

July 2012

IMMIGRATION DIRECTORATE INSTRUCTIONS**CHAPTER 8
SECTION FM 3.1****CHILDREN****INTRODUCTION**

Section 55 of the Borders, Citizenship and Immigration Act 2009 requires the UK Border Agency to carry out its existing functions in a way that takes into account the need to safeguard and promote the welfare of children in the UK. It does not impose any new functions, or override existing functions.

Caseworkers must not apply the actions set out in this instruction either to children or to those with children without considering the effect of Section 55. The UK Border Agency instruction 'Arrangements to Safeguard and Promote Children's Welfare in the United Kingdom Border Agency' sets out the key principles to take into account in all Agency activities.

Our statutory duty to children includes the need to demonstrate:

- Fair treatment which meets the same standard a British child would receive;
- The child's interests being made a primary, although not the only consideration;
- No discrimination of any kind;
- Asylum applications are dealt with in a timely fashion;
- Identification of those that might be at risk from harm.

This section provides guidance for the following child applications:

Part 1

Leave to enter or remain as a child of a parent, parents or relative who are present and settled in the UK or are being admitted for settlement – **paragraphs 297-300** of the Immigration Rules

Part 2

Leave to enter or remain as a child whose parent has made an application for entry clearance or leave, or who has limited leave as a partner – **Appendix FM** of the Immigration Rules

Part 3

Leave to enter or remain as the child of a relative with limited leave to enter or remain in the UK as a refugee or beneficiary of humanitarian protection – **paragraph 319X** of the Immigration Rules

Part 4

Indefinite leave to remain in the United Kingdom as the child of a relative who is present and settled in the United Kingdom or as a former refugee or beneficiary of humanitarian protection who is now a British Citizen.

Definitions of the terms parent, maintenance and accommodation can be found at the end of this section.

Section 4 of this chapter provides guidance relating to children born in the United Kingdom who are not British citizens.

Section 5 of this chapter provides guidance for the handling of cases involving children seeking to accompany, join or remain with **adoptive** parents.

There is no longer any provision under the Rules for **unmarried daughters over the age of 18** to be treated as dependent children. They must be considered as "Adult Dependent Relatives" - see **guidance on Adult Dependent Relatives (Chapter 8 Section FM 6.0)**.

PART 1 - LEAVE TO ENTER OR REMAIN AS A CHILD OF A PARENT, PARENTS OR RELATIVE WHO ARE PRESENT AND SETTLED IN THE UK OR ARE BEING ADMITTED FOR SETTLEMENT

Paragraphs 297-300 of the Immigration Rules. These sections will remain unchanged after 9 July 2012.

1. The Policy

Subject to the requirements of Paragraph 297 of the Immigration Rules, **indefinite** leave to enter the United Kingdom may be granted to a child under 18 years of age where:

- both parents are present and settled here, or are being admitted on the same occasion for settlement; or
- one parent is present and settled here and the other is being admitted on the same occasion for settlement at the time the child is seeking admission; or
- one parent is present and settled here or is being admitted on the same occasion for settlement, and the other parent is **dead**; or
- one parent is present and settled here or is being admitted on the same occasion for settlement, and has had **sole responsibility** for the child's upbringing; or
- one parent (**or a relative**) is present and settled here or being admitted for settlement, **and** there are "**serious and compelling family or other considerations**" which make the child's exclusion undesirable, **and** suitable arrangements have been made for the child's care.

1.1. Requirements – when dealing with entry clearance applications.

Caseworkers dealing with referred entry clearance applications must satisfy themselves that the child:

- is related as claimed;
- is under 18 years of age;
- the applicant is not married, is not a civil partner or leading an independent life ;
- there is adequate and appropriate maintenance and accommodation for the child, provided by the sponsor, without recourse to public funds;
- the child holds the requisite valid UK entry clearance

1.2. Requirements - on arrival in the United Kingdom

The main points on which the immigration officer needs to be satisfied are that:

- the child holds a valid entry clearance endorsed "Settlement - to join father/mother/parents" or "accompanying father/mother/parents"; or "ODR – LLE – to join or accompany relative" and
- there is no reason to believe that false representations were made in order to obtain the entry clearance or that circumstances have changed since its issue.

1.3. Further guidance

Most children seeking entry in this capacity will be in possession of an entry clearance, and detailed examination is unlikely to be necessary before indefinite leave to enter is granted. However, where a passenger does arrive without a valid entry clearance for this purpose it will be necessary to establish:

- * whether there are any compelling compassionate circumstances which would prevent refusal and removal; and, if so,
- * whether or not the passenger would have qualified for entry clearance.

Chapter 8 Section FM 3.2A provides guidance for interpreting the requirements of the Rules in respect of "Children";

1.4. Granting indefinite leave to enter

Where the immigration officer is satisfied that all the requirements of Paragraph 297 have been met or, in the absence of entry clearance, that, after consideration of all the relevant factors, the granting of settlement is the appropriate course of action, indefinite leave to enter may be granted.

1.5. Refusal of indefinite leave to enter

- Where a **non-visa national** seeks entry in this capacity without a valid United Kingdom entry clearance issued for this purpose and no compassionate circumstances exist, he should be refused entry under Paragraph 300 of the Immigration Rules.
- A **visa national** seeking entry without a valid United Kingdom visa falls to be refused under Paragraph 320(5). See **Chapter 9, Section 2** to these instructions.
- Where a passenger seeking entry in this capacity holds an entry clearance for this purpose, refusal may only be considered under Paragraph 321 (See **Chapter 9, Section 3** to these instructions).

- In the case of a person returning to the United Kingdom from a temporary absence abroad, within a period for which he was previously given leave, reference **must** be made, before refusal, to **Chapter 1, Section 9, "Persons returning to resume previous leave"**.

Chapter 8 Section FM 7.0 provides examples of refusal formulae.

1.6. **Right of appeal and corresponding refusal form**

Where no entry clearance is held, there is no right of appeal against refusal of leave to enter in this capacity [Section 13(3B)(a) of the Immigration Act 1971 (as set out in Section 11 of the Asylum and Immigration Appeals Act 1993)].

Form IS 82D should therefore be used.

The "**Port Instructions for on-entry asylum applications**" provides details of the appropriate forms to use in mixed asylum/non-asylum cases.

INDEFINITE LEAVE TO REMAIN

1.7 Subject to the requirements of Paragraph 298 of the Immigration Rules, **indefinite** leave to remain in the United Kingdom may be granted to a child under 18 years of age where:

- both parents are present and settled here; or
- one parent is present and settled here and the other parent is **dead**; or
- one parent is present and settled here and has had **sole responsibility** for the child's upbringing; or
- one parent or a relative is present and settled here and there are "**serious and compelling family or other considerations**" which make the child's exclusion undesirable, and suitable arrangements have been made for the child's care.

1.8. **Requirements**

Caseworkers must satisfy themselves that;

- the child is related as claimed;
- the child is under 18 years of age; or

- the child has leave to enter or remain which was granted to him with a view to settlement in this category; and
- the child is not married, is not a civil partner or leading an independent life
- there is adequate and appropriate maintenance and accommodation for the child provided by the sponsor.
- does not have one or more unspent convictions

1.9. Further guidance

Where the child did not enter with entry clearance for this purpose, caseworkers should request evidence (if not submitted) that the child is related as claimed. This should normally be in the form of a full birth certificate showing both parents' names. Where necessary, guidance about suspect documentation may be obtained from ISNFS (the Immigration Service National Forgery Section) at Status Park. Alternatively, assistance may be sought from the entry clearance officer or the authority which issued the document.

Chapter 8 Section FM 3.2A provides guidance for interpreting the requirements of the Rules in respect of "Children";

1.10. Granting indefinite leave to remain

A child may be granted settlement in this category if all the requirements of Paragraph 298 are met.

1.11. Refusal of indefinite leave to remain

Chapter 9, Section 1 "Adverse decisions - General Guidance" provides important advice about the decision making process and should be consulted whenever an application falls to be refused.

Refusal of indefinite leave to remain under Paragraph 300 of of the Immigration Rules on the grounds that each of the provisions of Paragraph 298 is not met.

Chapter 8 Section FM 7.0 provides examples of refusal formulae.

PART 2 – LEAVE TO ENTER OR REMAIN AS A CHILD WHOSE PARENT HAS MADE AN APPLICATION FOR ENTRY CLEARANCE OR LEAVE, OR WHO HAS LIMITED LEAVE AS A PARTNER

Appendix FM of the Immigration Rules

2.1 Background

Changes to the Immigration Rules made on 09 July 2012 introduced new requirements for those applying for leave as the family member of a person who is:

- a) a British citizen in the UK
- b) present and settled in the UK
- c) in the UK with refugee leave or humanitarian protection.

These are set out in Appendix FM to the Rules.

Paragraphs 301-303 of the Immigration Rules are no longer available to those who submit an application on or after 9 July. Applications on or after 9 July for leave to enter or remain as a child of a parent with limited leave should now be considered under Appendix FM of the Rules.

2.2 Relationship requirements

To qualify under these provisions the child must:

- be under the age of 18 at the date of application, unless applying to extend leave granted as a child under Appendix FM in cases where the applicant has subsequently reached the age of 18 but not yet obtained settlement
- not be married or in a civil partnership
- not have formed an independent family unit
- not be leading an independent life

2.3 Financial requirement

The changes on 9 July 2012 introduced a new financial requirement for those applying under this route,

Where a child is applying at the same time as their parent is applying for leave or settlement as a partner there will be a higher financial requirement. The level of the financial requirement will be determined by the number of children applying for leave to enter or remain, including children who may already have been granted leave..

Information about the financial requirement, including the required levels and sources of funds, can be found at Chapter 8 Section FM 1.7.

If the higher financial requirement and other requirements are met, the child can be granted leave in line with their migrant parent. If the migrant parent and child are applying together, and the higher financial requirement and other requirements are not met, all the applicants will be refused.

The higher financial requirement will continue to apply until the migrant spouse or partner achieves settlement after 5 years on the family route, even if the child or children reaches the age of 18 before the end of that five year period.

The financial requirement does not apply to children who are British citizens or EEA nationals (except where the non-EEA spouse or partner is being accompanied or joined by the EEA child of a former relationship) or to children who qualify for indefinite leave to enter.

The financial requirement does not have to be met if the partner of the parent (of the child applying for leave is receiving one or more of the following :

- (i) disability living allowance;
- (ii) severe disablement allowance;
- (iii) industrial injury disablement benefit;
- (iv) attendance allowance; or
- (v) carer's allowance.

In such cases evidence must be provided that the child's parent's partner can maintain and accommodate themselves, the child and any dependents adequately in the UK without recourse to public funds (see section on maintenance in the definitions section).

2.4 Entry Clearance

The requirements that must be met for entry clearance are that the child:

- must be outside the UK
- must have made a valid application for entry clearance as a child
- must not fail the suitability requirement (see below)
- must meet the financial requirement
- must provide evidence that there will be adequate accommodation, without recourse to public funds, for the family (including family members not included in the application who live in the same household).

2.5 Suitability requirement

The suitability requirements for entry clearance are:

S-EC.1.2. The Secretary of State has personally directed that the exclusion of the applicant from the UK is conducive to the public good.

S-EC.1.3. The applicant is at the date of application the subject of a deportation order.

S-EC.1.4. The exclusion of the applicant from the UK is conducive to the public good because they have been convicted of an offence for which they have been sentenced to imprisonment for at least 12 months.

S-EC.1.5. The exclusion of the applicant from the UK is conducive to the public good

or because, for example, the applicant's conduct (including convictions which do not fall within paragraph S-EC.1.4.), character, associations, or other reasons, make it undesirable to grant them entry clearance.

S-EC.1.6. The applicant has failed without reasonable excuse to-

- (a) attend an interview when required to do so;
- (b) provide specified information, including physical data, when required to do so; or
- (c) undergo a medical examination, or provide a medical report, when required to do so.

S-EC.1.7. It is undesirable to grant entry clearance to the applicant for medical reasons.

S-EC.2.1. The applicant will normally be refused on grounds of suitability if any of paragraphs S-EC.2.2. to 2.4. apply.

S-EC.2.2. Whether or not to the applicant's knowledge –

- (a) false information, representations or documents have been submitted in relation to the application (including false information submitted to any person to obtain a document used in support of the application); or
- (b) there has been a failure to disclose material facts in relation to the application.

S-EC.2.3. One or more relevant NHS body has notified the Secretary of State that the applicant has failed to pay charges in accordance with the relevant NHS regulations on charges to overseas visitors and the outstanding charges have a total value of at least £1000.

S-EC.2.4. A maintenance and accommodation undertaking has been requested or required under paragraph 35 of these Rules or otherwise and has not been provided.

2.6 Granting entry clearance

If a child meets the requirements for entry clearance they should be given leave to enter for a period in line with their (non-settled) parent.

The conditions of the leave should be with no recourse to public funds.

2.7 Leave to remain (including indefinite leave to remain)

The requirements that must be met for leave to remain are that the child:

- must be in the UK
- must have made a valid application for leave to remain as a child
- must not fail the suitability requirement
- must meet the financial requirement

- must provide evidence that there will be adequate accommodation, without recourse to public funds, for the family (including family members not included in the application who live in the same household).

2.8 Suitability requirement for leave to remain

S-LTR.1.1. The applicant will be refused limited leave to remain on grounds of suitability if any of paragraphs S-LTR.1.2 to 1.7 apply.

S-LTR.1.2. The applicant is at the date of application the subject of a deportation order.

S-LTR.1.3. The presence of the applicant in the UK is not conducive to the public good because they have been convicted of an offence for which they have been sentenced to imprisonment for at least 4 years.

S-LTR.1.4. The presence of the applicant in the UK is not conducive to the public good because they have been convicted of an offence for which they have been sentenced to imprisonment for less than 4 years but at least 12 months.

S-LTR.1.5. The presence of the applicant in the UK is not conducive to the public good because, in the view of the Secretary of State, their offending has caused serious harm or they are a persistent offender who shows a particular disregard for the law.

S-LTR.1.6. The presence of the applicant in the UK is not conducive to the public good because their conduct (including convictions which do not fall within paragraphs S-LTR.1.3. to 1.5.), character, associations, or other reasons, make it undesirable to allow them to remain in the UK.

S-LTR.1.7. The applicant has failed without reasonable excuse to-

- (a) attend an interview when required to do so;
- (b) provide specified information, including physical data, when required to do so; or
- (c) undergo a medical examination, or provide a medical report, when required to do so.

S-LTR.2.1. The applicant will normally be refused on grounds of suitability if any of paragraphs S-LTR.2.2. to 2.4. apply.

S-LTR.2.2. Whether or not to the applicant's knowledge –

- (a) false information, representations or documents have been submitted in relation to the application (including false information submitted to any person to obtain a document used in support of the application); or
- (b) there has been a failure to disclose material facts in relation to the application.

S-LTR.2.3. One or more relevant NHS body has notified the Secretary of State that the applicant has failed to pay charges in accordance with the relevant NHS regulations on charges to overseas visitors and the outstanding charges have a total value of at least £1000.

S-LTR.2.4. A maintenance and accommodation undertaking has been requested under paragraph 35 of these Rules and has not been provided.

S-LTR.3.1. When considering whether the presence of the applicant in the UK is not conducive to the public good any legal or practical reasons why the applicant cannot presently be removed from the UK must be ignored.

2.9 Granting leave to remain

If the child meets the requirements for leave to remain leave should be granted for a period in line with their (non-settled) parent.

Leave should be granted with no recourse to public funds.

If the parent is granted indefinite leave to remain, the child should be granted indefinite leave to remain.

PART 3 - LEAVE TO ENTER OR REMAIN AS THE CHILD OF A RELATIVE WITH LIMITED LEAVE TO ENTER OR REMAIN IN THE UK AS A REFUGEE OR BENEFICIARY OF HUMANITARIAN PROTECTION

Paragraphs 319X – 319Y

3.1 Definition of child of a relative for the Purposes of Paragraph 319X of Immigration Rules only

The definition of the term “child of a relative” for the purpose of 319X of the Immigration Rules includes the following:

Nieces, nephews, step brothers, step sisters and cousins of refugees and persons with HP resident in the UK. Under 18 years of age.

It does not include step children. Step children will come under either Part 11 or Paragraph 319R of the Immigration Rules (post-flight children of refugees/persons with HP).

Rule 319X (iii) is explicit that the relative cannot be the parent of the child that is seeking leave to enter or remain. These will also come under Paragraph 319R of the Immigration Rules

3.2 Limited leave to enter

The requirements to be met by a person seeking leave to enter in this capacity are set out in paragraph 319X in Part 8 of the Immigration Rules and must be referred to when reading the following advice.

3.3 Requirements

Limited leave to enter may be granted for five years provided:

- A valid United Kingdom entry clearance for entry in this capacity is produced to the Immigration Officer upon arrival in the UK, and
- There is no reason to believe that false representations were made in order to obtain the entry clearance or that circumstances have changed since its issue
- All of the requirements within paragraph 319 (i)-(viii) have been met

3.4 Consideration

Caseworkers must satisfy themselves that:

- the applicant is seeking leave to enter to accompany or join a relative with limited leave to enter or remain as a refugee or person with humanitarian protection; and

- the relative has limited leave in the United Kingdom as a refugee or beneficiary of humanitarian protection and there are serious and compelling family or other considerations which make exclusion of the child undesirable and suitable arrangements have been made for the child's care; and
- the relative is not the parent of the child who is seeking leave to enter or remain in the United Kingdom; and
- the applicant is under the age of 18; and
- the applicant is not married, is not a civil partner or leading an independent life; and has not formed an independent family unit; and
- the applicant can and will be accommodated and maintained adequately by the relative the child is seeking to join without recourse to public funds, in accommodation which the relative owns or occupies exclusively in the UK; and
- The applicant is of "good character, conduct and associations" specified within the General Grounds for Refusal.

3.5 Limited leave to Enter

Limited leave to enter may be granted for 5 years provided a valid United Kingdom entry clearance for entry in this capacity is produced to the Immigration Officer upon arrival.

3.6 Granting limited leave to Remain

Limited leave to remain may be granted if all of the requirements of paragraph 319X (i) – (viii) have been met.

3.7 Refusal of limited leave to enter

Refusal of limited leave to enter is appropriate where a person seeks leave to enter in this capacity without a valid United Kingdom entry clearance.

3.8 Refusal of limited leave to remain

Refusal of limited leave to remain is appropriate if all the requirements of paragraph 319X (i) – (viii) have not been met and the applicant is not of "good character, conduct and associations" as specified within the General Grounds for Refusal.

PART 4 - INDEFINITE LEAVE TO REMAIN IN THE UNITED KINGDOM AS THE CHILD OF A RELATIVE WHO IS PRESENT AND SETTLED IN THE UNITED KINGDOM OR AS A FORMER REFUGEE OR BENEFICIARY OF HUMANITARIAN PROTECTION WHO IS NOW A BRITISH CITIZEN. .

To qualify for indefinite leave to remain as the child of a relative who is present and settled in the United Kingdom, an applicant must meet the requirements set out in paragraph 298(ii)(d) of the Immigration Rules. This paragraph outlines that the applicant was admitted into the United Kingdom in accordance with paragraph 319X as the child of a relative with limited leave to enter or remain as a refugee or beneficiary of humanitarian protection in the UK who is now present and settled here.

4.1 Requirements

The requirements to be met are that the child:

- beneficiary of human protection has limited leave to enter or remain in the UK in accordance with paragraph 319X as the child of a relative with limited leave to remain as a refugee or in the UK and who is now present and settled here
- is not leading an independent life
- is not married
- has not formed an independent family unit
- can be accommodated adequately by the relative the child was admitted to join, without recourse to public funds, in accommodation which the relative owns exclusively
- can be maintained adequately by the relative the child was admitted to join, without recourse to public funds
- does not have one or more unspent convictions within the meaning of the Rehabilitation of Offenders Act 1974.

4.2 Granting leave

Indefinite leave to enter or remain may be granted if the above requirements are met.

5. DEFINITIONS

5.1 Definition of a parent

The definition of the term “parent” for the purposes of the immigration rules (Paragraph 6 - introduction to the Immigration Rules), includes:

- ◆ the stepfather, where the natural father is dead or the stepmother, where the natural mother is dead;
- ◆ the father as well as the mother of an illegitimate child (where he is proved to be the father);
- ◆ an adoptive parent (provided that the child was legally adopted in a country whose adoption orders are recognised by the United Kingdom - see modernised **guidance on adopted children**).
- ◆ in the case of a child born in the United Kingdom who is not a British citizen, a person to whom there has been a genuine transfer of parental responsibility on the grounds of the original parent's/parents' inability to care for the child.

There is a different definition for those applying under sections 319X-Y – see above.

5.2 Adequate accommodation

Guidance on accommodation can be found at: Chapter 8 Section FM 1.7A

5.3 Maintenance

Guidance on maintenance can be found at: Chapter 8 Section FM 1.7