grounds within the First-tier Tribunal; terms and interpretation of articles, in particular Article 3 and Article 8 of the ECHR; fundamental Strasbourg and UK case law on both, eg, <i>Ullah and Do v SSHD (2004)</i> , <i>Ireland v UK (App. no. 5310/71)</i> , <i>Soering v UK (App. no. 14038/88)</i> , <i>Chahal v UK (App. no. 22414/93)</i> , <i>Bensaid v UK (App. no. 44599/98)</i> , <i>N v UK (App. no. 26565/05)</i>
	<b>8.2</b> Analyse the circumstances where an in-country Article 8 claim might be successful	<b>8.2</b> A clear understanding of the principles of Article 8 case law, eg, <i>Boultif v Switzerland (App. no. 54273/00)</i> , <i>Uner v Netherlands (App. no. 46410/99)</i> , <i>Razgar v SSHD (2004)</i> , <i>Huang v SSHD (2007)</i> ; understanding of circumstances where high tests and thresholds for Article 8 might be satisfied
	<b>8.3</b> Explain the regime of humanitarian protection	<b>8.3</b> An understanding of EU Qualification Directive and definition of 'serious harm'; indiscriminate violence protection; type of status granted and steps towards settlement; active reviews; family reunion; understand the Temporary Protection Directive and its

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	<p><b>8.4</b> Summarise the discretionary leave policy</p> <p><b>8.5</b> Apply an understanding of the law of human rights claims for protection and humanitarian protection to a given situation</p> <p><b>8.6</b> Critically evaluate a given issue or situation to predict probable legal implications</p>	<p>consequences</p> <p><b>8.4</b> An understanding of DL policy on unaccompanied minors; grants in response to Article 8 claims; type of status granted; steps towards settlement; active reviews</p> <p><b>8.5</b> Application of understanding to a complex scenario</p> <p><b>8.6</b> A reasoned opinion of likely legal implications, including remedies and defences, where appropriate</p>
<b>9 Understand the law on deportation and removal</b>	<p><b>9.1</b> Describe the law on and process of deportation</p> <p><b>9.2</b> Compare the differences between deportation and removal</p> <p><b>9.3</b> Analyse the principles behind deportation</p> <p><b>9.4</b> Apply an understanding of the law on deportation and removal to a given situation</p> <p><b>9.5</b> Critically evaluate a given issue or</p>	<p><b>9.1</b> Liability for deportation; exclusion from deportation under s7 Immigration Act 1971; different stages of the process</p> <p><b>9.2</b> Presumption in favour of deportation; weight to be given to public safety issues; exclusion for 3 or 10 years; need to apply for revocation; likely detention in run up to any appeal</p> <p><b>9.3</b> Who is likely to be considered for deportation; arguing deportation cases based on Article 8 ECHR and immigration rule 364, using relevant key case law, eg, <i>N (Kenya) (2004) EWCA Civ 1094</i>, arguing reasonableness of relocation for third parties and case law on 'insurmountable obstacles'</p> <p><b>9.4</b> Application of understanding to a complex scenario</p> <p><b>9.5</b> A reasoned opinion of likely legal</p>

	situation to predict probable legal implications	implications, including remedies and defences, where appropriate
<b>10 Understand the appeals process and other remedies</b>	<b>10.1</b> Describe the structure of the statutory appeals process	<b>10.1</b> Normal appeal to First-tier Tribunal; Upper-tier Tribunal; Court of Appeal; House of Lords; ECHR; also the parallel processes relating to the European Court of Justice and judicial review
	<b>10.2</b> Explain the key provisions of the appeals procedure rules	<b>10.2</b> Lodging appeals; time limits for appeals and reconsideration applications; procedure for allegations of, and tests for accepting, out of time appeals and applications; case management powers; terms of rule 23 on asylum claim appeals
	<b>10.3</b> Analyse the nature of the reconsideration process	<b>10.3</b> Test for ordering reconsideration; what are errors of law; stages of reconsideration; review applications to High Court; extent to which issues can be limited at second stage reconsideration; relevant current case law on these issues, eg, <i>DK (Serbia) (2006)</i>
	<b>10.4</b> Explain the possible uses of judicial review in an immigration and asylum context	<b>10.4</b> Fresh claims under immigration rule 353; 3 <sup>rd</sup> country cases; failures to follow policies (and extent to which this can be remedied in the tribunal and/or courts); abuse of process; legitimate expectation
	<b>10.5</b> Analyse the utility of alternative complaint mechanisms	<b>10.5</b> Eg: complaints to UK visas, UK Border Agency, Parliamentary Ombudsman, local MP; how they can be used to promote client's interests supplementary to or as an alternative to a legal remedy in the courts, and can be used to obtain compensation

	<p><b>10.6</b> Analyse the strengths and weaknesses of a case for bail made through the immigration bail application process</p> <p><b>10.7</b> Apply an understanding of the appeals process and other remedies to a given situation</p> <p><b>10.8</b> Critically evaluate a given issue or situation to predict probable legal implications</p>	<p><b>10.6</b> Mandatory use of B1 form; 3 day listing policy; information needed to apply for bail; sureties not essential but can be very helpful; what makes a good surety; role of personal recognizance</p> <p><b>10.7</b> Application of understanding to a complex scenario</p> <p><b>10.8</b> A reasoned opinion of likely legal implications, including remedies and defences, where appropriate</p>
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<b>Additional information about the unit</b>	
Unit aim(s)	To accredit a broad and detailed understanding of Immigration Law
Unit expiry date	31 March 2015
Details of the relationship between the unit and relevant national occupational standards (if appropriate)	This unit may provide relevant underpinning knowledge and understanding towards units of the Legal Advice standards
Details of the relationship between the unit and other standards or curricula (if appropriate)	N/A
Assessment requirements specified by a sector or regulatory body (if appropriate)	N/A
Endorsement of the unit by a sector or other appropriate body (if required)	N/A
Location of the unit within the subject/sector classification	15.5 Law and Legal Services
Name of the organisation submitting the unit	ILEX (Institute of Legal Executives)
Availability for use	Available to all Awarding Bodies to award credit (shared)
Availability for delivery	1 September 2009

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