

# STATEMENT OF CHANGES IN IMMIGRATION RULES

*Laid before Parliament on 7 November 2007 under section 3(2) of  
The Immigration Act 1971*

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*Ordered by The House of Commons to be printed  
7 November 2007*

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*(This document is accompanied by an Explanatory Memorandum)*

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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 him 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 (Cmnd2663), 26 October 1995 (HC 797), 4 January 1996 (Cmnd 3073), 7 March 1996 (HC 274), 2 April 1996 (HC329), 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 (Cmnd4065), 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), 26November 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 (HC523), 3 August 2004 (Cmnd 6297), 24 September 2004 (Cmnd 6339), 18 October 2004 (HC 1112), 20 December2004 (HC 164), 11 January 2005 (HC 194), 7 February 2005 (HC 302), 22 February 2005 (HC 346), 24 March2005 (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 March2006 (HC 949), 30 March 2006 (HC 1016), 20 April 2006 (HC 1053), 19 July 2006 (HC 1337), 18 September2006 (Cm 6918), 7 November 2006 (HC 1702), 11 December 2006 (HC 130), 19 March 2007 (HC 398), 3 April 2007 (Cm 7074) and 4 April 2007 (Cm 7075).

The changes shall take effect on 8 November 2007.

1. After the word “respectively.” In paragraph 339Q (iii), insert:

“ “Family member” for the purposes of this sub-paragraph refers only to those who are treated as dependants for the purposes of paragraph 349”.

2. In paragraph 349 after “If the principal applicant is granted asylum” insert  
“or humanitarian protection”
3. In paragraph 349 after “Where an asylum” insert  
“or humanitarian protection”
4. In paragraph 349 after “at the same time that asylum” insert  
“or humanitarian protection”
5. After paragraph 352F insert

352FA. The requirements to be met by a person seeking leave to enter or remain in the United Kingdom as the spouse or civil partner of a person who has been granted humanitarian protection in the United Kingdom on or after 30 August 2005 are that:

- (i) the applicant is married to or the civil partner of a person granted humanitarian protection on or after 30 August 2005; and
- (ii) the marriage or civil partnership did not take place after the person granted humanitarian protection left the country of his former habitual residence in order to seek asylum in the UK; and
- (iii) the applicant would not be excluded from a grant of humanitarian protection for any of the reasons in paragraph 339D; and
- (iv) each of the parties intend to live permanently with the other as his or her spouse or civil partner and the marriage or civil partnership is subsisting; and
- (v) if seeking leave to enter, the applicant holds a valid United Kingdom entry clearance for entry in this capacity.

352FB. Limited leave to enter the United Kingdom as the spouse or civil partner of a person granted humanitarian protection may be granted provided a valid United Kingdom entry clearance for entry in this capacity is produced to the Immigration Officer on arrival. Limited leave to remain in the United Kingdom as the spouse or civil partner of a person granted humanitarian protection may be granted provided the Secretary of State is satisfied that each of the requirements in sub paragraphs 352FA(i) – (iv) are met.

352FC. Limited leave to enter the United Kingdom as the spouse or civil partner of a person granted humanitarian protection is to be refused if a valid United Kingdom entry clearance for entry in this capacity is not produced to the Immigration Officer on arrival. Limited leave to remain as the spouse or civil partner of a person granted humanitarian protection is to be refused if the Secretary of State is not satisfied that each of the requirements in sub paragraphs 352FA (i) - (iv) are met.

352FD. The requirements to be met by a person seeking leave to enter or remain in the United Kingdom as the unmarried or same-sex partner of a person who has been granted humanitarian protection in the United Kingdom are that:

- (i) the applicant is the unmarried or same-sex partner of a person granted humanitarian protection on or after 9th October 2006; and
- (ii) the parties have been living together in a relationship akin to either a marriage or a civil partnership which has subsisted for two years or more; and
- (iii) the relationship existed before the person granted humanitarian protection left the country of his former habitual residence in order to seek asylum; and
- (iv) the applicant would not be excluded from a grant of humanitarian protection for any of the reasons in paragraph 339D; and
- (v) each of the parties intends to live permanently with the other as his or her unmarried or same-sex partner and the relationship is subsisting; and
- (vi) if seeking leave to enter, the applicant holds a valid United Kingdom entry clearance for entry in this capacity.

352FE. Limited leave to enter the United Kingdom as the unmarried or same-sex partner of a person granted humanitarian protection may be granted provided a valid United Kingdom entry clearance for entry in this capacity is produced to the Immigration Officer on arrival. Limited leave to remain in the United Kingdom as the unmarried or same sex partner of a person granted humanitarian protection may be granted provided the Secretary of State is satisfied that each of the requirements in subparagraphs 352FD (i) – (v) are met.

352FF. Limited leave to enter the United Kingdom as the unmarried or same-sex partner of a person granted humanitarian protection is to be refused if a valid United Kingdom entry clearance for entry in this capacity is not produced to the Immigration Officer on arrival. Limited leave to remain as the unmarried or same sex partner of a person granted humanitarian protection is to be refused if the Secretary of State is not satisfied that each of the requirements in sub paragraphs 352FD(i) – (v) are met.

352FG. The requirements to be met by a person seeking leave to enter or remain in the United Kingdom in order to join or remain with their parent who has been granted humanitarian protection in the United Kingdom on or after 30 August 2005 are that the applicant:

- (i) is the child of a parent who has been granted humanitarian protection in the United Kingdom on or after 30 August 2005; and
- (ii) is under the age of 18, and
- (iii) is not leading an independent life, is unmarried or is not in a civil partnership, and has not formed an independent family unit; and
- (iv) was part of the family unit of the person granted humanitarian protection at the time that the person granted humanitarian protection left the country of his habitual residence in order to seek asylum in the UK; and
- (v) would not be excluded from a grant of humanitarian protection for any of the reasons in paragraph 339D; and
- (vi) if seeking leave to enter, holds a valid United Kingdom entry clearance for entry in this capacity.

352FH. Limited leave to enter the United Kingdom as the child of a person granted humanitarian protection may be granted provided a valid United Kingdom entry clearance for entry in this capacity is produced to the Immigration Officer on arrival. Limited leave to remain in the United Kingdom as the child of a person granted humanitarian protection may be granted provided the Secretary of State is satisfied that each of the requirements in sub paragraphs 352FG(i) -(v) are met.

352FI. Limited leave to enter the United Kingdom as the child of a person granted humanitarian protection is to be refused if a valid United Kingdom entry clearance for entry in this capacity is not produced to the Immigration Officer on arrival. Limited leave to remain as the child of a person granted humanitarian protection is to be refused if the Secretary of State is not satisfied that each of the requirements in sub paragraphs 352FG(i)-(v) are met.



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**EXPLANATORY MEMORANDUM TO  
THE STATEMENT OF CHANGES IN IMMIGRATION RULES  
LAID ON 7 NOVEMBER 2007 (HC 28)**

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 a number of changes to the provisions on dependants in part 11 (asylum) of the rules. In particular they clarify that the dependants of those granted humanitarian protection (HP) will be granted leave for the same duration as the principal applicant providing they were dependants on the asylum claim. Dependants of those granted HP will now also be able to apply for family reunion. In both cases a dependant means a minor child, a spouse, civil partner or unmarried or same-sex partner providing in all cases they otherwise meet the requirements set out in the rules.

2.2 Paragraph 339Q of the rules, which concerns the provision of UK residence permits to those granted asylum or HP, has also been changed slightly to clarify that the reference to family members in that paragraph means those who are treated as dependants on the claim as described above.

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

3.1 None.

**4. Legislative Background**

4.1 On 19 July 2005 a ministerial undertaking was given to the effect that those granted HP on or after 30 August 2005 would have the immediate right to family reunion.

4.2 Changes to the Immigration Rules were made on 9 October 2006 (Cm 6918) in part implementation of Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted ("the Qualification Directive"). These changes are being made to reflect existing policy and implement the provisions on family unity for those granted humanitarian protection.

4.3 Under Articles 23 and 24 of the Qualification Directive dependants of those granted humanitarian protection must also be permitted to stay in the Member State concerned and be provided with a residence permit.

4.4 The Directive was implemented both by the introduction of new legislation as well as reliance on existing legislation. Where possible, the changes that are necessary to implement the Directive have been made through the Immigration Rules. Article 23 of the Directive on family unity was not implemented in the Rules with Cm 6819.

4.5 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 Home Secretary, to be followed in regulating entry into, and stay of persons in, the United Kingdom. Under section 3(2) the Secretary of State is obliged "...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 this Act ..".

4.6 This statement of Changes in Immigration Rules will be laid on 7 November 2007. The changes will take effect on 8 November 2007.

4.7 This Statement of Changes in Immigration Rules was incorporated into a consolidated version of the Immigration Rules, which can be found under the 'Laws & Policy' page at: [www.bia.homeoffice.gov.uk](http://www.bia.homeoffice.gov.uk), where there are also copies of all the Statements of Changes in Immigration Rules issued since May 2003.

**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 Qualification Directive set a deadline of 10 October 2006 for Member States to comply with its provisions. The Directive was subject to a public consultation exercise and a summary of this can be found on the Home Office and Border and Immigration Agency website. In the response to Article 23 on family unity, the UK stated that the Immigration Rules would be amended to include family unity for family members of persons granted HP. Although to date these provisions have not been included in the Immigration Rules, family reunion has been available as a matter of policy. The inclusion of the family reunion provision in the Rules was delayed due to a review of this policy.

## **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.
- 8.2 There is no identifiable impact on the public sector.
- 8.3 A Race Equality Impact Assessment has been prepared, and found that the change has no impact on Race Equality issues.

## **9. Contact**

- 9.1 The Home Office's Immigration Enquiry Bureau on telephone: 0870-6067766 or by e-mail: [indpublicenquiries@ind.homeoffice.gsi.gov.uk](mailto:indpublicenquiries@ind.homeoffice.gsi.gov.uk) can answer any queries regarding the instrument.