

STATEMENT OF CHANGES IN IMMIGRATION RULES

*Laid before Parliament on 17 March 2008 under section 3(2) of
The Immigration Act 1971*

*Ordered by The House of Commons to be printed
17 March 2008*

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STATEMENT OF CHANGES IN IMMIGRATION RULES

The Home Secretary has made the changes hereinafter stated in the rules laid down by her as to the practice to be followed in the administration of the Immigration Act 1971 for regulating entry into and the stay of persons in the United Kingdom and contained in the Statement laid before Parliament on 23 May 1994 (HC 395), as amended. The amending statements were laid before, or presented to, Parliament on 20 September 1994 (Cmnd 2663), 26 October 1995 (HC 797), 4 January 1996 (Cmnd 3073), 7 March 1996 (HC 274), 2 April 1996 (HC 329), 30 August 1996 (Cmnd 3365), 31 October 1996 (HC 31), 27 February 1997 (HC 338), 29 May 1997 (Cmnd 3669), 5 June 1997 (HC 26), 30 July 1997 (HC 161), 11 May 1998 (Cmnd 3953), 8 October 1998 (Cmnd 4065), 18 November 1999 (HC 22), 28 July 2000 (HC 704), 20 September 2000 (Cmnd 4851), 27 August 2001 (Cmnd 5253), 16 April 2002 (HC 735), 27 August 2002 (Cmnd 5597), 7 November 2002 (HC 1301), 26 November 2002 (HC 104), 8 January 2003 (HC 180), 10 February 2003 (HC 389), 31 March 2003 (HC 538), 30 May 2003 (Cmnd 5829), 24 August 2003 (Cmnd 5949), 12 November 2003 (HC 1224), 17 December 2003 (HC 95), 12 January 2004 (HC 176), 26 February 2004 (HC 370), 31 March 2004 (HC 464), 29 April 2004 (HC 523), 3 August 2004 (Cmnd 6297), 24 September 2004 (Cmnd 6339), 18 October 2004 (HC 1112), 20 December 2004 (HC 164), 11 January 2005 (HC 194), 7 February 2005 (HC 302), 22 February 2005 (HC 346), 24 March 2005 (HC 486), 15 June 2005 (HC 104), 12 July 2005 (HC 299), 24 October 2005 (HC 582), 9 November 2005 (HC 645), 21 November 2005 (HC 697), 19 December 2005 (HC 769), 23 January 2006 (HC 819), 1 March 2006 (HC 949), 30 March 2006 (HC 1016), 20 April 2006 (HC 1053), 19 July 2006 (HC 1337), 18 September 2006 (Cm 6918), 7 November 2006 (HC 1702), 11 December 2006 (HC 130), 19 March 2007 (HC 398), 3 April 2007 (Cm 7074), 4 April 2007 (Cm 7075), 7 November 2007 (HC 28), 13 November 2007 (HC 40), 19 November 2007 (HC 82) and 6 February 2008 (HC 321).

These changes will come into force on 7th April 2008.

Rule 331

After "...is refused asylum" insert "or their application for asylum is withdrawn or treated as withdrawn under paragraph 333C of these Rules"

Rule 332

After "...that application is refused" insert "or withdrawn or treated as withdrawn under paragraph 333C of these Rules"

Rule 333C

Delete and replace with:

"333C If an application for asylum is withdrawn either explicitly or implicitly, consideration of it may be discontinued. An application will be treated as explicitly withdrawn if the applicant signs the relevant form provided by the Secretary of State. An application may be treated as impliedly withdrawn if an applicant fails to attend the personal interview as provided in paragraph 339NA of these Rules unless the applicant demonstrates within a reasonable time that that failure was due to circumstances beyond his or her control. The Secretary of State will indicate on the applicant's asylum file that the application for asylum has been withdrawn and consideration of it has been discontinued.

Rule 339M

After "...for example", delete "a failure to attend an interview"

Rule 353

After "...claim has been refused" insert "or withdrawn or treated as withdrawn under paragraph 333C of these Rules"

Rule 295G

In paragraph 295G, for sub-paragraph (i), each sub-paragraph (i)(a), and sub-paragraph (b) substitute:

- "(i) (a) the applicant was admitted to the United Kingdom or given an extension of stay for a period of 2 years in accordance with paragraphs 295AA to 295F of these Rules and has completed a period of 2 years as the unmarried or same-sex partner of a person present and settled here; or
- (b) the applicant was admitted to the UK or given an extension of stay as the unmarried or same-sex partner of a Tier 1 (General) Migrant, and then obtained an extension of stay under paragraphs 295AA to 295F of these Rules and has completed a period of 2 years as the unmarried or same-sex partner of the person who is now present and settled here; or
- (c) the applicant was admitted to the United Kingdom in accordance with leave granted under paragraph 295B(c) of these rules; and"

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**EXPLANATORY MEMORANDUM TO
THE STATEMENT OF CHANGES IN IMMIGRATION RULES
LAID ON 17 MARCH 2008 (HC 420)**

1. This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 This Statement of Changes in the Immigration Rules makes changes to paragraphs 331, 332, 333C, 338 and 353, which all relate to the circumstances in which the Secretary of State will treat a claim for asylum as withdrawn.

2.2 In particular when an asylum applicant fails to attend, without reasonable excuse, his or her substantive asylum interview, the asylum application will normally be treated as withdrawn. Likewise if the asylum applicant expressly asks to withdraw his or her claim.

2.3 A further change, to paragraph 295G, is also included, to correct a numbering error from the previous rules change laid on 6 February 2008 (HC 321). This paragraph relates to the requirements to be met for those seeking indefinite leave to remain as the unmarried or same-sex partner of a person present and settled in the United Kingdom.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 The Rules Change will come into force on the 7th April. From that time, where a case owner is considering a case where the applicant fails to attend, without reasonable excuse, their substantive interview, they may treat the application as impliedly withdrawn.

4. Legislative Background

4.1 The Immigration Rules are the Rules made under section 3(2) of the Immigration Act 1971. These constitute a statement of practice as laid before Parliament by the Secretary of State, to be followed in regulating entry to, and stay of persons in, the United Kingdom. Under section 3(2), the Secretary of State is obliged to "...from time to time (and as soon as may be) lay before Parliament statements of the Rules, or any changes in the Rules, laid down by him as to the practice to be followed in the administration of the Act".

4.2 Article 20 of Council Directive 2005/85/EC of 1 December 2005 laying down minimum standards on procedures in Member States for granting and withdrawing refugee status (OJ No. L 326, 13.12.05, page 13) ("the Directive") states that "Member States may assume that the applicant has implicitly withdrawn or abandoned his/her application in particular when it is ascertained that:

(a) he/she has...not appeared for a personal interview as provided for in Articles 12, 13 and 14, unless the applicant demonstrates within a reasonable time that his/her failure was due to circumstances beyond his/her control;

(b) he/she has absconded or left without authorisation the place where he/she lived or was held...."

4.3 The Directive sets out the basic procedural obligations on Member States when assessing asylum applications. It was the final one to be implemented as part of the first phase of the Common European Asylum System.

5. Territorial Extent and Application

5.1 This Statement applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 As the Statement is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The Government is committed to ensuring the integrity and robustness of the decision making process in relation to asylum claims. It will continue to ensure that those who need and qualify for our protection get it as quickly and as efficiently as possible.

7.2 However, there are instances where an individual will, to avoid the consequences of being in the UK illegally, seek to make an asylum claim. This can be solely as a means of delaying the process of removing that person to their country of origin. The actions of the applicant will demonstrably show that they have no real interest in pursuing the claim or in allowing the Secretary of State to interrogate the basis upon which they are making the claim.

- 7.3 These claims will, from now on, be treated as withdrawn. This represents a change in policy from the current approach of rejecting such an application but the Government believes that treating the claim as withdrawn, reflecting the fact that the applicant never actually intended to make a legitimate application for asylum, better demonstrates its commitment to ensuring only legitimate asylum claimants are given the protection of refugee status. This will allow case owners to focus their efforts on those applicants who are behaving in a way which demonstrates that they are serious in making a claim for asylum.
- 7.4 In line with the provisions of the Directive, the claim will only be treated as impliedly withdrawn when the individual has failed to turn up for their substantive interview. A letter will be sent to them giving them 5 days in which to re-establish contact and explain the reason for their failure to attend. If this is not responded to, the case owner will check whether or not the individual is still at the accommodation provider or other residence that they are supposed to be at and, if not, will treat the claim as withdrawn.
- 7.5 The intention of amendment to paragraph 295G is to ensure that we treat the unmarried or same-sex partners of Tier 1 (General) Migrants in the same way as we treat those of people present and settled in the UK. Due to the numbering error and the subsequent incorrect insertion of “and”, this intention is not currently reflected. The amendment in this Statement of Changes rectifies this error.

8. Impact

- 8.1 A Regulatory Impact Assessment has not been prepared for this Statement as it has minimal impact on business, charities or voluntary bodies.

9. Contact

- 9.1 The Home Office’s Immigration Enquiry Bureau on telephone: 0870 6067766 or by e-mail:biapublicenquiries@bia.homeoffice.gsi.gov.uk can answer any queries regarding the instrument.