

**Government policy with respect to requests for permission for readmission of
Prohibited Immigrants into the Cayman Islands**

Recommendations by the Cabinet Appointed Committee

Introduction

1. As instructed by Cabinet in August 2008, a Committee was established under the chairmanship of the then Chief Immigration Officer to make recommendations on a comprehensive policy regarding re-entry into the Cayman Islands for persons who are prohibited immigrants. The Committee was comprised of representatives from the Portfolio of Internal and External Affairs (Chief Secretary’s Office), the Portfolio of Legal Affairs (Attorney General’s Chambers), the Immigration Department, the Royal Cayman Islands Police Service and the Human Rights Committee. This work has now been completed and the recommendations of the Committee are contained in this Paper. Before looking at those proposals it is instructive to consider the reasons why a properly formulated policy has become necessary.

Background

2. Under the Immigration Law (2007 Revision) (“the Law”) a person who has previously been deported from the Cayman Islands is considered a prohibited immigrant. Prohibited immigrant status is automatic in cases where a person has been convicted of an offence for which a sentence of imprisonment of twelve months or more has been passed otherwise than for non-payment of a fine. A deportation order may also be granted where a person has been convicted in a court of any offence punishable with imprisonment and where the court recommends to the Governor-in-Cabinet that a deportation order should be made.

3. Each year up to fifty persons who are prohibited immigrants seek permission to re-enter the Cayman Islands. In some cases the person wishes only to visit for a particular event, but often they are seeking the permanent revocation of the deportation order so that they may return for the purpose of employment and longer term residence. In some cases the person has a close Caymanian family connection, for example a spouse whom they wish to join. The Portfolio of Internal and External Affairs and the Department of Immigration have also received increasing numbers of petitions calling for persons who were deported to be allowed to return to the Islands.

Statutory provisions

4. The ability to revoke or vary a deportation order is vested in the Governor-in-Cabinet. Section 89(3) of the Immigration Law (2007 Revision) states that:

“(3) The Governor-

(a) may, at any time, revoke a deportation order and may vary or modify its terms so as to permit the person in respect of whom it is made, to enter and land in the Islands for such purpose and subject to such conditions as may be specified.”

5. The Law or the Immigration Regulations (2007 Revision) do not however provide any instruction or specify any conditions that must be satisfied prior to revoking or varying a Deportation Order. The Law also does not prescribe an application process. The Governor-in-Cabinet has simply in the past relied on a report prepared by the Portfolio of Internal and External Affairs in consultation with law enforcement agencies which sets out the circumstances that led to the person becoming a prohibited immigrant, the length of their absence from the Islands, and whether they have committed any further offences. It is this lack of specific guidelines, and the consequent risk of inconsistency in decision making, that prompted the Cabinet to commission this review.

6. The Cabinet also considered that guidance should be publicly available so that prohibited immigrants wishing to return to the Cayman Islands would be properly informed in relation to the application process and the factors that will be taken into account when their application is considered. As well as allowing them to manage their expectations, the publication of such information would also, it is hoped, act as a deterrent to those contemplating the commission of offences in the Cayman Islands.

Methodology

7. At its first meeting the Committee agreed that the central issues for consideration were:

- a) the length of time that must pass before a person becomes eligible to apply for a revocation or variation of a Deportation Order; and
- b) whether there should be any difference in policy with respect to persons
 - a. with Caymanian family connections
 - b. who are seeking entry for short visits for specific purposes
- c) the procedure that would be implemented to process and determine applications
- d) the consequences should a prohibited immigrant re-offend whilst in the Cayman Islands either during the period of probation or subsequently.

8. The Committee also considered several actual case studies and took note of the arrangements concerning the re-entry of prohibited immigrants in the United Kingdom and the United States. Whilst the latter was helpful, the Committee took the view that given the particular characteristics of our Islands our policies would not necessarily follow those implemented elsewhere.

Considerations and Recommendations

(i) Eligibility

9. Perhaps the most important issue to be decided is the length of time that a prohibited immigrant should be excluded from the jurisdiction. While the Committee was of the opinion that there should not be a permanent bar on a prohibited immigrant being able to apply for permission to re-enter, it considered that in order to maintain a deterrent effect the length of exclusion must be significant. In the Committee's view, that period should reflect the seriousness

of the offence for which the person was convicted and, critically, the risk that the applicant represents to public safety if they are allowed to re-enter.

10. The Committee proposes that offences should be divided into three categories as follows:
- a) Category 1 (most serious offences and including persons deported for being an undesirable inhabitant)
 - Person may apply for re-entry after having being outside the jurisdiction for a period of not less than **thirty** years starting from the date of deportation.
 - for example: murder, arson, drug trafficking, rape, grievous bodily harm
 - b) Category 2 (less serious offences)
 - Person may apply for re-entry after having being outside the jurisdiction for a period of not less than **twenty** years starting from the date of deportation.
 - for example: actual bodily harm, fraud, handling stolen goods
 - c) Category 3 (least serious offences)
 - Person may apply for re-entry after having being outside the jurisdiction for a period of not less than **ten** years starting from the date of deportation.
 - for example: immigration offences, consumption or simple possession of a controlled drug, common assault.

A more detailed, though not exclusive, list of the offences that would fall within each category is attached as Appendix B.

Persons with Caymanian family connections

11. The Committee is of the opinion that with respect to Category 1 and 2 offences, persons with Caymanian family connections should be considered differently to those with no such connection with respect to the length of time that they must wait before being allowed to apply for re-entry. The Committee considered, however, that in order to maintain a meaningful deterrent effect, the absolute minimum period before which a person may apply for re-entry (even if they possess a Caymanian family connection) should be no less than ten years. This is why the proposed eligibility period for Category 3 offences (ten years) is the same for persons with Caymanian family connections and those without.

In this context the Committee considered ‘Caymanian family connections’ should mean a mother, father, spouse (whether married before or after the deportation) or child (including a legally adopted child) who possesses the Right to be Caymanian (or Caymanian Status as it was known as previously). The Committee proposes that such persons should be allowed to apply for re-entry sooner than those who have no family connection. In cases where an applicant is able to prove that he has a Caymanian family connection the Committee recommends that he may apply for re-entry as follows:

- Category 1 (most serious offences): after being outside the jurisdiction for a period of not less than **twenty** years (as compared to thirty years for persons without a Caymanian family connection)
- Category 2 (less serious offences): after being outside the jurisdiction for a period of not less than **fourteen** years (as compared to twenty years for persons without a Caymanian family connection)
- Category 3 (least serious offences): after being outside the jurisdiction for a period of not less than **ten** years (same as for persons without a Caymanian family connection)

It should be emphasized that this concession on the basis of a Caymanian family connection only reduces the length of time that a person must wait before becoming eligible to apply. It does not constitute an automatic approval of the application (though the existence of a family connection will be taken into account on a case by case basis in the context of the right to a family life – see below).

Persons seeking permission to enter for a short visit or visits

12. The Committee accepted that persons seeking permission to enter for a short visit posed a proportionately lesser risk to public safety than a person wishing to take up long-term residence. However, the Committee considered that such persons should be subject to the same eligibility requirements as other offenders. The fact that they are coming for a shorter period would be taken into account by the Cabinet Advisory

Committee on Prohibited Immigrants when formulating their recommendation to the Governor-in-Cabinet (see below).

(ii) Application and authorisation process

13. As noted earlier, there is presently no procedure for making an application for permission to re-enter the Cayman Islands. It is proposed that a person who satisfies the eligibility requirements will make an application to the Governor-in-Cabinet using an application form. This application form demands a considerable range of information about the prohibited immigrant in relation to his sponsor in the Cayman Islands, family details, the applicant's criminal history (both in relation to crimes committed here that led to deportation and arrests/convictions since leaving the jurisdiction). Further information is required concerning the countries in which the person has lived since leaving the Cayman Islands and his present and previous employment. The form also requires the person to give a written statement as to his reasons for wishing to return to the Cayman Islands. To assist applicants a variety of administrative documents will be available on the Government website. Applicants will be required to give their consent to the Cayman Islands Government performing a complete background check and they must also complete a Medical Examination Form as part of the application process.

(iii) Application submission and vetting

14. The application will be submitted to the Chief Secretary's Office, along with a non-refundable application fee of CI\$250.00, where it will be checked for completeness. The application will then be scheduled for consideration by a Cabinet Advisory Committee on Prohibited Immigrants (CACPI) which will meet quarterly. (The CACPI could be convened outside this period to consider an application urgently if circumstances require) The committee, which it is proposed will comprise of the Hon. Chief Secretary, the Chief Immigration Officer, the Commissioner of Police (or their designates), and a licensed psychiatrist or psychologist, will examine the application closely and make a recommendation on its merits to the Governor-in-Cabinet. During this process the committee will be permitted to seek additional information from

law enforcement or other agencies. For example, in some cases it may be necessary to request a Victim Impact Statement, i.e. a document which provides the view of the victim in relation to the perpetrator's application for re-entry to the jurisdiction. With respect to processing time, it is proposed that a decision on an application will be taken within six months of receipt. In cases where the application is refused, the applicant will be given brief reasons for the refusal and advised on how long they must wait before becoming eligible to re-apply. The determination of this period will be at the discretion of the CACPI.

(iv) Human Rights

Where the applicant is seeking to re-join his or her immediate family in the Cayman Islands, the CACPI in making its recommendation to the Governor-in-Cabinet will weigh carefully any public policy grounds for refusing the application, for example in the interest of preventing crime, against the applicant's right to a family life as afforded by Article 8 of the European Convention on Human Rights. Again, where the applicant is a divorced father of a child resident in the Cayman Islands this would include consideration of the closeness of the father-child ties; the residency status and nationality of the mother; the length of time in which the father had been lawfully resident in the Cayman Islands; the depth of the father's integration into Caymanian culture as compared to his links with his country of nationality; and the seriousness of the crime committed by the father.

Where an applicant considers that by refusing his application for readmission into the Cayman Islands his right to family life, or any other right set out in the European Convention on Human Rights, has been violated, he may exercise his right of individual petition to the European Court of Human Rights. The Governor-in-Cabinet's decision will also be open to challenge in the Cayman Islands' courts by way of judicial review.

(v) Probation

15. If the Governor-in-Council accepts the recommendation of the CACPI it will authorize the issue of a permit under section 63 of the Immigration Law (2007 Revision) allowing the

applicant to enter for a period of twelve months initially (if the applicant is seeking to return to take up long-term residence). This will only allow the person to enter the Islands for the period stated in the permit which will be conditioned that the person satisfies the usual entry requirements of the Immigration Law (2007 Revision). If the person intends to seek employment, he will be required to obtain a work permit in the usual way. At the end of the twelve month probationary period the person will be required to re-apply to the Governor-in-Cabinet for the revocation of the deportation order. The application will again be considered by the CACPI and a recommendation made to the Governor-in-Cabinet. The recommendation will be based on the applicant's conduct during the probationary period.

16. If at any point during the probationary period or after a deportation order has been revoked the person re-offends, he will be subject to the deportation provisions of the Law. The Committee proposes that provision be made in the Law to the effect that where a person has been deported for a second time he may be barred from re-applying for permission to return for an indefinite period. Again, the CACPI will take into account the seriousness of the second offence and this will be weighed against any family life implications.

Implementation

17. To give effect to the procedures and policy guidelines outlined above may require amendments to the Immigration Law (2009 Revision) and the Immigration Regulations (2009 Revision), *inter alia* with respect to creating provision for the ability to apply for the revocation of a Deportation Order, to prescribe the criteria for applying and in order to charge an application fee.