

# OISC LEVELS 2 AND 3 EXAM RESOURCE BOOK

JANUARY 2015 VERSION

The November 2014 version of this resource book has been updated to include amendments to the Immigration (EEA) Regulations 2006 introduced by the Immigration (European Economic Area) (Amendment) (No. 3) Regulations 2014, and by the addition of Regulation 29AA to the extract of those regulations. There has also been a correction to the text of para 323 of HC395.

Although great care has been taken in the compilation and preparation of this book to ensure accuracy, the OISC cannot in any circumstances accept responsibility for any errors or omissions.

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# Immigration Act 1971

## Sections 1, 3(5), 3(6)

### 1 General principles

(1) All those who are in this Act expressed to have the right of abode in the United Kingdom shall be free to live in, and to come and go into and from, the United Kingdom without let or hindrance except such as may be required under and in accordance with this Act to enable their right to be established or as may be otherwise lawfully imposed on any person.

(2) Those not having that right may live, work and settle in the United Kingdom by permission and subject to such regulation and control of their entry into, stay in and departure from the United Kingdom as is imposed by this Act; and indefinite leave to enter or remain in the United Kingdom shall, by virtue of this provision be treated as having been given under this Act to those in the United Kingdom at its coming into force, if they are then settled there (and not exempt under this Act from the provisions relating to leave to enter or remain).

(3) Arrival in and departure from the United Kingdom on a local journey from or to any of the Islands (that is to say, the Channel Islands and Isle of Man) or the Republic of Ireland shall not be subject to control under this Act, nor shall a person require leave to enter the United Kingdom on so arriving, except in so far as any of those places is for any purpose excluded from this subsection under the powers conferred by this Act; and in this Act the United Kingdom and those places, or such of them as are not so excluded, are collectively referred to as "the common travel area".

(4) The rules laid down by the Secretary of State as to the practice to be followed in the administration of this Act for regulating the entry into and stay in the United Kingdom of persons not having the right of abode shall include provision for admitting (in such cases and subject to such restrictions as may be provided by the rules, and subject or not to conditions as to length of stay or otherwise) persons coming for the purpose of taking employment, or for purposes of study, or as visitors, or as dependants of persons lawfully in or entering the United Kingdom.

(5) . . .

### 3 General provisions for regulation and control

(5) A person who is not a British citizen is liable to deportation from the United Kingdom if—

- (a) the Secretary of State deems his deportation to be conducive to the public good; or
- (b) another person to whose family he belongs is or has been ordered to be deported.

(6) Without prejudice to the operation of subsection (5) above, a person who is not a British citizen shall also be liable to deportation from the United Kingdom if, after he has attained the age of seventeen, he is convicted of an offence for which he is punishable with imprisonment and on his conviction is recommended for deportation by a court empowered by this Act to do so.

## Section 3C

### 3C Continuation of leave pending variation decision

(1) This section applies if—

- (a) a person who has limited leave to enter or remain in the United Kingdom applies to the Secretary of State for variation of the leave,
- (b) the application for variation is made before the leave expires, and
- (c) the leave expires without the application for variation having been decided.

(2) The leave is extended by virtue of this section during any period when—

- (a) the application for variation is neither decided nor withdrawn,
  - (b) an appeal under section 82(1) of the Nationality, Asylum and Immigration Act 2002 could be brought, while the appellant is in the United Kingdom against the decision on the application for variation (ignoring any possibility of an appeal out of time with permission),
  - (c) an appeal under that section against that decision, brought while the appellant is in the United Kingdom, is pending (within the meaning of section 104 of that Act), or
  - (d) an administrative review of the decision on the application for variation—
    - (i) could be sought, or
    - (ii) is pending.
- (3) Leave extended by virtue of this section shall lapse if the applicant leaves the United Kingdom.
- (4) A person may not make an application for variation of his leave to enter or remain in the United Kingdom while that leave is extended by virtue of this section.
- (5) But subsection (4) does not prevent the variation of the application mentioned in subsection (1)(a).
- (6) The Secretary of State may make regulations determining when an application is decided for the purposes of this section; and the regulations—
- (a) may make provision by reference to receipt of a notice,
  - (b) may provide for a notice to be treated as having been received in specified circumstances,
  - (c) may make different provision for different purposes or circumstances,
  - (d) shall be made by statutory instrument, and
  - (e) shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (7) In this section—
- “administrative review” means a review conducted under the immigration rules;
- the question of whether an administrative review is pending is to be determined in accordance with the immigration rules.

**Section 24-25B, 26**

**24 Illegal entry and similar offences**

- (1) A person who is not a British citizen shall be guilty of an offence punishable on summary conviction with a fine of not more than level 5 on the standard scale or with imprisonment for not more than six months, or with both, in any of the following cases:—
- (a) if contrary to this Act he knowingly enters the United Kingdom in breach of a deportation order or without leave;
  - (aa) . . .
  - (b) if, having only a limited leave to enter or remain in the United Kingdom, he knowingly either—
    - (i) remains beyond the time limited by the leave; or
    - (ii) fails to observe a condition of the leave;

(c) if, having lawfully entered the United Kingdom without leave by virtue of section 8(1) above, he remains without leave beyond the time allowed by section 8(1);

(d) if, without reasonable excuse, he fails to comply with any requirement imposed on him under Schedule 2 to this Act to report to a medical officer of health, or to attend, or submit to a test or examination, as required by such an officer;

(e) if, without reasonable excuse, he fails to observe any restriction imposed on him under Schedule 2 or 3 to this Act as to residence, as to his employment or occupation or as to reporting to the police, to an immigration officer or to the Secretary of State;

(f) if he disembarks in the United Kingdom from a ship or aircraft after being placed on board under Schedule 2 or 3 to this Act with a view to his removal from the United Kingdom;

(g) if he embarks in contravention of a restriction imposed by or under an Order in Council under section 3(7) of this Act.

(1A) A person commits an offence under subsection (1)(b)(i) above on the day when he first knows that the time limited by his leave has expired and continues to commit it throughout any period during which he is in the United Kingdom thereafter; but a person shall not be prosecuted under that provision more than once in respect of the same limited leave.

(2) . . .

(3) The extended time limit for prosecutions which is provided for by section 28 below shall apply to offences under subsection (1)(a) and (c) above.

(4) In proceedings for an offence against subsection (1)(a) above of entering the United Kingdom without leave,—

(a) any stamp purporting to have been imprinted on a passport or other travel document by an immigration officer on a particular date for the purpose of giving leave shall be presumed to have been duly so imprinted, unless the contrary is proved;

(b) proof that a person had leave to enter the United Kingdom shall lie on the defence if, but only if, he is shown to have entered within six months before the date when the proceedings were commenced.

## **24A Deception**

(1) A person who is not a British citizen is guilty of an offence if, by means which include deception by him—

(a) he obtains or seeks to obtain leave to enter or remain in the United Kingdom; or

(b) he secures or seeks to secure the avoidance, postponement or revocation of enforcement action against him.

(2) “Enforcement action”, in relation to a person, means—

(a) the giving of directions for his removal from the United Kingdom (“directions”) under Schedule 2 to this Act or section 10 of the Immigration and Asylum Act 1999;

(b) the making of a deportation order against him under section 5 of this Act; or

(c) his removal from the United Kingdom in consequence of directions or a deportation order.

(3) A person guilty of an offence under this section is liable—

(a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both; or

(b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or

to both.

(4) . . .

## **25 Assisting unlawful immigration to member State**

(1) A person commits an offence if he—

(a) does an act which facilitates the commission of a breach of immigration law by an individual who is not a citizen of the European Union,

(b) knows or has reasonable cause for believing that the act facilitates the commission of a breach of immigration law by the individual, and

(c) knows or has reasonable cause for believing that the individual is not a citizen of the European Union.

(2) In subsection (1) “immigration law” means a law which has effect in a member State and which controls, in respect of some or all persons who are not nationals of the State, entitlement to—

(a) enter the State,

(b) transit across the State, or

(c) be in the State.

(3) A document issued by the government of a member State certifying a matter of law in that State—

(a) shall be admissible in proceedings for an offence under this section, and

(b) shall be conclusive as to the matter certified.

(4) Subsection (1) applies to things done whether inside or outside the United Kingdom.

(6) A person guilty of an offence under this section shall be liable—

(a) on conviction on indictment, to imprisonment for a term not exceeding 14 years, to a fine or to both, or

(b) on summary conviction, to imprisonment for a term not exceeding six months, to a fine not exceeding the statutory maximum or to both.

(7) In this section—

(a) a reference to a member State includes a reference to a State on a list prescribed for the purposes of this section by order of the Secretary of State (to be known as the “Section 25 List of Schengen Acquis States”), and

(b) a reference to a citizen of the European Union includes a reference to a person who is a national of a State on that list.

(8) An order under subsection (7)(a)—

(a) may be made only if the Secretary of State thinks it necessary for the purpose of complying with the United Kingdom’s obligations under the EU Treaties,

(b) may include transitional, consequential or incidental provision,

(c) shall be made by statutory instrument, and

(d) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

## **25A Helping asylum-seeker to enter United Kingdom**

(1) A person commits an offence if—

(a) he knowingly and for gain facilitates the arrival in, or the entry into, the United Kingdom of an individual, and

(b) he knows or has reasonable cause to believe that the individual is an asylum-seeker.

(2) In this section “asylum-seeker” means a person who intends to claim that to remove him from or require him to leave the United Kingdom would be contrary to the United Kingdom’s obligations under—

(a) the Refugee Convention (within the meaning given by section 167(1) of the Immigration and Asylum Act 1999 (c 33) (interpretation)), or

(b) the Human Rights Convention (within the meaning given by that section).

(3) Subsection (1) does not apply to anything done by a person acting on behalf of an organisation which—

(a) aims to assist asylum-seekers, and

(b) does not charge for its services.

(4) Subsections (4) and (6) of section 25 apply for the purpose of the offence in subsection (1) of this section as they apply for the purpose of the offence in subsection (1) of that section.

### **25B Assisting entry to United Kingdom in breach of deportation or exclusion order**

(1) A person commits an offence if he—

(a) does an act which facilitates a breach of a deportation order in force against an individual who is a citizen of the European Union, and

(b) knows or has reasonable cause for believing that the act facilitates a breach of the deportation order.

(2) Subsection (3) applies where the Secretary of State personally directs that the exclusion from the United Kingdom of an individual who is a citizen of the European Union is conducive to the public good.

(3) A person commits an offence if he—

(a) does an act which assists the individual to arrive in, enter or remain in the United Kingdom,

(b) knows or has reasonable cause for believing that the act assists the individual to arrive in, enter or remain in the United Kingdom, and

(c) knows or has reasonable cause for believing that the Secretary of State has personally directed that the individual’s exclusion from the United Kingdom is conducive to the public good.

(4) Subsections (4) and (6) of section 25 apply for the purpose of an offence under this section as they apply for the purpose of an offence under that section.

### **26 General offences in connection with administration of Act**

(1) A person shall be guilty of an offence punishable on summary conviction with a fine of not more than level 5 on the standard scale or with imprisonment for not more than six months, or with both, in any of the following cases—

(a) if, without reasonable excuse, he refuses or fails to submit to examination under Schedule 2 to this Act;

(b) if, without reasonable excuse, he refuses or fails to furnish or produce any information in his possession, or any documents in his possession or control, which he is on an examination under that

Schedule required to furnish or produce;

(c) if on any such examination or otherwise he makes or causes to be made to an immigration officer or other person lawfully acting in the execution of a relevant enactment a return, statement or representation which he knows to be false or does not believe to be true;

(d) if, without lawful authority, he alters any certificate of entitlement, entry clearance, work permit or other document issued or made under or for the purposes of this Act, or uses for the purposes of this Act, or has in his possession for such use, any passport, certificate of entitlement, entry clearance, work permit or other document which he knows or has reasonable cause to believe to be false;

(e) if, without reasonable excuse, he fails to complete and produce a landing or embarkation card in accordance with any order under Schedule 2 to this Act;

(f) if, without reasonable excuse, he fails to comply with any requirement or regulations under section 4(3) or of an order under section 4(4) above;

(g) if, without reasonable excuse, he obstructs an immigration officer or other person lawfully acting in the execution of this Act.

(2) The extended time limit for prosecutions which is provided for by section 28 below shall apply to offences under subsection (1)(c) and (d) above.

(3) "Relevant enactment" means—

(a) this Act;

(b) the Immigration Act 1988;

(c) the Asylum and Immigration Appeals Act 1993 (apart from section 4 or 5); . . .

(d) the Immigration and Asylum Act 1999 (apart from Part VI); or

(e) the Nationality, Immigration and Asylum Act 2002 (apart from Part 5)

**Schedule 2, paras 2(1), 8(1), 16(1), 21(1)-(2), 29(1) and (6), 31(1) and (2)**

**Examination by immigration officers, and medical examination**

**2**

(1) An immigration officer may examine any persons who have arrived in the United Kingdom by ship or aircraft (including transit passengers, members of the crew and others not seeking to enter the United Kingdom) for the purpose of determining—

(a) whether any of them is or is not a British citizen; and

(b) whether, if he is not, he may or may not enter the United Kingdom without leave; and

(c) whether, if he may not—

(i) he has been given leave which is still in force,

(ii) he should be given leave and for what period or on what conditions (if any), or

(iii) he should be refused leave.

**Removal of persons refused leave to enter and illegal entrants**

**8**

(1) Where a person arriving in the United Kingdom is refused leave to enter, an immigration officer may, subject to sub-paragraph (2) below—

(a) give the captain of the ship or aircraft in which he arrives directions requiring the captain to remove him from the United Kingdom in that ship or aircraft; or



(b) give the owners or agents of that ship or aircraft directions requiring them to remove him from the United Kingdom in any ship or aircraft specified or indicated in the directions, being a ship or aircraft of which they are the owners or agents; or

(c) give those owners or agents . . . directions requiring them to make arrangements for his removal from the United Kingdom in any ship or aircraft specified or indicated in the direction to a country or territory so specified being either—

(i) a country of which he is a national or citizen; or

(ii) a country or territory in which he has obtained a passport or other document of identity; or

(iii) a country or territory in which he embarked for the United Kingdom; or

(iv) a country or territory to which there is reason to believe that he will be admitted.

### ***Detention of persons liable to examination or removal***

#### **16**

(1) A person who may be required to submit to examination under paragraph 2 above may be detained under the authority of an immigration officer pending his examination and pending a decision to give or refuse him leave to enter.

(1A) A person whose leave to enter has been suspended under paragraph 2A may be detained under the authority of an immigration officer pending—

(a) completion of his examination under that paragraph; and

(b) a decision on whether to cancel his leave to enter.

(1B) A person who has been required to submit to further examination under paragraph 3(1A) may be detained under the authority of an immigration officer, for a period not exceeding 12 hours, pending the completion of the examination.

(2) If there are reasonable grounds for suspecting that a person is someone in respect of whom directions may be given under any of paragraphs 8 to 10A or 12 to 14, that person may be detained under the authority of an immigration officer pending—

(a) a decision whether or not to give such directions;

(b) his removal in pursuance of such directions.

(3) A person on board a ship or aircraft may, under the authority of an immigration officer, be removed from the ship or aircraft for detention under this paragraph; but if an immigration officer so requires the captain of a ship or aircraft shall prevent from disembarking in the United Kingdom any person who has arrived in the United Kingdom in the ship or aircraft and been refused leave to enter, and the captain may for that purpose detain him in custody on board the ship or aircraft.

(4) The captain of a ship or aircraft, if so required by an immigration officer, shall prevent from disembarking in the United Kingdom or before the directions for his removal have been fulfilled any person placed on board the ship or aircraft under paragraph 11 or 15 above, and the captain may for that purpose detain him in custody on board the ship or aircraft.

(4A) . . .

### ***Temporary admission or release of persons liable to detention***

#### **21**

(1) A person liable to detention or detained under paragraph 16(1), (1A) or (2) above may, under the written authority of an immigration officer, be temporarily admitted to the United Kingdom without being detained or be released from detention; but this shall not prejudice a later exercise of the power to detain him.

(2) So long as a person is at large in the United Kingdom by virtue of this paragraph, he shall be subject to such restrictions as to residence, as to his employment or occupation and as to reporting to the police or an immigration officer as may from time to time be notified to him in writing by an immigration officer.

### ***Grant of bail pending appeal***

#### **29**

(1) Where a person (in the following provisions of this Schedule referred to as “an appellant”) has an appeal pending under Part 5 of the Nationality, Immigration and Asylum Act 2002 and is for the time being detained under Part I of this Schedule, he may be released on bail in accordance with this paragraph.

### ***Forfeiture of recognizances***

#### **31**

(1) Where under paragraph 29 above (as it applies in England and Wales or in Northern Ireland) a recognizance is entered into conditioned for the appearance of an appellant before the Tribunal, and it appears to the Tribunal, to be forfeited, the Tribunal may by order declare it to be forfeited and adjudge the persons bound thereby, whether as principal or sureties, or any of them, to pay the sum in which they are respectively bound or such part of it, if any, as the Tribunal thinks fit.

(2) An order under this paragraph shall, for the purposes of this sub-paragraph, specify a magistrates' court or, in Northern Ireland, court of summary jurisdiction; and the recognizance shall be treated for the purposes of collection, enforcement and remission of the sum forfeited as having been forfeited by the court so specified.

### ***Schedule 3, paras 2(1)-2(3)***

### ***Detention or control pending deportation***

#### **2**

(1) Where a recommendation for deportation made by a court is in force in respect of any person, and that person is not detained in pursuance of the sentence or order of any court, he shall, unless the court by which the recommendation is made otherwise directs, or a direction is given under sub-paragraph (1A) below, be detained pending the making of a deportation order in pursuance of the recommendation, unless the Secretary of State directs him to be released pending further consideration of his case or he is released on bail.

(1A) Where—

(a) a recommendation for deportation made by a court on conviction of a person is in force in respect of him; and

(b) he appeals against his conviction or against that recommendation,

the powers that the court determining the appeal may exercise include power to direct him to be released without setting aside the recommendation.

(2) Where notice has been given to a person in accordance with regulations under section 105 of the Nationality, Immigration and Asylum Act 2002 (notice of decision) of a decision to make a deportation order against him, and he is not detained in pursuance of the sentence or order of a court, he may be detained under the authority of the Secretary of State pending the making of the deportation order.

(3) Where a deportation order is in force against any person, he may be detained under the authority of the Secretary of State pending his removal or departure from the United Kingdom (and if already detained by virtue of sub-paragraph (1) or (2) above when the order is made, shall continue to be detained unless he is released on bail or the Secretary of State directs otherwise).

# British Nationality Act 1981

## Sections 1-3

### *Acquisition after commencement*

#### **1 Acquisition by birth or adoption**

(1) A person born in the United Kingdom after commencement, or in a qualifying territory on or after the appointed day, shall be a British citizen if at the time of the birth his father or mother is—

- (a) a British citizen; or
- (b) settled in the United Kingdom or that territory.

(1A) A person born in the United Kingdom or a qualifying territory on or after the relevant day shall be a British citizen if at the time of the birth his father or mother is a member of the armed forces.

(2) A new-born infant who, after commencement, is found abandoned in the United Kingdom, or on or after the appointed day is found abandoned in a qualifying territory, shall, unless the contrary is shown, be deemed for the purposes of subsection (1)—

- (a) to have been born in the United Kingdom after commencement or in that territory on or after the appointed day; and
- (b) to have been born to a parent who at the time of the birth was a British citizen or settled in the United Kingdom or that territory.

(3) A person born in the United Kingdom after commencement who is not a British citizen by virtue of subsection (1), (1A) or (2) shall be entitled to be registered as a British citizen if, while he is a minor—

- (a) his father or mother becomes a British citizen or becomes settled in the United Kingdom; and
- (b) an application is made for his registration as a British citizen.

(3A) A person born in the United Kingdom on or after the relevant day who is not a British citizen by virtue of subsection (1), (1A) or (2) shall be entitled to be registered as a British citizen if, while he is a minor—

- (a) his father or mother becomes a member of the armed forces; and
- (b) an application is made for his registration as a British citizen

(4) A person born in the United Kingdom after commencement who is not a British citizen by virtue of subsection (1), (1A) or (2) shall be entitled, on an application for his registration as a British citizen made at any time after he has attained the age of ten years, to be registered as such a citizen if, as regards each of the first ten years of that person's life, the number of days on which he was absent from the United Kingdom in that year does not exceed 90.

(5) Where—

- (a) any court in the United Kingdom or, on or after the appointed day, any court in a qualifying territory makes an order authorising the adoption of a minor who is not a British citizen; or
- (b) a minor who is not a British citizen is adopted under a Convention adoption, effected under the law of a country or territory outside the United Kingdom,

that minor shall, if the requirements of subsection (5A) are met, be a British citizen as from the date on which the order is made or the Convention adoption is effected, as the case may be.

(5A) Those requirements are that on the date on which the order is made or the Convention adoption is effected (as the case may be)—

(a) the adopter or, in the case of a joint adoption, one of the adopters is a British citizen; and

(b) in a case within subsection (5)(b), the adopter or, in the case of a joint adoption, both of the adopters are habitually resident in the United Kingdom or in a designated territory.

(6) Where an order or a Convention adoption in consequence of which any person became a British citizen by virtue of subsection (5) ceases to have effect, whether on annulment or otherwise, the cesser shall not affect the status of that person as a British citizen.

(7) If in the special circumstances of any particular case the Secretary of State thinks fit, he may for the purposes of subsection (4) treat the person to whom the application relates as fulfilling the requirement specified in that subsection although, as regards any one or more of the first ten years of that person's life, the number of days on which he was absent from the United Kingdom in that year or each of the years in question exceeds 90.

(8) In this section and elsewhere in this Act “settled” has the meaning given by section 50 . . .

(9) The relevant day for the purposes of subsection (1A) or (3A) is the day appointed for the commencement of section 42 of the Borders, Citizenship and Immigration Act 2009 (which inserted those subsections).

## **2 Acquisition by descent**

(1) A person born outside the United Kingdom and the qualifying territories after commencement shall be a British citizen if at the time of the birth his father or mother—

(a) is a British citizen otherwise than by descent; or

(b) is a British citizen and is serving outside the United Kingdom and the qualifying territories in service to which this paragraph applies, his or her recruitment for that service having taken place in the United Kingdom or a qualifying territory; or

(c) is a British citizen and is serving outside the United Kingdom and the qualifying territories in service under an EU institution, his or her recruitment for that service having taken place in a country which at the time of the recruitment was a member of the European Union.

(2) Paragraph (b) of subsection (1) applies to—

(a) Crown service under the government of the United Kingdom or of a qualifying territory; and

(b) service of any description for the time being designated under subsection (3).

(3) For the purposes of this section the Secretary of State may by order made by statutory instrument designate any description of service which he considers to be closely associated with the activities outside the United Kingdom and the qualifying territories of Her Majesty's government in the United Kingdom or in a qualifying territory.

(4) Any order made under subsection (3) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

## **3 Acquisition by registration: minors**

(1) If while a person is a minor an application is made for his registration as a British citizen, the Secretary of State may, if he thinks fit, cause him to be registered as such a citizen.

(2) A person born outside the United Kingdom and the qualifying territories shall be entitled, on an application for his registration as a British citizen made while he is a minor, to be registered as such a citizen if the requirements specified in subsection (3) or, in the case of a person born stateless, the requirements specified in paragraphs (a) and (b) of that subsection, are fulfilled in the case of either that person's father or his mother (“the parent in question”).

- (3) The requirements referred to in subsection (2) are—
- (a) that the parent in question was a British citizen by descent at the time of the birth; and
  - (b) that the father or mother of the parent in question—
    - (i) was a British citizen otherwise than by descent at the time of the birth of the parent in question; or
    - (ii) became a British citizen otherwise than by descent at commencement, or would have become such a citizen otherwise than by descent at commencement but for his or her death; and
  - (c) that, as regards some period of three years ending with a date not later than the date of the birth—
    - (i) the parent in question was in the United Kingdom or a qualifying territory at the beginning of that period; and
    - (ii) the number of days on which the parent in question was absent from the United Kingdom and the qualifying territories in that period does not exceed 270.
- (4) . . .
- (5) A person born outside the United Kingdom and the qualifying territories shall be entitled, on an application for his registration as a British citizen made while he is a minor, to be registered as such a citizen if the following requirements are satisfied, namely—
- (a) that at the time of that person's birth his father or mother was a British citizen by descent; and
  - (b) subject to subsection (6), that that person and his father and mother were in the United Kingdom or a qualifying territory at the beginning of the period of three years ending with the date of the application and that, in the case of each of them, the number of days on which the person in question was absent from the United Kingdom and the qualifying territories in that period does not exceed 270; and
  - (c) subject to subsection (6), that the consent of his father and mother to the registration has been signified in the prescribed manner.
- (6) In the case of an application under subsection (5) of the registration of a person as a British citizen—
- (a) if his father or mother died, or their marriage or civil partnership was terminated, on or before the date of the application, or his father and mother were legally separated on that date, the references to his father and mother in paragraph (b) of that subsection shall be read either as references to his father or as references to his mother; and
  - (b) if his father or mother died on or before that date, the reference to his father and mother in paragraph (c) of that subsection shall be read as a reference to either of them; . . .

## **6 Acquisition by naturalisation.**

- (1) If, on an application for naturalisation as a British citizen made by a person of full age and capacity, the Secretary of State is satisfied that the applicant fulfils the requirements of Schedule 1 for naturalisation as such a citizen under this subsection, he may, if he thinks fit, grant to him a certificate of naturalisation as such a citizen.
- (2) If, on an application for naturalisation as a British citizen made by a person of full age and capacity who on the date of the application is married to a British citizen, or is the civil partner of a British citizen the Secretary of State is satisfied that the applicant fulfils the requirements of Schedule 1 for naturalisation as such a citizen under this subsection, he may, if he thinks fit, grant to him a certificate of naturalisation as such a citizen.

## Schedule 1

### Naturalisation as a British citizen under section 6(1)

#### 1

(1) Subject to paragraph 2, the requirements for naturalisation as a British citizen under section 6(1) are, in the case of any person who applies for it—

(a) the requirements specified in sub-paragraph (2) of this paragraph, or the alternative requirement specified in sub-paragraph (3) of this paragraph; and

(b) that he is of good character; and

(c) that he has a sufficient knowledge of the English, Welsh or Scottish Gaelic language; and

(ca) that he has sufficient knowledge about life in the United Kingdom; and

(d) that either—

(i) his intentions are such that, in the event of a certificate of naturalisation as a British citizen being granted to him, his home or (if he has more than one) his principal home will be in the United Kingdom; or

(ii) he intends, in the event of such a certificate being granted to him, to enter into, or continue in, Crown service under the government of the United Kingdom, or service under an international organisation of which the United Kingdom or Her Majesty's government therein is a member, or service in the employment of a company or association established in the United Kingdom.

(2) The requirements referred to in sub-paragraph (1)(a) of this paragraph are—

(a) that the applicant was in the United Kingdom at the beginning of the period of five years ending with the date of the application, and that the number of days on which he was absent from the United Kingdom in that period does not exceed 450; and

(b) that the number of days on which he was absent from the United Kingdom in the period of twelve months so ending does not exceed 90; and

(c) that he was not at any time in the period of twelve months so ending subject under the immigration laws to any restriction on the period for which he might remain in the United Kingdom; and

(d) that he was not at any time in the period of five years so ending in the United Kingdom in breach of the immigration laws.

#### 2

(1) If in the special circumstances of any particular case the Secretary of State thinks fit, he may for the purposes of paragraph 1 do all or any of the following things, namely—

(a) treat the applicant as fulfilling the requirement specified in paragraph 1(2)(a) or paragraph 1(2)(b), or both, although the number of days on which he was absent from the United Kingdom in the period there mentioned exceeds the number there mentioned;

(a) treat the applicant as fulfilling the requirement specified in paragraph 1(2)(b) although the number of days on which the applicant was absent from the United Kingdom in a year of the qualifying period exceeds 90;

(b) treat the applicant as having been in the United Kingdom for the whole or any part of any period during which he would otherwise fall to be treated under paragraph 9(1) as having been absent;

(ba) treat the applicant as fulfilling the requirement specified in paragraph 1(2)(c) where the applicant has had a qualifying immigration status for only part of the qualifying period;

(bb) treat the applicant as fulfilling the requirement specified in paragraph 1(2)(d) where the applicant has had probationary citizenship leave but it expired in the qualifying period;

(c) disregard any such restriction as is mentioned in paragraph 1(2)(c), not being a restriction to which the applicant was subject on the date of the application;

(ca) treat the applicant as fulfilling the requirement specified in paragraph 1(2)(e) although the applicant has not been in continuous employment since the date of the grant mentioned there;

(d) treat the applicant as fulfilling the requirement specified in paragraph 1(2)(d) although he was in the United Kingdom in breach of the immigration laws in the period there mentioned qualifying period;

(e) waive the need to fulfil either or both of the requirements specified in paragraph 1(1)(c) and (ca) if he considers that because of the applicant's age or physical or mental condition it would be unreasonable to expect him to fulfil that requirement or those requirements.

(2) If in the special circumstances of a particular case that is an armed forces case or an exceptional Crown service case the Secretary of State thinks fit, the Secretary of State may for the purposes of paragraph 1 waive the need to fulfil all or any of the requirements specified in paragraph 1(2).

(3) An armed forces case is a case where, on the date of the application, the applicant is or has been a member of the armed forces.

(4) An exceptional Crown service case is a case where—

(a) the applicant is, on the date of the application, serving outside the United Kingdom in Crown service under the government of the United Kingdom; and

(b) the Secretary of State considers the applicant's performance in the service to be exceptional.

(5) In paragraph 1(2)(e) and sub-paragraph (1)(ca) of this paragraph, "employment" includes self-employment.

### **Naturalisation as a British citizen under section 6(2)**

#### **3**

Subject to paragraph 4, the requirements for naturalisation as a British citizen under section 6(2) are, in the case of any person who applies for it—

(a) that he was in the United Kingdom at the beginning of the period of three years ending with the date of the application, and that the number of days on which he was absent from the United Kingdom in that period does not exceed 270; and

(b) that the number of days on which he was absent from the United Kingdom in the period of twelve months so ending does not exceed 90; and

(c) that on the date of the application he was not subject under the immigration laws to any restriction on the period for which he might remain in the United Kingdom; and

(d) that he was not at any time in the period of three years ending with the date of the application in the United Kingdom in breach of the immigration laws; and

(e) the requirements specified in paragraph 1(1)(b), (c) and (ca).

## **Immigration and Asylum Act 1999**

### **Section 10**

#### **10 Removal of certain persons unlawfully in the United Kingdom**

(1) A person who is not a British citizen may be removed from the United Kingdom, in accordance with directions given by an immigration officer, if—

(a) having only a limited leave to enter or remain, he does not observe a condition attached to the leave or remains beyond the time limited by the leave;

(b) he uses deception in seeking (whether successfully or not) leave to remain; or

(ba) his indefinite leave to enter or remain has been revoked under section 76(3) of the Nationality, Immigration and Asylum Act 2002 (person ceasing to be refugee);

(c) directions . . . have been given for the removal, under this section, of a person . . . to whose family he belongs.

(2) Directions may not be given under subsection (1)(a) if the person concerned has made an application for leave to remain in accordance with regulations made under section 9.

(3) Directions for the removal of a person may not be given under subsection (1)(c) unless the Secretary of State has given the person written notice of the intention to remove him.

(4) A notice under subsection (3) may not be given if—

(a) the person whose removal under subsection (1)(a) or (b) is the cause of the proposed directions under subsection (1)(c) has left the United Kingdom, and

(b) more than eight weeks have elapsed since that person's departure.

(5) If a notice under subsection (3) is sent by first class post to a person's last known address, that subsection shall be taken to be satisfied at the end of the second day after the day of posting.

(5A) Directions for the removal of a person under subsection (1)(c) cease to have effect if he ceases to belong to the family of the person whose removal under subsection (1)(a) or (b) is the cause of the directions under subsection (1)(c).

(6) Directions under this section—

(a) may be given only to persons falling within a prescribed class;

(b) may impose any requirements of a prescribed kind.

(7) In relation to any such directions, paragraphs 10, 11, 16 to 18, 21 and 22 to 24 of Schedule 2 to the 1971 Act (administrative provisions as to control of entry), apply as they apply in relation to directions given under paragraph 8 of that Schedule.

(8) When a person is notified that a decision has been made to remove him in accordance with this section, the notification invalidates any leave to enter or remain in the United Kingdom previously given to him.

(9) The costs of complying with a direction given under this section (so far as reasonably incurred) must be met by the Secretary of State.

(10) A person shall not be liable to removal from the United Kingdom under this section at a time when section 7(1)(b) of the Immigration Act 1971 (Commonwealth and Irish citizens ordinarily resident in United Kingdom) would prevent a decision to deport him.



## 10 Removal of persons unlawfully in the United Kingdom

**[Note that this version of section 10 applies only to students and their dependants who have been refused an extension of stay following an application made on or after 20 October 2014<sup>1</sup>]**

(1) A person may be removed from the United Kingdom under the authority of the Secretary of State or an immigration officer if the person requires leave to enter or remain in the United Kingdom but does not have it.

(2) Where a person (“P”) is liable to be or has been removed from the United Kingdom under subsection (1), a member of P’s family who meets the following three conditions may also be removed from the United Kingdom under the authority of the Secretary of State or an immigration officer, provided that the Secretary of State or immigration officer has given the family member written notice of the intention to remove him or her.

(3) The first condition is that the family member is—

- (a) P’s partner,
- (b) P’s child, or a child living in the same household as P in circumstances where P has care of the child,
- (c) in a case where P is a child, P’s parent, or
- (d) an adult dependent relative of P.

(4) The second condition is that—

- (a) in a case where the family member has leave to enter or remain in the United Kingdom, that leave was granted on the basis of his or her family life with P;
- (b) in a case where the family member does not have leave to enter or remain in the United Kingdom, in the opinion of the Secretary of State or immigration officer the family member—
  - (i) would not, on making an application for such leave, be granted leave in his or her own right, but
  - (ii) would be granted leave on the basis of his or her family life with P, if P had leave to enter or remain.

(5) The third condition is that the family member is neither a British citizen, nor is he or she entitled to enter or remain in the United Kingdom by virtue of an enforceable EU right or of any provision made under section 2(2) of the European Communities Act 1972.

(6) A notice given to a family member under subsection (2) invalidates any leave to enter or remain in the United Kingdom previously given to the family member.

(7) For the purposes of removing a person from the United Kingdom under subsection (1) or (2), the Secretary of State or an immigration officer may give any such direction for the removal of the person as may be given under paragraphs 8 to 10 of Schedule 2 to the 1971 Act.

(8) But subsection (7) does not apply where a deportation order is in force against a person (and any directions for such a person’s removal must be given under Schedule 3 to the 1971 Act).

(9) The following paragraphs of Schedule 2 to the 1971 Act apply in relation to directions under

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<sup>1</sup> The Immigration Act 2014 (Commencement No. 3, Transitional and Saving Provisions) Order 2014

subsection (7) (and the persons subject to those directions) as they apply in relation to directions under paragraphs 8 to 10 of Schedule 2 (and the persons subject to those directions)—

- (a) paragraph 11 (placing of person on board ship or aircraft);
  - (b) paragraph 16(2) to (4) (detention of person where reasonable grounds for suspecting removal directions may be given or pending removal in pursuance of directions);
  - (c) paragraph 17 (arrest of person liable to be detained and search of premises for person liable to arrest);
  - (d) paragraph 18 (supplementary provisions on detention);
  - (e) paragraph 18A (search of detained person);
  - (f) paragraph 18B (detention of unaccompanied children);
  - (g) paragraphs 19 and 20 (payment of expenses of custody etc);
  - (h) paragraph 21 (temporary admission to UK of person liable to detention);
  - (i) paragraphs 22 to 25 (bail);
  - (j) paragraphs 25A to 25E (searches etc).
- (10) The Secretary of State may by regulations make further provision about—
- (a) the time period during which a family member may be removed under subsection (2);
  - (b) the service of a notice under subsection (2).
- (11) In this section “child” means a person who is under the age of 18.

### **Section 31**

#### **31 Defences based on Article 31(1) of the Refugee Convention**

(1) It is a defence for a refugee charged with an offence to which this section applies to show that, having come to the United Kingdom directly from a country where his life or freedom was threatened (within the meaning of the Refugee Convention), he—

- (a) presented himself to the authorities in the United Kingdom without delay;
- (b) showed good cause for his illegal entry or presence; and
- (c) made a claim for asylum as soon as was reasonably practicable after his arrival in the United Kingdom.

(2) If, in coming from the country where his life or freedom was threatened, the refugee stopped in another country outside the United Kingdom, subsection (1) applies only if he shows that he could not reasonably have expected to be given protection under the Refugee Convention in that other country.

(3) In England and Wales and Northern Ireland the offences to which this section applies are any offence, and any attempt to commit an offence, under—

- (a) Part I of the Forgery and Counterfeiting Act 1981 (forgery and connected offences);
- (aa) section 4 or 6 of the Identity Documents Act 2010;
- (b) section 24A of the 1971 Act (deception); or
- (c) section 26(1)(d) of the 1971 Act (falsification of documents).

(4) In Scotland, the offences to which this section applies are those—

(a) of fraud,

(b) of uttering a forged document,

(ba) under section 4 or 6 of the Identity Documents Act 2010,

(c) under section 24A of the 1971 Act (deception), or

(d) under section 26(1)(d) of the 1971 Act (falsification of documents),

and any attempt to commit any of those offences.

(5) A refugee who has made a claim for asylum is not entitled to the defence provided by subsection (1) in relation to any offence committed by him after making that claim.

(6) “Refugee” has the same meaning as it has for the purposes of the Refugee Convention.

(7) If the Secretary of State has refused to grant a claim for asylum made by a person who claims that he has a defence under subsection (1), that person is to be taken not to be a refugee unless he shows that he is.

(8) A person who—

(a) was convicted in England and Wales or Northern Ireland of an offence to which this section applies before the commencement of this section, but

(b) at no time during the proceedings for that offence argued that he had a defence based on Article 31(1),

may apply to the Criminal Cases Review Commission with a view to his case being referred to the Court of Appeal by the Commission on the ground that he would have had a defence under this section had it been in force at the material time.

(9) A person who—

(a) was convicted in Scotland of an offence to which this section applies before the commencement of this section, but

(b) at no time during the proceedings for that offence argued that he had a defence based on Article 31(1),

may apply to the Scottish Criminal Cases Review Commission with a view to his case being referred to the High Court of Justiciary by the Commission on the ground that he would have had a defence under this section had it been in force at the material time.

(10) The Secretary of State may by order amend—

(a) subsection (3), or

(b) subsection (4),

by adding offences to those for the time being listed there.

(11) Before making an order under subsection (10)(b), the Secretary of State must consult the Scottish Ministers.

## **Sections 82, 84, 91**

### **Immigration Advisers and Immigration Service Providers**

#### ***Interpretation***

## **82 Interpretation of Part V**

(1) In this Part—

“claim for asylum” means a claim that it would be contrary to the United Kingdom's obligations under—

- (a) the Refugee Convention, or
- (b) Article 3 of the Human Rights Convention,

for the claimant to be removed from, or required to leave, the United Kingdom;

“the Commissioner” means the Immigration Services Commissioner;

“the complaints scheme” means the scheme established under paragraph 5(1) of Schedule 5;

“designated judge” has the same meaning as in section 119(1) of the Courts and Legal Services Act 1990;

“designated professional body” has the meaning given by section 86;

“designated qualifying regulator” has the meaning given by section 86A;

“immigration advice” means advice which—

- (a) relates to a particular individual;
- (b) is given in connection with one or more relevant matters;
- (c) is given by a person who knows that he is giving it in relation to a particular individual and in connection with one or more relevant matters; and
- (d) is not given in connection with representing an individual before a court in criminal proceedings or matters ancillary to criminal proceedings;

“immigration services” means the making of representations on behalf of a particular individual—

- (a) in civil proceedings before a court, tribunal or adjudicator in the United Kingdom, or
- (b) in correspondence with a Minister of the Crown or government department,

in connection with one or more relevant matters;

“Minister of the Crown” has the same meaning as in the Ministers of the Crown Act 1975;

“qualified person” means a person who is qualified for the purposes of section 84;

“registered person” means a person who is registered with the Commissioner under section 85;

“relevant matters” means any of the following—

- (a) a claim for asylum;
- (b) an application for, or for the variation of, entry clearance or leave to enter or remain in the United Kingdom;
- (ba) an application for an immigration employment document;
- (c) unlawful entry into the United Kingdom;
- (d) nationality and citizenship under the law of the United Kingdom;
- (e) citizenship of the European Union;

- (f) admission to Member States under EU law;
- (g) residence in a Member State in accordance with rights conferred by or under Community law;
- (h) removal or deportation from the United Kingdom;
- (i) an application for bail under the Immigration Acts or under the Special Immigration Appeals Commission Act 1997;
- (j) an appeal against, or an application for judicial review in relation to, any decision taken in connection with a matter referred to in paragraphs (a) to (i); . . .

. . . .

(2) In this Part, references to the provision of immigration advice or immigration services are to the provision of such advice or services by a person—

(a) in the United Kingdom (regardless of whether the persons to whom they are provided are in the United Kingdom or elsewhere); and

(b) in the course of a business carried on (whether or not for profit) by him or by another person.

(3) In the definition of “relevant matters” in subsection (1) “immigration employment document” means—

(a) a work permit (within the meaning of section 33(1) of the Immigration Act 1971 (interpretation)), and

(b) any other document which relates to employment and is issued for a purpose of immigration rules or in connection with leave to enter or remain in the United Kingdom.

### ***The general prohibition***

#### **84 Provision of immigration services**

(1) No person may provide immigration advice or immigration services unless he is a qualified person.

(2) A person is a qualified person if he is—

(a) a registered person,

(b) authorised by a designated professional body to practise as a member of the profession whose members the body regulates,

(ba) a person authorised to provide immigration advice or immigration services by a designated qualifying regulator,

(c) the equivalent in an EEA State of—

(i) a registered person, or

(ii) a person within paragraph (b) or (ba),

(d) a person permitted, by virtue of exemption from a prohibition, to provide in an EEA State advice or services equivalent to immigration advice or services, or

(e) acting on behalf of, and under the supervision of, a person within any of paragraphs (a) to (d) (whether or not under a contract of employment).

(3) Subsection (2)(a) and (e) are subject to any limitation on the effect of a person's registration imposed under paragraph 2(2) of Schedule 6.

(3A) A person's entitlement to provide immigration advice or immigration services by virtue of subsection (2)(ba)—

(a) is subject to any limitation on that person's authorisation imposed by the regulatory arrangements of the designated qualifying regulator in question, and

(b) does not extend to the provision of such advice or services by the person other than in England and Wales (regardless of whether the persons to whom they are provided are in England and Wales or elsewhere).

(3B) In subsection (3A) “regulatory arrangements” has the same meaning as in the Legal Services Act 2007 (see section 21 of that Act).

(4) Subsection (1) does not apply to a person who—

(a) is certified by the Commissioner as exempt (“an exempt person”);

(b) is employed by an exempt person;

(c) works under the supervision of an exempt person or an employee of an exempt person; or

(d) who falls within a category of person specified in an order made by the Secretary of State for the purposes of this subsection.

(5) A certificate under subsection (4)(a) may relate only to a specified description of immigration advice or immigration services.

(6) Subsection (1) does not apply to a person—

(a) holding an office under the Crown, when acting in that capacity;

(b) employed by, or for the purposes of, a government department, when acting in that capacity;

(c) acting under the control of a government department; or

(d) otherwise exercising functions on behalf of the Crown.

(7) An exemption given under subsection (4) may be withdrawn by the Commissioner.

## ***Enforcement***

### **91 Offences**

(1) A person who provides immigration advice or immigration services in contravention of section 84 or of a restraining order is guilty of an offence and liable—

(a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both; or

(b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or to both.

(2) “Restraining order” means—

(a) a direction given by the First-tier Tribunal under section 89(8) or paragraph 9(3) of Schedule 5; or

(b) an order made by a disciplinary body under section 90(1).

(3) If an offence under this section committed by a body corporate is proved—

(a) to have been committed with the consent or connivance of an officer, or

(b) to be attributable to neglect on his part,

the officer as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.

(4) “Officer”, in relation to a body corporate, means a director, manager, secretary or other similar officer of the body, or a person purporting to act in such a capacity.

(5) If the affairs of a body corporate are managed by its members, subsection (3) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(6) If an offence under this section committed by a partnership in Scotland is proved—

(a) to have been committed with the consent or connivance of a partner, or

(b) to be attributable to neglect on his part,

the partner as well as the partnership is guilty of the offence and liable to be proceeded against and punished accordingly.

(7) “Partner” includes a person purporting to act as a partner.

## **Sections 94, 95**

### **Support for Asylum-Seekers**

#### ***Interpretation***

#### **94 Interpretation of Part VI**

(1) In this Part—

...

*“asylum-seeker” means a person who is not under 18 and has made a claim for asylum which has been recorded by the Secretary of State but which has not been determined;*

“asylum-seeker” means a person—

(a) who is at least 18 years old,

(b) who is in the United Kingdom,

(c) who has made a claim for asylum at a place designated by the Secretary of State,

(d) whose claim has been recorded by the Secretary of State, and

(e) whose claim has not been determined;

“claim for asylum” means a claim that it would be contrary to the United Kingdom's obligations under the Refugee Convention, or under Article 3 of the Human Rights Convention, for the claimant to be removed from, or required to leave, the United Kingdom;

“the Department” means the Department of Health and Social Services for Northern Ireland;

*“dependant”, in relation to an asylum-seeker or a supported person, means a person in the United Kingdom who—*

(a) *is his spouse;*

(b) *is a child of his, or of his spouse, who is under 18 and dependent on him; or*

(c) *falls within such additional category, if any, as may be prescribed;*

“dependant” in relation to an asylum-seeker or a supported person means a person who—

- (a) is in the United Kingdom, and
- (b) is within a prescribed class;

“the Executive” means the Northern Ireland Housing Executive;

“housing accommodation” includes flats, lodging houses and hostels;

“local authority” means—

- (a) in England and Wales, a county council, a county borough council, a district council, a London borough council, the Common Council of the City of London or the Council of the Isles of Scilly;
- (b) in Scotland, a council constituted under section 2 of the Local Government etc (Scotland) Act 1994;

“Northern Ireland authority” has the meaning given by section 110(9);

“supported person” means—

- (a) an asylum-seeker, or
- (b) a dependant of an asylum-seeker,

who has applied for support and for whom support is provided under section 95.

(2) References in this Part to support provided under section 95 include references to support which is provided under arrangements made by the Secretary of State under that section.

(3) *For the purposes of this Part, a claim for asylum is determined at the end of such period beginning—*

- (a) *on the day on which the Secretary of State notifies the claimant of his decision on the claim, or*
- (b) *if the claimant has appealed against the Secretary of State's decision, on the day on which the appeal is disposed of,*

*as may be prescribed.*

(3) A claim for asylum shall be treated as determined for the purposes of subsection (1) at the end of such period as may be prescribed beginning with—

- (a) the date on which the Secretary of State notifies the claimant of his decision on the claim, or
- (b) if the claimant appeals against the Secretary of State's decision, the date on which the appeal is disposed of.

(3A) A person shall continue to be treated as an asylum-seeker despite paragraph (e) of the definition of “asylum-seeker” in subsection (1) while—

- (a) his household includes a dependant child who is under 18, and
- (b) he does not have leave to enter or remain in the United Kingdom.

(4) An appeal is disposed of when it is no longer pending for the purposes of the Immigration Acts or the Special Immigration Appeals Commission Act 1997.

(5) *If an asylum-seeker's household includes a child who is under 18 and a dependant of his, he is to be treated (for the purposes of this Part) as continuing to be an asylum-seeker while—*

- (a) *the child is under 18; and*
- (b) *he and the child remain in the United Kingdom.*



(6) *Subsection (5) does not apply if, on or after the determination of his claim for asylum, the asylum-seeker is granted leave to enter or remain in the United Kingdom (whether or not as a result of that claim).*

(7) For the purposes of this Part, the Secretary of State may inquire into, and decide, the age of any person.

(8) A notice under subsection (3) must be given in writing.

(9) If such a notice is sent by the Secretary of State by first class post, addressed—

- (a) to the asylum-seeker's representative, or
- (b) to the asylum-seeker's last known address,

it is to be taken to have been received by the asylum-seeker on the second day after the day on which it was posted.

### ***Provision of support***

#### **95 Persons for whom support may be provided**

(1) The Secretary of State may provide, or arrange for the provision of, support for—

- (a) asylum-seekers, or
- (b) dependants of asylum-seekers,

who appear to the Secretary of State to be destitute or to be likely to become destitute within such period as may be prescribed.

(2) *In prescribed circumstances, a person who would otherwise fall within subsection (1) is excluded.*

(3) *For the purposes of this section, a person is destitute if—*

- (a) *he does not have adequate accommodation or any means of obtaining it (whether or not his other essential living needs are met); or*
- (b) *he has adequate accommodation or the means of obtaining it, but cannot meet his other essential living needs.*

(4) *If a person has dependants, subsection (3) is to be read as if the references to him were references to him and his dependants taken together.*

(5) *In determining, for the purposes of this section, whether a person's accommodation is adequate, the Secretary of State—*

- (a) *must have regard to such matters as may be prescribed for the purposes of this paragraph; but*
- (b) *may not have regard to such matters as may be prescribed for the purposes of this paragraph or to any of the matters mentioned in subsection (6).*

(6) *Those matters are—*

- (a) *the fact that the person concerned has no enforceable right to occupy the accommodation;*
- (b) *the fact that he shares the accommodation, or any part of the accommodation, with one or more other persons;*
- (c) *the fact that the accommodation is temporary;*
- (d) *the location of the accommodation.*

(7) *In determining, for the purposes of this section, whether a person's other essential living needs are met, the Secretary of State—*

(a) *must have regard to such matters as may be prescribed for the purposes of this paragraph; but*

(b) *may not have regard to such matters as may be prescribed for the purposes of this paragraph.*

(8) *The Secretary of State may by regulations provide that items or expenses of such a description as may be prescribed are, or are not, to be treated as being an essential living need of a person for the purposes of this Part.*

(2) Where a person has dependants, he and his dependants are destitute for the purpose of this section if they do not have and cannot obtain both—

(a) adequate accommodation, and

(b) food and other essential items.

(3) Where a person does not have dependants, he is destitute for the purpose of this section if he does not have and cannot obtain both—

(a) adequate accommodation, and

(b) food and other essential items.

(4) In determining whether accommodation is adequate for the purposes of subsection (2) or (3) the Secretary of State must have regard to any matter prescribed for the purposes of this subsection.

(5) In determining whether accommodation is adequate for the purposes of subsection (2) or (3) the Secretary of State may not have regard to—

(a) whether a person has an enforceable right to occupy accommodation,

(b) whether a person shares all or part of accommodation,

(c) whether accommodation is temporary or permanent,

(d) the location of accommodation, or

(e) any other matter prescribed for the purposes of this subsection.

(6) The Secretary of State may by regulations specify items which are or are not to be treated as essential items for the purposes of subsections (2) and (3).

(7) The Secretary of State may by regulations—

(a) provide that a person is not to be treated as destitute for the purposes of this Part in specified circumstances;

(b) enable or require the Secretary of State in deciding whether a person is destitute to have regard to income which he or a dependant of his might reasonably be expected to have;

(c) enable or require the Secretary of State in deciding whether a person is destitute to have regard to support which is or might reasonably be expected to be available to the person or a dependant of his;

(d) enable or require the Secretary of State in deciding whether a person is destitute to have regard to assets of a prescribed kind which he or a dependant of his has or might reasonably be expected to have;

(e) make provision as to the valuation of assets.

(9) Support may be provided subject to conditions.

(9A) A condition imposed under subsection (9) may, in particular, relate to—

(a) any matter relating to the use of the support provided, or

(b) compliance with a restriction imposed under paragraph 21 of Schedule 2 to the 1971 Act (temporary admission or release from detention) or paragraph 2 or 5 of Schedule 3 to that Act (restriction pending deportation).

(10) The conditions must be set out in writing.

(11) A copy of the conditions must be given to the supported person.

(12) Schedule 8 gives the Secretary of State power to make regulations supplementing this section.

(13) Schedule 9 makes temporary provision for support in the period before the coming into force of this section.

## **Nationality Immigration and Asylum Act 2002**

### **Section 72**

#### **Removal**

#### **72 Serious criminal**

(1) This section applies for the purpose of the construction and application of Article 33(2) of the Refugee Convention (exclusion from protection).

(2) A person shall be presumed to have been convicted by a final judgment of a particularly serious crime and to constitute a danger to the community of the United Kingdom if he is—

- (a) convicted in the United Kingdom of an offence, and
- (b) sentenced to a period of imprisonment of at least two years.

(3) A person shall be presumed to have been convicted by a final judgment of a particularly serious crime and to constitute a danger to the community of the United Kingdom if—

- (a) he is convicted outside the United Kingdom of an offence,
- (b) he is sentenced to a period of imprisonment of at least two years, and
- (c) he could have been sentenced to a period of imprisonment of at least two years had his conviction been a conviction in the United Kingdom of a similar offence.

(4) A person shall be presumed to have been convicted by a final judgment of a particularly serious crime and to constitute a danger to the community of the United Kingdom if—

- (a) he is convicted of an offence specified by order of the Secretary of State, or
- (b) he is convicted outside the United Kingdom of an offence and the Secretary of State certifies that in his opinion the offence is similar to an offence specified by order under paragraph (a).

(5) An order under subsection (4)—

- (a) must be made by statutory instrument, and
- (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(6) A presumption under subsection (2), (3) or (4) that a person constitutes a danger to the community is rebuttable by that person.

(7) A presumption under subsection (2), (3) or (4) does not apply while an appeal against conviction or sentence—

- (a) is pending, or
- (b) could be brought (disregarding the possibility of appeal out of time with leave).

(8) Section 34(1) of the Anti-terrorism, Crime and Security Act 2001 (c 24) (no need to consider gravity of fear or threat of persecution) applies for the purpose of considering whether a presumption mentioned in subsection (6) has been rebutted as it applies for the purpose of considering whether Article 33(2) of the Refugee Convention applies.

(9) Subsection (10) applies where—

- (a) a person appeals under section 82, 83, 83A or 101 of this Act or under section 2 of the Special Immigration Appeals Commission Act 1997 (c 68) wholly or partly on the ground that to remove him

from or to require him to leave the United Kingdom would breach the United Kingdom's obligations under the Refugee Convention, and

(b) the Secretary of State issues a certificate that presumptions under subsection (2), (3) or (4) apply to the person (subject to rebuttal).

(10) The . . . Tribunal or Commission hearing the appeal—

(a) must begin substantive deliberation on the appeal by considering the certificate, and

(b) if in agreement that presumptions under subsection (2), (3) or (4) apply (having given the appellant an opportunity for rebuttal) must dismiss the appeal in so far as it relies on the ground specified in subsection (9)(a).

(10A) Subsection (10) also applies in relation to the Upper Tribunal when it acts under section 12(2)(b)(ii) of the Tribunals, Courts and Enforcement Act 2007.

(11) For the purposes of this section—

(a) “the Refugee Convention” means the Convention relating to the Status of Refugees done at Geneva on 28th July 1951 and its Protocol, and

(b) a reference to a person who is sentenced to a period of imprisonment of at least two years—

(i) does not include a reference to a person who receives a suspended sentence (*unless at least two years of the sentence are not suspended*) (unless a court subsequently orders that the sentence or any part of it is to take effect),

(ia) does not include a reference to a person who is sentenced to a period of imprisonment of at least two years only by virtue of being sentenced to consecutive sentences which amount in aggregate to more than two years,

(ii) includes a reference to a person who is sentenced to detention, or ordered or directed to be detained, in an institution other than a prison (including, in particular, a hospital or an institution for young offenders), and

(iii) includes a reference to a person who is sentenced to imprisonment or detention, or ordered or directed to be detained, for an indeterminate period (provided that it may last for two years).

### **Section 76-78**

#### **76 Revocation of leave to enter or remain**

(1) The Secretary of State may revoke a person's indefinite leave to enter or remain in the United Kingdom if the person—

(a) is liable to deportation, but

(b) cannot be deported for legal reasons.

(2) The Secretary of State may revoke a person's indefinite leave to enter or remain in the United Kingdom if—

(a) the leave was obtained by deception

(3) The Secretary of State may revoke a person's indefinite leave to enter or remain in the United Kingdom if the person, or someone of whom he is a dependant, ceases to be a refugee as a result of—

(a) voluntarily availing himself of the protection of his country of nationality,

(b) voluntarily re-acquiring a lost nationality,

(c) acquiring the nationality of a country other than the United Kingdom and availing himself of its protection, or

(d) voluntarily establishing himself in a country in respect of which he was a refugee.

(4) In this section—

“indefinite leave” has the meaning given by section 33(1) of the Immigration Act 1971 (c 77) (interpretation),

“liable to deportation” has the meaning given by section 3(5) and (6) of that Act (deportation),

“refugee” has the meaning given by the Convention relating to the Status of Refugees done at Geneva on 28th July 1951 and its Protocol, and

(5) A power under subsection (1) or (2) to revoke leave may be exercised—

(a) in respect of leave granted before this section comes into force;

(b) in reliance on anything done before this section comes into force.

(6) A power under subsection (3) to revoke leave may be exercised—

(a) in respect of leave granted before this section comes into force, but

(b) only in reliance on action taken after this section comes into force.

(7) In section 10(1) of the Immigration and Asylum Act 1999 (removal of persons unlawfully in United Kingdom) after paragraph (b) (and before the word “or”) there shall be inserted—

“(ba) his indefinite leave to enter or remain has been revoked under section 76(3) of the Nationality, Immigration and Asylum Act 2002 (person ceasing to be refugee);”.

## **78 No removal while appeal pending**

(1) While a person's appeal under section 82(1) is pending he may not be—

(a) removed from the United Kingdom in accordance with a provision of the Immigration Acts, or

(b) required to leave the United Kingdom in accordance with a provision of the Immigration Acts.

(2) In this section “pending” has the meaning given by section 104.

(3) Nothing in this section shall prevent any of the following while an appeal is pending—

(a) the giving of a direction for the appellant's removal from the United Kingdom,

(b) the making of a deportation order in respect of the appellant (subject to section 79), or

(c) the taking of any other interim or preparatory action.

(4) This section applies only to an appeal brought while the appellant is in the United Kingdom in accordance with section 92.

## **78A Restriction on removal of children and their parents etc**

(1) This section applies in a case where—

(a) a child is to be removed from or required to leave the United Kingdom, and

(b) an individual who—

(i) is a parent of the child or has care of the child, and

(ii) is living in a household in the United Kingdom with the child,

is also to be removed from or required to leave the United Kingdom (a “relevant parent or carer”).

(2) During the period of 28 days beginning with the day on which the relevant appeal rights are exhausted—

(a) the child may not be removed from or required to leave the United Kingdom; and

(b) a relevant parent or carer may not be removed from or required to leave the United Kingdom if, as a result, no relevant parent or carer would remain in the United Kingdom.

(3) The relevant appeal rights are exhausted at the time when—

(a) neither the child, nor any relevant parent or carer, could bring an appeal under section 82 (ignoring any possibility of an appeal out of time with permission), and

(b) no appeal brought by the child, or by any relevant parent or carer, is pending within the meaning of section 104.

(4) Nothing in this section prevents any of the following during the period of 28 days mentioned in subsection (2)—

(a) the giving of a direction for the removal of a person from the United Kingdom,

(b) the making of a deportation order in respect of a person, or

(c) the taking of any other interim or preparatory action.

(5) In this section—

“child” means a person who is aged under 18;

references to a person being removed from or required to leave the United Kingdom are to the person being removed or required to leave in accordance with a provision of the Immigration Acts

### **Sections 82-97, 104, 120**

**[Note that many of the appeals provisions below have been repealed or amended so far as students and their dependants who have been refused an extension of stay following an application made on or after 20 October 2014, and those who become a foreign criminal within the definition in section 117D(2) of the 2002 Act (and their family members) on or after 20th October 2014 are concerned<sup>2</sup>. They remain in this book, unamended, as they continue to apply to all other migrants.]**

#### **82 Right of appeal: general**

(1) Where an immigration decision is made in respect of a person he may appeal to the Tribunal.

(2) In this Part “immigration decision” means—

(a) refusal of leave to enter the United Kingdom,

(b) refusal of entry clearance,

(c) refusal of a certificate of entitlement under section 10 of this Act,

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<sup>2</sup> The Immigration Act 2014 (Commencement No. 3, Transitional and Saving Provisions) Order 2014

(d) refusal to vary a person's leave to enter or remain in the United Kingdom if the result of the refusal is that the person has no leave to enter or remain,

(e) variation of a person's leave to enter or remain in the United Kingdom if when the variation takes effect the person has no leave to enter or remain,

(f) revocation under section 76 of this Act of indefinite leave to enter or remain in the United Kingdom,

(g) a decision that a person is to be removed from the United Kingdom by way of directions under section 10(1)(a), (b), (ba) or (c) of the Immigration and Asylum Act 1999 (c 33) (removal of person unlawfully in United Kingdom),

(h) a decision that an illegal entrant is to be removed from the United Kingdom by way of directions under paragraphs 8 to 10 of Schedule 2 to the Immigration Act 1971 (c 77) (control of entry: removal),

(ha) a decision that a person is to be removed from the United Kingdom by way of directions under section 47 of the Immigration, Asylum and Nationality Act 2006 (removal: persons with statutorily extended leave),

(i) a decision that a person is to be removed from the United Kingdom by way of directions given by virtue of paragraph 10A of that Schedule (family),

(ia) a decision that a person is to be removed from the United Kingdom by way of directions under paragraph 12(2) of Schedule 2 to the Immigration Act 1971 (c 77) (seamen and aircrews),

(ib) a decision to make an order under section 2A of that Act (deprivation of right of abode),

(j) a decision to make a deportation order under section 5(1) of that Act, and

(k) refusal to revoke a deportation order under section 5(2) of that Act.

(3) . . .

(3A) Subsection (2)(j) does not apply to a decision to make a deportation order which states that it is made in accordance with section 32(5) of the UK Borders Act 2007; but—

(a) a decision that section 32(5) applies is an immigration decision for the purposes of this Part, and

(b) a reference in this Part to an appeal against an automatic deportation order is a reference to an appeal against a decision of the Secretary of State that section 32(5) applies.

(4) The right of appeal under subsection (1) is subject to the exceptions and limitations specified in this Part.

## **82 Right of appeal to the Tribunal**

**[Note that this version of section 82 applies only to students and their dependants who have been refused an extension of stay following an application made on or after 20 October 2014, and to those who become a foreign criminal within the definition in section 117D(2) of the 2002 Act (and their family members) on or after 20th October 2014<sup>3</sup>]**

(1) A person (“P”) may appeal to the Tribunal where—

(a) the Secretary of State has decided to refuse a protection claim made by P,

(b) the Secretary of State has decided to refuse a human rights claim made by P, or

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<sup>3</sup> The Immigration Act 2014 (Commencement No. 3, Transitional and Saving Provisions) Order 2014



(c) the Secretary of State has decided to revoke P's protection status.

(2) For the purposes of this Part—

(a) a "protection claim" is a claim made by a person ("P") that removal of P from the United Kingdom—

(i) would breach the United Kingdom's obligations under the Refugee Convention, or

(ii) would breach the United Kingdom's obligations in relation to persons eligible for a grant of humanitarian protection;

(b) P's protection claim is refused if the Secretary of State makes one or more of the following decisions—

(i) that removal of P from the United Kingdom would not breach the United Kingdom's obligations under the Refugee Convention;

(ii) that removal of P from the United Kingdom would not breach the United Kingdom's obligations in relation to persons eligible for a grant of humanitarian protection;

(c) a person has "protection status" if the person has been granted leave to enter or remain in the United Kingdom as a refugee or as a person eligible for a grant of humanitarian protection;

(d) "humanitarian protection" is to be construed in accordance with the immigration rules;

(e) "refugee" has the same meaning as in the Refugee Convention.

(3) The right of appeal under subsection (1) is subject to the exceptions and limitations specified in this Part.

### **83 Appeal: asylum claim**

(1) This section applies where a person has made an asylum claim and—

(a) his claim has been rejected by the Secretary of State, but

(b) he has been granted leave to enter or remain in the United Kingdom for a period exceeding one year (or for periods exceeding one year in aggregate).

(2) The person may appeal to the Tribunal against the rejection of his asylum claim.

### **83A Appeal: variation of limited leave**

(1) This section applies where—

(a) a person has made an asylum claim,

(b) he was granted limited leave to enter or remain in the United Kingdom as a refugee within the meaning of the Refugee Convention,

(c) a decision is made that he is not a refugee, and

(d) following the decision specified in paragraph (c) he has limited leave to enter or remain in the United Kingdom otherwise than as a refugee.

(2) The person may appeal to the Tribunal against the decision to curtail or to refuse to extend his limited leave.

### **84 Grounds of appeal**

(1) An appeal under section 82(1) against an immigration decision must be brought on one or more of the following grounds—

- (a) that the decision is not in accordance with immigration rules;
  - (b) that the decision is unlawful by virtue of . . . Article 20A of the Race Relations (Northern Ireland) Order 1997 (discrimination by public authorities);
  - (c) that the decision is unlawful under section 6 of the Human Rights Act 1998 (c 42) (public authority not to act contrary to Human Rights Convention) as being incompatible with the appellant's Convention rights;
  - (d) that the appellant is an EEA national or a member of the family of an EEA national and the decision breaches the appellant's rights under the EU Treaties in respect of entry to or residence in the United Kingdom;
  - (e) that the decision is otherwise not in accordance with the law;
  - (f) that the person taking the decision should have exercised differently a discretion conferred by immigration rules;
  - (g) that removal of the appellant from the United Kingdom in consequence of the immigration decision would breach the United Kingdom's obligations under the Refugee Convention or would be unlawful under section 6 of the Human Rights Act 1998 as being incompatible with the appellant's Convention rights.
- (2) In subsection (1)(d) "EEA national" means a national of a State which is a contracting party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 (as it has effect from time to time).
- (3) An appeal under section 83 must be brought on the grounds that removal of the appellant from the United Kingdom would breach the United Kingdom's obligations under the Refugee Convention.
- (4) An appeal under section 83A must be brought on the grounds that removal of the appellant from the United Kingdom would breach the United Kingdom's obligations under the Refugee Convention.

#### **84 Grounds of Appeal**

**[Note that this version of section 84 applies only to students and their dependants who have been refused an extension of stay following an application made on or after 20 October 2014, and to those who become a foreign criminal within the definition in section 117D(2) of the 2002 Act (and their family members) on or after 20th October 2014<sup>4</sup>]**

- (1) An appeal under section 82(1)(a) (refusal of protection claim) must be brought on one or more of the following grounds—
- (a) that removal of the appellant from the United Kingdom would breach the United Kingdom's obligations under the Refugee Convention;
  - (b) that removal of the appellant from the United Kingdom would breach the United Kingdom's obligations in relation to persons eligible for a grant of humanitarian protection;
  - (c) that removal of the appellant from the United Kingdom would be unlawful under section 6 of the Human Rights Act 1998 (public authority not to act contrary to Human Rights Convention).
- (2) An appeal under section 82(1)(b) (refusal of human rights claim) must be brought on the ground that the decision is unlawful under section 6 of the Human Rights Act 1998.
- (3) An appeal under section 82(1)(c) (revocation of protection status) must be brought on one or more of the following grounds—

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<sup>4</sup> The Immigration Act 2014 (Commencement No. 3, Transitional and Saving Provisions) Order 2014

(a) that the decision to revoke the appellant's protection status breaches the United Kingdom's obligations under the Refugee Convention;

(b) that the decision to revoke the appellant's protection status breaches the United Kingdom's obligations in relation to persons eligible for a grant of humanitarian protection.

### **85 Matters to be considered**

(1) An appeal under section 82(1) against a decision shall be treated by the Tribunal as including an appeal against any decision in respect of which the appellant has a right of appeal under section 82(1).

(2) If an appellant under section 82(1) makes a statement under section 120, the Tribunal shall consider any matter raised in the statement which constitutes a ground of appeal of a kind listed in section 84(1) against the decision appealed against.

(3) Subsection (2) applies to a statement made under section 120 whether the statement was made before or after the appeal was commenced.

(4) On an appeal under section 82(1), 83(2) or 83A(2) against a decision the Tribunal may consider evidence about any matter which it thinks relevant to the substance of the decision, including evidence which concerns a matter arising after the date of the decision.

(5) But subsection (4) is subject to the exceptions in section 85A.

### **85 Matters to be considered**

**[Note that this version of section 85 applies only to students and their dependants who have been refused an extension of stay following an application made on or after 20 October 2014, and to those who become a foreign criminal within the definition in section 117D(2) of the 2002 Act (and their family members) on or after 20th October 2014<sup>5</sup>]**

(1) An appeal under section 82(1) against a decision shall be treated by the Tribunal as including an appeal against any decision in respect of which the appellant has a right of appeal under section 82(1).

(2) If an appellant under section 82(1) makes a statement under section 120, the Tribunal shall consider any matter raised in the statement which constitutes a ground of appeal of a kind listed in section 84(1) against the decision appealed against.

(3) Subsection (2) applies to a statement made under section 120 whether the statement was made before or after the appeal was commenced.

(4) On an appeal under section 82(1), 83(2) or 83A(2) against a decision the Tribunal may consider evidence about any matter which it thinks relevant to the substance of the decision, including evidence which concerns a matter arising after the date of the decision.

(5) But the Tribunal must not consider a new matter unless the Secretary of State has given the Tribunal consent to do so.

(6) A matter is a "new matter" if—

(a) it constitutes a ground of appeal of a kind listed in section 84, and

(b) the Secretary of State has not previously considered the matter in the context of—

(i) the decision mentioned in section 82(1), or

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<sup>5</sup> The Immigration Act 2014 (Commencement No. 3, Transitional and Saving Provisions) Order 2014

(ii) a statement made by the appellant under section 120.

### **85A Matters to be considered: new evidence: exceptions**

(1) This section sets out the exceptions mentioned in section 85(5).

(2) Exception 1 is that in relation to an appeal under section 82(1) against an immigration decision of a kind specified in section 82(2)(b) or (c) the Tribunal may consider only the circumstances appertaining at the time of the decision.

(3) Exception 2 applies to an appeal under section 82(1) if—

(a) the appeal is against an immigration decision of a kind specified in section 82(2)(a) or (d),

(b) the immigration decision concerned an application of a kind identified in immigration rules as requiring to be considered under a “Points Based System”, and

(c) the appeal relies wholly or partly on grounds specified in section 84(1)(a), (e) or (f).

(4) Where Exception 2 applies the Tribunal may consider evidence adduced by the appellant only if it—

(a) was submitted in support of, and at the time of making, the application to which the immigration decision related,

(b) relates to the appeal in so far as it relies on grounds other than those specified in subsection (3)(c),

(c) is adduced to prove that a document is genuine or valid, or

(d) is adduced in connection with the Secretary of State's reliance on a discretion under immigration rules, or compliance with a requirement of immigration rules, to refuse an application on grounds not related to the acquisition of “points” under the “Points Based System”.

(5) Tribunal Procedure Rules may make provision, for the purposes of subsection (4)(a), about the circumstances in which evidence is to be treated, or not treated, as submitted in support of, and at the time of making, an application.

### **86 Determination of appeal**

(1) This section applies on an appeal under section 82(1), 83 or 83A.

(2) The Tribunal must determine—

(a) any matter raised as a ground of appeal (whether or not by virtue of section 85(1)), and

(b) any matter which section 85 requires it to consider.

(3) The Tribunal must allow the appeal in so far as it thinks that—

(a) a decision against which the appeal is brought or is treated as being brought was not in accordance with the law (including immigration rules), or

(b) a discretion exercised in making a decision against which the appeal is brought or is treated as being brought should have been exercised differently.

(4) For the purposes of subsection (3) a decision that a person should be removed from the United Kingdom under a provision shall not be regarded as unlawful if it could have been lawfully made by reference to removal under another provision.

(5) In so far as subsection (3) does not apply, the Tribunal shall dismiss the appeal.

(6) Refusal to depart from or to authorise departure from immigration rules is not the exercise of a

discretion for the purposes of subsection (3)(b).

### **87 Successful appeal: direction**

(1) If the Tribunal allows an appeal under section 82, 83 or 83A it may give a direction for the purpose of giving effect to its decision.

(2) A person responsible for making an immigration decision shall act in accordance with any relevant direction under subsection (1).

(3) But a direction under this section shall not have effect while—

(a) an application for permission to appeal under section 11 or 13 of the Tribunals, Courts and Enforcement Act 2007 could be made or is awaiting determination,

(b) permission to appeal to the Upper Tribunal or a court under either of those sections has been granted and the appeal is awaiting determination, or

(c) an appeal has been remitted under section 12 or 14 of that Act and is awaiting determination.

(4) *A direction under subsection (1) shall be treated as part of the Tribunal's decision on the appeal for the purposes of section 11 of the Tribunals, Courts and Enforcement Act 2007.*

### **Exceptions and limitations**

#### **88 Ineligibility**

(1) This section applies to an immigration decision of a kind referred to in section 82(2)(a), (b), (d) or (e).

(2) A person may not appeal under section 82(1) against an immigration decision which is taken on the grounds that he or a person of whom he is a dependant—

(a) does not satisfy a requirement as to age, nationality or citizenship specified in immigration rules,

(b) does not have an immigration document of a particular kind (or any immigration document),

(ba) has failed to supply a medical report or a medical certificate in accordance with a requirement of immigration rules,

(c) is seeking to be in the United Kingdom for a period greater than that permitted in his case by immigration rules, or

(d) is seeking to enter or remain in the United Kingdom for a purpose other than one for which entry or remaining is permitted in accordance with immigration rules.

(3) In subsection (2)(b) "immigration document" means—

(a) entry clearance,

(b) a passport,

(c) a work permit or other immigration employment document within the meaning of section 122, and

(d) a document which relates to a national of a country other than the United Kingdom and which is designed to serve the same purpose as a passport.

(4) Subsection (2) does not prevent the bringing of an appeal on any or all of the grounds referred to in section 84(1)(b), (c) and (g).

#### **88A Ineligibility: entry clearance 88A Entry clearance**

(1) *A person may not appeal under section 82(1) against refusal of entry clearance if the decision to refuse is taken on grounds which—*

- (a) *relate to a provision of immigration rules, and*
- (b) *are specified for the purpose of this section by order of the Secretary of State.*

(2) *Subsection (1)—*

- (a) *does not prevent the bringing of an appeal on either or both of the grounds referred to in section 84(1)(b) and (c), and*
- (b) *is without prejudice to the effect of section 88 in relation to an appeal under section 82(1) against refusal of entry clearance.*

(1) A person may not appeal under section 82(1) against refusal of an application for entry clearance unless the application was made for the purpose of—

- (a) visiting a person of a class or description prescribed by regulations for the purpose of this subsection, or
- (b) entering as the dependant of a person in circumstances prescribed by regulations for the purpose of this subsection.

(2) Regulations under subsection (1) may, in particular—

- (a) make provision by reference to whether the applicant is a member of the family (within such meaning as the regulations may assign) of the person he seeks to visit;
- (b) provide for the determination of whether one person is dependent on another;
- (c) make provision by reference to the circumstances of the applicant, of the person whom the applicant seeks to visit or on whom he depends, or of both (and the regulations may, in particular, include provision by reference to—
  - (i) whether or not a person is lawfully settled in the United Kingdom within such meaning as the regulations may assign;
  - (ii) the duration of two individuals' residence together);
- (d) make provision by reference to an applicant's purpose in entering as a dependant;
- (e) make provision by reference to immigration rules;
- (f) confer a discretion.

(3) Subsection (1)—

- (a) does not prevent the bringing of an appeal on either or both of the grounds referred to in section 84(1)(b) and (c), and
- (b) is without prejudice to the effect of section 88 in relation to an appeal under section 82(1) against refusal of entry clearance.

### **89 Refusal of leave to enter**

(1) A person may not appeal under section 82(1) against refusal of leave to enter the United Kingdom unless—

- (a) on his arrival in the United Kingdom he had entry clearance, and
- (b) the purpose of entry specified in the entry clearance is the same as that specified in his application for leave to enter.

(2) Subsection (1) does not prevent the bringing of an appeal on any or all of the grounds referred to in section 84(1)(b), (c) and (g).

### **90 Non-family visitor**

(1) *A person who applies for entry clearance for the purpose of entering the United Kingdom as a visitor may appeal under section 82(1) against refusal of entry clearance only if the application was made for the purpose of visiting a member of the applicant's family.*

(2) *In subsection (1) the reference to a member of the applicant's family shall be construed in accordance with regulations.*

(3) *Regulations under subsection (2) may, in particular, make provision wholly or partly by reference to the duration of two individuals' residence together.*

(4) *Subsection (1) does not prevent the bringing of an appeal on either or both of the grounds referred to in section 84(1)(b) and (c).*

### **91 Student**

(1) *A person may not appeal under section 82(1) against refusal of entry clearance if he seeks it—*

(a) *in order to follow a course of study for which he has been accepted and which will not last more than six months,*

(b) *in order to study but without having been accepted for a course, or*

(c) *as the dependant of a person seeking entry clearance for a purpose described in paragraph (a) or (b).*

(2) *Subsection (1) does not prevent the bringing of an appeal on either or both of the grounds referred to in section 84(1)(b) and (c).*

### **92 Appeal from within United Kingdom: general**

(1) A person may not appeal under section 82(1) while he is in the United Kingdom unless his appeal is of a kind to which this section applies.

(2) This section applies to an appeal against an immigration decision of a kind specified in section 82(2)(c), (d), (e), (f), (ha) and (j).

(3) This section also applies to an appeal against refusal of leave to enter the United Kingdom if—

(a) at the time of the refusal the appellant is in the United Kingdom, and

(b) on his arrival in the United Kingdom the appellant had entry clearance.

(3A) But this section does not apply by virtue of subsection (3) if subsection (3B) or (3C) applies to the refusal of leave to enter.

(3B) This subsection applies to a refusal of leave to enter which is a deemed refusal under paragraph 2A(9) of Schedule 2 to the Immigration Act 1971 (c 77) resulting from cancellation of leave to enter by an immigration officer—

(a) under paragraph 2A(8) of that Schedule, and

(b) on the grounds specified in paragraph 2A(2A) of that Schedule.

(3C) This subsection applies to a refusal of leave to enter which specifies that the grounds for refusal are that the leave is sought for a purpose other than that specified in the entry clearance.

(3D) This section also applies to an appeal against refusal of leave to enter the United Kingdom if at the time of the refusal the appellant—

- (a) is in the United Kingdom,
- (b) has a work permit, and
- (c) is any of the following (within the meaning of the British Nationality Act 1981 (c 61))—
  - (i) a British overseas territories citizen,
  - (ii) a British Overseas citizen,
  - (iii) a British National (Overseas),
  - (iv) a British protected person, or
  - (v) a British subject.
- (4) This section also applies to an appeal against an immigration decision if the appellant—
  - (a) has made an asylum claim, or a human rights claim, while in the United Kingdom, or
  - (b) is an EEA national or a member of the family of an EEA national and makes a claim to the Secretary of State that the decision breaches the appellant's rights under the EU Treaties in respect of entry to or residence in the United Kingdom.

## **92 Place from which an appeal may be brought or continued**

**[Note that this version of section 92 applies only to students and their dependants who have been refused an extension of stay following an application made on or after 20 October 2014, and to those who become a foreign criminal within the definition in section 117D(2) of the 2002 Act (and their family members) on or after 20th October 2014<sup>6</sup>]**

- (1) This section applies to determine the place from which an appeal under section 82(1) may be brought or continued.
- (2) In the case of an appeal under section 82(1)(a) (protection claim appeal), the appeal must be brought from outside the United Kingdom if—
- (a) the claim to which the appeal relates has been certified under section 94(1) or (7) (claim clearly unfounded or removal to safe third country), or
  - (b) paragraph 5(3)(a), 10(3), 15(3) or 19(b) of Schedule 3 to the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 (removal of asylum seeker to safe third country) applies.

Otherwise, the appeal must be brought from within the United Kingdom.

- (3) In the case of an appeal under section 82(1)(b) (human rights claim appeal) where the claim to which the appeal relates was made while the appellant was in the United Kingdom, the appeal must be brought from outside the United Kingdom if—
- (a) the claim to which the appeal relates has been certified under section 94(1) or (7) (claim clearly unfounded or removal to safe third country) or section 94B (certification of human rights claims made by persons liable to deportation), or
  - (b) paragraph 5(3)(b) or (4), 10(4), 15(4) or 19(c) of Schedule 3 to the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 (removal of asylum seeker to safe third country) applies.

Otherwise, the appeal must be brought from within the United Kingdom.

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<sup>6</sup> The Immigration Act 2014 (Commencement No. 3, Transitional and Saving Provisions) Order 2014



(4) In the case of an appeal under section 82(1)(b) (human rights claim appeal) where the claim to which the appeal relates was made while the appellant was outside the United Kingdom, the appeal must be brought from outside the United Kingdom.

(5) In the case of an appeal under section 82(1)(c) (revocation of protection status)—

(a) the appeal must be brought from within the United Kingdom if the decision to which the appeal relates was made while the appellant was in the United Kingdom;

(b) the appeal must be brought from outside the United Kingdom if the decision to which the appeal relates was made while the appellant was outside the United Kingdom.

(6) If, after an appeal under section 82(1)(a) or (b) has been brought from within the United Kingdom, the Secretary of State certifies the claim to which the appeal relates under section 94(1) or (7) or section 94B, the appeal must be continued from outside the United Kingdom.

(7) Where a person brings or continues an appeal under section 82(1)(a) (refusal of protection claim) from outside the United Kingdom, for the purposes of considering whether the grounds of appeal are satisfied, the appeal is to be treated as if the person were not outside the United Kingdom.

(8) Where an appellant brings an appeal from within the United Kingdom but leaves the United Kingdom before the appeal is finally determined, the appeal is to be treated as abandoned unless the claim to which the appeal relates has been certified under section 94(1) or (7) or section 94B.

#### **94 Appeal from within United Kingdom: unfounded human rights or asylum claim**

(1) This section applies to an appeal under section 82(1) where the appellant has made an asylum claim or a human rights claim (or both).

(1A) A person may not bring an appeal against an immigration decision of a kind specified in section 82(2)(c), (d), (e) or (ha) in reliance on section 92(2) if the Secretary of State certifies that the claim or claims mentioned in subsection (1) above is or are clearly unfounded.

(2) A person may not bring an appeal to which this section applies in reliance on section 92(4)(a) if the Secretary of State certifies that the claim or claims mentioned in subsection (1) is or are clearly unfounded.

(3) If the Secretary of State is satisfied that an asylum claimant or human rights claimant is entitled to reside in a State listed in subsection (4) he shall certify the claim under subsection (2) unless satisfied that it is not clearly unfounded.

(4) Those States are—

...

(k) the Republic of Albania,

...

(n) Jamaica,

(o) Macedonia,

(p) the Republic of Moldova, . . .

...

(s) Bolivia,

(t) Brazil,

(u) Ecuador,

- (v) . . .
- (w) South Africa, and
- (x) Ukraine,
- (y) India,
- (z) Mongolia,
- (aa) Ghana (in respect of men),
- (bb) Nigeria (in respect of men),
- (cc) Bosnia-Herzegovina,
- (dd) Gambia (in respect of men),
- (ee) Kenya (in respect of men),
- (ff) Liberia (in respect of men),
- (gg) Malawi (in respect of men),
- (hh) Mali (in respect of men),
- (ii) Mauritius,
- (jj) Montenegro,
- (kk) Peru,
- (ll) Serbia,
- (mm) Sierra Leone (in respect of men),
- (nn) Kosovo,
- (oo) South Korea.

(5) The Secretary of State may by order add a State, or part of a State, to the list in subsection (4) if satisfied that—

(a) there is in general in that State or part no serious risk of persecution of persons entitled to reside in that State or part, and

(b) removal to that State or part of persons entitled to reside there will not in general contravene the United Kingdom's obligations under the Human Rights Convention.

(5A) If the Secretary of State is satisfied that the statements in subsection (5) (a) and (b) are true of a State or part of a State in relation to a description of person, an order under subsection (5) may add the State or part to the list in subsection (4) in respect of that description of person.

(5B) Where a State or part of a State is added to the list in subsection (4) in respect of a description of person, subsection (3) shall have effect in relation to a claimant only if the Secretary of State is satisfied that he is within that description (as well as being satisfied that he is entitled to reside in the State or part).

(5C) A description for the purposes of subsection (5A) may refer to—

- (a) gender,
- (b) language,

- (c) race,
- (d) religion,
- (e) nationality,
- (f) membership of a social or other group,
- (g) political opinion, or
- (h) any other attribute or circumstance that the Secretary of State thinks appropriate.

(5D) In deciding whether the statements in subsection (5) (a) and (b) are true of a State or part of a State, the Secretary of State—

(a) shall have regard to all the circumstances of the State or part (including its laws and how they are applied), and

(b) shall have regard to information from any appropriate source (including other member States and international organisations).

(6) The Secretary of State may by order amend the list in subsection (4) so as to omit a State or part added under subsection (5); and the omission may be—

- (a) general, or
- (b) effected so that the State or part remains listed in respect of a description of person.

(6A) Subsection (3) shall not apply in relation to an asylum claimant or human rights claimant who—

(a) is the subject of a certificate under section 2 or 70 of the Extradition Act 2003 (c 41),

(b) is in custody pursuant to arrest under section 5 of that Act,

(c) is the subject of a provisional warrant under section 73 of that Act,

(d) is the subject of an authority to proceed under section 7 of the Extradition Act 1989 (c 33) or an order under paragraph 4(2) of Schedule 1 to that Act, or

(e) is the subject of a provisional warrant under section 8 of that Act or of a warrant under paragraph 5(1)(b) of Schedule 1 to that Act.

(6B) A certificate under subsection (1A) or (2) may not be issued (and subsection (3) shall not apply) in relation to an appeal under section 82(2)(d) or (e) against a decision relating to leave to enter or remain in the United Kingdom, where the leave was given in circumstances specified for the purposes of this subsection by order of the Secretary of State.

(7) A person may not bring an appeal to which this section applies in reliance on section 92(4) if the Secretary of State certifies that—

(a) it is proposed to remove the person to a country of which he is not a national or citizen, and

(b) there is no reason to believe that the person's rights under the Human Rights Convention will be breached in that country.

(8) In determining whether a person in relation to whom a certificate has been issued under subsection (7) may be removed from the United Kingdom, the country specified in the certificate is to be regarded as—

(a) a place where a person's life and liberty is not threatened by reason of his race, religion, nationality, membership of a particular social group, or political opinion, and

(b) a place from which a person will not be sent to another country otherwise than in accordance with the Refugee Convention.

(9) Where a person in relation to whom a certificate is issued under this section subsequently brings an appeal under section 82(1) while outside the United Kingdom, the appeal shall be considered as if he had not been removed from the United Kingdom.

#### **94A European Common List of Safe Countries of Origin**

(1) The Secretary of State shall by order prescribe a list of States to be known as the “European Common List of Safe Countries of Origin”.

(2) Subsections (3) and (4) apply where a person makes an asylum claim or a human rights claim (or both) and that person is—

(a) a national of a State which is listed in the European Common List of Safe Countries of Origin, or

(b) a Stateless person who was formerly habitually resident in such a State.

(3) The Secretary of State shall consider the claim or claims mentioned in subsection (2) to be unfounded unless satisfied that there are serious grounds for considering that the State in question is not safe in the particular circumstances of the person mentioned in that subsection.

(4) The Secretary of State shall also certify the claim or claims mentioned in subsection (2) under section 94(2) unless satisfied that the claim or claims is or are not clearly unfounded.

(5) An order under subsection (1)—

(a) may be made only if the Secretary of State thinks it necessary for the purpose of complying with the United Kingdom's obligations under EU law,

(b) may include transitional, consequential or incidental provision,

(c) shall be made by statutory instrument, and

(d) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

#### **94B Appeal from within the United Kingdom: certification of human rights claims made by persons liable to deportation**

(1) This section applies where a human rights claim has been made by a person (“P”) who is liable to deportation under—

(a) section 3(5)(a) of the Immigration Act 1971 (Secretary of State deeming deportation conducive to public good), or

(b) section 3(6) of that Act (court recommending deportation following conviction).

(2) The Secretary of State may certify the claim if the Secretary of State considers that, despite the appeals process not having been begun or not having been exhausted, removal of P to the country or territory to which P is proposed to be removed, pending the outcome of an appeal in relation to P's claim, would not be unlawful under section 6 of the Human Rights Act 1998 (public authority not to act contrary to Human Rights Convention).

(3) The grounds upon which the Secretary of State may certify a claim under subsection (2) include (in particular) that P would not, before the appeals process is exhausted, face a real risk of serious irreversible harm if removed to the country or territory to which P is proposed to be removed.

#### **95 Appeal from outside United Kingdom: removal**

A person who is outside the United Kingdom may not appeal under section 82(1) on the ground specified in section 84(1)(g) (except in a case to which section 94(9) applies).

## **96 Earlier right of appeal**

(1) An appeal under section 82(1) against an immigration decision (“the new decision”) in respect of a person may not be brought if the Secretary of State or an immigration officer certifies—

(a) that the person was notified of a right of appeal under that section against another immigration decision (“the old decision”) (whether or not an appeal was brought and whether or not any appeal brought has been determined),

(b) that the claim or application to which the new decision relates relies on a matter that could have been raised in an appeal against the old decision, and

(c) that, in the opinion of the Secretary of State or the immigration officer, there is no satisfactory reason for that matter not having been raised in an appeal against the old decision.

(2) An appeal under section 82(1) against an immigration decision (“the new decision”) in respect of a person may not be brought if the Secretary of State or an immigration officer certifies—

(a) that the person received a notice under section 120 by virtue of an application other than that to which the new decision relates or by virtue of a decision other than the new decision,

(b) that the new decision relates to an application or claim which relies on a matter that should have been, but has not been, raised in a statement made in response to that notice, and

(c) that, in the opinion of the Secretary of State or the immigration officer, there is no satisfactory reason for that matter not having been raised in a statement made in response to that notice.

(4) In subsection (1) “notified” means notified in accordance with regulations under section 105.

(5) Subsections (1) and (2) apply to prevent a person's right of appeal whether or not he has been outside the United Kingdom since an earlier right of appeal arose or since a requirement under section 120 was imposed.

(6) In this section a reference to an appeal under section 82(1) includes a reference to an appeal under section 2 of the Special Immigration Appeals Commission Act 1997 (c 68) which is or could be brought by reference to an appeal under section 82(1).

(7) A certificate under subsection (1) or (2) shall have no effect in relation to an appeal instituted before the certificate is issued.

## **97 National security, &c**

(1) An appeal under section 82(1), 83(2) or 83A(2) against a decision in respect of a person may not be brought or continued if the Secretary of State certifies that the decision is or was taken—

(a) by the Secretary of State wholly or partly on a ground listed in subsection (2), or

(b) in accordance with a direction of the Secretary of State which identifies the person to whom the decision relates and which is given wholly or partly on a ground listed in subsection (2).

(2) The grounds mentioned in subsection (1) are that the person's exclusion or removal from the United Kingdom is—

(a) in the interests of national security, or

(b) in the interests of the relationship between the United Kingdom and another country.

(3) An appeal under section 82(1), 83(2) or 83A(2) against a decision may not be brought or continued if the Secretary of State certifies that the decision is or was taken wholly or partly in reliance on information which in his opinion should not be made public—

(a) in the interests of national security,

- (b) in the interests of the relationship between the United Kingdom and another country, or
  - (c) otherwise in the public interest.
- (4) In subsections (1)(a) and (b) and (3) a reference to the Secretary of State is to the Secretary of State acting in person.

**104 Pending appeal**

(1) An appeal under section 82(1) is pending during the period—

- (a) beginning when it is instituted, and
- (b) ending when it is finally determined, withdrawn or abandoned (or when it lapses under section 99).

“(2) An appeal under section 82(1) is not finally determined for the purpose of subsection (1)(b) while—

- (a) an application for permission to appeal under section 11 or 13 of the Tribunals, Courts and Enforcement Act 2007 could be made or is awaiting determination,
- (b) permission to appeal under either of those sections has been granted and the appeal is awaiting determination, or
- (c) an appeal has been remitted under section 12 or 14 of that Act and is awaiting determination.”; and
- (3) .....

(4) An appeal under section 82(1) brought by a person while he is in the United Kingdom shall be treated as abandoned if the appellant leaves the United Kingdom.

(4A) An appeal under section 82(1) brought by a person while he is in the United Kingdom shall be treated as abandoned if the appellant is granted leave to enter or remain in the United Kingdom (subject to subsections (4B) and (4C)).

(4B) Subsection (4A) shall not apply to an appeal in so far as it is brought on the ground relating to the Refugee Convention specified in section 84(1)(g) where the appellant—

- (a) is granted leave to enter or remain in the United Kingdom for a period exceeding 12 months, and
- (b) gives notice, in accordance with Tribunal Procedure Rules (which may include provision about timing), that he wishes to pursue the appeal in so far as it is brought on that ground.

(4C) Subsection (4A) shall not apply to an appeal in so far as it is brought on the ground specified in section 84(1)(b) where the appellant gives notice, in accordance with Tribunal Procedure Rules (which may include provision about timing), that he wishes to pursue the appeal in so far as it is brought on that ground.]

(5) An appeal under section 82(2)(a), (c), (d), (e) or (f) shall be treated as finally determined if a deportation order is made against the appellant.

**PART 5A**

ARTICLE 8 OF THE ECHR: PUBLIC INTEREST CONSIDERATIONS

**117A Application of this Part**

(1) This Part applies where a court or tribunal is required to determine whether a decision made under the Immigration Acts—

- (a) breaches a person’s right to respect for private and family life under Article 8, and

(b) as a result would be unlawful under section 6 of the Human Rights Act 1998.

(2) In considering the public interest question, the court or tribunal must (in particular) have regard—

(a) in all cases, to the considerations listed in section 117B, and

(b) in cases concerning the deportation of foreign criminals, to the considerations listed in section 117C.

(3) In subsection (2), “the public interest question” means the question of whether an interference with a person’s right to respect for private and family life is justified under Article 8(2).

#### **117B Article 8: public interest considerations applicable in all cases**

(1) The maintenance of effective immigration controls is in the public interest.

(2) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are able to speak English, because persons who can speak English—

(a) are less of a burden on taxpayers, and

(b) are better able to integrate into society.

(3) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are financially independent, because such persons—

(a) are not a burden on taxpayers, and

(b) are better able to integrate into society.

(4) Little weight should be given to—

(a) a private life, or

(b) a relationship formed with a qualifying partner,

that is established by a person at a time when the person is in the United Kingdom unlawfully.

(5) Little weight should be given to a private life established by a person at a time when the person’s immigration status is precarious.

(6) In the case of a person who is not liable to deportation, the public interest does not require the person’s removal where—

(a) the person has a genuine and subsisting parental relationship with a qualifying child, and

(b) it would not be reasonable to expect the child to leave the United Kingdom.

#### **117C Article 8: additional considerations in cases involving foreign criminals**

(1) The deportation of foreign criminals is in the public interest.

(2) The more serious the offence committed by a foreign criminal, the greater is the public interest in deportation of the criminal.

(3) In the case of a foreign criminal (“C”) who has not been sentenced to a period of imprisonment of four years or more, the public interest requires C’s deportation unless Exception 1 or Exception 2 applies.

(4) Exception 1 applies where—

(a) C has been lawfully resident in the United Kingdom for most of C’s life,

(b) C is socially and culturally integrated in the United Kingdom, and

(c) there would be very significant obstacles to C’s integration into the country to which C is proposed to be deported.

(5) Exception 2 applies where C has a genuine and subsisting relationship with a qualifying partner, or a genuine and subsisting parental relationship with a qualifying child, and the effect of C's deportation on the partner or child would be unduly harsh.

(6) In the case of a foreign criminal who has been sentenced to a period of imprisonment of at least four years, the public interest requires deportation unless there are very compelling circumstances, over and above those described in Exceptions 1 and 2.

(7) The considerations in subsections (1) to (6) are to be taken into account where a court or tribunal is considering a decision to deport a foreign criminal only to the extent that the reason for the decision was the offence or offences for which the criminal has been convicted.

## **117D Interpretation of this Part**

(1) In this Part—

“Article 8” means Article 8 of the European Convention on Human Rights;

“qualifying child” means a person who is under the age of 18 and who—

- (a) is a British citizen, or
- (b) has lived in the United Kingdom for a continuous period of seven years or more;

“qualifying partner” means a partner who—

- (a) is a British citizen, or
- (b) who is settled in the United Kingdom (within the meaning of the Immigration Act 1971 — see section 33(2A) of that Act).

(2) In this Part, “foreign criminal” means a person—

- (a) who is not a British citizen,
- (b) who has been convicted in the United Kingdom of an offence, and
- (c) who—
  - (i) has been sentenced to a period of imprisonment of at least 12 months,
  - (ii) has been convicted of an offence that has caused serious harm, or
  - (iii) is a persistent offender.

(3) For the purposes of subsection (2)(b), a person subject to an order under—

- (a) section 5 of the Criminal Procedure (Insanity) Act 1964 (insanity etc),
  - (b) section 57 of the Criminal Procedure (Scotland) Act 1995 (insanity etc), or
  - (c) Article 50A of the Mental Health (Northern Ireland) Order 1986 (insanity etc),
- has not been convicted of an offence.

(4) In this Part, references to a person who has been sentenced to a period of imprisonment of a certain length of time—

- (a) do not include a person who has received a suspended sentence (unless a court subsequently orders that the sentence or any part of it (of whatever length) is to take effect);
- (b) do not include a person who has been sentenced to a period of imprisonment of that length of time only by virtue of being sentenced to consecutive sentences amounting in aggregate to that length of time;



(c) include a person who is sentenced to detention, or ordered or directed to be detained, in an institution other than a prison (including, in particular, a hospital or an institution for young offenders) for that length of time; and

(d) include a person who is sentenced to imprisonment or detention, or ordered or directed to be detained, for an indeterminate period, provided that it may last for at least that length of time.

(5) If any question arises for the purposes of this Part as to whether a person is a British citizen, it is for the person asserting that fact to prove it.

...

## **120 Requirement to state additional grounds for application**

(1) This section applies to a person if—

(a) he has made an application to enter or remain in the United Kingdom, or

(b) an immigration decision within the meaning of section 82 has been taken or may be taken in respect of him.

(2) The Secretary of State or an immigration officer may by notice in writing require the person to state—

(a) his reasons for wishing to enter or remain in the United Kingdom,

(b) any grounds on which he should be permitted to enter or remain in the United Kingdom, and

(c) any grounds on which he should not be removed from or required to leave the United Kingdom.

(3) A statement under subsection (2) need not repeat reasons or grounds set out in—

(a) the application mentioned in subsection (1)(a), or

(b) an application to which the immigration decision mentioned in subsection (1)(b) relates.

# Asylum and Immigration (Treatment of Claimants, etc.) Act 2004

## Sections 1-2

### Offences

#### 1 Assisting unlawful immigration

(1) At the end of section 25 of the Immigration Act 1971 (c 77) (offence of assisting unlawful immigration to member State) add—

“(7) In this section—

(a) a reference to a member State includes a reference to a State on a list prescribed for the purposes of this section by order of the Secretary of State (to be known as the “Section 25 List of Schengen Acquis States”), and

(b) a reference to a citizen of the European Union includes a reference to a person who is a national of a State on that list.

(8) An order under subsection (7)(a)—

(a) may be made only if the Secretary of State thinks it necessary for the purpose of complying with the United Kingdom’s obligations under the Community Treaties,

(b) may include transitional, consequential or incidental provision,

(c) shall be made by statutory instrument, and

(d) shall be subject to annulment in pursuance of a resolution of either House of Parliament.”

(2) In section 25C(9)(a) of that Act (forfeiture of vehicle, ship or aircraft) for “(within the meaning of section 25)” substitute “(for which purpose “member State” and “immigration law” have the meanings given by section 25(2) and (7))”.

#### 2 Entering United Kingdom without passport, &c

(1) A person commits an offence if at a leave or asylum interview he does not have with him an immigration document which—

(a) is in force, and

(b) satisfactorily establishes his identity and nationality or citizenship.

(2) A person commits an offence if at a leave or asylum interview he does not have with him, in respect of any dependent child with whom he claims to be travelling or living, an immigration document which—

(a) is in force, and

(b) satisfactorily establishes the child's identity and nationality or citizenship.

(3) But a person does not commit an offence under subsection (1) or (2) if—

(a) the interview referred to in that subsection takes place after the person has entered the United Kingdom, and

(b) within the period of three days beginning with the date of the interview the person provides to an immigration officer or to the Secretary of State a document of the kind referred to in that subsection.

(4) It is a defence for a person charged with an offence under subsection (1)—

- (a) to prove that he is an EEA national,
  - (b) to prove that he is a member of the family of an EEA national and that he is exercising a right under the EU Treaties in respect of entry to or residence in the United Kingdom,
  - (c) to prove that he has a reasonable excuse for not being in possession of a document of the kind specified in subsection (1),
  - (d) to produce a false immigration document and to prove that he used that document as an immigration document for all purposes in connection with his journey to the United Kingdom, or
  - (e) to prove that he travelled to the United Kingdom without, at any stage since he set out on the journey, having possession of an immigration document.
- (5) It is a defence for a person charged with an offence under subsection (2) in respect of a child—
- (a) to prove that the child is an EEA national,
  - (b) to prove that the child is a member of the family of an EEA national and that the child is exercising a right under the EU Treaties in respect of entry to or residence in the United Kingdom,
  - (c) to prove that the person has a reasonable excuse for not being in possession of a document of the kind specified in subsection (2),
  - (d) to produce a false immigration document and to prove that it was used as an immigration document for all purposes in connection with the child's journey to the United Kingdom, or
  - (e) to prove that he travelled to the United Kingdom with the child without, at any stage since he set out on the journey, having possession of an immigration document in respect of the child.
- (6) Where the charge for an offence under subsection (1) or (2) relates to an interview which takes place after the defendant has entered the United Kingdom—
- (a) subsections (4)(c) and (5)(c) shall not apply, but
  - (b) it is a defence for the defendant to prove that he has a reasonable excuse for not providing a document in accordance with subsection (3).
- (7) For the purposes of subsections (4) to (6)—
- (a) the fact that a document was deliberately destroyed or disposed of is not a reasonable excuse for not being in possession of it or for not providing it in accordance with subsection (3), unless it is shown that the destruction or disposal was—
    - (i) for a reasonable cause, or
    - (ii) beyond the control of the person charged with the offence, and
  - (b) in paragraph (a)(i) “reasonable cause” does not include the purpose of—
    - (i) delaying the handling or resolution of a claim or application or the taking of a decision,
    - (ii) increasing the chances of success of a claim or application, or
    - (iii) complying with instructions or advice given by a person who offers advice about, or facilitates, immigration into the United Kingdom, unless in the circumstances of the case it is unreasonable to expect non-compliance with the instructions or advice.
- (8) A person shall be presumed for the purposes of this section not to have a document with him if he fails to produce it to an immigration officer or official of the Secretary of State on request.
- (9) A person guilty of an offence under this section shall be liable—

(a) on conviction on indictment, to imprisonment for a term not exceeding two years, to a fine or to both, or

(b) on summary conviction, to imprisonment for a term not exceeding twelve months, to a fine not exceeding the statutory maximum or to both.

(10) If an immigration officer reasonably suspects that a person has committed an offence under this section he may arrest the person without warrant.

(11) An offence under this section shall be treated as—

(a) a relevant offence for the purposes of sections 28B and 28D of the Immigration Act 1971 (c 77) (search, entry and arrest), and

(b) an offence under Part III of that Act (criminal proceedings) for the purposes of sections 28(4), 28E, 28G and 28H (search after arrest, &c) of that Act.

(12) In this section—

“EEA national” means a national of a State which is a contracting party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 (as it has effect from time to time),

“immigration document” means—

(a) a passport, and

(b) a document which relates to a national of a State other than the United Kingdom and which is designed to serve the same purpose as a passport, and

“leave or asylum interview” means an interview with an immigration officer or an official of the Secretary of State at which a person—

(a) seeks leave to enter or remain in the United Kingdom, or

(b) claims that to remove him from or require him to leave the United Kingdom would breach the United Kingdom's obligations under the Refugee Convention or would be unlawful under section 6 of the Human Rights Act 1998 (c 42) as being incompatible with his Convention rights.

(13) For the purposes of this section—

(a) a document which purports to be, or is designed to look like, an immigration document, is a false immigration document, and

(b) an immigration document is a false immigration document if and in so far as it is used—

(i) outside the period for which it is expressed to be valid,

(ii) contrary to provision for its use made by the person issuing it, or

(iii) by or in respect of a person other than the person to or for whom it was issued.

(14) Section 11 of the Immigration Act 1971 (c 77) shall have effect for the purpose of the construction of a reference in this section to entering the United Kingdom.

(15) In so far as this section extends to England and Wales, subsection (9)(b) shall, until the commencement of section 154 of the Criminal Justice Act 2003 (c 44) (increased limit on magistrates' power of imprisonment), have effect as if the reference to twelve months were a reference to six months.

(16) In so far as this section extends to Scotland, subsection (9)(b) shall have effect as if the reference to twelve months were a reference to six months.

(17) In so far as this section extends to Northern Ireland, subsection (9)(b) shall have effect as if

the reference to twelve months were a reference to six months.

#### **Section 4**

#### **4 Trafficking people for exploitation**

(1) *A person commits an offence if he arranges or facilitates the arrival in , or the entry into, the United Kingdom of an individual (the “passenger”) and—*

- (a) *he intends to exploit the passenger in the United Kingdom or elsewhere, or*
- (b) *he believes that another person is likely to exploit the passenger in the United Kingdom or elsewhere.*

(2) *A person commits an offence if he arranges or facilitates travel within the United Kingdom by an individual (the “passenger”) in respect of whom he believes that an offence under subsection (1) may have been committed and—*

- (a) *he intends to exploit the passenger in the United Kingdom or elsewhere, or*
- (b) *he believes that another person is likely to exploit the passenger in the United Kingdom or elsewhere.*

(3) *A person commits an offence if he arranges or facilitates the departure from the United Kingdom of an individual (the “passenger”) and—*

- (a) *he intends to exploit the passenger outside the United Kingdom, or*
- (b) *he believes that another person is likely to exploit the passenger outside the United Kingdom.*

(1A) A person (“A”) commits an offence if A intentionally arranges or facilitates—

- (a) the arrival in, or entry into, the United Kingdom or another country of another person (“B”),
- (b) the travel of B within the United Kingdom or another country, or
- (c) the departure of B from the United Kingdom or another country,

with a view to the exploitation of B.

(1B) For the purposes of subsection (1A)(a) and (c) A's arranging or facilitating is with a view to the exploitation of B if (and only if)—

- (a) A intends to exploit B, after B's arrival, entry or (as the case may be) departure but in any part of the world, or
- (b) A believes that another person is likely to exploit B, after B's arrival, entry or (as the case may be) departure but in any part of the world.

(1C) For the purposes of subsection (1A)(b) A's arranging or facilitating is with a view to the exploitation of B if (and only if)—

- (a) A intends to exploit B, during or after the journey and in any part of the world, or
- (b) A believes that another person is likely to exploit B, during or after the journey and in any part of the world.

(3A) A person to whom section 5(2) applies commits an offence if—

- (a) in relation to an individual (the “passenger”), he arranges or facilitates—
  - (i) the arrival in or the entry into a country other than the United Kingdom of the passenger,
  - (ii) travel by the passenger within a country other than the United Kingdom,
  - (iii) the departure of the passenger from a country other than the United Kingdom, and
- (b) he—
  - (i) intends to exploit the passenger, or

- (ii) believes that another person is likely to exploit the passenger,
  - (wherever the exploitation is to occur).
- (4) For the purposes of this section a person is exploited if (and only if)—
  - (a) he is the victim of behaviour that contravenes Article 4 of the Human Rights Convention (slavery and forced labour),
  - (b) he is encouraged, required or expected to do anything
    - (i) as a result of which he or another person would commit an offence *under the Human Organ Transplants Act 1989 (c 31)* Part 1 of the Human Tissue (Scotland) Act 2006 (asp 4) or under section 32 or 33 of the Human Tissue Act 2004 as it has effect in the law of England and Wales, or
    - (ii) which, were it done in England and Wales, would constitute an offence within sub-paragraph (i),
  - (ba) he is encouraged, required or expected to do anything in connection with the removal of any part of a human body—
    - (i) as a result of which he or another person would commit an offence under the law of Scotland (other than an offence mentioned in paragraph (b)(i)), or
    - (ii) which, were it done in Scotland, would constitute such an offence,
  - (c) he is subjected to force, threats or deception designed to induce him—
    - (i) to provide services of any kind,
    - (ii) to provide another person with benefits of any kind, or
    - (iii) to enable another person to acquire benefits of any kind, or
  - (d) a person uses or attempts to use him for any purpose within sub-paragraph (i), (ii) or (iii) of paragraph (c), having chosen him for that purpose on the grounds that—
    - (i) he is mentally or physically ill or disabled, he is young or he has a family relationship with a person, and
    - (ii) a person without the illness, disability, youth or family relationship would be likely to refuse to be used for that purpose.
- (4A) A person who is a UK national commits an offence under this section regardless of—
  - (a) where the arranging or facilitating takes place, or
  - (b) which country is the country of arrival, entry, travel or (as the case may be) departure.
- (4B) A person who is not a UK national commits an offence under this section if—
  - (a) any part of the arranging or facilitating takes place in the United Kingdom, or
  - (b) the United Kingdom is the country of arrival, entry, travel or (as the case may be) departure.
- (5) A person guilty of an offence under this section shall be liable—
  - (a) on conviction on indictment, to imprisonment for a term not exceeding 14 years, to a fine or to both, or
  - (b) on summary conviction, to imprisonment for a term not exceeding twelve months, to a fine not exceeding the statutory maximum or to both.

## Section 8

## ***Treatment of claimants***

### **8 Claimant's credibility**

(1) In determining whether to believe a statement made by or on behalf of a person who makes an asylum claim or a human rights claim, a deciding authority shall take account, as damaging the claimant's credibility, of any behaviour to which this section applies.

(2) This section applies to any behaviour by the claimant that the deciding authority thinks—

(a) is designed or likely to conceal information,

(b) is designed or likely to mislead, or

(c) is designed or likely to obstruct or delay the handling or resolution of the claim or the taking of a decision in relation to the claimant.

(3) Without prejudice to the generality of subsection (2) the following kinds of behaviour shall be treated as designed or likely to conceal information or to mislead—

(a) failure without reasonable explanation to produce a passport on request to an immigration officer or to the Secretary of State,

(b) the production of a document which is not a valid passport as if it were,

(c) the destruction, alteration or disposal, in each case without reasonable explanation, of a passport,

(d) the destruction, alteration or disposal, in each case without reasonable explanation, of a ticket or other document connected with travel, and

(e) failure without reasonable explanation to answer a question asked by a deciding authority.

(4) This section also applies to failure by the claimant to take advantage of a reasonable opportunity to make an asylum claim or human rights claim while in a safe country.

(5) This section also applies to failure by the claimant to make an asylum claim or human rights claim before being notified of an immigration decision, unless the claim relies wholly on matters arising after the notification.

(6) This section also applies to failure by the claimant to make an asylum claim or human rights claim before being arrested under an immigration provision, unless—

(a) he had no reasonable opportunity to make the claim before the arrest, or

(b) the claim relies wholly on matters arising after the arrest.

(7) In this section—

“asylum claim” has the meaning given by section 113(1) of the Nationality, Immigration and Asylum Act 2002 (c 41) (subject to subsection (9) below),

“deciding authority” means—

(a) an immigration officer,

(b) the Secretary of State,

(c) the First-tier Tribunal, or

(d) the Special Immigration Appeals Commission,

“human rights claim” has the meaning given by section 113(1) of the Nationality, Immigration and

Asylum Act 2002 (subject to subsection (9) below),

“immigration decision” means—

- (a) refusal of leave to enter the United Kingdom,
- (b) refusal to vary a person's leave to enter or remain in the United Kingdom,
- (c) grant of leave to enter or remain in the United Kingdom,
- (d) a decision that a person is to be removed from the United Kingdom by way of directions under section 10 of the Immigration and Asylum Act 1999 (c 33)(removal of persons unlawfully in United Kingdom),
- (e) a decision that a person is to be removed from the United Kingdom by way of directions under paragraphs 8 to 12 of Schedule 2 to the Immigration Act 1971 (c 77) (control of entry: removal),
- (f) a decision to make a deportation order under section 5(1) of that Act, and
- (g) a decision to take action in relation to a person in connection with extradition from the United Kingdom,

“immigration provision” means—

- (a) sections 28A, 28AA, 28B, 28C and 28CA of the Immigration Act 1971 (immigration offences: enforcement),
- (b) paragraph 17 of Schedule 2 to that Act (control of entry),
- (c) section 14 of this Act, and
- (d) a provision of the Extradition Act 1989 (c 33) or 2003 (c 41),

“notified” means notified in such manner as may be specified by regulations made by the Secretary of State,

“passport” includes a document which relates to a national of a country other than the United Kingdom and which is designed to serve the same purpose as a passport, and

“safe country” means a country to which Part 2 of Schedule 3 applies.

(8) A passport produced by or on behalf of a person is valid for the purposes of subsection (3)(b) if it—

- (a) relates to the person by whom or on whose behalf it is produced,
- (b) has not been altered otherwise than by or with the permission of the authority who issued it, and
- (c) was not obtained by deception.

(9) In subsection (4) a reference to an asylum claim or human rights claim shall be treated as including a reference to a claim of entitlement to remain in a country other than the United Kingdom made by reference to the rights that a person invokes in making an asylum claim or a human rights claim in the United Kingdom.

(9A) In paragraph (c) of the definition of a “deciding authority” in subsection (7) the reference to the First-tier Tribunal includes a reference to the Upper Tribunal when acting under section 12(2)(b)(ii) of the Tribunals, Courts and Enforcement Act 2007.

(10) Regulations under subsection (7) specifying a manner of notification may, in particular—

- (a) apply or refer to regulations under section 105 of the Nationality, Immigration and Asylum Act 2002 (c 41) (notice of immigration decisions);



- (b) make provision similar to provision that is or could be made by regulations under that section;
  - (c) modify a provision of regulations under that section in its effect for the purpose of regulations under this section;
  - (d) provide for notice to be treated as received at a specified time if sent to a specified class of place in a specified manner.
- (11) Regulations under subsection (7) specifying a manner of notification—
- (a) may make incidental, consequential or transitional provision,
  - (b) shall be made by statutory instrument, and
  - (c) shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (12) This section shall not prevent a deciding authority from determining not to believe a statement on the grounds of behaviour to which this section does not apply.
- (13) . . .

**Schedule 3 Part 2**

**Part 2 First List of Safe Countries (Refugee Convention and Human Rights (1))**

**2**

This Part applies to—

- (a) Austria,
- (b) Belgium,
- (ba) Bulgaria,
- (c) Republic of Cyprus,
- (d) Czech Republic,
- (e) Denmark,
- (f) Estonia,
- (g) Finland,
- (h) France,
- (i) Germany,
- (j) Greece,
- (k) Hungary,
- (l) Iceland,
- (m) Ireland,
- (n) Italy,
- (o) Latvia,
- (p) Lithuania,
- (q) Luxembourg,

- (r) Malta,
- (s) Netherlands,
- (t) Norway,
- (u) Poland,
- (v) Portugal,
- (va) Romania,
- (w) Slovak Republic,
- (x) Slovenia,
- (y) Spain, . . .
- (z) Sweden,
- (z1) Switzerland.

### 3

(1) This paragraph applies for the purposes of the determination by any person, tribunal or court whether a person who has made an asylum claim or a human rights claim may be removed—

- (a) from the United Kingdom, and
- (b) to a State of which he is not a national or citizen.

(2) A State to which this Part applies shall be treated, in so far as relevant to the question mentioned in sub-paragraph (1), as a place—

- (a) where a person's life and liberty are not threatened by reason of his race, religion, nationality, membership of a particular social group or political opinion,
- (b) from which a person will not be sent to another State in contravention of his Convention rights, and
- (c) from which a person will not be sent to another State otherwise than in accordance with the Refugee Convention.

### 4

Section 77 of the Nationality, Immigration and Asylum Act 2002 (c 41) (no removal while claim for asylum pending) shall not prevent a person who has made a claim for asylum from being removed—

- (a) from the United Kingdom, and
- (b) to a State to which this Part applies;

provided that the Secretary of State certifies that in his opinion the person is not a national or citizen of the State.

### 5

(1) This paragraph applies where the Secretary of State certifies that—

- (a) it is proposed to remove a person to a State to which this Part applies, and
- (b) in the Secretary of State's opinion the person is not a national or citizen of the State.

(2) The person may not bring an immigration appeal by virtue of section 92(2) or (3) of that Act

(appeal from within United Kingdom: general).

(3) The person may not bring an immigration appeal by virtue of section 92(4)(a) of that Act (appeal from within United Kingdom: asylum or human rights) in reliance on—

(a) an asylum claim which asserts that to remove the person to a specified State to which this Part applies would breach the United Kingdom's obligations under the Refugee Convention, or

(b) a human rights claim in so far as it asserts that to remove the person to a specified State to which this Part applies would be unlawful under section 6 of the Human Rights Act 1998 because of the possibility of removal from that State to another State.

(4) The person may not bring an immigration appeal by virtue of section 92(4)(a) of that Act in reliance on a human rights claim to which this sub-paragraph applies if the Secretary of State certifies that the claim is clearly unfounded; and the Secretary of State shall certify a human rights claim to which this sub-paragraph applies unless satisfied that the claim is not clearly unfounded.

(5) Sub-paragraph (4) applies to a human rights claim if, or in so far as, it asserts a matter other than that specified in sub-paragraph (3)(b).

## **6**

A person who is outside the United Kingdom may not bring an immigration appeal on any ground that is inconsistent with treating a State to which this Part applies as a place—

(a) where a person's life and liberty are not threatened by reason of his race, religion, nationality, membership of a particular social group or political opinion,

(b) from which a person will not be sent to another State in contravention of his Convention rights, and

(c) from which a person will not be sent to another State otherwise than in accordance with the Refugee Convention.

## Immigration Asylum and Nationality Act 2006

### Section 47

(1) Where the Secretary of State gives written notice of a pre-removal decision to the person affected, the Secretary of State may—

- (a) in the document containing that notice,
- (b) in a document enclosed in the same envelope as that document,
- (c) otherwise on the occasion when that notice is given to the person, or
- (d) at any time after that occasion but before an appeal against the pre-removal decision is brought under section 82(1) of the Nationality, Immigration and Asylum Act 2002,

also give the person written notice that the person is to be removed from the United Kingdom under this section in accordance with directions given by an immigration officer if and when the person's leave to enter or remain in the United Kingdom expires.

(1A) In subsection (1) "pre-removal decision" means—

- (a) a decision on an application—
  - (i) for variation of limited leave to enter or remain in the United Kingdom, and
  - (ii) made before the leave expires,
- (b) a decision to revoke a person's leave to enter or remain in the United Kingdom, or
- (c) a decision to vary a person's leave to enter or remain in the United Kingdom where the variation will result in the person having no leave to enter or remain in the United Kingdom.

(2) Directions under this section may impose any requirements of a kind prescribed for the purpose of section 10 of the Immigration and Asylum Act 1999 (c 33) (removal of persons unlawfully in United Kingdom).

(3) In relation to directions under this section, paragraphs 10, 11, 16 to 18, 21 and 22 to 24 of Schedule 2 to the Immigration Act 1971 (administrative provisions as to control of entry) apply as they apply in relation to directions under paragraph 8 of that Schedule.

(4) The costs of complying with a direction given under this section (so far as reasonably incurred) must be met by the Secretary of State.

(5) A person shall not be liable to removal from the United Kingdom under this section at a time when section 7(1)(b) of the Immigration Act 1971 (Commonwealth and Irish citizens ordinarily resident in United Kingdom) would prevent a decision to deport him.

(6) In section 82(2) of the Nationality, Immigration and Asylum Act 2002 (c 41) (right of appeal: general) after paragraph (h) insert—

"(ha) a decision that a person is to be removed from the United Kingdom by way of directions under section 47 of the Immigration, Asylum and Nationality Act 2006 (removal: persons with statutorily extended leave),".

(7) In section 92(2) of that Act (appeal from within United Kingdom) after "(f)" insert " , (ha)".

(8) In section 94(1A) of that Act (appeal from within United Kingdom: unfounded claim) for "or (e)" substitute "(e) or (ha)".

## **UK Borders Act 2007**

### **Sections 32-38**

#### ***Deportation of criminals***

#### **32 Automatic deportation**

- (1) In this section “foreign criminal” means a person—
  - (a) who is not a British citizen,
  - (b) who is convicted in the United Kingdom of an offence, and
  - (c) to whom Condition 1 or 2 applies.
- (2) Condition 1 is that the person is sentenced to a period of imprisonment of at least 12 months.
- (3) Condition 2 is that—
  - (a) the offence is specified by order of the Secretary of State under section 72(4)(a) of the Nationality, Immigration and Asylum Act 2002 (c 41) (serious criminal), and
  - (b) the person is sentenced to a period of imprisonment.
- (4) For the purpose of section 3(5)(a) of the Immigration Act 1971 (c 77), the deportation of a foreign criminal is conducive to the public good.
- (5) The Secretary of State must make a deportation order in respect of a foreign criminal (subject to section 33).
- (6) The Secretary of State may not revoke a deportation order made in accordance with subsection (5) unless—
  - (a) he thinks that an exception under section 33 applies,
  - (b) the application for revocation is made while the foreign criminal is outside the United Kingdom, or
  - (c) section 34(4) applies.
- (7) Subsection (5) does not create a private right of action in respect of consequences of non-compliance by the Secretary of State.

#### **33 Exceptions**

- (1) Section 32(4) and (5)—
  - (a) do not apply where an exception in this section applies (subject to subsection (7) below), and
  - (b) are subject to sections 7 and 8 of the Immigration Act 1971 (Commonwealth citizens, Irish citizens, crew and other exemptions).
- (2) Exception 1 is where removal of the foreign criminal in pursuance of the deportation order would breach—
  - (a) a person's Convention rights, or
  - (b) the United Kingdom's obligations under the Refugee Convention.
- (3) Exception 2 is where the Secretary of State thinks that the foreign criminal was under the age of 18 on the date of conviction.

(4) Exception 3 is where the removal of the foreign criminal from the United Kingdom in pursuance of a deportation order would breach rights of the foreign criminal under the EU treaties.

(5) Exception 4 is where the foreign criminal—

(a) is the subject of a certificate under section 2 or 70 of the Extradition Act 2003 (c 41),

(b) is in custody pursuant to arrest under section 5 of that Act,

(c) is the subject of a provisional warrant under section 73 of that Act,

(d) is the subject of an authority to proceed under section 7 of the Extradition Act 1989 (c 33) or an order under paragraph 4(2) of Schedule 1 to that Act, or

(e) is the subject of a provisional warrant under section 8 of that Act or of a warrant under paragraph 5(1)(b) of Schedule 1 to that Act.

(6) Exception 5 is where any of the following has effect in respect of the foreign criminal—

(a) a hospital order or guardianship order under section 37 of the Mental Health Act 1983 (c 20),

(b) a hospital direction under section 45A of that Act,

(c) a transfer direction under section 47 of that Act,

(d) a compulsion order under section 57A of the Criminal Procedure (Scotland) Act 1995 (c 46),

(e) a guardianship order under section 58 of that Act,

(f) a hospital direction under section 59A of that Act,

(g) a transfer for treatment direction under section 136 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), or

(h) an order or direction under a provision which corresponds to a provision specified in paragraphs (a) to (g) and which has effect in relation to Northern Ireland.

(6A) Exception 6 is where the Secretary of State thinks that the application of section 32(4) and (5) would contravene the United Kingdom's obligations under the Council of Europe Convention on Action against Trafficking in Human Beings (done at Warsaw on 16th May 2005).

(7) The application of an exception—

(a) does not prevent the making of a deportation order;

(b) results in it being assumed neither that deportation of the person concerned is conducive to the public good nor that it is not conducive to the public good;

but section 32(4) applies despite the application of Exception 1 or 4.

### **34 Timing**

(1) Section 32(5) requires a deportation order to be made at a time chosen by the Secretary of State.

(2) A deportation order may not be made under section 32(5) while an appeal or further appeal against the conviction or sentence by reference to which the order is to be made—

(a) has been instituted and neither withdrawn nor determined, or

(b) could be brought.

(3) For the purpose of subsection (2)(b)—

- (a) the possibility of an appeal out of time with permission shall be disregarded, and
  - (b) a person who has informed the Secretary of State in writing that the person does not intend to appeal shall be treated as being no longer able to appeal.
- (4) The Secretary of State may withdraw a decision that section 32(5) applies, or revoke a deportation order made in accordance with section 32(5), for the purpose of—
- (a) taking action under the Immigration Acts or rules made under section 3 of the Immigration Act 1971 (c 77) (immigration rules), and
  - (b) subsequently taking a new decision that section 32(5) applies and making a deportation order in accordance with section 32(5).

### **35 Appeal**

- (1) The Nationality, Immigration and Asylum Act 2002 (c 41) is amended as follows.
- (2) At the end of section 79 (no deportation order pending appeal) add—
- “(3) This section does not apply to a deportation order which states that it is made in accordance with section 32(5) of the UK Borders Act 2007.
- (4) But a deportation order made in reliance on subsection (3) does not invalidate leave to enter or remain, in accordance with section 5(1) of the Immigration Act 1971, if and for so long as section 78 above applies.”
- (3) Before section 82(4) (general right of appeal) insert—
- “(3A) Subsection (2)(j) does not apply to a decision to make a deportation order which states that it is made in accordance with section 32(5) of the UK Borders Act 2007; but—
- (a) a decision that section 32(5) applies is an immigration decision for the purposes of this Part, and
  - (b) a reference in this Part to an appeal against an automatic deportation order is a reference to an appeal against a decision of the Secretary of State that section 32(5) applies.”

### **36 Detention**

- (1) A person who has served a period of imprisonment may be detained under the authority of the Secretary of State—
- (a) while the Secretary of State considers whether section 32(5) applies, and
  - (b) where the Secretary of State thinks that section 32(5) applies, pending the making of the deportation order.
- (2) Where a deportation order is made in accordance with section 32(5) the Secretary of State shall exercise the power of detention under paragraph 2(3) of Schedule 3 to the Immigration Act 1971 (c 77) (detention pending removal) unless in the circumstances the Secretary of State thinks it inappropriate.
- (3) A court determining an appeal against conviction or sentence may direct release from detention under subsection (1) or (2).
- (4) Provisions of the Immigration Act 1971 which apply to detention under paragraph 2(3) of Schedule 3 to that Act shall apply to detention under subsection (1) (including provisions about bail).
- (5) Paragraph 2(5) of Schedule 3 to that Act (residence, occupation and reporting restrictions) applies to a person who is liable to be detained under subsection (1).

### **37 Family**

(1) Where a deportation order against a foreign criminal states that it is made in accordance with section 32(5) (“the automatic deportation order”) this section shall have effect in place of the words from “A deportation order” to “after the making of the deportation order against him” in section 5(3) of the Immigration Act 1971 (period during which family members may also be deported).

(2) A deportation order may not be made against a person as belonging to the family of the foreign criminal after the end of the relevant period of 8 weeks.

(3) In the case of a foreign criminal who has not appealed in respect of the automatic deportation order, the relevant period begins when an appeal can no longer be brought (ignoring any possibility of an appeal out of time with permission).

(4) In the case of a foreign criminal who has appealed in respect of the automatic deportation order, the relevant period begins when the appeal is no longer pending (within the meaning of section 104 of the Nationality, Immigration and Asylum Act 2002 (c 41)).

### **38 Interpretation**

(1) In section 32(2) the reference to a person who is sentenced to a period of imprisonment of at least 12 months—

(a) does not include a reference to a person who receives a suspended sentence (unless a court subsequently orders that the sentence or any part of it (of whatever length) is to take effect),

(b) does not include a reference to a person who is sentenced to a period of imprisonment of at least 12 months only by virtue of being sentenced to consecutive sentences amounting in aggregate to more than 12 months,

(c) includes a reference to a person who is sentenced to detention, or ordered or directed to be detained, in an institution other than a prison (including, in particular, a hospital or an institution for young offenders) for at least 12 months, and

(d) includes a reference to a person who is sentenced to imprisonment or detention, or ordered or directed to be detained, for an indeterminate period (provided that it may last for 12 months).

(2) In section 32(3)(b) the reference to a person who is sentenced to a period of imprisonment—

(a) does not include a reference to a person who receives a suspended sentence (unless a court subsequently orders that the sentence or any part of it is to take effect), and

(b) includes a reference to a person who is sentenced to detention, or ordered or directed to be detained, in an institution other than a prison (including, in particular, a hospital or an institution for young offenders).

(3) For the purposes of section 32 a person subject to an order under section 5 of the Criminal Procedure (Insanity) Act 1964 (c 84) (insanity, &c.) has not been convicted of an offence.

(4) In sections 32 and 33—

(a) “British citizen” has the same meaning as in section 3(5) of the Immigration Act 1971 (c 77) (and section 3(8) (burden of proof) shall apply),

(b) “Convention rights” has the same meaning as in the Human Rights Act 1998 (c 42),

(c) “deportation order” means an order under section 5, and by virtue of section 3(5), of the Immigration Act 1971, and

(d) “the Refugee Convention” means the Convention relating to the Status of Refugees done at Geneva on 28th July 1951 and its Protocol.



## **Tribunals, Courts and Enforcement Act 2007**

### **Sections 11-14**

#### **11 Right to appeal to Upper Tribunal**

(1) For the purposes of subsection (2), the reference to a right of appeal is to a right to appeal to the Upper Tribunal on any point of law arising from a decision made by the First-tier Tribunal other than an excluded decision.

(2) Any party to a case has a right of appeal, subject to subsection (8).

(3) That right may be exercised only with permission (or, in Northern Ireland, leave).

(4) Permission (or leave) may be given by—

(a) the First-tier Tribunal, or

(b) the Upper Tribunal,

on an application by the party.

(5) For the purposes of subsection (1), an “excluded decision” is—

(a) any decision of the First-tier Tribunal on an appeal made in exercise of a right conferred by the Criminal Injuries Compensation Scheme in compliance with section 5(1)(a) of the Criminal Injuries Compensation Act 1995 (c 53) (appeals against decisions on reviews),

(aa) any decision of the First-tier Tribunal on an appeal made in exercise of a right conferred by the Victims of Overseas Terrorism Compensation Scheme in compliance with section 52(3) of the Crime and Security Act 2010,

(b) any decision of the First-tier Tribunal on an appeal under section 28(4) or (6) of the Data Protection Act 1998 (c 29) (appeals against national security certificate),

(c) any decision of the First-tier Tribunal on an appeal under section 60(1) or (4) of the Freedom of Information Act 2000 (c 36) (appeals against national security certificate),

(d) a decision of the First-tier Tribunal under section 9—

(i) to review, or not to review, an earlier decision of the tribunal,

(ii) to take no action, or not to take any particular action, in the light of a review of an earlier decision of the tribunal,

(iii) to set aside an earlier decision of the tribunal, or

(iv) to refer, or not to refer, a matter to the Upper Tribunal,

(e) a decision of the First-tier Tribunal that is set aside under section 9 (including a decision set aside after proceedings on an appeal under this section have been begun), or

(f) any decision of the First-tier Tribunal that is of a description specified in an order made by the Lord Chancellor.

(6) A description may be specified under subsection (5)(f) only if—

(a) in the case of a decision of that description, there is a right to appeal to a court, the Upper Tribunal or any other tribunal from the decision and that right is, or includes, something other than a right (however expressed) to appeal on any point of law arising from the decision, or

(b) decisions of that description are made in carrying out a function transferred under section 30 and prior to the transfer of the function under section 30(1) there was no right to appeal from

decisions of that description.

(7) Where—

- (a) an order under subsection (5)(f) specifies a description of decisions, and
- (b) decisions of that description are made in carrying out a function transferred under section 30,

the order must be framed so as to come into force no later than the time when the transfer under section 30 of the function takes effect (but power to revoke the order continues to be exercisable after that time, and power to amend the order continues to be exercisable after that time for the purpose of narrowing the description for the time being specified).

(8) The Lord Chancellor may by order make provision for a person to be treated as being, or to be treated as not being, a party to a case for the purposes of subsection (2).

## **12 Proceedings on appeal to Upper Tribunal**

(1) Subsection (2) applies if the Upper Tribunal, in deciding an appeal under section 11, finds that the making of the decision concerned involved the making of an error on a point of law.

(2) The Upper Tribunal—

- (a) may (but need not) set aside the decision of the First-tier Tribunal, and
- (b) if it does, must either—
  - (i) remit the case to the First-tier Tribunal with directions for its reconsideration, or
  - (ii) re-make the decision.

(3) In acting under subsection (2)(b)(i), the Upper Tribunal may also—

- (a) direct that the members of the First-tier Tribunal who are chosen to reconsider the case are not to be the same as those who made the decision that has been set aside;
- (b) give procedural directions in connection with the reconsideration of the case by the First-tier Tribunal.

(4) In acting under subsection (2)(b)(ii), the Upper Tribunal—

- (a) may make any decision which the First-tier Tribunal could make if the First-tier Tribunal were re-making the decision, and
- (b) may make such findings of fact as it considers appropriate.

## **13 Right to appeal to Court of Appeal etc**

(1) For the purposes of subsection (2), the reference to a right of appeal is to a right to appeal to the relevant appellate court on any point of law arising from a decision made by the Upper Tribunal other than an excluded decision.

(2) Any party to a case has a right of appeal, subject to subsection (14).

(3) That right may be exercised only with permission (or, in Northern Ireland, leave).

(4) Permission (or leave) may be given by—

- (a) the Upper Tribunal, or
- (b) the relevant appellate court,

on an application by the party.

(5) An application may be made under subsection (4) to the relevant appellate court only if permission (or leave) has been refused by the Upper Tribunal.

(6) The Lord Chancellor may, as respects an application under subsection (4) that falls within subsection (7) and for which the relevant appellate court is the Court of Appeal in England and Wales or the Court of Appeal in Northern Ireland, by order make provision for permission (or leave) not to be granted on the application unless the Upper Tribunal or (as the case may be) the relevant appellate court considers—

- (a) that the proposed appeal would raise some important point of principle or practice, or
- (b) that there is some other compelling reason for the relevant appellate court to hear the appeal.

(6A) Rules of court may make provision for permission not to be granted on an application under subsection (4) to the Court of Session that falls within subsection (7) unless the court considers—

- (a) that the proposed appeal would raise some important point of principle, or
- (b) that there is some other compelling reason for the court to hear the appeal.

(7) An application falls within this subsection if the application is for permission (or leave) to appeal from any decision of the Upper Tribunal on an appeal under section 11.

(8) For the purposes of subsection (1), an “excluded decision” is—

(a) any decision of the Upper Tribunal on an appeal under section 28(4) or (6) of the Data Protection Act 1998 (c 29) (appeals against national security certificate),

(b) any decision of the Upper Tribunal on an appeal under section 60(1) or (4) of the Freedom of Information Act 2000 (c 36) (appeals against national security certificate),

(c) any decision of the Upper Tribunal on an application under section 11(4)(b) (application for permission or leave to appeal),

(d) a decision of the Upper Tribunal under section 10—

- (i) to review, or not to review, an earlier decision of the tribunal,
- (ii) to take no action, or not to take any particular action, in the light of a review of an earlier decision of the tribunal, or
- (iii) to set aside an earlier decision of the tribunal,

(e) a decision of the Upper Tribunal that is set aside under section 10 (including a decision set aside after proceedings on an appeal under this section have been begun), or

(f) any decision of the Upper Tribunal that is of a description specified in an order made by the Lord Chancellor.

(9) A description may be specified under subsection (8)(f) only if—

(a) in the case of a decision of that description, there is a right to appeal to a court from the decision and that right is, or includes, something other than a right (however expressed) to appeal on any point of law arising from the decision, or

(b) decisions of that description are made in carrying out a function transferred under section 30 and prior to the transfer of the function under section 30(1) there was no right to appeal from decisions of that description.

(10) Where—

(a) an order under subsection (8)(f) specifies a description of decisions, and

(b) decisions of that description are made in carrying out a function transferred under section 30,

the order must be framed so as to come into force no later than the time when the transfer under section 30 of the function takes effect (but power to revoke the order continues to be exercisable after that time, and power to amend the order continues to be exercisable after that time for the purpose of narrowing the description for the time being specified).

(11) Before the Upper Tribunal decides an application made to it under subsection (4), the Upper Tribunal must specify the court that is to be the relevant appellate court as respects the proposed appeal.

(12) The court to be specified under subsection (11) in relation to a proposed appeal is whichever of the following courts appears to the Upper Tribunal to be the most appropriate—

(a) the Court of Appeal in England and Wales;

(b) the Court of Session;

(c) the Court of Appeal in Northern Ireland.

(13) In this section except subsection (11), “the relevant appellate court”, as respects an appeal, means the court specified as respects that appeal by the Upper Tribunal under subsection (11).

(14) The Lord Chancellor may by order make provision for a person to be treated as being, or to be treated as not being, a party to a case for the purposes of subsection (2).

(15) Rules of court may make provision as to the time within which an application under subsection (4) to the relevant appellate court must be made.

#### 14 Proceedings on appeal to Court of Appeal etc

(1) Subsection (2) applies if the relevant appellate court, in deciding an appeal under section 13, finds that the making of the decision concerned involved the making of an error on a point of law.

(2) The relevant appellate court—

(a) may (but need not) set aside the decision of the Upper Tribunal, and

(b) if it does, must either—

(i) remit the case to the Upper Tribunal or, where the decision of the Upper Tribunal was on an appeal or reference from another tribunal or some other person, to the Upper Tribunal or that other tribunal or person, with directions for its reconsideration, or

(ii) re-make the decision.

(3) In acting under subsection (2)(b)(i), the relevant appellate court may also—

(a) direct that the persons who are chosen to reconsider the case are not to be the same as those who—

(i) where the case is remitted to the Upper Tribunal, made the decision of the Upper Tribunal that has been set aside, or

(ii) where the case is remitted to another tribunal or person, made the decision in respect of which the appeal or reference to the Upper Tribunal was made;

(b) give procedural directions in connection with the reconsideration of the case by the Upper Tribunal or other tribunal or person.

(4) In acting under subsection (2)(b)(ii), the relevant appellate court—

(a) may make any decision which the Upper Tribunal could make if the Upper Tribunal were re-

making the decision or (as the case may be) which the other tribunal or person could make if that other tribunal or person were re-making the decision, and

(b) may make such findings of fact as it considers appropriate.

(5) Where—

(a) under subsection (2)(b)(i) the relevant appellate court remits a case to the Upper Tribunal, and

(b) the decision set aside under subsection (2)(a) was made by the Upper Tribunal on an appeal or reference from another tribunal or some other person,

the Upper Tribunal may (instead of reconsidering the case itself) remit the case to that other tribunal or person, with the directions given by the relevant appellate court for its reconsideration.

(6) In acting under subsection (5), the Upper Tribunal may also—

(a) direct that the persons who are chosen to reconsider the case are not to be the same as those who made the decision in respect of which the appeal or reference to the Upper Tribunal was made;

(b) give procedural directions in connection with the reconsideration of the case by the other tribunal or person.

(7) In this section “the relevant appellate court”, as respects an appeal under section 13, means the court specified as respects that appeal by the Upper Tribunal under section 13(11).

## **Borders, Citizenship and Immigration Act 2009**

### **Section 55**

#### **Children**

#### **55 Duty regarding the welfare of children**

- (1) The Secretary of State must make arrangements for ensuring that—
- (a) the functions mentioned in subsection (2) are discharged having regard to the need to safeguard and promote the welfare of children who are in the United Kingdom, and
  - (b) any services provided by another person pursuant to arrangements which are made by the Secretary of State and relate to the discharge of a function mentioned in subsection (2) are provided having regard to that need.
- (2) The functions referred to in subsection (1) are—
- (a) any function of the Secretary of State in relation to immigration, asylum or nationality;
  - (b) any function conferred by or by virtue of the Immigration Acts on an immigration officer;
  - (c) any general customs function of the Secretary of State;
  - (d) any customs function conferred on a designated customs official.
- (3) A person exercising any of those functions must, in exercising the function, have regard to any guidance given to the person by the Secretary of State for the purpose of subsection (1).
- (4) The Director of Border Revenue must make arrangements for ensuring that—
- (a) the Director's functions are discharged having regard to the need to safeguard and promote the welfare of children who are in the United Kingdom, and
  - (b) any services provided by another person pursuant to arrangements made by the Director in the discharge of such a function are provided having regard to that need.
- (5) A person exercising a function of the Director of Border Revenue must, in exercising the function, have regard to any guidance given to the person by the Secretary of State for the purpose of subsection (4).
- (6) In this section—
- “children” means persons who are under the age of 18;
- “customs function”, “designated customs official” and “general customs function” have the meanings given by Part 1.
- (7) A reference in an enactment (other than this Act) to the Immigration Acts includes a reference to this section.
- (8) Section 21 of the UK Borders Act 2007 (c 30) (children) ceases to have effect.

**2014 No. 2604 (L. 31)**

**TRIBUNALS AND INQUIRIES**

**The Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014**

*Made* - - - - 24th September 2014

*Laid before Parliament* 29th September 2014

*Coming into force* - - 20th October 2014

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SCHEDULE — The Fast Track Rules

PART 1 — Introduction and Scope

PART 2 — Appeals to the Tribunal

PART 3 — Appeals to the Upper Tribunal

PART 4 — General Provisions

PART 5 — Transfer Out of Fast Track

Having consulted in accordance with paragraph 28(1) of Schedule 5 to the Tribunals, Courts and Enforcement Act 2007(a), the Tribunal Procedure Committee has made the following Rules in exercise of the powers conferred by—

- (a) sections 9, 22, 29(3) and (4) of and Schedule 5 to the Tribunals, Courts and Enforcement Act 2007,
- (b) paragraph 25 of Schedule 2 to the Immigration Act 1971(b),
- (c) section 106(3) of the Nationality, Immigration and Asylum Act 2002(c),
- (d) section 40A(3) of the British Nationality Act 1981(d), and
- (e) Schedule 1 to the Immigration (European Economic Area) Regulations 2006(e).

The Lord Chancellor has allowed the Rules in accordance with paragraph 28(3) of Schedule 5 to the Tribunals, Courts and Enforcement Act 2007.

## PART 1

### Introduction

#### **Citation, commencement, application and interpretation**

1.—(1) These Rules may be cited as the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 and come into force on 20th October 2014.

(2) They apply to proceedings before the Immigration and Asylum Chamber of the First-tier Tribunal.

(3) The Schedule of Fast Track Rules has effect in the circumstances and in the manner specified in that Schedule.

(4) In these Rules—

“the 1999 Act” means the Immigration and Asylum Act 1999(f);

“the 2002 Act” means the Nationality, Immigration and Asylum Act 2002;

“the 2004 Act” means the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004(a);

“the 2006 Regulations” means the Immigration (European Economic Area) Regulations 2006;

“the 2007 Act” means the Tribunals, Courts and Enforcement Act 2007;

“appealable decision” means a decision from which there is a right of appeal to the Immigration and Asylum Chamber of the First-tier Tribunal;

“appellant” means a person who has provided a notice of appeal to the Tribunal against an appealable decision in accordance with these Rules;

“asylum claim” has the meaning given in section 113(1) of the 2002 Act;

“certificate of fee satisfaction” means a certificate of fee satisfaction issued by the Lord Chancellor under article 8 of the Fees Order;

“decision maker” means the maker of a decision against which an appeal is brought;

“dispose of proceedings” includes, unless indicated otherwise, disposing of a part of the proceedings;

“document” means anything in which information is recorded in any form, and an obligation under these Rules to provide or allow access to a document or a copy of a document for any purpose means, unless the Tribunal directs otherwise, an obligation to provide or allow access to such document or copy in a legible form or in a form which can be readily made into a legible form;

“Fast Track Rules” means the rules contained in the Schedule to this statutory instrument;

“the Fees Order” means the First-tier Tribunal (Immigration and Asylum Chamber) Fees Order 2011(b);

“hearing” means an oral hearing and includes a hearing conducted in whole or in part by video link, telephone or other means of instantaneous two-way electronic communication;

“the Immigration Acts” means the Acts referred to in section 61 of the UK Borders Act 2007(c);

“party” means—

- (a) an appellant or respondent to proceedings;
- (b) a party to a bail application as provided for in rule 37(3) and 37(4); and
- (c) the UNHCR where notice has been given to the Tribunal in accordance with rule 8(3);

“practice direction” means a direction given under section 23 of the 2007 Act;

“qualified representative” means a person who is a qualified person in accordance with section 84(2) of the 1999 Act;

“respondent” means—

- (a) the decision maker specified in the notice of decision against which a notice of appeal has been provided; and
- (b) a person substituted or added as a respondent in accordance with rule 8.

“Tribunal” means the First-tier Tribunal;

“the UNHCR” means the United Kingdom Representative of the United Nations High Commissioner for Refugees; and

“working day” means any day except—

(a) a Saturday or Sunday, Christmas Day, Good Friday or a bank holiday under section 1 of the Banking and Financial Dealings Act 1971(a); and

(b) 27th to 31st December inclusive.

(5) A rule or Part referred to by number alone, means a rule in, or Part of, these Rules.

### **Overriding objective and parties’ obligation to co-operate with the Tribunal**

**2.—**(1) The overriding objective of these Rules is to enable the Tribunal to deal with cases fairly and justly.

(2) Dealing with a case fairly and justly includes—

- (a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties and of the Tribunal;
- (b) avoiding unnecessary formality and seeking flexibility in the proceedings;

- (c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;
- (d) using any special expertise of the Tribunal effectively; and
- (e) avoiding delay, so far as compatible with proper consideration of the issues.

(3) The Tribunal must seek to give effect to the overriding objective when it—

- (a) exercises any power under these Rules; or
- (b) interprets any rule or practice direction.

(4) Parties must—

- (a) help the Tribunal to further the overriding objective; and
- (b) co-operate with the Tribunal generally.

## PART 2

### General Powers and Provisions

#### Delegation to staff

**3.—**(1) Anything of a formal or administrative nature which is required or permitted to be done by the Tribunal under these Rules may be done by a member of the Tribunal's staff.

(2) Staff appointed by the Lord Chancellor may, with the approval of the Senior President of Tribunals, carry out functions of a judicial nature permitted or required to be done by the Tribunal.

(3) The approval referred to at paragraph (2) may apply generally to the carrying out of specified functions by members of staff of a specified description in specified circumstances.

(4) Within 14 days after the date on which the Tribunal sends notice of a decision made by a member of staff under paragraph (2) to a party, that party may apply in writing to the Tribunal for that decision to be considered afresh by a judge.

#### Case management powers

**4.—**(1) Subject to the provisions of the 2007 Act and any other enactment, the Tribunal may regulate its own procedure.

(2) The Tribunal may give a direction in relation to the conduct or disposal of proceedings at any time, including a direction amending, suspending or setting aside an earlier direction.

(3) In particular, and without restricting the general powers in paragraphs (1) and (2), the Tribunal may—

- (a) extend or shorten the time for complying with any rule, practice direction or direction;
- (b) consolidate or hear together two or more sets of proceedings or parts of proceedings raising common issues;
- (c) permit or require a party to amend a document;
- (d) permit or require a party or another person to provide documents, information, evidence or submissions to the Tribunal or a party;
- (e) provide for a particular matter to be dealt with as a preliminary issue;
- (f) hold a hearing to consider any matter, including a case management issue; (g) decide the form of any hearing;

- (h) adjourn or postpone a hearing;
- (i) require a party to produce a bundle for a hearing;
- (j) stay (or, in Scotland, sist) proceedings;
- (k) transfer proceedings to another court or tribunal if that other court or tribunal has jurisdiction in relation to the proceedings and—
  - (i) because of a change of circumstances since the proceedings were started, the Tribunal no longer has jurisdiction in relation to the proceedings; or
  - (ii) the Tribunal considers that the other court or tribunal is a more appropriate forum for the determination of the case; or
- (l) suspend the effect of its own decision pending the determination by the Tribunal or the Upper Tribunal of an application for permission to appeal against, and any appeal or review of, that decision.

### **Procedure for applying for and giving directions**

**5.—**(1) The Tribunal may give a direction on the application of one or more of the parties or on its own initiative.

- (2) An application for a direction may be made—
  - (a) by sending or delivering a written application to the Tribunal; or
  - (b) orally during the course of a hearing.
- (3) An application for a direction must include the reason for making that application.
- (4) Unless the Tribunal considers that there is good reason not to do so, the Tribunal must send written notice of any direction to every party and to any other person affected by the direction.
- (5) If a party or any other person sent notice of the direction under paragraph (4) wishes to challenge the direction which the Tribunal has given, they may do so by applying for another direction which amends, suspends or sets aside the first direction.

### **Failure to comply with rules etc**

**6.—**(1) An irregularity resulting from a failure to comply with any requirement in these Rules, a practice direction or a direction does not of itself render void the proceedings or any step taken in the proceedings.

- (2) If a party has failed to comply with a requirement in these Rules, a practice direction or a direction, the Tribunal may take such action as it considers just, which may include—
  - (a) waiving the requirement;
  - (b) requiring the failure to be remedied; or
  - (c) exercising its power under paragraph (3).
- (3) The Tribunal may refer to the Upper Tribunal, and ask the Upper Tribunal to exercise its power under section 25 (supplementary powers of Upper Tribunal) of the 2007 Act in relation to, any failure by a person to comply with a requirement imposed by the Tribunal—
  - (a) to attend at any place for the purpose of giving evidence;
  - (b) otherwise to make themselves available to give evidence;
  - (c) to swear an oath in connection with the giving of evidence;
  - (d) to give evidence as a witness;

- (e) to produce a document; or
- (f) to facilitate the inspection of a document or any other thing (including any premises).

### **Striking out of an appeal for non-payment of fee and reinstatement**

7.—(1) Where the Tribunal is notified by the Lord Chancellor that a certificate of fee satisfaction has been revoked, the appeal shall automatically be struck out without order of the Tribunal and the Tribunal must notify each party that the appeal has been struck out.

(2) Where an appeal has been struck out in accordance with paragraph (1), the appeal may be reinstated if—

- (a) the appellant applies to have the appeal reinstated; and
- (b) the Lord Chancellor has issued a new certificate of fee satisfaction.

(3) An application made under paragraph (2)(a) must be made in writing and received by the Tribunal within 14 days, or if the appellant is outside the United Kingdom within 28 days, of the date on which the Tribunal sent notification of the striking out to the appellant.

### **Substitution and addition of parties**

8.—(1) The Tribunal may give a direction substituting a respondent if—

- (a) the wrong person has been named as a respondent; or
- (b) the substitution has become necessary because of a change in circumstances since the start of proceedings.

(2) The Tribunal may give a direction adding a person to the proceedings as a respondent.

(3) The UNHCR may give notice to the Tribunal that they wish to participate in any proceedings where the appellant has made an asylum claim and on giving such notice becomes a party to the proceedings.

(4) If—

- (a) the Tribunal gives a direction under paragraph (1) or (2); or
- (b) the UNHCR gives notice to the Tribunal under paragraph (3),

the Tribunal may give such consequential directions as it considers appropriate.

### **Orders for payment of costs and interest on costs (or, in Scotland, expenses)**

9.—(1) If the Tribunal allows an appeal, it may order a respondent to pay by way of costs to the appellant an amount no greater than—

- (a) any fee paid under the Fees Order that has not been refunded; and
- (b) any fee which the appellant is or may be liable to pay under that Order.

(2) The Tribunal may otherwise make an order in respect of costs only—

- (a) under section 29(4) of the 2007 Act (wasted costs) and costs incurred in applying for such costs; or
- (b) if a person has acted unreasonably in bringing, defending or conducting proceedings.

(3) The Tribunal may make an order under this rule on an application or on its own initiative.

(4) A person making an application for an order for costs—

- (a) must, unless the application is made orally at a hearing, send or deliver an application to the Tribunal and to the person against whom the order is sought to be made; and

- (b) may send or deliver together with the application a schedule of the costs claimed in sufficient detail to allow summary assessment of such costs by the Tribunal.
- (5) An application for an order for costs may be made at any time during the proceedings but must be made within 28 days after the date on which the Tribunal sends—
- (a) a notice of decision recording the decision which disposes of the proceedings; or
  - (b) notice that a withdrawal has taken effect under rule 17 (withdrawal).
- (6) The Tribunal may not make an order for costs against a person (in this rule called the “paying person”) without first giving that person an opportunity to make representations.
- (7) The amount of costs to be paid under an order under this rule may be determined by—
- (a) summary assessment by the Tribunal;
  - (b) agreement of a specified sum by the paying person and the person entitled to receive the costs (in this rule called the “receiving person”);
  - (c) detailed assessment of the whole or a specified part of the costs (including the costs of the assessment) incurred by the receiving person, if not agreed.
- (8) Except in relation to paragraph (9), in the application of this rule in relation to Scotland, any reference to costs is to be read as a reference to expenses.
- (9) Following an order for detailed assessment made by the Tribunal under paragraph (7)(c) the paying person or the receiving person may apply—
- (a) in England and Wales, to the county court for a detailed assessment of the costs on the standard basis or, if specified in the order, on the indemnity basis; and the Civil Procedure Rules 1998(a), section 74 (interest on judgment debts, etc) of the County Courts Act 1984(b) and the County Court (Interest on Judgment Debts) Order 1991(c) shall apply, with necessary modifications, to that application and assessment as if the proceedings in the Tribunal had been proceedings in a court to which the Civil Procedure Rules 1998 apply;
  - (b) in Scotland, to the Auditor of the Sheriff Court or the Court of Session (as specified in the order) for the taxation of the expenses according to the fees payable in that court; or
  - (c) in Northern Ireland, to the Taxing Office of the High Court of Northern Ireland for taxation on the standard basis or, if specified in the order, on the indemnity basis.

## **Representatives**

- 10.—**(1) A party may be represented by any person not prohibited from representing by section 84 of the 1999 Act.
- (2) Where a party is or has been represented by a person prohibited from representing by section 84 of the 1999 Act, that does not of itself render void the proceedings or any step taken in the proceedings.
- (3) If a party appoints a representative, that party (or the representative if the representative is a qualified representative) must send or deliver to the Tribunal written notice of the representative’s name and address, which may be done at a hearing.
- (4) Anything permitted or required to be done by a party under these Rules, a practice direction or a direction may be done by the representative of that party, except signing a witness statement.
- (5) A person who receives notice of the appointment of a representative—
- (a) must provide to the representative any document which is required to be provided to the represented party, and need not provide that document to the represented party; and

(b) may assume that the representative is and remains authorised as such until they receive written notification that this is not so from the representative or the represented party.

(6) As from the date on which a person has notified the Tribunal that they are acting as the representative of an appellant and has given an address for service, if any document is provided to the appellant a copy must also at the same time be provided to the appellant's representative.

### **Calculating time**

**11.—**(1) An act required or permitted to be done on or by a particular day by these Rules, a practice direction or a direction must, unless otherwise directed, be done by midnight on that day.

(2) Subject to the Tribunal directing that this paragraph does not apply, if the time specified by these Rules, a practice direction or a direction for doing any act ends on a day other than a working day, the act is done in time if it is done on the next working day.

### **Sending, delivery and language of documents**

**12.—**(1) Any document to be provided to the Tribunal or any person under these Rules, a practice direction or a direction must be— (a) delivered, or sent by post, to an address;

(b) sent via a document exchange to a document exchange number or address;

(c) sent by fax to a fax number;

(d) sent by e-mail to an e-mail address; or

(e) sent or delivered by any other method, identified for that purpose by the Tribunal or person to whom the document is directed.

(2) A document to be provided to an individual may be provided by leaving it with that individual.

(3) If the respondent believes that the address specified under paragraph (1) for the provision of documents to the appellant is not appropriate for that purpose, the respondent must notify the Tribunal in writing of that fact and, if aware of it, an address which would be appropriate.

(4) If any document is provided to a person who has notified the Tribunal that they are acting as the representative of a party, it shall be deemed to have been provided to that party.

(5) Subject to paragraph (6)—

(a) any notice of appeal or application notice provided to the Tribunal must be completed in English; and

(b) if a document provided to the Tribunal is not written in English, it must be accompanied by an English translation.

(6) In proceedings that are in Wales or have a connection with Wales, a document or translation may be provided to the Tribunal in Welsh.

### **Use of documents and information**

**13.—**(1) The Tribunal may make an order prohibiting the disclosure or publication of—

(a) specified documents or information relating to the proceedings; or

(b) any matter likely to lead members of the public to identify any person whom the Tribunal considers should not be identified.

(2) The Tribunal may give a direction prohibiting the disclosure of a document or information to a person if—

(a) the Tribunal is satisfied that such disclosure would be likely to cause that person or some other person serious harm; and

- (b) the Tribunal is satisfied, having regard to the interests of justice, that it is proportionate to give such a direction.
- (3) If a party (“the first party”) considers that the Tribunal should give a direction under paragraph (2) prohibiting the disclosure of a document or information to another party (“the second party”), the first party must—
  - (a) exclude the relevant document or information from any documents to be provided to the second party; and
  - (b) provide to the Tribunal the excluded document or information, and the reason for its exclusion, so that the Tribunal may decide whether the document or information should be disclosed to the second party or should be the subject of a direction under paragraph (2).
- (4) The Tribunal must conduct proceedings as appropriate in order to give effect to a direction given under paragraph (2).
- (5) If the Tribunal gives a direction under paragraph (2) which prevents disclosure to a party who has appointed a representative, the Tribunal may give a direction that the documents or information be disclosed to that representative if the Tribunal is satisfied that—
  - (a) disclosure to the representative would be in the interests of the party; and
  - (b) the representative will act in accordance with paragraph (6).
- (6) Documents or information disclosed to a representative in accordance with a direction under paragraph (5) must not be disclosed either directly or indirectly to any other person without the Tribunal’s consent.
- (7) The Tribunal may, on the application of a party or on its own initiative, give a direction that certain documents or information must or may be disclosed to the Tribunal on the basis that the Tribunal will not disclose such documents or information to other persons, or specified other persons.
- (8) A party making an application for a direction under paragraph (7) may withhold the relevant documents or information from other parties until the Tribunal has granted or refused the application.
- (9) In a case involving matters relating to national security, the Tribunal must ensure that information is not disclosed contrary to the interests of national security.
- (10) The Tribunal must conduct proceedings and record its decision and reasons appropriately so as not to undermine the effect of an order made under paragraph (1), a direction given under paragraph (2), (5) or (7) or the duty imposed by paragraph (9).

### **Evidence and submissions**

**14.—**(1) Without restriction on the general powers in rule 4 (case management powers), the Tribunal may give directions as to—

- (a) issues on which it requires evidence or submissions;
- (b) the nature of the evidence or submissions it requires;
- (c) whether the parties are permitted or required to provide expert evidence;
- (d) any limit on the number of witnesses whose evidence a party may put forward, whether in relation to a particular issue or generally;
- (e) the manner in which any evidence or submissions are to be provided, which may include a direction for them to be given—
  - (i) orally at a hearing; or
  - (ii) by witness statement or written submissions; and



- (f) the time at which any evidence or submissions are to be provided.
- (2) The Tribunal may admit evidence whether or not—
  - (a) the evidence would be admissible in a civil trial in the United Kingdom; or
  - (b) subject to section 85A(4) of the 2002 Act, the evidence was available to the decision maker.
- (3) The Tribunal may consent to a witness giving, or require any witness to give, evidence on oath or affirmation, and may administer an oath or affirmation for that purpose.

### **Summoning or citation of witnesses and orders to answer questions or produce documents**

- 15.**—(1) On the application of a party or on its own initiative, the Tribunal may—
- (a) by summons (or, in Scotland, citation) require any person to attend as a witness at a hearing at the time and place specified in the summons or citation; or
  - (b) order any person to answer any questions or produce any documents in that person’s possession or control which relate to any issue in the proceedings.
- (2) A summons or citation under paragraph (1)(a) must—
- (a) give the person required to attend 14 days’ notice of the hearing or such shorter period as the Tribunal may direct; and
  - (b) where the person is not a party, make provision for the person’s necessary expenses of attendance to be paid, and state who is to pay them.
- (3) No person may be compelled to give any evidence or produce any document that the person could not be compelled to give or produce on a trial of an action in a court of law in the part of the United Kingdom where the proceedings are to be determined.
- (4) A summons, citation or order under this rule must—
- (a) state that the person on whom the requirement is imposed may apply to the Tribunal to vary or set aside the summons, citation or order, if they have not had an opportunity to object to it; and
  - (b) state the consequences of failure to comply with the summons, citation or order.

### **Appeal treated as abandoned or finally determined**

- 16.**—(1) A party must notify the Tribunal if they are aware that—
- (a) the appellant has left the United Kingdom;
  - (b) the appellant has been granted leave to enter or remain in the United Kingdom;
  - (c) a deportation order has been made against the appellant; or
  - (d) a document listed in paragraph 4(2) of Schedule 2 to the 2006 Regulations has been issued to the appellant.
- (2) Where an appeal is treated as abandoned pursuant to section 104(4A) of the 2002 Act or paragraph 4(2) of Schedule 2 to 2006 Regulations, the Tribunal must send the parties a notice informing them that the appeal is being treated as abandoned or finally determined, as the case may be.
- (3) Where an appeal would otherwise fall to be treated as abandoned pursuant to section 104(4A) of the 2002 Act, but the appellant wishes to pursue their appeal, the appellant must provide a notice, which must comply with any relevant practice direction, to the Tribunal and each other party so that it is received within 28 days of the date on which the appellant was sent notice of the grant of leave to enter or remain in the United Kingdom or was sent the document listed in paragraph 4(2) of Schedule 2 to the 2006 Regulations, as the case may be.

## **Withdrawal**

**17.—**(1) A party may give notice of the withdrawal of their appeal—

- (a) by providing to the Tribunal a written notice of withdrawal of the appeal; or
- (b) orally at a hearing,

and in either case must specify the reasons for that withdrawal.

(2) The Tribunal must (save for good reason) treat an appeal as withdrawn if the respondent notifies the Tribunal and each other party that the decision (or, where the appeal relates to more than one decision, all of the decisions) to which the appeal relates has been withdrawn and specifies the reasons for the withdrawal of the decision.

(3) The Tribunal must notify each party in writing that a withdrawal has taken effect under this rule and that the proceedings are no longer regarded by the Tribunal as pending.

## **Certification of pending appeal**

**18.—**(1) The Secretary of State must, upon issuing a certificate under section 97 or 98 of the 2002 Act which relates to a pending appeal, provide notice of the certification to the Tribunal.

(2) Where a notice of certification is provided under paragraph (1), the Tribunal must—

- (a) notify the parties; and
- (b) take no further action in relation to the appeal.

# **PART 3**

## **Proceedings Before the Tribunal**

### **CHAPTER 1**

#### **Before the Hearing**

## **Notice of appeal**

**19.—**(1) An appellant must start proceedings by providing a notice of appeal to the Tribunal.

(2) If the person is in the United Kingdom, the notice of appeal must be received not later than 14 days after they are sent the notice of the decision against which the appeal is brought.

(3) If the person is outside the United Kingdom, the notice of appeal must be received —

- (a) not later than 28 days after their departure from the United Kingdom if the person—
  - (i) was in the United Kingdom when the decision against which they are appealing was made, and
  - (ii) may not appeal while they are in the United Kingdom by reason of a provision of the 2002 Act; or
- (b) in any other case, not later than 28 days after they receive the notice of the decision.

(4) The notice of appeal must—

- (a) set out the grounds of appeal;
- (b) be signed and dated by the appellant or their representative;

- (c) if the notice of appeal is signed by the appellant’s representative, the representative must certify in the notice of appeal that it has been completed in accordance with the appellant’s instructions;
  - (d) state whether the appellant requires an interpreter at any hearing and if so for which language and dialect;
  - (e) state whether the appellant intends to attend at any hearing; and
  - (f) state whether the appellant will be represented at any hearing.
- (5) The appellant must provide with the notice of appeal—
- (a) the notice of decision against which the appellant is appealing or if it is not practicable to include the notice of decision, the reasons why it is not practicable;
  - (b) any statement of reasons for that decision;
  - (c) any documents in support of the appellant’s case which have not been supplied to the respondent;
  - (d) an application for the Lord Chancellor to issue a certificate of fee satisfaction;
  - (e) any further information or documents required by an applicable practice direction.
- (6) The Tribunal must send a copy of the notice of appeal and the accompanying documents or information provided by the appellant to the respondent.
- (7) An appellant may, with the permission of the Tribunal, vary the grounds on which they rely in the notice of appeal.

**Late notice of appeal**

**20.**—(1) Where a notice of appeal is provided outside the time limit in rule 19, including any extension of time directed under rule 4(3)(a) (power to extend time), the notice of appeal must include an application for such an extension of time and the reason why the notice of appeal was not provided in time.

(2) If, upon receipt of a notice of appeal, the notice appears to the Tribunal to have been provided outside the time limit but does not include an application for an extension of time, the Tribunal must (unless it extends time of its own initiative) notify the person in writing that it proposes to treat the notice of appeal as being out of time.

(3) Where the Tribunal gives notification under paragraph (2), the person may by written notice to the Tribunal contend that—

- (a) the notice of appeal was given in time; or
- (b) time for providing the notice of appeal should be extended,

and, if so, that person may provide the Tribunal with written evidence in support of that contention.

(4) The Tribunal must decide any issue under this rule as to whether a notice of appeal was given in time, or whether to extend the time for appealing, as a preliminary issue, and may do so without a hearing.

(5) Where the Tribunal makes a decision under this rule it must provide to the parties written notice of its decision, including its reasons.

**Special provision for imminent removal cases (late notice of appeal)**

**21.**—(1) This rule applies in any case to which rule 20 applies, where the respondent notifies the Tribunal that directions have been given for the removal of that person from the United Kingdom on a date within 5 days of the date on which the notice of appeal was received.

- (2) The Tribunal must, if reasonably practicable, make any decision under rule 20 before the date and time proposed for the removal.
- (3) Rule 20 shall apply, subject to the modifications that the Tribunal may—
  - (a) give notification under rule 20(2) orally, which may include giving it by telephone,
  - (b) direct a time for providing evidence under rule 20(3), and
  - (c) direct that evidence in support of a contention under rule 20(3) is to be given orally, which may include requiring the evidence to be given by telephone, and hold a hearing for the purpose of receiving such evidence.

### **Circumstances in which the Tribunal may not accept a notice of appeal**

**22.**—(1) Where a person has provided a notice of appeal to the Tribunal and any of the circumstances in paragraph (2) apply, the Tribunal may not accept the notice of appeal.

(2) The circumstances referred to in paragraph (1) are that—

- (a) there is no appealable decision; or
- (b) the Lord Chancellor has refused to issue a certificate of fee satisfaction.

(3) Where the Tribunal does not accept a notice of appeal, it must—

- (a) notify the person providing the notice of appeal and the respondent; and
- (b) take no further action on that notice of appeal.

### **Response: entry clearance cases**

**23.**—(1) This rule applies to an appeal against a refusal of entry clearance or a refusal of an EEA family permit (which has the meaning given in regulation 2(1) of the 2006 Regulations).

(2) When a respondent is provided with a copy of a notice of appeal from a refusal of entry clearance or a refusal of an EEA family permit, the respondent must provide the Tribunal with—

- (a) the notice of the decision to which the notice of appeal relates and any other document the respondent provided to the appellant giving reasons for that decision;
- (b) a statement of whether the respondent opposes the appellant's case and, if so, the grounds for such opposition;
- (c) any statement of evidence or application form completed by the appellant;
- (d) any record of an interview with the appellant in relation to the decision being appealed;
- (e) any other unpublished document which is referred to in a document mentioned in subparagraph (a) or relied upon by the respondent; and
- (f) the notice of any other appealable decision made in relation to the appellant.

(3) The respondent must send to the Tribunal and the other parties the documents listed in paragraph (2) within 28 days of the date on which the respondent received from the Tribunal a copy of the notice of appeal and any accompanying documents or information provided under rule 19(6).

### **Response: other cases**

**24.**—(1) Except in appeals to which rule 23 applies, when a respondent is provided with a copy of a notice of appeal, the respondent must provide the Tribunal with—

- (a) the notice of the decision to which the notice of appeal relates and any other document the respondent provided to the appellant giving reasons for that decision;
- (b) any statement of evidence or application form completed by the appellant;

- (c) any record of an interview with the appellant in relation to the decision being appealed;
  - (d) any other unpublished document which is referred to in a document mentioned in subparagraph (a) or relied upon by the respondent; and
  - (e) the notice of any other appealable decision made in relation to the appellant.
- (2) The respondent must, if the respondent intends to change or add to the grounds or reasons relied upon in the notice or the other documents referred to in paragraph (1)(a), provide the Tribunal and the other parties with a statement of whether the respondent opposes the appellant's case and the grounds for such opposition.
- (3) The documents listed in paragraph (1) and any statement required under paragraph (2) must be provided in writing within 28 days of the date on which the Tribunal sent to the respondent a copy of the notice of appeal and any accompanying documents or information provided under rule 19(6).

## CHAPTER 2

### Hearings

#### **Consideration of decision with or without a hearing**

**25.—**(1) The Tribunal must hold a hearing before making a decision which disposes of proceedings except where—

- (a) each party has consented to, or has not objected to, the matter being decided without a hearing;
  - (b) the appellant has not consented to the appeal being determined without a hearing but the Lord Chancellor has refused to issue a certificate of fee satisfaction for the fee payable for a hearing;
  - (c) the appellant is outside the United Kingdom and does not have a representative who has an address for service in the United Kingdom;
  - (d) it is impracticable to give the appellant notice of the hearing;
  - (e) a party has failed to comply with a provision of these Rules, a practice direction or a direction and the Tribunal is satisfied that in all the circumstances, including the extent of the failure and any reasons for it, it is appropriate to determine the appeal without a hearing;
  - (f) the appeal is one to which rule 16(2) or 18(2) applies; or
  - (g) subject to paragraph (2), the Tribunal considers that it can justly determine the matter without a hearing.
- (2) Where paragraph (1)(g) applies, the Tribunal must not make the decision without a hearing without first giving the parties notice of its intention to do so, and an opportunity to make written representations as to whether there should be a hearing.
- (3) This rule does not apply to decisions under Part 4 or Part 5.

#### **Notice of hearings**

**26.** The Tribunal must give each party entitled to attend a hearing reasonable notice of the time and place of the hearing (including any adjourned or postponed hearing) and any changes to the time and place of the hearing.

#### **Public and private hearings**

**27.—**(1) Subject to the following paragraphs and to section 108 of the 2002 Act, all hearings must be held in public.

- (2) The Tribunal may give a direction that a hearing, or part of it, is to be held in private.

- (3) Where a hearing, or part of it, is to be held in private, the Tribunal may determine who is permitted to attend the hearing or part of it.
- (4) The Tribunal may give a direction excluding from any hearing, or part of it—
  - (a) any person whose conduct the Tribunal considers is disrupting or is likely to disrupt the hearing;
  - (b) any person whose presence the Tribunal considers is likely to prevent another person from giving evidence or making submissions freely;
  - (c) any person who the Tribunal considers should be excluded in order to give effect to a direction under rule 13(2) (withholding a document or information likely to cause serious harm); or
  - (d) any person where the purpose of the hearing would be defeated by the attendance of that person.
- (5) The Tribunal may give a direction excluding a witness from a hearing until that witness gives evidence.

### **Hearing in a party's absence**

- 28.** If a party fails to attend a hearing the Tribunal may proceed with the hearing if the Tribunal—
- (a) is satisfied that the party has been notified of the hearing or that reasonable steps have been taken to notify the party of the hearing; and
  - (b) considers that it is in the interests of justice to proceed with the hearing.

## **CHAPTER 3**

### **Decisions**

#### **Decisions and notice of decisions**

- 29.—**(1) The Tribunal may give a decision orally at a hearing.
- (2) Subject to rule 13(2) (withholding information likely to cause serious harm), the Tribunal must provide to each party as soon as reasonably practicable after making a decision (other than a decision under Part 4) which disposes of the proceedings—
- (a) a notice of decision stating the Tribunal's decision; and
  - (b) notification of any right of appeal against the decision and the time within which, and the manner in which, such right of appeal may be exercised.
- (3) Where the decision of the Tribunal relates to—
- (a) an asylum claim or a humanitarian protection claim, the Tribunal must provide, with the notice of decision in paragraph (2)(a), written reasons for its decision;
  - (b) any other matter, the Tribunal may provide written reasons for its decision but, if it does not do so, must notify the parties of the right to apply for a written statement of reasons.
- (4) Unless the Tribunal has already provided a written statement of reasons, a party may make a written application to the Tribunal for such statement following a decision which disposes of the proceedings.
- (5) An application under paragraph (4) must be received within 28 days of the date on which the Tribunal sent or otherwise provided to the party a notice of decision relating to the decision which disposes of the proceedings.

(6) If a party makes an application in accordance with paragraphs (4) and (5) the Tribunal must, subject to rule 13(2) (withholding a document or information likely to cause serious harm), send a written statement of reasons to each party as soon as reasonably practicable.

## PART 4

### Correcting, Setting Aside, Reviewing and Appealing Tribunal Decisions

#### Interpretation

**30.** In this Part—

“appeal” means the exercise of a right of appeal on a point of law under section 11 of the 2007 Act;

“review” means the review of a decision by the Tribunal under section 9 of the 2007 Act.

#### Clerical mistakes and accidental slips or omissions

**31.** The Tribunal may at any time correct any clerical mistake or other accidental slip or omission in a decision, direction or any document produced by it, by—

- (a) providing notification of the amended decision or direction, or a copy of the amended document, to all parties; and
- (b) making any necessary amendment to any information published in relation to the decision, direction or document.

#### Setting aside a decision which disposes of proceedings

**32.—(1)** The Tribunal may set aside a decision which disposes of proceedings, or part of such a decision, and re-make the decision, or the relevant part of it, if—

- (a) the Tribunal considers that it is in the interests of justice to do so; and
- (b) one or more of the conditions in paragraph (2) are satisfied.

(2) The conditions are—

- (a) a document relating to the proceedings was not provided to, or was not received at an appropriate time by, a party or a party’s representative;
- (b) a document relating to the proceedings was not provided to the Tribunal at an appropriate time;
- (c) a party, or a party’s representative, was not present at a hearing related to the proceedings; or
- (d) there has been some other procedural irregularity in the proceedings.

(3) An application for a decision, or part of a decision, to be set aside under paragraph (1) must be made—

- (a) if the appellant is outside the United Kingdom, within 28 days; or
- (b) in any other case, within 14 days,

of the date on which the party was sent the notice of decision.

#### Application for permission to appeal to the Upper Tribunal

**33.—(1)** A party seeking permission to appeal to the Upper Tribunal must make a written application to the Tribunal for permission to appeal.

- (2) Subject to paragraph (3), an application under paragraph (1) must be provided to the Tribunal so that it is received no later than 14 days after the date on which the party making the application was provided with written reasons for the decision.
- (3) Where an appellant is outside the United Kingdom, an application to the Tribunal under paragraph (1) must be provided to the Tribunal so that it is received no later than 28 days after the date on which the party making the application was provided with written reasons for the decision.
- (4) The time within which a party may apply for permission to appeal against an amended notice of decision runs from the date on which the party is sent the amended notice of decision.
- (5) An application under paragraph (1) must—
- (a) identify the decision of the Tribunal to which it relates;
  - (b) identify the alleged error or errors of law in the decision; and
  - (c) state the result the party making the application is seeking and include any application for an extension of time and the reasons why such an extension should be given.
- (6) If a person makes an application under paragraph (1) when the Tribunal has not given a written statement of reasons for its decision—
- (a) the Tribunal must, if no application for a written statement of reasons has been made, treat the application for permission as such an application; and
  - (b) may—
    - (i) direct under rule 36 that the application is not to be treated as an application for permission to appeal; or
    - (ii) determine the application for permission to appeal.
- (7) If an application for a written statement of reasons has been, or is, refused because the application was received out of time, the Tribunal must only admit the application for permission if the Tribunal considers that it is in the interests of justice to do so.

### **Tribunal's consideration of an application for permission to appeal to the Upper Tribunal**

- 34.**—(1) On receiving an application for permission to appeal the Tribunal must first consider whether to review the decision in accordance with rule 35.
- (2) If the Tribunal decides not to review the decision, or reviews the decision and decides to take no action in relation to the decision, or part of it, the Tribunal must consider whether to give permission to appeal in relation to the decision or that part of it.
  - (3) The Tribunal must send a record of its decision to the parties as soon as practicable.
  - (4) If the Tribunal refuses permission to appeal it must send with the record of its decision—
    - (a) a statement of its reasons for such refusal; and
    - (b) notification of the right to make an application to the Upper Tribunal for permission to appeal and the time within which, and the manner in which, such application must be made.
  - (5) The Tribunal may give permission to appeal on limited grounds, but must comply with paragraph (4) in relation to any grounds on which it has refused permission.

### **Review of a decision**

- 35.**—(1) The Tribunal may only undertake a review of a decision—
- (a) pursuant to rule 34 (review on an application for permission to appeal); and
  - (b) if it is satisfied that there was an error of law in the decision.



(2) The Tribunal must notify the parties in writing of the outcome of any review, and of any right of appeal in relation to the outcome.

(3) If the Tribunal takes any action in relation to a decision following a review without first giving every party an opportunity to make representations—

(a) the notice under paragraph (2) must state that any party that did not have an opportunity to make representations may apply for such action to be set aside; and

(b) the Tribunal may regard the review as incomplete and act accordingly.

### **Power to treat an application as a different type of application**

**36.** The Tribunal may treat an application for a decision to be corrected, set aside or reviewed, or for permission to appeal against a decision, as an application for any other one of those things.

## **PART 5**

### **Bail**

#### **Scope of this Part and interpretation**

**37.—**(1) This Part applies to bail proceedings, meaning bail applications and any matter relating to bail which the Tribunal is considering on its own initiative.

(2) In this Part, “bail party” means a person released on bail or applying to the Tribunal to be released on bail.

(3) Except where paragraph (4) applies, the parties to bail proceedings are the bail party and the Secretary of State.

(4) Where the proceedings concern forfeiture of a recognizance, the parties are the Secretary of State and any person who entered into the recognizance in question, whether as principal or surety.

#### **Bail applications**

**38.—**(1) A bail application must be made by sending or delivering to the Tribunal an application notice containing the information specified below.

(2) A bail application must specify whether it is for—

(a) the bail party to be released on bail;

(b) variation of bail conditions;

(c) continuation of bail; or

(d) forfeiture of a recognizance.

(3) Subject to paragraph (4), a bail application must contain the following details—

(a) the bail party’s—

(i) full name;

(ii) date of birth; and

(iii) date of their most recent arrival in the United Kingdom;

(b) the address of any place where the bail party is detained;

- (c) the address where the bail party will reside if the bail application is granted, or, if unable to give such an address, the reason why an address is not given;
  - (d) the amount of any recognizance in which the bail party is, or is proposed to be, bound;
  - (e) whether the bail party has a pending appeal to the Tribunal or any pending application for further appeal relating to such an appeal;
  - (f) the full name, address, date of birth and any occupation of any person who is acting or is proposed to act as a surety for the recognizance and the amount in which the surety is, or is proposed to be, bound;
  - (g) where the bail party is aged 18 or over, whether the bail party will, if required, agree as a condition of bail to co-operate with electronic monitoring under section 36 of the 2004 Act;
  - (h) the grounds on which the application is made and, where a previous application has been refused, when it was refused and details of any material change in circumstances since the refusal; and
  - (i) whether an interpreter will be required at the hearing, and in respect of what language and dialect.
- (4) Where the application is for forfeiture of a recognizance, paragraph (3) applies except for subparagraphs (a)(iii), (b), (c), (e) and (g) of that paragraph.
- (5) An application made by the bail party must be signed by the bail party or their representative.
- (6) On receipt of a bail application, the Tribunal must record the date on which it was received and provide a copy of the application to the Secretary of State as soon as reasonably practicable.

### **Bail hearings**

**39.**—(1) Subject to paragraph (3), where a bail application is for the bail party to be released on bail, the Tribunal must, as soon as reasonably practicable, hold a hearing of the application.

(2) In all other bail proceedings, the Tribunal may determine the matter without a hearing if it considers it can justly do so.

(3) Where an application for release on bail is received by the Tribunal within 28 days after a Tribunal decision made at a hearing under paragraph (1) not to release the bail party on bail, the Tribunal—

- (a) must determine whether the bail party has demonstrated that there has been a material change in circumstances since the decision;
- (b) if the Tribunal so determines, must apply paragraph (1);
- (c) otherwise, must dismiss the application without a hearing.

(4) Paragraph (3) has no effect until the date on which section 7(3)(c) of the Immigration Act 2014(a) (inserting paragraph 25(2) of Schedule 2 to the Immigration Act 1971) comes into force.

### **Response to a bail application**

**40.**—(1) If the Secretary of State opposes a bail application, the Secretary of State must provide the Tribunal and the bail party with a written statement of the reasons for doing so—

- (a) not later than 2.00 pm on the working day before the hearing; or
- (b) if the Secretary of State was provided with notice of the hearing less than 24 hours before that time, as soon as reasonably practicable.

(2) Where the Secretary of State's reasons for opposition include that directions are in force for the removal of the bail party from the United Kingdom, the Secretary of State must provide a copy of the notice of those directions.

### **Decision in bail proceedings**

**41.**—(1) The Tribunal must provide written notice of its decision to—

- (a) the parties; and
  - (b) if the bail application is for the bail party to be released on bail, the person having custody of the bail party.
- (2) Where bail is granted, varied or continued, the notice must state any bail conditions, including any amounts in which the bail party and any sureties are to be bound.
- (3) Where bail is refused or where the Tribunal orders forfeiture of the recognizance, the notice must include reasons for the decision.
- (4) Where, instead of granting or refusing bail, the Tribunal fixes the amount and conditions of the bail with a view to the recognizance being taken subsequently by a person specified by the Tribunal, the notice must include the matters stated in paragraph (2) and the name or office of the person so specified.
- (5) Paragraph (6) applies where the Tribunal determines that directions for the removal of the bail party from the United Kingdom are for the time being in force and the directions require the bail party to be removed from the United Kingdom within 14 days of the date of the decision to release the bail party on bail or under paragraph (4).
- (6) The notice provided under paragraph (1) must state—
- (a) the determination of the Tribunal under paragraph (5);
  - (b) whether the Secretary of State has consented to the release of the bail party;
  - (c) where the Secretary of State has not consented to that release, that the bail party must therefore not be released on bail.

### **Recognizances**

**42.**—(1) Any recognizance must be in writing and must state—

- (a) the bail conditions, including the amount of the recognizance and any amount in which any surety agrees to be bound; and
  - (b) that the bail party and any surety understand the bail conditions and that, if the bail party fails to comply with those conditions, they may be ordered to pay all or part of the amount in which they are bound.
- (2) The recognizance must be signed by the bail party and any surety and provided to the Tribunal, and a copy provided to—
- (a) the parties,
  - (b) any person having custody of the bail party, and
  - (c) (c) any surety.

### **Release of bail party**

**43.** The person having custody of the bail party must release the bail party upon—

- (a) being provided with a notice of decision to grant bail; or

(b) being—

(i) provided with a notice of decision fixing the amount and conditions of the bail, and

(ii) satisfied that the recognizance required by that decision has been entered into.

#### **Application of this Part to Scotland**

**44.** This Part applies to Scotland with the following modifications—

(a) in rule 37, for paragraph (4) substitute—

“(4) Where the proceedings concern forfeiture of bail, the parties are the Secretary of State and any person who entered into the bail bond in question, whether that is the bail party or cautioner.”

(b) in rule 38—

(i) for paragraph (2)(d) substitute—

“(d) forfeiture of bail.”;

(ii) for paragraph (3)(d) substitute—

“(d) the amount, if any, deposited or to be deposited if bail is granted.”;

(iii) for paragraph (3)(f) substitute—

“(f) the full name, address, date of birth and any occupation of any person acting or offering to act as a cautioner if the application for bail is granted, and the amount, if any, deposited or to be deposited.”; and

(iv) for paragraph (4) substitute—

“(4) Where the application is for forfeiture of bail, paragraph (3) applies with the exception of subparagraphs (a)(iii) and (b), (c), (e) and (g) of that paragraph”;

(c) in rule 41, for paragraphs (2), (3) and (4) substitute—

“(2) Where bail is granted, varied or continued, the notice must state any bail conditions, including the amounts (if any) to be deposited by the bail party and any cautioners.

(3) Where bail is refused or where the Tribunal orders forfeiture of bail, the notice must include reasons for the decision.

(4) Where, instead of granting or refusing bail, the Tribunal fixes the amount and conditions of bail with a view to a bail bond being entered into subsequently before a person specified by the Tribunal, the notice must include the matters stated in paragraph (2) and the name or office of the person so specified.”;

(d) for rule 42 substitute—

#### **“Bail bond**

**42.—**(1) Any bail bond of a bail party or cautioner must be in writing and, where the deposit of money is required as a condition of bail, must state—

(a) the amount to be deposited; and

(b) that the bail party and any cautioner understand that, if the bail party fails to answer to bail, all or part of the amount deposited may be forfeited.

(2) The bail bond must be signed by the bail party and any cautioner and provided to the Tribunal, and a copy provided to—

(a) the parties,

(b) any person having custody of the bail party, and

(c) any cautioner.”

(e) in rule 43, for sub-paragraph (b) substitute—

“(b) being—

(i) provided with the notice of decision fixing the amount and conditions of the bail, and

(ii) satisfied that the amount, if any, to be deposited in accordance with those conditions has been deposited.”.

## PART 6

### Final

#### Revocations

45. The statutory instruments listed in the left hand column of Table 1 below are revoked to the extent specified in the right hand column.

**Table 1 Revocations**

<i>Statutory Instrument</i>	<i>Extent of revocation</i>
The Asylum and Immigration Tribunal (Procedure) Rules 2005 (S.I. 2005/230)	The entire Rules
The Asylum and Immigration Tribunal (Procedure) (Amendment) Rules 2006 (S.I. 2006/2788)	The entire Rules
The Asylum and Immigration Tribunal (Procedure) Rules 2007 (S.I. 2007/835)	The entire Rules
The Asylum and Immigration Tribunal (Procedure) (Amendment No. 2) Rules 2007 (S.I. 2007/3170)	The entire Rules
The Asylum and Immigration Tribunal (Procedure) (Amendment) Rules 2008 (S.I. 2008/1088)	The entire Rules
The Tribunal Procedure (Amendment No. 2) Rules 2010 (S.I. 2010/44)	Rules 23 to 28 inclusive
The Tribunal Procedure (Amendment No. 3) Rules 2010 (S.I. 2010/2653)	Rule 4
The Tribunal Procedure (Amendment) (No. 2) Rules 2011 (S.I. 2011/2840)	The entire Rules
The Asylum and Immigration Tribunal (Fast Track Procedure) Rules 2005 (S.I. 2005/560)	The entire Rules
The Asylum and Immigration Tribunal (Fast Track Procedure) (Amendment) Rules 2006 (S.I. 2006/2789)	The entire Rules
The Asylum and Immigration Tribunal (Fast Track Procedure) (Amendment) Rules 2008 (S.I. 2008/1089)	The entire Rules

#### Transitional provisions

46.—(1) The Tribunal may give any direction to ensure that proceedings are dealt with fairly and, in particular, may—

(a) apply any provision of the Asylum and Immigration Tribunal (Procedure) Rules 2005 or the Asylum and Immigration Tribunal (Fast Track Procedure) Rules 2005 which applied to the proceedings immediately before the date these Rules came into force; or

(b) disapply provisions of these Rules (including the Fast Track Rules).

(2) A time period which has started to run before the date on which these Rules come into force and which has not expired shall continue to apply.

We make these Rules,

*Brian F J Langstaff  
Michael J Reed  
Simon Cox  
Simon Ennals  
W B Thompson  
Mark Rowland  
Philip Brook Smith QC  
Jayam Dalal*

24th September 2014

I allow these Rules,  
Signed by the authority of the Lord Chancellor

*Edward Faulks*  
Minister of State  
Ministry of Justice

24th September 2014

Rule 1(3)

## SCHEDULE

### The Fast Track Rules

#### PART 1

##### Introduction and Scope

##### **Interpretation and relationship with the Principal Rules**

1.—(1) The rules in this Schedule are the Fast Track Rules.

(2) A rule or Part referred to in this Schedule by number alone means a rule in, or Part of, the Fast Track Rules.

(3) In these Rules, the “Principal Rules” means rules 1 to 46 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014.

(4) The Principal Rules, except for those provisions referred to in Table 2 below apply for the purposes of and the interpretation of the Fast Track Rules.

(5) Where the Fast Track Rules cease to apply to an appeal or application because—

- (a) the condition referred to in rule 2(1)(b) ceases to apply; or
- (b) the Tribunal makes an order under rule 14,

the Principal Rules shall apply to the appeal or application.

- (6) Where—
- (a) a period of time for taking a step has started to run under a provision of the Fast Track Rules, and
- (b) that provision ceases to apply in the circumstances to which paragraph (5) refers,
- if the Principal Rules contain a time limit for taking such step, the time limit in the Principal Rules shall apply, and the relevant period of time shall be treated as running from the date on which the period of time under the Fast Track Rules started to run.

**Table 2 Principal Rules which do not apply in the fast track**

<i>Rule numbers refer to the Principal Rules</i>	<i>Notes</i>
Rule 3(2) – (4) (delegation to staff) Rule 4(3)(a) (case management powers: reducing or extending time)	Rule 5(2) – (6) of the Fast Track Rules (time limits) applies
Rule 4(3)(h) (case management powers: adjourning or postponing hearing)	Rule 12 of the Fast Track Rules (adjournment) applies
Rule 4(3)(j) (case management powers: stay or sist proceedings)	
Rule 4(3)(k) (case management powers: transfer of proceedings)	
Rule 4(3)(l) (suspending effect of decision pending onward appeal etc)	
Rule 7 (striking out of appeal for non-payment of fee and reinstatement)	
Rule 9(1) (costs orders for payment of Tribunal fees)	
Rule 19 (notice of appeal)	Rules 3 to 6 of the Fast Track Rules apply
Rules 20 and 21 (late notice of appeal; special provision for imminent removal cases)	Rule 5 of the Fast Track Rules (time limits) applies
Rule 22, except for the purposes of paragraph (2)(a) (no appealable decision)	
Rules 23 – 24 (response: entry clearance and other cases)	Rule 7 of the Fast Track Rules (filing of documents by respondent) applies
Rule 29(2) to (6) (provision of written statement of reasons for Tribunal’s decision)	Rule 10 of the Fast Track Rules (decisions and notice of decisions) applies
Rule 33(2) and (3) (time limit for applying to the Tribunal for permission to appeal to the Upper Tribunal)	Rule 11 of the Fast Track Rules (time limit for making an application for permission to appeal) applies
Rule 34(1) (Tribunal to consider first whether to review decision)	

### **Scope of Fast Track Rules**

**2.—(1)** The Fast Track Rules apply to an appeal to the Tribunal or an application for permission to appeal to the Upper Tribunal where the appellant—

- (a) was detained under the Immigration Acts at a place specified in paragraph (3) when provided with notice of the appealable decision against which the appellant is appealing; and
- (b) has been continuously detained under the Immigration Acts at a place or places specified in paragraph (3) since that notice was served on the appellant.

- (2) An appellant does not, for the purposes of this rule, cease to satisfy the condition in paragraph (1)(b) by reason only of—
- (a) being transported from one place of detention specified in paragraph (3) to another place which is so specified; or
  - (b) leaving and returning to such a place of detention for any purpose between the hours of 6 am and 10 pm.
- (3) The places specified for the purposes of this rule are—
- (a) Colnbrook House Immigration Removal Centre, Harmondsworth, Middlesex;
  - (b) Harmondsworth Immigration Removal Centre, Harmondsworth, Middlesex;
  - (c) Yarl’s Wood Immigration Removal Centre, Clapham, Bedfordshire.

## PART 2

### Appeals to the Tribunal

#### Notice of appeal

**3.—**(1) An appellant must start proceedings by providing a notice of appeal to the Tribunal.

(2) The notice of appeal must—

- (a) set out the grounds of appeal;
- (b) be signed and dated by the appellant or their representative;
- (c) if a notice of appeal is signed by the appellant’s representative, the representative must certify in the notice of appeal that it has been completed in accordance with the appellant’s instructions;
- (d) state whether the appellant requires an interpreter at any hearing and if so for which language and dialect;
- (e) state whether the appellant intends to attend at any hearing; and
- (f) state whether the appellant will be represented at any hearing.

(3) The appellant must provide with the notice of appeal—

- (a) the notice of decision against which the appellant is appealing or if it is not practicable to include the notice of decision, the reasons why it is not practicable;
- (b) any statement of reasons for that decision;
- (c) any documents in support of the appellant’s case which have not been supplied to the respondent;
- (d) an application for the Lord Chancellor to issue a certificate of fee satisfaction;
- (e) any further information or documents required by an applicable practice direction.

(4) An appellant may, with the permission of the Tribunal, vary the grounds on which they rely in the notice of appeal.

#### Providing notice of appeal

**4.—**(1) An appellant may provide a notice of appeal to the Tribunal either—



- (a) by providing it to the Tribunal; or
  - (b) by providing it to the person having custody of the appellant.
- (2) Where a notice of appeal is provided under paragraph (1)(b), the person having custody of the appellant must—
- (a) endorse on the notice the date that it is provided to the person having custody of the appellant; and
  - (b) provide it to the Tribunal immediately.

### **Time limits**

**5.—**(1) The notice of appeal must be provided not later than 2 working days after the day on which the appellant was provided with notice of the decision against which the appeal is brought.

(2) Where a notice of appeal is provided outside the time limit in paragraph (1), the Tribunal must not extend the time for appealing unless it considers that it is in the interests of justice to do so.

(3) Subject to paragraph (5), the Tribunal must consider any issue as to—

- (a) whether a notice of appeal was given outside the time limit in paragraph (1); and
- (b) whether to extend the time for appealing,

at the hearing fixed for the hearing of the appeal under the Fast Track Rules under rule 8, and rules 9, 12 and 14 apply to the consideration and decision of such an issue as they apply to the consideration and decision of an appeal.

(4) Where a notice of appeal is provided outside the time limit in paragraph (1) and the respondent notifies the Tribunal that directions have been given for the removal of that person from the United Kingdom on a date within 5 working days of the date on which the notice of appeal was received, the Tribunal must, if reasonably practicable, make any decision on an issue referred to in paragraph (3) before the date and time proposed for the removal, and may do so as a preliminary issue.

(5) Where the Tribunal decides that the notice of appeal was provided outside the time limit and does not extend the time for appealing, the Tribunal must provide to the parties notice of its decision, including its reasons, not later than 1 working day after the date on which that decision was made, after which it shall take no further action in relation to the notice of appeal.

(6) In a case to which paragraph (5) applies, the notice of decision may be given orally at a hearing.

### **Service of notice of appeal etc on respondent**

**6.** When the Tribunal receives a notice of appeal and any further documents or information from the appellant under rule 4, it must immediately provide a copy to the respondent.

### **Filing of documents by respondent**

**7.** The respondent must, not later than 2 working days after the day on which the Tribunal provides the respondent with the notice of appeal, provide the following documents to the Tribunal—

- (a) the notice of the decision to which the notice of appeal relates, and any other document the respondent provided to the appellant giving reasons for that decision;
- (b) any statement of evidence or application form completed by the appellant;
- (c) any record of an interview with the appellant, in relation to the decision being appealed;
- (d) any other unpublished document which is referred to in a document mentioned in subparagraph (a) or relied upon by the respondent; and
- (e) the notice of any other appealable decision made in relation to the appellant.

### **Fixing date of appeal hearing**

- 8.**—(1) The Tribunal must fix a date for the hearing of the appeal which is—
- (a) not later than 3 working days after the day on which the respondent provides the documents under rule 7; or
  - (b) if the Tribunal is unable to arrange a hearing within that time, as soon as practicable.
- (2) The Tribunal must provide notice of the date, time and place of the hearing to every party as soon as practicable and in any event not later than noon on the working day before the hearing.
- (3) A practice direction may provide that, as regards—
- (a) all appellants detained at one of the places specified in rule 2(3); or
  - (b) a class or category of appellants detained in any of those specified places, a period of 6 working days shall apply instead of the period of 3 working days provided for in paragraph (1).

### **Consideration with or without a hearing**

**9.**—(1) The Tribunal must conclude the hearing of the appeal on the date fixed under the Fast Track Rules.

(2) Where—

- (a) the appeal—
  - (i) lapses pursuant to section 99 of the 2002 Act;
  - (ii) is treated as abandoned pursuant to section 104(4A) of the 2002 Act; or
  - (iii) is withdrawn by the appellant or treated as withdrawn in accordance with rule 17 of the Principal Rules;
- (b) the Tribunal postpones or adjourns the hearing under rule 12 or 14(2)(a); or
- (c) all of the parties to the appeal consent to the Tribunal deciding the appeal without a hearing;

the requirement referred to in paragraph (1) ceases.

### **Decisions and notice of decisions**

**10.**—(1) Where the Tribunal decides an appeal, it must provide to each party—

- (a) a notice of decision and the reasons for it;
- (b) notification of any right of appeal against the decision and the time within which, and the manner in which, such right of appeal may be exercised.

(2) The Tribunal must provide the notice and the notification—

- (a) where rule 9(1) applies, not later than 2 working days after the day on which the hearing of the appeal was concluded; or
- (b) in any other case, not later than 2 working days after the day on which the appeal was decided.

## **PART 3**

### **Appeals to the Upper Tribunal**

## **Time limit for making an application for permission to appeal**

**11.** An application for permission to appeal to the Upper Tribunal must be provided to the Tribunal so that it is received no later than 3 working days after the date on which the party making the application was provided with the notice of decision.

## **PART 4 General Provisions**

### **Adjournment**

**12.** Unless the Tribunal makes an order under rule 14, the Tribunal may postpone or adjourn the hearing of the appeal only where the Tribunal is satisfied that—

- (a) the appeal could not justly be decided if the hearing were to be concluded on the date fixed under the Fast Track Rules; and
- (b) there is an identifiable future date, not more than 10 working days after the date so fixed, upon which the Tribunal can conclude the hearing and justly decide the appeal within the timescales provided for in the Fast Track Rules.

### **Correction of errors and determinations**

**13.** Where a notice of decision is amended under the Principal Rules, the Tribunal must, not later than one working day after making the amendment, provide an amended version to every party to whom it provided the original.

## **PART 5**

### **Transfer Out of Fast Track**

#### **Transfer out of fast track**

**14.—(1)** Where the Fast Track Rules apply to an appeal or application, the Tribunal must order that the Fast Track Rules shall cease to apply—

- (a) if all the parties consent; or
- (b) if the Tribunal is satisfied that the case cannot justly be decided within the timescales provided for in the Fast Track Rules.

(2) When making an order under paragraph (1), the Tribunal may, notwithstanding rule 1(5) or (6) of the Fast Track Rules or the application of the Principal Rules—

- (a) postpone or adjourn any hearing of the appeal or application; and
- (b) give directions in relation to the conduct of the proceedings.

### **EXPLANATORY NOTE**

*(This note is not part of the Rules)*

These Rules replace the Asylum and Immigration Tribunal (Procedure) Rules 2005 (S.I. 2005/230) as amended and the Asylum and Immigration Tribunal (Fast Track Procedure) Rules 2005 (S.I. 2005/560) as amended.

Part 1 contains interpretation provisions and states the overriding objective applicable to proceedings before the Immigration and Asylum Chamber of the First-tier Tribunal.

Part 2 includes provisions on delegation to staff, case management powers, sanctions for noncompliance, costs and expenses, service of documents and information and rules about evidence, submissions and witnesses.

Part 3 contains provisions on notices of appeal, hearings and decisions by the Tribunal.

Part 4 deals with correcting, setting aside, reviewing and appealing against Tribunal decisions.

Part 5 deals with bail.

Part 6 contains transitional and revocation provisions.

The Schedule contains the Fast Track Rules for appeals and applications where the appellant is detained under the Immigration Acts at specified places.

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## **Tribunal Procedure (Upper Tribunal) Rules 2008**

***Rules 2, 5-6, 12, 13, 15, 17-17A, 21, 24, 25, 36A, 44-46***

### **2. Overriding objective and parties' obligation to co-operate with the Upper Tribunal**

(1) The overriding objective of these Rules is to enable the Upper Tribunal to deal with cases fairly and justly.

(2) Dealing with a case fairly and justly includes—

(a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties;

(b) avoiding unnecessary formality and seeking flexibility in the proceedings;

(c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;

(d) using any special expertise of the Upper Tribunal effectively; and

(e) avoiding delay, so far as compatible with proper consideration of the issues.

(3) The Upper Tribunal must seek to give effect to the overriding objective when it—

(a) exercises any power under these Rules; or

(b) interprets any rule or practice direction.

(4) Parties must—

(a) help the Upper Tribunal to further the overriding objective; and

(b) co-operate with the Upper Tribunal generally.

### **5.— Case management powers**

(1) Subject to the provisions of the 2007 Act and any other enactment, the Upper Tribunal may regulate its own procedure.

(2) The Upper Tribunal may give a direction in relation to the conduct or disposal of proceedings at any time, including a direction amending, suspending or setting aside an earlier direction.

(3) In particular, and without restricting the general powers in paragraphs (1) and (2), the Upper Tribunal may—

(a) extend or shorten the time for complying with any rule, practice direction or direction;

(b) consolidate or hear together two or more sets of proceedings or parts of proceedings raising common issues, or treat a case as a lead case;

(c) permit or require a party to amend a document;

(d) permit or require a party or another person to provide documents, information, evidence or submissions to the Upper Tribunal or a party;

(e) deal with an issue in the proceedings as a preliminary issue;

(f) hold a hearing to consider any matter, including a case management issue;

(g) decide the form of any hearing;

- (h) adjourn or postpone a hearing;
  - (i) require a party to produce a bundle for a hearing;
  - (j) stay (or, in Scotland, sist) proceedings;
  - (k) transfer proceedings to another court or tribunal if that other court or tribunal has jurisdiction in relation to the proceedings and—
    - (i) because of a change of circumstances since the proceedings were started, the Upper Tribunal no longer has jurisdiction in relation to the proceedings; or
    - (ii) the Upper Tribunal considers that the other court or tribunal is a more appropriate forum for the determination of the case;
  - (l) suspend the effect of its own decision pending an appeal or review of that decision;
  - (m) in an appeal, or an application for permission to appeal, against the decision of another tribunal, suspend the effect of that decision pending the determination of the application for permission to appeal, and any appeal;
  - (n) require any person, body or other tribunal whose decision is the subject of proceedings before the Upper Tribunal to provide reasons for the decision, or other information or documents in relation to the decision or any proceedings before that person, body or tribunal.
- (4) The Upper Tribunal may direct that a fast-track case cease to be treated as a fast-track case if—
- (a) all the parties consent; or
  - (b) the Upper Tribunal is satisfied that the appeal or application could not be justly determined if it were treated as a fast-track case;

...

## **6. Procedure for applying for and giving directions**

- (1) The Upper Tribunal may give a direction on the application of one or more of the parties or on its own initiative.
- (2) An application for a direction may be made—
  - (a) by sending or delivering a written application to the Upper Tribunal; or
  - (b) orally during the course of a hearing.
- (3) An application for a direction must include the reason for making that application.
- (4) Unless the Upper Tribunal considers that there is good reason not to do so, the Upper Tribunal must send written notice of any direction to every party and to any other person affected by the direction.
- (5) If a party or any other person sent notice of the direction under paragraph (4) wishes to challenge a direction which the Upper Tribunal has given, they may do so by applying for another direction which amends, suspends or sets aside the first direction.

## **12.— Calculating time**

- (1) An act required by these Rules, a practice direction or a direction to be done on or by a particular day must be done by 5pm on that day.
- (2) If the time specified by these Rules, a practice direction or a direction for doing any act ends on a

day other than a working day, the act is done in time if it is done on the next working day.

(3) In a special educational needs case or a disability discrimination in schools case, the following days must not be counted when calculating the time by which an act must be done—

(a) 25th December to 1st January inclusive; and

(b) any day in August.

(3A) In an asylum case or an immigration case, when calculating the time by which an act must be done, in addition to the days specified in the definition of “working days” in rule 1(interpretation), the following days must also not be counted as working days—

(a) 27th to 31st December inclusive;

(4) Paragraph (3) or (3A) does not apply where the Upper Tribunal directs that an act must be done by or on a specified date.

...

### **13. Sending and delivery of documents**

(1) Any document to be provided to the Upper Tribunal under these Rules, a practice direction or a direction must be—

(a) sent by pre-paid post or by document exchange, or delivered by hand, <sup>1</sup> to the address specified for the proceedings;

(b) sent by fax to the number specified for the proceedings; or

(c) sent or delivered by such other method as the Upper Tribunal may permit or direct.

(2) Subject to paragraph (3), if a party provides a fax number, email address or other details for the electronic transmission of documents to them, that party must accept delivery of documents by that method.

(3) If a party informs the Upper Tribunal and all other parties that a particular form of communication, other than pre-paid post or delivery by hand, should not be used to provide documents to that party, that form of communication must not be so used.

(4) If the Upper Tribunal or a party sends a document to a party or the Upper Tribunal by email or any other electronic means of communication, the recipient may request that the sender provide a hard copy of the document to the recipient. The recipient must make such a request as soon as reasonably practicable after receiving the document electronically.

(5) The Upper Tribunal and each party may assume that the address provided by a party or its representative is and remains the address to which documents should be sent or delivered until receiving written notification to the contrary.

(6) Subject to paragraph (7), if a document submitted to the Upper Tribunal is not written in English, it must be accompanied by an English translation.

(7) In proceedings that are in Wales or have a connection with Wales, a document or translation may be submitted to the Tribunal in Welsh.

### **15. Evidence and submissions**

(1) Without restriction on the general powers in rule 5(1) and (2) (case management powers), the Upper Tribunal may give directions as to—

(a) issues on which it requires evidence or submissions;

(b) the nature of the evidence or submissions it requires;

(c) whether the parties are permitted or required to provide expert evidence, and if so whether the parties must jointly appoint a single expert to provide such evidence;

(d) any limit on the number of witnesses whose evidence a party may put forward, whether in relation to a particular issue or generally;

(e) the manner in which any evidence or submissions are to be provided, which may include a direction for them to be given—

(i) orally at a hearing; or

(ii) by written submissions or witness statement; and

(f) the time at which any evidence or submissions are to be provided.

(2) The Upper Tribunal may—

(a) admit evidence whether or not—

(i) the evidence would be admissible in a civil trial in the United Kingdom; or

(ii) the evidence was available to a previous decision maker; or

(b) exclude evidence that would otherwise be admissible where—

(i) the evidence was not provided within the time allowed by a direction or a practice direction;

(ii) the evidence was otherwise provided in a manner that did not comply with a direction or a practice direction; or

(iii) it would otherwise be unfair to admit the evidence.

(2A) In an asylum case or an immigration case—

(a) if a party wishes the Upper Tribunal to consider evidence that was not before the First-tier Tribunal, that party must send or deliver a notice to the Upper Tribunal and any other party—

(i) indicating the nature of the evidence; and

(ii) explaining why it was not submitted to the First-tier Tribunal; and

(b) when considering whether to admit evidence that was not before the First-tier Tribunal, the Upper Tribunal must have regard to whether there has been unreasonable delay in producing that evidence.

(3) The Upper Tribunal may consent to a witness giving, or require any witness to give, evidence on oath, and may administer an oath for that purpose.

## **17. Withdrawal**

(1) Subject to paragraph (2), a party may give notice of the withdrawal of its case, or any part of it—

(a) ... by sending or delivering to the Upper Tribunal a written notice of withdrawal; or

(b) orally at a hearing.

(2) Notice of withdrawal will not take effect unless the Upper Tribunal consents to the withdrawal except in relation to an application for permission to appeal.

(3) A party which has withdrawn its case may apply to the Upper Tribunal for the case to be reinstated.

(4) An application under paragraph (3) must be made in writing and be received by the Upper Tribunal within 1 month after—



- (a) the date on which the Upper Tribunal received the notice under paragraph (1)(a); or
  - (b) the date of the hearing at which the case was withdrawn orally under paragraph (1)(b).
- (5) The Upper Tribunal must notify each party in writing that a withdrawal has taken effect <sup>2</sup> under this rule.
- (6) Paragraph (3) does not apply to a financial services case other than a reference against a penalty.

**17A. Appeal treated as abandoned or finally determined in an asylum case or an immigration case**

(1) A party to an asylum case or an immigration case before the Upper Tribunal must notify the Tribunal if they are aware that—

- (a) the appellant has left the United Kingdom;
- (b) the appellant has been granted leave to enter or remain in the United Kingdom;
- (c) a deportation order has been made against the appellant; or
- (d) a document listed in paragraph 4(2) of Schedule 2 to the Immigration (European Economic Area) Regulations 2006 has been issued to the appellant.

(2) Where an appeal is treated as abandoned pursuant to section 104(4) or (4A) of the Nationality, Immigration and Asylum Act 2002 <sup>2</sup> or paragraph 4(2) of Schedule 2 to the Immigration (European Economic Area) Regulations 2006, or as finally determined pursuant to section 104(5) of the Nationality, Immigration and Asylum Act 2002, the Upper Tribunal must send the parties a notice informing them that the appeal is being treated as abandoned or finally determined.

(3) Where an appeal would otherwise fall to be treated as abandoned pursuant to section 104(4A) of the Nationality, Immigration and Asylum Act 2002, but the appellant wishes to pursue their appeal, the appellant must send or deliver a notice, which must comply with any relevant practice directions, to the Upper Tribunal and the respondent so that it is received within thirty days of the date on which the notice of the grant of leave to enter or remain in the United Kingdom was sent to the appellant.

(4) Where a notice of grant of leave to enter or remain is sent electronically or delivered personally, the time limit in paragraph (3) is twenty eight days.

(5) Notwithstanding rule 5(3)(a) (case management powers) and rule 7(2) (failure to comply with rules etc.), the Upper Tribunal must not extend the time limits in paragraph (3) and (4).

**21. Application to the Upper Tribunal for permission to appeal**

(2) A person may apply to the Upper Tribunal for permission to appeal to the Upper Tribunal against a decision of another tribunal only if—

- (a) they have made an application for permission to appeal to the tribunal which made the decision challenged; and
- (b) that application has been refused or has not been admitted or has been granted only on limited grounds.

(3) An application for permission to appeal must be made in writing and received by the Upper Tribunal no later than—

(a) in the case of an application under section 4 of the Safeguarding Vulnerable Groups Act 2006, 3 months after the date on which written notice of the decision being challenged was sent to the appellant;

(aa) in an asylum case or an immigration case where the appellant is in the United Kingdom at the time that the application is made—

(i) 14 days after the date on which notice of the First-tier Tribunal's refusal of permission was sent to the appellant; or

(ii) if the case is a fast-track case, four working days after the date on which notice of the First-tier Tribunal's refusal of permission was sent to the appellant;

(b) otherwise, a month after the date on which the tribunal that made the decision under challenge sent notice of its refusal of permission to appeal, or refusal to admit the application for permission to appeal, to the appellant.

(4) The application must state—

(a) the name and address of the appellant;

(b) the name and address of the representative (if any) of the appellant;

(c) an address where documents for the appellant may be sent or delivered;

(d) details (including the full reference) of the decision challenged;

(e) the grounds on which the appellant relies; and

(f) whether the appellant wants the application to be dealt with at a hearing.

(5) The appellant must provide with the application a copy of—

(a) any written record of the decision being challenged;

(b) any separate written statement of reasons for that decision; and

(c) if the application is for permission to appeal against a decision of another tribunal, the notice of refusal of permission to appeal, or notice of refusal to admit the application for permission to appeal, from that other tribunal.

(6) If the appellant provides the application to the Upper Tribunal later than the time required by paragraph (3) or by an extension of time allowed under rule 5(3)(a) (power to extend time)—

(a) the application must include a request for an extension of time and the reason why the application was not provided in time; and

(b) unless the Upper Tribunal extends time for the application under rule 5(3)(a) (power to extend time) the Upper Tribunal must not admit the application.

(7) If the appellant makes an application to the Upper Tribunal for permission to appeal against the decision of another tribunal, and that other tribunal refused to admit the appellant's application for permission to appeal because the application for permission or for a written statement of reasons was not made in time—

(a) the application to the Upper Tribunal for permission to appeal must include the reason why the application to the other tribunal for permission to appeal or for a written statement of reasons, as the case may be, was not made in time; and

(b) the Upper Tribunal must only admit the application if the Upper Tribunal considers that it is in the interests of justice for it to do so.

### **Special procedure for providing notice of a refusal of permission to appeal in an asylum case**

**22A.** (1) This rule applies to a decision in an asylum case to refuse permission to appeal or to refuse to admit a late application for permission to appeal, where—

(a) the appellant is not the Secretary of State;

(b) at the time the application is made the appellant is in the United Kingdom; and

(c) the decision is not made in a fast-track case.

(2) The Upper Tribunal must provide written notice of the refusal and of the reasons for the refusal (“the notice”) to the Secretary of State as soon as reasonably practicable.

(3) The Secretary of State must—

(a) send the notice to the appellant not later than 30 days after the Upper Tribunal provided it to the Secretary of State; and

(b) as soon as practicable after doing so, inform the Upper Tribunal of the date on which, and the means by which, it was sent.

(4) If the Secretary of State does not give the Upper Tribunal the information required by paragraph (3)(b) within 31 days after the notice was provided to the Secretary of State, the Upper Tribunal must send the notice to the appellant as soon as reasonably practicable.

#### **24. Response to the notice of appeal**

(1) This rule and rule 25 do not apply to a road transport case <sup>2</sup>, in respect of which Schedule 1 makes alternative provision.

(1A) Subject to any direction given by the Upper Tribunal, a respondent may provide a response to a notice of appeal.

(2) Any response provided under paragraph (1A) <sup>3</sup> must be in writing and must be sent or delivered to the Upper Tribunal so that it is received—

(a) if an application for permission to appeal stands as the notice of appeal, no later than one month after the date on which the respondent was sent notice that permission to appeal had been granted;

(b) in any other case, no later than 1 month after the date on which the Upper Tribunal sent a copy of the notice of appeal to the respondent.

(3) The response must state—

(a) the name and address of the respondent;

(aa) in a fast-track case, two days before the hearing of the appeal; or

(b) the name and address of the representative (if any) of the respondent;

(c) an address where documents for the respondent may be sent or delivered;

(d) whether the respondent opposes the appeal;

(e) the grounds on which the respondent relies, including (in the case of an appeal against the decision of another tribunal) any grounds on which the respondent was unsuccessful in the proceedings which are the subject of the appeal, but intends to rely in the appeal; and

(f) whether the respondent wants the case to be dealt with at a hearing.

(4) If the respondent provides the response to the Upper Tribunal later than the time required by paragraph (2) or by an extension of time allowed under rule 5(3)(a) (power to extend time), the response must include a request for an extension of time and the reason why the response <sup>7</sup> was not provided in time.

(5) When the Upper Tribunal receives the response it must send a copy of the response and any accompanying documents to the appellant and each other party.

#### **25. Appellant's reply**

(1) Subject to any direction given by the Upper Tribunal, the appellant may provide a reply to any response provided under rule 24 (response to the notice of appeal).

(2) Subject to paragraph (2A), any <sup>1</sup> reply provided under paragraph (1) must be in writing and must be sent or delivered to the Upper Tribunal so that it is received within one month after the date on which the Upper Tribunal sent a copy of the response to the appellant.

(2A) In an asylum case or an immigration case, the time limit in paragraph (2) is—

(a) one month after the date on which the Upper Tribunal sent a copy of the response to the appellant, or five days before the hearing of the appeal, whichever is the earlier; and

(b) in a fast-track case, the day of the hearing.

(3) When the Upper Tribunal receives the reply it must send a copy of the reply and any accompanying documents to each respondent.

### **36A Special time limits for hearing an appeal in a fast-track case(a**

(1) Subject to rule 36(2)(aa) (notice of hearings) and paragraph (2) of this rule, where permission to appeal to the Upper Tribunal has been given in a fast-track case, the Upper Tribunal must start the hearing of the appeal not later than—

(a) five working days after the date on which the First-tier Tribunal or the Upper Tribunal sent notice of its grant of permission to appeal to the appellant; or

(b) where the notice of its grant of permission to appeal is sent electronically or delivered personally, two working days after the date on which the First-tier Tribunal or the Upper Tribunal sent notice of its grant of permission to appeal to the appellant.

(2) If the Upper Tribunal is unable to arrange for the hearing to start within the time specified in paragraph (1), it must set a date for the hearing as soon as is reasonably practicable.

### **44. Application for permission to appeal**

(1) Subject to paragraph (4A), a person seeking permission to appeal must make a written application to the Upper Tribunal for permission to appeal.

...

(3A) An application under paragraph (1) in respect of a decision in an asylum case or an immigration case must be sent or delivered to the Upper Tribunal so that it is received within the appropriate period after the Upper Tribunal or, as the case may be in an asylum case, the Secretary of State for the Home Department, sent any of the documents in paragraph (3) to the party making the application.

(3B) The appropriate period referred to in paragraph (3A) is as follows—

(a) where the person who appealed to the First-tier Tribunal is in the United Kingdom at the time that the application is made—

(i) twelve working days ; or

(ii) if the party making the application is in detention under the Immigration Acts, seven working days; and

(b) where the person who appealed to the First-tier Tribunal is outside the United Kingdom at the time that the application is made, thirty eight days.

(3C) Where a notice of decision is sent electronically or delivered personally, the time limits in paragraph (3B) are—

(a) in sub-paragraph (a)(i), ten working days;

(b) in sub-paragraph (a)(ii), five working days; and

(c) in sub-paragraph (b), ten working days.

...

(4A) Where, in judicial review proceedings in the Immigration and Asylum Chamber of the Upper Tribunal, a decision is given orally at a hearing, a person may apply to the Tribunal for permission to appeal—

(a) orally at that hearing; or

(b) in writing, before the commencement or the expiry of the relevant period determined by reference to paragraph (4).

(5) The date in paragraph (3)(c) or (4)(c) applies only if the application for the decision to be set aside was made within the time stipulated in rule 43 (setting aside a decision which disposes of proceedings) or any extension of that time granted by the Upper Tribunal.

(6) If the person seeking permission to appeal provides the application to the Upper Tribunal later than the time required by paragraph (3) , (3A) <sup>10</sup>, (3D) <sup>11</sup> or (4), or by any extension of time under rule 5(3)(a) (power to extend time)—

(a) the application must include a request for an extension of time and the reason why the application notice was not provided in time; and

(b) unless the Upper Tribunal extends time for the application under rule 5(3)(a) (power to extend time) the Upper Tribunal must refuse the application.

(7) An application under paragraph (1) or (4A)(a) must—

(a) identify the decision of the Tribunal to which it relates;

(b) identify the alleged error or errors of law in the decision; and

(c) state the result the party making the application is seeking.

#### **45. Upper Tribunal's consideration of application for permission to appeal**

(1) On receiving an application for permission to appeal the Upper Tribunal may review the decision in accordance with rule 46 (review of a decision), but may only do so if—

(a) when making the decision the Upper Tribunal overlooked a legislative provision or binding authority which could have had a material effect on the decision; or

(b) since the Upper Tribunal's decision, a court has made a decision which is binding on the Upper Tribunal and which, had it been made before the Upper Tribunal's decision, could have had a material effect on the decision.

(2) If the Upper Tribunal decides not to review the decision, or reviews the decision and decides to take no action in relation to the decision or part of it, the Upper Tribunal must consider whether to give permission to appeal in relation to the decision or that part of it.

(3) The Upper Tribunal must send a record of its decision to the parties as soon as practicable.

(4) If the Upper Tribunal refuses permission to appeal it must send with the record of its decision—

(a) a statement of its reasons for such refusal; and

(b) notification of the right to make an application to the relevant appellate court for permission to appeal and the time within which, and the method by which, such application must be made.

(5) The Upper Tribunal may give permission to appeal on limited grounds, but must comply with

paragraph (4) in relation to any grounds on which it has refused permission.

#### **46. Review of a decision**

(1) The Upper Tribunal may only undertake a review of a decision pursuant to rule 45(1) (review on an application for permission to appeal).

(2) The Upper Tribunal must notify the parties in writing of the outcome of any review and of any rights of review or appeal in relation to the outcome.

(3) If the Upper Tribunal decides to take any action in relation to a decision following a review without first giving every party an opportunity to make representations, the notice under paragraph (2) must state that any party that did not have an opportunity to make representations may apply for such action to be set aside and for the decision to be reviewed again.

## **Practice Directions for Immigration and Asylum Chamber**

### ***Paragraphs 3, 4, 7, 9-13***

## **PRACTICE DIRECTIONS FOR THE IMMIGRATION AND ASYLUM**

### **CHAMBER OF THE UPPER TRIBUNAL**

#### **3 Procedure on appeal**

3.1 Where permission to appeal to the Upper Tribunal has been granted, then, unless and to the extent that they are directed otherwise, for the purposes of preparing for a hearing in the Upper Tribunal the parties should assume that:-

(a) the Upper Tribunal will decide whether the making of the decision of the First-tier Tribunal involved the making of an error on a point of law, such that the decision should be set aside under section 12(2)(a) of the 2007 Act;

(b) except as specified in Practice Statement 7.2 (disposal of appeals by Upper Tribunal), the Upper Tribunal will proceed to re-make the decision under section 12(2)(b)(ii), if satisfied that the original decision should be set aside; and

(c) in that event, the Upper Tribunal will consider whether to remake the decision by reference to the First-tier Tribunal's findings of fact and any new documentary evidence submitted under UT rule 15(2A) which it is reasonably practicable to adduce for consideration at that hearing.

3.2 The parties should be aware that, in the circumstances described in paragraph 3.1(c), the Upper Tribunal will generally expect to proceed, without any further hearing, to re-make the decision, where this can be undertaken without having to hear oral evidence. In certain circumstances, the Upper Tribunal may give directions for the giving of oral evidence at the relevant hearing, where it appears appropriate to do so. Such directions may be given before or at that hearing.

3.3 In a case where no oral evidence is likely to be required in order for the Upper Tribunal to re-make the decision, the Upper Tribunal will therefore expect any documentary evidence relevant to the re-making of the decision to be adduced in accordance with Practice Direction 4 so that it may be considered at the relevant hearing; and, accordingly, the party seeking to rely on such documentary evidence will be expected to show good reason why it is not reasonably practicable to adduce the same in order for it to be considered at that hearing.

3.4 If the Upper Tribunal nevertheless decides that it cannot proceed as described in paragraph 3.1(c) because findings of fact are needed which it is not in a position to make, the Upper Tribunal will make arrangements for the adjournment of the hearing, so that the proceedings may be completed before the same constitution of the Tribunal; or, if that is not reasonably practicable, for their transfer to a different constitution, in either case so as to enable evidence to be adduced for that purpose.

3.5 Where proceedings are transferred in the circumstances described in paragraph 3.4, any documents sent to or given by the Tribunal from which the proceedings are transferred shall be deemed to have been sent to or given by the Tribunal to which those proceedings are transferred.

3.6 Where such proceedings are transferred, the Upper Tribunal shall prepare written reasons for finding that the First-tier Tribunal made an error of law, such that its decision fell to be set aside, and those written reasons shall be sent to the parties before the next hearing.

3.7 The written reasons shall be incorporated in full in, and form part of, the determination of the Upper Tribunal that re-makes the decision. Only in very exceptional cases can the decision contained in those written reasons be departed from or varied by the Upper Tribunal which re-makes the decision under section 12(2)(b)(ii) of the 2007 Act.

3.8 Unless directed otherwise, the parties to any fast track appeal which is before the Upper Tribunal will be expected to attend with all necessary witnesses and evidence that may be required if the

Upper Tribunal should decide that it is necessary to set aside the decision of the First-tier Tribunal and re-make the decision. It will be unusual for the Upper Tribunal to adjourn or transfer, but, if it does so, paragraph 3.6 and 3.7 will, so far as appropriate, apply. 3.9 In this Practice Direction and Practice Direction 4, “the relevant hearing” means a hearing fixed by the Upper Tribunal at which it will consider if the First-tier Tribunal made an error of law.

3.10 Without prejudice to the generality of paragraph 1.5, where, by virtue of any transitional provisions in Schedule 4 to the Transfer of Functions Order, the Upper Tribunal is undertaking the reconsideration of a decision of the AIT, references in this Practice Direction and Practice Direction 4 to the First-tier Tribunal shall be construed as references to the AIT.

#### **4 Evidence**

4.1 UT rule 15(2A) imposes important procedural requirements where the Upper Tribunal is asked to consider evidence that was not before the First-tier Tribunal. UT rule 15(2A) must be complied with in every case where permission to appeal is granted and a party wishes the Upper Tribunal to consider such evidence. Notice under rule 15(2A)(a), indicating the nature of the evidence and explaining why it was not submitted to the First-tier Tribunal, must be filed with the Upper

Tribunal and served on the other party within the time stated in any specific directions given by the Upper Tribunal; or, if no such direction has been given, as soon as practicable after permission to appeal has been granted.

4.2 A party who wishes the Upper Tribunal to consider any evidence that was not before the First-tier Tribunal must indicate in the notice whether the evidence is sought to be adduced:-

(a) in connection with the issue of whether the First-tier Tribunal made an error of law, requiring its decision to be set aside; or

(b) in connection with the re-making of the decision by the Upper Tribunal, in the event of the First-tier Tribunal being found to have made such an error.

4.3 The notice must clearly indicate whether the party concerned wishes the evidence to be considered at the relevant hearing and state whether the evidence is in oral or documentary form.

4.4 Where a party wishes, in the circumstances described in paragraph

4.2(b), to adduce only documentary evidence, Practice Direction 3.3 will apply.

4.5 Where a party wishes, in the circumstances described in paragraph

4.2(b), to adduce oral evidence at the relevant hearing, the notice must explain why it is considered desirable to proceed in such a manner and give details of the oral evidence and a time estimate.

4.6 Where the Upper Tribunal acts under Practice Direction 3 to adjourn or transfer the hearing, it shall consider any notice given under UT rule

#### **7 Case management review hearings and directions**

7.1 Where the Tribunal so directs, a CMR hearing will be held in the case of an appeal where the party who is or was the appellant before the First-tier

Tribunal:-

(a) is present in the United Kingdom; and

(b) has a right of appeal whilst in the United Kingdom.

7.2 It is important that the parties and their representatives understand that a CMR hearing is a hearing in the appeal and that the appeal may be determined under the relevant Procedure Rules if a party does not appear and is not represented at that hearing.

7.3 In addition to any information required by First-tier rule 8 (form of contents and notice of appeal),



the appellant before the First-tier Tribunal must provide that Tribunal and the respondent at the CMR hearing with:-

- (a) particulars of any application for permission to vary the grounds of appeal;
- (b) particulars of any amendments to the reasons in support of the grounds of appeal;
- (c) particulars of any witnesses to be called or whose written statement or report is proposed to be relied upon at the full hearing; and
- (d) the draft of any directions that the appellant is requesting the Tribunal to make at the CMR hearing.

7.4 In addition to any documents required by relevant Procedure Rules, the party who is or was the respondent before the First-tier Tribunal must provide the Tribunal and the other party at the CMR hearing with:-

- (a) any amendment that has been made or is proposed to be made to the notice of decision to which the appeal relates or to any other document served on the person concerned giving reasons for that decision; and
- (b) a draft of any directions that the Tribunal is requested to make at the CMR hearing.

7.5 In most cases, including those appeals where a CMR hearing is to be held, the Tribunal will normally have given to the parties the following directions with the notice of hearing:- (a) not later than 5 working days before the full hearing (or 10 days in the case of an out-of-country appeal) the appellant shall serve on the Tribunal and the respondent:

- (i) witness statements of the evidence to be called at the hearing, such statements to stand as evidence in chief at the hearing;
- (ii) a paginated and indexed bundle of all the documents to be relied on at the hearing with a schedule identifying the essential passages;
- (iii) a skeleton argument, identifying all relevant issues including human rights claims and citing all the authorities relied upon; and
- (iv) a chronology of events;

(b) not later than 5 working days before the full hearing, the respondent shall serve on the Tribunal and the appellant a paginated and indexed bundle of all the documents to be relied upon at the hearing, with a schedule identifying the relevant passages, and a list of any authorities relied upon.

7.6 At the end of the CMR hearing, the Tribunal will give the parties any further written directions relating to the conduct of the appeal.

7.7 Although in normal circumstances a witness statement should stand as evidence-in-chief, there may be cases where it will be appropriate for appellants or witnesses to have the opportunity of adding to or supplementing their witness statements.

7.8 In addition to the directions referred to above, at the end of the CMR hearing the Tribunal will also give to the parties written confirmation of:-

- (a) any issues that have been agreed at the CMR hearing as being relevant to the determination of the appeal; and
- (b) any concessions made at the CMR hearing by a party.

## **9 Adjournments**

9.1 Applications for the adjournment of appeals (other than fast track appeals) listed for hearing before the Tribunal must be made not later than 5.00p.m. one clear working day before the date of the

hearing.

9.2 For the avoidance of doubt, where a case is listed for hearing on, for example, a Friday, the application must be received by 5.00p.m. on the Wednesday.

9.3 The application for an adjournment must be supported by full reasons and must be made in accordance with relevant Procedure Rules.

9.4 Any application made later than the end of the period mentioned in paragraph 9.1 must be made to the Tribunal at the hearing and will require the attendance of the party or the representative of the party seeking the adjournment.

9.5 It will be only in the most exceptional circumstances that a late application for an adjournment will be considered without the attendance of a party or representative.

9.6 Parties must not assume that an application, even if made in accordance with paragraph 9.1, will be successful and they must always check with the Tribunal as to the outcome of the application.

9.7 Any application for the adjournment of a fast track appeal must be made to the Tribunal at the hearing and will be considered by the Tribunal in accordance with relevant Procedure Rules.

9.8 If an adjournment is not granted and the party fails to attend the hearing, the Tribunal may in certain circumstances proceed with the hearing in that party's absence.

## **10 Expert evidence**

10.1 A party who instructs an expert must provide clear and precise instructions to the expert, together with all relevant information concerning the nature of the appellant's case, including the appellant's immigration history, the reasons why the appellant's claim or application has been refused by the respondent and copies of any relevant previous reports prepared in respect of the appellant.

10.2 It is the duty of an expert to help the Tribunal on matters within the expert's own expertise. This duty is paramount and overrides any obligation to the person from whom the expert has received instructions or by whom the expert is paid.

10.3 Expert evidence should be the independent product of the expert uninfluenced by the pressures of litigation.

10.4 An expert should assist the Tribunal by providing objective, unbiased opinion on matters within his or her expertise, and should not assume the role of an advocate.

10.5 An expert should consider all material facts, including those which might detract from his or her opinion.

10.6 An expert should make it clear:-

(a) when a question or issue falls outside his or her expertise; and

(b) when the expert is not able to reach a definite opinion, for example because of insufficient information.

10.7 If, after producing a report, an expert changes his or her view on any material matter, that change of view should be communicated to the parties without delay, and when appropriate to the Tribunal.

10.8 An expert's report should be addressed to the Tribunal and not to the party from whom the expert has received instructions.

10.9 An expert's report must:-

(a) give details of the expert's qualifications;

(b) give details of any literature or other material which the expert has relied on in making the report;

(c) contain a statement setting out the substance of all facts and instructions given to the expert which are material to the opinions expressed in the report or upon which those opinions are based;

(d) make clear which of the facts stated in the report are within the expert's own knowledge;

(e) say who carried out any examination, measurement or other procedure which the expert has used for the report, give the qualifications of that person, and say whether or not the procedure has been carried out under the expert's supervision;

(f) where there is a range of opinion on the matters dealt with in the report: (i) summarise the range of opinion, so far as reasonably practicable, and

(ii) give reasons for the expert's own opinion;

(g) contain a summary of the conclusions reached;

(h) if the expert is not able to give an opinion without qualification, state the qualification; and

(j) contain a statement that the expert understands his or her duty to the Tribunal, and has complied and will continue to comply with that duty.

10.10 An expert's report must be verified by a Statement of Truth as well as containing the statements required in paragraph 10.9(h) and (j).

10.11 The form of the Statement of Truth is as follows:- "I confirm that insofar as the facts stated in my report are within my own knowledge I have made clear which they are and I believe them to be true, and that the opinions I have expressed represent my true and complete professional opinion".

10.12 The instructions referred to in paragraph 10.9(c) are not protected by privilege but cross-examination of the expert on the contents of the instructions will not be allowed unless the Tribunal permits it (or unless the party who gave the instructions consents to it). Before it gives permission the Tribunal must be satisfied that there are reasonable grounds to consider that the statement in the report or the substance of the instructions is inaccurate or incomplete. If the Tribunal is so satisfied, it will allow the cross-examination where it appears to be in the interests of justice to do so.

10.13 In this Practice Direction:-

"appellant" means the party who is or was the appellant before the First-tier Tribunal; and

"respondent" means the party who is or was the respondent before the First-tier Tribunal.

## **11 Citation of unreported determinations**

11.1 A determination of the Tribunal which has not been reported may not be cited in proceedings before the Tribunal unless:-

(a) the person who is or was the appellant before the First-tier Tribunal, or a member of that person's family, was a party to the proceedings in which the previous determination was issued; or (b) the Tribunal gives permission.

11.2 An application for permission to cite a determination which has not been reported must:-

(a) include a full transcript of the determination;

(b) identify the proposition for which the determination is to be cited; and

(c) certify that the proposition is not to be found in any reported determination of the Tribunal, the IAT or the AIT and had not been superseded by the decision of a higher authority.

11.3 Permission under paragraph 11.1 will be given only where the Tribunal considers that it would be materially assisted by citation of the determination, as distinct from the adoption in argument of the reasoning to be found in the determination. Such instances are likely to be rare; in particular, in the case of determinations which were unreportable (see Practice Statement 11 (reporting of

determinations)). It should be emphasised that the Tribunal will not exclude good arguments from consideration but it will be rare for such an argument to be capable of being made only by reference to an unreported determination.

11.4 The provisions of paragraph 11.1 to 11.3 apply to unreported and unreportable determinations of the AIT, the IAT and adjudicators, as those provisions apply respectively to unreported and unreportable determinations of the Tribunal.

11.5 A party citing a determination of the IAT bearing a neutral citation number prior to 2003 (including all series of "bracket numbers") must be in a position to certify that the matter or proposition for which the determination is cited has not been the subject of more recent, reported, determinations of the IAT, the AIT or the Tribunal.

11.6 In this Practice Direction and Practice Direction 12, "determination" includes any decision of the AIT or the Tribunal.

## **12 Starred and Country Guidance determinations**

12.1 Reported determinations of the Tribunal, the AIT and the IAT which are "starred" shall be treated by the Tribunal as authoritative in respect of the matter to which the "starring" relates, unless inconsistent with other authority that is binding on the Tribunal.

12.2 A reported determination of the Tribunal, the AIT or the IAT bearing the letters "CG" shall be treated as an authoritative finding on the country guidance issue identified in the determination, based upon the evidence before the members of the Tribunal, the AIT or the IAT that determine the appeal. As a result, unless it has been expressly superseded or replaced by any later "CG" determination, or is inconsistent with other authority that is binding on the Tribunal, such a country guidance case is authoritative in any subsequent appeal, so far as that appeal:-

(a) relates to the country guidance issue in question; and

(b) depends upon the same or similar evidence.

12.3 A list of current CG cases will be maintained on the Tribunal's website.

Any representative of a party to an appeal concerning a particular country will be expected to be conversant with the current "CG" determinations relating to that country.

12.4 Because of the principle that like cases should be treated in like manner, any failure to follow a clear, apparently applicable country guidance case or to show why it does not apply to the case in question is likely to be regarded as grounds for appeal on a point of law.

## **13 Bail applications**

13.1 An application for bail must if practicable be listed for hearing within three working days of receipt by the Tribunal of the notice of application.

13.2 Any such notice which is received by the Tribunal after 3.30p.m. on a particular day will be treated for the purposes of this paragraph as if it were received on the next business day.

13.3 An Upper Tribunal judge may exercise bail jurisdiction under the Immigration Act 1971 by reason of being also a First-tier judge.

13.4 Notwithstanding paragraph 13.3, it will usually be appropriate for a bail application to be made to an Upper Tribunal judge only where the appeal in question is being heard by the Upper Tribunal, or where a hearing before the Upper Tribunal is imminent. In case of doubt, a potential applicant should consult the bails section of the First-tier Tribunal.

14 This Practice Direction is made by the Senior President of Tribunals with the agreement of the Lord Chancellor. It is made in the exercise of powers conferred by the Tribunals, Courts and Enforcement Act 2007.

## **Practice Statements for Immigration and Asylum Chamber**

### ***Paragraphs 3, 5, 7***

#### **3 Where the Tribunal may not accept a notice of appeal**

3.1 First-tier rule 9 (where the Tribunal may not accept a notice of appeal) imposes a duty on the Tribunal not to accept an invalid notice of appeal (in the circumstances described in rule 9(1A)) and to serve notice to this effect on the person who gave the notice of appeal and on the respondent.

3.2 The Tribunal will scrutinise a notice of appeal as soon as practicable after it has been given. First-tier rule 9 makes no provision for the issue of validity to be determined by means of a hearing or by reference to any representations of the parties.

3.3 Once the Tribunal has served the notice described in paragraph 3.1, First tier rule 9 provides that the Tribunal must take no further action in relation to the notice of appeal. The decision under First-tier rule 9 is, accordingly, a procedural or preliminary decision.

3.4 The fact that a hearing date may have been given to the parties does not mean that the appeal must be treated as valid. Accordingly, if at a hearing (including a CMR hearing) it transpires that the notice of appeal does not relate to a decision against which there is, in the circumstances, an exercisable right of appeal, the Tribunal must so find; but it will do so in the form of a determination, rather than by means of a notice under First tier rule 9.

#### **5 Record of proceedings**

5.1 The Tribunal shall keep a record of proceedings of any hearing and attach that record to the Tribunal's case file.

#### **7 Disposal of appeals in Upper Tribunal**

7.1 Where under section 12(1) of the 2007 Act (proceedings on appeal to the Upper Tribunal) the Upper Tribunal finds that the making of the decision concerned involved the making of an error on a point of law, the Upper Tribunal may set aside the decision and, if it does so, must either remit the case to the First-tier Tribunal under section 12(2)(b)(i) or proceed (in accordance with relevant Practice Directions) to re-make the decision under section 12(2)(b)(ii).

7.2 The Upper Tribunal is likely on each such occasion to proceed to re-make the decision, instead of remitting the case to the First-tier Tribunal, unless the Upper Tribunal is satisfied that:-

(a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or

(b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.

7.3 Remaking rather than remitting will nevertheless constitute the normal approach to determining appeals where an error of law is found, even if some further fact finding is necessary.

## Immigration Rules (HC395) (extract only)

### Interpretation (paragraph 6, extract only)

6. In these Rules the following interpretations apply:

"the **Immigration Acts**" has the same meaning as it has in the Interpretation Act 1978. "**the 1993 Act**" is the Asylum and Immigration Appeals Act 1993.

"**the 1996 Act**" is the Asylum and Immigration Act 1996

"**the 2006 EEA Regulations**" means the Immigration (European Economic Area) Regulations 2006

"**adoption**" unless the contrary intention appears, includes a de facto adoption in accordance with the requirements of paragraph 309A of these Rules, and "adopted" and "adoptive parent" should be construed accordingly.

In Appendix FM references to '**application for leave to remain**' include an application for variation of leave to enter or remain of a person in the UK.

"**Approved Destination Status Agreement with China**" means the Memorandum of Understanding on visa and related issues concerning tourist groups from the People's Republic of China to the United Kingdom as a approved destination, signed on 21 January 2005.

"**a bona fide private education institution**" is a private education institution which:

- a) maintains satisfactory records of enrolment and attendance of students, and supplies these to the Border and Immigration Agency when requested;
- b) provides courses which involve a minimum of 15 hours organised daytime study per week;
- c) ensures a suitably qualified tutor is present during the hours of study to offer teaching and instruction to the students;
- d) offers courses leading to qualifications recognised by the appropriate accreditation bodies;
- e) employs suitably qualified staff to provide teaching, guidance and support to the students;
- f) provides adequate accommodation, facilities, staffing levels and equipment to support the numbers of students enrolled at the institution; and
- g) if it offers tuition support to external students at degree level, ensures that such students are registered with the UK degree awarding body.

"**Business day**" means any day other than Saturday or Sunday, a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in the part of the United Kingdom to which the notice is sent, Christmas Day or Good Friday.

"**civil partner**" means a civil partnership which exists under or by virtue of the Civil Partnership Act 2004 (and any reference to a civil partner is to be read accordingly);

"**conviction**" means conviction for a criminal offence in the UK or any other country.

"**curtailment**" in relation to the curtailment of a person's leave to enter or remain in the UK, means curtailing their leave such that they will have a shorter period of, or no, leave remaining.

**"degree level study"** means a course which leads to a recognised United Kingdom degree at bachelor's level or above, or an equivalent qualification at level 6 or above of the revised National Qualifications Framework, or levels 9 or above of the Scottish Credit and Qualifications Framework.

Under Part 8 of these Rules, **"post-graduate level study"** means a course at level 7 or above of the revised National Qualifications Framework or Qualifications and Credit Framework, or level 11 or above of the Scottish Credit and Qualifications Framework, which leads to a recognised United Kingdom postgraduate degree at Master's level or above, or an equivalent qualification at the same level.

**"foundation degree"** means a programme of study which leads to a qualification awarded by an English higher education institution with degree awarding powers which is at a minimum of level 5 on the revised National Qualifications Framework, or awarded on a directly equivalent basis in the devolved administrations.

**"primary degree"** means a qualification obtained from a course of degree level study, which did not feature as an entry requirement a previous qualification obtained from degree level study. An undergraduate degree is a primary degree. A Masters degree that has a Bachelor degree as an entry requirement is not a primary degree.

A **"UK recognised body"** is an institution that has been granted degree awarding powers by either a Royal Charter, an Act of Parliament or the Privy Council. For the purposes of these Rules we will consider the Foundation Programme Office, South London Local Education and Training Board and the Yorkshire and Humber Strategic Health Authority as equivalent to UK Recognised Bodies.

A **"UK listed body"** is an institution that is not a UK recognised body but which provides full courses that lead to the award of a degree by a UK recognised body.

**"EEA national"** has the meaning given in regulation 2(1) of the 2006 EEA Regulations.

**"an external student"** is a student studying for a degree from a UK degree awarding body without any requirement to attend the UK degree awarding body's premises or a UK Listed Body's premises for lectures and tutorials.

**"United Kingdom passport"** bears the meaning it has in the Immigration Act 1971. **"a UK Bachelors degree"** means

- (a) A programme of study or research which leads to the award, by or on behalf of a university, college or other body which is authorised by Royal Charter or by or under an Act of Parliament to grant degrees, of a qualification designated by the awarding institution to be of Bachelors degree level; or
- (b) A programme of study or research, which leads to a recognised award for the purposes of section 214(2)(c) of the Education Reform Act 1988, of a qualification designated by the awarding institution to be of Bachelors degree level.

**"Immigration Officer"** includes a Customs Officer acting as an Immigration Officer.

**"Multiple Entry work permit employment"** is work permit employment where the person concerned does not intend to spend a continuous period in the United Kingdom in work permit employment.

**"public funds"** means

- (a) housing under Part VI or VII of the Housing Act 1996 and under Part II of the Housing Act 1985, Part I or II of the Housing (Scotland) Act 1987, Part II of the Housing (Northern Ireland) Order 1981 or Part II of the Housing (Northern Ireland) Order 1988;
- (b) attendance allowance, severe disablement allowance, carer's allowance and disability living

allowance under Part III of the Social Security Contribution and Benefits Act 1992; income support, council tax benefit and housing benefit under Part VII of that Act; a social fund payment under Part VIII of that Act; child benefit under Part IX of that Act; income based jobseeker's allowance under the Jobseekers Act 1995, income related allowance under Part 1 of the Welfare Reform Act 2007 (employment and support allowance) state pension credit under the State Pension Credit Act 2002; or child tax credit and working tax credit under Part 1 of the Tax Credits Act 2002;

- (c) attendance allowance, severe disablement allowance, carer's allowance and disability living allowance under Part III of the Social Security Contribution and Benefits (Northern Ireland) Act 1992; income support, council tax benefit and, housing benefit under Part VII of that Act; a social fund payment under Part VIII of that Act; child benefit under Part IX of that Act; income based jobseeker's allowance under the Jobseekers (Northern Ireland) Order 1995 or income related allowance under Part 1 of the Welfare Reform Act (Northern Ireland) 2007;
- (d) Universal Credit under Part 1 of the Welfare Reform Act 2012 or Personal Independence Payment under Part 4 of that Act;
- (e) Universal Credit, Personal Independence Payment or any domestic rate relief under the Northern Ireland Welfare Reform Act 2013;
- (f) a council tax reduction under a council tax reduction scheme made under section 13A of the Local Government Finance Act 1992 in relation to England or Wales or a council tax reduction pursuant to the Council Tax Reduction (Scotland) Regulations 2012 or the Council Tax Reduction (State Pension Credit) (Scotland) Regulations 2012.

**"settled in the United Kingdom"** means that the person concerned:

- (a) is free from any restriction on the period for which he may remain save that a person entitled to an exemption under Section 8 of the Immigration Act 1971 (otherwise than as a member of the home forces) is not to be regarded as settled in the United Kingdom except in so far as Section 8(5A) so provides; and
- (b) is either:
  - (i) ordinarily resident in the United Kingdom without having entered or remained in breach of the immigration laws; or
  - (ii) despite having entered or remained in breach of the immigration laws, has subsequently entered lawfully or has been granted leave to remain and is ordinarily resident.

**"a parent"** includes

- (a) the stepfather of a child whose father is dead and the reference to stepfather includes a relationship arising through civil partnership;
- (b) the stepmother of a child whose mother is dead and the reference to stepmother includes a relationship arising through civil partnership and;
- (c) the father as well as the mother of an illegitimate child where he is proved to be the father;
- (d) an adoptive parent, where a child was adopted in accordance with a decision taken by the competent administrative authority or court in a country whose adoption orders are recognised by the United Kingdom or where a child is the subject of a de facto adoption in accordance with the requirements of paragraph 309A of these Rules (except that an adopted child or a child who is the subject of a de facto adoption may not make an application for leave to enter or remain in order to accompany, join or remain with an adoptive parent under paragraphs 297-303);



- (e) 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 ground of the original parent(s)' inability to care for the child.

**"date of application"** means the date of application determined in accordance with paragraph 30 or 34G of these rules as appropriate.

**"a valid application"** means an application made in accordance with the requirements of Part 1 of these Rules.

**"refugee leave"** means limited leave granted pursuant to paragraph 334 or 335 of these rules and has not been revoked pursuant to paragraph 339A or 339B of these rules.

**"humanitarian protection"** means limited leave granted pursuant to paragraph 339C of these rules and has not been revoked pursuant to paragraph 339G or 339H of these rules.

**"a period of imprisonment"** referred to in these rules has the same meaning as set out in section 38(2) of the UK Borders Act 2007.

**"Overstayed" or "Overstaying"** means the applicant has stayed in the UK beyond the latest of:

- (i) the time limit attached to the last period of leave granted, or
- (ii) beyond the period that his leave was extended under sections 3C or 3D of the Immigration Act 1971.

**"intention to live permanently with the other" or "intend to live together permanently"** means an intention to live together, evidenced by a clear commitment from both parties that they will live together permanently in the UK immediately following the outcome of the application in question or as soon as circumstances permit thereafter. However, where an application is made under Appendix Armed Forces the words "in the UK" in this definition do not apply."

Where an application is made under Appendix FM and the sponsor is a permanent member of HM Diplomatic Service, or a comparable UK-based staff member of the British Council, the Department for International Development or the Home Office on a tour of duty outside the UK, the words "in the UK" in this definition do not apply.

**"present and settled" or "present and settled in the UK"** means that the person concerned is settled in the United Kingdom, and, at the time that an application under these Rules is made, is physically present here or is coming here with or to join the applicant and intends to make the United Kingdom their home with the applicant if their application is successful.

Where the person concerned is a British Citizen or settled in the UK and is:

- (i) a member of HM Forces serving overseas, or
- (ii) a permanent member of HM Diplomatic Service, or a comparable UK-based staff member of the British Council, the Department for International Development or the Home Office on a tour of duty outside the UK, and the applicant has provided the evidence specified in paragraph 26A of Appendix FM-SE,

then for the purposes of Appendix FM the person is to be regarded as present and settled in the UK, and in paragraphs R-LTRP.1.1.(a) and R-ILRP.1.1.(a) of Appendix FM the words "and their partner must be in the UK" are to be disregarded.

For the purposes of an application as a fiancé(e) or proposed civil partner under paragraphs 289AA to 295 or Appendix FM, an EEA national who holds a document certifying permanent residence issued under the 2006 EEA Regulations is to be regarded as present and settled in the UK.

**"sponsor"** means the person in relation to whom an applicant is seeking leave to enter or remain as their spouse, fiancé, civil partner, proposed civil partner, unmarried partner, same-sex partner or dependent relative, as the case may be, under paragraphs 277 to 295O or 317 to 319 or the person in relation to whom an applicant is seeking entry clearance or leave as their partner or dependent relative under Appendix FM.

**"overcrowded"** means overcrowded within the meaning of the Housing Act 1985, the Housing (Scotland) Act 1987 or the Housing (Northern Ireland) Order 1988 (as appropriate).

**"working illegally"** means working in breach of conditions of leave or working when in the UK without valid leave where such leave is required.

**"in breach of immigration laws"** means without valid leave where such leave is required, or in breach of the conditions of leave.

**"adequate"** and **"adequately"** in relation to a maintenance and accommodation requirement shall mean that, after income tax, national insurance contributions and housing costs have been deducted, there must be available to the family the level of income that would be available to them if the family was in receipt of income support."

**"occupy exclusively"** in relation to accommodation shall mean that part of the accommodation must be for the exclusive use of the family.

**"must not be leading an independent life"** "must not be leading an independent life" or "is not leading an independent life" means that the applicant does not have a partner as defined in Appendix FM; is living with their parents (except where they are at boarding school, college or university as part of their full-time education); is not employed full-time (unless aged 18 years or over); is wholly or mainly dependent upon their parents for financial support (unless aged 18 years or over); and is wholly or mainly dependent upon their parents for emotional support. Where a relative other than a parent may act as the sponsor of the applicant, references in this definition to "parents" shall be read as applying to that other relative."

**"prohibited degree of relationship"** has the same meaning as in the Marriage Act 1949, the Marriage (Prohibited Degrees of Relationship) Act 1986 and the Civil Partnership Act 2004.

**"visa nationals"** are the persons specified in Appendix 1 to these Rules who need a visa for the United Kingdom.

**"non-visa nationals"** are persons who are not specified in Appendix 1 to these Rules.

**"specified national"** is a person specified in Appendix 3 to these Rules who seeks leave to enter the United Kingdom for a period of more than 6 months.

**"employment"** unless the contrary intention appears, includes paid and unpaid employment, paid and unpaid work placements undertaken as part of a course or period of study, self employment and engaging in business or any professional activity.

**"the Human Rights Convention"** means the Convention for the Protection of Human Rights and Fundamental Freedoms, agreed by the Council of Europe at Rome on 4th November 1950 as it has effect for the time being in relation to the United Kingdom.

**"immigration employment document"** means a work permit or any other document which relates to employment and is issued for the purpose of these Rules or in connection with leave to enter or remain in the United Kingdom.

**"Employment as a Doctor in Training"** means employment in a medical post or training programme which has been approved by the Postgraduate Medical Education and Training Board, or employment in a postgraduate training programme in dentistry.

"**these Rules**" means these immigration rules (HC 395) made under section 3(2) of the Immigration Act 1971.

A '**refugee**' is a refugee as defined in regulation 2 of The Refugee or Person in Need of International Protection (Qualification) Regulation 2006.

...

6A. For the purpose of these Rules, a person (P) is not to be regarded as having (or potentially having) recourse to public funds merely because P is (or will be) reliant in whole or in part on public funds provided to P's sponsor unless, as a result of P's presence in the United Kingdom, the sponsor is (or would be) entitled to increased or additional public funds (save where such entitlement to increased or additional public funds is by virtue of P and the sponsor's joint entitlement to benefits under the regulations referred to in paragraph 6B).

6B. Subject to paragraph 6C, a person (P) shall not be regarded as having recourse to public funds if P is entitled to benefits specified under section 115 of the Immigration and Asylum Act 1999 by virtue of regulations made under sub-sections (3) and (4) of that section or section 42 of the Tax Credits Act 2002.

6C. A person (P) making an application from outside the United Kingdom will be regarded as having recourse to public funds where P relies upon the future entitlement to any public funds that would be payable to P or to P's sponsor as a result of P's presence in the United Kingdom, (including those benefits to which P or the sponsor would be entitled as a result of P's presence in the United Kingdom under the regulations referred to in to paragraph 6B)".

## **Part 1: Rules 15, 18-20, 24, 27, 28, 30, 34, 35, 39**

### **Common Travel Area**

15. The United Kingdom, the Channel Islands, the Isle of Man and the Republic of Ireland collectively form a common travel area. A person who has been examined for the purpose of immigration control at the point at which he entered the area does not normally require leave to enter any other part of it. However certain persons subject to the Immigration (Control of Entry through the Republic of Ireland) Order 1972 (as amended) who enter the United Kingdom through the Republic of Ireland do require leave to enter. This includes:

- (i) those who merely passed through the Republic of Ireland;
- (ii) persons requiring visas;
- (iii) persons who entered the Republic of Ireland unlawfully;
- (iv) persons who are subject to directions given by the Secretary of State for their exclusion from the United Kingdom on the ground that their exclusion is conducive to the public good;
- (v) persons who entered the Republic from the United Kingdom and Islands after entering there unlawfully or overstaying their leave.

### **Returning Residents**

18. A person seeking leave to enter the United Kingdom as a returning resident may be admitted for settlement provided the Immigration Officer is satisfied that the person concerned:

- (i) had indefinite leave to enter or remain in the United Kingdom when he last left; and
- (ii) has not been away from the United Kingdom for more than 2 years; and
- (iii) did not receive assistance from public funds towards the cost of leaving the United Kingdom; and
- (iv) now seeks admission for the purpose of settlement.

19. A person who does not benefit from the preceding paragraph by reason only of having been away from the United Kingdom too long may nevertheless be admitted as a returning resident if, for example, he has lived here for most of his life.

19A. Where a person who has indefinite leave to enter or remain in the United Kingdom accompanies, on a tour of duty abroad, a spouse, civil partner, unmarried partner or same-sex partner who is a member of HM Forces serving overseas, or a permanent member of HM Diplomatic Service, or a comparable United Kingdom-based staff member of the British Council, or a staff member of the Department for International Development who is a British Citizen or is settled in the United Kingdom, sub-paragraphs (ii) and (iii) of paragraph 18 shall not apply.

20. The leave of a person whose stay in the United Kingdom is subject to a time limit lapses on his going to a country or territory outside the common travel area if the leave was given for a period of six months or less or conferred by a visit visa. In other cases, leave lapses on the holder remaining outside the United Kingdom for a continuous period of more than two years. A person whose leave has lapsed and who returns after a temporary absence abroad within the period of this earlier leave has no claim to admission as a returning resident. His application to re-enter the United Kingdom should be considered in the light of all the relevant circumstances. The same time limit and any conditions attached will normally be reimposed if he meets the requirements of these Rules, unless he is seeking admission in a different capacity from the one in which he was last given leave to enter or remain.

### **Entry clearance**

24. The following must produce to the Immigration Officer a valid passport or other identity document endorsed with a United Kingdom entry clearance issued to him for the purpose for which he seeks entry:

(i) a visa national;

(ii) any other person (other than British Nationals (Overseas), a British overseas territories citizen, a British Overseas citizen, a British protected person or a person who under the British Nationality Act 1981 is a British subject) who is seeking entry for a period exceeding six months or is seeking entry for a purpose for which prior entry clearance is required under these Rules.

Such a person will be refused leave to enter if he has no such current entry clearance. Any other person who wishes to ascertain in advance whether he is eligible for admission to the United Kingdom may apply for the issue of an entry clearance.

27. An application for entry clearance is to be decided in the light of the circumstances existing at the time of the decision, except that an applicant will not be refused an entry clearance where entry is sought in one of the categories contained in paragraphs 296-316 *or paragraph EC-C of Appendix FM* solely on account of his attaining the age of 18 years between receipt of his application and the date of the decision on it.

28. An applicant for an entry clearance must be outside the United Kingdom and Islands at the time of the application. An applicant for an entry clearance who is seeking entry as a visitor must apply to a post designated by the Secretary of State to accept applications for entry clearance for that purpose and from that category of applicant. Subject to paragraph 28A, any other application must be made to the post in the country or territory where the applicant is living which has been designated by the Secretary of State to accept applications for entry clearance for that purpose and from that category of applicant. Where there is no such post the applicant must apply to the appropriate designated post outside the country or territory where he is living.

30. An application for an entry clearance is not made until any fee required to be paid under the Consular Fees Act 1980 (including any Regulations or Orders made under that Act) has been paid.

### **Specified forms and procedures for applications or claims in connection with immigration**

A34. An application for leave to remain in the United Kingdom under these Rules must be made either by completing the relevant online application process in accordance with paragraph A34 (iii) by using the specified application form in accordance with paragraphs 34A to 34D.

- (i) "The relevant online application process" means the application process accessible via the visas and immigration pages of the gov.uk website and identified there as relevant for applications for leave to remain for the immigration category under which the applicant wishes to apply.

- (ii) "Specified" in relation to the relevant online application process means specified in the online guidance accompanying that process.
- (iii) When the application is made via the relevant online application process:
  - (a) any specified fee in connection with the application must be paid in accordance with the method specified;
  - (b) if the online application process requires the applicant to provide biometric information that information must be provided as specified;
  - (c) if the online application process requires supporting documents to be submitted by post then any such documents specified as mandatory must be submitted in the specified manner within 15 working days of submission of the online application;
  - (d) if the online application process requires the applicant to make an appointment to attend a public enquiry office of the United Kingdom Border Agency the applicant must, within 45 working days of submission of the online application, make and attend that appointment; and comply with any specified requirements in relation to the provision of biometric information and documents specified as mandatory.

Notice of invalidity will be given in writing and deemed to be received on the date it is given, except where it is sent by post, in which case it will be deemed to be received on the second day after it was posted excluding any day which is not a business day.

34. An application form is specified when:

- (i) it is posted on the visas and immigration pages of the gov.uk website,
- (ii) it is marked on the form that it is a specified form for the purpose of the immigration rules,
- (iii) it comes into force on the date specified on the form and/or in any accompanying announcement.

34A. Where an application form is specified, the application or claim must also comply with the following requirements:

- (i) Subject to paragraph A34 the application or claim must be made using the specified form,
- (ii) any specified fee in connection with the application or claim must be paid in accordance with the method specified in the application form, separate payment form and/or related guidance notes, as applicable,
- (iii) any section of the form which is designated as mandatory in the application form and/or related guidance notes must be completed as specified,
- (iv) if the application form and/or related guidance notes require the applicant to provide biometric information, such information must be provided as specified,
- (v) an appointment for the purposes stated in subparagraph (iv) must be made and must take place by the dates specified in any subsequent notification by the Secretary of State following receipt of the application, or as agreed by the Secretary of State,
- (vi) where the application or claim is made by post or courier, or submitted in person:
  - (a) the application or claim must be accompanied by the photographs and documents specified as mandatory in the application form and/or related guidance notes,
    - (ab) those photographs must be in the same format specified as mandatory in the application form and/or related guidance notes, and
  - (b) the form must be signed by the applicant, and where applicable, the applicant's spouse, civil partner, same-sex partner or unmarried partner, save that where the applicant is under the age of eighteen, the form may be signed by the parent or legal guardian of the applicant on his behalf,

34B. Where an application form is specified, it must be sent by prepaid post to the Home Office at the address specified on the application form for such purposes, or submitted in person at a Home Office premium service centre. Application types permitted in person at a Home Office premium service centre are listed on the visa and immigration pages of the gov.uk website.

- (i) an application may be sent by courier to the Home Office at the address specified on the application form for such purposes if it is an application for:
  - (a) limited or indefinite leave to remain as a sole representative, retired person of independent means or as a Tier 1 Migrant or Tier 2 Migrant;
  - (b) limited leave to remain for work permit employment, as a seasonal agricultural worker, for the purpose of employment under the Sectors- Based Scheme.
  - (c) Indefinite leave to remain as a businessperson, investor or innovator, or
  - (d) limited leave to remain as a Tier 5 (Temporary Worker) Migrant.
- (ii) an applicant may submit an application online where this option is available on the visas and immigration pages of the gov.uk website
- (iii) application may not be sent by pre-paid post, and must be made online, if it is an application for a Tier 2, Tier 4 or Tier 5 (Temporary Worker) sponsorship licence.

34C. Where an application or claim in connection with immigration for which an application form is specified does not comply with the requirements in paragraph 34A, or where an application for leave to remain in the United Kingdom is made by completing the relevant online application process, and does not comply with the requirements of paragraph A34(iii), the following provisions apply:

- (a) Subject to sub-paragraph (b), the application will be invalid if it does not comply with the relevant requirements of A34(iii) or 34A, as applicable, and will not be considered. Notice of invalidity will be given in writing and deemed to be received on the date it is given, except where it is sent by post, in which case it will be deemed to be received on the second day after it was posted excluding any day which is not a business day, unless the contrary is proved.
- (b) The decision maker may contact the applicant or their representative in writing and give the applicant a single opportunity to correct any omission or error which renders the application invalid. The amended application and/or any requested documents must be received at the address specified in the request within 10 business days of the date on which the request was sent

34D. Where the main applicant wishes to include applications or claims by any members of his family as his dependants on his own application form, the applications or claims of the dependants must meet the following requirements or they will be invalid and will not be considered:

- (i) the application form must expressly permit the applications or claims of dependants to be included, and
- (ii) such dependants must be:
  - (a) the spouse, civil partner, unmarried or same-sex partner of the main applicant; and/or
  - (b) children of the main applicant aged under 18; and/or
  - (c) where permitted by the Rules for the immigration category under which the applicant wishes to apply, any dependants of the main applicant aged 18 or over.

#### **Variation of Applications or Claims for Leave to Remain**

34E. If a person wishes to vary the purpose of an application or claim for leave to remain in the United Kingdom and an application form is specified for such new purpose or paragraph A34 applies, the variation must comply with the requirements of paragraph 34A or paragraph A34 (as they apply at the date the variation is made) as if the variation were a new application or claim, or the variation will be invalid and will not be considered.

34F. Any valid variation of a leave to remain application will be decided in accordance with the immigration rules in force at the date such variation is made.

**Determination of the date of an application or claim (or variation of an application or claim) in connection with immigration**

34G. For the purposes of these rules, the date on which an application or claim (or a variation in accordance with paragraph 34E) is made is as follows:

- (i) where the application form is sent by post, the date of posting,
- (ii) where the application form is submitted in person, the date on which it is accepted by a Home Office premium service centre,
- (iii) where the application form is sent by courier, the date on which it is delivered to the Home Office, or
- (iv) where the application is made via the online application process, on the date on which the online application is submitted.

34H. Applications or claims for leave to remain made before 29 February 2008 for which a form was prescribed prior to 29 February 2008 shall be subject to the forms and procedures as in force on the date on which the application or claim was made.

34I. Where an application or claim is made no more than 21 days after the date on which a form is specified under the immigration rules and on a form that was permitted for such application or claim immediately prior to the date of such specification, the application or claim shall be deemed to have been made on the specified form.

**Withdrawn applications or claims for leave to remain in the United Kingdom**

34J. Where a person whose application or claim for leave to remain is being considered requests the return of his passport for the purpose of travel outside the common travel area, the application for leave shall, provided it has not already been determined, be treated as withdrawn as soon as the passport is returned in response to that request.

34K. Paragraph 34J does not apply to an applicant who is applying as a Tier 2 Migrant or a Tier 5 Migrant and whose application is supported by a Certificate of Sponsorship from a Premium Sponsor.

**Specified forms and procedures in connection with applications for administrative review**

**Notice of an eligible decision**

34L. (1) Unless sub-paragraph (2) applies, written notice must be given to a person of any eligible decision. The notice given must:

- (a) include or be accompanied by a statement of reasons for the decision to which it relates, and
- (b) include information on how to apply for an administrative review and the time limit for making an application.

(2) Sub-paragraph (1) does not apply where the eligible decision is a grant of leave to remain.

**Making an application**

34M. (1) Unless sub-paragraph (2) applies only one valid application for administrative review may be made in respect of an eligible decision.

(2) A further application for administrative review in respect of an eligible decision may be made where the outcome of the administrative review is as set out in paragraph AR2.2(d) of Appendix AR of these Rules.

34N. An application for administrative review must be made in accordance with the requirements set out in paragraphs 34O to 34S. If it is not it will be invalid and will not be considered.

34O. The application must be made in accordance with paragraph 34U or paragraph 34V.

34P. The application must be made in relation to an eligible decision.

34Q. The application must be made while the applicant is in the UK.

34R. (1) The application must be made:

(a) where the applicant is not detained, no more than 14 calendar days after receipt by the applicant of the notice of the eligible decision; or

(b) where the applicant is in detention under the Immigration Acts, no more than 7 calendar days after receipt by the applicant of the notice of the eligible decision.

(2) But the application may be accepted out of time if the Secretary of State is satisfied that it would be unjust not to waive the time limit and the application was made as soon as reasonably practicable.

(3) For the purposes of this paragraph, where notice of the eligible decision is sent by post to an address in the UK, it is deemed to have been received, unless the contrary is shown, on the second working day after the day on which it was posted.

(4) For provision about when an application is made see paragraph 34W.

34S. An application may only include an application on behalf of a dependant of the applicant if that dependant was also a dependant on the application which resulted in the eligible decision.

#### **Notice of invalidity**

34T.(1) A notice informing an applicant that their application is invalid will be given in writing (which includes, where an email address has been provided for correspondence, by electronic mail).

(2) A notice of invalidity is deemed to have been received, unless the contrary is shown:

(a) where it is sent by post, on the second working day after the day on which it was posted;

(b) where it is sent by electronic mail, on the day on which it is sent; and

(c) where it is given in person, on the day on which it is given.

#### **Online applications for administrative review**

34U. (1) In this paragraph:

"the relevant online application process" means the application process accessible via the gov.uk website and identified there as relevant for applications for administrative review; and

"specified" in relation to the relevant online application process means specified in the online guidance accompanying that process.

(2) An application may be made online by completing the relevant online application process.

(3) Where an application is made online:

(a) any specified fee in connection with the application must be paid in accordance with the method specified;

(b) any section of the online application which is designated as mandatory must be completed as specified; and

(c) documents specified as mandatory on the online application or in the related guidance must be submitted either electronically with the online application and in the specified manner, where this is permitted, or received by post and in the specified manner no more than 7 working days after the day on which the online application is submitted.

#### **Postal applications for administrative review**

34V. (1) An application may be made by post or courier in accordance with this paragraph.

(2) Where an application is made by post or courier:



- (a) it must be made on the application form as specified within the meaning of paragraph 34 (but see paragraph 34Y);
- (b) any specified fee in connection with the application must be paid in accordance with the method specified in the application form, separate payment form or related guidance notes (as applicable);
- (c) any section of the application form which is designated as mandatory in the form itself or related guidance notes must be completed;
- (d) the form must be signed by the applicant or their representative;
- (e) the application must be accompanied by the documents specified as mandatory in the application form or related guidance notes; and
- (f) the application must be sent to the address specified on the form.

### **Determining the date of an application**

34W. (1) An application for administrative review is made:

- (a) where it is made by post in accordance with paragraph 34V, on the marked date of posting;
- (b) where it is made by courier in accordance with paragraph 34V, on the date on which it is delivered; and
- (c) where it is made online in accordance with paragraph 34U, on the date on which it is submitted.

(2) Accepting an application has been made does not mean that it is accepted as being valid.

### **Withdrawal of applications**

34X. (1) An application which has not been determined will be treated as withdrawn if the applicant requests the return of their passport for the purpose of travel outside the UK.

(2) An application which may only be brought from within the UK and which has not been determined will be treated as withdrawn if the applicant leaves the UK.

(3) The application for administrative review may be withdrawn by the applicant. A request to withdraw an application must be made in writing to the Home Office at the address provided for that purpose on the visas and immigration pages of the gov.uk website. The application will be treated as withdrawn on the date on which the request is received.

### **Transitional arrangements for specified forms used in postal and courier applications**

34Y. Where an application is made no more than 21 days after the date on which a form is specified (within the meaning of paragraph 34) and on a form that was specified immediately prior to the date of the new specification, the application is deemed to have been made on the specified form (and is therefore not to be treated as invalid by reason only of being made on the "wrong" form).

### **Undertakings**

35. A sponsor of a person seeking leave to enter or remain in the United Kingdom may be asked to give an undertaking in writing to be responsible for that person's maintenance, accommodation and (as appropriate) personal care for the period of any leave granted, including any further variation or for a period of 5 years from date of grant where indefinite leave to enter or remain is granted. Under the Social Security Administration Act 1992 and the Social Security Administration (Northern Ireland) Act 1992, the Department of Social Security or, as the case may be, the Department of Health and Social Services in Northern Ireland, may seek to recover from the person giving such an undertaking any income support paid to meet the needs of the person in respect of whom the undertaking has been given. Under the Immigration and Asylum Act 1999 the Home Office may seek to recover from the person giving such an undertaking amounts attributable to any support provided under section 95 of the Immigration and Asylum Act 1999 (support for asylum seekers) to, or in respect of, the person in respect of whom the undertaking has been given. Failure by the sponsor to maintain that person in

accordance with the undertaking, may also be an offence under section 105 of the Social Security Administration Act 1992 and/or under section 108 of the Immigration and Asylum Act 1999 if, as a consequence, asylum support and/or income support is provided to, or in respect of, that person.

## **Medical**

...

A39. Any person from a country listed in Appendix T Part 1 making an application for entry clearance to come to the UK for more than six months or as a fiance(e) or proposed civil partner applying for leave to enter under Section EC-P:Entry clearance as a partner under Appendix FM or leave to enter under paragraphs 290-291 in Part 8 of these Rules, must present, at the time of application, a valid medical certificate issued by a medical practitioner listed in Appendix T Part 2 confirming that they have undergone screening for active pulmonary tuberculosis and that this tuberculosis is not present in the applicant.

B39. Applicants seeking leave to enter as a returning resident under paragraph 19 of these rules, having been absent from the United Kingdom for more than two years are also subject to the requirements in paragraph A39.

39. The Entry Clearance Officer has the same discretion as an Immigration Officer to refer applicants for entry clearance for medical examination and the same principles will apply to the decision whether or not to issue an entry clearance.

...

## **Specified documents**

39B. (a) Where these Rules state that specified documents must be provided, that means documents specified in these Rules as being specified documents for the route under which the applicant is applying. If the specified documents are not provided, the applicant will not meet the requirement for which the specified documents are required as evidence.

- (b) Where these Rules specify documents that are to be provided, those documents are considered to be specified documents, whether or not they are named as such, and as such are subject to the requirements in (c) to (f) below.
- (c) If the Entry Clearance Officer or Secretary of State has reasonable cause to doubt the genuineness of any document submitted by an applicant which is, or which purports to be, a specified document under these Rules, and having taken reasonable steps to verify the document is unable to verify that it is genuine, the document will be discounted for the purposes of this application.
- (d) Specified documents must be originals, not copies, except where stated otherwise.
- (e) Specified documents must contain, or the applicant must provide, full contact details to allow each document to be verified.
- (f) Where any specified documents provided are not in English or Welsh, the applicant must provide the original and a full translation that can be independently verified by the Entry Clearance Officer, Immigration Officer or the Secretary of State.

The translation must be dated and include:

- (i) confirmation that it is an accurate translation of the original document;
- (ii) the full name and original signature of the translator or an authorised official of the translation company;
- (iii) the translator or translation company's contact details; and
- (iv) if the applicant is applying for leave to remain or indefinite leave to remain, certification by a qualified translator and details of the translator or translation company's credentials.

## **Indefinite leave to enter or remain**

39C (a) An applicant for indefinite leave to enter or remain must, unless the applicant provides a reasonable explanation, comply with any request made by the Secretary of State to attend an interview.

(b) If the decision-maker has reasonable cause to doubt (on examination or interview or on any other basis) that any document submitted by an applicant for the purposes of satisfying the requirements of Appendix KoLL of these Rules was genuinely obtained, that document may be discounted for the purposes of the application.

(c) Where sub-paragraph (b) applies, the decision-maker may request the applicant to provide additional evidence of knowledge of the English language and/or knowledge about life in the UK (as set out in paragraphs 3.2(b)(ii) and 3.3 of Appendix KoLL) for the purposes of demonstrating sufficient knowledge of the English language requirement and sufficient knowledge about life in the United Kingdom in accordance with Appendix KoLL.

(d) A decision-maker will not request evidence under sub-paragraph (c) where the decision-maker does not anticipate that the supply of that evidence will lead to a grant of leave to enter or remain in the United Kingdom because the application may be refused for other reasons.

## **Part 2 - Requirements for leave to enter as a general visitor**

41. The requirements to be met by a person seeking leave to enter the United Kingdom as a general visitor are that he:

(i) is genuinely seeking entry as a general visitor for a limited period as stated by him, not exceeding 6 months or not exceeding 12 months in the case of a person seeking entry to accompany an academic visitor, provided in the latter case the visitor accompanying the academic visitor (as their child, spouse or partner) has entry clearance; and

(ii) intends to leave the United Kingdom at the end of the period of the visit as stated by him; and does not intend to live for extended periods in the United Kingdom through frequent or successive visits; and

(iii) does not intend to take employment in the United Kingdom; and

(iv) does not intend to produce goods or provide services within the United Kingdom, including the selling of goods or services direct to members of the public; and

(v) Save to the extent provided by paragraph 43A, does not intend to undertake a course of study; and

(vi) will maintain and accommodate himself and any dependants adequately out of resources available to him without recourse to public funds or taking employment; or will, with any dependants, be maintained and/or accommodated adequately by relatives or friends who can demonstrate they are able and intend to do so, and are legally present in the United Kingdom, or will be at the time of their visit; and

(vii) can meet the cost of the return or onward journey; and

(viii) is not a child under the age of 18.

(ix) does not intend to do any of the activities provided for in paragraphs 46G (iii), 46M (iii) or 46S (iii); and

(x) does not, during his visit, intend to marry or form a civil partnership, or to give notice of marriage or civil partnership; and

(xi) does not intend to receive private medical treatment during his visit; and

(xii) is not in transit to a country outside the common travel area.

(xiii) where he is seeking leave to enter as a general visitor to take part in archaeological excavations, provides a letter from the director or organiser of the excavation stating the length of their visit and, where appropriate, what arrangements have been made for their accommodation and maintenance.

...

### **Leave to enter as a general visitor**

42. A person seeking leave to enter to the United Kingdom as a general visitor may be admitted for a period not exceeding 6 months, or not exceeding 12 months in the case of a person accompanying an academic visitor (as their child, spouse or partner), subject to a condition prohibiting employment and recourse to public funds, provided the Immigration Officer is satisfied that each of the requirements of paragraph 41 is met.

### **Permitted study as a general visitor**

43A. (1) A person who has been granted leave to enter the United Kingdom under paragraph 42 may undertake a course of study to the extent permitted by this paragraph.

(2) A course of study is permitted under this paragraph if it-

- (a) does not exceed 30 days in duration (either alone or taken together with any other course and whether continuous or otherwise); and
- (b) is a recreational course; but
- (c) is not an English language course.

(3) A course of study is also permitted under this paragraph if it-

(a) does not exceed 30 days in duration (either alone or taken together with any other course and whether continuous or otherwise); and

(b) is provided by an institution which is-

- (i) the holder of a Sponsor licence for Tier 4 of the Points-Based System,
- (ii) the holder of valid accreditation from Accreditation UK, the Accreditation Body for Language Services (ABLS), the British Accreditation Council (BAC), or the Accreditation Service for International Colleges (ASIC),
- (iii) the holder of a valid and satisfactory full institutional inspection, review or audit by the Bridge Schools Inspectorate, the Education and Training Inspectorate, Estyn, Education Scotland, the Independent Schools Inspectorate, Office for Standards in Education, the Quality Assurance Agency for Higher Education, the Schools Inspection Service or the Education and Training Inspectorate Northern Ireland, or
- (iv) an overseas higher education institution offering only part of its programmes in the United Kingdom, holding its own national accreditation and offering programmes that are an equivalent level to a United Kingdom degree.

(4) For the purposes of this paragraph a "recreational course" is one which a person undertakes purely for leisure purposes.

## **Part 5 - Persons with United Kingdom ancestry**

### **Requirements for leave to enter on the grounds of United Kingdom ancestry**

186. The requirements to be met by a person seeking leave to enter the United Kingdom on the grounds of his United Kingdom ancestry are that he:

(i) is a Commonwealth citizen; and

(ii) is aged 17 or over; and

(iii) is able to provide proof that one of his grandparents was born in the United Kingdom and Islands and that any such grandparent is the applicant's blood grandparent or grandparent by reason of an adoption recognised by the laws of the United Kingdom relating to adoption; and

- (iv) is able to work and intends to take or seek employment in the United Kingdom; and
- (v) will be able to maintain and accommodate himself and any dependants adequately without recourse to public funds; and
- (vi) holds a valid United Kingdom entry clearance for entry in this capacity.

#### **Leave to enter the United Kingdom on the grounds of United Kingdom ancestry**

187. A person seeking leave to enter the United Kingdom on the grounds of his United Kingdom ancestry may be given leave to enter for a period not exceeding 5 years provided he is able to produce to the Immigration Officer, on arrival, a valid United Kingdom entry clearance for entry in this capacity.

#### **Refusal of leave to enter on the grounds of United Kingdom ancestry**

188. Leave to enter the United Kingdom on the grounds of United Kingdom ancestry 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.

#### **Requirements for an extension of stay on the grounds of United Kingdom ancestry**

189. The requirements to be met by a person seeking an extension of stay on the grounds of United Kingdom ancestry are that:

- (i) he is able to meet each of the requirements of paragraph 186 (i)-(v); and
- (ii) he was admitted to the United Kingdom on the grounds of United Kingdom ancestry in accordance with paragraphs 186 to 188 or has been granted an extension of stay in this capacity; and
- (iii) he is not in the UK in breach of immigration laws except that any period of overstaying for a period of 28 days or less will be disregarded.

#### **Extension of stay on the grounds of United Kingdom ancestry**

190. An extension of stay on the grounds of United Kingdom ancestry may be granted for a period not exceeding 5 years provided the Secretary of State is satisfied that each of the requirements of paragraph 189 is met.

#### **Refusal of extension of stay on the grounds of United Kingdom ancestry**

191. An extension of stay on the grounds of United Kingdom ancestry is to be refused if the Secretary of State is not satisfied that each of the requirements of paragraph 189 is met.

#### **Indefinite leave to remain on the grounds of United Kingdom ancestry**

192. Indefinite leave to remain may be granted, on application, to a Commonwealth citizen with a United Kingdom born grandparent provided the applicant:

- (i) meets the requirements of paragraph 186 (i)-(v); and
- (ii) has spent a continuous period of 5 years lawfully in the United Kingdom in this capacity; and
- (iii) has sufficient knowledge of the English language and sufficient knowledge about life in the United Kingdom, in accordance with Appendix KoLL; and
- (iv) does not fall for refusal under the general grounds for refusal; and
- (v) is not in the UK in breach of immigration laws except that any period of overstaying for a period of 28 days or less will be disregarded; and
- (vi) provides the specified documents in paragraph 192-SD to evidence the reason for the absences set out in paragraph 128A, where the absence was due to a serious or compelling reason.

#### **192-SD Specified documents**

The specified documents referred to in paragraph 192(vi) are:

A personal letter from the applicant which includes full details of the reason for the absences and all original supporting documents in relation to those reasons - e.g. medical certificates, birth/death certificates, information about the reasons which led to the absence from the UK.

## **Part 6A - Points-based system**

### **245AAA General requirements for indefinite leave to remain**

For the purposes of references in this Part to requirements for indefinite leave to remain, except for those in paragraphs 245BF, 245DF and 245EF:

(a) "continuous period of 5 years lawfully in the UK" means, subject to paragraphs 245CD, 245GF and 245HF, residence in the United Kingdom for an unbroken period with valid leave, and for these purposes a period shall not be considered to have been broken where:

(i) the applicant has been absent from the UK for a period of 180 days or less in any of the five consecutive 12 month periods preceding the date of the application for leave to remain;

(ii) the applicant has existing limited leave to enter or remain upon their departure and return except that where that leave expired no more than 28 days prior to a further application for entry clearance, that period and any period pending the determination of an application made within that 28 day period shall be disregarded; and

(iii) the applicant has any period of overstaying between periods of entry clearance, leave to enter or leave to remain of up to 28 days and any period of overstaying pending the determination of an application made within that 28 day period disregarded.

(b) Except for periods when the applicant had leave as a Tier 1 (General) Migrant, a Tier 1 (Investor) Migrant, a Tier 1 (Entrepreneur) Migrant, a Tier 1 (Exceptional Talent) Migrant, a highly skilled migrant, a Businessperson, an Innovator, an Investor, a self-employed lawyer or a writer, composer or artist, the applicant must have been employed in the UK continuously throughout the five years, under the terms of their Certificate of Sponsorship, work permit or in the employment for which they were given leave to enter or remain, except that any breaks in employment in which they applied for leave as a Tier 2 Migrant, or, under Tier 5 Temporary Worker (International Agreement) Migrant as a private servant in a diplomatic household, where in the latter case they applied to enter the UK before 6 April 2012, to work for a new employer shall be disregarded, provided this is within 60 days of the end of their employment with their previous employer or Sponsor.

(c) Except for periods where the applicant had leave as a Tier 1(Investor) Migrant, a Tier 1(Entrepreneur) Migrant, a Tier 1(Exceptional Talent) Migrant or a highly skilled migrant, any absences from the UK during the five years must have been for a purpose that is consistent with the applicant's basis of stay here, including paid annual leave, or for serious or compelling reasons.

### **245AA. Documents not submitted with applications**

(a) Where Part 6A or any appendices referred to in Part 6A state that specified documents must be provided, the Entry Clearance Officer, Immigration Officer or the Secretary of State will only consider documents that have been submitted with the application, and will only consider documents submitted after the application where they are submitted in accordance with subparagraph (b).

(b) If the applicant has submitted specified documents in which:

(i) Some of the documents in a sequence have been omitted (for example, if one bank statement from a series is missing);

(ii) A document is in the wrong format (for example, if a letter is not on letterhead paper as specified); or

(iii) A document is a copy and not an original document; or

(iv) A document does not contain all of the specified information;

the Entry Clearance Officer, Immigration Officer or the Secretary of State may contact the applicant or his representative in writing, and request the correct documents. The requested documents must be received at the address specified in the request within 7 working days of the date of the request.

(c) Documents will not be requested where a specified document has not been submitted (for example an English language certificate is missing), or where the Entry Clearance Officer, Immigration Officer or the Secretary of State does not anticipate that addressing the omission or error referred to in subparagraph (b) will lead to a grant because the application will be refused for other reasons.

(d) If the applicant has submitted a specified document:

(i) in the wrong format; or

(ii) which is a copy and not an original document; or

(iii) which does not contain all of the specified information, but the missing information is verifiable from:

(1) other documents submitted with the application,

(2) the website of the organisation which issued the document, or

(3) the website of the appropriate regulatory body;

the application may be granted exceptionally, providing the Entry Clearance Officer, Immigration Officer or the Secretary of State is satisfied that the specified documents are genuine and the applicant meets all the other requirements. The Entry Clearance Officer, Immigration Officer or the Secretary of State reserves the right to request the specified original documents in the correct format in all cases where (b) applies, and to refuse applications if these documents are not provided as set out in (b).

## **Tier 1 (Entrepreneur) Migrants**

### **245D. Purpose of this route and meaning of business**

(a) This route is for migrants who wish to establish, join or take over one or more businesses in the UK.

(b) For the purpose of paragraphs 245D to 245DF and paragraphs 35 to 53 of Appendix A 'business' means an enterprise as:

(i) a sole trader,

(ii) a partnership, or

(iii) a company registered in the UK.

(c) Where paragraphs 245D to 245DF and paragraphs 35 to 53 of Appendix A, refer to money remaining available to the applicant until such time as it is spent for the purposes of his business or businesses:

(i) 'Available' means that the funds are:

(1) in the applicant's own possession,

(2) in the financial accounts of a UK incorporated business of which he is the director, or

(3) available from the third party or parties named in the application under the terms of the declaration(s) referred to in paragraph 41-SD(b) of Appendix A.

(ii) 'Spent' excludes spending on:

(1) the applicant's own remuneration,

- (2) buying the business from a previous owner, where the money goes to that previous owner rather than into the business,
- (3) investing in other businesses, and
- (4) any spending which is not directly for the purpose of establishing or running the applicant's own business or businesses.

#### **245DA. Entry to the UK**

All migrants arriving in the UK and wishing to enter as a Tier 1 (Entrepreneur) Migrant must have a valid entry clearance for entry under this route. If they do not have a valid entry clearance, entry will be refused.

#### **245DB. Requirements for entry clearance**

To qualify for entry clearance as a Tier 1 (Entrepreneur) Migrant, an applicant must meet the requirements listed below. If the applicant meets those requirements, entry clearance will be granted. If the applicant does not meet these requirements, the application will be refused.

Requirements:

- (a) The applicant must not fall for refusal under the general grounds for refusal.
- (b) The applicant must have a minimum of 75 points under paragraphs 35 to 53 of Appendix A.
- (c) The applicant must have a minimum of 10 points under paragraph 1 to 15 of Appendix B.
- (d) The applicant must have a minimum of 10 points under paragraph 1 to 2 of Appendix C.
- (e) An applicant who has, or was last granted, leave as a Student or a Postgraduate Doctor or Dentist, a Student Nurse, a Student Writing-Up a Thesis, a Student Re-Sitting an Examination or as a Tier 4 Migrant and:
  - (i) is currently being sponsored by a government or international scholarship agency, or
  - (ii) was being sponsored by a government or international scholarship agency, and that sponsorship came to an end 12 months ago or less,

must provide the unconditional written consent of the sponsoring Government or agency to the application and must provide the specified documents as set out in paragraph 245A above, to show that this requirement has been met.

(f) Except where the applicant has had entry clearance, leave to enter or leave to remain as a Tier 1 (Entrepreneur) Migrant, a Businessperson or an Innovator in the 12 months immediately before the date of application and is being assessed under Table 5 of Appendix A, the Entry Clearance Officer must be satisfied that:

- (i) the applicant genuinely intends and is able to establish, take over or become a director of one or more businesses in the UK within the next six months;
- (ii) the applicant genuinely intends to invest the money referred to in Table 4 of Appendix A in the business or businesses referred to in (i);
- (iii) that the money referred to in Table 4 of Appendix A is genuinely available to the applicant, and will remain available to him until such time as it is spent for the purposes of his business or businesses.
- (iv) that the applicant does not intend to take employment in the United Kingdom other than under the terms of paragraph 245DC;
- (g) In making the assessment in (f), the Entry Clearance Officer will assess the balance of probabilities. The Entry Clearance Officer may take into account the following factors:



- (i) the evidence the applicant has submitted;
  - (ii) the viability and credibility of the source of the money referred to in Table 4 of Appendix A;
  - (iii) the viability and credibility of the applicant's business plans and market research into their chosen business sector;
  - (iv) the applicant's previous educational and business experience (or lack thereof); (v) the applicant's immigration history and previous activity in the UK; and
  - (v) any other relevant information.
- (h) The Entry Clearance Officer reserves the right to request additional information and evidence to support the assessment in (f), and to refuse the application if the information or evidence is not provided. Any requested documents must be received by the UK Border Agency at the address specified in the request within 28 calendar days of the date of the request.
- (i) If the Entry Clearance Officer is not satisfied with the genuineness of the application in relation to a points-scoring requirement in Appendix A, those points will not be awarded.
- (j) The Entry Clearance Officer may decide not to carry out the assessment in (f) if the application already falls for refusal on other grounds, but reserves the right to carry out this assessment in any reconsideration of the decision.
- (k) The applicant must be at least 16 years old.
- (l) Where the applicant is under 18 years of age, the application must be supported by the applicant's parents or legal guardian or by one parent if that parent has sole legal responsibility for the child.
- (m) Where the applicant is under 18 years of age, the applicant's parents or legal guardian, or one parent if that parent has sole legal responsibility for the child, must confirm that they consent to the arrangements for the applicant's care in the UK.

#### **245DC. Period and conditions of grant**

- (a) Entry clearance will be granted for a period of 3 years and four months and will be subject to the following conditions:
- (i) no recourse to public funds,
  - (ii) registration with the police, if this is required by paragraph 326 of these Rules, and
  - (iii) no employment other than working for the business(es) the applicant has established, joined or taken over "but working for such business(es) does not include anything undertaken by the applicant pursuant to a contract of service or apprenticeship, whether express or implied and whether oral or written, with another business,, and
  - (iv) no employment as a professional sports person (including as a sports coach).

#### **245DD. Requirements for leave to remain**

To qualify for leave to remain as a Tier 1 (Entrepreneur) Migrant under this rule, an applicant must meet the requirements listed below. If the applicant meets these requirements, leave to remain will be granted. If the applicant does not meet these requirements, the application will be refused.

Requirements:

- (a) The applicant must not fall for refusal under the general grounds for refusal, except that paragraph 322(10) shall not apply, and must not be an illegal entrant.
- (b) The applicant must have a minimum of 75 points under paragraphs 35 to 53 of Appendix A.

- (c) The applicant must have a minimum of 10 points under paragraphs 1 to 15 of Appendix B.
- (d) The applicant must have a minimum of 10 points under paragraphs 1 to 2 of Appendix C.
- (e) The applicant who is applying for leave to remain must have, or have last been granted, entry clearance, leave to enter or remain:
  - (i) as a Highly Skilled Migrant,
  - (ii) as a Tier 1 (General) Migrant,
  - (iii) as a Tier 1 (Entrepreneur) Migrant,
  - (iv) as a Tier 1 (Investor) Migrant,
  - (v) as a Tier 1 (Graduate Entrepreneur) Migrant
  - (vi) as a Tier 1 (Post-Study Work) Migrant,
  - (vii) as a Businessperson,
  - (viii) as an Innovator,
  - (ix) as an Investor,
  - (x) as a Participant in the Fresh Talent: Working in Scotland Scheme,
  - (xi) as a Participant in the International Graduates Scheme (or its predecessor, the Science and Engineering Graduates Scheme),
  - (xii) as a Postgraduate Doctor or Dentist,
  - (xiii) as a Self-employed Lawyer,
  - (xiv) as a Student,
  - (xv) as a Student Nurse,
  - (xvi) as a Student Re-sitting an Examination,
  - (xvii) as a Student Writing Up a Thesis,
  - (xviii) as a Work Permit Holder,
  - (xix) as a Writer, Composer or Artist,
  - (xx) as a Tier 2 Migrant
  - (xxi) as a Tier 4 Migrant, or
  - (xxii) as a Prospective Entrepreneur
- (f) An applicant who has, or was last granted, leave as a Student or a Postgraduate Doctor or Dentist, Student Nurse, Student Re-Sitting an Examination, a Student Writing-Up a Thesis or as a Tier 4 Migrant and:
  - (i) is currently being sponsored by a government or international scholarship agency, or
  - (ii) was being sponsored by a government or international scholarship agency, and that sponsorship came to an end 12 months ago or less,

must provide the unconditional written consent of the sponsoring Government or agency to the application and must provide the specified documents as set out in paragraph 245A above, to show that this requirement has been met.

- (g) The applicant must not be in the UK in breach of immigration laws except that any period of overstaying for a period of 28 days or less will be disregarded.
- (h) Except where the applicant has, or was last granted, leave as a Tier 1 (Entrepreneur) Migrant, a Businessperson or an Innovator and is being assessed under Table 5 of Appendix A, the Secretary of State must be satisfied that:
- (i) the applicant genuinely:
- (1) intends and is able to establish, take over or become a director of one or more businesses in the UK within the next six months, or
- (2) has established, taken over or become a director of one or more businesses in the UK and continues to operate that business or businesses; and
- (ii) the applicant genuinely intends to invest the money referred to in Table 4 of Appendix A in the business or businesses referred to in (i);
- (iii) the money referred to in Table 4 of Appendix A is genuinely available to the applicant, and will remain available to him until such time as it is spent for the purposes of his business or businesses.
- (iv) that the applicant does not intend to take employment in the United Kingdom other than under the terms of paragraph 245DE.
- (i) In making the assessment in (h), the Secretary of State will assess the balance of probabilities. The Secretary of State may take into account the following factors:
- (i) the evidence the applicant has submitted;
- (ii) the viability and credibility of the source of the money referred to in Table 4 of Appendix A;
- (iii) the viability and credibility of the applicant's business plans and market research into their chosen business sector;
- (iv) the applicant's previous educational and business experience (or lack thereof);
- (v) the applicant's immigration history and previous activity in the UK;
- (vi) where the applicant has already registered in the UK as self-employed or as the director of a business, and the nature of the business requires mandatory accreditation, registration and/or insurance, whether that accreditation, registration and/or insurance has been obtained; and
- (vii) any other relevant information.
- (j) The Secretary of State reserves the right to request additional information and evidence to support the assessment in (h), and to refuse the application if the information or evidence is not provided. Any requested documents must be received by the Secretary of State at the address specified in the request within 28 calendar days of the date of the request.
- (k) If the Secretary of State is not satisfied with the genuineness of the application in relation to a points-scoring requirement in Appendix A, those points will not be awarded.
- (l) The Secretary of State may decide not to carry out the assessment in (h) if the application already falls for refusal on other grounds, but reserves the right to carry out this assessment in any reconsideration of the decision.
- (m) The applicant must, unless he provides a reasonable explanation, comply with any request made by the Secretary of State to attend for interview.
- (n) The applicant must be at least 16 years old.

(o) Where the applicant is under 18 years of age, the application must be supported by the applicant's parents or legal guardian or by one parent if that parent has sole legal responsibility for the child.

(p) Where the applicant is under 18 years of age, the applicant's parents or legal guardian, or one parent if that parent has sole legal responsibility for the child, must confirm that they consent to the arrangements for the applicant's care in the UK.

#### **245DE. Period, conditions and curtailment of grant**

(a) Leave to remain will be granted:

(i) for a period of 2 years, to an applicant who has, or was last granted, leave as a Tier 1 (Entrepreneur) Migrant,

(ii) for a period of 3 years, to any other applicant.

(b) Leave to remain under this route will be subject to the following conditions:

(i) no recourse to public funds,

(ii) registration with the police, if this is required by paragraph 326 of these Rules, and

(iii) no employment, other than working for the business or businesses which he has established, joined or taken over "but working for such business(es) does not include anything undertaken by the applicant pursuant to a contract of service or apprenticeship, whether express or implied and whether oral or written, with another business, and

(iv) no employment as a professional sportsperson (including as a sports coach).

(c) Without prejudice to the grounds for curtailment in paragraph 323 of these Rules, leave to enter or remain granted to a Tier 1 (Entrepreneur) Migrant may be curtailed if:

(i) within 6 months of the date specified in paragraph (d), the applicant has not done one or more of the following things:

(1) registered with HM Revenue and Customs as self-employed,

(2) registered a new business in which he is a director, or

(3) registered as a director of an existing business, or

(ii) the funds referred to in the relevant sections of Appendix A cease to be available to him, except where they have been spent for the purposes of his business or businesses.

(d) The date referred to in paragraph (c) is:

(i) the date of the applicant's entry to the UK, in the case of an applicant granted entry clearance as a Tier 1 (Entrepreneur) Migrant where there is evidence to establish the applicant's date of entry to the UK,

(ii) the date of the grant of entry clearance to the applicant, in the case of an applicant granted entry clearance as a Tier 1 (Entrepreneur) Migrant where there is no evidence to establish the applicant's date of entry to the UK, or

(iii) the date of the grant of leave to remain to the applicant, in any other case.

(e) Paragraph 245DE(c) does not apply where the applicant's last grant of leave prior to the grant of the leave that he currently has was as a Tier 1 (Entrepreneur) Migrant, a Businessperson or an Innovator.

#### **245DF. Requirements for indefinite leave to remain**

To qualify for indefinite leave to remain as a Tier 1 (Entrepreneur) Migrant, an applicant must meet the requirements listed below. If the applicant meets these requirements, indefinite leave to remain will be granted. If the applicant does not meet these requirements, the application will be refused.

Requirements:

- (a) DELETED
- (b) The applicant must not fall for refusal under the general grounds for refusal, and must not be an illegal entrant.
- (c) The applicant must have a minimum of 75 points under paragraphs 35 to 53 of Appendix A.
- (d) The applicant must have demonstrated sufficient knowledge of the English language and sufficient knowledge about life in the United Kingdom, in accordance with Appendix KoLL.
- (e) The applicant must not be in the UK in breach of immigration laws except that any period of overstaying for a period of 28 days or less will be disregarded.

## **Tier 2 (General) Migrants, Tier 2 (Minister of Religion) Migrants and Tier 2 (Sportsperson) Migrants**

### **245HD. Requirements for leave to remain**

To qualify for leave to remain as a Tier 2 (General) Migrant, Tier 2 (Minister of Religion Migrant or Tier 2 (Sportsperson) Migrant under this rule, an applicant must meet the requirements listed below. If the applicant meets these requirements, leave to remain will be granted. If the applicant does not meet these requirements, the application will be refused.

Requirements:

- (a) The applicant must not fall for refusal under the general grounds for refusal, and must not be an illegal entrant.
- (b) the applicant must:
  - (i) have, or have last been granted, entry clearance, leave to enter or leave to remain as:
    - (1) a Tier 1 Migrant,
    - (2) a Tier 2 Migrant,
    - (3) a Highly Skilled Migrant,
    - (4) an Innovator,
    - (5) a Jewish Agency Employee,
    - (6) a Member of the Operational Ground Staff of an Overseas-owned Airline,
    - (7) a Minister of Religion, Missionary or Member of a Religious Order,
    - (8) a Participant in the Fresh Talent: Working in Scotland Scheme,
    - (9) a Participant in the International Graduates Scheme (or its predecessor, the Science and Engineering Graduates Scheme),
    - (10) a Qualifying Work Permit Holder,
    - (11) a Representative of an Overseas Business
    - (12) a Representative of an Overseas Newspaper, News Agency or Broadcasting Organisation,
    - (13) a Tier 5 (Temporary Worker) Migrant, or
    - (14) the partner of a Relevant Points Based System Migrant if the relevant Points Based System Migrant is a Tier 4 Migrant,
  - or
  - (ii) have, or have last been granted, entry clearance, leave to enter or leave to remain as:
    - (1) a Tier 4 Migrant,
    - (2) a Student,
    - (3) a Student Nurse,
    - (4) a Student Re-Sitting an Examination,
    - (5) a Person Writing Up a Thesis,

- (6) an Overseas Qualified Nurse or Midwife,
- (7) a Postgraduate Doctor or Dentist, or
- (8) a Student Union Sabbatical Officer.

(c) An applicant who has, or was last granted leave as a Tier 2 (Intra-Company Transfer) Migrant must:

(i) have previously had leave as a Tier 2 (Intra-Company Transfer) Migrant under the Rules in place before 6 April 2010, or in the Established Staff sub-category under the Rules in place before 6 April 2011,

(ii) not have been granted entry clearance in this or any other route since the grant of leave referred to in (i) above; and

(iii) not be applying to work for the same Sponsor as sponsored him when he was last granted leave.

(d) An applicant under the provisions in (b)(ii) above must meet the following requirements:

(i) The applicant must have completed and passed:

(1) a UK recognised bachelor's or master's degree (not a qualification of equivalent level which is not a degree),

(2) a UK Postgraduate Certificate in Education or Professional Graduate Diploma of Education (not a qualification of equivalent level),

or the applicant must have completed a minimum of 12 months study in the UK towards a UK PhD.

(ii) The applicant must have studied for the course in (d)(i) at a UK institution that is a UK recognised or listed body, or which holds a sponsor licence under Tier 4 of the Points Based System.

(iii) The applicant must have studied the course referred to in (d)(i) during:

(1) his last grant of leave, or

(2) a period of continuous leave which includes his last grant of leave, (for these purposes continuous leave will not be considered to have been broken if any of the circumstances set out in paragraphs 245AAA(a)(i) to (iii) of these Rules apply.).

(iv) The applicant's periods of UK study and/or research towards the course in (i) must have been undertaken whilst he had entry clearance, leave to enter or leave to remain in the UK that was not subject to a restriction preventing him from undertaking that course of study and/or research.

(v) If the institution studied at is removed from the Tier 4 Sponsor Register, the applicant's qualification must not have been obtained on or after the date of removal from the Sponsor Register.

(vi) If the applicant:

(1) is currently being sponsored by a government or international scholarship agency, or

(2) was being sponsored by a government or international scholarship agency, and that sponsorship came to an end 12 months ago or less,

the applicant must provide the unconditional written consent of the sponsoring Government or agency to the application and must provide the specified documents as set out in paragraph 245A above, to show that this requirement has been met.

(vii) The applicant must provide an original degree certificate, academic transcript or an academic reference on official headed paper of the institution, which clearly shows:

(1) The applicant's name,

(2) the course title/award,

(3) the course duration (except in the case of a degree certificate), and

(4) unless the course is a PhD course, the date of course completion and pass (or the date of award in the case of a degree certificate).

(e) an applicant who was last granted leave as a Tier 5 (Temporary Worker) Migrant must have been granted such leave in the Creative and Sporting sub-category of Tier 5 in order to allow the applicant

to work as a professional footballer, and the applicant must be applying for leave to remain as a Tier 2 (Sportsperson) Migrant.

(f) If applying as a Tier 2 (General) Migrant, the applicant must have a minimum of 50 points under paragraphs 76 to 79D of Appendix A.

(g) If applying as a Tier 2 (Minister of Religion) Migrant, the applicant must have a minimum of 50 points under paragraphs 85 to 92A of Appendix A.

(h) If applying as a Tier 2 (Sportsperson) Migrant, the applicant must have a minimum of 50 points under paragraphs 93 to 100 of Appendix A.

(i) The applicant must have a minimum of 10 points under paragraphs 1 to 16 of Appendix B.

(j) The applicant must have a minimum of 10 points under paragraphs 4 to 5 of Appendix C.

(k) The applicant must not have had entry clearance or leave to remain as a Tier 2 Migrant at any time during the 12 months immediately before the date of the application, unless:

(i) the applicant's last grant of leave was as a Tier 2 Migrant,

(ii) the applicant was not in the UK with leave as a Tier 2 Migrant during this period, and provides evidence to show this, or

(iii) the applicant will be paid a gross annual salary (as recorded by the Certificate of Sponsorship Checking Service entry, and including such allowances as are specified as acceptable for this purpose in paragraph 79 of Appendix A) of £153,500 or higher.

(l) The applicant must be at least 16 years old.

(m) Where the applicant is under 18 years of age, the application must be supported by the applicant's parents or legal guardian, or by just one parent if that parent has sole legal responsibility for the child.

(n) Where the applicant is under 18 years of age, the applicant's parents or legal guardian, or just one parent if that parent has sole legal responsibility for the child, must confirm that they consent to the arrangements for the applicant's care in the UK.

(o) if the sponsor is a limited company, the applicant must not own more than 10% of its shares, unless the gross annual salary (as recorded by the Certificate of Sponsorship Checking Service entry, and including such allowances as are specified as acceptable for this purpose in paragraph 79 of Appendix A) is £153,500 or higher.

(p) The applicant must not be in the UK in breach of immigration laws except that any period of overstaying for a period of 28 days or less will be disregarded.

(q) If the applicant is applying as a Tier 2 (Minister of Religion) Migrant, the Secretary of State must be satisfied that the applicant:

(i) genuinely intends to undertake, and is capable of undertaking, the role recorded by the Certificate of Sponsorship Checking Service; and

(ii) will not undertake employment in the United Kingdom other than under the terms of paragraph 245HE(d)(iii).

(r) To support the assessment in paragraph 245HD(q), the Secretary of State may:

(i) request additional information and evidence, and refuse the application if the information or evidence is not provided. Any requested documents must be received by the Home Office at the address specified in the request within 28 calendar days of the date the request is sent, and

(ii) request the applicant attends an interview, and refuse the application if the applicant fails to comply with any such request without providing a reasonable explanation.

(s) If the Secretary of State is not satisfied following the assessment in paragraph 245HD(q), no points will be awarded under paragraphs 85 to 92A of Appendix A.

(t) The Secretary of State may decide not to carry out the assessment in paragraph 245HD(q) if the application already falls for refusal on other grounds, but reserves the right to carry out this assessment in any reconsideration of the decision.

#### **245HE. Period and conditions of grant**

(a) Leave to remain will be granted for whichever of the following is the shortest:

(i) the length of the period of engagement plus 14 days,

(ii) 5 years if the applicant is applying as a Tier 2 (General) Migrant, or

(iii) 3 years if the applicant is applying as a Tier 2 (Minister of Religion) Migrant or a Tier 2 (Sportsperson) Migrant, or

(iv) except where (b) applies, the difference between the continuous period of leave that the applicant has already been granted (notwithstanding any breaks between periods of leave of up to 28 days) as a Tier 2 Migrant (other than as a Tier 2 (Intra-Company Transfer) Migrant), and 6 years.

If the calculation of period of leave comes to zero or a negative number, leave to remain will be refused.

(b) The 6 year restriction set out in (a)(iv) will not apply if the applicant:

(i) previously had leave under the Rules in place before 6 April 2011 as:

(1) a Tier 2 (General) Migrant,

(2) a Tier 2 (Minister of Religion) Migrant,

(3) a Tier 2 (Sportsperson) Migrant,

(4) a Jewish Agency Employee,

(5) a Member of the Operational Ground Staff of an Overseas-owned Airline,

(6) a Minister of Religion, Missionary or Member of a Religious Order,

(7) a Qualifying Work Permit Holder, or

(8) a Representative of an Overseas Newspaper, News Agency or Broadcasting Organisation, and

(ii) has not been granted entry clearance as a Tier 2 (General)

Migrant, Tier 2 (Minister of Religion) Migrant or Tier 2 (Sportsperson) Migrant under the Rules in place from 6 April 2011, and

(iii) has not been granted entry clearance, leave to enter or leave to remain in any other category since the grant of leave referred to in (i) above.

(c) In addition to the period in (a), leave to remain will be granted for the period between the date that the application is decided and the date that the Certificate of Sponsorship Checking Service records as the start date of employment in the UK, provided this is not a negative value.”.

(d) leave to remain will be granted subject to the following conditions:

(i) no recourse to public funds,

(ii) registration with the police, if this is required by paragraph 326 of these Rules, and

(iii) no employment except:

(1) working for the sponsor in the employment that the Certificate of Sponsorship Checking Service records that the migrant is being sponsored to do, subject to any notification of a change to the details of that employment, other than prohibited changes as defined in paragraph 323AA,

(2) supplementary employment,

(3) voluntary work,



(4) until the start date of the period of engagement, any employment which the applicant was lawfully engaged in on the date of his application, and

(5) if the applicant is applying as a Tier 2 (Sportsperson) Migrant, employment as a sportsperson for his national team while his national team is in the UK and Temporary Engagement as a Sports Broadcaster.

(e) (i) Applicants who meet the requirements for leave to remain and who obtain points under paragraphs 76 to 79D of Appendix A shall be granted leave to remain as a Tier 2 (General) Migrant.

(ii) Applicants who meet the requirements for leave to remain and who obtain points under paragraphs 85 to 92 of Appendix A shall be granted leave to remain as a Tier 2 (Minister of Religion) Migrant.

(iii) Applicants who meet the requirements for leave to remain and who obtain points under paragraphs 93 to 100 of Appendix A shall be granted leave to remain as a Tier 2 (Sportsperson) Migrant.

## **Tier 5 (Temporary Worker) Migrants**

### **245ZM. Purpose of this route and definitions**

(a) This route is for certain types of temporary worker whose entry helps to satisfy cultural, charitable, religious or international objectives including volunteering and job shadowing.

(b) For the purposes of paragraphs 245ZM to 245ZS and paragraphs 105 to 112 of Appendix A:

a migrant has "consecutive engagements" if:

(i) more than one Certificate of Sponsorship reference number has been allocated in respect of the migrant,

(ii) there is no gap of more than 14 days between any of the periods of engagement, and

(iii) all the Certificate of Sponsorship Checking Service references record that the migrant is being sponsored in the creative and sporting subcategory of the Tier 5 (Temporary Worker) Migrant route.

"Period of engagement" means a period beginning with the employment start date as recorded on the Certificate of Sponsorship Checking Service entry which relates to the Certificate of Sponsorship reference number for which the migrant was awarded points under paragraphs 105 to 111 of Appendix A, and ending on the employment end date as recorded in the same entry.

### **245ZN. Entry clearance**

(a) Subject to paragraph (b), all migrants arriving in the UK and wishing to enter as a Tier 5 (Temporary Worker) Migrant must have a valid entry clearance for entry under this route. If they do not have a valid entry clearance, entry will be refused.

(b) A migrant arriving in the UK and wishing to enter as a Tier 5 (Temporary Worker) Migrant who does not have a valid entry clearance will not be refused entry if the following conditions are met:

(i) the migrant is not a visa national,

(ii) the Certificate of Sponsorship reference number provided by the migrant leading to points being obtained under Appendix A links to an entry in the Certificate of Sponsorship Checking Service recording that their Sponsor has sponsored them in the creative and sporting subcategory of the Tier 5 (Temporary Worker) Migrant route,

(iii) if the migrant has consecutive engagements, the total length of all the periods of engagement, together with any gap between those engagements, is 3 months or less,

(iv) if the migrant does not have consecutive engagements, the total length of the period of engagement is 3 months or less, and

(v) the migrant meets the requirements in paragraph 245ZO below.

#### **245ZO. Requirements for entry clearance or leave to enter**

To qualify for entry clearance or, as the case may be, leave to enter, as a Tier 5 (Temporary Worker) Migrant, an applicant must meet the requirements listed below. If the applicant meets these requirements, entry clearance will be granted. If the applicant does not meet these requirements, the application will be refused.

Requirements:

(a) The applicant must not fall for refusal under the general grounds for refusal.

(b) The applicant must have a minimum of 30 points under paragraphs 105 to 112 of Appendix A.

(c) The applicant must have a minimum of 10 points under paragraphs 8 to 9 of Appendix C.

(d) Where the applicant is under 18 years of age, the application must be supported by the applicant's parents or legal guardian, or by just one parent if that parent has sole legal responsibility for the child.

(e) Where the applicant is under 18 years of age, the applicant's parents or legal guardian, or just one parent if that parent has sole responsibility for the child, must confirm that they consent to the arrangements for the applicant's travel to, and reception and care in, the UK.

(f) An applicant being sponsored in the international agreement sub-category of Tier 5 (Temporary Workers) as a private servant in a diplomatic household must:

(i) be no less than 18 years of age at the time of application, and

(ii) provide evidence of agreed written terms and conditions of employment in the UK with his employer including specifically that the applicant will be paid in accordance with the National Minimum Wage Act 1998 and regulations made under that Act, in the form set out in Appendix Q.

(g) The employer referred to in (f) (ii) must be:

(i) a diplomat, or

(ii) an employee of an international organisation recognised by Her Majesty's Government, who enjoys certain privileges or immunity under UK or international law.

(h) Where the Certificate of Sponsorship Checking Service reference number for which the applicant was awarded points under Appendix A records that the applicant is being sponsored as a Contractual Service Supplier, or Independent Professional in the International Agreement sub-category of the Tier 5 (Temporary Worker) Migrant route, the grant of leave to enter will not result in the applicant being granted leave to enter or remain as a Contractual Service Supplier, or Independent Professional under the International Agreement sub-category of the Tier 5 (Temporary Worker) Migrant route for a cumulative period exceeding 6 months in any 12 month period ending during the period of leave to enter requested.

(i) The Entry Clearance Officer or Immigration Officer must be satisfied that the applicant:

(i) genuinely intends to undertake, and is capable of undertaking, the role recorded by the Certificate of Sponsorship Checking Service; and

(ii) will not undertake employment in the United Kingdom other than under the terms of paragraph 245ZP(f)(iii).

(j) To support the assessment in paragraph 245ZO(i), the Entry Clearance Officer or Immigration Officer may:

(i) request additional information and evidence, and refuse the application if the information or evidence is not provided. Any requested documents must be received by the Home Office at the address specified in the request within 28 calendar days of the date the request is sent, and

(ii) request the applicant attends an interview, and refuse the application if the applicant fails to comply with any such request without providing a reasonable explanation.

(k) If the Entry Clearance Officer or Immigration Officer is not satisfied following the assessment in paragraph 245ZO(i), no points will be awarded under paragraphs 105 to 112 of Appendix A.

(l) The Entry Clearance Officer or Immigration Officer may decide not to carry out the assessment in paragraph 245ZO(i) if the application already falls for refusal on other grounds, but reserves the right to carry out this assessment in any reconsideration of the decision.

#### **245ZP. Period and conditions of grant**

(a) Where paragraph 245ZN(b) applies and the applicant has consecutive engagements, leave to enter will be granted for:

(i) a period commencing not more than 14 days before the beginning of the first period of engagement and ending 14 days after the end of the last period of engagement, or

(ii) 3 months

whichever is the shorter.

(b) Where paragraph 245ZN(b) applies and the applicant does not have consecutive engagements, leave to enter will be granted for:

(i) a period commencing not more than 14 days before the beginning of the period of engagement and ending 14 days after the end of that period of engagement, or

(ii) 3 months

whichever is the shorter.

(c) Where paragraph 245ZN(b) does not apply and the Certificate of Sponsorship Checking Service reference number for which the applicant was awarded points under Appendix A records that the applicant is being sponsored in the Creative and Sporting subcategory, the Government Authorised Exchange subcategory for a Work Experience Programme, or the Charity Workers sub-category of the Tier 5 (Temporary Worker) Migrant route, entry clearance or leave to enter will be granted for:

(i) a period commencing 14 days before the beginning of the period of engagement (or of the first period of engagement, where the applicant has consecutive engagements) and ending 14 days after the end of that period of engagement (or of the last period of engagement, where the applicant has consecutive engagements), or

(ii) 12 months

whichever of (i) or (ii) is the shorter.

(d) Where paragraph 245ZN (b) does not apply and the Certificate of Sponsorship Checking Service reference number for which the applicant was awarded points under Appendix A records that the applicant is being sponsored in the religious workers, the Government Authorised Exchange subcategory for a for a Research Programme, Training Programme or Overseas Government Language Programme, or other than as a Contractual Service Supplier, or Independent Professional, in the international agreement subcategory of the Tier 5 (Temporary Worker) Migrant route, entry clearance will be granted for:

(i) a period commencing 14 days before the beginning of the period of engagement and ending 14 days after the end of that period of engagement, or

(ii) 2 years,

whichever is the shorter.

(e) Where paragraph 245ZN(b) does not apply and the Certificate of Sponsorship Checking Service reference number for which the applicant was awarded points under Appendix A records that the applicant is being sponsored as a Contractual Service Supplier, or Independent Professional in the International Agreement sub-category of the Tier 5 (Temporary Worker) Migrant route, entry clearance will be granted for:

(i) a period commencing 14 days before the beginning of the period of engagement and ending 14 days after the end of that period of engagement, or

(ii) 6 months,

whichever is the shorter.

(f) Leave to enter and entry clearance will be granted subject to the following conditions:

(i) no recourse to public funds,

(ii) registration with the police if this is required by paragraph 326 of these Rules, and

(iii) no employment except:

(1) unless paragraph (2) applies, working for the person who for the time being is the Sponsor in the employment that the Certificate of Sponsorship Checking Service records that the migrant is being sponsored to do for that Sponsor,

(2) in the case of a migrant whom the Certificate of Sponsorship Checking Service records as being sponsored in the Government Authorised Exchange subcategory of Tier 5 (Temporary Workers), the work, volunteering or job shadowing authorised by the Sponsor and that the Certificate of Sponsorship Checking Service records that the migrant is being sponsored to do,

(3) supplementary employment except in the case of a migrant whom the Certificate of Sponsorship Checking Service records as being sponsored in the international agreement sub-category, to work as a private servant in a diplomatic household or as a Contractual Service Supplier, or Independent Professional, and

(4) in the case of a migrant whom the Certificate of Sponsorship Checking Service records as being sponsored in the creative and sporting subcategory of Tier 5 (Temporary Workers), employment as a sportsperson for his national team while his national team is in the UK and Temporary Engagement as a Sports Broadcaster.

(iv) in the case of an applicant whom the Certificate of Sponsorship Checking Service records as being sponsored in the international agreement sub-category of Tier 5 (Temporary Workers), to work as a private servant in a diplomatic household, the employment in (iii)(1) above means working only in the household of the employer recorded by the Certificate of Sponsorship Checking Service.

## **Tier 4 (General) Student**

### **245ZT. Purpose of this route**

This route is for migrants aged 16 or over who wish to study in the UK.

### **245ZU. Entry clearance**

All migrants arriving in the UK and wishing to enter as a Tier 4 (General) Student must have a valid entry clearance for entry under this route. If they do not have a valid entry clearance, entry will be refused.

### **245ZV. Requirements for entry clearance**

To qualify for entry clearance as a Tier 4 (General) Student, an applicant must meet the requirements listed below. If the applicant meets these requirements, entry clearance will be granted. If the applicant does not meet these requirements, the application will be refused.

Requirements:

- (a) The applicant must not fall for refusal under the General Grounds for Refusal.
- (b) The applicant must have a minimum of 30 points under paragraphs 113 to 120 of Appendix A.
- (c) The applicant must have a minimum of 10 points under paragraphs 10 to 14 of Appendix C.
  - (ca) The applicant must, if required to do so on examination or interview, be able to demonstrate without the assistance of an interpreter English language proficiency of a standard to be expected from an individual who has reached the standard specified in a Confirmation of Acceptance for Studies assigned in accordance with Appendix A paragraph 118(b) (for the avoidance of doubt, the applicant will not be subject to a test at the standard set out in Appendix A, paragraph 118(b).
  - (da) if the applicant wishes to undertake a course:
    - (i) undergraduate or postgraduate studies leading to a Doctorate or Masters degree by research in one of the disciplines listed in paragraph 1 of Appendix 6 of these Rules, or
    - (ii) undergraduate or postgraduate studies leading to a taught Masters degree or other postgraduate qualification in one of the disciplines listed in paragraph 2 of Appendix 6 of these Rules, or
    - (iii) a period of study or research in excess of 6 months in one of the disciplines listed in paragraphs 1 or 2 of Appendix 6 of these Rules at an institution of higher education where this forms part of an overseas postgraduate qualification

the applicant must hold a valid Academic Technology Approval Scheme clearance certificate from the Counter-Proliferation Department of the Foreign and Commonwealth Office which relates to the course, or area of research, that the applicant will be taking and at the institution at which the applicant wishes to undertake it and must provide a print-out of his Academic Technology Approval Scheme clearance certificate to show that these requirements have been met.

- (e) If the applicant wishes to be a postgraduate doctor or dentist on a recognised Foundation Programme:
  - (i) the applicant must have successfully completed a recognised UK degree in medicine or dentistry from:
    - (1) an institution with a Tier 4 General Sponsor Licence,
    - (2) a UK publicly funded institution of further or higher education or
    - (3) a UK bona fide private education institution which maintains satisfactory records of enrolment and attendance,
  - (ii) the applicant must have previously been granted leave:
    - (1) as a Tier 4 (General) Student, or as a Student, for the final academic year of the studies referred to in paragraph (i) above, and
    - (2) as a Tier 4 (General) Student, or as a Student, for at least one other academic year (aside from the final year) of the studies referred to in paragraph (i) above,
    - (iii) if the applicant has previously been granted leave as a Postgraduate Doctor or Dentist, the applicant must not be seeking entry clearance or leave to enter or remain to a date beyond 3 years from the date on which he was first granted leave to enter or remain in that category, and
    - (iv) if the applicant has previously been granted leave as a Tier 4 (General) Student to undertake a course as a postgraduate doctor or dentist, the applicant must not be seeking entry clearance or leave to enter or remain to a date beyond 3 years from the date on which the applicant was first granted leave to undertake such a course.

(f) If the applicant is currently being sponsored by a Government or international scholarship agency, or within the last 12 months has come to the end of such a period of sponsorship, the applicant must provide the written consent of the sponsoring Government or agency to the application and must provide the specified documents as set out in paragraph 245A above, to show that this requirement has been met.

(g) If the course is below degree level the grant of entry clearance the applicant is seeking must not lead to the applicant having spent more than 3 years in the UK as a Tier 4 Migrant since the age of 18 studying courses that did not consist of degree level study.

(ga) If the course is at degree level or above, the grant of entry clearance the applicant is seeking must not lead to the applicant having spent more than 5 years in the UK as a Tier 4 (General) Migrant, or as a Student, studying courses at degree level or above unless:

(i) the applicant has successfully completed a course at degree level in the UK of a minimum duration of 4 academic years, and will follow a course of study at Master's degree level sponsored by a Sponsor that is a Recognised Body or a body in receipt of public funding as a higher education institution from the Department of Employment and Learning in Northern Ireland, the Higher Education Funding Council for England, the Higher Education Funding Council for Wales or the Scottish Funding Council, and the grant of entry clearance must not lead to the applicant having spent more than 6 years in the UK as a Tier 4 (General) Migrant, or as a Student, studying courses at degree level or above; or

(ii) the grant of entry clearance is to follow a course leading to the award of a PhD, and the applicant is sponsored by a Sponsor that is a Recognised Body or a body in receipt of public funding as a higher education institution from the Department of Employment and Learning in Northern Ireland, the Higher Education Funding Council for England, the Higher Education Funding Council for Wales or the Scottish Funding Council; or

(iii) the applicant is following a course of study in;

(1) Architecture;

(2) Medicine;

(3) Dentistry;

(4) Law, where the applicant has completed a course at degree level in the UK and is progressing to:

a. a law conversion course validated by the Joint Academic Stage Board in England and Wales, a Masters in Legal Science (MLegSc) in Northern Ireland, or an accelerated graduate LLB in Scotland; or

b. the Legal Practice Course in England and Wales, the Solicitors Course in Northern Ireland, or a Diploma in Professional Legal Practice in Scotland; or

c. the Bar Professional Training Course in England and Wales, or the Bar Course in Northern Ireland."

(5) Veterinary Medicine & Science; or

(6) Music at a music college that is a member of Conservatoires UK (CUK).

(gb) If the applicant has completed a course leading to the award of a PhD in the UK, the grant of entry clearance the applicant is seeking must not lead to the applicant having spent more than 8 years in the UK as a Tier 4 (General) Migrant, or as a Student.

(h) The applicant must be at least 16 years old.

(i) Where the applicant is under 18 years of age, the application must be supported by the applicant's parents or legal guardian, or by just one parent if that parent has sole legal responsibility for the child.

(j) Where the applicant is under 18 years of age, the applicant's parents or legal guardian, or just one parent if that parent has sole responsibility for the child, must confirm that they consent to the arrangements for the applicant's travel to, and reception and care in, the UK.

(k) The Entry Clearance Officer must be satisfied that the applicant is a genuine student.

## 245ZW. Period and conditions of grant

(a) Subject to paragraph (b), entry clearance will be granted for the duration of the course.

(b) In addition to the period of entry clearance granted in accordance with paragraph (a), entry clearance will also be granted for the periods set out in the following table. Notes to accompany the table appear below the table.

Type of course	Period of entry clearance to be granted before the course starts	Period of entry clearance to be granted after the course ends
12 months or more	1 month	4 months
6 months or more but less than 12 months	1 month	2 months
Pre-sessional course of less than 6 months	1 month	1 month
Course of less than 6 months that is not a pre-sessional course	7 days	7 days
Postgraduate doctor or dentist	1 month	1 month

### Notes

(i) If the grant of entry clearance is made less than 1 month or, in the case of a course of less than 6 months that is not a pre-sessional course, less than 7 days before the start of the course, entry clearance will be granted with immediate effect.

(ii) A pre-sessional course is a course which prepares a student for the student's main course of study in the UK.

(iii) The additional periods of entry clearance granted further to the table above will be disregarded for the purposes of calculating whether a migrant has exceeded the limits specified at 245ZV(g) to 245ZV(gb).

(c) Entry clearance will be granted subject to the following conditions:

(i) no recourse to public funds,

(ii) registration with the police, if this is required by paragraph 326 of these Rules,

(iii) no employment except:

(1) employment during term time of no more than 20 hours per week and employment (of any duration) during vacations, where the student is following a course of degree level study and is either:

(a) sponsored by a Sponsor that is a Recognised Body or a body in receipt of public funding as a higher education institution from the Department of Employment and Learning in Northern Ireland, the Higher Education Funding Council for England, the Higher Education Funding Council for Wales or the Scottish Funding Council; or

(b) sponsored by an overseas higher education institution to undertake a short-term Study Abroad Programme in the United Kingdom.

(2) employment during term time of no more than 10 hours per week and employment (of any duration) during vacations, where the student is following a course of below degree level study and is sponsored by a Sponsor that is a Recognised Body or a body in receipt of public funding as a higher education institution from the Department of Employment and Learning in Northern Ireland, the Higher Education Funding Council for England, the Higher Education Funding Council for Wales or the Scottish Funding Council,

(3) employment during term time of no more than 10 hours per week and employment (of any duration) during vacations, where the student is following a course of study at any academic level and is sponsored by a Sponsor that is a publicly funded further education college,

(4) employment as part of a course-related work placement which forms an assessed part of the applicant's course and provided that any period that the applicant spends on that placement does not exceed one third of the total length of the course undertaken in the UK except:

(i) where it is a United Kingdom statutory requirement that the placement should exceed one third of the total length of the course; or

(ii) where the placement does not exceed one half of the total length of the course undertaken in the UK and the student is following a course of degree level study and is either:

(a) sponsored by a Sponsor that is a Recognised Body or a body in receipt of public funding as a higher education institution from the Department of Employment and Learning in Northern Ireland, the Higher Education Funding Council for England, the Higher Education Funding Council for Wales or the Scottish Funding Council; or

(b) sponsored by an overseas higher education institution to undertake a short-term Study Abroad Programme in the United Kingdom.

(5) employment as a Student Union Sabbatical Officer, for up to 2 years, provided the post is elective and is at the institution which is the applicant's Sponsor or they must be elected to a national National Union of Students (NUS) position.

(6) employment as a postgraduate doctor or dentist on a recognised Foundation Programme

(7) until such time as a decision is received from the UK Border Agency on an application which is supported by a Certificate of Sponsorship assigned by a licensed Tier 2 Sponsor and which is made following successful completion of course at degree level or above at a Sponsor that is a Recognised Body or a body in receipt of public funding as a higher education institution from the Department of Employment and Learning in Northern Ireland, the Higher Education Funding Council for England, the Higher Education Funding Council for Wales or the Scottish Funding Council and while the applicant has extant leave, and any appeal or administrative review against that decision has been determined, employment with the Tier 2 Sponsor, in the role for which they assigned the Certificate of Sponsorship to the Tier 4 migrant,

(8) self-employment, providing the migrant has made an application for leave to remain as a Tier 1 (Graduate Entrepreneur) Migrant which:

(a) is supported by an endorsement from a qualifying Higher Education Institution,

(b) is made following successful completion of a UK recognised Bachelor degree, Masters degree or PhD (not a qualification of equivalent level which is not a degree) course at a Sponsor that is a Recognised Body or a body in receipt of public funding as a higher education institution from the Department of Employment and Learning in Northern Ireland, the Higher Education Funding Council for England, the Higher Education Funding Council for Wales or the Scottish Funding Council, and

(c) is made while the applicant has extant leave,

until such time as a decision is received from the UK Border Agency on that application and any appeal or administrative review against that decision has been determined,

provided that the migrant is not self-employed other than under the conditions of (8) above, or employed as a Doctor or Dentist in Training other than under the conditions of (v) below, professional sportsperson (including a sports coach) or an entertainer, and provided that the migrant's employment would not fill a permanent full time vacancy other than under the conditions of (7) above, or a vacancy on a recognised Foundation Programme or as a sabbatical officer; and

(iv) no study except:

...

## **245ZX. Requirements for leave to remain**



To qualify for leave to remain as a Tier 4 (General) Student under this rule, an applicant must meet the requirements listed below. If the applicant meets these requirements, leave to remain will be granted. If the applicant does not meet these requirements, the applicant will be refused.

Requirements:

(a) The applicant must not fall for refusal under the general grounds for refusal and must not be an illegal entrant.

(b) The applicant must have, or have last been granted, entry clearance, leave to enter or leave to remain:

(i) as a Tier 4 (General) Student,

(ii) as a Tier 4 (Child) Student,

(iii) as a Tier 1 (Post-study Work) Migrant,

(iv) as a Tier 2 Migrant,

(v) as a Participant in the International Graduates Scheme (or its predecessor, the Science and Engineering Graduates Scheme),

(vi) as a Participant in the Fresh Talent: Working in Scotland Scheme,

(vii) as a Postgraduate Doctor or Dentist,

(viii) as a Prospective Student,

(ix) as a Student,

(x) as a Student Nurse,

(xi) as a Student Re-sitting an Examination,

(xii) as a Student Writing-Up a Thesis,

(xiii) as a Student Union Sabbatical Officer, or

(xiv) as a Work Permit Holder.

(c) The applicant must have a minimum of 30 points under paragraphs 113 to 120 of Appendix A.

(d) The applicant must have a minimum of 10 points under paragraphs 10 to 14 of Appendix C.

(da) The applicant must, if required to do so on examination or interview, be able to demonstrate without the assistance of an interpreter English language proficiency of a standard to be expected from an individual who has reached the standard specified in a Confirmation of Acceptance for Studies assigned in accordance with Appendix A paragraph 118(b) (for the avoidance of doubt, the applicant will not be subject to a test at the standard set out in Appendix A, paragraph 118(b)).

(ea) if the applicant wishes to undertake a course:

(i) undergraduate or postgraduate studies leading to a Doctorate or Masters degree by research in one of the disciplines listed in paragraph 1 of Appendix 6 of these Rules, or

(ii) undergraduate or postgraduate studies leading to a taught Masters degree or other postgraduate qualification in one of the disciplines listed in paragraph 2 of Appendix 6 of these Rules, or

(iii) a period of study or research in excess of 6 months in one of the disciplines listed in paragraphs 1 or 2 of Appendix 6 of these Rules at an institution of higher education where this forms part of an overseas postgraduate qualification

the applicant must hold a valid Academic Technology Approval Scheme clearance certificate from the Counter-Proliferation Department of the Foreign and Commonwealth Office which relates to the course, or area of research, that the applicant will be taking and at the institution at which the applicant wishes to undertake it and must provide a print-out of his Academic Technology Approval Scheme clearance certificate to show that these requirements have been met. Applicants applying for

Leave to remain under the Doctorate Extension Scheme must, where required, meet the conditions of paragraph 245ZX(ea), unless they are applying for a course of study of 28 days or less.

(f) If the applicant wishes to be a postgraduate doctor or dentist on a recognised Foundation Programme:

(i) the applicant must have successfully completed a recognised UK degree in medicine or dentistry from:

(1) an institution with a Tier 4 General Sponsor Licence,

(2) a UK publicly funded institution of further or higher education or

(3) a UK bona fide private education institution which maintains satisfactory records of enrolment and attendance,

(ii) the applicant must have previously been granted leave:

(1) as a Tier 4 (General) Student, or as a Student, for the final academic year of the studies referred to in paragraph (i) above, and

(2) as a Tier 4 (General) Student, or as a Student, for at least one other academic year (aside from the final year) of the studies referred to in paragraph (i) above,

(iii) if the applicant has previously been granted leave as a Postgraduate Doctor or Dentist the applicant must not be seeking entry clearance or leave to enter or remain to a date beyond 3 years from the date on which he was first granted leave to enter or remain in that category, and

(iv) if the applicant has previously been granted leave as a Tier 4 (General) Student to undertake a course as a postgraduate doctor or dentist, the applicant must not be seeking entry clearance or leave to enter or remain to a date beyond 3 years from the date on which he was first granted leave to undertake such a course.

(g) If the applicant is currently being sponsored by a Government or international scholarship agency, or within the last 12 months has come to the end of such a period of sponsorship, the applicant must provide the unconditional written consent of the sponsoring Government or agency to the application and must provide the specified documents as set out in paragraph 245A above, to show that this requirement has been met.

(h) If the course is below degree level the grant of leave to remain the applicant is seeking must not lead to the applicant having spent more than 3 years in the UK as a Tier 4 Migrant since the age of 18 studying courses that did not consist of degree level study.

(ha) If the course is at degree level or above, the grant of leave to remain the applicant is seeking must not lead to the applicant having spent more than 5 years in the UK as a Tier 4 (General) Migrant, or as a Student, studying courses at degree level or above unless:

(i) the applicant has successfully completed a course at degree level in the UK of a minimum duration of 4 academic years, and will follow a course of study at Master's degree level sponsored by a Sponsor that is a Recognised Body or a body in receipt of public funding as a higher education institution from the Department of Employment and Learning in Northern Ireland, the Higher Education Funding Council for England, the Higher Education Funding Council for Wales or the Scottish Funding Council, and the grant of leave to remain must not lead to the applicant having spent more than 6 years in the UK as a Tier 4 (General) Migrant, or as a Student, studying courses at degree level or above; or

(ii) the grant of leave to remain is to follow a course leading to the award of a PhD and the applicant is sponsored by a Sponsor that is a Recognised Body or a body in receipt of public funding as a higher education institution from the Department of Employment and Learning in Northern Ireland, the Higher Education Funding Council for England, the Higher Education Funding Council for Wales or the Scottish Funding Council; or

(iii) the applicant is following a course of study in;

(1) Architecture;

(2) Medicine;

(3) Dentistry;

(4) Law, where the applicant has completed a course at degree level in the UK and is progressing to:

a. a law conversion course validated by the Joint Academic Stage Board in England and Wales, a Masters in Legal Science (MLegSc) in Northern Ireland, or an accelerated graduate LLB in Scotland; or

b. the Legal Practice Course in England and Wales, the Solicitors Course in Northern Ireland, or a Diploma in Professional Legal Practice in Scotland; or

c. the Bar Professional Training Course in England and Wales, or the Bar Course in Northern Ireland."

(5) Veterinary Medicine & Science; or

(6) Music at a music college that is a member of Conservatoires UK (CUK).

(hb) If the applicant has completed a course leading to the award of a PhD in the UK, the grant of leave to remain the applicant is seeking must not lead to the applicant having spent more than 8 years in the UK as a Tier 4 (General) Migrant, or as a Student.

(i) The applicant must be at least 16 years old.

(j) Where the applicant is under 18 years of age, the application must be supported by the applicant's parents or legal guardian, or by just one parent if that parent has sole legal responsibility for the child.

(k) Where the applicant is under 18 years of age, the applicant's parents or legal guardian, or just one parent if that parent has sole legal responsibility for the child, must confirm that they consent to the arrangements for the applicant's care in the UK.

(l) Unless applying for leave to remain as a Tier 4 (General) Student on the doctorate extension scheme, the applicant must be applying for leave to remain for the purpose of studies which commence within 28 days of the expiry of the applicant's current leave to enter or remain or, where the applicant has overstayed, within 28 days of when that period of overstaying began.

(m) The applicant must not be in the UK in breach of immigration laws except that any period of overstaying for a period of 28 days or less will be disregarded.

(n) Where the applicant is applying for leave to remain as a Tier 4 (General) Student on the doctorate extension scheme:

(i) leave to remain as a Tier 4 (General) Student on the doctorate extension scheme must not have previously been granted;

(ii) the applicant must be following a course leading to the award of a PhD;

(iii) the applicant must be sponsored by a Sponsor that is a Recognised Body or a body in receipt of public funding as a higher education institution from the Department of Employment and Learning in Northern Ireland, the Higher Education Funding Council for England, the Higher Education Funding Council for Wales or the Scottish Funding Council and that sponsor will be the sponsor awarding the PhD; and

(iv) the date of the application must be within 60 days of the expected end date of a course leading to the award of a PhD.

(o) the Secretary of State must be satisfied that the applicant is a genuine student.

#### **245ZY. Period and conditions of grant**

(a) Subject to paragraphs (b), (ba) and (c) below, leave to remain will be granted for the duration of the course.

(b) In addition to the period of leave to remain granted in accordance with paragraph (a), leave to remain will also be granted for the periods set out in the following table. Notes to accompany the table appear below the table.

Type of course	Period of leave to remain to be granted before the course starts	Period of leave to remain to be granted after the course ends
12 months or more	1 month	4 months
6 months or more but less than 12 months	1 month	2 months
Pre-sessional course of less than 6 months	1 month	1 month
Course of less than 6 months that is not a pre-sessional course	7 days	7 days
Postgraduate doctor or dentist	1 month	1 month

#### Notes

(i) If the grant of leave to remain is being made less than 1 month or, in the case of a course of less than 6 months that is not a pre-sessional course, less than 7 days before the start of the course, leave to remain will be granted with immediate effect.

(ii) A pre-sessional course is a course which prepares a student for the student's main course of study in the UK.

(iii) The additional periods of leave to remain granted further to the table above will be disregarded for the purposes of calculating whether a migrant has exceeded the limits specified at 245ZX(h) to 245ZX(hb).

(ba) Leave to remain as a Tier 4 (General) Student on the doctorate extension scheme will be granted for 12 months, commencing on the expected end date of a course leading to the award of a PhD.

(bb) Leave to remain as a Tier 4 (General) Student on the doctorate extension scheme will not be subject to the conditions on the limited time that can be spent as a Tier 4 (General) Student or as a student, specified at 245ZX (hb).

(c) Leave to remain will be granted subject to the following conditions:

(i) no recourse to public funds,

(ii) registration with the police, if this is required by paragraph 326 of these Rules,

(iii) no employment except:

(1) employment during term time of no more than 20 hours per week and employment (of any duration) during vacations, where the student is following a course of degree level study and is either:

(a) sponsored by a Sponsor that is a Recognised Body or a body in receipt of public funding as a higher education institution from the Department of Employment and Learning in Northern Ireland, the Higher Education Funding Council for England, the Higher Education Funding Council for Wales or the Scottish Funding Council; or

(b) sponsored by an overseas higher education institution to undertake a short-term Study Abroad Programme in the United Kingdom.

(2) employment during term time of no more than 10 hours per week and employment (of any duration) during vacations, where the student is following a course of below degree level study and is sponsored by a Sponsor that is a Recognised Body or a body in receipt of public funding as a higher education institution from the Department of Employment and Learning in Northern Ireland, the Higher Education Funding Council for England, the Higher Education Funding Council for Wales or the Scottish Funding Council,

(3) employment during term time of no more than 10 hours per week and employment (of any duration) during vacations, where the student is following a course of study at any academic level and is sponsored by a Sponsor that is a publicly funded further education college,

(4) employment as part of a course-related work placement which forms an assessed part of the applicant's course and provided that any period that the applicant spends on that placement does not exceed one third of the total length of the course undertaken in the UK except:

(i) where it is a United Kingdom statutory requirement that the placement should exceed one third of the total length of the course; or

(ii) where the placement does not exceed one half of the total length of the course undertaken in the UK and the student is following a course of degree level study and is either:

(a) sponsored by a Sponsor that is a Recognised Body or a body in receipt of public funding as a higher education institution from the Department of Employment and Learning in Northern Ireland, the Higher Education Funding Council for England, the Higher Education Funding Council for Wales or the Scottish Funding Council; or

(b) sponsored by an overseas higher education institution to undertake a short-term Study Abroad Programme in the United Kingdom.

(5) employment as a Student Union Sabbatical Officer for up to 2 years provided the post is elective and is at the institution which is the applicant's Sponsor or they must be elected to a national National Union of Students (NUS) position,

(6) employment as a postgraduate doctor or dentist on a recognised Foundation Programme

(7) until such time as a decision is received from the UK Border Agency on an application which is supported by a Certificate of Sponsorship assigned by a licensed Tier 2 Sponsor and which is made following successful completion of course at degree level or above at a Sponsor that is a Recognised Body or a body in receipt of public funding as a higher education institution from the Department of Employment and Learning in Northern Ireland, the Higher Education Funding Council for England, the Higher Education Funding Council for Wales or the Scottish Funding Council and while the applicant has extant leave, and any appeal or administrative review against that decision has been determined, employment with the Tier 2 Sponsor institution, in the role for which they assigned the Certificate of Sponsorship to the Tier 4 migrant,

(8) self-employment, providing the migrant has made an application for leave to remain as a Tier 1 (Graduate Entrepreneur) Migrant which is supported by an endorsement from a qualifying Higher Education Institution and which is made following successful completion of a course at degree level or above at a Sponsor that is a Recognised Body or a body in receipt of public funding as a higher education institution from the Department of Employment and Learning in Northern Ireland, the Higher Education Funding Council for England, the Higher Education Funding Council for Wales or the Scottish Funding Council and while the applicant has extant leave, until such time as a decision is received from the UK Border Agency on an application and any appeal or administrative review against that decision has been determined,

provided that the migrant is not self-employed other than under the conditions of (8) above, or employed as a Doctor or Dentist in Training other than under the conditions of (v) below, a professional sportsperson (including a sports coach) or an entertainer, and provided that the migrant's employment would not fill a permanent full time vacancy other than under the conditions of (7) above, or a vacancy on a recognised Foundation Programme or as a sabbatical officer.

(9) where, during the current period of leave, the migrant has successfully completed a PhD at a Sponsor that is a Recognised Body or a body in receipt of public funding as a higher education institution from the Department of Employment and Learning in Northern Ireland, the Higher Education Funding Council for England, the Higher Education Funding Council for Wales or the Scottish Funding Council, and has been granted leave to remain as a Tier 4 (General) Student on the doctorate extension scheme or has made a valid application for leave to remain as a Tier 4 (General) Student on the doctorate extension scheme but has not yet received a decision from the UK Border Agency on that application, there will be no limitation on the type of employment that may be taken, except for:

(a) no employment as a Doctor or Dentist in Training other than under the conditions of (v) below;

(b) no employment as a professional sportsperson (including a sports coach).

(iv) no study except:

(1) study at the institution that the Confirmation of Acceptance for Studies Checking Service records as the migrant's Sponsor, or where the migrant was awarded points for a visa letter, study at the institution which issued that visa letter unless the migrant is studying at an institution which is a partner institution of the migrant's Sponsor,

(2) until such time as a decision is received from the UK Border Agency on an application which is supported by a Confirmation of Acceptance for Studies assigned by a Highly Trusted Sponsor and which is made while the applicant has extant leave, and any appeal or administrative review against that decision has been determined, study at the Highly Trusted Sponsor institution which the Confirmation of Acceptance for Studies Checking Service records as having assigned a Confirmation of Acceptance for Studies to the Tier 4 migrant,

(3) supplementary study;

(4) study at the same or a higher level of course as that stated on the confirmation of acceptance for studies, or at a lower level where the same requirements or conditions of leave would have applied if the application had been to study at that lower level."

(v) no employment as a Doctor or Dentist in Training unless:

(1) the course that the migrant is being sponsored to do (as recorded by the Confirmation of Acceptance for Studies Checking Service) is a recognised Foundation Programme, or

(2) the migrant has made an application as a Tier 4 (General) Student which is supported by a Confirmation of Acceptance for Studies assigned by a Highly Trusted Sponsor to sponsor the applicant to do a recognised Foundation Programme, and this study satisfies the requirements of (iv)(2) above, or

(3) the migrant has made an application as a Tier 2 (General) Migrant which is supported by a Certificate of Sponsorship assigned by a licensed Tier 2 Sponsor to sponsor the applicant to work as a Doctor or Dentist in Training, and this employment satisfies the conditions of (iii)(7) above.

## **Part 7**

### **Long residence in the United Kingdom**

276A. For the purposes of paragraphs 276B to 276D and 276ADE(1).

(a) "continuous residence" means residence in the United Kingdom for an unbroken period, and for these purposes a period shall not be considered to have been broken where an applicant is absent from the United Kingdom for a period of 6 months or less at any one time, provided that the applicant in question has existing limited leave to enter or remain upon their departure and return, but shall be considered to have been broken if the applicant:

(i) has been removed under Schedule 2 of the 1971 Act, section 10 of the 1999 Act, has been deported or has left the United Kingdom having been refused leave to enter or remain here; or

(ii) has left the United Kingdom and, on doing so, evidenced a clear intention not to return; or

(iii) left the United Kingdom in circumstances in which he could have had no reasonable expectation at the time of leaving that he would lawfully be able to return; or

(iv) has been convicted of an offence and was sentenced to a period of imprisonment or was directed to be detained in an institution other than a prison (including, in particular, a hospital or an institution for young offenders), provided that the sentence in question was not a suspended sentence; or

(v) has spent a total of more than 18 months absent from the United Kingdom during the period in question.

(b) "lawful residence" means residence which is continuous residence pursuant to:

(i) existing leave to enter or remain; or

(ii) temporary admission within section 11 of the 1971 Act where leave to enter or remain is subsequently granted; or

(iii) an exemption from immigration control, including where an exemption ceases to apply if it is immediately followed by a grant of leave to enter or remain.

(c) 'lived continuously' and 'living continuously' mean 'continuous residence', except that paragraph 276A(a)(iv) shall not apply.

276A0. For the purposes of paragraph 276ADE(1) the requirement to make a valid application will not apply when the Article 8 claim is raised:

(i) as part of an asylum claim, or as part of a further submission in person after an asylum claim has been refused;

(ii) where a migrant is in immigration detention. A migrant in immigration detention or their representative must submit any application or claim raising Article 8 to a prison officer, a prisoner custody officer, a detainee custody officer or a member of Home Office staff at the migrant's place of detention; or

(iii) in an appeal; (subject to the consent of the Secretary of State where applicable). or

276A00. Where leave to remain is granted under paragraphs 276ADE-276DH, or where an applicant does not meet the requirements in paragraph 276ADE(1) but the Secretary of State grants leave to remain outside the rules on Article 8 grounds, (and without prejudice to the specific provision that is made in paragraphs 276ADE-276DH in respect of a no recourse to public funds condition), that leave may be subject to such conditions as the Secretary of State considers appropriate in a particular case.

#### **Requirements for an extension of stay on the ground of long residence in the United Kingdom**

276A1. The requirement to be met by a person seeking an extension of stay on the ground of long residence in the United Kingdom is that the applicant meets each of the requirements in paragraph 276B(i)-(ii) and (v).

#### **Extension of stay on the ground of long residence in the United Kingdom**

276A2. An extension of stay on the ground of long residence in the United Kingdom may be granted for a period not exceeding 2 years provided that the Secretary of State is satisfied that the requirement in paragraph 276A1 is met, and a person granted such an extension of stay following an application made before 9 July 2012 will remain subject to the rules in force on 8 July 2012.

Conditions to be attached to extension of stay on the ground of long residence in the United Kingdom

276A3. Where an extension of stay is granted under paragraph 276A2:

(i) if the applicant has spent less than 20 years in the UK, the grant of leave should be subject to the same conditions attached to his last period of lawful leave, or

(ii) if the applicant has spent 20 years or more in the UK, the grant of leave should not contain any restriction on employment.

Refusal of extension of stay on the ground of long residence in the United Kingdom

276A4. An extension of stay on the ground of long residence in the United Kingdom is to be refused if the Secretary of State is not satisfied that the requirement in paragraph 276A1 is met.

#### **Requirements for indefinite leave to remain on the ground of long residence in the United Kingdom**

**276B. The requirements to be met by an applicant for indefinite leave to remain on the ground of long residence in the United Kingdom are that:**

(i) (a) he has had at least 10 years continuous lawful residence in the United Kingdom.

(ii) having regard to the public interest there are no reasons why it would be undesirable for him to be given indefinite leave to remain on the ground of long residence, taking into account his:

(a) age; and

(b) strength of connections in the United Kingdom; and

(c) personal history, including character, conduct, associations and employment record; and

(d) domestic circumstances; and

(e) compassionate circumstances; and

(f) any representations received on the person's behalf; and

(iii) the applicant does not fall for refusal under the general grounds for refusal.

(iv) the applicant has demonstrated sufficient knowledge of the English language and sufficient knowledge about life in the United Kingdom, in accordance with Appendix KoLL.

(v) the applicant must not be in the UK in breach of immigration laws except that any period of overstaying for a period of 28 days or less will be disregarded, as will any period of overstaying between periods of entry clearance, leave to enter or leave to remain of up to 28 days and any period of overstaying pending the determination of an application made within that 28 day period.

### **Indefinite leave to remain on the ground of long residence in the United Kingdom**

276C. Indefinite leave to remain on the ground of long residence in the United Kingdom may be granted provided that the Secretary of State is satisfied that each of the requirements of paragraph 276B is met.

Refusal of indefinite leave to remain on the ground of long residence in the United Kingdom

276D. Indefinite leave to remain on the ground of long residence in the United Kingdom is to be refused if the Secretary of State is not satisfied that each of the requirements of paragraph 276B is met.

### **Private life**

#### **Requirements to be met by an applicant for leave to remain on the grounds of private life**

276ADE (1). The requirements to be met by an applicant for leave to remain on the grounds of private life in the UK are that at the date of application, the applicant:

(i) does not fall for refusal under any of the grounds in Section S-LTR 1.2 to S-LTR 2.3. and S-LTR.3.1. in Appendix FM; and

(ii) has made a valid application for leave to remain on the grounds of private life in the UK; and

(iii) has lived continuously in the UK for at least 20 years (discounting any period of imprisonment); or

(iv) is under the age of 18 years and has lived continuously in the UK for at least 7 years (discounting any period of imprisonment) and it would not be reasonable to expect the applicant to leave the UK; or

(v) is aged 18 years or above and under 25 years and has spent at least half of his life living continuously in the UK (discounting any period of imprisonment); or

(vi) is aged 18 years or above, has lived continuously in the UK for less than 20 years (discounting any period of imprisonment) but "there would be very significant obstacles to the applicant's integration into with the country to which he would have to go if required to leave the UK.

276ADE (2). Sub-paragraph (1)(vi) does not apply, and may not be relied upon, in circumstances in which it is proposed to return a person to a third country pursuant to Schedule 3 to the Asylum and Immigration (Treatment of Claimants, etc) Act 2004.

### **Leave to remain on the grounds of private life in the UK**



276BE(1). Limited leave to remain on the grounds of private life in the UK may be granted for a period not exceeding 30 months provided that the Secretary of State is satisfied that the requirements in paragraph 276ADE(1) are met or, in respect of the requirements in paragraph 276ADE(1)(iv) and (v), were met in a previous application which led to a grant of limited leave to remain under paragraph this sub-paragraph. Such leave shall be given subject to such conditions as the Secretary of State deems appropriate.

276BE(2). Where an applicant does not meet the requirements in paragraph 276ADE(1) but the Secretary of State grants leave to remain outside the rules on Article 8 grounds, the applicant will normally be granted leave for a period not exceeding 30 months and subject to a condition of no recourse to public funds unless the Secretary of State considers that the person should not be subject to such a condition.

276BE(3). Where an applicant has extant leave at the date of decision, the remaining period of that extant leave up to a maximum of 28 days will be added to the period of limited leave to remain granted under paragraph 276BE(1) or 276BE(2) (which may therefore exceed 30 months).

### **Refusal of limited leave to remain on the grounds of private life in the UK**

276CE. Limited leave to remain on the grounds of private life in the UK is to be refused if the Secretary of State is not satisfied that the requirements in paragraph 276ADE(1) are met.

### **Requirements for indefinite leave to remain on the grounds of private life in the UK**

276DE. The requirements to be met for the grant of indefinite leave to remain on the grounds of private life in the UK are that:

- (a) the applicant has been in the UK with continuous leave on the grounds of private life for a period of at least 120 months. This continuous leave will disregard any period of overstaying between periods of leave on the grounds of private life where the application was made no later than 28 days after the expiry of the previous leave. Any period pending the determination of the application will also be disregarded;
- (b) the applicant meets the requirements of paragraph 276ADE(1) or, in respect of the requirements in paragraph 276ADE(1)(iv) and (v), the applicant met the requirements in a previous application which led to a grant of limited leave to remain under paragraph 276BE(1);
- (c) the applicant does not fall for refusal under any of the grounds in Section S-ILR: Suitability- indefinite leave to remain in Appendix FM;
- (d) the applicant has demonstrated sufficient knowledge of the English language and sufficient knowledge about life in the United Kingdom, in accordance with Appendix KoLL; and
- (e) there are no reasons why it would be undesirable to grant the applicant indefinite leave to remain based on the applicant's conduct, character or associations or because the applicant represents a threat to national security.

### **Indefinite leave to remain on the grounds of private life in the UK**

276DF. Indefinite leave to remain on the grounds of private life in the UK may be granted provided that the Secretary of State is satisfied that each of the requirements of paragraph 276DE is met.

276DG. If the applicant does not meet the requirements for indefinite leave to remain on the grounds of private life in the UK only for one or both of the following reasons-

- (a) paragraph S-ILR.1.5. or S-ILR.1.6. in Appendix FM applies;
- (b) the applicant has not met the requirements of paragraphs 33B to 33G of these Rules,

the applicant may be granted further limited leave to remain on the grounds of private life in the UK for a period not exceeding 30 months, and subject to a condition of no recourse to public funds unless the Secretary of State considers that the person should not be subject to such a condition.

### **Refusal of indefinite leave to remain on the grounds of private life in the UK**

276DH. Indefinite leave to remain on the grounds of private life in the UK is to be refused if the Secretary of State is not satisfied that each of the requirements of paragraph 276DE is met, subject to paragraph 276DG.

## **Part 8**

### **Children of settled parent(s)**

#### **Requirements for indefinite leave to enter the United Kingdom as the child of a parent, parents or a relative present and settled or being admitted for settlement in the United Kingdom**

297. The requirements to be met by a person seeking indefinite leave to enter the United Kingdom as the child of a parent, parents or a relative present and settled or being admitted for settlement in the United Kingdom are that he:

(i) is seeking leave to enter to accompany or join a parent, parents or a relative in one of the following circumstances:

(a) both parents are present and settled in the United Kingdom; or

(b) both parents are being admitted on the same occasion for settlement; or

(c) one parent is present and settled in the United Kingdom and the other is being admitted on the same occasion for settlement; or

(d) one parent is present and settled in the United Kingdom or being admitted on the same occasion for settlement and the other parent is dead; or

(e) one parent is present and settled in the United Kingdom or being admitted on the same occasion for settlement and has had sole responsibility for the child's upbringing; or

(f) one parent or a relative is present and settled in the United Kingdom or being admitted on the same occasion for settlement 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

(ii) is under the age of 18; and

(iii) is not leading an independent life, is unmarried and is not a civil partner, and has not formed an independent family unit; and

(iv) can, and will, be accommodated adequately by the parent, parents or relative the child is seeking to join without recourse to public funds in accommodation which the parent, parents or relative the child is seeking to join, own or occupy exclusively; and

(v) can, and will, be maintained adequately by the parent, parents, or relative the child is seeking to join, without recourse to public funds; and

(vi) holds a valid United Kingdom entry clearance for entry in this capacity; and

(vii) does not fall for refusal under the general grounds for refusal.

Requirements for indefinite leave to remain in the United Kingdom as the child of a parent, parents or a relative present and settled or being admitted for settlement in the United Kingdom

#### **298. The requirements to be met by a person seeking indefinite leave to remain in the United Kingdom as the child of a parent, parents or a relative present and settled in the United Kingdom are that he:**

(i) is seeking to remain with a parent, parents or a relative in one of the following circumstances:

(a) both parents are present and settled in the United Kingdom; or

(b) one parent is present and settled in the United Kingdom and the other parent is dead; or

(c) one parent is present and settled in the United Kingdom and has had sole responsibility for the child's upbringing or the child normally lives with this parent and not their other parent; or

(d) one parent or a relative is present and settled in the United Kingdom 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

(ii) has or has had limited leave to enter or remain in the United Kingdom, and

(a) is under the age of 18; or

(b) was given leave to enter or remain with a view to settlement under paragraph 302 or Appendix FM; or

(c) was admitted into the UK in accordance with paragraph 319R and has completed a period of 2 years limited leave as the child of a refugee or beneficiary of humanitarian protection who is now present and settled in the UK or as the child of a former refugee or beneficiary of humanitarian protection who is now a British Citizen, or

(d) the applicant *has limited leave to enter or remain in* the United Kingdom in accordance with paragraph 319X, as the child of a relative with limited leave to remain as a refugee or beneficiary of humanitarian protection in the United Kingdom and who is now present and settled here; or

(e) was last given limited leave to remain under paragraph 298A; and

(iii) is not leading an independent life, is unmarried, and has not formed an independent family unit; and

(iv) can, and will, be accommodated adequately by the parent, parents or relative the child was admitted to join, without recourse to public funds in accommodation which the parent, parents or relative the child was admitted to join, own or occupy exclusively; and

(v) can, and will, be maintained adequately by the parent, parents or relative the child was admitted to join, without recourse to public funds; and

(vi) does not fall for refusal under the general grounds for refusal; and

(vii) if aged 18 or over, was admitted to the United Kingdom under paragraph 302, or Appendix FM, or 319R or 319X and has demonstrated sufficient knowledge of the English language and sufficient knowledge about life in the United Kingdom in accordance with Appendix KoLL.

298A. If an applicant does not meet the requirements of paragraph 298 only because:

(a) the applicant does not meet the requirement in paragraph 298(vi) by reason of a sentence or disposal of a type mentioned in paragraph 322(1C)(iii) or (iv); or

(b) an applicant aged 18 or over does not meet the requirement in paragraph 298(vii); or

(c) the applicant would otherwise be refused indefinite leave to remain under paragraph 322(1C)(iii) or (iv),

the applicant may be granted limited leave to remain for a period not exceeding 30 months and subject to a condition of no recourse to public funds.

**Indefinite leave to enter or remain in the United Kingdom as the child of a parent, parents or a relative present and settled or being admitted for settlement in the United Kingdom**

299. Indefinite leave to enter the United Kingdom as the child of a parent, parents or a relative present and settled or being admitted for settlement in the United Kingdom may be granted provided a valid United Kingdom entry clearance for entry in this capacity is produced to the Immigration Officer on arrival. Indefinite leave to remain in the United Kingdom as the child of a parent, parents or a relative present and settled in the United Kingdom may be granted provided the Secretary of State is satisfied that each of the requirements of paragraph 298 is met.

## **Part 9: General Grounds of Refusal**

### **Refusal of entry clearance or leave to enter the United Kingdom**

A320. Paragraphs 320 (except subparagraph (3), (10) and (11)) and 322 do not apply to an application for entry clearance, leave to enter or leave to remain as a Family Member under Appendix FM, and Part 9 (except for paragraph 322(1)) does not apply to an application for leave to remain on the grounds of private life under paragraphs 276ADE-276DH.

B320(1). Subject to sub-paragraph (2), paragraphs 320 (except sub-paragraphs (3), (7B),(10) and (11)) and 322 (except sub-paragraphs (2) and (3)) do not apply to an application for entry clearance, leave to enter or leave to remain under Appendix Armed Forces.

(2) As well as the sub-paragraphs mentioned above, sub-paragraph (13) of paragraph 320 also applies to applications for entry clearance, leave to enter or leave to remain under Part 9 or 10 of Appendix Armed Forces.

320. In addition to the grounds of refusal of entry clearance or leave to enter set out in Parts 2-8 of these Rules, and subject to paragraph 321 below, the following grounds for the refusal of entry clearance or leave to enter apply:

#### **Grounds on which entry clearance or leave to enter the United Kingdom is to be refused**

- (1) the fact that entry is being sought for a purpose not covered by these Rules;
- (2) the fact that the person seeking entry to the United Kingdom:
  - (a) is currently the subject of a deportation order; or
  - (b) has been convicted of an offence for which they have been sentenced to a period of imprisonment of at least 4 years; or
  - (c) has been convicted of an offence for which they have been sentenced to a period of imprisonment of at least 12 months but less than 4 years, unless a period of 10 years has passed since the end of the sentence; or
  - (d) has been convicted of an offence for which they have been sentenced to a period of imprisonment of less than 12 months, unless a period of 5 years has passed since the end of the sentence.

Where this paragraph applies, unless refusal would be contrary to the Human Rights Convention or the Convention and Protocol Relating to the Status of Refugees, it will only be in exceptional circumstances that the public interest in maintaining refusal will be outweighed by compelling factors.

- (3) failure by the person seeking entry to the United Kingdom to produce to the Immigration Officer a valid national passport or other document satisfactorily establishing his identity and nationality;
- (4) failure to satisfy the Immigration Officer, in the case of a person arriving in the United Kingdom or seeking entry through the Channel Tunnel with the intention of entering any other part of the common travel area, that he is acceptable to the immigration authorities there;
- (5) failure, in the case of a visa national, to produce to the Immigration Officer a passport or other identity document endorsed with a valid and current United Kingdom entry clearance issued for the purpose for which entry is sought;
- (6) where the Secretary of State has personally directed that the exclusion of a person from the United Kingdom is conducive to the public good;

(7) save in relation to a person settled in the United Kingdom or where the Immigration Officer is satisfied that there are strong compassionate reasons justifying admission, confirmation from the Medical Inspector that, for medical reasons, it is undesirable to admit a person seeking leave to enter the United Kingdom.

(7A) where false representations have been made or false documents or information have been submitted (whether or not material to the application, and whether or not to the applicant's knowledge), or material facts have not been disclosed, in relation to the application or in order to obtain documents from the Secretary of State or a third party required in support of the application.

(7B) where the applicant has previously breached the UK's immigration laws (and was 18 or over at the time of his most recent breach)by:

- (a) Overstaying;
- (b) breaching a condition attached to his leave;
- (c) being an Illegal Entrant;
- (d) using Deception in an application for entry clearance, leave to enter or remain, or in order to obtain documents from the Secretary of State or a third party required in support of the application (whether successful or not);

unless the applicant:

- (i) Overstayed for 90 days or less and left the UK voluntarily, not at the expense (directly or indirectly) of the Secretary of State;
- (ii) used Deception in an application for entry clearance more than 10 years ago;
- (iii) left the UK voluntarily, not at the expense (directly or indirectly) of the Secretary of State, more than 12 months ago;
- (iv) left the UK voluntarily, at the expense (directly or indirectly) of the Secretary of State, more than 2 years ago; and the date the person left the UK was no more than 6 months after the date on which the person was given notice of the removal decision, or no more than 6 months after the date on which the person no longer had a pending appeal or administrative review; whichever is the later;
- (v) left the UK voluntarily, at the expense (directly or indirectly) of the Secretary of State, more than 5 years ago;
- (vi) was removed or deported from the UK more than 10 years ago or;
- (vii) left or was removed from the UK as a condition of a caution issued in accordance with section 22 of the Criminal Justice Act 2003 more than 5 years ago.

Where more than one breach of the UK's immigration laws has occurred, only the breach which leads to the longest period of absence from the UK will be relevant under this paragraph.

(7D) failure, without providing a reasonable explanation, to comply with a request made on behalf of the Entry Clearance Officer to attend for interview.

**Grounds on which entry clearance or leave to enter the United Kingdom should normally be refused**

(8) failure by a person arriving in the United Kingdom to furnish the Immigration Officer with such information as may be required for the purpose of deciding whether he requires leave to enter and, if so, whether and on what terms leave should be given;

(8A) where the person seeking leave is outside the United Kingdom, failure by him to supply any information, documents, copy documents or medical report requested by an Immigration Officer;

(9) failure by a person seeking leave to enter as a returning resident to satisfy the Immigration Officer that he meets the requirements of paragraph 18 of these Rules, or that he seeks leave to enter for the same purpose as that for which his earlier leave was granted;

(10) production by the person seeking leave to enter the United Kingdom of a national passport or travel document issued by a territorial entity or authority which is not recognised by Her Majesty's Government as a state or is not dealt with as a government by them, or which does not accept valid United Kingdom passports for the purpose of its own immigration control; or a passport or travel document which does not comply with international passport practice;

(11) where the applicant has previously contrived in a significant way to frustrate the intentions of the Rules by:

(i) overstaying; or

(ii) breaching a condition attached to his leave; or

(iii) being an illegal entrant; or

(iv) deception in an application for entry clearance, leave to enter or remain or in order to obtain documents from the Secretary of State or a third party required in support of the application (whether successful or not); and

there are other aggravating circumstances, such as absconding, not meeting temporary admission/reporting restrictions or bail conditions, using an assumed identity or multiple identities, switching nationality, making frivolous applications or not complying with the re- documentation process.

(12) DELETED

(13) failure, except by a person eligible for admission to the United Kingdom for settlement, to satisfy the Immigration Officer that he will be admitted to another country after a stay in the United Kingdom;

(14) refusal by a sponsor of a person seeking leave to enter the United Kingdom to give, if requested to do so, an undertaking in writing to be responsible for that person's maintenance and accommodation for the period of any leave granted;

(16) failure, in the case of a child under the age of 18 years seeking leave to enter the United Kingdom otherwise than in conjunction with an application made by his parent(s) or legal guardian to provide the Immigration Officer, if required to do so, with written consent to the application from his parent(s) or legal guardian; save that the requirement as to written consent does not apply in the case of a child seeking admission to the United Kingdom as an asylum seeker;

(17) save in relation to a person settled in the United Kingdom, refusal to undergo a medical examination when required to do so by the Immigration Officer;

(18) DELETED

(18A) within the 12 months prior to the date on which the application is decided, the person has been convicted of or admitted an offence for which they received a non-custodial sentence or other out of court disposal that is recorded on their criminal record;

(18B) in the view of the Secretary of State:

(a) the person's offending has caused serious harm; or

(b) the person is a persistent offender who shows a particular disregard for the law.

(19) The immigration officer deems the exclusion of the person from the United Kingdom to be conducive to the public good. For example, because the person's conduct (including convictions which do not fall within paragraph 320(2)), character, associations, or other reasons, make it undesirable to grant them leave to enter.

(20) failure by a person seeking entry into the United Kingdom to comply with a requirement relating to the provision of physical data to which he is subject by regulations made under section 126 of the Nationality, Immigration and Asylum Act 2002.

(21) DELETED

(22) where one or more relevant NHS body has notified the Secretary of State that the person seeking entry or leave to enter has failed to pay a charge or charges with a total value of at least £1000 in accordance with the relevant NHS regulations on charges to overseas visitors

### **Refusal of leave to enter in relation to a person in possession of an entry clearance**

321. A person seeking leave to enter the United Kingdom who holds an entry clearance which was duly issued to him and is still current may be refused leave to enter only where the Immigration Officer is satisfied that:

(i) False representations were made or false documents or information were submitted (whether or not material to the application, and whether or not to the holder's knowledge), or material facts were not disclosed, in relation to the application for entry clearance; or in order to obtain documents from the Secretary of State or a third party required in support of the application.

(ii) a change of circumstances since it was issued has removed the basis of the holder's claim to admission, except where the change of circumstances amounts solely to the person becoming over age for entry in one of the categories contained in paragraphs 296-316 of these Rules since the issue of the entry clearance; or

(iii) grounds which would have led to a refusal under paragraphs 320(2), 320(6), 320(18A), 320(18B) or 320(19) (except where this sub-paragraph applies in respect of an entry clearance issued under Appendix Armed Forces it is to be read as if for "paragraphs 320(2), 320(6), 320(18A), 320(18B) or 320(19)" it said "paragraph 8(a), (b), (c) or (g) and paragraph 9(d)")

### **Grounds on which leave to enter or remain which is in force is to be cancelled at port or while the holder is outside the United Kingdom**

321A. The following grounds for the cancellation of a person's leave to enter or remain which is in force on his arrival in, or whilst he is outside, the United Kingdom apply;

(1) there has been such a change in the circumstances of that person's case since the leave was given, that it should be cancelled; or

(2) false representations were made or false documents were submitted (whether or not material to the application, and whether or not to the holder's knowledge), or material facts were not disclosed, in relation to the application for leave; or in order to obtain documents from the Secretary of State or a third party required in support of the application or,

(3) save in relation to a person settled in the United Kingdom or where the Immigration Officer or the Secretary of State is satisfied that there are strong compassionate reasons justifying admission, where it is apparent that, for medical reasons, it is undesirable to admit that person to the United Kingdom; or

(4) where the Secretary of State has personally directed that the exclusion of that person from the United Kingdom is conducive to the public good; or

(4A) Grounds which would have led to a refusal under paragraphs 320(2), 320(6), 320(18A), 320(18B) or 320(19) if the person concerned were making a new application for leave to enter or remain (except where this sub-paragraph applies in respect of leave to enter or remain granted under Appendix Armed Forces it is to be read as if for paragraphs 320(2), 320(6), 320(18A), 320(18B) or 320(19) it said "paragraph 8(a), (b), (c) or (g) and paragraph 9(d)"); or

(5) The Immigration Officer or the Secretary of State deems the exclusion of the person from the United Kingdom to be conducive to the public good. For example, because the person's conduct (including convictions which do not fall within paragraph 320(2)), character, associations, or other reasons, make it undesirable to grant them leave to enter the United Kingdom; or

(6) where that person is outside the United Kingdom, failure by that person to supply any information, documents, copy documents or medical report requested by an Immigration Officer or the Secretary of State.

#### **Refusal of leave to remain, variation of leave to enter or remain or curtailment of leave**

322. In addition to the grounds for refusal of extension of stay set out in Parts 2-8 of these Rules, the following provisions apply in relation to the refusal of an application for leave to remain, variation of leave to enter or remain or, where appropriate, the curtailment of leave: Grounds on which leave to remain and variation of leave to enter or remain in the United Kingdom are to be refused

(1) the fact that variation of leave to enter or remain is being sought for a purpose not covered by these Rules.

(1A) where false representations have been made or false documents or information have been submitted (whether or not material to the application, and whether or not to the applicant's knowledge), or material facts have not been disclosed, in relation to the application or in order to obtain documents from the Secretary of State or a third party required in support of the application.

(1B) the applicant is, at the date of application, the subject of a deportation order or a decision to make a deportation order;

(1C) where the person is seeking indefinite leave to enter or remain:

(i) they have been convicted of an offence for which they have been sentenced to imprisonment for at least 4 years; or

(ii) they have been convicted of an offence for which they have been sentenced to imprisonment for at least 12 months but less than 4 years, unless a period of 15 years has passed since the end of the sentence; or

(iii) have been convicted of an offence for which they have been sentenced to imprisonment for less than 12 months, unless a period of 7 years has passed since the end of the sentence; or

(iv) have, within the 24 months prior to the date on which the application is decided, been convicted of or admitted an offence for which they have received a non-custodial sentence or other out of court disposal that is recorded on their criminal record.

(1D) DELETED

#### **Grounds on which leave to remain and variation of leave to enter or remain in the United Kingdom should normally be refused**

(2) the making of false representations or the failure to disclose any material fact for the purpose of obtaining leave to enter or a previous variation of leave or in order to obtain documents from the Secretary of State or a third party required in support of the application for leave to enter or a previous variation of leave.



(2A) the making of false representations or the failure to disclose any material fact for the purpose of obtaining a document from the Secretary of State that indicates the person has a right to reside in the United Kingdom.

(3) failure to comply with any conditions attached to the grant of leave to enter or remain;

(4) failure by the person concerned to maintain or accommodate himself and any dependants without recourse to public funds;

(5) the undesirability of permitting the person concerned to remain in the United Kingdom in the light of his conduct (including convictions which do not fall within paragraph 322(1C), character or associations or the fact that he represents a threat to national security;

(5A) it is undesirable to permit the person concerned to enter or remain in the United Kingdom because, in the view of the Secretary of State:

(a) their offending has caused serious harm; or

(b) they are a persistent offender who shows a particular disregard for the law;

(6) refusal by a sponsor of the person concerned to give, if requested to do so, an undertaking in writing to be responsible for his maintenance and accommodation in the United Kingdom or failure to honour such an undertaking once given;

(7) failure by the person concerned to honour any declaration or undertaking given orally or in writing as to the intended duration and/or purpose of his stay;

(8) failure, except by a person who qualifies for settlement in the United Kingdom or by the spouse or civil partner of a person settled in the United Kingdom, to satisfy the Secretary of State that he will be returnable to another country if allowed to remain in the United Kingdom for a further period;

(9) failure by an applicant to produce within a reasonable time information, documents or other evidence required by the Secretary of State to establish his claim to remain under these Rules;

(10) failure, without providing a reasonable explanation, to comply with a request made on behalf of the Secretary of State to attend for interview;

(11) failure, in the case of a child under the age of 18 years seeking a variation of his leave to enter or remain in the United Kingdom otherwise than in conjunction with an application by his parent(s) or legal guardian, to provide the Secretary of State, if required to do so, with written consent to the application from his parent(s) or legal guardian; save that the requirement as to written consent does not apply in the case of a child who has been admitted to the United Kingdom as an asylum seeker.

(12) where one or more relevant NHS body has notified the Secretary of State that the person seeking leave to remain or a variation of leave to enter or remain has failed to pay a charge or charges with a total value of at least £1000 in accordance with the relevant NHS regulations on charges to overseas visitors.

### **Grounds on which leave to enter or remain may be curtailed**

323. A person's leave to enter or remain may be curtailed:

(i) on any of the grounds set out in paragraph 322(2)-(5A) above (except where this paragraph applies in respect of a person granted leave under Appendix Armed Forces "paragraph 322(2)-(5A) above" is to read as if it said "paragraph 322(2) and (3) above and paragraph 8(e) and (g) of Appendix Armed Forces"; or

(ia) he uses deception in seeking (whether successfully or not) leave to remain or a variation of leave to remain; or

(ii) if he ceases to meet the requirements of the Rules under which his leave to enter or remain was granted; or

- (iii) he is the dependant, or is seeking leave to remain as the dependant, of an asylum applicant whose claim has been refused and whose leave has been curtailed under section 7 of the 1993 Act, and he does not qualify for leave to remain in his own right, or
- (iv) any of the grounds set out in paragraph 339A (i)-(vi) and paragraph 339G (i)-(vi), or
- (v) where a person has, within the first 6 months of being granted leave to enter, committed an offence for which they are subsequently sentenced to a period of imprisonment, or
- (vi) if he was granted his current period of leave as the dependent of a person ("P") and P's leave to enter or remain is being, or has been, curtailed.

### **Curtailed leave in relation to a Tier 2 Migrant, a Tier 5 Migrant or a Tier 4 Migrant**

323A. In addition to the grounds specified in paragraph 323, the leave to enter or remain of a Tier 2 Migrant, a Tier 4 Migrant or a Tier 5 Migrant:

- (a) is to be curtailed if:
  - (i) in the case of a Tier 2 Migrant or a Tier 5 Migrant:
    - (1) the migrant fails to commence, or
    - (2) the migrant ceases, or will cease, before the end date recorded on the Certificate of Sponsorship Checking Service,
 

the employment, volunteering, training or job shadowing (as the case may be) that the migrant has been sponsored to do.
  - (ii) in the case of a Tier 4 Migrant:
    - (1) the migrant fails to commence studying with the Sponsor, or
    - (2) the Sponsor has excluded or withdrawn the migrant, or the migrant has withdrawn, from the course of studies, or
    - (2A) the migrant's course of study has ceased, or will cease, before the end date recorded on the Certificate of Sponsorship Checking Service, or
    - (3) the Sponsor withdraws their sponsorship of a migrant on the doctorate extension scheme, or
    - (4) the Sponsor withdraws their sponsorship of a migrant who, having completed a pre-sessional course as provided in paragraph 120(b) (i) of Appendix A, does not have a knowledge of English equivalent to level B2 of the Council of Europe's Common European Framework for Language Learning in all four components (reading, writing, speaking and listening) or above.
- (b) may be curtailed if:
  - (i) the migrant's Sponsor ceases to have a sponsor licence (for whatever reason); or
  - (ii) the migrant's Sponsor transfers the business for which the migrant works, or at which the migrant is studying, to another person; and
    - (1) that person does not have a sponsor licence; and

- (2) fails to apply for a sponsor licence within 28 days of the date of the transfer of the business; or
  - (3) applies for a sponsor licence but is refused; or
  - (4) makes a successful application for a sponsor licence, but the Sponsor licence granted is not in a category that would allow the Sponsor to issue a Certificate of Sponsorship or Confirmation of Acceptance for Studies to the migrant;
- (iii) In the case of a Tier 2 Migrant or a Tier 5 Migrant, if the employment that the Certificate of Sponsorship Checking Service records that the migrant is being sponsored to do undergoes a prohibited change as specified in paragraph 323AA;
- (iv) paragraph (a) above applies but:
- (1) the migrant is under the age of 18;
  - (2) the migrant has a dependant child under the age of 18;
  - (3) leave is to be varied such that when the variation takes effect the migrant will have leave to enter or remain and the migrant has less than 60 days extant leave remaining;
  - (4) the migrant has been granted leave to enter or remain with another Sponsor or under another immigration category; or
  - (5) the migrant has a pending application for leave to remain, or variation of leave, with the UK Border Agency, or has a pending appeal under Section 82 of the Nationality, Immigration and Asylum Act 2002 or has a pending administrative review.

...

#### **Curtailement of leave in relation to a Tier 1 (Exceptional Talent) Migrant**

323B. In addition to the grounds specified in paragraph 323, the leave to enter or remain of a Tier 1 (Exceptional Talent) Migrant may be curtailed if the Designated Competent Body that endorsed the application which led to the migrant's current grant of leave withdraws its endorsement of the migrant.

#### **Curtailement of leave in relation to a Tier 1 (Graduate Entrepreneur) Migrant**

323C. In addition to the grounds specified in paragraph 323, the leave to enter or remain of a Tier 1 (Graduate Entrepreneur) Migrant may be curtailed if the endorsing body that endorsed the application which led to the migrant's current grant of leave:

- (a) loses its status as an endorsing institution for Tier 1 (Graduate Entrepreneur) Migrants,
- (b) loses its status as a Highly Trusted Sponsor under Tier 4 of the Points-Based System (for whatever reason),
- (c) ceases to be an A-rated Sponsor under Tier 2 or Tier 5 of the Points-Based System because its Tier 2 or Tier 5 Sponsor licence is downgraded or revoked by the UK Border Agency, or
- (d) withdraws its endorsement of the migrant.

#### **Crew members**

324. A person who has been given leave to enter to join a ship, aircraft, hovercraft, hydrofoil or international train service as a member of its crew, or a crew member who has been given leave to enter for hospital treatment, repatriation or transfer to another ship, aircraft, hovercraft, hydrofoil or international train service in the United Kingdom, is to be refused leave to remain unless an extension

of stay is necessary to fulfil the purpose for which he was given leave to enter or unless he meets the requirements for an extension of stay as a spouse or civil partner in paragraph 284.

## **Part 11 - Asylum**

### **326A. Procedure**

The procedures set out in these Rules shall apply to the consideration of asylum and humanitarian protection.

326B. Where the Secretary of State is considering a claim for asylum or humanitarian protection under this Part, she will consider any Article 8 elements of that claim in line with the provisions of Appendix FM (family life) which are relevant to those elements and in line with paragraphs 276ADE to 276DH (private life) of these Rules unless the person is someone to whom Part 13 of these Rules applies.

### **Definition of asylum applicant**

327. Under the Rules an asylum applicant is a person who either;

(a) makes a request to be recognised as a refugee under the Geneva Convention on the basis that it would be contrary to the United Kingdom's obligations under the Geneva Convention for him to be removed from or required to leave the United Kingdom, or

(b) otherwise makes a request for international protection. "Application for asylum" shall be construed accordingly.

327A. Every person has the right to make an application for asylum on his own behalf.

### **Applications for asylum**

328. All asylum applications will be determined by the Secretary of State in accordance with the Geneva Convention. Every asylum application made by a person at a port or airport in the United Kingdom will be referred by the Immigration Officer for determination by the Secretary of State in accordance with these Rules.

328A. The Secretary of State shall ensure that authorities which are likely to be addressed by someone who wishes to make an application for asylum are able to advise that person how and where such an application may be made.

329. Until an asylum application has been determined by the Secretary of State or the Secretary of State has issued a certificate under Part 2, 3, 4 or 5 of Schedule 3 to the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 no action will be taken to require the departure of the asylum applicant or his dependants from the United Kingdom.

330. If the Secretary of State decides to grant asylum and the person has not yet been given leave to enter, the Immigration Officer will grant limited leave to enter.

331. If a person seeking leave to enter is refused asylum or their application for asylum is withdrawn or treated as withdrawn under paragraph 333C of these Rules, the Immigration Officer will consider whether or not he is in a position to decide to give or refuse leave to enter without interviewing the person further. If the Immigration Officer decides that a further interview is not required he may serve the notice giving or refusing leave to enter by post. If the Immigration Officer decides that a further interview is required, he will then resume his examination to determine whether or not to grant the person leave to enter under any other provision of these Rules. If the person fails at any time to comply with a requirement to report to an Immigration Officer for examination, the Immigration Officer may direct that the person's examination shall be treated as concluded at that time. The Immigration Officer will then consider any outstanding applications for entry on the basis of any evidence before him.

332. If a person who has been refused leave to enter applies for asylum and that application is refused or withdrawn or treated as withdrawn under paragraph 333C of these Rules, leave to enter will again be refused unless the applicant qualifies for admission under any other provision of these Rules.

333. Written notice of decisions on applications for asylum shall be given in reasonable time. Where the applicant is legally represented, notice may instead be given to the representative. Where the applicant has no legal representative and free legal assistance is not available, he shall be informed

of the decision on the application for asylum and, if the application is rejected, how to challenge the decision, in a language that he may reasonably be supposed to understand.

333A. The Secretary of State shall ensure that a decision is taken by him on each application for asylum as soon as possible, without prejudice to an adequate and complete examination.

Where a decision on an application for asylum cannot be taken within six months of the date it was recorded, the Secretary of State shall either:

(a) inform the applicant of the delay; or

(b) if the applicant has made a specific written request for it, provide information on the timeframe within which the decision on his application is to be expected. The provision of such information shall not oblige the Secretary of State to take a decision within the stipulated time-frame.

333B. Applicants for asylum shall be allowed an effective opportunity to consult, at their own expense or at public expense in accordance with provision made for this by the Legal Services Commission or otherwise, a person who is authorised under Part V of the Immigration and Asylum Act 1999 to give immigration advice. This paragraph shall also apply where the Secretary of State is considering revoking a person's refugee status in accordance with these Rules.

### **Withdrawal of applications**

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.

### **Grant of asylum**

334. An asylum applicant will be granted asylum in the United Kingdom if the Secretary of State is satisfied that:

(i) he is in the United Kingdom or has arrived at a port of entry in the United Kingdom;

(ii) he is a refugee, as defined in regulation 2 of The Refugee or Person in Need of International Protection (Qualification) Regulations 2006;

(iii) there are no reasonable grounds for regarding him as a danger to the security of the United Kingdom;

(iv) he does not, having been convicted by a final judgment of a particularly serious crime, he does not constitute danger to the community of the United Kingdom; and

(v) refusing his application would result in him being required to go (whether immediately or after the time limited by any existing leave to enter or remain) in breach of the Geneva Convention, to a country in which his life or freedom would be threatened on account of his race, religion, nationality, political opinion or membership of a particular social group.

335. If the Secretary of State decides to grant asylum to a person who has been given leave to enter (whether or not the leave has expired) or to a person who has entered without leave, the Secretary of State will vary the existing leave or grant limited leave to remain.

### **Refusal of asylum**

336. An application which does not meet the criteria set out in paragraph 334 will be refused. Where an application for asylum is refused, the reasons in fact and law shall be stated in the decision and information provided in writing on how to challenge the decision.

337. DELETED

338. When a person in the United Kingdom is notified that asylum has been refused he may, if he is liable to removal as an illegal entrant, removal under section 10 of the Immigration and Asylum Act

1999 or to deportation, at the same time be notified of removal directions, served with a notice of intention to make a deportation order, or served with a deportation order, as appropriate.

339. DELETED

#### **Revocation or refusal to renew a grant of asylum**

339A. A person's grant of asylum under paragraph 334 will be revoked or not renewed if the Secretary of State is satisfied that:

- (i) he has voluntarily re-availed himself of the protection of the country of nationality;
- (ii) having lost his nationality, he has voluntarily re-acquired it; or
- (iii) he has acquired a new nationality, and enjoys the protection of the country of his new nationality;
- (iv) he has voluntarily re-established himself in the country which he left or outside which he remained owing to a fear of persecution;
- (v) he can no longer, because the circumstances in connection with which he has been recognised as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of nationality;
- (vi) being a stateless person with no nationality, he is able, because the circumstances in connection with which he has been recognised a refugee have ceased to exist, to return to the country of former habitual residence;
- (vii) he should have been or is excluded from being a refugee in accordance with regulation 7 of The Refugee or Person in Need of International Protection (Qualification) Regulations 2006;
- (viii) his misrepresentation or omission of facts, including the use of false documents, were decisive for the grant of asylum;
- (ix) there are reasonable grounds for regarding him as a danger to the security of the United Kingdom; or
- (x) having been convicted by a final judgment of a particularly serious crime he constitutes danger to the community of the United Kingdom.

In considering (v) and (vi), the Secretary of State shall have regard to whether the change of circumstances is of such a significant and non-temporary nature that the refugee's fear of persecution can no longer be regarded as well-founded.

Where an application for asylum was made on or after the 21st October 2004, the Secretary of State will revoke or refuse to renew a person's grant of asylum where he is satisfied that at least one of the provisions in sub-paragraph (i)-(vi) apply.

339B. When a person's grant of asylum is revoked or not renewed any limited leave which they have may be curtailed.

339BA. Where the Secretary of State is considering revoking refugee status in accordance with these Rules, the person concerned shall be informed in writing that the Secretary of State is reconsidering his qualification for refugee status and the reasons for the reconsideration. That person shall be given the opportunity to submit, in a personal interview or in a written statement, reasons as to why his refugee status should not be revoked. If there is a personal interview, it shall be subject to the safeguards set out in these Rules. However, where a person acquires British citizenship status, his refugee status is automatically revoked in accordance with paragraph 339A (iii) upon acquisition of that status without the need to follow the procedure set out above.

#### **Grant of humanitarian protection**

339C. A person will be granted humanitarian protection in the United Kingdom if the Secretary of State is satisfied that:

- (i) he is in the United Kingdom or has arrived at a port of entry in the United Kingdom;

(ii) he does not qualify as a refugee as defined in regulation 2 of The Refugee or Person in Need of International Protection (Qualification) Regulations 2006;

(iii) substantial grounds have been shown for believing that the person concerned, if he returned to the country of return, would face a real risk of suffering serious harm and is unable, or, owing to such risk, unwilling to avail himself of the protection of that country; and

(iv) he is not excluded from a grant of humanitarian protection.

Serious harm consists of:

(i) the death penalty or execution;

(ii) unlawful killing;

(iii) torture or inhuman or degrading treatment or punishment of a person in the country of return; or

(iv) serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict.

### **Exclusion from humanitarian protection**

339D. A person is excluded from a grant of humanitarian protection under paragraph 339C (iv) where the Secretary of State is satisfied that:

(i) there are serious reasons for considering that he has committed a crime against peace, a war crime, a crime against humanity, or any other serious crime or instigated or otherwise participated in such crimes;

(ii) there are serious reasons for considering that he is guilty of acts contrary to the purposes and principles of the United Nations or has committed, prepared or instigated such acts or encouraged or induced others to commit, prepare or instigate instigated such acts;

(iii) there are serious reasons for considering that he constitutes a danger to the community or to the security of the United Kingdom; or

(iv) prior to his admission to the United Kingdom the person committed a crime outside the scope of (i) and (ii) that would be punishable by imprisonment were it committed in the United Kingdom and the person left his country of origin solely in order to avoid sanctions resulting from the crime.

339E. If the Secretary of State decides to grant humanitarian protection and the person has not yet been given leave to enter, the Secretary of State or an Immigration Officer will grant limited leave to enter. If the Secretary of State decides to grant humanitarian protection to a person who has been given limited leave to enter (whether or not that leave has expired) or a person who has entered without leave, the Secretary of State will vary the existing leave or grant limited leave to remain.

### **Refusal of humanitarian protection**

339F. Where the criteria set out in paragraph 339C is not met humanitarian protection will be refused.

### **Revocation of humanitarian protection**

339G. A person's humanitarian protection granted under paragraph 339C will be revoked or not renewed if the Secretary of State is satisfied that at least one of the following applies:

(i) the circumstances which led to the grant of humanitarian protection have ceased to exist or have changed to such a degree that such protection is no longer required;

(ii) the person granted humanitarian protection should have been or is excluded from humanitarian protection because there are serious reasons for considering that he has committed a crime against peace, a war crime, a crime against humanity, or any other serious crime or instigated or otherwise participated in such crimes;

(iii) the person granted humanitarian protection should have been or is excluded from humanitarian protection because there are serious reasons for considering that he is guilty of acts contrary to the purposes and principles of the United Nations or has committed,



prepared or instigated such acts or encouraged or induced others to commit, prepare or instigate such acts;

(iv) the person granted humanitarian protection should have been or is excluded from humanitarian protection because there are serious reasons for considering that he constitutes a danger to the community or to the security of the United Kingdom;

(v) the person granted humanitarian protection misrepresented or omitted facts, including the use of false documents, which were decisive to the grant of humanitarian protection; or

(vi) the person granted humanitarian protection should have been or is excluded from humanitarian protection because prior to his admission to the United Kingdom the person committed a crime outside the scope of (ii) and (iii) that would be punishable by imprisonment had it been committed in the United Kingdom and the person left his country of origin solely in order to avoid sanctions resulting from the crime.

In applying (i) the Secretary of State shall have regard to whether the change of circumstances is of such a significant and non-temporary nature that the person no longer faces a real risk of serious harm;

339H. When a person's humanitarian protection is revoked or not renewed any limited leave which they have may be curtailed.

### **Consideration of applications**

339HA. The Secretary of State shall ensure that the personnel examining applications for asylum and taking decisions on his behalf have the knowledge with respect to relevant standards applicable in the field of asylum and refugee law.

339I. When the Secretary of State considers a person's asylum claim, eligibility for a grant of humanitarian protection or human rights claim it is the duty of the person to submit to the Secretary of State as soon as possible all material factors needed to substantiate the asylum claim or establish that he is a person eligible for humanitarian protection or substantiate the human rights claim, which the Secretary of State shall assess in cooperation with the person.

The material factors include:

(i) the person's statement on the reasons for making an asylum claim or on eligibility for a grant of humanitarian protection or for making a human rights claim;

(ii) all documentation at the person's disposal regarding the person's age, background (including background details of relevant relatives), identity, nationality(ies), country(ies) and place(s) of previous residence, previous asylum applications, travel routes; and

(iii) identity and travel documents.

339IA. For the purposes of examining individual applications for asylum

(i) information provided in support of an application and the fact that an application has been made shall not be disclosed to the alleged actor(s) of persecution of the applicant, and

(ii) information shall not be obtained from the alleged actor(s) of persecution that would result in their being directly informed that an application for asylum has been made by the applicant in question and would jeopardise the physical integrity of the applicant and his dependants, or the liberty and security of his family members still living in the country of origin.

This paragraph shall also apply where the Secretary of State is considering revoking a person's refugee status in accordance with these Rules.

339J. The assessment by the Secretary of State of an asylum claim, eligibility for a grant of humanitarian protection or a human rights claim will be carried out on an individual, objective and impartial basis. This will include taking into account in particular:

(i) all relevant facts as they relate to the country of origin or country of return at the time of taking a decision on the grant; including laws and regulations of the country of origin or country of return and the manner in which they are applied;

(ii) relevant statements and documentation presented by the person including information on whether the person has been or may be subject to persecution or serious harm;

(iii) the individual position and personal circumstances of the person, including factors such as background, gender and age, so as to assess whether, on the basis of the person's personal circumstances, the acts to which the person has been or could be exposed would amount to persecution or serious harm;

(iv) whether the person's activities since leaving the country of origin or country of return were engaged in for the sole or main purpose of creating the necessary conditions for making an asylum claim or establishing that he is a person eligible for humanitarian protection or a human rights claim, so as to assess whether these activities will expose the person to persecution or serious harm if he returned to that country; and

(v) whether the person could reasonably be expected to avail himself of the protection of another country where he could assert citizenship.

339JA. Reliable and up-to-date information shall be obtained from various sources as to the general situation prevailing in the countries of origin of applicants for asylum and, where necessary, in countries through which they have transited. Such information shall be made available to the personnel responsible for examining applications and taking decisions and may be provided to them in the form of a consolidated country information report.

This paragraph shall also apply where the Secretary of State is considering revoking a person's refugee status in accordance with these Rules.

339K. The fact that a person has already been subject to persecution or serious harm, or to direct threats of such persecution or such harm, will be regarded as a serious indication of the person's well-founded fear of persecution or real risk of suffering serious harm, unless there are good reasons to consider that such persecution or serious harm will not be repeated.

339L. It is the duty of the person to substantiate the asylum claim or establish that he is a person eligible humanitarian protection or substantiate his human rights claim. Where aspects of the person's statements are not supported by documentary or other evidence, those aspects will not need confirmation when all of the following conditions are met:

(i) the person has made a genuine effort to substantiate his asylum claim or establish that he is a person eligible humanitarian protection or substantiate his human rights claim;

(ii) all material factors at the person's disposal have been submitted, and a satisfactory explanation regarding any lack of other relevant material has been given;

(iii) the person's statements are found to be coherent and plausible and do not run counter to available specific and general information relevant to the person's case;

(iv) the person has made an asylum claim or sought to establish that he is a person eligible for humanitarian protection or made a human rights claim at the earliest possible time, unless the person can demonstrate good reason for not having done so; and

(v) the general credibility of the person has been established.

339M. The Secretary of State may consider that a person has not substantiated his asylum claim or established that he is a person eligible for humanitarian protection or substantiated his human rights claim, and thereby reject his application for asylum, determine that he is not eligible for humanitarian protection or reject his human rights claim, if he fails, without reasonable explanation, to make a prompt and full disclosure of material facts, either orally or in writing, or otherwise to assist the Secretary of State in establishing the facts of the case; this includes, for example, failure to report to a designated place to be fingerprinted, failure to complete an asylum questionnaire or failure to comply with a requirement to report to an immigration officer for examination.

339MA. Applications for asylum shall be neither rejected nor excluded from examination on the sole ground that they have not been made as soon as possible.

339N. In determining whether the general credibility of the person has been established the Secretary of State will apply the provisions in s.8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004.

### **Personal interview**

339NA. Before a decision is taken on the application for asylum, the applicant shall be given the opportunity of a personal interview on his application for asylum with a representative of the Secretary of State who is legally competent to conduct such an interview.

The personal interview may be omitted where:

- (i) the Secretary of State is able to take a positive decision on the basis of evidence available;
- (ii) the Secretary of State has already had a meeting with the applicant for the purpose of assisting him with completing his application and submitting the essential information regarding the application;
- (iii) the applicant, in submitting his application and presenting the facts, has only raised issues that are not relevant or of minimal relevance to the examination of whether he is a refugee, as defined in regulation 2 of the Refugee or Person in Need of International Protection (Qualification) Regulations 2006;
- (iv) the applicant has made inconsistent, contradictory, improbable or insufficient representations which make his claim clearly unconvincing in relation to his having been the object of persecution;
- (v) the applicant has submitted a subsequent application which does not raise any relevant new elements with respect to his particular circumstances or to the situation in his country of origin;
- (vi) the applicant is making an application merely in order to delay or frustrate the enforcement of an earlier or imminent decision which would result in his removal; and
- (vii) it is not reasonably practicable, in particular where the Secretary of State is of the opinion that the applicant is unfit or unable to be interviewed owing to enduring circumstances beyond his control.

The omission of a personal interview shall not prevent the Secretary of State from taking a decision on the application.

Where the personal interview is omitted, the applicant and dependants shall be given a reasonable opportunity to submit further information.

339NB. (i) The personal interview mentioned in paragraph 339NA above shall normally take place without the presence of the applicant's family members unless the Secretary of State considers it necessary for an appropriate examination to have other family members present.

(ii) The personal interview shall take place under conditions which ensure appropriate confidentiality.

339NC (i) A written report shall be made of every personal interview containing at least the essential information regarding the asylum application as presented by the applicant in accordance with paragraph 339I of these Rules.

(ii) The Secretary of State shall ensure that the applicant has timely access to the report of the personal interview and that access is possible as soon as necessary for allowing an appeal to be prepared and lodged in due time.

339ND The Secretary of State shall provide at public expense an interpreter for the purpose of allowing the applicant to submit his case, wherever necessary. The Secretary of State shall select an interpreter who can ensure appropriate communication between the applicant and the representative of the Secretary of State who conducts the interview.

### **Internal relocation**

339O (i) The Secretary of State will not make:

(a) a grant of asylum if in part of the country of origin a person would not have a well founded fear of being persecuted, and the person can reasonably be expected to stay in that part of the country;  
or

(b) a grant of humanitarian protection if in part of the country of return a person would not face a real risk of suffering serious harm, and the person can reasonably be expected to stay in that part of the country.

(ii) In examining whether a part of the country of origin or country of return meets the requirements in (i) the Secretary of State, when making his decision on whether to grant asylum or humanitarian protection, will have regard to the general circumstances prevailing in that part of the country and to the personal circumstances of the person.

(iii) (i) applies notwithstanding technical obstacles to return to the country of origin or country of return

### **Sur place claims**

339P. A person may have a well-founded fear of being persecuted or a real risk of suffering serious harm based on events which have taken place since the person left the country of origin or country of return and/or activities which have been engaged in by a person since he left the country of origin or country of return, in particular where it is established that the activities relied upon constitute the expression and continuation of convictions or orientations held in the country of origin or country of return.

### **Residence Permits**

339Q(i) The Secretary of State will issue to a person granted asylum in the United Kingdom a United Kingdom Residence Permit (UKRP) as soon as possible after the grant of asylum. The UKRP will be valid for five years and renewable, unless compelling reasons of national security or public order otherwise require or where there are reasonable grounds for considering that the applicant is a danger to the security of the UK or having been convicted by a final judgment of a particularly serious crime, the applicant constitutes a danger to the community of the UK.

(ii) The Secretary of State will issue to a person granted humanitarian protection in the United Kingdom a UKRP as soon as possible after the grant of humanitarian protection. The UKRP will be valid for five years and renewable, unless compelling reasons of national security or public order otherwise require or where there are reasonable grounds for considering that the person granted humanitarian protection is a danger to the security of the UK or having been convicted by a final judgment of a serious crime, this person constitutes a danger to the community of the UK.

(iii) The Secretary of State will issue a UKRP to a family member of a person granted asylum or humanitarian protection where the family member does not qualify for such status. A UKRP will be granted for a period of five years. The UKRP is renewable on the terms set out in (i) and (ii) respectively. "Family member" for the purposes of this sub-paragraph refers only to those who are treated as dependants for the purposes of paragraph 349.

(iv) The Secretary of State may revoke or refuse to renew a person's UKRP where their grant of asylum or humanitarian protection is revoked under the provisions in the immigration rules.

### **Requirements for indefinite leave to remain for persons granted asylum or humanitarian protection**

339R. The requirements for indefinite leave to remain for a person granted asylum or humanitarian protection, or their dependants granted asylum or humanitarian protection in line with the main applicant, are that:

(i) the applicant has held a UK Residence Permit (UKRP) issued under paragraph 339Q for a continuous period of five years in the UK; and

(ii) the applicant's UKRP has not been revoked or not renewed under paragraphs 339A or 339G of the immigration rules; and

(iii) the applicant has not:

a. been convicted of an offence for which they have been sentenced to imprisonment for at least 4 years; or

b. been convicted of an offence for which they have been sentenced to imprisonment for at least 12 months but less than 4 years, unless a period of 15 years has passed since the end of the sentence; or

c. been convicted of an offence for which they have been sentenced to imprisonment for less than 12 months, unless a period of 7 years has passed since the end of the sentence; or

d. been convicted of an offence for which they have received a non-custodial sentence or other out of court disposal that is recorded on their criminal record, unless a period of 24 months has passed since they received their sentence; or

e. in the view of the Secretary of State persistently offended and shown a particular disregard for the law, unless a period of seven years has passed since the most recent sentence was received.

### **Indefinite leave to remain for a person granted asylum or humanitarian protection**

339S. Indefinite leave to remain for a person granted asylum or humanitarian protection will be granted where each of the requirements in paragraph 339R is met.

### **Refusal of indefinite leave to remain for a person granted asylum or humanitarian protection**

339T. (i) Indefinite leave to remain for a person granted asylum or humanitarian protection is to be refused if any of the requirements of paragraph 339R is not met.

(ii) An applicant refused indefinite leave to remain under paragraph 339T(i) may apply to have their UK Residence Permit extended in accordance with paragraph 339Q.

### **Consideration of asylum applications and human rights claims**

340. DELETED

341. DELETED

342. The actions of anyone acting as an agent of the asylum applicant or human rights claimant may also be taken into account in regard to the matters set out in paragraphs 340 and 341.

343. DELETED

344. DELETED

### **Travel documents**

344A(i). After having received a complete application for a travel document, the Secretary of State will issue to a person granted asylum in the United Kingdom and their family members travel documents, in the form set out in the Schedule to the Geneva Convention, for the purpose of travel outside the United Kingdom, unless compelling reasons of national security or public order otherwise require.

(ii) After having received a complete application for a travel document, the Secretary of State will issue travel documents to a person granted humanitarian protection in the United Kingdom where that person is unable to obtain a national passport or other identity documents which enable him to travel, unless compelling reasons of national security or public order otherwise require.

(iii) Where the person referred to in (ii) can obtain a national passport or identity documents but has not done so, the Secretary of State will issue that person with a travel document where he can show that he has made reasonable attempts to obtain a national passport or identity document and there are serious humanitarian reasons for travel.

### **Access to Employment**

344B. The Secretary of State will not impose conditions restricting the employment or occupation in the United Kingdom of a person granted asylum or humanitarian protection.

### **Information**

344C. A person who is granted asylum or humanitarian protection will be provided with access to information in a language that they may reasonably be supposed to understand which sets out the rights and obligations relating to that status. The Secretary of State will provide the information as soon as possible after the grant of asylum or humanitarian protection.

### **Third country cases**

345. (1) In a case where the Secretary of State is satisfied that the conditions set out in Paragraphs 4 and 5(1), 9 and 10(1), 14 and 15(1) or 17 of Schedule 3 to the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 are fulfilled, he will normally decline to examine the asylum application substantively and issue a certificate under Part 2, 3, 4 or 5 of Schedule 3 to the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 as appropriate.

(2) The Secretary of State shall not issue a certificate under Part 2, 3, 4 or 5 of Schedule 3 to the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 unless:

(i) the asylum applicant has not arrived in the United Kingdom directly from the country in which he claims to fear persecution and has had an opportunity at the border or within the third country or territory to make contact with the authorities of that third country or territory in order to seek their protection; or

(ii) there is other clear evidence of his admissibility to a third country or territory.

Provided that he is satisfied that a case meets these criteria, the Secretary of State is under no obligation to consult the authorities of the third country or territory before the removal of an asylum applicant to that country or territory.

345(2A) Where a certificate is issued under Part 2, 3, 4 or 5 of Schedule 3 to the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 the asylum applicant shall:

(i) be informed in a language that he may reasonably be expected to understand regarding his removal to a safe third country;

(ii) be provided with a document informing the authorities of the safe third country, in the language of that country, that the asylum application has not been examined in substance by the authorities in the United Kingdom;

(iii) sub-paragraph 345(2A)(ii) shall not apply if removal takes place with reference to the arrangements set out in Regulation (EC) No. 343/2003 (the Dublin Regulation); and

iv) if an asylum applicant removed under this paragraph is not admitted to the safe third country (not being a country to which the Dublin Regulation applies as specified in paragraph 345(2A)(iii)), subject to determining and resolving the reasons for his nonadmission, the asylum applicant shall be admitted to the asylum procedure in the United Kingdom.

(3) Where a certificate is issued under Part 2, 3, 4 or 5 of Schedule 3 to the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 in relation to the asylum claim and the person is seeking leave to enter the Immigration Officer will consider whether or not he is in a position to decide to give or refuse leave to enter without interviewing the person further. If the Immigration Officer decides that a further interview is not required he may serve the notice giving or refusing leave to enter by post. If the Immigration Officer decides that a further interview is required, he will then resume his examination to determine whether or not to grant the person leave to enter under any other provision of these Rules. If the person fails at any time to comply with a requirement to report to an Immigration Officer for examination, the Immigration Officer may direct that the person's examination shall be treated as concluded at that time. The Immigration Officer will then consider any outstanding applications for entry on the basis of any evidence before him.

(4) Where a certificate is issued under Part 2, 3, 4 or 5 of Schedule 3 to the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 the person may, if liable to removal as an illegal entrant, or removal under section 10 of the Immigration and Asylum Act 1999 or to deportation, at the same time be notified of removal directions, served with a notice of intention to make a deportation order, or served with a deportation order, as appropriate.

### **Previously rejected applications**

346. DELETED

347. DELETED

### **Rights of appeal**

348. DELETED

## **Dependants**

349. A spouse, civil partner, unmarried or same-sex partner, or minor child accompanying a principal applicant may be included in his application for asylum as his dependant, provided, in the case of an adult dependant with legal capacity, the dependant consents to being treated as such at the time the application is lodged. A spouse, civil partner, unmarried or same-sex partner or minor child may also claim asylum in his own right. If the principal applicant is granted asylum or humanitarian protection and leave to enter or remain any spouse, civil partner, unmarried or same-sex partner or minor child will be granted leave to enter or remain for the same duration. The case of any dependant who claims asylum in his own right will be also considered individually in accordance with paragraph 334 above. An applicant under this paragraph, including an accompanied child, may be interviewed where he makes a claim as a dependant or in his own right.

If the spouse, civil partner, unmarried or same-sex partner, or minor child in question has a claim in his own right, that claim should be made at the earliest opportunity. Any failure to do so will be taken into account and may damage credibility if no reasonable explanation for it is given. Where an asylum or humanitarian protection application is unsuccessful, at the same time that asylum or humanitarian protection is refused the applicant may be notified of removal directions or served with a notice of the Secretary of State's intention to deport him, as appropriate. In this paragraph and paragraphs 350-352 a child means a person who is under 18 years of age or who, in the absence of documentary evidence establishing age, appears to be under that age. An unmarried or same sex partner for the purposes of this paragraph, is a person who has been living together with the principal applicant in a subsisting relationship akin to marriage or a civil partnership for two years or more.

## **Unaccompanied children**

350. Unaccompanied children may also apply for asylum and, in view of their potential vulnerability, particular priority and care is to be given to the handling of their cases.

351. A person of any age may qualify for refugee status under the Convention and the criteria in paragraph 334 apply to all cases. However, account should be taken of the applicant's maturity and in assessing the claim of a child more weight should be given to objective indications of risk than to the child's state of mind and understanding of his situation. An asylum application made on behalf of a child should not be refused solely because the child is too young to understand his situation or to have formed a well founded fear of persecution. Close attention should be given to the welfare of the child at all times.

352. Any child over the age of 12 who has claimed asylum in his own right shall be interviewed about the substance of his claim unless the child is unfit or unable to be interviewed. When an interview takes place it shall be conducted in the presence of a parent, guardian, representative or another adult independent of the Secretary of State who has responsibility for the child. The interviewer shall have specialist training in the interviewing of children and have particular regard to the possibility that a child will feel inhibited or alarmed. The child shall be allowed to express himself in his own way and at his own speed. If he appears tired or distressed, the interview will be suspended. The interviewer should then consider whether it would be appropriate for the interview to be resumed the same day or on another day.

352ZA. The Secretary of State shall as soon as possible after an unaccompanied child makes an application for asylum take measures to ensure that a representative represents and/or assists the unaccompanied child with respect to the examination of the application and ensure that the representative is given the opportunity to inform the unaccompanied child about the meaning and possible consequences of the interview and, where appropriate, how to prepare himself for the interview. The representative shall have the right to be present at the interview and ask questions and make comments in the interview, within the framework set by the interviewer.

352ZB. The decision on the application for asylum shall be taken by a person who is trained to deal with asylum claims from children.

## **Requirements for limited leave to remain as an unaccompanied asylum seeking child.**

352ZC The requirements to be met in order for a grant of limited leave to remain to be made in relation to an unaccompanied asylum seeking child under paragraph 352ZE are:

a) the applicant is an unaccompanied asylum seeking child under the age of 17 ½ years throughout the duration of leave to be granted in this capacity;

b) the applicant must have applied for asylum and been refused Refugee Leave and Humanitarian Protection;

c) there are no adequate reception arrangements in the country to which they would be returned if leave to remain was not granted;

d) the applicant must not be excluded from a grant of asylum under Regulation 7 of the Refugee or Person in Need of International Protection (Qualification) Regulations 2006 or excluded from a grant of Humanitarian Protection under paragraph 339D or both;

e) there are no reasonable grounds for regarding the applicant as a danger to the security of the United Kingdom;

f) the applicant has not been convicted by a final judgment of a particularly serious crime, and the applicant does not constitute a danger to the community of the United Kingdom; and

g) the applicant is not, at the date of their application, the subject of a deportation order or a decision to make a deportation order.

352ZD An unaccompanied asylum seeking child is a person who:

a) is under 18 years of age when the asylum application is submitted.

b) is applying for asylum in their own right; and

c) is separated from both parents and is not being cared for by an adult who in law or by custom has responsibility to do so.

352ZE. Limited leave to remain should be granted for a period of 30 months or until the child is 17 ½ years of age whichever is shorter, provided that the Secretary of State is satisfied that the requirements in paragraph 352ZC are met.

352ZF. Limited leave granted under this provision will cease if

a) any one or more of the requirements listed in paragraph 352ZC cease to be met, or

b) a misrepresentation or omission of facts, including the use of false documents, were decisive for the grant of leave under 352ZE.

352A. The requirements to be met by a person seeking leave to enter or remain in the United Kingdom as the spouse civil partner of a refugee are that:

(i) the applicant is married to or the civil partner of a person who is currently a refugee granted status as such under the immigration rules in the United Kingdom ; and

(ii) the marriage or civil partnership did not take place after the person granted asylum left the country of his former habitual residence in order to seek asylum; and

(iii) the applicant would not be excluded from protection by virtue of article 1F of the United Nations Convention and Protocol relating to the Status of Refugees if he were to seek asylum in his own right; and

(iv) each of the parties intends to live permanently with the other as his or her spouse civil partner and the marriage is subsisting; and

(v) if seeking leave to enter, the applicant holds a valid United Kingdom entry clearance for entry in this capacity.

352AA. The requirements to be met by a person seeking leave to enter or remain in the United Kingdom as the unmarried or the same-sex partner of a refugee are that:

(i) the applicant is the unmarried or same-sex partner of a person who is currently a refugee granted status as such under the immigration rules in the United Kingdom and was granted that status in the UK 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 asylum left the country of his former habitual residence in order to seek asylum; and

(iv) the applicant would not be excluded from protection by virtue of paragraph 334(iii) or

(v) of these Rules or article 1F of the Geneva Convention if he were to seek asylum in his own right; and

(vi) 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

(vii) if seeking leave to enter, the applicant holds a valid United Kingdom entry clearance for entry in this capacity.

(viii) the parties are not involved in a consanguineous relationship with one another; and

352B. Limited leave to enter the United Kingdom as the spouse civil partner of a refugee 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 of a refugee may be granted provided the Secretary of State is satisfied that each of the requirements of paragraph 352A (i) - (v) are met.

352BA Limited leave to enter the United Kingdom as the unmarried or same-sex partner of a refugee 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 refugee may be granted provided the Secretary of State is satisfied that each of the requirements of paragraph 352AA (i) - (vii) are met.

352C. Limited leave to enter the United Kingdom as the spouse civil partner of a refugee 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 civil partner of a refugee is to be refused if the Secretary of State is not satisfied that each of the requirements of paragraph 352A (i) - (v) are met.

352CA Limited leave to enter the United Kingdom as the unmarried or same-sex partner of a refugee 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 refugee is to be refused if the Secretary of State is not satisfied that each of the requirements of paragraph 352AA (i) - (vi) are met.

352D. 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 the parent who is currently a refugee granted status as such under the immigration rules in the United Kingdom are that the applicant:

(i) is the child of a parent who is currently a refugee granted status as such under the immigration rules in the United Kingdom; and

(ii) is under the age of 18, and

(iii) is not leading an independent life, is unmarried and is not a civil partner, and has not formed an independent family unit; and

(iv) was part of the family unit of the person granted asylum at the time that the person granted asylum left the country of his habitual residence in order to seek asylum; and

(v) would not be excluded from protection by virtue of article 1F of the United Nations Convention and Protocol relating to the Status of Refugees if he were to seek asylum in his own right; and

(vi) if seeking leave to enter, holds a valid United Kingdom entry clearance for entry in this capacity.

352E. Limited leave to enter the United Kingdom as the child of a refugee 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 refugee may be granted

provided the Secretary of State is satisfied that each of the requirements of paragraph 352D (i) - (v) are met.

352F. Limited leave to enter the United Kingdom as the child of a refugee 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 refugee is to be refused if the Secretary of State is not satisfied that each of the requirements of paragraph 352D (i) - (v) are met.

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 is currently a beneficiary of humanitarian protection granted under the immigration rules in the United Kingdom and was granted that status on or after 30 August 2005 are that:

- (i) the applicant is married to or the civil partner of a person who is currently a beneficiary of humanitarian protection granted under the immigration rules and was granted that status 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 is currently a beneficiary of humanitarian protection granted under the immigration rules in the United Kingdom are that:

- (i) the applicant is the unmarried or same-sex partner of a person who is currently a beneficiary of humanitarian protection granted under the immigration rules and was granted that status 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) the parties are not involved in a consanguineous relationship with one another; and
- (vii) 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) - (vi) 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) - (vi) 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 is currently a beneficiary of humanitarian protection granted under the immigration rules in the United Kingdom and was granted that status on or after 30 August 2005 are that the applicant:

(i) is the child of a parent who is currently a beneficiary of humanitarian protection granted under the immigration rules in the United Kingdom and was granted that status 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.

352FJ. Nothing in paragraphs 352A-352FI shall allow a person to be granted leave to enter or remain in the United Kingdom as the spouse or civil partner, unmarried or same sex partner or child of a refugee, or of a person granted humanitarian protection under the immigration rules in the United Kingdom on or after 30 August 2005, if the refugee or, as the case may be, person granted humanitarian protection, is a British Citizen.

### **Interpretation**

352G. For the purposes of this Part:

(a) "Geneva Convention" means the United Nations Convention and Protocol relating to the Status of Refugees;

(b) "Country of return" means a country or territory listed in paragraph 8(c) of Schedule 2 of the Immigration Act 1971;

(c) "Country of origin" means the country or countries of nationality or, for a stateless person, or former habitual residence.

## **Part 12 - Procedure and rights of appeal**

### **Fresh Claims**

353. When a human rights or asylum claim has been refused or withdrawn or treated as withdrawn under paragraph 333C of these Rules and any appeal relating to that claim is no longer pending, the decision maker will consider any further submissions and, if rejected, will then determine whether they amount to a fresh claim. The submissions will amount to a fresh claim if they are significantly different from the material that has previously been considered. The submissions will only be significantly different if the content:

- (i) had not already been considered; and
- (ii) taken together with the previously considered material, created a realistic prospect of success, notwithstanding its rejection.

This paragraph does not apply to claims made overseas.

353A. Consideration of further submissions shall be subject to the procedures set out in these Rules. An applicant who has made further submissions shall not be removed before the Secretary of State has considered the submissions under paragraph 353 or otherwise.

### **Exceptional Circumstances**

353B. Where further submissions have been made and the decision maker has established whether or not they amount to a fresh claim under paragraph 353 of these Rules, or in cases with no outstanding further submissions whose appeal rights have been exhausted and which are subject to a review, the decision maker will also have regard to the migrant's:

- (i) character, conduct and associations including any criminal record and the nature of any offence of which the migrant concerned has been convicted;
- (ii) compliance with any conditions attached to any previous grant of leave to enter or remain and compliance with any conditions of temporary admission or immigration bail where applicable;
- (iii) length of time spent in the United Kingdom spent for reasons beyond the migrant's control after the human rights or asylum claim has been submitted or refused; in deciding whether there are exceptional circumstances which mean that removal from the United Kingdom is no longer appropriate.

This paragraph does not apply to submissions made overseas.

This paragraph does not apply where the person is liable to deportation.

## **Part 13 - Deportation**

### **A deportation order**

A362. Where Article 8 is raised in the context of deportation under Part 13 of these Rules, the claim under Article 8 will only succeed where the requirements of these rules as at 28 July 2014 are met, regardless of when the notice of intention to deport or the deportation order, as appropriate, was served.

362. A deportation order requires the subject to leave the United Kingdom and authorises his detention until he is removed. It also prohibits him from re-entering the country for as long as it is in force and invalidates any leave to enter or remain in the United Kingdom given him before the Order is made or while it is in force.

363. The circumstances in which a person is liable to deportation include:

- (i) where the Secretary of State deems the person's deportation to be conducive to the public good;

(ii) where the person is the spouse or civil partner or child under 18 of a person ordered to be deported; and

(iii) where a court recommends deportation in the case of a person over the age of 17 who has been convicted of an offence punishable with imprisonment.

363A. Prior to 2 October 2000, a person would have been liable to deportation in certain circumstances in which he is now liable to administrative removal. However, such a person remains liable to deportation, rather than administrative removal where:

(i) a decision to make a deportation order against him was taken before 2 October 2000; or

(ii) the person has made a valid application under the Immigration (Regularisation Period for Overstayers) Regulations 2000.

#### **Deportation of family members**

364. DELETED

364A. DELETED

365. The Secretary of State will not normally decide to deport the spouse or civil partner of a deportee where:

(i) he has qualified for settlement in his own right; or

(ii) he has been living apart from the deportee

under section 5 of the Immigration Act 1971.

366. The Secretary of State will not normally decide to deport the child of a deportee under section 5 of the Immigration Act 1971 where:

(i) he and his mother or father are living apart from the deportee; or

(ii) he has left home and established himself on an independent basis; or

(iii) he married or formed a civil partnership before deportation came into prospect.

367. DELETED

368. DELETED

#### **Right of appeal against destination**

369. DELETED

#### **Restricted right of appeal against deportation in cases of breach of limited leave**

370. DELETED

#### **Exemption to the restricted right of appeal**

371. DELETED

372. DELETED

#### **A deportation order made on the recommendation of a Court**

373. DELETED

#### **Where deportation is deemed to be conducive to the public good**

374. DELETED

375. DELETED

#### **Hearing of appeals**

376. DELETED

377. DELETED

378. DELETED

#### **Persons who have claimed asylum**

379. DELETED

379A. DELETED

380. DELETED

#### **Procedure**

381. When a decision to make a deportation order has been taken (otherwise than on the recommendation of a court) a notice will be given to the person concerned informing him of the decision.

382. Following the issue of such a notice the Secretary of State may authorise detention or make an order restricting a person as to residence, employment or occupation and requiring him to report to the police, pending the making of a deportation order.

383. DELETED

384. DELETED

#### **Arrangements for removal**

385. A person against whom a deportation order has been made will normally be removed from the United Kingdom. The power is to be exercised so as to secure the person's return to the country of which he is a national, or which has most recently provided him with a travel document, unless he can show that another country will receive him. In considering any departure from the normal arrangements, regard will be had to the public interest generally, and to any additional expense that may fall on public funds.

386. DELETED

#### **Supervised departure**

387. DELETED

#### **Returned deportees**

388. Where a person returns to the UK when a deportation order is in force against him, he may be deported under the original order. The Secretary of State will consider every such case in the light of all the relevant circumstances before deciding whether to enforce the order.

#### **Returned family members**

389. Persons deported in the circumstances set out in paragraphs 365-368 above (deportation of family members) may be able to seek re-admission to the United Kingdom under the Immigration Rules where:

- (i) a child reaches 18 (when he ceases to be subject to the deportation order); or
- (ii) in the case of a spouse or civil partner, the marriage or civil partnership comes to an end.

#### **Revocation of deportation order**

390. An application for revocation of a deportation order will be considered in the light of all the circumstances including the following:

- (i) the grounds on which the order was made;
- (ii) any representations made in support of revocation;
- (iii) the interests of the community, including the maintenance of an effective immigration control;
- (iv) the interests of the applicant, including any compassionate circumstances.

390A. Where paragraph 398 applies the Secretary of State will consider whether paragraph 399 or 399A applies and, if it does not, it will only be in exceptional circumstances that the public interest in maintaining the deportation order will be outweighed by other factors.

391. In the case of a person who has been deported following conviction for a criminal offence, the continuation of a deportation order against that person will be the proper course:

- (a) in the case of a conviction for an offence for which the person was sentenced to a period of imprisonment of less than 4 years, unless 10 years have elapsed since the making of the deportation order, when, if an application for revocation is received, consideration will be given on a case by case basis to whether the deportation order should be maintained, or
- (b) in the case of a conviction for an offence for which the person was sentenced to a period of imprisonment of at least 4 years, at any time,

Unless, in either case, the continuation would be contrary to the Human Rights Convention or the Convention and Protocol Relating to the Status of Refugees, or there are other exceptional circumstances that mean the continuation is outweighed by compelling factors.

391A. In other cases, revocation of the order will not normally be authorised unless the situation has been materially altered, either by a change of circumstances since the order was made, or by fresh information coming to light which was not before the appellate authorities or the Secretary of State. The passage of time since the person was deported may also in itself amount to such a change of circumstances as to warrant revocation of the order.

392. Revocation of a deportation order does not entitle the person concerned to re-enter the United Kingdom; it renders him eligible to apply for admission under the Immigration Rules. Application for revocation of the order may be made to the Entry Clearance Officer or direct to the Home Office.

#### **Rights of appeal in relation to a decision not to revoke a deportation order**

393. DELETED

394. DELETED

395. DELETED

396. Where a person is liable to deportation the presumption shall be that the public interest requires deportation. It is in the public interest to deport where the Secretary of State must make a deportation order in accordance with section 32 of the UK Borders Act 2007.

397. A deportation order will not be made if the person's removal pursuant to the order would be contrary to the UK's obligations under the Refugee Convention or the Human Rights Convention. Where deportation would not be contrary to these obligations, it will only be in exceptional circumstances that the public interest in deportation is outweighed.

#### **Deportation and Article 8**

A398. These rules apply where:

- (a) a foreign criminal liable to deportation claims that his deportation would be contrary to the United Kingdom's obligations under Article 8 of the Human Rights Convention;
- (b) a foreign criminal applies for a deportation order made against him to be revoked

398. Where a person claims that their deportation would be contrary to the UK's obligations under Article 8 of the Human Rights Convention, and

- (a) the deportation of the person from the UK is conducive to the public good and in the public interest because they have been convicted of an offence for which they have been sentenced to a period of imprisonment of at least 4 years;
- (b) the deportation of the person from the UK is conducive to the public good and in the public interest because they have been convicted of an offence for which they have been sentenced to a period of imprisonment of less than 4 years but at least 12 months; or

(c) the deportation of the person from the UK is conducive to the public good and in the public interest 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,

the Secretary of State in assessing that claim will consider whether paragraph 399 or 399A applies and, if it does not, the public interest in deportation will only be outweighed by other factors where there are very compelling circumstances over and above those described in paragraphs 399 and 399A.

399. This paragraph applies where paragraph 398 (b) or (c) applies if –

(a) the person has a genuine and subsisting parental relationship with a child under the age of 18 years who is in the UK, and

(i) the child is a British Citizen; or

(ii) the child has lived in the UK continuously for at least the 7 years immediately preceding the date of the immigration decision; and in either case

(a) it would be unduly harsh for the child to live in the country to which the person is to be deported; and

(b) it would be unduly harsh for the child to remain in the UK without the person who is to be deported; or

(b) the person has a genuine and subsisting relationship with a partner who is in the UK and is a British Citizen or settled in the UK, and

(i) the relationship was formed at a time when the person (deportee) was in the UK lawfully and their immigration status was not precarious; and

(ii) it would be unduly harsh for that partner to live in the country to which the person is to be deported, because of compelling circumstances over and above those described in EX.2. of Appendix FM; and

(iii) it would be unduly harsh for that partner to remain in the UK without the person who is to be deported.

399A. This paragraph applies where paragraph 398(b) or (c) applies if –

(a) the person has been lawfully resident in the UK for most of his life; and

(b) he is socially and culturally integrated in the UK; and

(c) there would be very significant obstacles to his integration into the country to which it is proposed he is deported.

399B. Where an Article 8 claim from a foreign criminal is successful:

(a) in the case of a person who is in the UK unlawfully or whose leave to enter or remain has been cancelled by a deportation order, limited leave may be granted for periods not exceeding 30 months and subject to such conditions as the Secretary of State considers appropriate;

(b) in the case of a person who has not been served with a deportation order, any limited leave to enter or remain may be curtailed to a period not exceeding 30 months and conditions may be varied to such conditions as the Secretary of State considers appropriate;

(c) indefinite leave to enter or remain may be revoked under section 76 of the 2002 Act and limited leave to enter or remain granted for a period not exceeding 30 months subject to such conditions as the Secretary of State considers appropriate;

(d) revocation of a deportation order does not confer entry clearance or leave to enter or remain or re-instate any previous leave.

399C. Where a foreign criminal who has previously been granted a period of limited leave under this Part applies for further limited leave or indefinite leave to remain his deportation remains conducive to the public good and in the public interest notwithstanding the previous grant of leave.



399D. Where a foreign criminal has been deported and enters the United Kingdom in breach of a deportation order enforcement of the deportation order is in the public interest and will be implemented unless there are very exceptional circumstances.

400. Where a person claims that their removal under paragraphs 8 to 10 of Schedule 2 to the Immigration Act 1971, section 10 of the Immigration and Asylum Act 1999 or section 47 of the Immigration, Asylum and Nationality Act 2006 would be contrary to the UK's obligations under Article 8 of the Human Rights Convention, the Secretary of State may require an application under paragraph 276ADE(1) (private life) or under paragraphs R- LTRP.1.1.(a), (b) and (d), R- LTRPT.1.1.(a), (b) and (d) and EX.1. of Appendix FM (family life as a partner or parent) of these rules. Where an application is not required, in assessing that claim the Secretary of State or an immigration officer will, subject to paragraph 353, consider that claim against the requirements to be met (except the requirement to make a valid application) under paragraph 276ADE(1) (private life) or paragraphs R-LTRP.1.1.(a), (b) and (d), R-LTRPT.1.1.(a), (b) and (d) and EX.1. of Appendix FM (family life as a partner or parent) of these rules as appropriate and if appropriate the removal decision will be cancelled.

## Appendix 1: UK visa requirements

1. Subject to paragraph 2 below, the following persons need a visa for the United Kingdom:

(a) Nationals or citizens of the following countries or territorial entities:

Afghanistan	Kenya
Albania	Korea (North)
Algeria	Kuwait
Angola	Kyrgyzstan
Armenia	Laos
Azerbaijan	Lebanon
Bahrain (except those referred to in sub-paragraph 2(w) of this Appendix)	Lesotho
Bangladesh	Liberia
Belarus	Libya
Benin	Macedonia
Bhutan	Madagascar
Bolivia	Malawi
Bosnia Herzegovina	Mali
Burkina Faso	Mauritania
Burma	Moldova
Burundi	Mongolia
Cambodia	Morocco
Cameroon	Mozambique
Cape Verde	Nepal
Central African Republic	Niger
Chad	Nigeria
People's Republic of China (except those referred to in sub-paragraphs 2(d) and (e) of this Appendix)	Oman (except those referred to in sub-paragraph 2(j) of this Appendix)
Colombia	Pakistan
Comoros	Peru
Congo	Philippines
Cuba	Qatar (except those referred to in sub-paragraph 2(k) of this Appendix)
Democratic Republic of the Congo	Russia
Djibouti	Rwanda
Dominican Republic	Sao Tome e Principe
Ecuador	Saudi Arabia
Egypt	Senegal
Equatorial Guinea	Serbia
Eritrea	Sierra Leone
Ethiopia	Somalia
Fiji	South Africa
Gabon	South Sudan
Gambia	Sri Lanka
Georgia	Sudan
Ghana	Surinam
Guinea	Swaziland
Guinea Bissau	Syria
Guyana	Taiwan (except those referred to in sub-paragraph 2(h) of this Appendix)
Haiti	Tajikistan
India	Tanzania
Indonesia	Thailand
Iran	Togo
Iraq	Tunisia
Ivory Coast	Turkey (except those referred to in sub-paragraph 2(q) of this Appendix)
Jamaica	Turkmenistan
Jordan	Uganda
Kazakhstan	Ukraine
	United Arab Emirates (except those referred to

in sub-paragraph 2(1) of this Appendix)  
 Uzbekistan  
 Venezuela  
 Vietnam  
 Yemen  
 ...

Zambia  
 Zimbabwe  
 The territories formerly comprising the socialist  
 Federal Republic of Yugoslavia

## Appendix A - Attributes

### 35-53

#### Attributes for Tier 1 (Entrepreneur) Migrants

35. An applicant applying for entry clearance, leave to remain or indefinite leave to remain as a Tier 1 (Entrepreneur) Migrant must score 75 points for attributes.

36. Subject to paragraph 37, available points for applications for entry clearance or leave to remain are shown in Table 4.

36A. An applicant who is applying for leave to remain and has, or was last granted, entry clearance, leave to enter or leave to remain as:

- (i) a Tier 4 Migrant,
- (ii) a Student,
- (iii) a Student Nurse,
- (iv) a Student Re-sitting an Examination, or
- (v) a Student Writing Up a Thesis,

will only be awarded points under the provisions in (b)(ii) or (b)(iii) in Table 4.

36B. An applicant who is applying for leave to remain and has, or was last granted, entry clearance, leave to enter or leave to remain as a Tier 1 (Post-Study Work) Migrant will only be awarded points under the provisions in (b)(ii), (b)(iii) or (d) in Table 4.

37. Available points are shown in Table 5 for an applicant who:

(a) has had entry clearance, leave to enter or leave to remain as a Tier 1 (Entrepreneur) Migrant, a Businessperson or an Innovator in the 12 months immediately before the date of application, or

(b) is applying for leave to remain and has, or was last granted, entry clearance, leave to enter or leave to remain as a Tier 1 (Entrepreneur) Migrant, a Businessperson or an Innovator.

38. Available points for applications for indefinite leave to remain are shown in Table 6.

39. (a) Notes to accompany Table 4 appear below Table 4.

(b) Notes to accompany Tables 4, 5 and 6 appear below Table 6.

40. In all cases, an applicant cannot use the same funds to score points for attributes under this Appendix and to score points for maintenance funds for himself or his dependants under Appendices C or E.

Table 4: Applications for entry clearance or leave to remain referred to in paragraph 36

Investment and business activity	Points
(a) The applicant has access to not less than £200,000, or (b) The applicant has access to not less than £50,000 from: (i) one or more registered venture capitalist firms regulated by the Financial Conduct Authority (FCA),	25

<p>(ii) one or more UK Entrepreneurial seed funding competitions which is listed as endorsed on the UK Trade &amp; Investment website, or</p> <p>(iii) one or more UK Government Departments, or Devolved Government Departments in Scotland, Wales or Northern Ireland, and made available by the Department(s) for the specific purpose of establishing or expanding a UK business, or</p> <p>(c) The applicant:</p> <p>(i) is applying for leave to remain,</p> <p>(ii) has, or was last granted, leave as a Tier 1 (Graduate Entrepreneur) Migrant, and</p> <p>(iii) has access to not less than £50,000, or</p> <p>(d) The applicant:</p> <p>(i) is applying for leave to remain,</p> <p>(ii) has, or was last granted, leave as a Tier 1 (Post-Study Work) Migrant,</p> <p>(iii) since before 11 July 2014 and up to the date of his application, has been continuously engaged in business activity which was not, or did not amount to, activity pursuant to a contract of service with a business other than his own and, during such period, has been continuously:</p> <p>(1) registered with HM Revenue &amp; Customs as self-employed, or</p> <p>(2) registered with Companies House as a director of a new or an existing business. Directors who are on the list of disqualified directors provided by Companies House will not be awarded points,</p> <p>(iv) since before 11 July 2014 and up to the date of his application, has continuously been working in an occupation which appears on the list of occupations skilled to National Qualifications Framework level 4 or above, as stated in the Codes of Practice in Appendix J, and provides the specified evidence in paragraph 41-SD. "Working" in this context means that the core service his business provides to its customers or clients involves the business delivering a service in an occupation at this level. It excludes any work involved in administration, marketing or website functions for the business, and</p> <p>(v) has access to not less than £50,000.</p>	
<p>The money is held in one or more regulated financial institutions</p>	<p>25</p>
<p>The money is disposable in the UK</p>	<p>25</p>

**Investment: notes**

41. An applicant will only be considered to have access to funds if:

(a) The specified documents in paragraph 41-SD are provided to show cash money to the amount required (this must not be in the form of assets and, where multiple documents are provided, they must show the total amount required is available on the same date);

(b) The specified documents in paragraph 41-SD are provided to show that the applicant has permission to use the money to invest in a business in the UK;

(c) The money is either held in a UK regulated financial institution or is transferable to the UK; and

(d) The money will remain available to the applicant until such time as it is spent for the purposes of the applicant's business or businesses. The Secretary of State reserves the right to request further evidence or otherwise verify that the money will remain available, and to refuse the application if this evidence is not provided or it is unable to satisfactorily verify.

41-SD. The specified documents in Table 4 and paragraph 41, and associated definitions, are as follows...[etc]

Table 5: Applications for entry clearance or leave to remain referred to in paragraph 37

Investment and business activity	Points
<p>The applicant has invested, or had invested on his behalf, not less than £200,000 (or £50,000 if, in his last grant of leave, he was awarded points for funds of £50,000 in cash directly into one or more businesses in the UK.</p>	25
<p>The applicant has:</p> <p>(a) registered with HM revenue and Customs as self-employed, or</p> <p>(b) registered with Companies House as a director of a new or an existing business. Directors who are on the list of disqualified directors provided by Companies House will not be awarded points.</p> <p>Where the applicant's last grant of entry clearance, leave to enter or leave to remain was as a Tier 1 (Entrepreneur) Migrant, the above condition must have been met within 6 months of his entry to the UK (if he was granted entry clearance as a Tier 1 (Entrepreneur) Migrant and there is evidence to establish his date of arrival to the UK), or, in any other case, the date of the grant of leave to remain.</p>	20
<p>On a date no earlier than three months prior to the date of application, the applicant was:</p> <p>(a) registered with HM revenue and Customs as self-employed, or</p> <p>(b) registered with Companies House as a director of a new or an existing business. Directors who are on the list of disqualified directors provided by Companies House will not be awarded points.</p>	15
<p>The applicant has:</p> <p>(a) established a new business or businesses that has or have created the equivalent of at least two new full time jobs for persons settled in the UK, or</p> <p>(b) taken over or invested in an existing business or businesses and his services or investment have resulted in a net increase in the employment provided by the business or businesses for persons settled in the UK by creating the equivalent of at least two new full time jobs.</p> <p>Where the applicant's last grant of entry clearance or leave to enter or remain was as a Tier 1 (Entrepreneur) Migrant, the jobs must have existed for at least 12 months of the period for which the previous leave was granted.</p>	20

Table 6: Applications for indefinite leave to remain as referred to in paragraph 38

Row	Investment and business activity	Points
1.	<p>The applicant has invested, or had invested on his behalf, not less than £200,000 (or £50,000 if, in his last grant of leave, he was awarded points for funds of £50,000) in cash directly into one or more businesses in the UK.</p> <p>The applicant will not need to provide evidence of this investment if he was awarded</p>	

	points for it, as set out in Table 5, in his previous grant of entry clearance or leave to remain as a Tier 1 (Entrepreneur) Migrant.	
2.	<p>On a date no earlier than three months prior to the date of application, the applicant was:</p> <p>(a) registered with HM Revenue and Customs as self-employed, or</p> <p>(b) registered with Companies House as a director of a new or an existing business. Directors who are on the list of disqualified directors provided by Companies House will not be awarded points.</p>	20
3.	<p>The applicant has:</p> <p>(a) established a new UK business or businesses that has or have created the equivalent of X new full time jobs for persons settled in the UK, or</p> <p>(b) taken over or invested in an existing UK business or businesses and his services or investment have resulted in a net increase in the employment provided by the business or businesses for persons settled in the UK by creating the equivalent of X new full time jobs where X is at least 2.</p> <p>Where the applicant's last grant of entry clearance or leave to enter or remain was as a Tier 1 (Entrepreneur) Migrant, the jobs must have existed for at least 12 months during that last grant of leave.</p>	20
4.	<p>The applicant has spent the specified continuous period lawfully in the UK, with absences from the UK of no more than 180 days in any 12 calendar months during that period.</p> <p>The specified period must have been spent with leave as a Tier 1 (Entrepreneur) Migrant, as a Businessperson and/or as an Innovator, of which the most recent period must have been spent with leave as a Tier (1) (Entrepreneur) Migrant.</p> <p>The specified continuous period is:</p> <p>(a) 3 years if the number of new full time jobs, X, referred to in row 3 above is at least 10, or</p> <p>(b) 3 years if the applicant has:</p> <p>(i) established a new UK business that has had an income from business activity of at least £5 million during a 3 year period</p> <p>in which the applicant has had leave as a Tier 1 (Entrepreneur) Migrant, or</p> <p>(ii) taken over or invested in an existing UK business and his services or investment have resulted in a net increase in income from business activity to that business of £5 million during a 3 year period in which the applicant has had leave as a Tier 1 (Entrepreneur) Migrant, when compared to the immediately preceding 3 year period,</p> <p>or</p> <p>(c) 5 years in all other cases.</p> <p>Time spent with valid leave in the Bailiwick of Guernsey, the Bailiwick of Jersey or the Isle of Man in a category equivalent to the categories set out above may be included in the continuous period of lawful residence, provided the most recent period of leave was as a Tier 1 (Entrepreneur) Migrant in the UK. In any such case, the applicant must have absences from the Bailiwick of Guernsey, the Bailiwick of Jersey or the Isle of Man (as the case may be) of no more than 180 days in any 12 calendar months during the specified continuous period.</p>	35

#### Investment and business activity: notes

46. Documentary evidence must be provided in all cases. The specified documents in paragraph 46-SD must be provided as evidence of any investment and business activity that took place when the applicant had leave as a Tier 1 (Entrepreneur) Migrant or a Tier 1 (Post-Study Work) Migrant, and any investment made no more than 12 months (or 24 months if the applicant was last granted leave as a Tier 1 (Graduate Entrepreneur) Migrant) before the date of the application for which the applicant is claiming points.

46-SD. The specified documents in paragraphs 45 and 46 are as follows:

(a) The applicant must provide all the appropriate specified documents needed to establish the amount of money he has invested from the following list:...[etc]

...

49. A full time job is one involving at least 30 hours of work a week. Two or more part time jobs that add up to 30 hours a week will count as one full time job but one full time job of more than 30 hours work a week will not count as more than one full time job.

50. Where the applicant's last grant of entry clearance or leave was as a Tier (Entrepreneur) Migrant, the jobs must have existed for a total of at least 12 months during the period in which the migrant had leave in that category. This need not consist of 12 consecutive months and the jobs need not exist at the date of application, provided they existed for at least 12 months during the period in which the migrant had leave as a Tier 1 (Entrepreneur) Migrant.

51. The jobs must comply with all relevant UK legislation including, but not limited to, the national Minimum Wage and the Working Time Directive.

#### Entrepreneurial teams: Notes

52. Two applicants, and no more than two applicants, may claim points for the same investment and business activity in Tables 4, 5 or 6 providing the following requirements are met.

Requirements:

(a) The applicants have equal level of control over the funds and/or the business or businesses in question;

(b) The applicants are both shown by name in each other's applications and in the specified evidence required in the relevant table; and

(c) Neither applicant has previously been granted leave as a Tier 1 (Entrepreneur) Migrant on the basis of investment and/or business activity linked in this way with any applicant other than each other if the same funds are being relied on as in a previous application.

53. (a) No points will be awarded for funds that are made available to any individual other than the applicant, except:

(i) under the terms of paragraph 52 above; or

(ii) where the money is held in a joint account with the applicant's "spouse, civil partner or partner (defined as a person who has been living together with the applicant in a relationship akin to a marriage or civil partnership for at least two years prior to the date of application), and that spouse or partner is not (or is not applying to be) another Tier 1 (Entrepreneur) Migrant.

(b) No points will be awarded for investment and business activity shared with another Tier 1 (Entrepreneur) applicant, except under the terms of paragraph 52 above.

(c) If the applicant is not the sole partner or director in the business, he must state:

(i) the names of the other partners or directors,

(ii) whether any of the other partners or directors are also Tier 1 (Entrepreneur) Migrants, and

(iii) if so:

- (1) the dates they became partners or directors,
- (2) whether they are applying under the provisions in paragraph 52 above, and
- (3) if they have made (or are making at the same time) an application in which they claimed points for creating jobs, the names of the jobholders in question.

## 76-79D

### Attributes for Tier 2 (General) Migrants

76. An applicant applying for entry or leave to remain as a Tier 2 (General) Migrant must score 50 points for attributes.

76A. Available points for entry clearance or leave to remain are shown in Table 11A.

76B. Notes to accompany Table 11A appear below the table.

Table 11A

Certificate of Sponsorship	Points	Appropriate salary	Points
Job offer passes Resident Labour Market Test	30	Appropriate salary	20
Resident Labour Market Test exemption applies	30		
Continuing to work in the same occupation for the same Sponsor	30		

## Notes

### Certificate of Sponsorship

77. Points may only be scored for one entry in the Certificate of Sponsorship column.

77A. In order to obtain points for a Certificate of Sponsorship, the applicant must provide a valid Certificate of Sponsorship reference number.

77B. The only Certificates of Sponsorship to be allocated to Sponsors for applicants to be Sponsored as Tier 2 (General) Migrants are:

- (a) Certificates of Sponsorship to be assigned to applicants as a Tier 2 (General) Migrant, as allocated to Sponsors under the Tier 2 (General) limit, which is set out in paragraphs 80 to 84A below.
  - (b) Certificates of Sponsorship to be assigned to specified applicants for leave to remain as a Tier 2 (General) Migrant, as set out in paragraph 77D of Appendix A,
  - (c) Certificates of Sponsorship to be assigned to an applicant to do a job for which the gross annual salary (including such allowances as are specified as acceptable for this purpose in paragraph 79 of this Appendix) is £153,100 (or £152,100, if the recruitment took place before 6 April 2014) or higher,
- and

77C. A Certificate of Sponsorship reference number will only be considered to be valid if:

- (a) the number supplied links to a Certificate of Sponsorship Checking Service entry that names the applicant as the migrant and confirms that the Sponsor is Sponsoring him as a Tier 2 (General) Migrant,
- (b) the Sponsor assigned that reference number to the migrant no more than 3 months after the Sponsor was allocated the Certificate of Sponsorship, if the Certificate of Sponsorship was allocated to the Sponsor under the Tier 2 (General) limit,



(c) the Sponsor assigned that reference number to the migrant no more than 3 months before the application for entry clearance or leave to remain is made,

(d) the application for entry clearance or leave to remain is made no more than 3 months before the start of the employment as stated on the Certificate of Sponsorship,

(e) The migrant must not previously have applied for entry clearance, leave to enter or leave to remain using the same Certificate of Sponsorship reference number, if that application was either approved or refused (not rejected as an invalid application, declared void or withdrawn),

(f) that reference number must not have been withdrawn or cancelled by the Sponsor or by the UK Border Agency since it was assigned, including where it has been cancelled by the UK Border Agency due to having been used in a previous application, and

(g) the Sponsor is an A-rated Sponsor, unless:

(1) the application is for leave to remain, and

(2) the applicant has, or was last granted, leave as a Tier 2 (General) Migrant, a Jewish Agency Employee, a Member of the Operational Ground Staff of an Overseas-owned Airline, a Representative of an Overseas Newspaper, News Agency or Broadcasting Organisation, or a Qualifying Work Permit Holder, and

(3) the applicant is applying to work for the same employer named on the Certificate of Sponsorship or Work Permit document which led to his last grant of leave or, in the case of an applicant whose last grant of leave was as a Jewish Agency Employee, a Member of the Operational Ground Staff of an Overseas-owned Airline, a Representative of an Overseas Newspaper, News Agency or Broadcasting Organisation, the same employer for whom the applicant was working or stated he was intending to work when last granted leave.

77D. No points will be awarded for a Certificate of Sponsorship unless:

(a) in the case of a Certificate of Sponsorship which was allocated to the Sponsor under the Tier 2 (General) limit, the number supplied links to a Certificate of Sponsorship Checking Service entry which contains the same job and at least the same salary details as stated in the Sponsor's application for that Certificate of Sponsorship,

(b) in the case of a Certificate of Sponsorship which was not allocated to the Sponsor under the Tier 2 (General) limit:

(i) the applicant:

(1) is applying for leave to remain, and

(2) does not have, or was not last granted, entry clearance, leave to enter or leave to remain as the Partner of a Relevant Points Based System Migrant, or

(ii) the number supplied links to a Certificate of Sponsorship Checking Service entry which shows that the applicant's gross annual salary (including such allowances as are specified as acceptable for this purpose in paragraph 79 of this appendix) to be paid by the Sponsor is £153,500 (or £152,100, if the recruitment took place before 6 April 2014) or higher.

77E. No points will be awarded for a Certificate of Sponsorship unless:

(a) the job that the Certificate of Sponsorship Checking Service entry records that the person is being sponsored to do appears on:

(i) the list of occupations skilled to National Qualifications Framework level 6 or above, as stated in the codes of practice in Appendix J, or

(ii) one of the following creative sector occupations skilled to National Qualifications Framework level 4 or above:

(1) 3411 Artists,

(2) 3412 Authors, writers and translators,

(3) 3413 Actors, entertainers and presenters,

- (4) 3414 Dancers and choreographers, or
- (5) 3422 Product, clothing and related designers,

or

(b) the job that the Certificate of Sponsorship Checking Service entry records that the person is being sponsored to do is skilled to National Qualifications Framework level 4 or above, and appears on the shortage occupation list in Appendix K,

or

(c) (i) the applicant is applying for leave to remain,

(ii) the applicant previously had leave as a Tier 2 (General) Migrant or a Qualifying Work Permit Holder, and has not since been granted leave to remain in any other route, or entry clearance or leave to enter in any route,

(iii) at the time a Certificate of Sponsorship or Work Permit which led to a grant of leave in (ii) was issued, the job referred to in that Certificate of Sponsorship or Work Permit appeared on the shortage occupation list in Appendix K, and

(iv) the job that the Certificate of Sponsorship Checking service entry records that the person is being sponsored to do in his current application is the same as the job referred to in (iii), for either the same or a different employer,

or

(d) (i) the applicant is applying for leave to remain,

(ii) the applicant previously had leave as a Tier 2 (General) Migrant under the Rules in place between 6 April 2011 and 13 June 2012, and has not since been granted leave to remain in any other route, or entry clearance or leave to enter in any route, and

(iii) the job that the Certificate of Sponsorship Checking Service entry records that the person is being sponsored to do appears on the list of occupations skilled to National Qualifications Framework level 4 or above, as stated in the codes of practice in Appendix J,

or

(e) (i) the applicant is applying for leave to remain,

(ii) the applicant previously had leave as:

(1) a Tier 2 (General) Migrant under the rules in place before 6 April 2011,

(2) a Qualifying Work Permit Holder,

(3) a Representative of an Overseas Newspaper, News Agency or Broadcasting Organisation,

(4) a Member of the Operational Ground Staff of an Overseas-owned Airline

(5) a Jewish Agency Employee,

and has not since been granted leave to remain in any other route, or entry clearance or leave to enter in any route, and

(iii) the job that the Certificate of Sponsorship Checking Service entry records that the person is being sponsored to do appears on the list of occupations skilled to National Qualifications Framework level 3 or above, as stated in the codes of practice in Appendix J, or the applicant is a Senior Care Worker or an Established Entertainer as defined in paragraph 6 of these Rules.

(f) (i) the applicant was last granted as a Tier 2 (General) Migrant,

(ii) the applicant is applying for leave to remain to work in the same occupation for the same Sponsor as in the application which led to his previous grant of leave,

(iii) the Certificate of Sponsorship used in support of the applicant's previous application was assigned by the Sponsor before 6 April 2013, and

(iv) the occupation fails to meet the required skill level in (a) to (e) above solely due to reclassification from the SOC 2000 system to the SOC 2010 system.

77F. An applicant cannot score points for a Certificate of Sponsorship from Table 11A if the job that the Certificate of Sponsorship Checking Service entry records that he is being sponsored to do is as a sports person or a Minister of Religion.

77G. No points will be awarded for a Certificate of Sponsorship if the job that the Certificate of Sponsorship Checking Service entry records that the applicant is being sponsored to do amounts to:

(a) the hire of the applicant to a third party who is not the sponsor to fill a position with that party, whether temporary or permanent, or

(b) contract work to undertake an ongoing routine role or to provide an ongoing routine service for a third party who is not the sponsor,

regardless of the nature or length of any arrangement between the sponsor and the third party.

77H. No points will be awarded for a Certificate of Sponsorship if the Entry Clearance Officer or the Secretary of State has reasonable grounds to believe, notwithstanding that the applicant has provided the evidence required under the relevant provisions of Appendix A, that:

(a) the job as recorded by the Certificate of Sponsorship Checking Service is not a genuine vacancy,

(b) the applicant is not appropriately qualified or registered to do the job in question (or will not be, by the time they begin the job), or

(c) the stated requirements of the job as recorded by the Certificate of Sponsorship Checking Service and in any advertisements for the job are inappropriate for the job on offer and / or have been tailored to exclude resident workers from being recruited.

77I. To support the assessment in paragraph 77H(b), if the applicant is not yet appropriately qualified or registered to do the job in question, he must provide evidence with his application showing that he can reasonably be expected to obtain the appropriate qualifications or registrations by the time he begins the job, for example, a letter from the relevant body providing written confirmation that the applicant has registered to sit the relevant examinations.

77J. To support the assessment in paragraph 77H(a)-(c), the Entry Clearance Officer or the Secretary of State may request additional information and evidence from the applicant or the Sponsor, and refuse the application if the information or evidence is not provided. Any requested documents must be received by the Entry Clearance Officer or the Secretary of State at the address specified in the request within 28 calendar days of the date the request is sent.

#### **Job offer passes Resident Labour Market Test**

#### **78. Points will only be awarded for a job offer that passes the Resident Labour Market Test if:**

(a) the Sponsor has advertised (or had advertised on its behalf) the job as set out in Tables 11B and 11C below; and

(b) The advertisements have stated:

(i) the job title,

(ii) the main duties and responsibilities of the job (job description),

(iii) the location of the job,

(iv) an indication of the salary package or salary range or terms on offer,

(v) the skills, qualifications and experience required for the job, and

(vi) the closing date for applications, unless it is part of the Sponsor's rolling recruitment programme, in which case the advertisement should show the period of the recruitment programme;

and

(c) The advertisements were published in English (or Welsh if the job is based in Wales); and

(d) The Sponsor can show that no suitable settled worker is available to fill the job unless the job is in a PhD-level occupation listed in Appendix J. Settled workers will not be considered unsuitable on the basis that they lack qualifications, experience or skills (including language skills) that were not specifically requested in the job advertisement; and

(e) The Certificate of Sponsorship Checking Service entry contains full details of when and where the job was advertised, and any advertisement reference numbers, including the Universal Jobmatch (or other Jobcentre Plus online service) or JobCentre Online vacancy reference number where relevant.

**Table 11B: Advertising methods and duration which satisfy the Resident Labour Market Test**

Type of job	Methods of advertising / recruitment	Duration / timing of advertising
New graduate jobs or internships	<p>University milkround visits to at least 3 UK universities (or all UK universities which provide the relevant course, whichever is the lower number),</p> <p>At least one of the following websites:</p> <ul style="list-style-type: none"> <li>- www.jobs.ac.uk,</li> <li>- www.milkround.com,</li> <li>- www.prospects.ac.uk, or</li> <li>- www.targetjobs.co.uk</li> </ul> <p>and</p> <p>At least one other medium listed in Table 11C</p>	At least 28 days within the <b>4 years</b> immediately before the Sponsor assigned the Certificate of Sponsorship to the applicant
Pupillages for trainee barristers	At least two media (or one medium if the job was advertised before 6 April 2013) listed in Table 11C	At least 28 days within the <b>2 years</b> immediately before the Sponsor assigned the Certificate of Sponsorship to the applicant
Jobs in PhD-level occupations as listed in Appendix J	At least two media (or one medium if the job was advertised before 6 April 2013) listed in Table 11C	At least 28 days within the <b>1 year</b> immediately before the Sponsor assigned the Certificate of Sponsorship to the applicant
Jobs where the appropriate salary, as determined by paragraphs 79 to 79D of Appendix A, is at least £71,600 per year (or £71,000 per year if the job was advertised before 6 April 2014) or there is a stock exchange disclosure requirement	At least two media (or one medium if the job was advertised before 6 April 2013) listed in Table 11C	At least 28 days within the <b>6 months</b> immediately before the Sponsor assigned the Certificate of Sponsorship to the applicant
Creative sector jobs covered by Table 9 of Appendix J	As set out in Table 9 of Appendix J	As set out in Table 9 of Appendix J

Orchestral musicians	Universal Jobmatch (or other Jobcentre Plus online service) for jobs based in England, Scotland or Wales, or JobCentre Online for jobs based in Northern Ireland, and  At least one other medium listed in Table 11C	At least 28 days within the <b>2 years</b> immediately before the Sponsor assigned the Certificate of Sponsorship to the applicant
Positions in the NHS where the Resident Labour Market Test includes advertising on NHS Jobs between 19 November 2012 and 6 April 2015	NHS Jobs	At least 28 days within the <b>6 months</b> immediately before the Sponsor assigned the Certificate of Sponsorship to the applicant
All other jobs	Universal Jobmatch (or other Jobcentre Plus online service) for jobs based in England, Scotland or Wales, or JobCentre Online for jobs based in Northern Ireland, and  At least one other medium listed in Table 11C	At least 28 days within the <b>6 months</b> immediately before the Sponsor assigned the Certificate of Sponsorship to the applicant

**Table 11C: Advertising media which satisfy the Resident Labour Market Test**

Type of medium	Criteria for suitable media
Newspaper	Must be: marketed throughout the UK or throughout the whole of the devolved nation in which the job is located, and  published at least once a week
Professional journal	Must be: available nationally through retail outlets or through subscription, published at least once a month, and  related to the nature of the job i.e. a relevant trade journal, official journal of a professional occupational body, or subject-specific publication
Website	Must be one of the following:  Universal Jobmatch (or other Jobcentre Plus online service), for jobs based in England, Scotland or Wales,  JobCentre Online, for jobs based in Northern Ireland,  an online version of a newspaper or professional journal which would satisfy the criteria above,  the website of a prominent professional or recruitment organisation, which does not charge a fee to jobseekers to view job advertisements or to apply for jobs via those advertisements, or

	if the Sponsor is a multinational organisation or has over 250 permanent employees in the UK, the Sponsor's own website
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### **Resident Labour Market Test exemption applies**

#### **Shortage occupation**

78A. In order for a Resident Labour Market Test exemption to apply for a job offer in a shortage occupation:

- (a) the job must, at the time the Certificate of Sponsorship was assigned to the applicant, have appeared on the shortage occupation list in Appendix K,
- (b) in all cases, contracted working hours must be for at least 30 hours a week, and
- (c) in all cases, if the UK Border Agency list of shortage occupations indicates that the job appears on the 'Scotland only' shortage occupation list, the job offer must be for employment in which the applicant will be working at a location in Scotland.

#### **Post-Study Work**

78B. In order for a Resident Labour Market Test exemption to apply for post-study work:

- (a) the applicant must be applying for leave to remain,
- (b) the applicant must have, or have last been granted, entry clearance, leave to enter or leave to remain as:
  - (1) a Tier 1 (Graduate Entrepreneur) Migrant,
  - (2) a Tier 1 (Post-Study Work) Migrant,
  - (3) a Participant in the International Graduates Scheme (or its predecessor, the Science and Engineering Graduates Scheme),
  - (4) a Participant in the Fresh Talent: Working in Scotland Scheme,
  - (5) a Tier 4 Migrant,
  - (6) a Student,
  - (7) a Student Nurse,
  - (8) a Student Re-Sitting an Examination,
  - (9) a Person Writing Up a Thesis,
  - (10) an Overseas Qualified Nurse or Midwife,
  - (11) a Postgraduate Doctor or Dentist, or
  - (12) a Student Union Sabbatical Officer,

and

(c) Where (b)(5) to (12) apply, the applicant must meet the requirements of paragraph 245HD(d) of these Rules.

#### **Other exemptions**

78C. In order for another Resident Labour Market Test exemption to apply, either:

- (a) the Certificate of Sponsorship Checking Service entry must show that the applicant's gross annual salary (including such allowances as are specified as acceptable for this purpose in paragraph 79 of this appendix) to be paid by the Sponsor is £153,500 (or £152,100, if the recruitment took place before 6 April 2014) or higher; or

(b) the job offer must be in a supernumerary research position where the applicant has been issued a non-transferable scientific research Award or Fellowship by an external organisation which is not the Sponsor, meaning that the role is over and above the Sponsor's normal requirements and if the applicant was not there, the role would not be filled by anyone else; or

(c) the job offer must be to continue working as a Doctor or Dentist in training, under the same NHS Training Number which was assigned to the applicant for previous lawful employment as a Doctor or Dentist in Training in the UK; or

(d) the job offer must be as a Doctor in Speciality Training where the applicant's salary and the costs of his training are being met by the government of another country under an agreement with that country and the United Kingdom Government; or

(e) the job offer must be to resume a post in a Higher Education Institution, working for the same Sponsor as in a previous grant of entry clearance or leave to remain as a Tier 2 (General) Migrant, where the break in employment is due solely to a period of academic leave;

and the Certificate of Sponsorship Checking Service entry must provide full details of why an exemption applies.

### **Continuing to work in the same occupation for the same Sponsor**

78D. In order for the applicant to be awarded points for continuing to work in the same occupation for the same Sponsor:

(a) the applicant must be applying for leave to remain,

(b) the applicant must have or have last been granted entry clearance or leave to remain as:

(i) a Tier 2 (General) Migrant,

(ii) a Qualifying Work Permit Holder,

(iii) a Representative of an Overseas Newspaper, News Agency or Broadcasting Organisation,

(iv) a Member of the Operational Ground Staff of an Overseas-owned Airline or

(v) a Jewish Agency Employee,

(b) the Sponsor must be the same employer:

(i) as the Sponsor on the previous application that was granted, in the case of an applicant whose last grant of leave was as a Tier 2 (General) Migrant,

(ii) that the work permit was issued to, in the case of an applicant whose last grant of leave was as a Qualifying Work Permit Holder,

(iii) for whom the applicant was working or stated he was intending to work when last granted leave, in the case of an applicant whose last grant of leave was a Representative of an Overseas Newspaper, News Agency or Broadcasting Organisation, a Member of the Operational Ground Staff of an Overseas-owned Airline, or a Jewish Agency Employee.

(c) the job that the Certificate of Sponsorship Checking Service entry records the applicant as having been engaged to do must be the same occupation:

(i) in respect of which the Certificate of Sponsorship that led to the previous grant was issued, in the case of an applicant whose last grant of leave was as a Tier 2 (General) Migrant,

(ii) in respect of which the previous work permit was issued, in the case of an applicant whose last grant of leave was as a Qualifying Permit Holder, or

(iii) that the applicant was doing, or intended to do, when he received his last grant of leave, in the case of an applicant whose last grant of leave was a Representative of an Overseas Newspaper, News Agency or Broadcasting Organisation, a Member of the Operational Ground Staff of an Overseas-owned Airline, or a Jewish Agency Employee,

### **Appropriate salary**

79. The points awarded for appropriate salary will be based on the applicant's gross annual salary to be paid by the Sponsor, subject to the following conditions:

- (i) Points will be awarded based on basic pay (excluding overtime);
- (ii) Allowances, such as London weighting, will be included in the salary for the awarding of points where they are part of the guaranteed salary package and would be paid to a local settled worker in similar circumstances;
- (iii) Other allowances and benefits, such as bonus or incentive pay, employer pension contributions, travel and subsistence (including travel to and from the applicant's home country), will not be included.
- (iv) If the applicant has exchanged some of his UK employment rights for shares as an employee-owner, the value of those shares will not be included.

79A. No points will be awarded if the salary referred to in paragraph 79 above is less than £20,500 per year, unless:

- (a) the applicant:
    - (i) is applying for leave to remain, and
    - (ii) previously had leave as:
      - (1) a Qualifying Work Permit Holder,
      - (2) a Representative of an Overseas Newspaper, News Agency or Broadcasting Organisation,
      - (3) a Member of the operational Ground Staff of an Overseas-owned Airline,
      - (4) a Jewish Agency Employee, or
      - (5) a Tier 2 (General) Migrant under the Rules in place before 6 April 2011; and
    - (iii) has not been granted entry clearance in this or any other route since that grant of leave; or
  - (b) the Certificate of Sponsorship checking service entry records that the applicant:
    - (i) obtained a Nursing and Midwifery Council permission before 30 March 2015 to undertake the Overseas Nursing Programme or the Adaptation to Midwifery Programme;
    - (ii) is being sponsored as a nurse or midwife in a supervised practice placement approved by the Nursing and Midwifery Council;
    - (iii) will continue to be sponsored as a registered nurse or midwife by the Sponsor after achieving Nursing and Midwifery Council registration; and
    - (iv) will be paid at least £20,500 per year once that registration is achieved,
- and the applicant provides evidence of the above, if requested to do so.

79B. No points will be awarded for appropriate salary if the salary referred to in paragraph 79 above is less than the appropriate rate for the job as stated in the codes of practice in Appendix J, unless the applicant is an established entertainer as defined in paragraph 6 of these Rules.

79C. Where the applicant is paid hourly, the appropriate salary consideration will be based on earnings up to a maximum of 48 hours a week, even if the applicant works for longer than this. For example, an applicant who works 60 hours a week for £8 per hour be considered to have a salary of £19,968 (8x48x52) and not £25,960 (8x60x52), and will therefore not be awarded points for appropriate salary.

79D. No points will be awarded for appropriate salary if the applicant does not provide a valid Certificate of Sponsorship reference number with his application.

*NB: This pack does not include the provisions relating to the Tier 2 (General) limit or monthly allocations.*

**105-112**



## Attributes for Tier 5 (Temporary Worker) Migrants

105. An applicant applying for entry clearance or leave enter or remain as a Tier 5 (Temporary Worker) Migrant must score 30 points for attributes.

106. Available points are shown in Table 15 below.

107. Notes to accompany Table 15 appear below in that table.

**Table 15**

Criterion	Points awarded
Holds a Tier 5 (Temporary Worker) Certificate of Sponsorship	30

### Notes

108. In order to meet the 'holds a Certificate of Sponsorship' requirement, the applicant will provide a valid Certificate of Sponsorship reference number for sponsorship in this category.

109. A Certificate of Sponsorship reference number will only be considered to be valid if the number supplied links to a Certificate of Sponsorship Checking Service reference that names the applicant as the migrant and confirms that the Sponsor is sponsoring him as a Tier 5( Temporary Worker) Migrant in the subcategory indicated by the migrant in his application for entry clearance or leave.

109A. A Certificate of Sponsorship reference number will only be considered to be valid if:

(a) the Sponsor assigned the reference number to the migrant no more than 3 months before the application for entry clearance or leave to remain is made, unless the migrant is applying for leave to enter and has previously been granted leave to enter using the same Certificate of Sponsorship reference number,

(b) the application for entry clearance or leave to remain is made no more than 3 months before the start date of the employment as stated on the Certificate of Sponsorship,

(c) that reference number must not have been cancelled by the Sponsor or by the United Kingdom Border Agency since it was assigned, and

(d) the Sponsor is an A-rated sponsor, unless the application is for leave to remain and the applicant has, or was last granted, leave as a Tier 5 Migrant, an Overseas Government Employee or a Qualifying Work Permit Holder.

110. The migrant must not previously have applied for entry clearance or leave to remain using the same Certificate of Sponsorship reference number, if that application was either approved or refused (not rejected as an invalid application, declared void or withdrawn).

111. In addition, a Certificate of Sponsorship reference number will only be considered to be valid:

(a) where the Certificate of Sponsorship Checking Service entry shows that the Certificate of Sponsorship has been issued in the Creative and Sporting subcategory to enable the applicant to work as a sports person, if:

(i) The Certificate of Sponsorship Checking Service entry shows that the applicant has been endorsed by the Governing Body for his sport (that is, the organisation which is specified in Appendix M as being the Governing Body for the sport in question), and

(ii) The endorsement referred to in (i) above confirms that the player or coach is internationally established at the highest level and/or will make a significant contribution to the development of his sport at the highest level in the UK, and that the post could not be filled by a suitable settled worker.

(b) where the Certificate of Sponsorship Checking Service entry shows that the Certificate of Sponsorship has been issued in the Creative and Sporting subcategory to enable the applicant to work as a creative worker, if the entry confirms that:

(i) where a relevant creative sector Codes of Practice exists in Appendix J, the Sponsor has complied with that Code of Practice; or

(ii) where no relevant creative sector Codes of Practice exists in Appendix J, the Sponsor has otherwise taken into account the needs of the resident labour market in that field, and the work could not be carried out by a suitable settled worker.

(c) where the Certificate of Sponsorship Checking Service entry shows that the Certificate of Sponsorship has been issued in the Charity Workers subcategory, if the work the applicant is being sponsored to do is:

(i) voluntary fieldwork directly related to the purpose of the charity which is sponsoring him,

(ii) not paid (except reasonable expenses outlined in section 44 of the National Minimum Wage Act), and

(iii) not a permanent position.

(d) where the Certificate of Sponsorship Checking Service entry shows that the Certificate of Sponsorship has been issued in the Religious Workers subcategory, if the entry confirms:

(i) that the applicant is being sponsored to perform religious duties, which:

(1) must be work which is within the Sponsor's organisation, or directed by the Sponsor's organisation,

(2) may include preaching, pastoral work and

(ii) an outline of the duties in (i),

(iii) if the Sponsor's organisation is a religious order, that the applicant is a member of that order;

(iv) that the applicant will receive pay and conditions at least equal to those given to settled workers in the same role,

(v) that the remuneration complies with or is exempt from National Minimum Wage regulations, and provides details of the remuneration,

(vi) details of how the resident labour market test has been complied with or why the role is exempt from the test, as set out in paragraph 92A of this Appendix.

(e) where the Certificate of Sponsorship Checking Service entry shows that the Certificate of Sponsorship has been issued in the Government Authorised Exchange subcategory, if the entry confirms that the work, volunteering or job shadowing the applicant is being sponsored to do:

(i) meets the requirements of the individual exchange scheme, as set out in Appendix N,

(ii) does not fill a vacancy in the workforce,

(iii) is skilled to National Qualifications Framework level 3, as stated in the codes of practice in Appendix J, unless the applicant is being sponsored under an individual exchange scheme set up as part of the European Commission's Lifelong Learning Programme,

(iv) conforms with all relevant UK and EU legislation, such as the National Minimum Wage Act and the Working Time Directive.

(f) where the Certificate of Sponsorship Checking Service entry shows that the Certificate of Sponsorship has been issued in the International Agreement subcategory and the applicant is applying for entry clearance or leave to enter or remain for the purpose of work as a Contractual Service Supplier, or Independent Professional if either:

(i) the work is pursuant to a contract to supply services to the sponsor in the United Kingdom by an overseas undertaking established on the territory of a party to the General Agreement on Trade in Services or a similar trade agreement which has been concluded between the EU and another party or parties and which is in force, and which has no commercial presence in the European Union; and

(ii) the service which that undertaking is contracted to supply to the sponsor in the United Kingdom is a service falling within the scope of the sectors specified in the relevant commitments in respect of

Contractual Service Suppliers or Independent Professionals as set out in the agreements mentioned at (i) above; and

(iii) the sponsor has, through an open tendering procedure or other procedure which guarantees the bona fide character of the contract, awarded a services contract for a period not exceeding 12 months to the applicant's employer; and

(iv) the sponsor will be the final consumer of the services provided under that contract; and

(v) the applicant is a national of the country in which the overseas undertaking is established; and

(vi) where the applicant is a Contractual Service Supplier, he possesses:

(1) a university degree or a technical qualification demonstrating knowledge of an equivalent level, and provides the original certificate of that qualification, except where (4) applies;

(2) where they are required by any relevant law, regulations or requirements in force in the United Kingdom in order to exercise the activity in question, professional qualifications;

(3) 3 years' professional experience in the sector concerned, except where (4) applies; and

(4) (\_a) in the case of advertising and translation services, relevant qualifications and 3 years' professional experience, and provides the original certificate of those qualifications;

(\_b) in the case of management consulting services and services related to management consulting (managers and senior consultants), a university degree and 3 years professional experience, and provides the original certificate of that qualification;

(\_c) in the case of technical testing and analysis services, a university degree or technical qualifications demonstrating technical knowledge and 3 years professional experience, and provides the original certificate of that qualification;

(\_d) in the case of fashion model services and entertainment services other than audiovisual services, 3 years' relevant experience;

(\_e) in the case of chef de cuisine services, an advanced technical qualification and 6 years' relevant experience at the level of chef de cuisine, and provides the original certificate of that qualification; and

(vii) where the applicant is a Contractual Service Supplier, he has been employed, and provides the specified documents in paragraph 111-SD to show that he has been employed, by the service supplier for a period of at least one year immediately prior to the date of application; or

(viii) where the applicant is an Independent Professional, he possesses:

(1) a university degree or a technical qualification demonstrating knowledge of an equivalent level, and provide the original certificate of that qualification,

(2) where they are required by any relevant law, regulations or requirements in force in the United Kingdom in order to exercise the activity in question, professional qualifications; and

(3) at least six years professional experience in the sector concerned; or

(ix) the applicant is applying for leave to remain and holds a Certificate of Sponsorship issued in the International Agreement sub-category by the same sponsor, and for the purpose of the same contract to supply services, as was the case when the applicant was last granted entry clearance, leave to enter or remain.

(g) where the Certificate of Sponsorship Checking Service entry shows that the Certificate of Sponsorship has been issued in the International Agreement subcategory and the applicant is coming for a purpose other than work as a Contractual Service Supplier, or Independent Profession if the entry confirms that applicant is being sponsored:

(i) as an employee of an overseas government, or

(ii) as an employee of an international organisation established by international treaty signed by the UK or European Union, or

(iii) as a private servant in a diplomatic household under the provisions of the Vienna Convention on Diplomatic Relations, 1961, or in the household of an employee of an international organisation recognised by Her Majesty's Government, who enjoys certain privileges or immunity under UK or international law, and confirms the name of the individual who is employing them.

111-SD (a) Where paragraph 111(f)(vii) refers to specified documents, those specified documents are:

- (i) original formal payslips issued by the employer and showing the employer's name; or
- (ii) payslips accompanied by a letter from the applicant's employer, on the employer's headed paper and signed by a senior official, confirming the payslips are authentic; or
- (iii) Personal bank or building society statements covering the full specified period, which clearly show:
  - (1) the applicant's name,
  - (2) the account number,
  - (3) the date of the statement (The most recent statement must be dated no earlier than 31 days before the date of the application),
  - (4) the financial institution's name and logo, and
  - (5) transactions by the service supplier covering the full specified period;

or

(iv) A building society pass book, which clearly shows:

- (1) the applicant's name,
- (2) the account number,
- (3) the financial institution's name and logo, and
- (4) transactions by the service supplier covering the full specified period.

(b) If the applicant provides the bank or building society statements in (a)(iii):

(i) The statements must:

- (1) be printed on paper bearing the bank or building society's letterhead,
- (2) bear the official stamp of the bank on every page, or
- (3) be accompanied by a supporting letter from the issuing bank or building society, on company headed paper, confirming the authenticity of the statements provided;

(ii) The statements must not be mini-statements obtained from an Automated Teller Machine.

112. Points will not be awarded for a Tier 5 (Temporary Worker) Certificate of Sponsorship where the claimed basis for its issuance are the provisions under Mode 4 of the General Agreement on Trade in Services relating to intra-corporate transfers.

### **113-120A**

#### **Attributes for Tier 4 (General) Students**

113. An applicant applying for entry clearance or leave to remain as a Tier 4 (General) Student must score 30 points for attributes.

114. Available points are shown in Table 16 below.

115. Notes to accompany Table 16 appear below that table.

**Table 16**

<b>Criterion</b>	<b>Points awarded</b>
Confirmation of Acceptance for Studies	30

## Notes

115A. In order to obtain points for a Confirmation of Acceptance for Studies, the applicant must provide a valid Confirmation of Acceptance for Studies reference number.

### Tier 4 Interim Limit

115B. The Secretary of State shall be entitled to limit the number of Confirmations of Acceptance for Studies allocated to any specific Sponsor in any one period.

115C. The limit on the number of Confirmations of Acceptance for Studies allocated to specific Sponsors shall be known as the Tier 4 Interim Limit.

115CA. The interim limit implemented by HC1888 and effective in relation to Tier 4 between 6 April 2012 and 31 December 2012 shall be known as the Former Interim Limit.

115D. The Tier 4 Interim Limit will apply from 1 January 2013 to 30 June 2013 (inclusive) (the "Tier 4 Interim Limit Period").

115E. The Tier 4 Interim Limit will be applied to any Tier 4 Sponsor who

(i) is still subject to the former interim limit on 31 December 2012 and has applied for but not yet achieved HTS status and a valid and satisfactory full institutional inspection, review or audit from one of the following bodies:

- (a) the Bridge Schools Inspectorate; or
- (b) the Education and Training Inspectorate; or
- (c) Estyn; or
- (d) Education Scotland; or
- (e) the Independent Schools Inspectorate; or
- (f) Ofsted; or
- (g) the Quality Assurance Agency for Higher Education; or
- (h) The Schools Inspection Service; or is not:

(ii) the Foundation Programme Office; (iii) the Yorkshire and Humber Strategic Health Authority; (iv) an overseas higher education institution which has Highly Trusted Sponsor Status.

115F. A Tier 4 Sponsor who does not satisfy the requirements of paragraph 115E and is therefore subject to the Tier 4 Interim Limit is known as a Limited Sponsor.

115FA. No Confirmations of Acceptance for Studies will be allocated to a Limited Sponsor where:

(i) The Limited Sponsor did not apply for inspection, review or audit by the appropriate specified body by the relevant deadline, as listed below:

<b>Specified body</b>	<b>Deadline</b>
Quality Assurance Agency	9 September 2011
Independent Schools Inspectorate	9 September 2011
Bridge Schools Inspectorate	7 October 2011
School Inspection Service	7 October 2011
Education Scotland	11 November 2011
Education and Training Inspectorate N.I.	30 April 2012

or

- (ii) The Limited Sponsor applied by the deadline specified in (i) above, and failed to meet the required standard to obtain a full institutional audit, inspection or review, except for where The Limited Sponsor requires a second institutional audit, inspection or review within 6 months of the initial audit, inspection or review as determined by the relevant body listed above; or
- (iii) The Limited Sponsor applied for Highly Trusted Sponsor status on two occasions and has not been granted Highly Trusted Sponsor status.

115FB. A Limited Sponsor that is allocated no Confirmations of Acceptance for Studies further to paragraph 115FA is known as a Legacy Sponsor

115G. All Confirmations of Acceptance for Studies allocated by the Secretary of State to Limited Sponsors prior to 1 January 2013 and which have not been assigned to an applicant for entry clearance, leave to enter or leave to remain under Tier 4 prior to 1 January 2013 are withdrawn and the only Confirmations of Acceptance for Studies allocated to a Limited Sponsor are the Confirmations of Acceptance for Studies allocated in accordance with paragraph 115H below.

115H. The Tier 4 Interim Limit will be calculated as follows:

(i) A Limited Sponsor who has that status as at 1 January 2013 will be allocated:

(a) where the Limited Sponsor was subject to the Former Tier 4 Interim Limit for the entirety of the period 6 April 2012 to 31 December 2012, a number of Confirmations of Acceptance for Studies equal to two thirds of the number of Confirmations of Acceptance for Studies allocated to that Limited Sponsor for the period 6 April 2012 to 31 December 2012;

(b) where the Limited Sponsor had a Tier 4 Sponsor Licence for only part of the period 6 April 2012 to 31 December 2012, and was subject to the Former Tier 4 Interim Limit from the date on which it was granted a sponsor licence, a number of Confirmations of Acceptance for Studies equal to:

(i) the number of Confirmations of Acceptance for Studies allocated to that Limited Sponsor for the period it was licenced between 6 April 2012 to 31 December 2012;

(ii) multiplied by the appropriate factor such that the figure in (i) is equal to the number of Confirmations of Acceptance for Studies that would have been granted to that Limited Sponsor for a period of 6 months;

(c) where the Limited Sponsor had a Tier 4 Sponsor Licence for the entirety of the period 6 April 2012 to 31 December 2012 and was subject to the Former Tier 4 Interim Limit for only part of that period, a number of Confirmations of Acceptance for Studies equal to:

(i) the number of Confirmations of Acceptance for Studies allocated to that Limited Sponsor under the Tier 4 Interim Limit;

(ii) multiplied by the appropriate factor such that the figure in (i) is equal to the number of Confirmations of Acceptance for Studies that would have been granted to that Limited Sponsor for a period of 6 months;

(d) where the calculation in paragraphs (a) to (c) results in 0 or a negative number, the Limited Sponsor will be allocated 0 Confirmations of Acceptance for Studies under the Tier 4 Interim Limit;

(e) where the calculation in paragraphs (a) to (c) does not result in a whole number, the Limited Sponsor will be allocated a number of Confirmations of Acceptance for Studies equal to the nearest whole number (fractions will be rounded up to the nearest whole number).

115I. A Limited Sponsor will, on provision to the UK Border Agency of evidence that it meets the criteria set out in paragraph 115E above, be exempt from the Tier 4 Interim Limit from the date the UK Border Agency provides written confirmation that it is so exempt.

116. A Confirmation of Acceptance for Studies will only be considered to be valid if:

(a) it was issued no more than 6 months before the application is made,

(b) the application for entry clearance or leave to remain is made no more than 3 months before the start date of the course of study as stated on the Confirmation of Acceptance for Studies,

(c) the Sponsor has not withdrawn the offer since the Confirmation of Acceptance for Studies was issued,

(d) it was issued by an institution with a Tier 4 (General) Student Sponsor Licence,

(da) where the application for entry clearance or leave to remain is for the applicant to commence a new course of study, not for completion of a course already commenced by way of re-sitting examinations or repeating a module of a course, the Sponsor must hold an A-rated or Highly Trusted Sponsor Licence and must not be a Legacy Sponsor,

116(db) where the Confirmation of Acceptance for Studies is issued by a Legacy Sponsor or a B-rated sponsor, the Confirmation of Acceptance for Studies will only be valid if it is issued for completion of a course already commenced by way of re-sitting examinations or repeating a module of a course and the Confirmation of Acceptance for Studies must be for the same course as the course for which the last period of leave was granted to study with that same sponsor,

(e) the institution must still hold such a licence at the time the application for entry clearance or leave to remain is determined

(ea) the migrant must not previously have applied for entry clearance, leave to enter or leave to remain using the same Confirmation of Acceptance for Studies reference number where that application was either approved or refused (not rejected as an invalid application declared void or withdrawn),

(f) it contains the following mandatory information:

(i) the applicant's:

- (1) name,
- (2) date of birth,
- (3) gender,
- (4) nationality, and
- (5) passport number;

(ii) the course:

- (1) title,
- (2) level,
- (3) start and end dates, and
- (4) hours per week, including confirmation that the course is full-time;

(iii) confirmation if the course is one in which the applicant must hold a valid Academic Technology Approval Scheme clearance certificate from the Counter-Proliferation Department of the Foreign and Commonwealth Office;

(iv) confirmation if the course is a recognised Foundation Programme for postgraduate doctors or dentists, and requires a certificate from the Postgraduate Dean;

(v) the main study address;

(vi) details of how the Tier 4 Sponsor has assessed the applicant's English language ability including, where relevant, the applicant's English language test scores in all four components (reading, writing, speaking and listening);

(vii) details of any work placements relating to the course;

(viii) accommodation, fees and boarding costs;

(ix) details of any partner institution, if the course will be provided by an education provider that is not the Tier 4 Sponsor; and

(x) the name and address of the overseas higher education institution, if the course is part of a study abroad programme.

(g) it was not issued for a course of studies, it was issued for a full-time, salaried, elected executive position as a student union sabbatical officer to an applicant who is part-way through their studies or who is being sponsored to fill the position in the academic year immediately after their graduation,

(h) it was not issued for a course of studies, it was issued within 60 days of the expected end date of a course leading to the award of a PhD and the migrant is sponsored by a Sponsor that is a

Recognised Body or a body in receipt of public funding as a higher education institution from the Department of Employment and Learning in Northern Ireland, the Higher Education Funding Council for England, the Higher Education Funding Council for Wales or the Scottish Funding Council, to enable the migrant to remain in the UK as a Tier 4 (General) Student on the doctorate extension scheme.

117. A Confirmation of Acceptance for Studies reference number will only be considered to be valid if:

(a) the number supplied links to a Confirmation of Acceptance for Studies Checking Service entry that names the applicant as the migrant and confirms that the Sponsor is sponsoring him in the Tier 4 category indicated by the migrant in his application for leave to remain (that is, as a Tier 4 (General) Student or a Tier 4 (Child) Student), and

(b) that reference number must not have been withdrawn or cancelled by the Sponsor or the UK Border Agency since it was assigned.

118. No points will be awarded for a Confirmation of Acceptance for Studies unless:

(a) the applicant supplies, as evidence of previous qualifications, the specified documents, as set out in paragraph 120-SD(a), that the applicant used to obtain the offer of a place on a course from the Sponsor unless the applicant is sponsored by a Highly Trusted Sponsor, is a national of one of the countries or the rightful holder of a qualifying passport issued by one of the relevant competent authorities, as appropriate, listed in Appendix H, and is applying for entry clearance in his country of nationality or in the territory related to the passport he holds, as appropriate, or leave to remain in the UK. The UK Border Agency reserves the right to request the specified documents from these applicants. The application will be refused if the specified documents are not provided in accordance with the request made; and

(b) One of the requirements in (i) to (iii) below is met:

(i) the course is degree level study and the Confirmation of Acceptance for Studies has been assigned by a Sponsor which is a Recognised Body or a body in receipt of funding as a higher education institution from the Department for Employment and Learning in Northern Ireland, the Higher Education Funding Council for England, the Higher Education Funding Council for Wales, or the Scottish Funding Council, and:

(1) the applicant is a national of one of the following countries: Antigua and Barbuda; Australia; The Bahamas; Barbados; Belize; Canada; Dominica; Grenada; Guyana; Jamaica; New Zealand; St Kitts and Nevis; St Lucia; St Vincent and the Grenadines; Trinidad and Tobago; United States of America, and provides the specified documents set out in paragraph 120-SD(b); or

(2) has obtained an academic qualification (not a professional or vocational qualification), which is deemed by UK NARIC to meet or exceed the recognised standard of a Bachelor's or Master's degree or a PhD in the UK, from an educational establishment in one of the following countries: Antigua and Barbuda; Australia; The Bahamas; Barbados; Belize; Dominica; Grenada; Guyana; Ireland; Jamaica; New Zealand; St Kitts and Nevis; St Lucia; St Vincent and The Grenadines; Trinidad and Tobago; the UK; the USA, and provides the specified documents set out in paragraph 120-SD(a); or

(3) the applicant has successfully completed a course as a Tier 4 (Child) Student (or under the student rules that were in force before 31 March 2009, where the student was granted permission to stay whilst he was under 18 years old) which:

i. was at least six months in length, and

ii. ended within two years of the date the sponsor assigned the Confirmation of Acceptance for Studies; or

(4) the Confirmation of Acceptance for Studies Checking Service entry confirms that the applicant has a knowledge of English equivalent to level B2 of the Council of Europe's Common European Framework for Language Learning in all four components (reading, writing, speaking and listening), or above, or that the Sponsor is satisfied that on completion of a pre-sessional course as provided for in paragraph 120(b)(i) of this Appendix, the applicant will have a knowledge of English as set out in this paragraph; or



(ii) the course is degree level study and the Confirmation of Acceptance for Studies has been assigned by a Sponsor which is not a Recognised Body or is not a body in receipt of funding as a higher education institution from the Department for Employment and Learning in Northern Ireland, the Higher Education Funding Council for England, the Higher Education Funding Council for Wales, or the Scottish Funding Council, and:

(1) the applicant is a national of one of the following countries: Antigua and Barbuda; Australia; The Bahamas; Barbados; Belize; Canada; Dominica; Grenada; Guyana; Jamaica; New Zealand; St Kitts and Nevis; St Lucia; St Vincent and the Grenadines; Trinidad and Tobago; United States of America, and provides the specified documents set out in paragraph 120-SD(b); or

(2) has obtained an academic qualification (not a professional or vocational qualification), which is deemed by UK NARIC to meet or exceed the recognised standard of a Bachelor's or Master's degree or a PhD in the UK, from an educational establishment in one of the following countries: Antigua and Barbuda; Australia; The Bahamas; Barbados; Belize; Dominica; Grenada; Guyana; Ireland; Jamaica; New Zealand; St Kitts and Nevis; St Lucia; St Vincent and The Grenadines; Trinidad and Tobago; the UK; the USA, and provides the specified documents set out in paragraph 120-SD(a); or

(3) the applicant has successfully completed a course as a Tier 4 (Child) Student (or under the student rules that were in force before 31 March 2009, where the student was granted permission to stay whilst he was under 18 years old) which:

i. was at least six months in length, and

ii. ended within two years of the date the sponsor assigned the Confirmation of Acceptance for Studies; or

(4) the applicant provides the specified documents from an English language test provider approved by the Secretary of State for these purposes as listed in Appendix O, which clearly show:

i. the applicant's name,

ii. that the applicant has achieved or exceeded level B2 of the Council of Europe's Common European Framework for Language learning in all four components (reading, writing, speaking and listening), unless exempted from sitting a component on the basis of the applicant's disability,

iii. the date of the award, and

iv. that the test is within its validity date (where applicable)."

Or

(iii) the course is for below degree level study and:

(1) the applicant is a national of one of the following countries: Antigua and Barbuda; Australia; The Bahamas; Barbados; Belize; Canada; Dominica; Grenada; Guyana; Jamaica; New Zealand; St Kitts and Nevis; St Lucia; St Vincent and the Grenadines; Trinidad and Tobago; United States of America, and provides the specified documents set out in paragraph 120-SD(b); or

(2) has obtained an academic qualification (not a professional or vocational qualification), which is deemed by UK NARIC to meet or exceed the recognised standard of a Bachelor's or Master's degree or a PhD in the UK, from an educational establishment in one of the following countries: Antigua and Barbuda; Australia; The Bahamas; Barbados; Belize; Dominica; Grenada; Guyana; Ireland; Jamaica; New Zealand; St Kitts and Nevis; St Lucia; St Vincent and The Grenadines; Trinidad and Tobago; the UK; the USA, and provides the specified documents set out in paragraph 120-SD(a); or

(3) the applicant has successfully completed a course as a Tier 4 (Child) student (or under the student rules that were in force before 31 March 2009, where the student was granted permission to stay whilst he was under 18 years old) which:

i. was at least six months in length, and

ii. ended within two years of the date the sponsor assigned the Confirmation of Acceptance for Studies; or

(4) the applicant provides the specified documents from an English language test provider approved by the Secretary of State for these purposes as listed in Appendix O, which clearly show:

- i. the applicant's name,
- ii. that the applicant has achieved or exceeded level B1 of the Council of Europe's Common European Framework for Language learning in all four components (reading, writing, speaking and listening), unless exempted from sitting a component on the basis of the applicant's disability,
- iii. the date of the award, and
- iv. that the test is within its validity date (where applicable)."

119. If the applicant is re-sitting examinations or repeating a module of a course, the applicant must not previously have re-sat the same examination or repeated the same module more than once, unless the Sponsor is a Highly Trusted Sponsor. If this requirement is not met then no points will be awarded for the Confirmation of Acceptance for Studies, unless the Sponsor is a Highly Trusted Sponsor.

120. Points will only be awarded for a Confirmation of Acceptance for Studies (even if all the requirements in paragraphs 116 to 119 above are met) if the course in respect of which it is issued meets each of the following requirements:

(a) The course must meet the following minimum academic requirements:

- i. for applicants applying to study in England, Wales or Northern Ireland, the course must be at National Qualifications Framework (NQF) / Qualifications and Credit Framework (QCF) Level 3 or above if the Sponsor is a Highly Trusted Sponsor; or
- ii. for applicants applying to study in England, Wales or Northern Ireland, the course must be at National Qualifications Framework (NQF) / Qualifications and Credit Framework (QCF) Level 4 or above if the Sponsor is an A-Rated Sponsor or a B-Rated Sponsor; or
- iii. for applicants applying to study in Scotland, the course must be accredited at Level 6 or above in the Scottish Credit and Qualifications Framework (SCQF) by the Scottish Qualifications Authority and the Sponsor must be a Highly Trusted Sponsor; or
- iv. for applicants applying to study in Scotland, the course must be accredited at Level 7 or above in the Scottish Credit and Qualifications Framework (SCQF) by the Scottish Qualifications Authority if the Sponsor is an A-Rated Sponsor or B-Rated Sponsor; or
- v. the course must be a short-term Study Abroad Programme in the United Kingdom as part of the applicant's qualification at an overseas higher education institution, and that qualification must be confirmed as the same as a United Kingdom degree level by the National Recognition Information Centre for the United Kingdom (UK NARIC); or
- vi. the course must be an English language course at level B2 or above of the Common European Framework of Reference for Languages; or
- vii. the course must be a recognised Foundation Programme for postgraduate doctors or dentists.

(b) The Confirmation of Acceptance for Studies must be for a single course of study except where the Confirmation of Acceptance for Studies is:

- (i) issued by a Sponsor which is a Recognised Body or a body in receipt of funding as a higher education institution from the Department for Employment and Learning in Northern Ireland, the Higher Education Funding Council for England, the Higher Education Funding Council for Wales, or the Scottish Funding Council to cover both a pre-sessional course of no longer than three months' duration and a course of degree level study at that Sponsor; and
- (ii) the applicant has an unconditional offer of a place on a course of degree level study at that Sponsor or that where the offer is made in respect of an applicant whose knowledge of English is not at B2 level of the Council of Europe's Common European Framework for Language Learning in all four components (reading, writing, speaking and listening) or above, the Sponsor is satisfied that on completion of a pre-sessional course as provided for in (i) above, the applicant will have a knowledge of English at as set out in this paragraph; and

(iii) the course of degree level study commences no later than one month after the end date of the pre-session course.

(c) The course must, except in the case of a pre-session course, lead to an approved qualification as defined in (cb) below.

(ca) If a student is specifically studying towards an Association of Certified Chartered Accountants (ACCA) qualification or an ACCA Foundations in Accountancy qualification, the sponsor must be an ACCA approved learning partner - student tuition (ALP-st) at either Gold or Platinum level.

(cb) An approved qualification as one that is:

(1) validated by Royal Charter,

(2) awarded by a body that is on the list of recognised bodies produced by the Department for Business, Innovation and Skills,

(3) recognised by one or more recognised bodies through a formal articulation agreement with the awarding body,

(4) in England, Wales and Northern Ireland, on the Register of Regulated Qualifications (<http://register.ofqual.gov.uk/>) at National Qualifications Framework (NQF) / Qualifications and Credit Framework (QCF) level 3 or above,

(5) in Scotland, accredited at Level 6 or above in the Scottish Credit and Qualifications Framework (SCQF) by the Scottish Qualifications Authority,

(6) an overseas qualification that UK NARIC assesses as valid and equivalent to National Qualifications Framework (NQF) / Qualifications and Credit Framework (QCF) level 3 or above, or

(7) covered by a formal legal agreement between a UK-recognised body and another education provider or awarding body. An authorised signatory for institutional agreements within the recognised body must sign this. The agreement must confirm the recognised body's own independent assessment of the level of the Tier 4 Sponsor's or the awarding body's programme compared to the National Qualifications Framework (NQF) / Qualifications and Credit Framework (QCF) or its equivalents. It must also state that the recognised body would admit any student who successfully completes the Tier 4 Sponsor's or the awarding body's named course onto a specific or a range of degree-level courses it offers.

(d) Other than when the applicant is on a course-related work placement or a pre-session course, all study that forms part of the course must take place on the premises of the sponsoring educational institution or an institution which is a partner institution of the migrant's Sponsor.

(e) The course must meet one of the following requirements:

i. be a full time course of degree level study that leads to an approved qualification as defined in (cb) above;

ii. be an overseas course of degree level study that is recognised as being equivalent to a UK Higher Education course and is being provided by an overseas Higher Education Institution; or

iii. be a full time course of study involving a minimum of 15 hours per week organised daytime study and, except in the case of a pre-session course, lead to an approved qualification, below bachelor degree level as defined in (cb) above.

(f) Where the student is following a course of below degree level study including course –related work placement, the course can only be offered by a Highly Trusted Sponsor. If the course contains a course-related work placement, any period that the applicant will be spending on that placement must not exceed one third of the total length of the course spent in the United Kingdom except :

(i) where it is a United Kingdom statutory requirement that the placement should exceed one third of the total length of the course; or

(ii) where the placement does not exceed one half of the total length of the course undertaken in the UK and the student is following a course of degree level study and is either:

(a) sponsored by a Sponsor that is a Recognised Body or a body in receipt of public funding as a higher education institution from the Department of Employment and Learning in Northern Ireland, the Higher Education Funding Council for England, the Higher Education Funding Council for Wales or the Scottish Funding Council; or

(b) sponsored by an overseas higher education institution to undertake a short-term Study Abroad Programme in the United Kingdom.

#### Specified documents

120-SD. Where paragraphs 118 to 120 of this Appendix refer to specified documents, those specified documents are as follows:

(a) In the case of evidence relating to previous qualifications, the applicant must provide, for each qualification, either:

(i) The original certificate(s) of qualification, which clearly shows:

- (1) the applicant's name,
- (2) the title of the award,
- (3) the date of the award, and
- (4) the name of the awarding institution;

(ii) The transcript of results, which clearly shows:

- (1) the applicant's name,
- (2) the name of the academic institution,
- (3) their course title, and
- (4) confirmation of the award;

This transcript must be original unless the applicant has applied for their course through UCAS (Universities and Colleges Admissions Service), and:

(a) the applicant is applying in the UK to study at a Higher Education Institution which has Highly Trusted Sponsor status, and

(b) the qualification is issued by a UK awarding body for a course that the applicant has studied in the UK;

or

(iii) If the applicant's Tier 4 sponsor has assessed the applicant by using one or more references, and the Confirmation of Acceptance for Studies Checking Service entry includes details of the references assessed, the original reference(s) (or a copy, together with an original letter from the Tier 4 sponsor confirming it is a true copy of the reference they assessed), which must contain:

- (1) the applicant's name,
- (2) confirmation of the type and level of course or previous experience; and dates of study or previous experience,
- (3) date of the letter, and
- (4) contact details of the referee.

(b) In the case of evidence of the applicant's nationality, the specified documents are the applicant's current valid original passport or travel document. If the applicant is unable to provide this, the UK Border Agency may exceptionally consider this requirement to have been met where the applicant provides full reasons in the passport section of the application form, and either:

- (1) a current national identity document, or

(2) an original letter from his home government or embassy, on the letter-headed paper of the government or embassy, which has been issued by an authorised official of that institution and confirms the applicant's full name, date of birth and nationality.

120A(a). Points will only be awarded for a valid Confirmation of Acceptance for Studies (even if all the requirements in paragraphs 116 to 120A above are met) if the Sponsor has confirmed that the course for which the Confirmation of Acceptance for Studies has been assigned represents academic progress from previous study, as defined in (b) below undertaken during the last period of leave as a Tier 4 (General) Student or as a Student where the applicant has had such leave, except where:

(i) the applicant is re-sitting examinations or repeating modules in accordance with paragraph 119 above, or

(ii) the applicant is making a first application to move to a new institution to complete a course commenced elsewhere.

(b) For a course to represent academic progress from previous study, the course must:

(i) be above the level of the previous course for which the applicant was granted leave as a Tier 4 (General) Student or as a Student, or

(ii) involve further study at the same level, which the Tier 4 Sponsor confirms as complementing the previous course for which the applicant was granted leave as a Tier 4 (General) Student or as a Student.

## Appendix AR – Administrative Review

### Introduction

Administrative review is available where an eligible decision has been made. Decisions eligible for administrative review are listed in paragraph AR3.2 of this Appendix.

Administrative review will consider whether an eligible decision is wrong because of a case working error and, if it is considered to be wrong, the decision will be withdrawn or amended as set out in paragraph AR2.2 of this Appendix.

Rules about how to make a valid application for administrative review are set out at paragraphs 34M to 34Y of these Rules.

### Definitions

AR1.1 For the purpose of this Appendix the following definitions apply:

<i>Applicant</i>	the individual applying for administrative review.
<i>Case working error</i>	an error in decision-making listed in paragraph AR3.4 (for administrative review in the UK).
<i>Valid application</i>	an application for administrative review made in accordance with paragraphs 34M to 34Y of these Rules.
<i>Pending</i>	as defined in paragraph AR2.9.
<i>Reviewer</i>	the Home Office case worker or Immigration Officer conducting the administrative review.
<i>Original decision maker</i>	the Home Office case worker or Immigration Officer who made the <i>eligible decision</i> .

### General Principles

#### What is administrative review?

AR2.1 Administrative review is the review of an *eligible decision* to decide whether the decision is wrong due to a *case working error*.

#### Outcome of administrative review

AR2.2 The outcome of an administrative review will be:

- (a) Administrative review succeeds and the *eligible decision* is withdrawn; or
- (b) Administrative review does not succeed and the *eligible decision* remains in force and all of the reasons given for the decision are maintained; or
- (c) Administrative review does not succeed and the *eligible decision* remains in force but one or more of the reasons given for the decision are withdrawn; or
- (d) Administrative review does not succeed and the *eligible decision* remains in force but with different or additional reasons to those specified in the decision under review.

### **What will be considered on administrative review?**

AR2.3 The *eligible decision* will be reviewed to establish whether there is a *case working error*, either as identified in the application for administrative review, or identified by the *Reviewer* in the course of conducting the administrative review.

AR2.4 The *Reviewer* will not consider any evidence that was not before the *original decision maker* except where evidence that was not before the *original decision maker* is submitted to demonstrate that a *case working error* as defined in paragraph AR3.4 (e), (g), (h) and (j) has been made.

AR2.5 If the *applicant* has identified a *case working error* as defined in paragraph AR3.4 (e), (g), (h) and (j), the *Reviewer* may contact the *applicant* or his representative in writing, and request relevant evidence. The requested evidence must be received at the address specified in the request within 7 working days of the date of the request.

AR2.6 The *Reviewer* will not consider whether the *applicant* is entitled to leave to remain on some other basis and nothing in these rules shall be taken to mean that the *applicant* may make an application for leave or vary an existing application for leave, or make a protection or human rights claim, by seeking administrative review.

### **Applying for administrative review**

AR2.7 The rules setting out the process to be followed for making an application for administrative review are at 34M to 34Y of these Rules.

### **Effect of Pending administrative review on liability for removal**

AR2.8 Where administrative review is *pending* (as defined in AR2.9) the Home Office will not seek to remove the *applicant* from the United Kingdom.

### **When is administrative review pending?**

AR2.9 Administrative review is *pending* for the purposes of sections 3C(2)(d) and 3D(2)(c) of the Immigration Act 1971:

- (a) While an application for administrative review can be made in accordance with 34M to 34Y of these Rules, ignoring any possibility of an administrative review out-of-time under paragraph 34R(2);
- (b) While a further application for administrative review can be made in accordance with paragraph 34M(2) of these Rules following a notice of outcome at AR2.2(d) served in accordance with Articles 8ZA to 8ZC of the Immigration (Leave to Enter and Remain) Order 2000 (SI 2000/1161) (as amended);
- (c) When an application for administrative review has been made until :
  - (i) the application for administrative review is rejected as invalid because it does not meet the requirements of paragraph 34N to 34S of these Rules;
  - (ii) the application for administrative review is withdrawn in accordance with paragraph 34X; or
  - (iii) the notice of outcome at AR2.2(a), (b) or (c) is served in accordance with Articles 8ZA to 8ZC of the Immigration (Leave to Enter and Remain) Order 2000 (SI 2000/1161) (as amended).

AR2.10 Administrative review is not *pending* when an administrative review waiver form has been signed by an individual in respect of whom an *eligible decision* has been made. An

administrative review waiver form is a form where the person can declare that although they can make an application in accordance with paragraphs 34M to 34Y of these Rules, they will not do so.

## **Administrative Review in the UK**

### **Decisions eligible for administrative review in the United Kingdom**

AR3.1 Administrative review is only available where an *eligible decision* has been made.

AR3.2 (a) An eligible decision is a refusal of an application made on or after 20th October 2014 for:

- (i) leave to remain as a Tier 4 Migrant under the Points Based System; or
  - (ii) leave to remain as the partner of a Tier 4 Migrant under paragraph 319C of the Immigration Rules; or
  - (iii) leave to remain as the child of a Tier 4 Migrant under paragraph 319H of the Immigration Rules.
- (b) An eligible decision is also a decision to grant leave to remain in relation to an application referred to in sub-paragraph (a) where a review is requested of the period of leave granted.

AR3.3 Any decision not listed in AR3.2. is not an *eligible decision* and administrative review is not available in respect of that decision.

### **What is a case working error?**

AR3.4 The following is a complete list of *case working errors* for the purposes of these Rules:

- (a) Where the *original decision maker* applied the wrong Immigration Rules;
- (b) Where the *original decision maker* applied the Immigration Rules incorrectly;
- (c) Where the *original decision maker* incorrectly added up the points to be awarded under the Immigration Rules;
- (d) Where there has been an error in calculating the correct period of immigration leave either held or to be granted;
- (e) Where the *original decision maker* has not considered all the evidence that was submitted as evidenced in the eligible decision;
- (f) Where the *original decision maker* has considered some or all of the evidence submitted incorrectly as evidenced in the eligible decision;
- (g) Where the Immigration Rules provide for the *original decision maker* to consider the credibility of the *applicant* in deciding the application and the *original decision maker* has reached an unreasonable decision on the credibility of the *applicant*;
- (h) Where the *original decision maker's* decision to refuse an application on the basis that the supporting documents were not genuine was incorrect;



- (i) Where the *original decision maker's* decision to refuse an application on the basis that the supporting documents did not meet the requirements of the Immigration Rules was incorrect;
- (j) Where the *original decision maker* has incorrectly refused an application on the basis that it was made more than 28 days after leave expired; and
- (k) Where the *original decision maker* failed to apply the Secretary of State's relevant published policy and guidance in relation to the application."

## Appendix B - English language

1. An applicant applying as a Tier 1 Migrant or Tier 2 Migrant must have 10 points for English language, unless applying for entry clearance or leave to remain:

- (i) as a Tier 1 (Exceptional Talent) Migrant,
- (ii) as a Tier 1 (Investor) Migrant, or
- (iii) as a Tier 2 (Intra-Company Transfer) Migrant.

2. The levels of English language required are shown in Table 1.

3. Available points for English language are shown in Table 2.

4. Notes to accompany the tables are shown below each table.

**Table 1**  
**Level of English language required to score points**

### Tier 1

Row	Category	Applications	Level of English language required
A	Tier 1 (General)	Entry clearance and leave to remain	A knowledge of English equivalent to level C1 or above of the Council of Europe's Common European Framework for Language Learning
B	Tier 1 (Entrepreneur)	Entry clearance and leave to remain	A knowledge of English equivalent to level B1 or above of the Council of Europe's Common European Framework for Language Learning
C	Tier 1 (Graduate Entrepreneur)	Entry clearance and leave to remain	A knowledge of English equivalent to level B1 or above of the Council of Europe's Common European Framework for Language Learning

### Tier 2

Row	Category	Applications	Level of English language required
E	Tier 2 (Minister of Religion)	Entry clearance and leave to remain	A knowledge of English equivalent to level B2 or above of the Council of Europe's Common European Framework for Language Learning
F	Tier 2 (General)	Entry clearance and leave to remain, other than the cases in paragraph 5 below	A knowledge of English equivalent to level B1 or above of the Council of Europe's Common European Framework for Language Learning
G	Tier 2 (General)	Leave to remain cases in paragraph 5 below	A knowledge of English equivalent to level A1 or above of the Council of Europe's Common European Framework for Language Learning
H	Tier 2 (Sportsperson)	Entry clearance and leave to remain	A knowledge of English equivalent to level A1 or above of the Council of Europe's Common European Framework for

			Language Learning
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**Notes**

5. An applicant applying for leave to remain as a Tier 2 (General) Migrant must have competence of English to a level A1 or above as set out in Table 1 above if:

(i) he previously had leave as:

(1) a Tier 2 (General) Migrant under the rules in place before 6 April 2011,

(2) a Qualifying Work Permit Holder,

(3) a representative of an overseas newspaper, news agency or Broadcasting organisation,

(4) a Member of the Operational Ground Staff of an Overseas-owned Airline, or

(5) a Jewish Agency Employee,

and

(ii) he has not been granted leave to remain in any other routes, or entry clearance or leave to enter in any route, since the grant of leave referred to in (i) above.

**Table 2  
Points available for English language**

Factor	Points
National of a majority English speaking country	10
Degree taught in English	10
Passed an English language test	10
Met requirement in a previous grant of leave	10
Transitional arrangements	10

**Notes**

**National of a majority English speaking country**

6. 10 points will only be awarded for being a national of a majority English speaking country if the applicant has the relevant level of English language shown in Table 1 and:

(i) is a national of one of the following countries:

Antigua and Barbuda

Australia

The Bahamas

Barbados

Belize

Canada

Dominica

Grenada

Guyana

Jamaica

New Zealand

St Kitts and Nevis

St Lucia

St Vincent and the Grenadines

Trinidad and Tobago  
USA

and

(ii) provides his current valid original passport or travel document to show that this requirement is met. If the applicant is unable to do so, the UK Border Agency may exceptionally consider this requirement to have been met where the applicant provides full reasons in the passport section of the application form, and either:

(1) a current national identity document, or

(2) an original letter from his home government or embassy, on the letter-headed paper of the government or embassy, which has been issued by an authorised official of that institution and confirms the applicant's full name, date of birth and nationality.

### **Degree taught in English**

7. 10 points will be awarded for a degree taught in English if the applicant has the relevant level of English language shown in Table 1 and:

(i) has obtained an academic qualification (not a professional or vocational qualification) which either:

(1) is deemed by UK NARIC to meet the recognised standard of a Bachelor's degree (not a Master's degree or a PhD) in the UK, and UK NARIC has confirmed that the degree was taught or researched in English to level C1 of the Council of Europe's Common European Framework for Language learning or above

or:

(2) is deemed by UK NARIC to meet or exceed the recognised standard of a Bachelor's or Master's degree or a PhD in the UK, and is from an educational establishment in one of the following countries:

Antigua and Barbuda  
Australia  
The Bahamas  
Barbados  
Belize  
Dominica  
Grenada  
Guyana  
Ireland  
Jamaica  
New Zealand  
St Kitts and Nevis  
St Lucia  
St Vincent and The Grenadines  
Trinidad and Tobago  
the UK  
the USA,

and

(ii) provides the following specified documents to show he has the qualification:

(1) the original certificate of the award, or

(2) if the applicant is awaiting graduation having successfully completed the qualification, or no longer has the certificate and the awarding institution is unable to provide a replacement, an academic transcript (or original letter in the case of a PhD qualification) from the awarding institution on its official headed paper, which clearly shows:

(a) the applicant's name,

(b) the name of the awarding institution,

(c) the title of the award,

(d) confirmation that the qualification has been or will be awarded, and

(e) the date that the certificate will be issued (if the applicant has not yet graduated) or confirmation that the institution is unable to reissue the original certificate or award.

8. If the applicant is required to have competence of English to level A1 as set out in Table 1 above (rows G and H) , 10 points will be awarded for a degree taught in English if the applicant has the relevant level of English language shown in Table 1 and:

(i) has obtained an academic qualification (not a professional or vocational qualification) which is deemed by UK NARIC to meet or exceed the recognised standard of a Bachelor's or Master's degree or a PhD in the UK,

(ii) provides the specified documents in paragraph 7(ii) evidence to show that he has the qualification, and

(iii) provides provide an original letter from the awarding institution on its official headed paper, which clearly shows:

(1) the applicant's name,

(2) the name of the awarding institution,

(3) the title of the award,

(4) the date of the award, and

(5) confirmation that the qualification was taught in English.

9. An applicant for entry clearance or leave to remain as a Tier 1 (Graduate Entrepreneur) Migrant does not need to provide evidence of a qualification taught in English if:

(a) the applicant scores points from Appendix A for an endorsement by the UK Higher Education Institution which awarded the qualification; and

(b) the endorsement letter contains the specified details of the qualification, as set out in paragraph 70(c) of Appendix A..

#### **Passed an English language test**

10. 10 points will only be awarded for passing an English language test if the applicant has the relevant level of English language shown in Table 1 and provides the specified documents from an English language test provider approved by the Secretary of State for these purposes, as listed in Appendix O, which clearly show:

(1) the applicant's name,

(2) the qualification obtained, which must meet or exceed the relevant level shown in Table 1 in all four components (reading, writing, speaking and listening), unless the applicant was exempted from sitting a component on the basis of his disability,

(3) the date of the award, and

(4) that the test is within its validity date (where applicable).

#### **Met requirement in a previous grant of leave**

11. Subject to paragraph 15 below, 10 points will be awarded for meeting the requirement in a previous grant of leave if the applicant:

(i) has ever been granted leave as a Tier 1 (General) Migrant, a Tier 1 (Entrepreneur) Migrant or Business person, or a Tier 1 (Post-Study Work) Migrant, or

(ii) has ever been granted leave as a Highly Skilled Migrant under the Rules in place on or after 5 December 2006.

12. Subject to paragraph 15 below, where the application falls under rows B to H of Table 1 above, 10 points will be awarded for meeting the requirement in a previous grant of leave if the applicant has ever been granted leave:

(a) as a Minister of Religion (not as a Tier 2 (Minister of Religion) Migrant) under the Rules in place on or after 19 April 2007,

(b) as a Tier 2 (Minister of Religion) Migrant, provided that when he was granted that leave he obtained points for English language for being a national of a majority English speaking country, a degree taught in English, or passing an English language test, or

(c) as a Tier 4 (General) student, and the Confirmation of Acceptance for Studies used to support that application was assigned on or after 21 April 2011 for a course of at least degree level study.

13. Subject to paragraph 15 below, where the application falls under rows B to C or rows F to H of Table 1 above, 10 points will be awarded for meeting the requirement in a previous grant of leave if the applicant has ever been granted leave:

(a) as a Tier 1 (Graduate Entrepreneur) Migrant,

(b) as a Tier 2 (General) Migrant under the Rules in place on or after 6 April 2011, or

(c) as a Tier 4 (General) student, and the Confirmation of Acceptance for Studies used to support that application was assigned on or after 21 April 2011,

provided that when he was granted that leave he obtained points for having knowledge of English equivalent to level B1 of the Council of Europe's Common European Framework for Language Learning or above.

14. Subject to paragraph 15 below, where the application falls under rows G and H of table 1 above, 10 points will be awarded for meeting the requirement in a previous grant of leave if the applicant has ever been granted:

(i) leave as a Minister of Religion (not as a Tier 2 (Minister of Religion) Migrant) under the Rules in place on or after 23 August 2004,

(ii) leave as a Tier 2 Migrant, provided that when he was granted that leave he obtained points for English language for being a national of a majority English speaking country, a degree taught in English, or passing an English language test.

15. No points will be awarded for meeting the requirement in a previous grant of leave if false representations were made or false documents or information were submitted (whether or not to the applicant's knowledge) in relation to the requirement in the application for that previous grant of leave.

#### **Transitional arrangements**

16. 10 points will be awarded for English language if the applicant:

(a) is applying for leave to remain as a Tier 2 (General) Migrant, and

(b) has previously been granted entry clearance, leave to enter or leave to remain as:

(i) a Jewish Agency Employee,

(ii) a Member of the Operational Ground Staff of an Overseas-owned Airline,

(iii) a Minister of Religion, Missionary or Member of a Religious Order,

(iv) a Qualifying Work Permit Holder,

(v) a Representative of an Overseas Newspaper, News Agency or Broadcasting Organisation

and

(c) has not been granted leave in any categories other than Tier 2 (General), Tier 2 (Intra-Company Transfer) and those listed in (b) above under the Rules in place since 28 November 2008.

17. 10 points will be awarded for English language if the applicant:

(a) is applying for leave to remain as a Tier 2 (Minister of Religion) Migrant,

(b) has previously been granted entry clearance, leave to enter and/or leave to remain as a Minister of Religion, Missionary or Member of a Religious Order, and

(c) has not been granted leave in any categories other than Tier 2 (Minister of Religion) and those listed in (b) above under the Rules in place since 28 November 2008.

18. 10 points will be awarded for English language if the applicant:

(a) is applying for leave to remain as a Tier 2 (Sportsperson) Migrant,

(b) has previously been granted entry clearance, leave to enter and/or leave to remain as a Qualifying Work Permit Holder, and

(c) has not been granted leave in any categories other than Tier 2 (Sportsperson) and as a Qualifying Work Permit Holder under the Rules in place since 28 November 2008.

## Appendix C - Funds

### Paras 1A-1B

1A. In all cases where an applicant is required to obtain points under Appendix C, the applicant must meet the requirements listed below:

- (a) The applicant must have the funds specified in the relevant part of Appendix C at the date of the application;
- (b) If the applicant is applying as a Tier 1 Migrant, a Tier 2 Migrant or a Tier 5 (Temporary Worker) Migrant, the applicant must have had the funds referred to in (a) above for a consecutive 90-day period of time, unless applying as a Tier 1 (Exceptional Talent) Migrant or a Tier 1 (Investor) Migrant;
- (c) If the applicant is applying as a Tier 4 Migrant, the applicant must have had the funds referred to in (a) above for a consecutive 28-day period of time;
- (ca) If the applicant is applying for entry clearance or leave to remain as a Tier 4 Migrant, he must confirm that the funds referred to in (a) above are:
  - (i) available in the manner specified in paragraph 13 below for his use in studying and living in the UK; and
  - (ii) that the funds will remain available in the manner specified in paragraph 13 below unless used to pay for course fees and living costs;
- (d) If the funds were obtained when the applicant was in the UK, the funds must have been obtained while the applicant had valid leave and was not acting in breach of any conditions attached to that leave;
- (e) Where the funds are in one or more foreign currencies, the applicant must have the specified level of funds when converted to pound sterling (£) using the spot exchange rate which appears on [www.oanda.com](http://www.oanda.com)\* for the date of the application;
- (f) Where the applicant is applying as a Tier 1 Migrant, a Tier 2 Migrant or a Tier 5 Migrant, the funds must have been under his own control on the date of the application and for the period specified in (b) above; and
- (g) Where the application is made at the same time as applications by the partner or child of the applicant (such that the applicant is a Relevant Points Based System Migrant for the purposes of paragraph 319AA), each applicant must have the total requisite funds specified in the relevant parts of appendices C and E. If each applicant does not individually meet the requirements of appendices C and / or E, as appropriate, all the applications (the application by the Relevant Points Based System Migrant and applications as the partner or child of that relevant Points Based system Migrant) will be refused.
- (h) the end date of the 90-day and 28-day periods referred to in (b) and (c) above will be taken as the date of the closing balance on the most recent of the specified documents (where specified documents from two or more accounts are submitted, this will be the end date for the account that most favours the applicant), and must be no earlier than 31 days before the date of application.
- (i) No points will be awarded where the specified documents show that the funds are held in a financial institution listed in Appendix P as being an institution with which the UK Border Agency is unable to make satisfactory verification checks.
- (j) Maintenance must be in the form of cash funds. Other accounts or financial instruments such as shares, bonds, pension funds etc, regardless of notice period are not acceptable.
- (k) If the applicant wishes to rely on a joint account as evidence of available funds, the applicant (or for children under 18 years of age, the applicant's parent or legal guardian who is legally present in the United Kingdom) must be named on the account as one of the account holders.
- (l) Overdraft facilities will not be considered towards funds that are available or under an applicant's own control.



1B. In all cases where Appendix C or Appendix E states that an applicant is required to provide specified documents, the specified documents are:

(a) Personal bank or building society statements which satisfy the following requirements:

(i) The statements must cover:

(1) a consecutive 90-day period of time, if the applicant is applying as a Tier 1 Migrant, a Tier 2 Migrant a Tier 5 (Temporary Worker) Migrant, or the Partner or Child of a Relevant Points Based System Migrant in any of these categories,

(2) a single date within 31 days of the date of the application, if the applicant is applying as a Tier 5 (Youth Mobility Scheme) Migrant, or

(3) a consecutive 28-day period of time, if the applicant is applying as a Tier 4 Migrant or the Partner or Child of a Relevant Points Based System Migrant who is a Tier 4 Migrant

(ii) The most recent statement must be dated no earlier than 31 days before the date of the application;

(iii) The statements must clearly show:

(1) the name of:

\_i. the applicant,

\_ii the applicant's parent(s) or legal guardian's name, if the applicant is applying as Tier 4 Migrant,

\_iii. the name of the Relevant Points-Based System Migrant, if the applicant is applying as a Partner or Child of a Relevant Points-Based System Migrant, or

\_iv. the name of the applicant's other parent who is legally present in the UK, if the applicant is applying as a Child of a Relevant Points-Based System Migrant,

(2) the account number,

(3) the date of each statement,

(4) the financial institution's name,

(5) the financial institution's logo,

(6) any transactions during the specified period, and

(7) that the funds in the account have been at the required level throughout the specified period;

(iv) The statements must be either:

(1) printed on the bank's or building society's letterhead,

(2) electronic bank or building society statements, accompanied by a supporting letter from the bank or building society, on company headed paper, confirming the statement provided is authentic, or

(3) electronic bank or building society statements, bearing the official stamp of the bank or building society on every page,

(v) The statements must not be mini-statements from automatic teller machines (ATMs);

or

(b) A building society pass book which satisfies the following requirements:

(i) The building society pass book must cover:

(1) a consecutive 90-day period of time, if the applicant is applying as a Tier 1 Migrant, a Tier 2 Migrant a Tier 5 (Temporary Worker) Migrant, or the Partner or Child of a Relevant Points Based System Migrant in any of these categories,

(2) a single date within 31 days of the date of the application, if the applicant is applying as a Tier 5 (Youth Mobility Scheme) Migrant, or

(3) a consecutive 28-day period of time, if the applicant is applying as a Tier 4 Migrant or the Partner or Child of a Relevant Points Based System Migrant who is a Tier 4 Migrant

(ii) The period covered by the building society pass book must end no earlier than 31 days before the date of the application;

(iii) The building society pass book must clearly show:

(1) the name of:

\_i. the applicant,

\_ii the applicant's parent(s) or legal guardian's name, if the applicant is applying as Tier 4 Migrant,

\_iii. the name of the Relevant Points-Based System Migrant, if the applicant is applying as a Partner or Child of a Relevant Points-Based System Migrant, or

\_iv. the name of the applicant's other parent who is legally present in the UK, if the applicant is applying as a Child of a Relevant Points-Based System Migrant,

(2) the account number,

(3) the building society's name and logo,

(4) any transactions during the specified period, and

(5) that there have been enough funds in the applicant's account throughout the specified period;

or

(c) A letter from the applicant's bank or building society, or a letter from a financial institution regulated for the purpose of personal savings accounts by the Financial Conduct Authority (FCA) and the Prudential Regulation Authority (PRA) or, for overseas accounts, the official regulatory body for the country in which the institution operates and the funds are located, which satisfies the following requirements:

(i) The letter must confirm the level of funds and that they have been held for:

(1) a consecutive 90-day period of time, if the applicant is applying as a Tier 1 Migrant, a Tier 2 Migrant a Tier 5 (Temporary Worker) Migrant, or the Partner or Child of a Relevant Points Based System Migrant in any of these categories,

(2) a single date within 31 days of the date of the application, if the applicant is applying as a Tier 5 (Youth Mobility Scheme) Migrant, or

(3) a consecutive 28-day period of time, if the applicant is applying as a Tier 4 Migrant or the Partner or Child of a Relevant Points Based System Migrant who is a Tier 4 Migrant;

(ii) The period covered by the letter must end no earlier than 31 days before the date of the application;

(iii) The letter must be dated no earlier than 31 days before the date of the application;

(iv) The letter must be on the financial institution's letterhead or official stationery;

(v) The letter must clearly show:

(1) the name of:

\_i. the applicant,

\_ii the applicant's parent(s) or legal guardian's name, if the applicant is applying as Tier 4 Migrant,

\_iii. the name of the Relevant Points-Based System Migrant, if the applicant is applying as a Partner or Child of a Relevant Points-Based System Migrant, or

\_iv. the name of the applicant's other parent who is legally present in the UK, if the applicant is applying as a Child of a Relevant Points-Based System Migrant,

(2) the account number,

(3) the date of the letter,

(4) the financial institution's name and logo,

(5) the funds held in the applicant's account, and

(5) confirmation that there have been enough funds in the applicant's account throughout the specified period;

or

(d) If the applicant is applying as a Tier 4 Migrant, an original loan letter from a financial institution regulated for the purpose of student loans by either the Financial Conduct Authority (FCA) and the Prudential Regulation Authority (PRA) or, in the case of overseas accounts, the official regulatory body for the country the institution is in and where the money is held, which is dated no more than 6 months before the date of the application and clearly shows:

- (1) the applicant's name,
- (2) the date of the letter,
- (3) the financial institution's name and logo,
- (4) the money available as a loan,
- (5) for applications for entry clearance, that the loan funds are or will be available to the applicant before he travels to the UK, unless the loan is an academic or student loan from the applicant's country's national government and will be released to the applicant on arrival in the UK,
- (6) there are no conditions placed upon the release of the loan funds to the applicant, other than him making a successful application as a Tier 4 Migrant, and
- (7) the loan is provided by the national government, the state or regional government or a government sponsored student loan company or is part of an academic or educational loans scheme.

### Tier 1 Migrants

1. An applicant applying for entry clearance or leave to remain as a Tier 1 Migrant must score 10 points for funds, unless applying as a Tier 1 (Exceptional Talent) Migrant or a Tier 1 (Investor) Migrant.

2. 10 points will only be awarded if an applicant:

(a) applying for entry clearance, has the level of funds shown in the table below and provides the specified documents in paragraph 1B above, or

Category	Level of funds	Points
Tier 1 (Entrepreneur)	£3,310	10
Tier 1 (Graduate Entrepreneur)	£1,890	10

(b) applying for leave to remain, has the level of funds shown in the table below and provides the specified documents in paragraph 1B above, or

Level of funds	Points
£945	10

(c) applying as a Tier 1 (Graduate Entrepreneur) Migrant scores points from Appendix A for an endorsement from UK Trade and Investment, and UK Trade and Investment has confirmed in the endorsement letter that it has awarded funding of at least £1,890 (for entry clearance applications) or £945 (for leave to remain applications) to the applicant.

3. Where the applicant is applying as a Tier 1 (Entrepreneur) Migrant, he cannot use the same funds to score points for attributes under Appendix A and to score points for maintenance funds for himself or his dependants under this Appendix or Appendix E.

### Tier 2 Migrants

4. An applicant applying for entry clearance or leave to remain as a Tier 2 Migrant must score 10 points for Funds.

5. 10 points will only be awarded if:

(a) the applicant has the level of funds shown in the table below and provides the specified documents in paragraph 1B above, or

Level of funds	Points awarded
£945	10

(b) the applicant has entry clearance, leave to enter or leave to remain as:

- (i) a Tier 2 Migrant
- (ii) a Jewish Agency Employee
- (iii) A member of the Operational Ground Staff of an Overseas-owned Airline,
- (iv) a Minister of Religion, Missionary or Member of a Religious Order,
- (v) a Representative of an Overseas Newspaper, News Agency or Broadcasting Organisation, or
- (vi) a Work Permit Holder, or

(c) the Sponsor is an a rated Sponsor and has certified on the Certificate of Sponsorship that, should it become necessary, it will maintain and accommodate the migrant up to the end of the first month of his employment. The Sponsor may limit the amount of the undertaking but any limit must be at least £945. Points will only be awarded if the applicant provides a valid Certificate of Sponsorship reference number with his application.

#### **Tier 5 (Youth Mobility) Temporary Migrants**

6. An applicant applying for entry clearance as a Tier 5 (Youth Mobility) Temporary Migrant must score 10 points for funds.

**7. 10 points will only be awarded if an applicant has the level of funds shown in the table below and provides the specified documents in paragraph 1B above:**

Level of funds	Points awarded
£1890	10

#### **Tier 5 (Temporary Worker) Migrants**

8. A migrant applying for entry clearance or leave to remain as a Tier 5 (Temporary Worker) Migrant must score 10 points for funds.

9. 10 points will only be awarded if an applicant has the level of funds shown in the table below and provides the specified documents in paragraph 1B above:

Criterion	Points awarded
<p>Meets one of the following criteria:</p> <ul style="list-style-type: none"> <li>• Has £945; or</li> <li>• The Sponsor is an A rated Sponsor and the Certificate of Sponsorship Checking Service confirms that the Sponsor has certified that the applicant will not claim public funds during his period of leave as a Tier 5 (Temporary Worker) Migrant.</li> </ul>	10

Points will only be awarded if the applicant provides a valid Certificate of Sponsorship reference number with his application.	
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#### Tier 4 (General) Students

10. A Tier 4 (General) Student must score 10 points for funds.

11. 10 points will only be awarded if the funds shown in the table below are available in the manner specified in paragraph 13 *and* 13A below to the applicant. The applicant must either:

(a) provide the specified documents in paragraph 1B above to show that the funds are available to him, or

(b) where the applicant is sponsored by a Highly Trusted Sponsor, is a national of one of the countries or the rightful holder of a qualifying passport issued by one of the relevant competent authorities, as appropriate, listed in Appendix H, and is applying for entry clearance in his country of nationality or in the territory related to the passport he holds, as appropriate, or leave to remain in the UK, confirm that the funds are available to him in the specified manner. The UK Border Agency reserves the right to request the specified documents in paragraph 1B above from these applicants to support this confirmation. The application will be refused if the specified documents are not provided in accordance with the request made.

Criterion	Points
<p><b>If studying in inner London:</b></p> <p>i) Where the applicant does not have an established presence studying in the United Kingdom, the applicant must have funds amounting to the full course fees for the first academic year of the course, or for the entire course if it is less than a year long, plus £1020 for each month of the course up to a maximum of nine months.</p> <p>ii) Where the applicant has an established presence studying in the United Kingdom, the applicant must have funds amounting to the course fees required either for the remaining academic year if the applicant is applying part-way through, or for the next academic year if the applicant will continue or commence a new course at the start of the next academic year, or for the entire course if it is less than a year long, plus £1020 for each month of the course up to a maximum of two months.</p>	10
<p><b>If studying in outer London and elsewhere in the United Kingdom:</b></p> <p>i) Where the applicant does not have an established presence studying in the United Kingdom, the applicant must have funds amounting to the full course fees for the first academic year of the course, or for the entire course if it is less than a year long, plus £820 for each month of the course up to a maximum of nine months.</p> <p>ii) Where the applicant has an established presence studying in the United Kingdom, the applicant must have funds amounting to the course fees required either for the remaining academic year if the applicant is applying part-way through, or for the next academic year if the applicant will continue or commence a new course at the start of the next academic year, or for the entire course if it is less than a year long, plus £820 for each month of the course up to a maximum of two months.</p>	10

#### Notes

12. An applicant will be considered to be studying in inner London if the institution, or branch of the institution, at which the applicant will be studying is situated in any of the London boroughs of Camden, City of London, Hackney, Hammersmith and Fulham, Haringey, Islington, Kensington and Chelsea, Lambeth, Lewisham, Newham Southwark, Tower Hamlets, Wandsworth, or Westminster. If the applicant will be studying at more than one site, one or more of which is in inner London and one

or more outside, then the applicant will be considered to be studying in inner London if the applicant's Confirmation of Acceptance for Studies states that the applicant will be spending the majority of time studying at a site or sites situated in inner London.

12A. If the length of the applicant's course includes a part of a month, the time will be rounded up to the next full month.

13. Funds will be available to the applicant only where the specified documents show or, where permitted by these Rules, the applicant confirms that the funds are held or provided by:

- (i) the applicant (whether as a sole or joint account holder); and/or
- (ii) the applicant's parent(s) or legal guardian(s), and the parent(s) or legal guardian(s) have provided written consent that their funds may be used by the applicant in order to study in the UK; and/or
- (iii) an official financial sponsor which must be Her Majesty's Government, the applicant's home government, the British Council or any international organisation, international company, University or Independent school.

13A. In assessing whether the requirements of Appendix C, paragraph 11 are met, where an applicant pays a deposit on account to the sponsor for accommodation costs this amount, up to a maximum of £1020, can be offset against the total maintenance requirement if he will be staying in accommodation arranged by the Tier 4 sponsor and he has paid this money to that Tier 4 sponsor.

13B. If the applicant is relying on the provisions in paragraph 13(ii) above, he must provide:

(a) one of the following original (or notarised copy) documents:

- (i) his birth certificate showing names of his parent(s),
- (ii) his certificate of adoption showing the names of both parent(s) or legal guardian, or
- (iii) a Court document naming his legal guardian;

and

(b) a letter from his parent(s) or legal guardian, confirming:

- (1) the relationship between the applicant and his parent(s) or legal guardian, and
- (2) that the parent(s) or legal guardian give their consent to the applicant using their funds to study in the UK.

13C. If the applicant has already paid all or part of the course fees to his Tier 4 Sponsor:

- (a) the Confirmation of Acceptance for Studies Checking Service entry must confirm details of the fees already paid; or
- (b) the applicant must provide an original paper receipt issued by the Tier 4 Sponsor, confirming details of the fees already paid.

13D. If the applicant has an official financial sponsor as set out in paragraph 13(iii) above:

- (a) the Confirmation of Acceptance for Studies Checking Service entry must confirm details of the official financial sponsorship, if it is the Tier 4 Sponsor who is the official financial sponsor; or
- (b) the applicant must provide a letter of confirmation from his official financial sponsor, on official letter-headed paper or stationery of that organisation and bearing the official stamp of that organisation, which clearly shows:

- (1) the applicant's name,
- (2) the name and contact details of the official financial sponsor,
- (3) the date of the letter,
- (4) the length of the official financial sponsorship, and
- (5) the amount of money the official financial sponsor is giving to the applicant, or a statement that the official financial sponsor will cover all of the applicant's fees and living costs.

14. An applicant will have an established presence studying in the UK if the applicant has current entry clearance, leave to enter or leave to remain as a Tier 4 migrant, Student or as a Postgraduate Doctor or Dentist and at the date of application:

(i) has finished a single course that was at least six months long within the applicant's last period of entry clearance, leave to enter or leave to remain, or

(ii) is applying for continued study on a single course where the applicant has completed at least six months of that course, or

(iii) is applying for leave to remain as a Tier 4 (General) Student on the doctorate extension scheme.

## Appendix FM family members

### Section GEN: General

#### Purpose

GEN.1.1. This route is for those seeking to enter or remain in the UK on the basis of their family life with a person who is a British Citizen, is settled in the UK, or is in the UK with limited leave as a refugee or person granted humanitarian protection (and the applicant cannot seek leave to enter or remain in the UK as their family member under Part 11 of these rules). It sets out the requirements to be met and, in considering applications under this route, it reflects how, under Article 8 of the Human Rights Convention, the balance will be struck between the right to respect for private and family life and the legitimate aims of protecting national security, public safety and the economic well-being of the UK; the prevention of disorder and crime; the protection of health or morals; and the protection of the rights and freedoms of others (and in doing so also reflects the relevant public interest considerations as set out in Part 5A of the Nationality, Immigration and Asylum Act 2002). It also takes into account the need to safeguard and promote the welfare of children in the UK in line with the Secretary of State's duty under section 55 of the Borders, Citizenship and Immigration Act 2009.

#### Definitions

GEN.1.2. For the purposes of this Appendix "partner" means-

- (i) the applicant's spouse;
- (ii) the applicant's civil partner;
- (iii) the applicant's fiancé(e) or proposed civil partner; or
- (iv) a person who has been living together with the applicant in a relationship akin to a marriage or civil partnership for at least two years prior to the date of application,

unless a different meaning of partner applies elsewhere in this Appendix.

GEN.1.3. For the purposes of this Appendix

- (a) "application for leave to remain" also includes an application for variation of leave to enter or remain by a person in the UK;
- (b) references to a person being present and settled in the UK also include a person who is being admitted for settlement on the same occasion as the applicant; and
- (c) references to a British Citizen in the UK also include a British Citizen who is coming to the UK with the applicant as their partner or parent.

GEN.1.4. In this Appendix "specified" means specified in Appendix FM-SE, unless otherwise stated.

GEN.1.5. If the Entry Clearance Officer, or Secretary of State, has reasonable cause to doubt the genuineness of any document submitted in support of an application, and having taken reasonable steps to verify the document, is unable to verify that it is genuine, the document will be discounted for the purposes of the application.

GEN.1.6. For the purposes of paragraph E-ECP.4.1.(a); E-LTRP.4.1.(a); EECPT. 4.1(a) and E-LTRPT.5.1.(a) the applicant must be a national of Antigua and Barbuda; Australia; the Bahamas; Barbados; Belize; Canada; Dominica; Grenada; Guyana; Jamaica; New Zealand; St Kitts and Nevis; St Lucia; St Vincent and the Grenadines; Trinidad and Tobago; or the United States of America.

GEN.1.7. In this Appendix references to paragraphs are to paragraphs of this Appendix unless the context otherwise requires.

GEN.1.8. Paragraphs 277-280, 289AA, 295AA and 296 of Part 8 of these Rules shall apply to this Appendix.

GEN.1.9. In this Appendix:

- (a) the requirement to make a valid application will not apply when the Article 8 claim is raised:



(i) as part of an asylum claim, or as part of a further submission in person after an asylum claim has been refused;

(ii) where a migrant is in immigration detention. A migrant in immigration detention or their representative must submit any application or claim raising Article 8 to a prison officer, a prisoner custody officer, a detainee custody officer or a member of Home Office staff at the migrant's place of detention; or

(iii) in an appeal (subject to the consent of the Secretary of State where applicable); and

(b) where an application or claim raising Article 8 is made in any of the circumstances specified in paragraph GEN.1.9.(a), or is considered by the Secretary of State under paragraph A277C of these rules, the requirements of paragraphs R-LTRP.1.1.(c) and R-LTRPT.1.1.(c) are not met.

GEN.1.10. Where an applicant does not meet the requirements of this Appendix as a partner or parent but the decision-maker grants entry clearance or leave to enter or remain outside the rules on Article 8 grounds, the applicant will normally be granted entry clearance for a period not exceeding 33 months, or leave to enter or remain for a period not exceeding 30 months, and subject to a condition of no recourse to public funds unless the decision-maker considers that the person should not be subject to such a condition.

GEN.1.11. Where entry clearance or leave to enter or remain is granted under this Appendix, or where an applicant does not meet the requirements of this Appendix as a partner or parent but the decision-maker grants entry clearance or leave to enter or remain outside the rules on Article 8 grounds, (and without prejudice to the specific provision that is made in this Appendix in respect of a no recourse to public funds condition), that leave may be subject to such conditions as the decision-maker considers appropriate in a particular case.

GEN.1.12. In paragraphs GEN.1.10. and GEN.1.11. "decision-maker" refers to the Secretary of State or an Entry Clearance Officer.

GEN.1.13. For the purposes of paragraphs D-LTRP.1.1., D-LTRP.1.2., D-ILRP.1.2., D-LTRPT.1.1., D-LTRPT.1.2., and D-ILRPT.1.2. (excluding a grant of limited leave to remain as a fiancé(e) or proposed civil partner), where the applicant has extant leave at the date of decision, the remaining period of that extant leave up to a maximum of 28 days will be added to the period of limited leave to remain granted under that paragraph (which may therefore exceed 30 months).

### **Leave to enter**

GEN.2.1. The requirements to be met by a person seeking leave to enter the UK under this route are that the person-

(a) must have a valid entry clearance for entry under this route; and

(b) must produce to the Immigration Officer on arrival a valid national passport or other document satisfactorily establishing their identity and nationality.

GEN.2.2. If a person does not meet the requirements of paragraph GEN.2.1. entry will be refused.

### **Family life with a partner**

#### **Section EC-P: Entry clearance as a partner**

EC-P.1.1. The requirements to be met for entry clearance as a partner are that-

(a) the applicant must be outside the UK;

(b) the applicant must have made a valid application for entry clearance as a partner;

(c) the applicant must not fall for refusal under any of the grounds in Section S-EC: Suitability–entry clearance; and

(d) the applicant must meet all of the requirements of Section E-ECP: Eligibility for entry clearance as a partner.

### **Section S-EC: Suitability-entry clearance**

S-EC.1.1. The applicant will be refused entry clearance on grounds of suitability if any of paragraphs S-EC.1.2. to 1.8. apply.

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 currently 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:

(a) been convicted of an offence for which they have been sentenced to a period of imprisonment of at least 4 years; or

(b) been convicted of an offence for which they have been sentenced to a period of imprisonment of at least 12 months but less than 4 years, unless a period of 10 years has passed since the end of the sentence; or

(c) been convicted of an offence for which they have been sentenced to a period of imprisonment of less than 12 months, unless a period of 5 years has passed since the end of the sentence.

Where this paragraph applies, unless refusal would be contrary to the Human Rights

Convention or the Convention and Protocol Relating to the Status of Refugees, it will only be in exceptional circumstances that the public interest in maintaining refusal will be outweighed by compelling factors.

S-EC.1.5. The exclusion of the applicant from the UK is conducive to the public good because, for example, the applicant's conduct (including convictions which do not fall within paragraph SEC.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 comply with a requirement to-

(a) attend an interview;

(b) provide information;

(c) provide physical data; or

(d) undergo a medical examination or provide a medical report.

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

S-EC.1.8. The applicant left or was removed from the UK as a condition of a caution issued in accordance with section 22 of the Criminal Justice Act 2003 less than 5 years prior to the date on which the application is decided.

S-EC.2.1. The applicant will normally be refused on grounds of suitability if any of paragraphs S-EC.2.2. to 2.5. 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.

S-EC.2.5. The exclusion of the applicant from the UK is conducive to the public good because:

(a) within the 12 months prior to the date on which the application is decided, the person has been convicted of or admitted an offence for which they received a non-custodial sentence or other out of court disposal that is recorded on their criminal record; or

(b) in the view of the Secretary of State:

(i) the person's offending has caused serious harm; or

(ii) the person is a persistent offender who shows a particular disregard for the law.

### **Section E-ECP: Eligibility for entry clearance as a partner**

E-ECP.1.1. To meet the eligibility requirements for entry clearance as a partner all of the requirements in paragraphs E-ECP.2.1. to 4.2. must be met.

#### **Relationship requirements**

E-ECP.2.1. The applicant's partner must be-

(a) a British Citizen in the UK, subject to paragraph GEN.1.3.(c); or

(b) present and settled in the UK, subject to paragraph GEN.1.3.(b); or (c) in the UK with refugee leave or with humanitarian protection.

E-ECP.2.2. The applicant must be aged 18 or over at the date of application.

E-ECP.2.3. The partner must be aged 18 or over at the date of application.

E-ECP.2.4. The applicant and their partner must not be within the prohibited degree of relationship.

E-ECP.2.5. The applicant and their partner must have met in person.

E-ECP.2.6. The relationship between the applicant and their partner must be genuine and subsisting.

E-ECP.2.7. If the applicant and partner are married or in a civil partnership it must be a valid marriage or civil partnership, as specified.

E-ECP.2.8. If the applicant is a fiancé(e) or proposed civil partner they must be seeking entry to the UK to enable their marriage or civil partnership to take place.

E-ECP.2.9. Any previous relationship of the applicant or their partner must have broken down permanently, unless it is a relationship which falls within paragraph 278(i) of these Rules.

E-ECP.2.10. The applicant and partner must intend to live together permanently in the UK.

#### **Financial requirements**

E-ECP.3.1. The applicant must provide specified evidence, from the sources listed in paragraph E-ECP.3.2., of-

- (a) a specified gross annual income of at least-
  - (i) £18,600;
  - (ii) an additional £3,800 for the first child; and
  - (iii) an additional £2,400 for each additional child; alone or in combination with
- (b) specified savings of-
  - (i) £16,000; and
  - (ii) additional savings of an amount equivalent to 2.5 times the amount which is the difference between the gross annual income from the sources listed in paragraph E-ECP.3.2.(a)-(d) and the total amount required under paragraph E- ECP.3.1.(a); or
- (c) the requirements in paragraph E-ECP.3.3.being met.

In this paragraph "child" means a dependent child of the applicant who is-

- (a) under the age of 18 years, or who was under the age of 18 years when they were first granted entry under this route;
- (b) applying for entry clearance as a dependant of the applicant, or has limited leave to enter or remain in the UK;
- (c) not a British Citizen or settled in the UK; and
- (d) not an EEA national with a right to be admitted under the Immigration (EEA) Regulations 2006.

E-ECP.3.2. When determining whether the financial requirement in paragraph E-ECP.3.1. is met only the following sources will be taken into account-

3.1. is met only the following sources will be taken into account-

- (a) income of the partner from specified employment or self-employment, which, in respect of a partner returning to the UK with the applicant, can include specified employment or self-employment overseas and in the UK;
- (b) specified pension income of the applicant and partner;
- (c) any specified maternity allowance or bereavement benefit received by the partner in the UK or any specified payment relating to service in HM Forces received by the applicant or partner;
- (d) other specified income of the applicant and partner; and
- (e) specified savings of the applicant and partner.

E-ECP.3.3. The requirements to be met under this paragraph are-

- (a) the applicant's partner must be receiving one or more of the following -
  - (i) disability living allowance;
  - (ii) severe disablement allowance;
  - (iii) industrial injury disablement benefit;
  - (iv) attendance allowance;
  - (v) carer's allowance;
  - (vi) personal independence payment;
  - (vii) Armed Forces Independence Payment or Guaranteed Income Payment under the Armed Forces Compensation Scheme; or

(viii) Constant Attendance Allowance, Mobility Supplement or War Disablement Pension under the War Pensions Scheme; and

(b) the applicant must provide evidence that their partner is able to maintain and accommodate themselves, the applicant and any dependants adequately in the UK without recourse to public funds.

E-ECP.3.4. The applicant must provide evidence that there will be adequate accommodation, without recourse to public funds, for the family, including other family members who are not included in the application but who live in the same household, which the family own or occupy exclusively: accommodation will not be regarded as adequate if-

(a) it is, or will be, overcrowded; or

(b) it contravenes public health regulations.

### **English language requirement**

E-ECP.4.1. The applicant must provide specified evidence that they-

(a) are a national of a majority English speaking country listed in paragraph GEN.1.6.;

(b) have passed an English language test in speaking and listening at a minimum of level A1 of the Common European Framework of Reference for Languages with a provider approved by the Secretary of State;

(c) have an academic qualification recognised by UK NARIC to be equivalent to the standard of a Bachelor's or Master's degree or PhD in the UK, which was taught in English; or

(d) are exempt from the English language requirement under paragraph E-ECP. 4.2.

E-ECP.4.2. The applicant is exempt from the English language requirement if at the date of application-

(a) the applicant is aged 65 or over;

(b) the applicant has a disability (physical or mental condition) which prevents the applicant from meeting the requirement; or

(c) there are exceptional circumstances which prevent the applicant from being able to meet the requirement prior to entry to the UK.

### **Section D-ECP: Decision on application for entry clearance as a partner**

D-ECP.1.1. If the applicant meets the requirements for entry clearance as a partner the applicant will be granted entry clearance for an initial period not exceeding 33 months, and subject to a condition of no recourse to public funds; or, where the applicant is a fiancé(e) or proposed civil partner, the applicant will be granted entry clearance for a period not exceeding 6 months, and subject to a condition of no recourse to public funds and a prohibition on employment.

D-ECP.1.2. Where the applicant does not meet the requirements for entry clearance as a partner the application will be refused.

### **Section R-LTRP: Requirements for limited leave to remain as a partner**

R-LTRP.1.1. The requirements to be met for limited leave to remain as a partner are-

(a) the applicant and their partner must be in the UK;

(b) the applicant must have made a valid application for limited or indefinite leave to remain as a partner; and either

(c)

- (i) the applicant must not fall for refusal under Section S-LTR: Suitability leave to remain; and
- (ii) the applicant meets all of the requirements of Section E-LTRP: Eligibility for leave to remain as a partner; or

(d)

- (i) the applicant must not fall for refusal under Section S-LTR: Suitability leave to remain; and
- (ii) the applicant meets the requirements of paragraphs E-LTRP.1.2-1.12. and E- LTRP.2.1.; and
- (iii) paragraph EX.1. applies.

### **Section S-LTR: Suitability-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 currently 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 comply with a requirement to-

- (a) attend an interview;
- (b) provide information;
- (c) provide physical data; or
- (d) undergo a medical examination or provide a medical report.

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.

### **Section E-LTRP: Eligibility for limited leave to remain as a partner**

E-LTRP.1.1. To qualify for limited leave to remain as a partner all of the requirements of paragraphs E-LTRP.1.2. to 4.2. must be met.

#### **Relationship requirements**

E-LTRP.1.2. The applicant's partner must be-

- (a) a British Citizen in the UK;
- (b) present and settled in the UK; or
- (c) in the UK with refugee leave or as a person with humanitarian protection.

E-LTRP.1.3. The applicant must be aged 18 or over at the date of application.

E-LTRP.1.4. The partner must be aged 18 or over at the date of application.

E-LTRP.1.5. The applicant and their partner must not be within the prohibited degree of relationship.

E-LTRP.1.6. The applicant and their partner must have met in person.

E-LTRP.1.7. The relationship between the applicant and their partner must be genuine and subsisting.

E-LTRP.1.8. If the applicant and partner are married or in a civil partnership it must be a valid marriage or civil partnership, as specified.

E-LTRP.1.9. Any previous relationship of the applicant or their partner must have broken down permanently, unless it is a relationship which falls within paragraph 278(i) of these Rules.

E-LTRP.1.10. The applicant and their partner must intend to live together permanently in the UK and, in any application for further leave to remain as a partner (except where the applicant is in the UK as a fiancé(e) or proposed civil partner) and in any application for indefinite leave to remain as a partner, the applicant must provide evidence that, since entry clearance as a partner was granted under paragraph D-ECP1.1. or since the last grant of limited leave to remain as a partner, the applicant and their partner have lived together in the UK or there is good reason, consistent with a continuing intention to live together permanently in the UK, for any period in which they have not done so.

E-LTRP.1.11. If the applicant is in the UK with leave as a fiancé(e) or proposed civil partner and the marriage or civil partnership did not take place during that period of leave, there must be good reason why and evidence that it will take place within the next 6 months.

E-LTRP.1.12. The applicant's partner cannot be the applicant's fiancé(e) or proposed civil partner, unless the applicant was granted entry clearance as that person's fiancé(e) or proposed civil partner.

#### **Immigration status requirements**

E-LTRP.2.1. The applicant must not be in the UK-

- (a) as a visitor; or
- (b) with valid leave granted for a period of 6 months or less, unless that leave is as a fiancé(e) or proposed civil partner, or was granted pending the outcome of family court or divorce proceedings

E-LTRP.2.2. The applicant must not be in the UK –

- (a) on temporary admission or temporary release, unless paragraph EX.1. applies; or
- (b) in breach of immigration laws (disregarding any period of overstaying for a period of 28 days or less), unless paragraph EX.1. applies.

### **Financial requirements**

E-LTRP.3.1. The applicant must provide specified evidence, from the sources listed in paragraph E-LTRP.3.2., of-

- (a) a specified gross annual income of at least-
  - (i) £18,600;
  - (ii) an additional £3,800 for the first child; and
  - (iii) an additional £2,400 for each additional child; alone or in combination with
- (b) specified savings of-
  - (i) £16,000; and
  - (ii) additional savings of an amount equivalent to 2.5 times the amount which is the difference between the gross annual income from the sources listed in paragraph E-LTRP.3.2.(a)-(f) and the total amount required under paragraph E-LTRP.3.1.(a); or
- (c) the requirements in paragraph E-LTRP.3.3. being met, unless paragraph EX.1. applies.

In this paragraph "child" means a dependent child of the applicant who is-

- (a) under the age of 18 years, or who was under the age of 18 years when they were first granted entry under this route;
- (b) applying for entry clearance or is in the UK as a dependant of the applicant;
- (c) not a British Citizen or settled in the UK; and
- (d) not an EEA national with a right to remain in the UK under the Immigration (EEA) Regulations 2006.

E-LTRP.3.2. When determining whether the financial requirement in paragraph ELTRP.

3.1. is met only the following sources may be taken into account-

- (a) income of the partner from specified employment or self-employment;
- (b) income of the applicant from specified employment or self-employment unless they are working illegally;
- (c) specified pension income of the applicant and partner;
- (d) any specified maternity allowance or bereavement benefit received by the applicant and partner in the UK or any specified payment relating to service in HM Forces received by the applicant or partner;
- (e) other specified income of the applicant and partner;



- (f) income from the sources at (b), (d) or (e) of a dependent child of the applicant under paragraph E-LTRP.3.1. who is aged 18 years or over; and
- (g) specified savings of the applicant, partner and a dependent child of the applicant under paragraph E-LTRP.3.1. who is aged 18 years or over.

E-LTRP.3.3. The requirements to meet this paragraph are-

- (a) the applicant's partner must be receiving one or more of the following -
  - (i) disability living allowance;
  - (ii) severe disablement allowance;
  - (iii) industrial injury disablement benefit;
  - (iv) attendance allowance;
  - (v) carer's allowance;
  - (vi) personal independence payment;
  - (vii) Armed Forces Independence Payment or Guaranteed Income Payment under the Armed Forces Compensation Scheme; or
  - (viii) Constant Attendance Allowance, Mobility Supplement or War Disablement Pension under the War Pensions Scheme; and.
- (b) the applicant must provide evidence that their partner is able to maintain and accommodate themselves, the applicant and any dependants adequately in the UK without recourse to public funds.

E-LTRP.3.4. The applicant must provide evidence that there will be adequate accommodation, without recourse to public funds, for the family, including other family members who are not included in the application but who live in the same household, which the family own or occupy exclusively, unless paragraph EX.1. applies: accommodation will not be regarded as adequate if-

- (a) it is, or will be, overcrowded; or
- (b) it contravenes public health regulations.

### **English language requirement**

E-LTRP.4.1. If the applicant has not met the requirement in a previous application for leave as a partner or parent, the applicant must provide specified evidence that they-

- (a) are a national of a majority English speaking country listed in paragraph GEN.1.6.;
- (b) have passed an English language test in speaking and listening at a minimum of level A1 of the Common European Framework of Reference for Languages with a provider approved by the Secretary of State;
- (c) have an academic qualification recognised by UK NARIC to be equivalent to the standard of a Bachelor's or Master's degree or PhD in the UK, which was taught in English; or
- (d) are exempt from the English language requirement under paragraph E-LTRP. 4.2; unless paragraph EX.1. applies.

E-LTRP.4.2. The applicant is exempt from the English language requirement if at the date of application-

- (a) the applicant is aged 65 or over;
- (b) the applicant has a disability (physical or mental condition) which prevents the applicant from meeting the requirement; or

- (c) there are exceptional circumstances which prevent the applicant from being able to meet the requirement.

#### **Section D-LTRP: Decision on application for limited leave to remain as a partner**

D-LTRP.1.1. If the applicant meets the requirements in paragraph R-LTRP.1.1.(a) to (c) for limited leave to remain as a partner the applicant will be granted limited leave to remain for a period not exceeding 30 months, and subject to a condition of no recourse to public funds, and they will be eligible to apply for settlement after a continuous period of at least 60 months with such leave or in the UK with entry clearance as a partner under paragraph D-ECP1.1. (excluding in all cases any period of entry clearance or limited leave as a fiancé(e) or proposed civil partner); or, if paragraph E-LTRP.1.11. applies, the applicant will be granted limited leave for a period not exceeding 6 months and subject to a condition of no recourse to public funds and a prohibition on employment.

D-LTRP.1.2. If the applicant meets the requirements in paragraph R-LTRP.1.1.(a), (b) and (d) for limited leave to remain as a partner they will be granted leave to remain for a period not exceeding 30 months and subject to a condition of no recourse to public funds unless the Secretary of State considers that the person should not be subject to such a condition, and they will be eligible to apply for settlement after a continuous period of at least 120 months with such leave, with limited leave as a partner under paragraph D-LTRP.1.1., or in the UK with entry clearance as a partner under paragraph D-ECP1.1. (excluding in all cases any period of entry clearance or limited leave as a fiancé(e) or proposed civil partner), or, if paragraph E-LTRP.1.11. applies, the applicant will be granted limited leave for a period not exceeding 6 months and subject to a condition of no recourse to public funds and a prohibition on employment.

D-LTRP.1.3. If the applicant does not meet the requirements for limited leave to remain as a partner the application will be refused.

#### **Section R-ILRP: Requirements for indefinite leave to remain (settlement) as a partner**

R-ILRP.1.1. The requirements to be met for indefinite leave to remain as a partner are that-

- (a) the applicant and their partner must be in the UK;
- (b) the applicant must have made a valid application for indefinite leave to remain as a partner;
- (c) the applicant must not fall for refusal under any of the grounds in Section S-ILR: Suitability-indefinite leave to remain;
- (d) the applicant:
  - (i) must meet all of the requirements of Section E-LTRP: Eligibility for leave to remain as a partner (but in applying paragraph E-LTRP. 3.1.(b)(ii) delete the words "2.5 times"); or
  - (ii) must meet the requirements of paragraphs E-LTRP.1.2.-1.12. and E-LTRP.2.1. and paragraph EX.1. applies; and
- (e) the applicant must meet all of the requirements of Section E-ILRP: Eligibility for indefinite leave to remain as a partner.

#### **Section S-ILR: Suitability for indefinite leave to remain**

S-ILR.1.1. The applicant will be refused indefinite leave to remain on grounds of suitability if any of paragraphs S-ILR.1.2. to 1.9. apply.

S-ILR.1.2. The applicant is currently the subject of a deportation order.

S-ILR.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-ILR.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, unless a period of 15 years has passed since the end of the sentence.

S-ILR.1.5. 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 12 months, unless a period of 7 years has passed since the end of the sentence.

S-ILR.1.6. The applicant has, within the 24 months prior to the date on which the application is decided, been convicted of or admitted an offence for which they received a non-custodial sentence or other out of court disposal that is recorded on their criminal record.

S-ILR.1.7. 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-ILR.1.8. 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-ILR.1.3. to 1.6.), character, associations, or other reasons, make it undesirable to allow them to remain in the UK.

S-ILR.1.9. The applicant has failed without reasonable excuse to comply with a requirement to-

- (a) attend an interview;
- (b) provide information;
- (c) provide physical data; or
- (d) undergo a medical examination or provide a medical report.

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

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

S-ILR.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.

## **Section E-ILRP: Eligibility for indefinite leave to remain as a partner**

E-ILRP.1.1. To meet the eligibility requirements for indefinite leave to remain as a partner all of the requirements of paragraphs E-ILRP.1.2. to 1.6. must be met.

E-ILRP.1.2. The applicant must be in the UK with valid leave to remain as a partner (disregarding any period of overstaying for a period of 28 days or less).

E-ILRP.1.3. The applicant must have completed a continuous period of at least 60 months with limited leave as a partner under paragraph R-LTRP.1.1.(a) to (c) or in the UK with entry clearance as a partner under paragraph D-ECP.1.1.; or a continuous period of at least 120 months with limited leave as a partner under paragraph R-LTR.P.1.1(a), (b) and (d) or in the UK with entry clearance as a partner under paragraph D-ECP.1.1.; or a continuous period of at least 120 months with limited leave as a partner under a combination of these paragraphs, excluding in all cases any period of entry clearance or limited leave as a fiancé(e) or proposed civil partner.

E-ILRP.1.4. In calculating the periods under paragraph E-ILRP.1.3. only the periods when the applicant's partner is the same person as the applicant's partner for the previous period of limited leave shall be taken into account.

E-ILRP.1.5. In calculating the periods under paragraph E-ILRP.1.3. the words "in the UK" in that paragraph shall not apply to any period(s) to which the evidence in paragraph 26A of Appendix FM-SE applies.

E-ILRP.1.6. The applicant must have demonstrated sufficient knowledge of the English language and sufficient knowledge about life in the United Kingdom in accordance with the requirements of Appendix KoLL of these Rules.

#### **Section D-ILRP: Decision on application for indefinite leave to remain as a partner**

D-ILRP.1.1. If the applicant meets all of the requirements for indefinite leave to remain as a partner the applicant will be granted indefinite leave to remain.

D-ILRP.1.2. If the applicant does not meet the requirements for indefinite leave to remain as a partner only for one or both of the following reasons-

(a) paragraph S-ILR.1.5. or S-ILR.1.6. applies;

(b) the applicant has not demonstrated sufficient knowledge of the English language or about life in the United Kingdom in accordance with Appendix KoLL,

the applicant will be granted further limited leave to remain as a partner for a period not exceeding 30 months, and subject to a condition of no recourse to public funds.

D-ILRP.1.3. If the applicant does not meet all the eligibility requirements for indefinite leave to remain as a partner, and does not qualify for further limited leave to remain as a partner under paragraph DILRP. 1.2., the application will be refused, unless the applicant meets the requirements in paragraph R-LTRP.1.1.(a), (b) and (d) for limited leave to remain as a partner. Where they do, the applicant will be granted further limited leave to remain as a partner for a period not exceeding 30 months under paragraph D-LTRP.1.2. and subject to a condition of no recourse to public funds unless the Secretary of State considers that the person should not be subject to such a condition.

#### **Section EX: Exceptions to certain eligibility requirements for leave to remain as a partner or parent**

EX.1. This paragraph applies if

(a)

(i) the applicant has a genuine and subsisting parental relationship with a child who-

(aa) is under the age of 18 years, or was under the age of 18 years when the applicant was first granted leave on the basis that this paragraph applied;

(bb) is in the UK;

(cc) is a British Citizen or has lived in the UK continuously for at least the 7 years immediately preceding the date of application ;and

(ii) it would not be reasonable to expect the child to leave the UK; or

(b) the applicant has a genuine and subsisting relationship with a partner who is in the UK and is a British Citizen, settled in the UK or in the UK with refugee leave or humanitarian protection, and there are insurmountable obstacles to family life with that partner continuing outside the UK.

EX.2. For the purposes of paragraph EX.1.(b) “insurmountable obstacles” means the very significant difficulties which would be faced by the applicant or their partner in continuing their family life together outside the UK and which could not be overcome or would entail very serious hardship for the applicant or their partner.

### **Bereaved partner**

Section BPILR: Indefinite leave to remain (settlement) as a bereaved partner

BPILR.1.1. The requirements to be met for indefinite leave to remain in the UK as a bereaved partner are that-

- (a) the applicant must be in the UK;
- (b) the applicant must have made a valid application for indefinite leave to remain as a bereaved partner;
- (c) the applicant must not fall for refusal under any of the grounds in Section S-ILR: Suitability-indefinite leave to remain; and
- (d) the applicant must meet all of the requirements of Section E-BPILR:

### **Eligibility for indefinite leave to remain as a bereaved partner.**

#### **Section E-BPILR: Eligibility for indefinite leave to remain as a bereaved partner**

E-BPILR.1.1. To meet the eligibility requirements for indefinite leave to remain as a bereaved partner all of the requirements of paragraphs E-BPILR1.2. to 1.4. must be met. E-BPILR.1.2. The applicant's last grant of limited leave must have been as-

- (a) a partner (other than a fiancé(e) or proposed civil partner) of a British Citizen or a person settled in the UK; or
- (b) a bereaved partner.

E-BPILR.1.3. The person who was the applicant's partner at the time of the last grant of limited leave as a partner must have died.

E-BPILR.1.4. At the time of the partner's death the relationship between the applicant and the partner must have been genuine and subsisting and each of the parties must have intended to live permanently with the other in the UK.

#### **Section D-BPILR: Decision on application for indefinite leave to remain as a bereaved partner**

D-BPILR.1.1. If the applicant meets all of the requirements for indefinite leave to remain as a bereaved partner the applicant will be granted indefinite leave to remain.

D-BPILR.1.2. If the applicant does not meet the requirements for indefinite leave to remain as a bereaved partner only because paragraph S-ILR.1.5. or S-ILR.1.6. applies, the applicant will be granted further limited leave to remain for a period not exceeding 30 months, and subject to a condition of no recourse to public funds.

D-BPILR.1.3. If the applicant does not meet the requirements for indefinite leave to remain as a bereaved partner, or limited leave to remain as a bereaved partner under paragraph DBPILR.1.2., the application will be refused.

### **Victim of domestic violence**

#### **Section DVILR: Indefinite leave to remain (settlement) as a victim of domestic violence**

DVILR.1.1. The requirements to be met for indefinite leave to remain in the UK as a victim of domestic violence are that-

- (a) the applicant must be in the UK;
- (b) the applicant must have made a valid application for indefinite leave to remain as a victim of domestic violence;
- (c) the applicant must not fall for refusal under any of the grounds in Section S-ILR: Suitability-indefinite leave to remain; and
- (d) the applicant must meet all of the requirements of Section E-DVILR:

Eligibility for indefinite leave to remain as a victim of domestic violence.

#### **Section E-DVILR: Eligibility for indefinite leave to remain as a victim of domestic violence**

E-DVILR.1.1. To meet the eligibility requirements for indefinite leave to remain as a victim of domestic violence all of the requirements of paragraphs E-DVILR.1.2. and 1.3. must be met.

E-DVILR.1.2. The applicant's first grant of limited leave under this Appendix must have been as a partner (other than a fiancé(e) or proposed civil partner) of a British Citizen or a person settled in the UK under paragraph D- LTRP.1.1. or D-LTRP.1.2. of this Appendix and any subsequent grant of limited leave must have been:

- (a) granted as a partner (other than a fiancé(e) or proposed civil partner) of a British Citizen or a person settled in the UK under paragraph D-ECP.1.1., D- LTRP.1.1. or D-LTRP.1.2. of this Appendix; or
- (b) granted to enable access to public funds pending an application under DVILR and the preceding grant of leave was granted as a partner (other than a fiancé(e) or proposed civil partner) of a British Citizen or a person settled in the UK under paragraph D-ECP.1.1., D-LTRP.1.1. or D-LTRP.1.2. of this Appendix; or
- (c) granted under paragraph D-DVILR.1.2.

E-DVILR.1.3. The applicant must provide evidence that during the last period of limited leave as a partner of a British Citizen or a person settled in the UK under paragraph D-ECP.1.1., D-LTRP.1.1. or D-LTRP.1.2. of this Appendix the applicant's relationship with their partner broke down permanently as a result of domestic violence.

#### **Section D-DVILR: Decision on application for indefinite leave to remain as a victim of domestic violence**

D-DVILR.1.1. If the applicant meets all of the requirements for indefinite leave to remain as a victim of domestic violence the applicant will be granted indefinite leave to remain.

D-DVILR.1.2. If the applicant does not meet the requirements for indefinite leave to remain as a victim of domestic violence only because paragraph S-ILR.1.5. or S-ILR.1.6. applies, the applicant will be granted further limited leave to remain for a period not exceeding 30 months.

D-DVILR.1.3. If the applicant does not meet the requirements for indefinite leave to remain as a victim of domestic violence, or further limited leave to remain under paragraph D-DVILR.1.2. the application will be refused.

### **Family life as a child of a person with limited leave as a partner or parent**

This route is for a child whose parent is applying for entry clearance or leave, or who has limited leave, as a partner or parent. For further provision on a child seeking to enter or remain in the UK for the purpose of their family life see Part 8 of these Rules.

#### **Section EC-C: Entry clearance as a child**

EC-C.1.1. The requirements to be met for entry clearance as a child are that-

- (a) the applicant must be outside the UK;
- (b) the applicant must have made a valid application for entry clearance as a child;
- (c) the applicant must not fall for refusal under any of the grounds in Section S-EC: Suitability for entry clearance; and
- (d) the applicant must meet all of the requirements of Section E-ECC: Eligibility for entry clearance as a child.

#### **Section E-ECC: Eligibility for entry clearance as a child**

E-ECC.1.1. To meet the eligibility requirements for entry clearance as a child all of the requirements of paragraphs E-ECC.1.2. to 2.4. must be met.

#### **Relationship requirements**

E-ECC.1.2. The applicant must be under the age of 18 at the date of application.

E-ECC.1.3. The applicant must not be married or in a civil partnership.

E-ECC.1.4. The applicant must not have formed an independent family unit.

E-ECC.1.5. The applicant must not be leading an independent life.

E-ECC.1.6. One of the applicant's parents must be in the UK with limited leave to enter or remain, or be applying, or have applied, for entry clearance, as a partner or a parent under this Appendix (referred to in this section as the "applicant's parent"), and

- (a) the applicant's parent's partner under Appendix FM is also a parent of the applicant; or
- (b) the applicant's parent has had and continues to have sole responsibility for the child's upbringing; or
- (c) 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.

#### **Financial requirement**

E-ECC.2.1. The applicant must provide specified evidence, from the sources listed in paragraph E-ECC.2.2., of-

(a) a specified gross annual income of at least-

- (i) £18,600;
- (ii) an additional £3,800 for the first child; and
- (iii) an additional £2,400 for each additional child; alone or in combination with

(b) specified savings of

- (i) £16,000; and
- (ii) additional savings of an amount equivalent to 2.5 times the amount which is the difference between the gross annual income from the sources listed in paragraph E-ECC.2.2.(a)-(f) and the total amount required under paragraph E-ECC.2.1.(a); or

(c) the requirements in paragraph E-ECC.2.3. being met.

In this paragraph "child" means the applicant and any other dependent child of the applicant's parent who is -

- (a) under the age of 18 years, or who was under the age of 18 years when they were first granted entry under this route;
- (b) in the UK;
- (c) not a British Citizen or settled in the UK; and
- (d) not an EEA national with a right to remain in the UK under the Immigration (EEA) Regulations 2006.

E-ECC.2.2. When determining whether the financial requirement in paragraph E-ECC. 2.1. is met only the following sources may be taken into account-

- (a) income of the applicant's parent's partner from specified employment or selfemployment, which, in respect of an applicant's parent's partner returning to the UK with the applicant, can include specified employment or self-employment overseas and in the UK;
- (b) income of the applicant's parent from specified employment or self employment if they are in the UK unless they are working illegally;
- (c) specified pension income of the applicant's parent and that parent's partner;
- (d) any specified maternity allowance or bereavement benefit received by the applicant's parent and that parent's partner in the UK or any specified payment relating to service in HM Forces received by the applicant's parent and that parent's partner;
- (e) other specified income of the applicant's parent and that parent's partner;
- (f) income from the sources at (b), (d) or (e) of a dependent child of the applicant's parent under paragraph E-ECC.2.1. who is aged 18 years or over; and
- (g) specified savings of the applicant's parent, that parent's partner and a dependent child of the applicant's parent under paragraph E-ECC.2.1. who is aged 18 years or over.

E-ECC.2.3. The requirements to be met under this paragraph are-

- (a) the applicant's parent's partner must be receiving one or more of the following-
  - (i) disability living allowance;
  - (ii) severe disablement allowance;



- (iii) industrial injury disablement benefit;
- (iv) attendance allowance;
- (v) carer's allowance;
- (vi) personal independence payment;
- (vii) Armed Forces Independence Payment or Guaranteed Income Payment under the Armed Forces Compensation Scheme; or
- (viii) Constant Attendance Allowance, Mobility Supplement or War Disablement Pension under the War Pensions Scheme; and

- (b) the applicant must provide evidence that their parent's partner is able to maintain and accommodate themselves, the applicant's parent, the applicant and any dependants adequately in the UK without recourse to public funds.

E-EEC.2.4. The applicant must provide evidence that there will be adequate accommodation, without recourse to public funds, for the family, including other family members who are not included in the application but who live in the same household, which the family own or occupy exclusively: accommodation will not be regarded as adequate if-

- (a) it is, or will be, overcrowded; or
- (b) it contravenes public health regulations.

Section D-ECC: Decision on application for entry clearance as a child D-ECC.1.1. If the applicant meets the requirements for entry clearance as a child they will be granted entry clearance of a duration which will expire at the same time as the leave granted to the applicant's parent, and subject to a condition of no recourse to public funds.

D-ECC.1.2. If the applicant does not meet the requirements for entry clearance as a child the application will be refused.

### **Section R-LTRC: Requirements for leave to remain as a child**

R-LTRC.1.1. The requirements to be met for leave to remain as a child are that-

- (a) the applicant must be in the UK;
- (b) the applicant must have made a valid application for leave to remain as a child; and either
- (c)
  - (i) the applicant must not fall for refusal under any of the grounds in Section S LTR: Suitability-leave to remain; and
  - (ii) the applicant meets all of the requirements of Section E-LTRC: Eligibility for leave to remain as a child; or
- (d)
  - (i) the applicant must not fall for refusal under any of the grounds in Section S- LTR: Suitability-leave to remain; and
  - (ii) the applicant meets the requirements of paragraphs E-LTRC.1.2.-1.6.; and
  - (iii) a parent of the applicant has been or is at the same time being granted leave to remain under paragraph D-LTRP.1.2. or D-LTRPT.1.2. or indefinite leave to remain under this Appendix (except as an adult dependent relative).

## **Section E-LTRC: Eligibility for leave to remain as a child**

E-LTRC.1.1. To qualify for limited leave to remain as a child all of the requirements of paragraphs E-LTRC.1.2. to 2.4. must be met (except where paragraph R-LTRC.1.1.(d)(ii) applies).

### **Relationship requirements**

E-LTRC.1.2. The applicant must be under the age of 18 at the date of application or when first granted leave as a child under this route.

E-LTRC.1.3. The applicant must not be married or in a civil partnership.

E-LTRC.1.4. The applicant must not have formed an independent family unit.

E-LTRC.1.5. The applicant must not be leading an independent life.

E-LTRC.1.6. One of the applicant's parents (referred to in this section as the "applicant's parent") must be in the UK and have leave to enter or remain or indefinite leave to remain, or is at the same time being granted leave to remain or indefinite leave to remain, under this

Appendix (except as an adult dependent relative), and

- (a) the applicant's parent's partner under Appendix FM is also a parent of the applicant; or
- (b) the applicant's parent has had and continues to have sole responsibility for the child's upbringing or the applicant normally lives with this parent and not their other parent; or
- (c) 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.

### **Financial requirements**

E-LTRC.2.1. The applicant must provide specified evidence, from the sources listed in paragraph E-LTRC.2.2., of -

(a) a specified gross annual income of at least-

- (i) £18,600;
- (ii) an additional £3,800 for the first child; and
- (iii) an additional £2,400 for each additional child; alone or in combination with

(b) specified savings of-

- (i) £16,000; and
- (ii) additional savings of an amount equivalent to 2.5 times (or if the parent is applying for indefinite leave to remain 1 times) the amount which is the difference between the gross annual income from the sources listed in paragraph E-LTRC.2.2.(a)-(f) and the total amount required under paragraph E-LTRC.2.1.(a); or

(c) the requirements in paragraph E-LTRC.2.3. being met.

In this paragraph "child" means the applicant and any other dependent child of the applicant's parent who is-

- (i) under the age of 18 years, or who was under the age of 18 years when they were first granted entry under this route;
- (ii) in the UK;
- (iii) not a British Citizen or settled in the UK; and
- (iv) not an EEA national with a right to remain in the UK under the Immigration (EEA) Regulations 2006.

E-LTRC.2.2. When determining whether the financial requirement in paragraph ELTRC. 2.1. is met only the following sources may be taken into account-

- (a) income of the applicant's parent's partner from specified employment or selfemployment;
- (b) income of the applicant's parent from specified employment or self employment;
- (c) specified pension income of the applicant's parent and that parent's partner;
- (d) any specified maternity allowance or bereavement benefit received by the applicant's parent and that parent's partner in the UK or any specified payment relating to service in HM Forces received by the applicant's parent and that parent's partner;
- (e) other specified income of the applicant's parent and that parent's partner;
- (f) income from the sources at (b), (d) or (e) of a dependent child of the applicant's parent under paragraph E-LTRC.2.1. who is aged 18 years or over; and
- (g) specified savings of the applicant's parent, that parent's partner and a dependent child of the applicant's parent under paragraph E-ECC.2.1. who is aged 18 years or over.

E-LTRC.2.3. The requirements to be met under this paragraph are-

- (a) the applicant's parent's partner must be receiving one or more of the following -
  - (i) disability living allowance;
  - (ii) severe disablement allowance;
  - (iii) industrial injury disablement benefit;
  - (iv) attendance allowance;
  - (v) carer's allowance;
  - (vi) personal independence payment;
  - (vii) Armed Forces Independence Payment or Guaranteed Income Payment under the Armed Forces Compensation Scheme; or
  - (viii) Constant Attendance Allowance, Mobility Supplement or War Disablement Pension under the War Pensions Scheme; and
- (b) the applicant must provide evidence that their parent's partner is able to maintain and accommodate themselves, the applicant's parent, the applicant and any dependants adequately in the UK without recourse to public funds.

E-LTRC.2.4. The applicant must provide evidence that there will be adequate accommodation in the UK, without recourse to public funds, for the family, including other family members who are not included in the application but who live in the same household, which the family own or occupy exclusively: accommodation will not be regarded as adequate if-

- (a) it is, or will be, overcrowded; or
- (b) it contravenes public health regulations.

#### **Section D-LTRC: Decision on application for leave to remain as a child**

D-LTRC.1.1. If the applicant meets the requirements for leave to remain as a child the applicant will be granted leave to remain of a duration which will expire at the same time as the leave granted to the applicant's parent, and subject to a condition of no recourse to public funds. To qualify for indefinite leave to remain as a child of a person with indefinite leave to remain as a partner or parent, the applicant must meet the requirements of paragraph 298 of these rules.

D-LTRC.1.2. If the applicant does not meet the requirements for leave to remain as a child the application will be refused.

### **Family life as a parent of a child in the UK**

#### **Section EC-PT: Entry clearance as a parent of a child in the UK**

EC-PT.1.1. The requirements to be met for entry clearance as a parent are that-

- (a) the applicant must be outside the UK;
- (b) the applicant must have made a valid application for entry clearance as a parent;
- (c) the applicant must not fall for refusal under any of the grounds in Section S-EC: Suitability—entry clearance; and
- (d) the applicant must meet all of the requirements of Section E-ECPT: Eligibility for entry clearance as a parent.

#### **Section E-ECPT: Eligibility for entry clearance as a parent**

E-ECPT.1.1. To meet the eligibility requirements for entry clearance as a parent all of the requirements in paragraphs E-ECPT.2.1. to 4.2. must be met.

#### **Relationship requirements**

E-ECPT.2.1. The applicant must be aged 18 years or over.

E-ECPT.2.2. The child of the applicant must be-

- (a) under the age of 18 years at the date of application;
- (b) living in the UK; and
- (c) a British Citizen or settled in the UK. E-ECPT.2.3. Either -
  - (a) the applicant must have sole parental responsibility for the child; or
  - (b) the parent or carer with whom the child normally lives must be-
    - (i) a British Citizen in the UK or settled in the UK;
    - (ii) not the partner of the applicant; and
    - (iii) the applicant must not be eligible to apply for entry clearance as a partner under this Appendix.

E-ECPT.2.4.

- (a) The applicant must provide evidence that they have either-
  - (i) sole parental responsibility for the child; or
  - (ii) access rights to the child; and
- (b) The applicant must provide evidence that they are taking, and intend to continue to take, an active role in the child's upbringing.

#### **Financial requirements**

E-ECPT.3.1. The applicant must provide evidence that they will be able to adequately maintain and accommodate themselves and any dependants in the UK without recourse to public funds

E-ECPT.3.2. The applicant must provide evidence that there will be adequate accommodation in the UK, without recourse to public funds, for the family, including other family members who are not included in the application but who live in the same household, which the family own or occupy exclusively: accommodation will not be regarded as adequate if-

- (a) it is, or will be, overcrowded; or
- (b) it contravenes public health regulations.

### **English language requirement**

E-ECPT.4.1. The applicant must provide specified evidence that they-

- (a) are a national of a majority English speaking country listed in paragraph GEN.1.6.;
- (b) have passed an English language test in speaking and listening at a minimum of level A1 of the Common European Framework of Reference for Languages with a provider approved by the Secretary of State;
- (c) have an academic qualification recognised by UK NARIC to be equivalent to the standard of a Bachelor's or Master's degree or PhD in the UK, which was taught in English; or
- (d) are exempt from the English language requirement under paragraph E-ECPT. 4.2.

E-ECPT.4.2. The applicant is exempt from the English language requirement if at the date of application-

- (a) the applicant is aged 65 or over;
- (b) the applicant has a disability (physical or mental condition) which prevents the applicant from meeting the requirement; or
- (c) there are exceptional circumstances which prevent the applicant from being able to meet the requirement prior to entry to the UK.

### **Section D-ECPT: Decision on application for entry clearance as a parent**

D-ECPT.1.1. If the applicant meets the requirements for entry clearance as a parent they will be granted entry clearance for an initial period not exceeding 33 months, and subject to a condition of no recourse to public funds.

D-ECPT.1.2. If the applicant does not meet the requirements for entry clearance as a parent the application will be refused.

### **Section R-LTRPT: Requirements for limited leave to remain as a parent**

R-LTRPT.1.1. The requirements to be met for limited or indefinite leave to remain as a parent or partner are-

- (a) the applicant and the child must be in the UK;
- (b) the applicant must have made a valid application for limited or indefinite leave to remain as a parent or partner; and either
- (c)
  - (i) the applicant must not fall for refusal under Section S-LTR: Suitability leave to remain; and

- (ii) the applicant meets all of the requirements of Section ELTRPT: Eligibility for leave to remain as a parent, or
- (d)
- (i) the applicant must not fall for refusal under S-LTR: Suitability leave to remain; and
- (ii) the applicant meets the requirements of paragraphs E-LTRPT.2.2-2.4. and E-LTRPT.3.1.; and
- (iii) paragraph EX.1. applies.

**Section E-LTRPT: Eligibility for limited leave to remain as a parent**

E-LTRPT.1.1. To qualify for limited leave to remain as a parent all of the requirements of paragraphs E-LTRPT.2.2. to 5.2. must be met.

**Relationship requirements**

E-LTRPT.2.2. The child of the applicant must be-

- (a) under the age of 18 years at the date of application, or where the child has turned 18 years of age since the applicant was first granted entry clearance or leave to remain as a parent under this Appendix, must not have formed an independent family unit or be leading an independent life;
- (b) living in the UK; and
- (c) a British Citizen or settled in the UK; or
- (d) has lived in the UK continuously for at least the 7 years immediately preceding the date of application and paragraph EX.1. applies.

E-LTRPT.2.3. Either-

- (a) the applicant must have sole parental responsibility for the child or the child normally lives with the applicant and not their other parent (who is a British Citizen or settled in the UK);or
- (b) the parent or carer with whom the child normally lives must be-
  - (i) a British Citizen in the UK or settled in the UK;
  - (ii) not the partner of the applicant (which here includes a person who has been in a relationship with the applicant for less than two years prior to the date of application); and
  - (iii) the applicant must not be eligible to apply for leave to remain as a partner under this Appendix.

E-LTRPT.2.4.

- (a) The applicant must provide evidence that they have either-
  - (i) sole parental responsibility for the child, or that the child normally lives with them; or
  - (ii) access rights to the child; and
- (b) The applicant must provide evidence that they are taking, and intend to continue to take, an active role in the child's upbringing.

**Immigration status requirement**

E-LTRPT.3.1. The applicant must not be in the UK-

- (a) as a visitor; or
- (b) with valid leave granted for a period of 6 months or less, unless that leave was granted pending the outcome of family court or divorce proceedings;

E-LTRPT.3.2. The applicant must not be in the UK –

- (a) on temporary admission or temporary release, unless paragraph EX.1. applies; or
- (b) in breach of immigration laws (disregarding any period of overstaying for a period of 28 days or less), unless paragraph EX.1. applies.”.

#### **Financial requirements**

E-LTRPT.4.1. The applicant must provide evidence that they will be able to adequately maintain and accommodate themselves and any dependants in the UK without recourse to public funds, unless paragraph EX.1. applies.

E-LTRPT.4.2. The applicant must provide evidence that there will be adequate accommodation in the UK, without recourse to public funds, for the family, including other family members who are not included in the application but who live in the same household, which the family own or occupy exclusively, unless paragraph EX.1. applies: accommodation will not be regarded as adequate if-

- (a) it is, or will be, overcrowded; or
- (b) it contravenes public health regulations.

#### **English language requirement**

E-LTRPT.5.1. If the applicant has not met the requirement in a previous application for leave as a parent or partner, the applicant must provide specified evidence that they-

- (a) are a national of a majority English speaking country listed in paragraph GEN.1.6.;
- (b) have passed an English language test in speaking and listening at a minimum of level A1 of the Common European Framework of Reference for Languages with a provider approved by the Secretary of State;
- (c) have an academic qualification recognised by UK NARIC to be equivalent to the standard of a Bachelor's or Master's degree or PhD in the UK, which was taught in English; or
- (d) are exempt from the English language requirement under paragraph E-LTRPT. 5.2, unless paragraph EX.1. applies.

E-LTRPT.5.2. The applicant is exempt from the English language requirement if at the date of application-

- (a) the applicant is aged 65 or over;
- (b) the applicant has a disability (physical or mental condition) which prevents the applicant from meeting the requirement; or
- (c) there are exceptional circumstances which prevent the applicant from being able to meet the requirement.

#### **Section D-LTRPT: Decision on application for limited leave to remain as a parent**

D-LTRPT.1.1. If the applicant meets the requirements in paragraph R-LTRPT.1.1. (a) to (c) for limited leave to remain as a parent the applicant will be granted limited leave to remain for a period not exceeding 30 months, and subject to a condition of no recourse to public funds, and they will be

eligible to apply for settlement after a continuous period of at least 60 months with such leave or in the UK with entry clearance as a parent under paragraph D-ECPT.1.1.

D-LTRPT.1.2. If the applicant meets the requirements in paragraph R-LTRPT.1.1. (a), (b) and (d) for limited leave to remain as a parent they will be granted leave to remain for a period not exceeding 30 months and subject to a condition of no recourse to public funds unless the Secretary of State considers that the person should not be subject to such a condition, and they will be eligible to apply for settlement after a continuous period of at least 120 months with such leave, with limited leave as a parent under paragraph D-LTRPT.1.1., or in the UK with entry clearance as a parent under paragraph D-ECPT.1.1.

D-LTRPT.1.3. If the applicant does not meet the requirements for limited leave to remain as a parent the application will be refused.

### **Section R-ILRPT: Requirements for indefinite leave to remain (settlement) as a parent**

R-ILRPT.1.1. The requirements to be met for indefinite leave to remain as a parent are that-

- (a) the applicant must be in the UK;
- (b) the applicant must have made a valid application for indefinite leave to remain as a parent;
- (c) the applicant must not fall for refusal under any of the grounds in Section S-ILR: Suitability-indefinite leave to remain;
- (d) the applicant must meet all of the requirements of Section E-LTRPT:

Eligibility for leave to remain as a parent; and

- (e) the applicant must meet all of the requirements of Section E-ILRPT: Eligibility for indefinite leave to remain as a parent.

### **Section E-ILRPT: Eligibility for indefinite leave to remain as a parent**

E-ILRPT.1.1. To meet the eligibility requirements for indefinite leave to remain as a parent all of the requirements of paragraphs E-ILRPT.1.2. to 1.5. must be met.

E-ILRPT.1.2. The applicant must be in the UK with valid leave to remain as a parent (disregarding any period of overstaying for 28 days or less).

E-ILRPT.1.3. The applicant must have completed a continuous period of at least 60 months with limited leave as a parent under paragraph R-LTRPT.1.1.(a) to (c) or in the UK with entry clearance as a parent under paragraph D-ECPT.1.1.; or a continuous period of at least 120 months with limited leave as a parent, under paragraphs R-LTRPT.1.1(a), (b) and (d) or in the UK with entry clearance as a parent under paragraph D-ECPT.1.1.; or a continuous period of at least 120 months with limited leave as a parent under a combination of these paragraphs.

E-ILRPT.1.4. DELETED.

E-ILRPT.1.5. The applicant must have demonstrated sufficient knowledge of the English language and sufficient knowledge about life in the United Kingdom in accordance with the requirements of Appendix KoLL of these Rules.

### **Section D-ILRPT: Decision on application for indefinite leave to remain as a parent**

D-ILRPT.1.1. If the applicant meets all of the requirements for indefinite leave to remain as a parent the applicant will be granted indefinite leave to remain.



D-ILRPT.1.2. If the applicant does not meet the requirements for indefinite leave to remain as a parent only for one or both of the following reasons- (a) paragraph S-ILR.1.5. or S-ILR.1.6. applies; or

(b) the applicant has not demonstrated sufficient knowledge of the English language or about life in the United Kingdom in accordance with Appendix KoLL, the applicant will be granted further limited leave to remain as a parent for a period not exceeding 30 months, and subject to a condition of no recourse to public funds.

D-ILRPT.1.3. If the applicant does not meet all the eligibility requirements for indefinite leave to remain as a parent, and does not qualify for further limited leave to remain under paragraph DILRPT.1.2., the application will be refused, unless the applicant meets the requirements in paragraph R-LTRPT.1.1.(a), (b) and (d) for limited leave to remain as a parent. Where they do, the applicant will be granted further limited leave to remain as a parent for a period not exceeding 30 months under paragraph D-LTRPT.1.2. and subject to a condition of no recourse to public funds unless the Secretary of State considers that the person should not be subject to such a condition.

### **Adult dependent relative**

#### **Section EC-DR: Entry clearance as an adult dependent relative**

EC-DR.1.1. The requirements to be met for entry clearance as an adult dependent relative are that-

- (a) the applicant must be outside the UK;
- (b) the applicant must have made a valid application for entry clearance as an adult dependent relative;
- (c) the applicant must not fall for refusal under any of the grounds in Section S-EC: Suitability for entry clearance; and
- (d) the applicant must meet all of the requirements of Section E-ECDR: Eligibility for entry clearance as an adult dependent relative.

#### **Section E-ECDR: Eligibility for entry clearance as an adult dependent relative**

E-ECDR.1.1. To meet the eligibility requirements for entry clearance as an adult dependent relative all of the requirements in paragraphs E-ECDR.2.1. to 3.2. must be met.

#### **Relationship requirements**

E-ECDR.2.1. The applicant must be the-

- (a) parent aged 18 years or over;
- (b) grandparent;
- (c) brother or sister aged 18 years or over; or
- (d) son or daughter aged 18 years or over of a person ("the sponsor") who is in the UK.

E-ECDR.2.2. If the applicant is the sponsor's parent or grandparent they must not be in a subsisting relationship with a partner unless that partner is also the sponsor's parent or grandparent and is applying for entry clearance at the same time as the applicant. E-ECDR.2.3. The sponsor must at the date of application be-

- (a) aged 18 years or over; and
- (b)
  - (i) a British Citizen in the UK; or

- (ii) present and settled in the UK; or
- (iii) in the UK with refugee leave or humanitarian protection.

E-ECDR.2.4. The applicant or, if the applicant and their partner are the sponsor's parents or grandparents, the applicant's partner, must as a result of age, illness or disability require longterm personal care to perform everyday tasks.

E-ECDR.2.5. The applicant or, if the applicant and their partner are the sponsor's parents or grandparents, the applicant's partner, must be unable, even with the practical and financial help of the sponsor, to obtain the required level of care in the country where they are living, because-

- (a) it is not available and there is no person in that country who can reasonably provide it; or
- (b) it is not affordable.

### **Financial requirements**

E-ECDR.3.1. The applicant must provide evidence that they can be adequately maintained, accommodated and cared for in the UK by the sponsor without recourse to public funds.

E-ECDR.3.2. If the applicant's sponsor is a British Citizen or settled in the UK, the applicant must provide an undertaking signed by the sponsor confirming that the applicant will have no recourse to public funds, and that the sponsor will be responsible for their maintenance, accommodation and care, for a period of 5 years from the date the applicant enters the UK if they are granted indefinite leave to enter.

### **Section D-ECDR: Decision on application for entry clearance as an adult dependent relative**

D-ECDR.1.1. If the applicant meets the requirements for entry clearance as an adult dependent relative of a British Citizen or person settled in the UK they will be granted indefinite leave to enter.

D-ECDR.1.2. If the applicant meets the requirements for entry clearance as an adult dependent relative and the sponsor has limited leave the applicant will be granted limited leave of a duration which will expire at the same time as the sponsor's limited leave, and subject to a condition of no recourse to public funds. If the sponsor applies for further limited leave, the applicant may apply for further limited leave of the same duration, if the requirements in ECDR.1.1. (c) and (d) continue to be met, and subject to no recourse to public funds.

D-ECDR.1.3. If the applicant does not meet the requirements for entry clearance as an adult dependent relative the application will be refused.

### **Section R-ILRDR: Requirements for indefinite leave to remain as an adult dependent relative**

R-ILRDR.1.1. The requirements to be met for indefinite leave to remain as an adult dependent relative are that-

- (a) the applicant is in the UK;
- (b) the applicant must have made a valid application for indefinite leave to remain as an adult dependent relative;
- (c) the applicant must not fall for refusal under any of the grounds in Section S-ILR: Suitability-indefinite leave to remain; and
- (d) the applicant must meet all of the requirements of Section E-ILRDR: Eligibility for indefinite leave to remain as an adult dependent relative.

### **Section E-ILRDR: Eligibility for indefinite leave to remain as an adult dependent relative**

E-ILRDR.1.1. To qualify for indefinite leave to remain as an adult dependent relative all of the requirements of paragraphs E-ILRDR.1.2. to 1.5. must be met.

E-ILRDR.1.2. The applicant must be in the UK with valid leave to remain as an adult dependent relative (disregarding any period of overstaying for a period of 28 days or less). E-ILRDR.1.3. The applicant's sponsor must at the date of application be

(a) present and settled in the UK; or

(b) in the UK with refugee leave or as a person with humanitarian protection and have made an application for indefinite leave to remain.

E-ILRDR.1.4. The applicant must provide evidence that they can be adequately maintained, accommodated and cared for in the UK by the sponsor without recourse to public funds.

E-ILRDR.1.5. The applicant must provide an undertaking signed by the sponsor confirming that the applicant will have no recourse to public funds, and that the sponsor will be responsible for their maintenance, accommodation and care, for a period ending 5 years from the date the applicant entered the UK with limited leave as an adult dependent relative.

### **Section D-ILRDR: Decision on application for indefinite leave to remain as an adult dependent relative**

D-ILRDR.1.1. If the applicant meets the requirements for indefinite leave to remain as an adult dependent relative and the applicant's sponsor is settled in the UK, the applicant will be granted indefinite leave to remain as an adult dependent relative.

D-ILRDR.1.2. If the applicant does not meet the requirements for indefinite leave to remain as an adult dependent relative because paragraph S-ILR.1.5. or S-ILR.1.6. applies, the applicant will be granted further limited leave to remain as an adult dependent relative for a period not exceeding 30 months, and subject to a condition of no recourse to public funds.

D-ILRDR.1.3. If the applicant's sponsor has made an application for indefinite leave to remain and that application is refused, the applicant's application for indefinite leave to remain will be refused. If the sponsor is granted limited leave, the applicant will be granted further limited leave as an adult dependent relative of a duration which will expire at the same time as the sponsor's further limited leave, and subject to a condition of no recourse to public funds.

D-ILRDR.1.4. Where an applicant does not meet the requirements for indefinite leave to remain, or further limited leave to remain under paragraphs D-ILRDR.1.2. or 1.3., the application will be refused.

### **Deportation and removal**

Where the Secretary of State or an immigration officer is considering deportation or removal of a person who claims that their deportation or removal from the UK would be a breach of the right to respect for private and family life under Article 8 of the Human Rights Convention that person may be required to make an application under this Appendix or paragraph 276ADE(1), but if they are not required to make an application Part 13 of these Rules will apply.

## **Appendix FM-SE**

### **Family Members - Specified Evidence**

A. This Appendix sets out the specified evidence applicants need to provide to meet the requirements of rules contained in Appendix FM and, where those requirements are also contained in other rules, including Appendix Armed Forces, and unless otherwise stated, the specified evidence applicants need to provide to meet the requirements of those rules.

B. Where evidence is not specified by Appendix FM, but is of a type covered by this Appendix, the requirements of this Appendix shall apply.

C. In this Appendix references to paragraphs are to paragraphs of this Appendix unless the context otherwise requires.

D. (a) In deciding an application in relation to which this Appendix states that specified documents must be provided, the Entry Clearance Officer or Secretary of State ("the decision maker") will consider documents that have been submitted with the application, and will only consider documents submitted after the application where sub-paragraph (b) or (e) applies.

(b) If the applicant:

(i) Has submitted:

(aa) A sequence of documents and some of the documents in the sequence have been omitted (e.g. if one bank statement from a series is missing);

(bb) A document in the wrong format (for example, if a letter is not on letterhead paper as specified); or

(cc) A document that is a copy and not an original document; or

(dd) A document which does not contain all of the specified information; or

(ii) Has not submitted a specified document, the decision-maker may contact the applicant or his representative in writing or otherwise, and request the document(s) or the correct version(s). The material requested must be received at the address specified in the request within a reasonable timescale specified in the request.

(c) The decision-maker will not request documents where he or she does not anticipate that addressing the error or omission referred to in sub-paragraph (b) will lead to a grant because the application will be refused for other reasons.

(d) If the applicant has submitted:

(i) A document in the wrong format; or

(ii) A document that is a copy and not an original document, or

(iii) A document that does not contain all of the specified information, but the missing information is verifiable from:

(1) other documents submitted with the application,

(2) the website of the organisation which issued the document, or

(3) the website of the appropriate regulatory body,

the application may be granted exceptionally, providing the decision-maker is satisfied that the document(s) is genuine and that the applicant meets the requirement to which the document relates. The decision-maker reserves the right to request the specified original document(s) in the correct format in all cases where sub-paragraph (b) applies, and to refuse applications if this material is not provided as set out in sub-paragraph (b).

(e) Where the decision-maker is satisfied that there is a valid reason why a specified document(s) cannot be supplied, e.g. because it is not issued in a particular country or has been permanently lost, he or she may exercise discretion not to apply the requirement for the document(s) or to request alternative or additional information or document(s) be submitted by the applicant.

(f) Before making a decision under Appendix FM or this Appendix, the decision-maker may contact the applicant or their representative in writing or otherwise to request further information or documents. The material requested must be received at the address specified in the request within a reasonable timescale specified in the request.

## **Evidence of Financial Requirements under Appendix FM**

A1. To meet the financial requirement under paragraphs E-ECP.3.1., E-LTRP.3.1., E-ECC.2.1. and E-LTRC.2.1. of Appendix FM, the applicant must meet:

- (a) The level of financial requirement applicable to the application under Appendix FM; and
- (b) The requirements specified in Appendix FM and this Appendix as to:
  - (i) The permitted sources of income and savings;
  - (ii) The time periods and permitted combinations of sources applicable to each permitted source relied upon; and
  - (iii) The evidence required for each permitted source relied upon.

1. In relation to evidencing the financial requirements in Appendix FM the following general provisions shall apply:

- (a) Bank statements must:
  - (i) be from a financial institution regulated by the appropriate regulatory body for the country in which that institution is operating.
  - (ii) not be from a financial institution on the list of excluded institutions in Appendix P of these rules.
  - (iii) in relation to personal bank statements be only in the name of:
    - (1) the applicant's partner, the applicant or both as appropriate; or
    - (2) if the applicant is a child the applicant parent's partner, the applicant's parent or both as appropriate; or
    - (3) if the applicant is an adult dependent relative, the applicant's sponsor or the applicant, unless otherwise stated.
  - (iv) cover the period(s) specified.
  - (v) be:
    - (1) on official bank stationery; or
    - (2) electronic bank statements which are either accompanied by a letter from the bank on its headed stationery confirming that the documents are authentic or which bear the official stamp of the issuing bank on every page.

(aa) Where a bank statement is specified in this Appendix, a building society statement, a building society pass book, a letter from the applicant's bank or building society, or a letter from a financial institution regulated by the Financial Conduct Authority and the Prudential Regulation Authority or, for overseas accounts, the appropriate regulatory body for the country in which the institution operates and the funds are located, may be submitted as an alternative to a bank statement(s) provided that:

- (1) the requirements in paragraph 1(a)(i)-(iv) are met as if the document were a bank statement; and
- (2) a building society pass book must clearly show:
  - (i) the account number;
  - (ii) the building society's name and logo; and
  - (iii) the information required on transactions, funds held and time period(s) or as otherwise specified in this Appendix in relation to bank statements; and/or
- (3) a letter must be on the headed stationery of the bank, building society or other financial institution and must clearly show:

- (i) the account number,
  - (ii) the date of the letter;
  - (iii) the financial institution's name and logo; and
  - (iv) the information required on transactions, funds held and time period(s) or as otherwise specified in this Appendix in relation to bank statements.
- (b) Promises of third party support will not be accepted. Third party support will only be accepted in the form of:
  - (i) payments from a former partner of the applicant for the maintenance of the applicant or any children of the applicant and the former partner, and payments from a former partner of the applicant's partner for the maintenance of that partner;
  - (ii) income from a dependent child who has turned 18, remains in the same UK household as the applicant and continues to be counted towards the financial requirement under Appendix FM;
  - (iii) gift of cash savings (whose source must be declared) evidenced at paragraph 1(a)(iii), provided that the cash savings have been held by the person or persons at paragraph 1(a)(iii) for at least 6 months prior to the date of application and are under their control; and
  - (iv) a maintenance grant or stipend associated with undergraduate study or postgraduate study or research.
- (bb) Payslips must be:
  - (i) original formal payslips issued by the employer and showing the employer's name; or
  - (ii) accompanied by a letter from the employer, on the employer's headed paper and signed by a senior official, confirming the payslips are authentic;
- (c) The employment or self-employment income of an applicant will only be taken into account if they are in the UK, aged 18 years or over and working legally, and prospective employment income will not be taken into account (except that of an applicant's partner or parent's partner who is returning to employment or self-employment in the UK at paragraphs ECP.3.2.(a) and E-ECC.2.2.(a) of Appendix FM).
- (cc) The income of an applicant or sponsor working in the UK in salaried or non-salaried employment or in self-employment can include income from work undertaken overseas, provided paragraph E-LTRP.1.10 of Appendix FM and the other requirements of this Appendix are met.
- (d) All income and savings must be lawfully derived.
- (e) Savings must be held in cash.
- (f) Income or cash savings in a foreign currency will be converted to pounds sterling using the closing spot exchange rate which appears on [www.oanda.com](http://www.oanda.com)\* on the date of application.
- (g) Where there is income or cash savings in different foreign currencies, each will be converted into pounds sterling before being added together, and then added to any UK income or savings to give a total amount.
- (h) All documentary evidence must be original, unless otherwise stated.
- (i) Evidence of profit from the sale of a business, property, investment, bond, stocks, shares or other asset will:
  - (i) not be accepted as evidence of income, but
  - (ii) the associated funds will be accepted as cash savings subject to the requirements of this Appendix and Appendix FM.
- (j) Where any specified documents provided are not in English or Welsh, the applicant must provide the original and a full translation that can be independently verified by the Entry

Clearance Officer, Immigration Officer or the Secretary of State. The translation must be dated and include:

- (i) confirmation that it is an accurate translation of the original document;
  - (ii) the full name and original signature of the translator or an authorised official of the translation company;
  - (iii) the translator or translation company's contact details; and
  - (iv) if the applicant is applying for leave to remain or indefinite leave to remain, certification by a qualified translator and details of the translator or translation company's credentials.
- (k) Where the gross (pre-tax) amount of any income cannot be properly evidenced, the net (post-tax) amount will be counted, including towards a gross income requirement.
- (l) Where this Appendix requires the applicant to provide specified evidence relating to a period which ends with the date of application, that evidence, or the most recently dated part of it, must be dated no earlier than 28 days before the date of application.
- (m) Cash income on which the correct tax has been paid may be counted as income under this Appendix, subject to the relevant evidential requirements of this Appendix.
- (n) The gross amount of any cash income may be counted where the person's specified bank statements show the net amount which relates to the gross amount shown on their payslips (or in the relevant specified evidence provided in addition to the specified bank statements in relation to non-employment income). Otherwise, only the net amount shown on the specified bank statements may be counted.
- (o) In this Appendix, a reference to the "average" is a reference to the mean average.

2. In respect of salaried employment in the UK (except where paragraph 9 applies), all of the following evidence must be provided:

- (a) Payslips covering:
- (i) a period of 6 months prior to the date of application if the person has been employed by their current employer for at least 6 months (and where paragraph 13(b) of this Appendix does not apply); or
  - (ii) any period of salaried employment in the period of 12 months prior to the date of application if the person has been employed by their current employer for less than 6 months (or at least 6 months but the person does not rely on paragraph 13(a) of this Appendix), or in the financial year(s) relied upon by a self-employed person.
- (b) A letter from the employer(s) who issued the payslips at paragraph 2(a) confirming:
- (i) the person's employment and gross annual salary;
  - (ii) the length of their employment;
  - (iii) the period over which they have been or were paid the level of salary relied upon in the application; and
  - (iv) the type of employment (permanent, fixed-term contract or agency).
- (c) Personal bank statements corresponding to the same period(s) as the payslips at paragraph 2(a), showing that the salary has been paid into an account in the name of the person or in the name of the person and their partner jointly.
- (d) Where the person is a director of a limited company based in the UK, evidence that the company is not of a type specified in paragraph 9(a). This can include the latest Annual Return filed at Companies House.

2A. (i) In respect of salaried employment in the UK (paragraph 2 of this Appendix), statutory or contractual maternity, paternity, adoption or sick pay in the UK (paragraph 5 or 6 of this Appendix), or a director's salary paid to a self-employed person (paragraph 9 of this Appendix), the applicant may, in addition to the payslips and personal bank statements required under that paragraph, submit the P60 for the relevant period(s) of employment relied upon (if issued). If they do not, the Entry Clearance Officer or Secretary of State may grant the application if otherwise satisfied that the requirements of this Appendix relating to that employment are met. The Entry Clearance Officer or Secretary of State may request that the applicant submit the document(s) in accordance with paragraph D of this Appendix.

(ii) In respect of salaried employment in the UK (paragraph 2 of this Appendix), or statutory or contractual maternity, paternity, adoption or sick pay in the UK (paragraph 5 or 6 of this Appendix), the applicant may, in addition to the letter from the employer(s) required under that paragraph, submit a signed contract of employment. If they do not, the Entry Clearance Officer or Secretary of State may grant the application if otherwise satisfied that the requirements of this Appendix relating to that employment are met. The Entry Clearance Officer or Secretary of State may request that the applicant submit the document(s) in accordance with paragraph D of this Appendix.

3. In respect of salaried employment outside of the UK, evidence should be a reasonable equivalent to that set out in paragraph 2 and (where relevant) paragraph 2A. In respect of an equity partner whose income from the partnership is treated as salaried employment under paragraph 17, the payslips and employer's letter referred to in paragraph 2 may be replaced by other evidence providing the relevant information in paragraph 2 (which may include, but is not confined to, a letter on official stationery from an accountant, solicitor or business manager acting for the partnership).

4. In respect of a job offer in the UK (for an applicant's partner or parent's partner returning to salaried employment in the UK at paragraphs E-ECP.3.2.(a) and E-ECC.2.2.(a) of Appendix FM) a letter from the employer must be provided:

- (a) confirming the job offer, the gross annual salary and the starting date of the employment which must be within 3 months of the applicant's partner's return to the UK; or
- (b) enclosing a signed contract of employment, which must have a starting date within 3 months of the applicant's partner's return to the UK.

5. In respect of statutory or contractual maternity, paternity or adoption pay all of the following, and in respect of parental leave in the UK only the evidence at paragraph 5(c), must be provided:

- (a) Personal bank statements corresponding to the same period(s) as the payslips at paragraph 5(b), showing that the salary has been paid into an account in the name of the person or in the name of the person and their partner jointly.
- (b) Payslips covering:

- (i) a period of 6 months prior to the date of application or to the commencement of the maternity, paternity or adoption leave, if the applicant has been employed by their current employer for at least 6 months (and where paragraph 13(b) does not apply); or
- (ii) any period of salaried employment in the period of 12 months prior to the date of application or to the commencement of the maternity, paternity or adoption leave, if the applicant has been employed by their current employer for less than 6 months (or at least 6 months but the person does not rely on paragraph 13(a)).

(c) A letter from the employer confirming:

- (i) the length of the person's employment;
- (ii) the gross annual salary and the period over which it has been paid at this level;
- (iii) the entitlement to maternity, paternity, parental or adoption leave; and (iv) the date of commencement and the end-date of the maternity, paternity, parental or adoption leave.

6. In respect of statutory or contractual sick pay in the UK all of the following must be provided:



- (a) Personal bank statements corresponding to the same period(s) as the payslips at paragraph 6(b), showing that the salary has been paid into an account in the name of the person or in the name of the person and their partner jointly.
- (b) Payslips covering:
  - (i) a period of 6 months prior to the date of application or to the commencement of the sick leave, if the applicant has been employed by their current employer for at least 6 months (and where paragraph 13(b) does not apply); or,
  - (ii) any period of salaried employment in the period of 12 months prior to the date of application or to the commencement of the sick leave, if the applicant has been employed by their current employer for less than 6 months (or at least 6 months but the person does not rely on paragraph 13(a)).
- (c) A letter from employer confirming:
  - (i) the length of the person's employment;
  - (ii) the gross annual salary and the period over which it has been paid at this level;
  - (iii) that the person is in receipt of statutory or contractual sick pay; and (iv) the date of commencement of the sick leave.

7. In respect of self-employment in the UK as a partner, as a sole trader or in a franchise all of the following must be provided:

- (a) Evidence of the amount of tax payable, paid and unpaid for the last full financial year.
- (b) The following documents for the last full financial year, or for the last two such years (where those documents show the necessary level of gross income as an average of those two years):
  - (i) annual self-assessment tax return to HMRC (a copy or print-out); and
  - (ii) Statement of Account (SA300 or SA302).
- (c) Proof of registration with HMRC as self-employed if available.
- (d) Each partner's Unique Tax Reference Number (UTR) and/or the UTR of the partnership or business.
- (e) Where the person holds or held a separate business bank account(s), bank statements for the same 12-month period as the tax return(s).
- (f) personal bank statements for the same 12-month period as the tax return(s) showing that the income from self-employment has been paid into an account in the name of the person or in the name of the person and their partner jointly.
- (g) Evidence of ongoing self-employment through evidence of payment of Class 2 National Insurance contributions, or (where the person has reached state pension age) through alternative evidence (which may include, but is not confined to, evidence of ongoing payment of business rates, business-related insurance premiums, employer National Insurance contributions or franchise payments to the parent company).
- (h) One of the following documents must also be submitted:
  - (i) (aa) If the business is required to produce annual audited accounts, such accounts for the last full financial year; or
    - (bb) If the business is not required to produce annual audited accounts, unaudited accounts for the last full financial year and an accountant's certificate of confirmation, from an accountant who is a member of a UK Recognised Supervisory Body (as defined in the Companies Act 2006);
  - (ii) A certificate of VAT registration and the VAT return for the last full financial year (a copy or print-out) confirming the VAT registration number, if turnover is in excess of £79,000 or was in excess of the threshold which applied during the last full financial year;

- (iii) Evidence to show appropriate planning permission or local planning authority consent is held to operate the type/class of business at the trading address (where this is a local authority requirement); or
- (iv) A franchise agreement signed by both parties.

(i) The document referred to in paragraph 7(h)(iv) must be provided if the organisation is a franchise.

8. In respect of self-employment outside of the UK, evidence should be a reasonable equivalent to that set out in paragraph 7.
9. In respect of income from employment and/or shares in a limited company based in the UK of a type specified in paragraph 9(a), the requirements of paragraph 9(b)-(d) shall apply in place of the requirements of paragraphs 2 and 10(b).

(a) The specified type of limited company is one in which:

- (i) the person is a director of the company (or another company within the same group); and
- (ii) shares are held (directly or indirectly) by the person, their partner or the following family members of the person or their partner: parent, grandparent, child, stepchild, grandchild, brother, sister, uncle, aunt, nephew, niece or first cousin; and
- (iii) any remaining shares are held (directly or indirectly) by fewer than five other persons.

(b) All of the following must be provided:

- (i) Company Tax Return CT600 (a copy or print-out) for the last full financial year and evidence this has been filed with HMRC, such as electronic or written acknowledgment from HMRC.
- (ii) Evidence of registration with the Registrar of Companies at Companies House.
- (iii) If the company is required to produce annual audited accounts, such accounts for the last full financial year.
- (iv) If the company is not required to produce annual audited accounts, unaudited accounts for the last full financial year and an accountant's certificate of confirmation, from an accountant who is a member of a UK Recognized Supervisory Body (as defined in the Companies Act 2006).
- (v) Corporate/business bank statements covering the same 12-month period as the Company Tax Return CT600.
- (vi) A current Appointment Report from Companies House.
- (vii) One of the following documents must also be provided:

(1) A certificate of VAT registration and the VAT return for the last full financial year (a copy or print-out) confirming the VAT registration number, if turnover is in excess of £79,000 or was in excess of the threshold which applied during the last full financial year.

(2) Proof of ownership or lease of business premises.

(3) Original proof of registration with HMRC as an employer for the purposes of PAYE and National Insurance, proof of PAYE reference number and Accounts Office reference number. This evidence may be in the form of a certified copy of the documentation issued by HMRC.

(c) Where the person is listed as a director of the company and receives a salary from the company, all of the following documents must also be provided:

- (i) Payslips and P60 (if issued) covering the same period as the Company Tax Return CT600.
- (ii) Personal bank statements covering the same 12-month period as the

Company Tax Return CT600 showing that the salary as a director was paid into an account in the name of the person or in the name of the person and their partner jointly.

- (d) Where the person receives dividends from the company, all of the following documents must also be provided:
- (i) Dividend vouchers for all dividends declared in favour of the person during or in respect of the period covered by the Company Tax Return CT600 showing the company's and the person's details with the person's net dividend amount and tax credit.
  - (ii) Personal bank statement(s) showing that those dividends were paid into an account in the name of the person or in the name of the person and their partner jointly.

10. In respect of non-employment income all the following evidence, in relation to the form of income relied upon, must be provided:

- (a) To evidence property rental income:
- (i) Confirmation that the person or the person and their partner jointly own the property for which the rental income is received, through:
    - (1) A copy of the title deeds of the property or of the title register from the Land Registry (or overseas equivalent); or
    - (2) A mortgage statement.
  - (ii) personal bank statements for the 12-month period prior to the date of application showing the rental income was paid into an account in the name of the person or of the person and their partner jointly. (iii) A rental agreement or contract.
- (b) To evidence dividends (except where paragraph 9 applies) or other income from investments, stocks, shares, bonds or trust funds:
- (i) A certificate showing proof of ownership and the amount(s) of any investment(s).
  - (ii) A portfolio report (for a financial institution regulated by the Financial Conduct Authority (and the Prudential Regulation Authority where applicable) in the UK) or a dividend voucher showing the company and person's details with the person's net dividend amount and tax credit.
  - (iii) personal bank statements for the 12-month period prior to the date of application showing that the income relied upon was paid into an account in the name of the person or of the person and their partner jointly.
  - (iv) Where the person is a director of a limited company based in the UK, evidence that the company is not of a type specified in paragraph 9(a). This can include the latest Annual Return filed at Companies House.
- (c) To evidence interest from savings:
- (i) personal bank statements for the 12-month period prior to the date of application showing the amount of the savings held and that the interest was paid into an account in the name of the person or of the person and their partner jointly.
- (d) To evidence maintenance payments (from a former partner of the applicant to maintain their and the applicant's child or children or the applicant, or from a former partner of the applicant's partner to maintain the applicant's partner):
- (i) Evidence of a maintenance agreement through any of the following:
    - (1) A court order;
    - (2) Written voluntary agreement; or
    - (3) Child Support Agency documentation.

- (ii) personal bank statements for the 12-month period prior to the date of application showing the income relied upon was paid into an account in the name of the applicant.
- (e) To evidence a pension:
- (i) Official documentation from:
    - (1) The Department for Work and Pensions (in respect of the Basic State Pension and the Additional or Second State Pension) or other government department or agency, including the Veterans Agency;
    - (2) An overseas pension authority; or (3) A pension company, confirming pension entitlement and amount.
  - (ii) At least one personal bank statement in the 12-month period prior to the date of application showing payment of the pension into the person's account.
  - (iii) For the purposes of sub-paragraph (i), War Disablement Pension, War Widow's/Widower's Pension and any other pension or equivalent payment for life made under the War Pensions Scheme, the Armed Forces Compensation Scheme or the Armed Forces Attributable Benefits Scheme may be treated as a pension, unless excluded under paragraph 21 of this Appendix.
- (f) To evidence UK Maternity Allowance, Bereavement Allowance, Bereavement Payment and Widowed Parent's Allowance:
- (i) Department for Work and Pensions documentation confirming the person or their partner is or was in receipt of the benefit in the 12-month period prior to the date of application.
  - (ii) personal bank statements for the 12-month period prior to the date of application showing the income was paid into the person's account.
- (ff) Subject to paragraph 12, to evidence payments under the War Pensions Scheme, the Armed Forces Compensation Scheme or the Armed Forces Attributable Benefits Scheme which are not treated as a pension for the purposes of paragraph 10(e)(i):
- (i) Veterans Agency or Department for Work and Pensions documentation in the form of an award notification letter confirming the person or their partner is or was in receipt of the payment at the date of application.
  - (ii) personal bank statements for the 12-month period prior to the date of application showing the income was paid into the person's account."
- (g) To evidence a maintenance grant or stipend (not a loan) associated with undergraduate study or postgraduate study or research:
- (i) Documentation from the body or company awarding the grant or stipend confirming that the person is currently in receipt of the grant or stipend or will be within 3 months of the date of application, confirming that the grant or stipend will be paid for a period of at least 12 months or for at least one full academic year from the date of application or from the date on which payment of the grant or stipend will commence, and confirming the annual amount of the grant or stipend. Where the grant or stipend is or will be paid on a tax-free basis, the amount of the gross equivalent may be counted as income under this Appendix.
  - (ii) personal bank statements for any part of the 12-month period prior to the date of the application during which the person has been in receipt of the grant or stipend showing the income was paid into the person's account.
- (h) To evidence ongoing insurance payments (such as, but not exclusively, payments received under an income protection policy):
- (i) documentation from the insurance company confirming:

- (a) that in the 12 months prior to the date of application the person has been in receipt of insurance payments and the amount and frequency of the payments.
  - (b) the reason for the payments and their expected duration.
  - (c) that, provided any relevant terms and conditions continue to be met, the payment(s) will continue for at least the 12 months following the date of application.
    - (ii) personal bank statements for the 12-month period prior to the date of application showing the insurance payments were paid into the person's account.
- (i) To evidence ongoing payments (other than maintenance payments under paragraph 10(d)) arising from a structured legal settlement (such as, but not exclusively, one arising from settlement of a personal injury claim):
- (i) documentation from a court or the person's legal representative confirming:
    - (a) that in the 12 months prior to the date of application the person has been in receipt of structured legal settlement payments and the amount and frequency of those payments.
    - (b) the reason for the payments and their expected duration.
    - (c) that the payment(s) will continue for at least the 12 months following the date of application.
    - (ii) personal bank statements for the 12-month period prior to the date of application showing the payments were paid into the person's account, either directly or via the person's legal representative.

11. In respect of cash savings the following must be provided:

- (a) personal bank statements showing that at least the level of cash savings relied upon in the application has been held in an account(s) in the name of the person or of the person and their partner jointly throughout the period of 6 months prior to the date of application.
- (b) A declaration by the account holder(s) of the source(s) of the cash savings.

11A. In respect of cash savings:

- (a) The savings may be held in any form of bank/savings account (whether a deposit or investment account), provided that the account allows the savings to be accessed immediately (with or without a penalty for withdrawing funds without notice). This can include savings held in a pension savings account which can be immediately withdrawn.
- (b) Paid out competition winnings or a legacy which has been paid can contribute to cash savings.
- (c) Funds held as cash savings by the applicant, their partner or both jointly at the date of application can have been transferred from investments, stocks, shares, bonds or trust funds within the period of 6 months prior to the date of application, provided that:
  - (i) The funds have been in the ownership and under the control of the applicant, their partner or both jointly for at least the period of 6 months prior to the date of application.
  - (ii) The ownership of the funds in the form of investments, stocks, shares, bonds or trust funds; the cash value of the funds in that form at or before the beginning of the period of 6 months prior to the date of application; and the transfer of the funds into cash, are evidenced by a portfolio report or other relevant documentation from a financial institution regulated by the appropriate regulatory body for the country in which that institution is operating.

(iii) The requirements of this Appendix in respect of the cash savings held at the date of application are met, except that the period of 6 months prior to the date of application in paragraph 11(a) will be reduced by the amount of that period in which the relevant funds were held in the form of investments, stocks, shares, bonds or trust funds.

(iv) For the purposes of sub-paragraph 11A(c), "investments" includes funds held in an investment account which does not meet the requirements of paragraphs 11 and 11A(a).

(d) Funds held as cash savings by the applicant, their partner or both jointly at the date of application can be from the proceeds of the sale of property, in the form only of a dwelling, other building or land, which took place within the period of 6 months prior to the date of application, provided that:

(i) The property (or relevant share of the property) was owned at the beginning of the period of 6 months prior to the date of application and at the date of sale by the applicant, their partner or both jointly.

(ii) Where ownership of the property was shared with a third party, only the proceeds of the sale of the share of the property owned by the applicant, their partner or both jointly may be counted.

(iii) The funds deposited as cash savings are the net proceeds of the sale, once any mortgage or loan secured on the property (or relevant share of the property) has been repaid and once any taxes and professional fees associated with the sale have been paid.

(iv) The decision-maker is satisfied that the requirements in sub-paragraphs (i)-(iii) are met on the basis of information and documents submitted in support of the application. These may include for example:

(1) Registration information or documentation (or a copy of this) from the Land Registry (or overseas equivalent).

(2) A letter from a solicitor (or other relevant professional, if the sale takes place overseas) instructed in the sale of the property confirming the sale price and other relevant information.

(3) A letter from a lender (a bank or building society) on its headed stationery regarding the repayment of a mortgage or loan secured on the property.

(4) Confirmation of payment of taxes or professional fees associated with the sale.

(5) Any other relevant evidence that the requirements in subparagraphs (i)-(iii) are met.

(v) The requirements of this Appendix in respect of the cash savings held at the date of application are met, except that the period of 6 months mentioned in paragraph 11(a) will be reduced by the amount of time which passed between the start of that 6-month period and the deposit of the proceeds of the sale in an account mentioned in paragraph 11(a).

12. Where a person is in receipt of Carer's Allowance, Disability Living Allowance, Severe Disablement Allowance, Industrial Injuries Disablement Benefit, Attendance Allowance or Personal Independence Payment or Armed Forces Independence Payment or Guaranteed Income Payment under the Armed Forces Compensation Scheme or Constant Attendance Allowance, Mobility Supplement or War Disablement Pension under the War Pensions Scheme, all the following must be provided:

- (a) Official documentation from the Department for Work and Pensions or Veterans Agency confirming the current entitlement and the amount currently received.
- (b) At least one personal bank statement in the 12-month period prior to the date of application showing “payment of the amount of the benefit or allowance to which the person is currently entitled into their account.

12A. Where the financial requirement the applicant must meet under Appendix FM relates to adequate maintenance, paragraphs 2 to 12 apply only to the extent and in the manner specified by this paragraph. Where such a financial requirement applies, the applicant must provide the following evidence:

- (a) Where the current salaried employment in the UK of the applicant or their partner, parent, parent's partner or sponsor is relied upon:
  - (i) A letter from the employer confirming the employment, the gross annual salary and the annual salary after income tax and National Insurance contributions have been paid, how long the employment has been held, and the type of employment (permanent, fixed-term contract or agency).
  - (ii) Payslips covering the period of 6 months prior to the date of application or such shorter period as the current employment has been held.
  - (iii) personal bank statement covering the same period as the payslips, showing that the salary has been paid into an account in the name of the person or in the name of the person and their partner jointly.
- (b) Where statutory or contractual maternity, paternity, adoption or sick pay in the UK of the applicant or their partner, parent, parent's partner or sponsor are relied upon, paragraph 5(b)(i) and (c) or paragraph 6(b)(i) and (c) apply as appropriate.
- (c) Where self-employment in the UK of the applicant or their partner, parent, parent's partner or sponsor, or income from employment and/or shares in a limited company based in the UK of a type to which paragraph 9 applies, is relied upon, paragraph 7 or 9 applies as appropriate.
- (d) Where the non-employment income of the applicant or their partner, parent, parent's partner or sponsor is relied upon, paragraph 10 applies and paragraph 10 shall apply as if it referred to any UK welfare benefit or tax credit relied upon and to HMRC as well as Department for Work and Pensions or other official documentation.
- (e) Where the cash savings of the applicant or their partner, parent, parent's partner or sponsor are relied upon, paragraphs 11 and 11A apply.
- (f) The monthly housing and Council Tax costs for the accommodation in the UK in which the applicant (and any other family members who are or will be part of the same household) lives or will live if the application is granted.
- (g) Where the applicant is an adult dependent relative applying for entry clearance, the applicant must in addition provide details of the care arrangements in the UK planned for them by their sponsor (which can involve other family members in the UK), of the cost of these arrangements and of how that cost will be met by the sponsor.

12B. Where the financial requirement an applicant must meet under Part 8 (excluding an applicant who is a family member of a Relevant Points Based System Migrant) or under Appendix FM relates to adequate maintenance and where cash savings are relied upon to meet the requirement in full or in part, the decision-maker will:

- (a) Establish the total cash savings which meet the requirements of paragraphs 11 and 11A;
- (b) Divide this figure by the number of weeks of limited leave which would be issued if the application were granted, or by 52 if the application is for indefinite leave to enter or remain;

(c) Add the figure in sub-paragraph 12B(b) to the weekly net income (before the deduction of housing costs) available to meet the requirement

### **Calculating Gross Annual Income under Appendix FM**

13. Based on evidence that meets the requirements of this Appendix, and can be taken into account with reference to the applicable provisions of Appendix FM, gross annual income under paragraphs E-ECP.3.1., E-LTRP.3.1., E-ECC.2.1. and E-LTRC.2.1. will be calculated in the following ways:

(a) Where the person is in salaried employment in the UK at the date of application, has been employed by their current employer for at least 6 months and has been paid throughout the period of 6 months prior to the date of application at a level of gross annual salary which equals or exceeds the level relied upon in paragraph 13(a)(i), their gross annual income will be (where paragraph 13(b) does not apply) the total of:

- (i) The level of gross annual salary relied upon in the application;
- (ii) The gross amount of any specified non-employment income (other than pension income) received by them or their partner in the 12 months prior to the date of application; and
- (iii) The gross annual income from a UK or foreign State pension or a private pension received by them or their partner.

(b) Where the person is in salaried employment in the UK at the date of application and has been employed by their current employer for less than 6 months (or at least 6 months but the person does not rely on paragraph 13(a)), their gross annual income will be the total of:

- (i) The gross annual salary from employment as it was at the date of application;
- (ii) The gross amount of any specified non-employment income (other than pension income) received by them or their partner in the 12 months prior to the date of application; and
- (iii) The gross annual income from a UK or foreign State pension or a private pension received by them or their partner.

In addition, the requirements of paragraph 15 must be met.

(c) Where the person is the applicant's partner, is in salaried employment outside of the UK at the date of application, has been employed by their current employer for at least 6 months, and is returning to the UK to take up salaried employment in the UK starting within 3 months of their return, the person's gross annual income will be calculated:

- (i) On the basis set out in paragraph 13(a); and also
- (ii) On that basis but substituting for the gross annual salary at paragraph 13(a)(i) the gross annual salary in the salaried employment in the UK to which they are returning.

(d) Where the person is the applicant's partner, has been in salaried employment outside of the UK within 12 months of the date of application, and is returning to the UK to take up salaried employment in the UK starting within 3 months of their return, the person's gross annual income will be calculated:

- (i) On the basis set out in paragraph 13(a) but substituting for the gross annual salary at paragraph 13(a)(i) the gross annual salary in the salaried employment in the UK to which they are returning; and also (ii) On the basis set out in paragraph 15(b).

(e) Where the person is self-employed, their gross annual income will be the total of their gross income from their self-employment, from any salaried or non-salaried employment they have had or their partner has had (if their partner is in the UK with permission to work), from specified non-employment income received by them or their partner, and from income from a UK or foreign State pension or a private pension received by them or their partner, in the last



full financial year or as an average of the last two full financial years. The requirements of this Appendix for specified evidence relating to these forms of income shall apply as if references to the date of application were references to the end of the relevant financial year(s). The relevant financial year(s) cannot be combined with any financial year(s) to which paragraph 9 applies and vice versa.

(f) Where the person is self-employed, they cannot combine their gross annual income at paragraph 13(e) with specified savings in order to meet the level of income required under Appendix FM.

(g) Where the person is not relying on income from salaried employment or self employment, their gross annual income will be the total of:

(i) The gross amount of any specified non-employment income (other than pension income) received by them or their partner in the 12 months prior to the date of application; and

(ii) The gross annual income from a UK or foreign State pension or a private pension received by them or their partner.

(h) Where the person is the applicant's partner and is in self-employment outside the UK at the date of application and is returning to the UK to take up salaried employment in the UK starting within 3 months of their return, the person's gross annual income will be calculated:

(i) On the basis set out in paragraph 13(a) but substituting for the gross annual salary at paragraph 13(a)(i) the gross annual salary in the salaried employment in the UK to which they are returning; and also (ii) On the basis set out in paragraph 13(e).

(i) Any period of unpaid maternity, paternity, adoption, parental or sick leave in the 12 months prior to the date of application will not be counted towards any period relating to employment, or any period relating to income from employment, for which this Appendix provides.

(j) The provisions of paragraph 13 which apply to self-employment and to a person who is self-employed also apply to income from employment and/or shares in a limited company based in the UK of a type to which paragraph 9 applies and to a person in receipt of such income.

(k) Where the application relies on the employment income of the applicant and the sponsor, all of that income must be calculated either under sub-paragraph 13(a) or under sub-paragraph 13(b) and paragraph 15, and not under a combination of these methods.

14. Where the requirements of this Appendix and Appendix FM are met by the combined income or cash savings of more than one person, the income or the cash savings must only be counted once unless stated otherwise.

15. In respect of paragraph 13(b) and paragraph 13(d), the provisions in this paragraph also apply:

(a) In order to evidence the level of gross annual income required by Appendix FM, the person must meet the requirements in paragraph 13(b) or paragraph 13(d)(i); and (b) The person must also meet the level of gross annual income required by Appendix FM on the basis that their income is the total of:

(i) The gross income from salaried employment in the UK or overseas earned by the person in the 12 months prior to the date of application;

(ii) The gross amount of any specified non-employment income (other than pension income) received by the person or their partner in the 12 months prior to the date of application;

(iii) The gross amount received from a UK or foreign State pension or a private pension by the person or their partner in the 12 months prior to the date of application; and

(iv) The person cannot combine the gross annual income at paragraph 15(b)(i)-(iii) with specified savings in order to meet the level of income required.

16. Where a person is in receipt of maternity, paternity, adoption or sick pay or has been so in the 6 months prior to the date of application, this paragraph applies:

- (a) the relevant date for considering the length of employment with their current employer will be the date that the maternity, paternity, adoption or sick leave commenced or the date of application; and
- (b) the relevant period for calculating income from their salaried employment will be the period prior to the commencement of the maternity, paternity, adoption or sick pay or to the date of application.

17. If a person is an equity partner, for example in a law firm, the income they draw from the partnership will be treated as salaried employment for the purposes of this Appendix and Appendix FM.

17A. Where a person is a subcontractor under the Construction Industry Scheme administered by HMRC and does not rely on paragraph 13(e), the income they receive as a subcontractor under the Construction Industry Scheme may be treated as income from salaried employment for the purposes of this Appendix and Appendix FM. In that case, the requirements for specified evidence in paragraph 2 must be met, subject to applying those requirements so as to reflect the person's status as a subcontractor under the Construction Industry Scheme.

18. When calculating income from salaried employment under paragraphs 12A and 13 to 16, this paragraph applies:

- (a) Basic pay, skills-based allowances, and UK location-based allowances will be counted as income provided that:
  - (i) They are contractual; and
  - (ii) Where these allowances make up more than 30% of the total salary, only the amount up to 30% is counted.

- (b) Overtime, commission-based pay and bonuses (which can include tips and gratuities paid via a tronc scheme registered with HMRC) will be counted as income, where they have been received in the relevant period(s) of employment or self-employment relied upon in the application.

(bb) In respect of a person in salaried employment at the date of application, the amount of income in sub-paragraph (b) which may be added to their gross annual salary, and counted as part of that figure for the purposes of paragraph 13(a)(i) or 13(b)(i), is the annual equivalent of the person's average gross monthly income from that income in their current employment in the 6 months prior to the date of application.

- (c) UK and overseas travel, subsistence and accommodation allowances, and allowances relating to the cost of living overseas will not be counted as income. (d) Gross income from non-salaried employment will be calculated on the same basis as income from salaried employment, except as provided in paragraph 18(e) and 18(f), and the requirements of this Appendix for specified evidence relating to salaried employment shall apply as if references to salary were references to income from non-salaried employment. Non-salaried employment includes that paid at an hourly or other rate (and the number and/or pattern of hours required to be worked may vary), or paid an amount which varies according to the work undertaken, whereas salaried employment includes that paid at a minimum fixed rate (usually annual) and is subject usually to a contractual minimum number of hours to be worked.

(e) For the purpose of paragraph 13(a)(i), in respect of a person in non-salaried employment at the date of application "the level of gross annual salary relied upon in the application" shall be no greater than the annual equivalent of the person's average gross monthly income from non-salaried employment in the 6 months prior to the date of application, where that employment was held throughout that period.

(f) For the purpose of paragraph 13(b)(i), "the gross annual salary from employment as it was at the date of application" of a person in non-salaried employment at the date of application shall be considered to be the annual equivalent of the person's average gross

monthly income from non-salaried employment in the 6 months prior to the date of application, regardless of whether that employment was held throughout that period.

(g) For the purpose of paragraphs 13(c)(ii) and 13(d)(i), "the gross annual salary in the salaried employment in the UK to which they are returning" of a person who is returning to the UK to take up non-salaried employment in the UK starting within 3 months of their return is the gross annual income from that employment, based on the rate or amount of pay, and the standard or core hours of work, set out in the document(s) from the employer provided under paragraph 4. Notwithstanding paragraph 18(b), this may include the gross "on-target" earnings which may be expected from satisfactory performance in the standard or core hours of work.

19. When calculating income from self-employment under paragraphs 12A and 13(e), and in relation to income from employment and/or shares in a limited company based in the UK of a type to which paragraph 9 applies, this paragraph applies:

- (a) There must be evidence of ongoing self-employment, and (where income from salaried employment is also relied upon or where paragraph 9(c) applies) ongoing employment, at the date of application.
- (b) Where the self-employed person is a sole trader or is in a partnership or franchise agreement, the income will be:
  - (i) the gross taxable profits from their share of the business; and
  - (ii) allowances or deductible expenses which are not taxed will not be counted towards income.
- (c) Where income to which paragraph 19 applies is being used to meet the financial requirement for an initial application for leave to remain as a partner under Appendix FM by an applicant who used such income to meet that requirement in an application for entry clearance as a fiancé(e) or proposed civil partner under that Appendix in the last 12 months, the Secretary of State may continue to accept the same level and evidence of income to which paragraph 19 applies that was accepted in granting the application for entry clearance, provided that there is evidence of ongoing self-employment, and (where income from salaried employment is also relied upon or where paragraph 9(c) applies) ongoing employment, at the date of the application for leave to remain.
- (d) The financial year(s) to which paragraph 7 refers is the period of the last full financial year(s) to which the required Statement(s) of Account (SA300 or SA302) relates.
- (e) The financial year(s) to which paragraph 9 refers is the period of the last full financial year(s) to which the required Company Tax Return(s) CT600 relates.

20. When calculating income from specified non-employment sources under paragraphs 12A and 13 to 15, this paragraph applies:

- (a) Assets or savings must be in the name of the person, or jointly with their partner.
- (b) Any asset or savings on which income is based must be held or owned by the person at the date of application.
- (c) Any rental income from property, in the UK or overseas, must be from a property that is:
  - (i) owned by the person;
  - (ii) not their main residence and will not be so if the application is granted, except in the circumstances specified in paragraph 20(e); and
  - (iii) if ownership of the property is shared with a third party, only income received from their share of the property can be counted.
- (cc) The amount of rental income from property received before any management fee was deducted may be counted.
- (d) Equity in a property cannot be used to meet the financial requirement.

- (e) Where the applicant and their partner are resident outside the UK at the date of application, rental income from a property in the UK that will become their main residence if the application is granted may only be counted under paragraph 13(c)(i) and paragraph 13(d)(ii).
- (f) Any future entitlement to a maintenance grant or stipend of the type specified in paragraph 10(g) may be counted as though the person had received the annual amount of that grant or stipend in the 12 months prior to the date of application.

20A. When calculating the gross annual income from pension under paragraph 13, the gross annual amount of any pension received may be counted where the pension has become a source of income at least 28 days prior to the date of application.

21. When calculating income under paragraphs 13 to 16, the following sources will not be counted:

- (a) Loans and credit facilities.
- (b) Income-related benefits: Income Support, income-related Employment and Support Allowance, Pension Credit, Housing Benefit, Council Tax Benefit and income-based Jobseeker's Allowance.
- (c) The following contributory benefits: contribution-based Jobseeker's Allowance, contribution-based Employment and Support Allowance and Incapacity Benefit.
- (cc) Unemployability Allowance, Allowance for a Lowered Standard of Occupation and Invalidity Allowance under the War Pension Scheme.
- (d) Child Benefit.
- (e) Working Tax Credit.
- (f) Child Tax Credit.
- (g) Any other source of income not specified in this appendix.

### **Evidence of Marriage or Civil Partnerships**

22. A claim to have been married in the United Kingdom must be evidenced by a marriage certificate.

23. A claim to be divorced in the United Kingdom must be evidenced by a decree absolute from a civil court.

24. A civil partnership in the United Kingdom must be evidenced by a civil partnership certificate.

25. The dissolution of a civil partnership in the UK must be evidenced by a final order of civil partnership dissolution from a civil court.

26. Marriages, civil partnerships or evidence of divorce or dissolution from outside the UK must be evidenced by a reasonable equivalent to the evidence detailed in paragraphs 22 to 25, valid under the law in force in the relevant country.

### **Evidence of the Applicant Living Overseas with a Crown Servant**

26A. Where

(a) An applicant for entry clearance, limited leave to enter or remain or indefinite leave to remain as a partner under Appendix FM (except as a fiancé(e) or proposed civil partner) intends to enter or remain in the UK to begin their probationary period (or has done so) and then to live outside the UK for the time being with their sponsor (or is doing so or has done so) before the couple live together permanently in the UK; and

(b) The sponsor, who is a British Citizen or settled in the UK, is a permanent member of HM Diplomatic Service or a comparable UK-based staff member of the British Council, the Department for International Development or the Home Office on a tour of duty outside the UK, the applicant must provide a letter on official stationery from the sponsor's head of mission confirming the information at (a) and (b) and confirming the start date and expected end date of the sponsor's tour of duty outside the UK.

### **Evidence of English Language Requirements**

27. Evidence of passing an English language test in speaking and listening must take the form of either:

- (a) a certificate and/or other document(s) for the relevant test as specified in Appendix O that:
  - (i) is from an English language test provider approved by the Secretary of State for these purposes as specified in Appendix O of these rules
  - (ii) is a test approved by the Secretary of State for these purposes as specified in Appendix O of these rules
  - (iii) shows the applicant's name;
  - (iv) shows the qualification obtained (which must meet or exceed level A1 of the Common European Framework of Reference); and, (v) shows the date of award.

Or,

- (b) a print out of the online score from a PTE (Pearson) test which:
  - (i) is a test approved by the Secretary of State for these purposes as specified in Appendix O of these rules;
  - (ii) can be used to show that the qualification obtained (which must meet or exceed level A1 of the Common European Framework of Reference); and, (iii) is from an English language test provider approved by the Secretary of State for these purposes as specified in Appendix O of these rules

28. The evidence required to show that a person is a citizen or national of a majority English speaking country is a valid passport or travel document, unless paragraphs 29 and 30 apply. A dual national may invoke either of their nationalities.

29. If the applicant has not provided their passport or travel document other evidence of nationality can be supplied in the following circumstances only (as indicated by the applicant on their application form):

- (a) where the passport or travel document has been lost or stolen;
- (b) where the passport or travel document has expired and been returned to the relevant authorities; or
- (c) where the passport or travel document is with another part of the Home Office.

30. Alternative evidence as proof of nationality, if acceptable, must be either:

- (a) A current national identity document; or
- (b) An original letter from the applicant's Home Government, Embassy or High Commission confirming the applicant's full name, date of birth and nationality.

31. Evidence of an academic qualification (recognised by UK NARIC to be equivalent to the standard of a Bachelor's or Master's degree or PhD in the UK) and was taught in English must be either:

- (a) A certificate issued by the relevant institution confirming the award of the academic qualification showing:
  - (i) the applicant's name;

- (ii) the title of award;
- (iii) the date of award;
- (iv) the name of the awarding institution; and,
- (v) that the qualification was taught in English

Or,

(b) If the applicant is awaiting graduation or no longer has the certificate and cannot get a new one, the evidence must be:

- (i) an original academic reference from the institution awarding the academic qualification that;
  - (1) is on official letter headed paper;
  - (2) shows the applicant's name;
  - (3) shows the title of award;
  - (4) confirms that the qualification was taught in English;
  - (5) explains when the academic qualification has been, or will be awarded; and
  - (6) states either the date that the certificate will be issued (if the applicant has not yet graduated) or confirms that the institution is unable to re-issue the original certificate of award.

or

- (ii) an original academic transcript that
  - (1) is on official letter headed paper
  - (2) shows the applicant's name;
  - (3) the name of the academic institution;
  - (4) the course title;
  - (5) confirms that the qualification was taught in English; and, (6) provides confirmation of the award.

32. If the qualification was taken in one of the following countries, it will be assumed for the purpose of paragraph 31 that it was taught in English: Antigua and Barbuda, Australia, the Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Ireland, Jamaica, New Zealand, St Kitts and Nevis, St Lucia, St Vincent and the Grenadines, Trinidad and Tobago, the UK, the USA.

32A. For the avoidance of doubt paragraphs 27 to 32D of this Appendix apply to fiancé(e), proposed civil partner, spouse, civil partner, unmarried partner and same sex partner applications for limited leave to enter or remain made under Part 8 of these Rules where English language requirements apply, regardless of the date of application. Paragraphs 27 to 32D of this Appendix also apply to spouse, civil partner, unmarried partner and same sex partner applications which do not meet the requirements of Part 8 of these Rules for indefinite leave to remain (where the application is for indefinite leave to remain) and are being considered for a grant of limited leave to remain where paragraph A277A(b) of these Rules applies. Any references in paragraphs 27 to 32D of this Appendix to "limited leave to enter or remain" shall therefore be read as referring to all applicants referred to in this paragraph.

32B. Where the decision-maker has:

- (a) reasonable cause to doubt that an English language test in speaking and listening at a minimum of level A1 of the Common Framework of Reference for Languages relied on at any time to meet a requirement for limited leave to enter or remain in Part 8 or Appendix FM was genuinely obtained; or
- (b) information that the test certificate or result awarded to the applicant has been withdrawn by the test provider for any reason, the decision-maker may discount the document and the applicant must

provide a new test certificate or result from an approved provider which shows that they meet the requirement, if they are not exempt from it.

32C. If an applicant applying for limited leave to enter or remain under Part 8 or Appendix FM submits an English language test certificate or result which has ceased by the date of application to be:

- (a) from an approved test provider, or
- (b) in respect of an approved test,

the decision-maker will not accept that certificate or result as valid, unless the decision-maker does so in accordance with paragraph 32D of this Appendix and subject to any transitional arrangements made in respect of the test provider or test in question.

32D. If an applicant applying for limited leave to enter or remain under Part 8 or Appendix FM submits an English language test certificate or result and the Home Office has already accepted it as part of a successful previous partner or parent application (but not where the application was refused, even if on grounds other than the English language requirement), the decision-maker may accept that certificate or result as valid if it is:

- (a) from a provider which is no longer approved, or
- (b) from a provider who remains approved but the test the applicant has taken with that provider is no longer approved, or
- (c) past its validity date (if a validity date is required under Appendix O), provided that when the subsequent application is made:
  - (i) the applicant has had continuous leave (disregarding any period of overstaying of no more than 28 days) as a partner or parent since the Home Office accepted the test certificate as valid; and
  - (ii) the award to the applicant does not fall within the circumstances set out in paragraph 32B of this Appendix.

### **Adult dependent relatives**

33. Evidence of the family relationship between the applicant(s) and the sponsor should take the form of birth or adoption certificates, or other documentary evidence.

34. Evidence that, as a result of age, illness or disability, the applicant requires long-term personal care should take the form of:

- (a) Independent medical evidence that the applicant's physical or mental condition means that they cannot perform everyday tasks; and
- (b) This must be from a doctor or other health professional.

35. Independent evidence that the applicant is unable, even with the practical and financial help of the sponsor in the UK, to obtain the required level of care in the country where they are living should be from:

- (a) a central or local health authority;
- (b) a local authority; or
- (c) a doctor or other health professional.

36. If the applicant's required care has previously been provided through a private arrangement, the applicant must provide details of that arrangement and why it is no longer available.

37. If the applicant's required level of care is not, or is no longer, affordable because payment previously made for arranging this care is no longer being made, the applicant must provide records of that payment and an explanation of why that payment cannot continue. If financial support has been provided by the sponsor or other close family in the UK, the applicant must provide an explanation of why this cannot continue or is no longer sufficient to enable the required level of care to be provided.

## **Appendix KOLL**

### **PART 1. GENERAL**

#### **1.1**

##### **Purpose**

This Appendix sets out how an applicant for indefinite leave to enter or remain must demonstrate sufficient knowledge of the English language and about life in the United Kingdom where it is a requirement of the Rules to demonstrate this for the purposes of an application for indefinite leave to enter or remain. It also sets out general exemptions to the requirement on grounds of age and enables the decision maker to waive the requirement in light of special circumstances in any particular case.

“Specified” in this Appendix means “specified in Part 4 of this appendix”

### **PART 2 - KNOWLEDGE OF LANGUAGE AND LIFE**

2.1 An applicant for leave to enter or remain has sufficient knowledge of the English language and about life in the United Kingdom for the purpose of an application for indefinite leave to enter or remain made under these Rules if the requirements set out in paragraphs 2.2 and 2.3 are met unless the exceptions set out in Part 3 apply.

2.2 For the purposes of paragraph 2.1, an applicant demonstrates sufficient knowledge of the English language if:

- a) the applicant has provided specified documentary evidence that:
  - i) the applicant is a national or citizen of one of the following countries:

Antigua and Barbuda  
Australia  
The Bahamas  
Barbados  
Belize  
Canada  
Dominica  
Grenada  
Guyana  
Jamaica  
New Zealand  
St Kitts and Nevis  
St Lucia  
St Vincent and the Grenadines  
Trinidad and Tobago  
USA.

or

- ii) the applicant has passed an English language test in speaking and listening at a minimum level B1 of the Common European Framework of Reference for Languages with a provider approved by the Secretary of State as specified in Appendix O to these Rules; or

- iii) the applicant has obtained an academic qualification(not a professional or vocational qualification), which is deemed by UK NARIC to meet the recognised standard of a Bachelor's or Master's degree or PhD in the UK, from an educational establishment in one of the following



countries: Antigua and Barbuda; Australia; The Bahamas; Barbados; Belize; Dominica; Grenada; Guyana; Ireland; Jamaica; New Zealand; St Kitts and Nevis; St Lucia; St Vincent and The Grenadines; Trinidad and Tobago; the UK; the USA; and provides the specified documents; or

iv) the applicant has obtained an academic qualification (not a professional or vocational qualification) which is deemed by UK NARIC to meet the recognised standard of a Bachelor's or Master's degree or PhD in the UK, and

(1) provides the specified documentary evidence to show he has the qualification, and

(2) UK NARIC has confirmed that the qualification was taught or researched in English; or

v) the applicant has obtained an academic qualification (not a professional or vocational qualification) which is deemed by UK NARIC to meet the recognised standard of a Bachelor's or Master's degree or PhD in the UK, and provides the specified evidence to show:

(1) he has the qualification, and

(2) that the qualification was taught or researched in English; or.

vi) the applicant has taken and passed in England, Wales or Northern Ireland a qualification in English for Speakers of Other Languages (ESOL) which:

(aa) includes speaking and listening;

(bb) is at ESOL Entry level 3, level 1, level 2 or level 3,

(cc) is regulated by the Office of Qualifications and Examinations Regulation (OFQUAL), the Welsh Government or the Council for Curriculum, Examinations and Assessment (CCEA), and

(dd) is listed as an ESOL qualification on the Register of Regulated Qualifications, or

vii) the applicant has passed in Scotland a National Qualification in English for Speakers of Other Languages at Scottish Credit and Qualifications Framework (SCQF) level 4, 5 or 6 awarded by the Scottish Qualifications Authority; or

(b) the applicant-

(i) has limited leave to enter or remain in the UK, and

(ii) that leave (or a grant of leave which preceded it provided any periods of leave since have been unbroken) was given on the basis that the applicant had an English language qualification at a minimum level of B1 on the Common European Framework of Reference for Languages, and

iii) at the date of application, the provider of that qualification continues to be approved by the Secretary of State as specified in Appendix O to these Rules.

2.3 For the purposes of sub-paragraph (1), an applicant demonstrates sufficient knowledge about life in the United Kingdom if:

a) the applicant has passed the test known as the “Life in the UK test” administered by learndirect limited; or

b) in respect of an applicant who was resident in the Isle of Man, the applicant took and passed the test in the Isle of Man known as the “Life in the UK test” and which was administered by an educational institution or other person approved for that purpose by the Lieutenant Governor; or

c) in respect of an applicant who was resident in the Bailiwick of Guernsey or in the Bailiwick of Jersey, the applicant took and passed the test known as the “Citizenship Test” and which was administered by an educational institution or other person approved for that purpose by the Lieutenant Governor of Guernsey or Jersey (as the case may be). 62

### **Part 3**

#### **Exceptions**

3.1 Notwithstanding any requirement to the contrary in these Rules, for the purposes of this appendix, an applicant will not be required to demonstrate sufficient knowledge of the English language and about life in the UK where:

a) the applicant is under 18 years of age at the date of his or her application, or

b) the applicant is at least 65 years of age at the date of his or her application, or

c) in all the circumstances of the case, the decision maker considers that, because of the applicant’s mental or physical condition, it would be unreasonable to expect the applicant to fulfil that requirement.

3.2 In the following circumstances an applicant will be deemed to have demonstrated sufficient knowledge of the English language and about life in the UK:

a) Where the application for indefinite leave to enter or remain in the United Kingdom is made under:

i) paragraph 196D and the applicant has had, as at the day on which the application is made, continuous leave to enter or remain in the United Kingdom for at least 15 years as the spouse or civil partner of a person who has or has had leave to enter or remain under paragraphs 128-193 (but not paragraphs 135I -135K), or

ii) paragraph 198 and the applicant has had, as at the day on which the application was made, continuous leave to enter or remain in the United Kingdom for at least 15 years as the child of a person who has or has had leave to enter or remain in the United Kingdom under paragraphs 128–193 (but not paragraphs 135I-135K), or

iii) paragraph 248D and the applicant has had, as at the day on which the application was made, continuous leave to enter or remain in the United Kingdom for at least 15 years as a person exercising rights of access to a child resident in the United Kingdom and that child is under the age of 18 at the day on which the applicant’s application for indefinite leave is made under paragraph 248D, or

iv) paragraph 273D and the applicant has had, as at the day on which the application is made, continuous leave to enter or remain in the United Kingdom for at least 15 years as a spouse or civil partner of a person who has or has had leave to enter or remain in the United Kingdom as a

retired person of independent means, or

v) paragraph 275A and the applicant has had, as at the day on which the application was made, continuous leave to enter or remain in the United Kingdom for at least 15 years as the child of a person who has or has had leave to enter or remain in the United Kingdom as a retired person of independent means, or

vi) paragraph 287 and the applicant has had, as at the day on which the application is made, continuous leave to enter or remain in the United Kingdom for at least 15 years under paragraph 281 or paragraph 284, or

vii) paragraph 295G and the applicant has had, as at the day on which the application is made, continuous leave to enter or remain in the United Kingdom for at least 15 years under paragraph 295B or paragraph 295D, or

viii) paragraph 298 and the applicant has had, as at the day on which the application is made, continuous leave to enter or remain in the United Kingdom for at least 15 years under paragraph 302 or Appendix FM or paragraph 319R or paragraph 319X, or

ix) paragraph 319E and the applicant has had, as at the day on which the application is made, continuous leave to enter or remain in the United Kingdom for at least 15 years as the partner of a relevant points based system migrant

x) paragraph 319J and the applicant has had, as at the day on which the application is made, continuous leave to enter or remain in the United Kingdom for at least 15 years as the child of a relevant points based system migrant

xi) section E-ILRP of Appendix FM and the applicant has had, as at the day on which the application is made, continuous leave to enter or remain in the United Kingdom for at least 15 years on the day on which the application is made as a partner (except where leave is as a fiancé or proposed civil partner) under section D-LTRP of Appendix FM; or

xii) section E-ILRPT of Appendix FM and the applicant has had, as at the day on which the application is made, continuous leave to enter or remain in the United Kingdom for at least 15 years on the day on which the application is made as a parent under section D-ILRPT of Appendix FM, or

(xiii) paragraph 25 or 31 of Appendix Armed Forces and the applicant has completed, on the date on which the application is made, a continuous period of leave to enter or remain in the United Kingdom of at least 15 years as the partner of a member of HM Forces under that Appendix, or

(xiv) paragraph 45 or 49 of Appendix Armed Forces and the applicant has completed, on the date on which the application is made, a continuous period of leave to enter or remain in the United Kingdom of at least 15 years as the child of a member of HM Forces under that Appendix, and

(b)(i) the applicant has provided specified documentary evidence of an English language speaking and listening qualification at A2 CEFR or ESOL entry level 2 or Scottish Credit and Qualification Framework level 3; or

(ii) where paragraph 39C(c) of these Rules applies, the applicant has provided specified documentary evidence of an English language speaking and listening

qualification at A2 CEFR with a provider approved by the Secretary of State as specified in Appendix O to these Rules.

c) the applicant has provided specified documentary evidence from a qualified English language teacher that the applicant has made efforts to learn English but does not yet have sufficient knowledge of the English language to pass a qualification at B1 CEFR, or ESOL entry level 3 or Scottish Credit and Qualification Framework level 4, and

d) the applicant is not a national or a citizen of one of the following countries:

Antigua and Barbuda  
Australia  
The Bahamas  
Barbados  
Belize  
Canada  
Dominica  
Grenada  
Guyana  
Jamaica  
New Zealand  
St Kitts and Nevis  
St Lucia  
St Vincent and the Grenadines  
Trinidad and Tobago  
USA.

3.3 Where paragraph 39C(c) of these Rules applies, an applicant demonstrates sufficient knowledge of the English language and about life in the UK where:

(i) upon a request by the decision-maker to provide additional evidence of knowledge of the English language, he or she has provided specified documentary evidence that he or she has passed an English language test in speaking and listening at a minimum B1 of the Common European Framework of Reference for Languages with a provider approved by the Secretary of State as specified in Appendix O to these Rules, unless paragraph 3.2 of this Appendix applies; or

(ii) upon a request by the decision-maker to provide additional evidence of knowledge about life in the UK, he or she has provided specified evidence that he or she has passed the test known as the "Life in the UK test" administered by learndirect limited under arrangements approved by the decision-maker; or

(iii) upon a request by the decision-maker to provide additional evidence of knowledge of the English language and about life in the UK, he or she has provided the evidence set out in sub-paragraphs (i) and (ii).

## **PART 4**

### **SPECIFIED DOCUMENTS**

4.1 Where these Rules require an applicant to demonstrate sufficient knowledge of the English language and of life in the United Kingdom, the applicant must supply the documents specified in paragraphs 4.6 to 4.14 below.

4.2 The decision maker will only consider evidence submitted after the date on which an application is made where the circumstances in paragraph 39(C)(c) of these Rules or paragraphs 4.3 or 4.6 of this Appendix apply.

4.3 Where an applicant has submitted:

(i) a document in the wrong format (for example, if a letter is not on letterhead paper as specified); or

(ii) a document that is a copy and not an original document, or

(iii) a document which does not contain all of the specified information, or

(iv) fails to submit a specified document,

the decision-maker may contact the applicant or his or her representative (in writing or otherwise), and request the document or the correct version of the document. The document must be received by the Home Office at the address specified in the request within such timescale (which will not be unreasonable) as is specified.

4.4 A decision-maker may decide not to request a document under paragraph 4.3 where he or she does not anticipate that the supply of that document will lead to a grant of leave to enter or remain in the United Kingdom because the application may be refused for other reasons.

4.5 Without prejudice to the decision maker's discretion under paragraph 4.2 and also his or her right in all cases to request the original or specified document and refuse an application in circumstances in which they are not provided, where an applicant submits a specified document:

(i) in the wrong format, or

(ii) which is a copy and not an original document, or

(iii) which does not contain all of the specified information but the missing information is verifiable from,

(aa) other documents submitted with the application,

(bb) the website of the organisation which issued the document, or

(cc) the website of the appropriate regulatory body;

the application for leave to enter or remain in the United Kingdom may be granted exceptionally providing the decision-maker is satisfied that the specified documents are genuine and that the applicant meets all the other requirements.

4.6 Where the decision-maker is satisfied that there is a valid reason why a document has not been and cannot be supplied, (for example, because the document has been permanently lost or destroyed), he or she may waive the requirement for the document to be provided or may instead request alternative or additional evidence (which may include confirmation of evidence from the organisation which issued the original document).

4.7 The evidence specified for the purposes of paragraph 2.2 of this Appendix is:

a) a certificate that:

(i) is from an English language test provider approved by the Secretary of State for the purposes of limited leave to enter or

remain as specified in Appendix O of these Rules, and

is in respect of a test approved by the Secretary of State as specified in that Appendix, and

ii) shows the applicant's name; and

iii) shows the qualification obtained, and

iv) shows that the level of speaking and listening skills attained by the applicant met or exceeded level B1 of the Common European Framework of Reference, and

v) shows the date of award of the qualification; or,

b) a print out of the online score from a PTE Academic (Pearson) test which:

i) is from an English language test provider approved by the Secretary of State for the purposes of limited leave to enter or remain as specified in Appendix O of these rules, and

ii) is in respect of a test approved by the Secretary of State as specified in that Appendix, and

iii) can be used to show the qualification obtained; and,

iv) shows that the level of speaking and listening skills attained by the applicant met or exceeded level B1 of the Common European Framework of Reference; or

c) a certificate or other document issued by an awarding organisation that is recognised either by Ofqual, the Welsh Government, or CCEA that

i) is issued in England, Wales or Northern Ireland in respect of a qualification listed as an ESOL qualification in the OFQUAL Register of Regulated Qualifications, and

ii) shows that the level of speaking and listening skills attained by the applicant met or exceeded ESOL entry level 3; or

d) a certificate that

i) is issued in Scotland in respect of a National Qualification in English for Speakers of Other Languages awarded by the Scottish Qualifications Authority, and

ii) shows that the level of speaking and listening skills attained by the applicant met or exceeded Scottish Credit and Qualifications Framework level 4

4.8 Subject to paragraphs 4.9 and 4.10 the documentary evidence specified for the purposes of paragraph 2.2 of this Appendix as showing that a person is a national or a citizen of one of the countries listed in paragraph 2.2 is a valid passport or travel document which satisfactorily establishes the applicant's nationality.

4.9 If the applicant cannot provide their passport or travel document other evidence of nationality of the type described in paragraph 4.10 may

exceptionally be supplied in the following circumstances (the reason for which must be indicated by the applicant on their application form), where:

- (a) the applicant's passport has been lost or stolen, or
- (b) the applicant's passport has expired and has been returned to the relevant authorities, or
- (c) the applicant's passport is with another part of the Home Office.

4.10 Where paragraph 4.9 applies, the alternative evidence specified for the purposes of establishing the applicant's nationality is:

- (a) a valid national identity document; or
- (b) an original letter from the applicant's Home Government or Embassy confirming the applicant's full name, date of birth and nationality.

4.11. The evidence specified for the purposes of paragraph 2.2(a)(iii) and 2.2(a)(iv) (academic qualification recognised by UK NARIC) is:

- (a) a certificate issued by the relevant institution confirming the award of the academic qualification and showing:
  - (i) the applicant's name,
  - (ii) the title of the award,
  - (iii) the date of the award,
  - (iv) the name of the awarding institution, and,
  - (v) for paragraph 2.2 (iii) that the qualification was taught in English or,
- (b) where an applicant has not, at the date of application, formally graduated or no longer has his or her certificate and is unable to obtain a duplicate certificate:
  - (i) an original academic reference from the institution awarding the academic qualification that:
    - (aa) is on official letter headed paper,
    - (bb) shows the applicant's name,
    - (cc) shows the title of the award,
    - (dd) confirms that the qualification was taught in English,
    - (ee) states when the academic qualification was (or as the case may be, will be) awarded, and
    - (ff) confirms that the institution is unable to issue a duplicate certificate of award or (as the case may be in respect of an applicant who has not yet graduated) the date on which the certificate will be issued, or
  - (ii) an original academic transcript that;
    - (aa) is on official letter headed paper,
    - (bb) shows the applicant's name,

(cc) shows the name of the academic institution,

(dd) shows the course title,

(ee) confirms that the qualification was taught in English, and,

(ff) confirms the award given.

4.12 In the absence of any evidence to the contrary, a qualification obtained in one of the following countries will be assumed for the purposes of this Appendix to have been taught in English: Antigua and Barbuda, Australia, the Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Ireland, Jamaica, New Zealand, St Kitts and Nevis, St Lucia, St Vincent and the Grenadines, Trinidad and Tobago, the UK or the USA.

4.13 The evidence specified for the purposes of paragraph 3.2(b)(i) (evidence of English language speaking and listening) is the same as that specified for the purposes of paragraph 2.3(a)(vi) and 2.3 (a)(vii) except that:

(a) references to B1 are to be read as references to A2,

(b) references to ESOL levels Entry 3, level 1, level 2 and level 3 are to be read as references to ESOL Entry level 2, and

(c) references to Scottish Credit and Qualification Framework Level 4, 5 and 6 are to be read as references to Scottish Qualification Framework Level 3.

4.13A. The evidence specified for the purposes of paragraph 3.2(b)(ii) (evidence of English language speaking and listening) is the same as that specified for the purposes of paragraph 2.2(a)(ii) except that references to B1 are to be read as references to A2.

4.14 (a) The evidence specified for the purposes of paragraph 3.2(c) (evidence from qualified English teacher) is a letter from the teacher which is signed by him or her and dated no more than 3 months before the date on which the application for indefinite leave to remain is made and which includes the following information:

i) the applicant's name,

ii) confirmation that the applicant has attended an English language class taught by that teacher for at least 75 guided learning hours and which was taught during the period of 12 months immediately preceding the date on which the application for indefinite leave to remain was made,

iii) confirmation that the teacher has assessed that the speaking and listening level attained by the applicant is not at B1 level or above,

iv) confirmation that the applicant is considered unlikely to attain B1 level through further study

v) confirmation of the teacher's qualifications as an English language teacher within the meaning of this Appendix.

(b) For the purposes of paragraph (a)(ii) "guided learning hours" means the time during which a person is taught or given instruction and does not include any time spent on unsupervised preparation or study.



4.15 The documentary evidence specified for the purposes of paragraph 2.3 of this Appendix is:

a) a pass notification letter issued by learndirect limited in respect of the test known as the “Life in the UK test”, or

b) where the “Life in the UK test” was taken and passed in the Isle of Man, a pass certificate in respect of the test issued by the relevant educational institution or other person approved for that purpose by the Lieutenant Governor, or

c) where the “Citizenship test” was taken in the Bailiwick of Guernsey or, as the case may be, in the Bailiwick of Jersey, a pass certificate issued by the relevant educational institution or other person approved for that purpose by the Lieutenant Governor of Guernsey or Jersey (as the case may be).

4.16 The evidence specified for the purposes of paragraph 3.3(i) of this Appendix (evidence of English language speaking and listening) is the same as that specified for the purpose of paragraph 2.2(a)(ii) of this Appendix.

4.17 The evidence specified for the purposes of paragraph 3.3(ii) of this Appendix (evidence of knowledge about life in the UK) is the same as that specified at paragraph 4.15(a) of this Appendix.

## **PART 5**

### **INTERPRETATION**

5.1 For the purposes of this Appendix “decision maker” means an Entry Clearance Officer or the Secretary of State.

5.2 For the purposes of this Appendix, “qualified English language teacher” means a person who holds a qualification in teaching English as a foreign language or in teaching English to speakers of other languages which was awarded by an awarding organisation regulated by OFQUAL or the Welsh Government or the CCEA or the Scottish Qualification Authority

## Appendix T

### Tuberculosis screening

#### Part 1 - applicable countries

Migrants applying to enter the UK for more than 6 months from the countries listed below, or who are applying in a category which may lead to them being settled in the United Kingdom in accordance with the definition of "settled in the United Kingdom" contained in paragraph 6 of the Immigration Rules, must present at the time of application a valid medical certificate issued by a medical practitioner listed in Part 2 of this Appendix confirming that they have undergone screening for active pulmonary tuberculosis and that such tuberculosis is not present in the applicant.

- Afghanistan
- Algeria
- Angola
- Armenia
- Azerbaijan
- Bangladesh
- Belarus
- Benin
- Bhutan
- Bolivia
- Botswana
- Brunei Darussalam
- Burkina Faso
- Burma
- Burundi
- Cambodia
- Cape Verde
- Central African Republic
- Chad
- Cameroon
- China
- Congo
- Congo Democratic Republic
- Côte d'Ivoire
- Democratic People's Republic of Korea
- Djibouti
- Dominican Republic
- Ecuador
- Equatorial Guinea
- Eritrea
- Ethiopia
- Gabon
- Gambia
- Georgia
- Ghana
- Guatemala
- Guinea
- Guinea Bissau
- Guyana
- Haiti
- Hong Kong or Macau
- India
- Indonesia
- Iraq
- Kazakhstan
- Kenya
- Kiribati
- Korea
- Kyrgyzstan
- Laos
- Lesotho
- Liberia
- Madagascar
- Malawi
- Malaysia
- Mali
- Marshall Islands
- Mauritania
- Micronesia
- Moldova
- Mongolia
- Morocco
- Mozambique
- Namibia
- Nepal
- Niger
- Nigeria
- Pakistan
- Palau
- Papua New Guinea
- Panama
- Paraguay
- Peru
- Russian Federation
- Rwanda
- Sao Tome and Principe
- Senegal

- Sierra Leone
- Solomon Islands
- Somalia
- South Africa
- South Sudan
- Sri Lanka
- Sudan
- Tajikistan
- Swaziland
- Tanzania
- Timor Leste
- Togo
- Thailand
- The Philippines
- Turkmenistan
- Tuvalu
- Uganda
- Ukraine
- Uzbekistan
- Vanuatu
- Vietnam
- Zambia
- Zimbabwe

Applicants from Burkina Faso, Côte d'Ivoire, Niger, Togo are screened in Ghana, those from Eritrea and Somalia are screened in Kenya, those in Lesotho and Swaziland are screened in South Africa and those from Laos are screened in Thailand.

## Immigration Notice Regulations

### **Regs 4-7**

#### 7. Service of notice

(1) A notice required to be given under regulation 4 may be—

(a) given by hand;

(b) sent by fax;

(c) sent by postal service in which delivery or receipt is recorded to:-

(i) an address provided for correspondence by the person or his representative; or

(ii) where no address for correspondence has been provided by the person, the last-known or usual place of abode or place of business of the person or his representative.

(2) Where—

(a) a person's whereabouts are not known; and

(b)(i) no address has been provided for correspondence and the decision-maker does not know the last-known or usual place of abode or place of business of the person; or

(ii) the address provided to the decision-maker is defective, false or no longer in use by the person; and

(c) no representative appears to be acting for the person,

the notice shall be deemed to have been given when the decision-maker enters a record of the above circumstances and places the signed notice on the relevant file.

(3) Where a notice has been given in accordance with paragraph (2) and then subsequently the person is located, he shall be given a copy of the notice and details of when and how it was given as soon as is practicable.

(4) Where a notice is sent by post in accordance with paragraph (1)(c) it shall be deemed to have been served, unless the contrary is proved,—

(a) on the second day after it was posted if it is sent to a place within the United Kingdom;

(b) on the twenty-eighth day after it was posted if it is sent to a place outside the United Kingdom.

(5) For the purposes of paragraph (4) the period is to be calculated—

(a) excluding the day on which the notice is posted; and

(b) in the case of paragraph (4)(a), excluding any day which is not a business day.

(6) In this regulation, "business day" means any day other than Saturday or Sunday, a day which is a bank holiday under the Banking and Financial Dealings Act 1971(1) in the part of the United Kingdom to which the notice is sent, Christmas Day or Good Friday.

(7) A notice given under regulation 4 may, in the case of a minor who does not have a representative, be given to the parent, guardian or another adult who for the time being takes responsibility for the child.

## **The Immigration (European Economic Area) Regulations 2006**

### **Regulations 2-21B, 25-27, 29A**

#### **General interpretation**

2. (1) In these Regulations—

“the 1971 Act” means the Immigration Act 1971;

“the 1999 Act” means the Immigration and Asylum Act 1999;

“the 2002 Act” means the Nationality, Immigration and Asylum Act 2002;

“the Accession Regulations” means the Accession (Immigration and Worker Registration) Regulations 2004;

“civil partner” does not include—

(a) a party to a civil partnership of convenience; or

(b) the civil partner (“C”) of a person (“P”) where a spouse, civil partner or durable partner of C or P is already present in the United Kingdom;

“decision maker” means the Secretary of State, an immigration officer or an entry clearance officer (as the case may be);

“derivative residence card” means a card issued to a person, in accordance with regulation 18A, as proof of the holder’s derivative right to reside in the United Kingdom as at the date of issue;

“deportation order” means an order made pursuant to regulation 24(3);

“document certifying permanent residence” means a document issued to an EEA national, in accordance with regulation 18, as proof of the holder’s permanent right of residence under regulation 15 as at the date of issue;

“durable partner” does not include the durable partner (“D”) of a person (“P”) where a spouse, civil partner or durable partner of D or P is already present in the United Kingdom and where that marriage, civil partnership or durable partnership is subsisting;

“EEA decision” means a decision under these Regulations that concerns—

(a) a person’s entitlement to be admitted to the United Kingdom;

(b) a person’s entitlement to be issued with or have renewed, or not to have revoked, a registration certificate, residence card, derivative residence card, document certifying permanent residence or permanent residence card;

(c) a person’s removal from the United Kingdom; or

(d) the cancellation, pursuant to regulation 20A, of a person’s right to reside in the United Kingdom;

but does not include decisions under regulations 24AA (human rights considerations and interim orders to suspend removal) or 29AA (temporary admission in order to submit case in person)

“EEA family permit” means a document issued to a person, in accordance with regulation 12, in connection with his admission to the United Kingdom;

“EEA national” means a national of an EEA State who is not also a British citizen;

“EEA State” means—

(a) a member State, other than the United Kingdom;

(b) Norway, Iceland or Liechtenstein; or

(c)Switzerland;

“entry clearance” has the meaning given in section 33(1) of the 1971 Act;

“entry clearance officer” means a person responsible for the grant or refusal of entry clearance;

“exclusion order” means an order made under regulation 19(1B)

“immigration rules” has the meaning given in section 33(1) of the 1971 Act;

“military service” means service in the armed forces of an EEA State;

“permanent residence card” means a card issued to a person who is not an EEA national, in accordance with regulation 18, as proof of the holder’s permanent right of residence under regulation 15 as at the date of issue;

“a qualifying EEA State residence card” means—

(a) document called a “Residence card of a family member of a Union Citizen” issued under Article 10 of Council Directive [2004/38/EC](#) (as applied, where relevant, by the EEA Agreement) by an EEA State listed in sub-paragraph (b) to a non-EEA family member of an EEA national as proof of the holder’s right of residence in that State;

(b)Germany and Estonia;

“registration certificate” means a certificate issued to an EEA national, in accordance with regulation 16, as proof of the holder’s right of residence in the United Kingdom as at the date of issue;

“relevant EEA national” in relation to an extended family member has the meaning given in regulation 8(6);

“residence card” means a card issued to a person who is not an EEA national, in accordance with regulation 17, as proof of the holder’s right of residence in the United Kingdom as at the date of issue;

“spouse” does not include—

(a) a party to a marriage of convenience; or

(b) the spouse (“S”) of a person (“P”) where a spouse, civil partner or durable partner of S or P is already present in the United Kingdom;

(2) Paragraph (1) is subject to paragraph 1(a) of Schedule 4 (transitional provisions).

(3) Section 11 of the 1971 Act (construction of references to entry)(4) shall apply for the purpose of determining whether a person has entered the United Kingdom for the purpose of these Regulations as it applies for the purpose of determining whether a person has entered the United Kingdom for the purpose of that Act.

### **Continuity of residence**

**3.** (1) This regulation applies for the purpose of calculating periods of continuous residence in the United Kingdom under regulation 5(1) and regulation 15.

(2) Continuity of residence is not affected by —

(a) periods of absence from the United Kingdom which do not exceed six months in total in any year;

(b) periods of absence from the United Kingdom on military service; or

(c) any one absence from the United Kingdom not exceeding twelve months for an important reason such as pregnancy and childbirth, serious illness, study or vocational training or an overseas posting.

(3) But continuity of residence is broken if a person is removed from the United Kingdom under these Regulations.

**“Worker”, “self-employed person”, “self-sufficient person” and “student”**

4. (1) In these Regulations —

(a) “worker” means a worker within the meaning of Article 45 of the Treaty on the Functioning of the European Union;

(b) “self-employed person” means a person who establishes himself in order to pursue activity as a self-employed person in accordance with Article 49 of the Treaty on the Functioning of the European Union;

(c) “self-sufficient person” means a person who has—

(i) sufficient resources not to become a burden on the social assistance system of the United Kingdom during his period of residence; and

(ii) comprehensive sickness insurance cover in the United Kingdom;

(d) “student” means a person who—

(i) is enrolled, for the principal purpose of following a course of study (including vocational training), at a public or private establishment which is—

(aa) financed from public funds; or

(bb) otherwise recognised by the Secretary of State as an establishment which has been accredited for the purpose of providing such courses or training within the law or administrative practice of the part of the United Kingdom in which the establishment is located;

(ii) has comprehensive sickness insurance cover in the United Kingdom; and

(iii) assures the Secretary of State, by means of a declaration, or by such equivalent means as the person may choose, that he has sufficient resources not to become a burden on the social assistance system of the United Kingdom during his period of residence.

(2) For the purposes of paragraph (1)(c), where family members of the person concerned reside in the United Kingdom and their right to reside is dependent upon their being family members of that person—

(a) the requirement for that person to have sufficient resources not to become a burden on the social assistance system of the United Kingdom during his period of residence shall only be satisfied if his resources and those of the family members are sufficient to avoid him and the family members becoming such a burden;

(b) the requirement for that person to have comprehensive sickness insurance cover in the United Kingdom shall only be satisfied if he and his family members have such cover.

(3) For the purposes of paragraph (1)(d), where family members of the person concerned reside in the United Kingdom and their right to reside is dependent upon their being family members of that person, the requirement for that person to assure the Secretary of State that he has sufficient resources not to become a burden on the social assistance system of the United Kingdom during his period of residence shall only be satisfied if he assures the Secretary of State that his resources and those of the family members are sufficient to avoid him and the family members becoming such a burden.

(4) For the purposes of paragraphs (1)(c) and (d) and paragraphs (2) and (3), the resources of the person concerned and, where applicable, any family members, are to be regarded as sufficient if —

(a) they exceed the maximum level of resources which a British citizen and his family members may possess if he is to become eligible for social assistance under the United Kingdom benefit system; or

(b) paragraph (a) does not apply but, taking into account the personal situation of the person concerned and, where applicable, any family members, it appears to the decision maker that the resources of the person or persons concerned should be regarded as sufficient.

(5) For the purpose of regulation 15A(2) references in this regulation to “family members” includes a “primary carer” as defined in regulation 15A(7).

**“Worker or self-employed person who has ceased activity”**

5. (1) In these Regulations, “worker or self-employed person who has ceased activity” means an EEA national who satisfies the conditions in paragraph (2), (3), (4) or (5).

(2) A person satisfies the conditions in this paragraph if he—

(a) terminates his activity as a worker or self-employed person and—

(i) has reached the age at which he is entitled to a state pension on the date on which he terminates his activity; or

(ii) in the case of a worker, ceases working to take early retirement;

(b) pursued his activity as a worker or self-employed person in the United Kingdom for at least twelve months prior to the termination; and

(c) resided in the United Kingdom continuously for more than three years prior to the termination.

(3) A person satisfies the conditions in this paragraph if—

(a) he terminates his activity in the United Kingdom as a worker or self-employed person as a result of a permanent incapacity to work; and

(b) either—

(i) he resided in the United Kingdom continuously for more than two years prior to the termination; or

(ii) the incapacity is the result of an accident at work or an occupational disease that entitles him to a pension payable in full or in part by an institution in the United Kingdom.

(4) A person satisfies the conditions in this paragraph if—

(a) he is active as a worker or self-employed person in an EEA State but retains his place of residence in the United Kingdom, to which he returns as a rule at least once a week; and

(b) prior to becoming so active in that EEA State, he had been continuously resident and continuously active as a worker or self-employed person in the United Kingdom for at least three years.

(5) A person who satisfies the condition in paragraph (4)(a) but not the condition in paragraph (4)(b) shall, for the purposes of paragraphs (2) and (3), be treated as being active and resident in the United Kingdom during any period in which he is working or self-employed in the EEA State.

(6) The conditions in paragraphs (2) and (3) as to length of residence and activity as a worker or self-employed person shall not apply in relation to a person whose spouse or civil partner is a British citizen.

(7) Subject to regulations 6(2), 7A(3) or 7B(3), for the purposes of this regulation—

(a) periods of inactivity for reasons not of the person’s own making;

(b) periods of inactivity due to illness or accident; and

(c) in the case of a worker, periods of involuntary unemployment duly recorded by the relevant employment office,

shall be treated as periods of activity as a worker or self-employed person, as the case may be.

**“Qualified person”**



6. (1) In these Regulations, “qualified person” means a person who is an EEA national and in the United Kingdom as—

- (a) a jobseeker;
- (b) a worker;
- (c) a self-employed person;
- (d) a self-sufficient person; or
- (e) a student.

(2) Subject to regulations 7A(4) or 7B(4), a person who is no longer working shall not cease to be treated as a worker for the purpose of paragraph (1)(b) if—

- (a) he is temporarily unable to work as the result of an illness or accident;
- (b) he is in duly recorded involuntary unemployment after having been employed in the United Kingdom for at least one year, provided that he—
  - (i) has registered as a jobseeker with the relevant employment office; and
  - (ii) satisfies conditions A and B;
- (ba) he is in duly recorded involuntary unemployment after having been employed in the United Kingdom for less than one year, provided that he—
  - (i) has registered as a jobseeker with the relevant employment office; and
  - (ii) satisfies conditions A and B;
- (c) he is involuntarily unemployed and has embarked on vocational training; or
- (d) he has voluntarily ceased working and embarked on vocational training that is related to his previous employment.

(2A) A person to whom paragraph (2)(ba) applies may only retain worker status for a maximum of six months.

(3) A person who is no longer in self-employment shall not cease to be treated as a self-employed person for the purpose of paragraph (1)(c) if he is temporarily unable to pursue his activity as a self-employed person as the result of an illness or accident.

(4) For the purpose of paragraph (1)(a), a “jobseeker” is a person who satisfies conditions A, B and, where relevant, C.

(5) Condition A is that the person—

- (a) entered the United Kingdom in order to seek employment; or
- (b) is present in the United Kingdom seeking employment, immediately after enjoying a right to reside pursuant to paragraph (1)(b) to (e) (disregarding any period during which worker status was retained pursuant to paragraph (2)(b) or (ba)).

(6) Condition B is that the person can provide evidence that he is seeking employment and has a genuine chance of being engaged.

(7) A person may not retain the status of a worker pursuant to paragraph (2)(b), or jobseeker pursuant to paragraph (1)(a), for longer than the relevant period unless he can provide compelling evidence that he is continuing to seek employment and has a genuine chance of being engaged.

(8) In paragraph (7), “the relevant period” means—

(a) in the case of a person retaining worker status pursuant to paragraph (2)(b), a continuous period of six months;

(b) in the case of a jobseeker, 91 days, minus the cumulative total of any days during which the person concerned previously enjoyed a right to reside as a jobseeker, not including any days prior to a continuous absence from the United Kingdom of at least 12 months.

(9) Condition C applies where the person concerned has, previously, enjoyed a right to reside under this regulation as a result of satisfying conditions A and B—

(a) in the case of a person to whom paragraph (2)(b) or (ba) applied, for at least six months; or

(b) in the case of a jobseeker, for at least 91 days in total,

unless the person concerned has, since enjoying the above right to reside, been continuously absent from the United Kingdom for at least 12 months.

(10) Condition C is that the person has had a period of absence from the United Kingdom.

(11) Where condition C applies—

(a) paragraph (7) does not apply; and

(b) condition B has effect as if “compelling” were inserted before “evidence”.

### **Family member**

7. (1) Subject to paragraph (2), for the purposes of these Regulations the following persons shall be treated as the family members of another person—

(a) his spouse or his civil partner;

(b) direct descendants of his, his spouse or his civil partner who are—

(i) under 21; or

(ii) dependants of his, his spouse or his civil partner;

(c) dependent direct relatives in his ascending line or that of his spouse or his civil partner;

(d) a person who is to be treated as the family member of that other person under paragraph (3).

(2) A person shall not be treated under paragraph (1)(b) or (c) as the family member of a student residing in the United Kingdom after the period of three months beginning on the date on which the student is admitted to the United Kingdom unless—

(a) in the case of paragraph (b), the person is the dependent child of the student or of his spouse or civil partner; or

(b) the student also falls within one of the other categories of qualified persons mentioned in regulation 6(1).

(3) Subject to paragraph (4), a person who is an extended family member and has been issued with an EEA family permit, a registration certificate or a residence card shall be treated as the family member of the relevant EEA national for as long as he continues to satisfy the conditions in regulation 8(2), (3), (4) or (5) in relation to that EEA national and the permit, certificate or card has not ceased to be valid or been revoked.

(4) Where the relevant EEA national is a student, the extended family member shall only be treated as the family member of that national under paragraph (3) if either the EEA family permit was issued under regulation 12(2), the registration certificate was issued under regulation 16(5) or the residence card was issued under regulation 17(4).

### **Application of the Accession Regulations**

**7A.** (1) This regulation applies to an EEA national who was an accession State worker requiring registration on 30th April 2011 ('an accession worker').

(2) In this regulation—

“accession State worker requiring registration” has the same meaning as in regulation 1(2)(d) of the Accession Regulations;

“legally working” has the same meaning as in regulation 2(7) of the Accession Regulations.

(3) In regulation 5(7)(c), where the worker is an accession worker, periods of involuntary unemployment duly recorded by the relevant employment office shall be treated only as periods of activity as a worker—

(a) during any period in which regulation 5(4) of the Accession Regulations applied to that person; or

(b) when the unemployment began on or after 1st May 2011.

(4) Regulation 6(2) applies to an accession worker where he—

(a) was a person to whom regulation 5(4) of the Accession Regulations applied on 30th April 2011; or

(b) became unable to work, became unemployed or ceased to work, as the case maybe, on or after 1st May 2011.

(5) For the purposes of regulation 15, an accession worker shall be treated as having resided in accordance with these Regulations during any period before 1st May 2011 in which the accession worker—

(a) was legally working in the United Kingdom; or

(b) was a person to whom regulation 5(4) of the Accession Regulations applied.

(6) Subject to paragraph (7), a registration certificate issued to an accession worker under regulation 8 of the Accession Regulations shall, from 1st May 2011, be treated as if it was a registration certificate issued under these Regulations where the accession worker was legally working in the United Kingdom for the employer specified in that certificate on—

(a) 30th April 2011; or

(b) the date on which the certificate is issued where it is issued after 30th April 2011.

(7) Paragraph (6) does not apply—

(a) if the Secretary of State issues a registration certificate in accordance with regulation 16 to an accession worker on or after 1st May 2011; and

(b) from the date of registration stated on that certificate.

### **Application of the EU2 Regulations**

**7B.** (1) This regulation applies to an EEA national who was an accession State national subject to worker authorisation before 1st January 2014.

(2) In this regulation—

“accession State national subject to worker authorisation” has the same meaning as in regulation 2 of the EU2 Regulations;

“the EU2 Regulations” means the Accession (Immigration and Worker Authorisation) Regulations 2006.

(3) Regulation 2(12) of the EU2 Regulations (accession State national subject to worker authorisation: legally working) has effect for the purposes of this regulation as it does for regulation 2(3) and (4) of the EU2 Regulations.

(4) In regulation 5(7)(c), where the worker is an accession State national subject to worker authorisation, periods of involuntary unemployment duly recorded by the relevant employment office must only be treated as periods of activity as a worker when the unemployment began on or after 1st January 2014.

(5) Regulation 6(2) applies to an accession State national subject to worker authorisation where the accession State national subject to worker authorisation became unable to work, became unemployed or ceased to work, as the case may be, on or after 1st January 2014.

(6) For the purposes of regulation 15, an accession State national subject to worker authorisation must be treated as having resided in accordance with these Regulations during any period before 1st January 2014 in which the accession State national subject to worker authorisation was legally working in the United Kingdom.

(7) An accession worker card issued to an accession State national subject to worker authorisation under regulation 11 of the EU2 Regulations before 1st January 2014 must be treated as if it were a registration certificate issued under these Regulations so long as it has not expired.

### **“Extended family member”**

**8.** (1) In these Regulations “extended family member” means a person who is not a family member of an EEA national under regulation 7(1)(a), (b) or (c) and who satisfies the conditions in paragraph (2), (3), (4) or (5).

(2) A person satisfies the condition in this paragraph if the person is a relative of an EEA national, his spouse or his civil partner and—

(a) the person is residing in a country other than the United Kingdom and is dependent upon the EEA national or is a member of his household;

(b) the person satisfied the condition in paragraph (a) and is accompanying the EEA national to the United Kingdom or wishes to join him there; or

(c) the person satisfied the condition in paragraph (a), has joined the EEA national in the United Kingdom and continues to be dependent upon him or to be a member of his household.

(3) A person satisfies the condition in this paragraph if the person is a relative of an EEA national or his spouse or his civil partner and, on serious health grounds, strictly requires the personal care of the EEA national his spouse or his civil partner.

(4) A person satisfies the condition in this paragraph if the person is a relative of an EEA national and would meet the requirements in the immigration rules (other than those relating to entry clearance) for indefinite leave to enter or remain in the United Kingdom as a dependent relative of the EEA national were the EEA national a person present and settled in the United Kingdom.

(5) A person satisfies the condition in this paragraph if the person is the partner of an EEA national (other than a civil partner) and can prove to the decision maker that he is in a durable relationship with the EEA national.

(6) In these Regulations “relevant EEA national” means, in relation to an extended family member, the EEA national who is or whose spouse or civil partner is the relative of the extended family member for the purpose of paragraph (2), (3) or (4) or the EEA national who is the partner of the extended family member for the purpose of paragraph (5).

### **Family members of British citizens**

**9.** (1) If the conditions in paragraph (2) are satisfied, these Regulations apply to a person who is the family member of a British citizen as if the British citizen (“P”) were an EEA national.

(2) The conditions are that—

(a) P is residing in an EEA State as a worker or self-employed person or was so residing before returning to the United Kingdom;

(b) if the family member of P is P's spouse or civil partner, the parties are living together in the EEA State or had entered into the marriage or civil partnership and were living together in the EEA State before the British citizen returned to the United Kingdom; and

(c) the centre of P's life has transferred to the EEA State where P resided as a worker or self-employed person.

(3) Factors relevant to whether the centre of P's life has transferred to another EEA State include—

(a) the period of residence in the EEA State as a worker or self-employed person;

(b) the location of P's principal residence;

(c) the degree of integration of P in the EEA State.

(4) Where these Regulations apply to the family member of P, P is to be treated as holding a valid passport issued by an EEA State for the purpose of the application of regulation 13 to that family member.

#### **“Family member who has retained the right of residence”**

**10.** (1) In these Regulations, “family member who has retained the right of residence” means, subject to paragraph (8), a person who satisfies the conditions in paragraph (2), (3), (4) or (5).

(2) A person satisfies the conditions in this paragraph if—

(a) he was a family member of a qualified person or of an EEA national with a permanent right of residence when that person died;

(b) he resided in the United Kingdom in accordance with these Regulations for at least the year immediately before the death of the qualified person or the EEA national with a permanent right of residence; and

(c) he satisfies the condition in paragraph (6).

(3) A person satisfies the conditions in this paragraph if—

(a) he is the direct descendant of—

(i) a qualified person or an EEA national with a permanent right of residence who has died;

(ii) a person who ceased to be a qualified person on ceasing to reside in the United Kingdom; or

(iii) the person who was the spouse or civil partner of the qualified person or the EEA national with a permanent right of residence mentioned in sub-paragraph (i) when he died or is the spouse or civil partner of the person mentioned in sub-paragraph (ii); and

(b) he was attending an educational course in the United Kingdom immediately before the qualified person or the EEA national with a permanent right of residence died or ceased to be a qualified person and continues to attend such a course.

(4) A person satisfies the conditions in this paragraph if the person is the parent with actual custody of a child who satisfies the condition in paragraph (3).

(5) A person satisfies the conditions in this paragraph if—

(a) he ceased to be a family member of a qualified person or of an EEA national with a permanent right of residence on the termination of the marriage or civil partnership of that person;

(b) he was residing in the United Kingdom in accordance with these Regulations at the date of the termination;

(c) he satisfies the condition in paragraph (6); and

(d) either—

(i) prior to the initiation of the proceedings for the termination of the marriage or the civil partnership the marriage or civil partnership had lasted for at least three years and the parties to the marriage or civil partnership had resided in the United Kingdom for at least one year during its duration;

(ii) the former spouse or civil partner of the qualified person has custody of a child of the qualified person or the EEA national with a permanent right of residence;

(iii) the former spouse or civil partner of the qualified person or the EEA national with a permanent right of residence has the right of access to a child of the qualified person or the EEA national with a permanent right of residence, where the child is under the age of 18 and where a court has ordered that such access must take place in the United Kingdom; or

(iv) the continued right of residence in the United Kingdom of the person is warranted by particularly difficult circumstances, such as he or another family member having been a victim of domestic violence while the marriage or civil partnership was subsisting.

(6) The condition in this paragraph is that the person—

(a) is not an EEA national but would, if he were an EEA national, be a worker, a self-employed person or a self-sufficient person under regulation 6; or

(b) is the family member of a person who falls within paragraph (a).

(7) In this regulation, “educational course” means a course within the scope of Article 12 of Council Regulation [\(EEC\) No. 1612/68](#) on freedom of movement for workers.

(8) A person with a permanent right of residence under regulation 15 shall not become a family member who has retained the right of residence on the death or departure from the United Kingdom of the qualified person or the EEA national with a permanent right of residence or the termination of the marriage or civil partnership, as the case may be, and a family member who has retained the right of residence shall cease to have that status on acquiring a permanent right of residence under regulation 15.

## PART 2 EEA RIGHTS

### Right of admission to the United Kingdom

11. (1) An EEA national must be admitted to the United Kingdom if he produces on arrival a valid national identity card or passport issued by an EEA State.

(2) A person who is not an EEA national must be admitted to the United Kingdom if he is—

(a) a family member of an EEA national and produces on arrival a valid passport and a qualifying EEA State residence card, provided the conditions in regulation 19(2)(a) (non-EEA family member to be accompanying or joining EEA national in the United Kingdom) and (b) (EEA national must have a right to reside in the United Kingdom under these Regulations) are met; or

(b) a family member of an EEA national, a family member who has retained the right of residence, a person who meets the criteria in paragraph (5) or a person with a permanent right of residence under regulation 15 and produces on arrival—

(i) a valid passport; and

(ii) an EEA family permit, a residence card, a derivative residence card or a permanent residence card.

(3) An immigration officer must not place a stamp in the passport of a person admitted to the United Kingdom under this regulation who is not an EEA national if the person produces a residence card, a derivative residence card, a permanent residence card or a qualifying EEA State residence card.

(4) Before an immigration officer refuses admission to the United Kingdom to a person under this regulation because the person does not produce on arrival a document mentioned in paragraph (1) or (2), the immigration officer must give the person every reasonable opportunity to obtain the document or have it brought to him within a reasonable period of time or to prove by other means that he is—

(a) an EEA national;

(b) a family member of an EEA national with a right to accompany that national or join him in the United Kingdom;

(ba) a person who meets the criteria in paragraph (5); or

(c) a family member who has retained the right of residence or a person with a permanent right of residence under regulation 15.

(5) A person (“P”) meets the criteria in this paragraph where—

(a) P previously resided in the United Kingdom pursuant to regulation 15A(3) and would be entitled to reside in the United Kingdom pursuant to that regulation were P in the country;

(b) P is accompanying an EEA national to, or joining an EEA national in, the United Kingdom and P would be entitled to reside in the United Kingdom pursuant to regulation 15A(2) were P and the EEA national both in the United Kingdom;

(c) P is accompanying a person (“the relevant person”) to, or joining the relevant person in, the United Kingdom and—

(i) the relevant person is residing, or has resided, in the United Kingdom pursuant to regulation 15A(3); and

(ii) P would be entitled to reside in the United Kingdom pursuant to regulation 15A(4) were P and the relevant person both in the United Kingdom;

(d) P is accompanying a person who meets the criteria in (b) or (c) (“the relevant person”) to the United Kingdom and—

(i) P and the relevant person are both—

(aa) seeking admission to the United Kingdom in reliance on this paragraph for the first time; or

(bb) returning to the United Kingdom having previously resided there pursuant to the same provisions of regulation 15A in reliance on which they now base their claim to admission; and

(ii) P would be entitled to reside in the United Kingdom pursuant to regulation 15A(5) were P and the relevant person there; or

(e) P is accompanying a British citizen to, or joining a British citizen in, the United Kingdom and P would be entitled to reside in the United Kingdom pursuant to regulation 15A(4A) were P and the British citizen both in the United Kingdom.

(6) Paragraph (7) applies where—

(a) a person (“P”) seeks admission to the United Kingdom in reliance on paragraph (5)(b), (c) or (e); and

(b) if P were in the United Kingdom, P would have a derived right of residence by virtue of regulation 15A(7)(b)(ii).

(7) Where this paragraph applies a person (“P”) will only be regarded as meeting the criteria in paragraph (5)(b), (c) or (e) where P—

(a) is accompanying the person with whom P would on admission to the United Kingdom jointly share care responsibility for the purpose of regulation 15A(7)(b)(ii); or

(b) has previously resided in the United Kingdom pursuant to regulation 15A(2), (4) or (4A) as a joint primary carer and seeks admission to the United Kingdom in order to reside there again on the same basis.

(8) But this regulation is subject to regulations 19(1), (1A), (1AB) and (2).

### **Issue of EEA family permit**

**12.** (1) An entry clearance officer must issue an EEA family permit to a person who applies for one if the person is a family member of an EEA national and—

(a) the EEA national—

(i) is residing in the UK in accordance with these Regulations; or

(ii) will be travelling to the United Kingdom within six months of the date of the application and will be an EEA national residing in the United Kingdom in accordance with these Regulations on arrival in the United Kingdom; and

(b) the family member will be accompanying the EEA national to the United Kingdom or joining the EEA national there.

(1A) An entry clearance officer must issue an EEA family permit to a person who applies and provides proof that, at the time at which he first intends to use the EEA family permit, he—

(a) would be entitled to be admitted to the United Kingdom by virtue of regulation 11(5); and

(b) will (save in the case of a person who would be entitled to be admitted to the United Kingdom by virtue of regulation 11(5)(a)) be accompanying to, or joining in, the United Kingdom any person from whom his right to be admitted to the United Kingdom under regulation 11(5) will be derived.

(1B) An entry clearance officer must issue an EEA family permit to a family member who has retained the right of residence.

(2) An entry clearance officer may issue an EEA family permit to an extended family member of an EEA national who applies for one if—

(a) the relevant EEA national satisfies the condition in paragraph (1)(a);

(b) the extended family member wishes to accompany the relevant EEA national to the United Kingdom or to join him there; and

(c) in all the circumstances, it appears to the entry clearance officer appropriate to issue the EEA family permit.

(3) Where an entry clearance officer receives an application under paragraph (2) he shall undertake an extensive examination of the personal circumstances of the applicant and if he refuses the application shall give reasons justifying the refusal unless this is contrary to the interests of national security.

(4) An EEA family permit issued under this regulation shall be issued free of charge and as soon as possible.

(5) But an EEA family permit shall not be issued under this regulation if the applicant or the EEA national concerned is not entitled to be admitted to the United Kingdom as a result of regulation 19(1A) or (1AB) or falls to be excluded in accordance with regulation 19(1B) falls to be excluded from the United Kingdom on grounds of public policy, public security or public health in accordance with regulation 21.

(6) An EEA family permit will not be issued under this regulation to a person (“A”) who is the spouse, civil partner or durable partner of a person (“B”) where a spouse, civil partner or durable partner of A or B holds a valid EEA family permit.

### **Initial right of residence**



**13.** (1) An EEA national is entitled to reside in the United Kingdom for a period not exceeding three months beginning on the date on which he is admitted to the United Kingdom provided that he holds a valid national identity card or passport issued by an EEA State.

(2) A family member of an EEA national or a family member who has retained the right of residence who is residing in the United Kingdom under paragraph (1) who is not himself an EEA national is entitled to reside in the United Kingdom provided that he holds a valid passport.

(3) An EEA national or his family member who becomes an unreasonable burden on the social assistance system of the United Kingdom will cease to have a right to reside under this regulation.

(4) A person who otherwise satisfies the criteria in this regulation will not be entitled to reside in the United Kingdom under this regulation where the Secretary of State has made a decision under regulation 19(3)(b), 20(1) or 20A(1).

#### **Extended right of residence**

**14.** (1) A qualified person is entitled to reside in the United Kingdom for so long as he remains a qualified person.

(2) A family member of a qualified person residing in the United Kingdom under paragraph (1) or of an EEA national with a permanent right of residence under regulation 15 is entitled to reside in the United Kingdom for so long as he remains the family member of the qualified person or EEA national.

(3) A family member who has retained the right of residence is entitled to reside in the United Kingdom for so long as he remains a family member who has retained the right of residence.

(4) A right to reside under this regulation is in addition to any right a person may have to reside in the United Kingdom under regulation 13 or 15.

(5) A person who otherwise satisfies the criteria in this regulation will not be entitled to a right to reside in the United Kingdom under this regulation where the Secretary of State has made a decision under regulation 19(3)(b), 20(1) or 20A(1).

#### **Permanent right of residence**

**15.** (1) The following persons shall acquire the right to reside in the United Kingdom permanently—

(a) an EEA national who has resided in the United Kingdom in accordance with these Regulations for a continuous period of five years;

(b) a family member of an EEA national who is not himself an EEA national but who has resided in the United Kingdom with the EEA national in accordance with these Regulations for a continuous period of five years;

(c) a worker or self-employed person who has ceased activity;

(d) the family member of a worker or self-employed person who has ceased activity;

(e) a person who was the family member of a worker or self-employed person where—

(i) the worker or self-employed person has died;

(ii) the family member resided with him immediately before his death; and

(iii) the worker or self-employed person had resided continuously in the United Kingdom for at least the two years immediately before his death or the death was the result of an accident at work or an occupational disease;

(f) a person who—

(i) has resided in the United Kingdom in accordance with these Regulations for a continuous period of five years; and

(ii) was, at the end of that period, a family member who has retained the right of residence.

(1A) Residence in the United Kingdom as a result of a derivative right of residence does not constitute residence for the purpose of this regulation.

(2) The right of permanent residence under this regulation shall be lost only through absence from the United Kingdom for a period exceeding two consecutive years.

(3) A person who satisfies the criteria in this regulation will not be entitled to a permanent right to reside in the United Kingdom where the Secretary of State has made a decision under regulation 19(3)(b), 20(1) or 20A(1).

### **Derivative right of residence**

**15A.** (1) A person (“P”) who is not an exempt person and who satisfies the criteria in paragraph (2), (3), (4), (4A) or (5) of this regulation is entitled to a derivative right to reside in the United Kingdom for as long as P satisfies the relevant criteria.

(2) P satisfies the criteria in this paragraph if—

(a) P is the primary carer of an EEA national (“the relevant EEA national”); and

(b) the relevant EEA national—

(i) is under the age of 18;

(ii) is residing in the United Kingdom as a self-sufficient person; and

(iii) would be unable to remain in the United Kingdom if P were required to leave.

(3) P satisfies the criteria in this paragraph if—

(a) P is the child of an EEA national (“the EEA national parent”);

(b) P resided in the United Kingdom at a time when the EEA national parent was residing in the United Kingdom as a worker; and

(c) P is in education in the United Kingdom and was in education there at a time when the EEA national parent was in the United Kingdom.

(4) P satisfies the criteria in this paragraph if—

(a) P is the primary carer of a person meeting the criteria in paragraph (3) (“the relevant person”); and

(b) the relevant person would be unable to continue to be educated in the United Kingdom if P were required to leave.

(4A) P satisfies the criteria in this paragraph if—

(a) P is the primary carer of a British citizen (“the relevant British citizen”);

(b) the relevant British citizen is residing in the United Kingdom; and

(c) the relevant British citizen would be unable to reside in the UK or in another EEA State if P were required to leave.

(5) P satisfies the criteria in this paragraph if—

(a) P is under the age of 18;

(b) P’s primary carer is entitled to a derivative right to reside in the United Kingdom by virtue of paragraph (2) or (4);

(c) P does not have leave to enter, or remain in, the United Kingdom; and

(d) requiring P to leave the United Kingdom would prevent P’s primary carer from residing in the United Kingdom.

(6) For the purpose of this regulation—

- (a) “education” excludes nursery education;
- (b) “worker” does not include a jobseeker or a person who falls to be regarded as a worker by virtue of regulation 6(2); and
- (c) “an exempt person” is a person—
  - (i) who has a right to reside in the United Kingdom as a result of any other provision of these Regulations;
  - (ii) who has a right of abode in the United Kingdom by virtue of section 2 of the 1971 Act;
  - (iii) to whom section 8 of the 1971 Act, or any order made under subsection (2) of that provision, applies; or
  - (iv) who has indefinite leave to enter or remain in the United Kingdom.

(7) P is to be regarded as a “primary carer” of another person if

- (a) P is a direct relative or a legal guardian of that person; and
- (b) P—
  - (i) is the person who has primary responsibility for that person’s care; or
  - (ii) shares equally the responsibility for that person’s care with one other person who is not an exempt person.

(7A) Where P is to be regarded as a primary carer of another person by virtue of paragraph (7)(b)(ii) the criteria in paragraphs (2)(b)(iii), (4)(b) and (4A)(c) shall be considered on the basis that both P and the person with whom care responsibility is shared would be required to leave the United Kingdom.

(7B) Paragraph (7A) does not apply if the person with whom care responsibility is shared acquired a derivative right to reside in the United Kingdom as a result of this regulation prior to P assuming equal care responsibility.

(8) P will not be regarded as having responsibility for a person’s care for the purpose of paragraph (7) on the sole basis of a financial contribution towards that person’s care.

(9) A person who otherwise satisfies the criteria in paragraph (2), (3), (4), (4A) or (5) will not be entitled to a derivative right to reside in the United Kingdom where the Secretary of State has made a decision under regulation 19(3)(b), 20(1) or 20A(1).

### **Continuation of a right of residence**

**15B.** (1) This regulation applies during any period in which, but for the effect of regulation 13(4), 14(5), 15(3) or 15A(9), a person (“P”) who is in the United Kingdom would be entitled to reside here pursuant to these Regulations.

(2) Where this regulation applies, any right of residence will (notwithstanding the effect of regulation 13(4), 14(5), 15(3) or 15A(9)) be deemed to continue during any period in which—

- (a) an appeal under regulation 26 could be brought, while P is in the United Kingdom, against a relevant decision (ignoring any possibility of an appeal out of time with permission); or
- (b) an appeal under regulation 26 against a relevant decision, brought while P is in the United Kingdom, is pending.

(3) Periods during which residence pursuant to regulation 14 is deemed to continue as a result of paragraph (2) will not constitute residence for the purpose of regulation 15 unless and until—

- (a) a relevant decision is withdrawn by the Secretary of State; or
- (b) an appeal against a relevant decision is allowed and that appeal is finally determined.

(4) Periods during which residence is deemed to continue as a result of paragraph (2) will not constitute residence for the purpose of regulation 21(4)(a) unless and until—

(a) a relevant decision is withdrawn by the Secretary of State; or

(b) an appeal against a relevant decision is allowed and that appeal is finally determined.

(5) A “relevant decision” for the purpose of this regulation means a decision pursuant to regulation 19(3)(b), 20(1) or 20A(1) which would, but for the effect of paragraph (2), prevent P from residing in the United Kingdom pursuant to these Regulations.

(6) This regulation does not affect the ability of the Secretary of State to give directions for P’s removal while an appeal is pending or before it is finally determined.

(7) In this regulation, “pending” and “finally determined” have the meanings given in section 104 of the 2002 Act.

### **PART 3 RESIDENCE DOCUMENTATION**

#### **Issue of registration certificate**

**16.** (1) The Secretary of State must issue a registration certificate to a qualified person immediately on application and production of—

(a) a valid identity card or passport issued by an EEA State;

(b) proof that he is a qualified person.

(2) In the case of a worker, confirmation of the worker’s engagement from his employer or a certificate of employment is sufficient proof for the purposes of paragraph (1)(b).

(3) The Secretary of State must issue a registration certificate to an EEA national who is the family member of a qualified person or of an EEA national with a permanent right of residence under regulation 15 immediately on application and production of—

(a) a valid identity card or passport issued by an EEA State; and

(b) proof that the applicant is such a family member.

(4) The Secretary of State must issue a registration certificate to an EEA national who is a family member who has retained the right of residence on application and production of—

(a) a valid identity card or passport; and

(b) proof that the applicant is a family member who has retained the right of residence.

(5) The Secretary of State may issue a registration certificate to an extended family member not falling within regulation 7(3) who is an EEA national on application if—

(a) the relevant EEA national in relation to the extended family member is a qualified person or an EEA national with a permanent right of residence under regulation 15; and

(b) in all the circumstances it appears to the Secretary of State appropriate to issue the registration certificate.

(6) Where the Secretary of State receives an application under paragraph (5) he shall undertake an extensive examination of the personal circumstances of the applicant and if he refuses the application shall give reasons justifying the refusal unless this is contrary to the interests of national security.

(7) A registration certificate issued under this regulation shall state the name and address of the person registering and the date of registration.

(8) But this regulation is subject to regulations 7A(6) and 20(1).

#### **Issue of residence card**

**17.** (1) The Secretary of State must issue a residence card to a person who is not an EEA national and is the family member of a qualified person or of an EEA national with a permanent right of residence under regulation 15 on application and production of—

(a) a valid passport; and

(b) proof that the applicant is such a family member.

(2) The Secretary of State must issue a residence card to a person who is not an EEA national but who is a family member who has retained the right of residence on application and production of—

(a) a valid passport; and

(b) proof that the applicant is a family member who has retained the right of residence.

(3) On receipt of an application under paragraph (1) or (2) and the documents that are required to accompany the application the Secretary of State shall immediately issue the applicant with a certificate of application for the residence card and the residence card shall be issued no later than six months after the date on which the application and documents are received.

(4) The Secretary of State may issue a residence card to an extended family member not falling within regulation 7(3) who is not an EEA national on application if—

(a) the relevant EEA national in relation to the extended family member is a qualified person or an EEA national with a permanent right of residence under regulation 15; and

(b) in all the circumstances it appears to the Secretary of State appropriate to issue the residence card.

(5) Where the Secretary of State receives an application under paragraph (4) he shall undertake an extensive examination of the personal circumstances of the applicant and if he refuses the application shall give reasons justifying the refusal unless this is contrary to the interests of national security.

(6) A residence card issued under this regulation may take the form of a stamp in the applicant's passport and shall be valid for—

(a) five years from the date of issue; or

(b) in the case of a residence card issued to the family member or extended family member of a qualified person, the envisaged period of residence in the United Kingdom of the qualified person,

whichever is the shorter.

(6A) A residence card issued under this regulation shall be entitled "Residence card of a family member of an EEA national" or "Residence card of a family member who has retained the right of residence", as the case may be.

(7) Omitted.

(8) But this regulation is subject to regulation 20(1) and (1A).

#### **Issue of a document certifying permanent residence and a permanent residence card**

**18.** (1) The Secretary of State must issue an EEA national with a permanent right of residence under regulation 15 with a document certifying permanent residence as soon as possible after an application for such a document and proof that the EEA national has such a right is submitted to the Secretary of State.

(2) The Secretary of State must issue a person who is not an EEA national who has a permanent right of residence under regulation 15 with a permanent residence card no later than six months after the date on which an application for a permanent residence card and proof that the person has such a right is submitted to the Secretary of State.

(3) Subject to paragraph (5), a permanent residence card shall be valid for ten years from the date of issue and must be renewed on application.

(4) Omitted.

(5) A document certifying permanent residence and a permanent residence card shall cease to be valid if the holder ceases to have a right of permanent residence under regulation 15.

(6) But this regulation is subject to regulation 20.

### **Issue of a derivative residence card**

**18A.** (1) The Secretary of State must issue a person with a derivative residence card on application and on production of—

(a) a valid identity card issued by an EEA State or a valid passport; and

(b) proof that the applicant has a derivative right of residence under regulation 15A.

(2) On receipt of an application under paragraph (1) the Secretary of State must issue the applicant with a certificate of application as soon as possible.

(3) A derivative residence card issued under paragraph (1) may take the form of a stamp in the applicant's passport and will be valid until—

(a) a date five years from the date of issue; or

(b) any other date specified by the Secretary of State when issuing the derivative residence card.

(4) A derivative residence card issued under paragraph (1) must be issued and as soon as practicable.

(5) But this regulation is subject to regulations 20(1) and 20(1A).

### **PART 4 REFUSAL OF ADMISSION AND REMOVAL ETC**

#### **Exclusion and removal from the United Kingdom**

**19.** (1) A person is not entitled to be admitted to the United Kingdom by virtue of regulation 11 if his exclusion is justified on grounds of public policy, public security or public health in accordance with regulation 21.

(1A) A person is not entitled to be admitted to the United Kingdom by virtue of regulation 11 if that person is subject to a deportation or exclusion order, except where the person is temporarily admitted pursuant to regulation 29AA.

(1AB) A person is not entitled to be admitted to the United Kingdom by virtue of regulation 11 if the Secretary of State considers there to be reasonable grounds to suspect that his admission would lead to the abuse of a right to reside in accordance with regulation 21B(1).

(1B) If the Secretary of State considers that the exclusion of an EEA national or the family member of an EEA national is justified on the grounds of public policy, public security or public health in accordance with regulation 21 the Secretary of State may make an order for the purpose of these Regulations prohibiting that person from entering the United Kingdom.

(2) A person is not entitled to be admitted to the United Kingdom as the family member of an EEA national under regulation 11(2) unless, at the time of his arrival—

(a) he is accompanying the EEA national or joining him in the United Kingdom; and

(b) the EEA national has a right to reside in the United Kingdom under these Regulations.

(3) Subject to paragraphs (4) and (5), an EEA national who has entered the United Kingdom or the family member of such a national who has entered the United Kingdom may be removed if –

(a) that person does not have or ceases to have a right to reside under these Regulations;

(b) the Secretary of State has decided that the person's removal is justified on grounds of public policy, public security or public health in accordance with regulation 21; or

(c) the Secretary of State has decided that the person's removal is justified on grounds of abuse of rights in accordance with regulation 21B(2).

(4) A person must not be removed under paragraph (3) as the automatic consequence of having recourse to the social assistance system of the United Kingdom.

(5) A person must not be removed under paragraph (3) if he has a right to remain in the United Kingdom by virtue of leave granted under the 1971 Act unless his removal is justified on the grounds of public policy, public security or public health in accordance with regulation 21.

#### **Refusal to issue or renew and revocation of residence documentation**

**20.** (1) The Secretary of State may refuse to issue, revoke or refuse to renew a registration certificate, a residence card, a document certifying permanent residence or a permanent residence card if the refusal or revocation is justified on grounds of public policy, public security or public health or on grounds of abuse of rights in accordance with regulation 21B(2).

(1A) A decision under regulation 19(3) to remove a person from the United Kingdom will (save during any period in which a right of residence is deemed to continue as a result of regulation 15B(2)) invalidate a registration certificate, residence card, document certifying permanent residence or permanent residence card held by that person or an application made by that person for such a certificate, card or document.

(2) The Secretary of State may revoke a registration certificate or a residence card or refuse to renew a residence card if the holder of the certificate or card has ceased to have, or never had a right to reside under these Regulations.

(3) The Secretary of State may revoke a document certifying permanent residence or a permanent residence card or refuse to renew a permanent residence card if the holder of the certificate or card has ceased to have, or never had a right of permanent residence under regulation 15.

(4) An immigration officer may, at the time of a person's arrival in the United Kingdom—

(a) revoke that person's residence card if he is not at that time the family member of a qualified person or of an EEA national who has a right of permanent residence under regulation 15, a family member who has retained the right of residence or a person with a right of permanent residence under regulation 15;

(b) revoke that person's permanent residence card if he is not at that time a person with a right of permanent residence under regulation 15.

(5) An entry clearance officer or immigration officer may at any time revoke a person's EEA family permit if—

(a) the revocation is justified on grounds of public policy, public security or public health; or

(b) the person is not at that time the family member of an EEA national with the right to reside in the United Kingdom under these Regulations or is not accompanying that national or joining him in the United Kingdom.

(6) Any action taken under this regulation on grounds of public policy, public security or public health shall be in accordance with regulation 21.

#### **Cancellation of a right of residence**

**20A.** (1) Where the conditions in paragraph (2) are met the Secretary of State may cancel a person's right to reside in the United Kingdom pursuant to these Regulations.

(2) The conditions in this paragraph are met where—

(a) a person has a right to reside in the United Kingdom as a result of these Regulations;

(b) the Secretary of State has decided that the cancellation of that person's right to reside in the United Kingdom is justified on grounds of public policy, public security or public health in accordance with regulation 21 or on grounds of abuse of rights in accordance with regulation 21B(2);

(c) the circumstances are such that the Secretary of State cannot make a decision under regulation 20(1); and

(d) it is not possible for the Secretary of State to remove the person from the United Kingdom pursuant to regulation 19(3)(b) or 2(c).

### **Verification of a right of residence**

**20B.**(1) This regulation applies when the Secretary of State—

(a) has reasonable doubt as to whether a person (“A”) has a right to reside under regulation 14(1) or (2); or

(b) wants to verify the eligibility of a person (“A”) to apply for documentation issued under Part 3.

(2) The Secretary of State may invite A to—

(a) provide evidence to support the existence of a right to reside, or to support an application for documentation under Part 3; or

(b) attend an interview with the Secretary of State.

(3) If A purports to be entitled to a right to reside on the basis of a relationship with another person (“B”), the Secretary of State may invite B to—

(a) provide information about their relationship with A; or

(b) attend an interview with the Secretary of State.

(4) If, without good reason, A or B fail to provide the additional information requested or, on at least two occasions, fail to attend an interview if so invited, the Secretary of State may draw any factual inferences about A’s entitlement to a right to reside as appear appropriate in the circumstances.

(5) The Secretary of State may decide following an inference under paragraph (4) that A does not have or ceases to have a right to reside.

(6) But the Secretary of State must not decide that A does not have or ceases to have a right to reside on the sole basis that A failed to comply with this regulation.

(7) This regulation may not be invoked systematically.

(8) In this regulation, “a right to reside” means a right to reside under these Regulations.

### **Decisions taken on public policy, public security and public health grounds**

**21.** (1) In this regulation a “relevant decision” means an EEA decision taken on the grounds of public policy, public security or public health.

(2) A relevant decision may not be taken to serve economic ends.

(3) A relevant decision may not be taken in respect of a person with a permanent right of residence under regulation 15 except on serious grounds of public policy or public security.

(4) A relevant decision may not be taken except on imperative grounds of public security in respect of an EEA national who—

(a) has resided in the United Kingdom for a continuous period of at least ten years prior to the relevant decision; or

(b) is under the age of 18, unless the relevant decision is necessary in his best interests, as provided for in the Convention on the Rights of the Child adopted by the General Assembly of the United Nations on 20th November 1989.



(5) Where a relevant decision is taken on grounds of public policy or public security it shall, in addition to complying with the preceding paragraphs of this regulation, be taken in accordance with the following principles—

- (a) the decision must comply with the principle of proportionality;
- (b) the decision must be based exclusively on the personal conduct of the person concerned;
- (c) the personal conduct of the person concerned must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society;
- (d) matters isolated from the particulars of the case or which relate to considerations of general prevention do not justify the decision;
- (e) a person's previous criminal convictions do not in themselves justify the decision.

(6) Before taking a relevant decision on the grounds of public policy or public security in relation to a person who is resident in the United Kingdom the decision maker must take account of considerations such as the age, state of health, family and economic situation of the person, the person's length of residence in the United Kingdom, the person's social and cultural integration into the United Kingdom and the extent of the person's links with his country of origin.

(7) In the case of a relevant decision taken on grounds of public health—

- (a) a disease that does not have epidemic potential as defined by the relevant instruments of the World Health Organisation or is not a disease listed in Schedule 1 to the Health Protection (Notification) Regulations 2010 shall not constitute grounds for the decision; and
- (b) if the person concerned is in the United Kingdom, diseases occurring after the three month period beginning on the date on which he arrived in the United Kingdom shall not constitute grounds for the decision.

#### **Application of Part 4 to persons with a derivative right of residence**

**21A.** (1) Where this regulation applies Part 4 of these Regulations applies subject to the modifications listed in paragraph (3).

(2) This regulation applies where a person—

- (a) would, notwithstanding Part 4 of these Regulations, have a right to be admitted to, or reside in, the United Kingdom by virtue of a derivative right of residence arising under regulation 15A(2), (4), (4A) or (5);
- (b) holds a derivative residence card; or
- (c) has applied for a derivative residence card.

(3) Where this regulation applies Part 4 applies in relation to the matters listed in paragraph (2) as if—

- (a) references to a matter being justified on grounds of public policy, public security or public health in accordance with regulation 21 referred instead to a matter being "conducive to the public good";
- (b) the reference in regulation 20(5)(a) to a matter being "justified on grounds of public policy, public security or public health" referred instead to a matter being "conducive to the public good";
- (c) references to "the family member of an EEA national" referred instead to "a person with a derivative right of residence";
- (d) references to "a registration certificate, a residence card, a document certifying permanent residence or a permanent residence card" referred instead to "a derivative residence card";

(e) the reference in regulation 19(1A) to a deportation or exclusion order referred also to a deportation or exclusion order made under any provision of the immigration Acts.

(f) regulation 20(4) instead conferred on an immigration officer the power to revoke a derivative residence card where the holder is not at that time a person with a derivative right of residence; and

(g) regulations 20(3), 20(6) and 21 were omitted.

### **Abuse of rights or fraud**

**21B.** (1) The abuse of a right to reside includes—

(a) engaging in conduct which appears to be intended to circumvent the requirement to be a qualified person;

(b) attempting to enter the United Kingdom within 12 months of being removed pursuant to regulation 19(3)(a), where the person attempting to do so is unable to provide evidence that, upon re-entry to the United Kingdom, the conditions for any right to reside, other than the initial right of residence under regulation 13, will be met;

(c) entering, attempting to enter or assisting another person to enter or attempt to enter, a marriage or civil partnership of convenience; or

(d) fraudulently obtaining or attempting to obtain, or assisting another to obtain or attempt to obtain, a right to reside.

(2) The Secretary of State may take an EEA decision on the grounds of abuse of rights where there are reasonable grounds to suspect the abuse of a right to reside and it is proportionate to do so.

(3) Where these Regulations provide that an EEA decision taken on the grounds of abuse in the preceding twelve months affects a person's right to reside, the person who is the subject of that decision may apply to the Secretary of State to have the effect of that decision set aside on grounds that there has been a material change in the circumstances which justified that decision.

(4) An application under paragraph (3) may only be made whilst the applicant is outside the United Kingdom.

(5) This regulation may not be invoked systematically.

(6) In this regulation, "a right to reside" means a right to reside under these Regulations."

...

## **PART 6 APPEALS UNDER THESE REGULATIONS**

### **Interpretation of Part 6**

**25.** (1) In this Part—

"Asylum claim" has the meaning given in section 113(1) of the 2002 Act; and

"Commission" has the same meaning as in the Special Immigration Appeals Commission Act 1997;

"Human rights claim" has the meaning given in section 113(1) of the 2002 Act.

(2) For the purposes of this Part, and subject to paragraphs (3) and (4), an appeal is to be treated as pending during the period when notice of appeal is given and ending when the appeal is finally determined, withdrawn or abandoned.

(3) An appeal is not to be treated as finally determined while a further appeal may be brought; and, if such a further appeal is brought, the original appeal is not to be treated as finally determined until the further appeal is determined, withdrawn or abandoned.

(4) A pending appeal is not to be treated as abandoned solely because the appellant leaves the United Kingdom.

### **Appeal rights**

**26.** (1) Subject to the following paragraphs of this regulation, a person may appeal under these Regulations against an EEA decision.

(2) If a person claims to be an EEA national, he may not appeal under these Regulations unless he produces a valid national identity card or passport issued by an EEA State.

(2A) If a person claims to be in a durable relationship with an EEA national he may not appeal under these Regulations unless he produces—

(a) a passport; and

(b) sufficient evidence to satisfy the Secretary of State that he is in a relationship with that EEA national.

(3) If a person to whom paragraph (2) does not apply claims to be a family member who has retained the right of residence or the family member or relative of an EEA national he may not appeal under these Regulations unless he produces—

(a) a passport; and

(b) either—

(i) an EEA family permit;

(ia) a qualifying EEA State residence card;

(ii) proof that he is the family member or relative of an EEA national; or

(iii) in the case of a person claiming to be a family member who has retained the right of residence, proof that he was a family member of the relevant person.

(3A) If a person claims to be a person with a derivative right of entry or residence he may not appeal under these Regulations unless he produces a valid national identity card issued by an EEA State or a passport, and either—

(a) an EEA family permit; or

(b) proof that—

(i) where the person claims to have a derivative right of entry or residence as a result of regulation 15A(2), he is a direct relative or guardian of an EEA national who is under the age of 18;

(ii) where the person claims to have a derivative right of entry or residence as a result of regulation 15A(3), he is the child of an EEA national;

(iii) where the person claims to have a derivative right of entry or residence as a result of regulation 15A(4), he is a direct relative or guardian of the child of an EEA national;

(iv) where the person claims to have a derivative right of entry or residence as a result of regulation 15A(5), he is under the age of 18 and is a dependant of a person satisfying the criteria in (i) or (iii);

(v) where the person claims to have a derivative right of entry or residence as a result of regulation 15A(4A), he is a direct relative or guardian of a British citizen.

(4) A person may not bring an appeal under these Regulations on a ground certified under paragraph (5) or rely on such a ground in an appeal brought under these Regulations.

(5) The Secretary of State or an immigration officer may certify a ground for the purposes of paragraph (4) if it has been considered in a previous appeal brought under these Regulations or under section 82(1) of the 2002 Act.

(6) Except where an appeal lies to the Commission, an appeal under these Regulations lies to the First-tier Tribunal.

(7) The provisions of or made under the 2002 Act referred to in Schedule 1 shall have effect for the purposes of an appeal under these Regulations to the First-tier Tribunal in accordance with that Schedule.

## **27. Out of country appeals**

(1) Subject to paragraphs (2) and (3), a person may not appeal under regulation 26 whilst he is in the United Kingdom against an EEA decision—

(a) to refuse to admit him to the United Kingdom;

(aa) to make an exclusion order against him;

(b) to refuse to revoke a deportation or exclusion order made against him;

(c) to refuse to issue him with an EEA family permit; ...

(ca) to revoke, or to refuse to issue or renew any document under these Regulations where that decision is taken at a time when the relevant person is outside the United Kingdom; or

(d) to remove him from the United Kingdom after he has entered the United Kingdom in breach of a deportation or exclusion order.

(2) Paragraphs (1)(a) and (aa) do not apply where the person is in the United Kingdom and —

(a) the person held a valid EEA family permit, registration certificate, residence card, derivative residence card, <sup>7</sup>document certifying permanent residence or permanent residence card or qualifying EEA State residence card on his arrival in the United Kingdom or can otherwise prove that he is resident in the United Kingdom;

(b) the person is deemed not to have been admitted to the United Kingdom under regulation 22(3) but at the date on which notice of the decision to refuse to admit him is given he has been in the United Kingdom for at least 3 months or;

(c) has made an asylum or human rights claim (or both), unless the Secretary of State has certified that the claim or claims is or are clearly unfounded.

(3) Paragraph (1)(d) does not apply where the person has made an asylum or human rights claim (or both), unless the Secretary of State has certified that the claim or claims is or are clearly unfounded.

...

## **Temporary admission in order to submit case in person**

**29AA.** (1) This regulation applies where—

(a) a person (“P”) was removed from the United Kingdom pursuant to regulation 19(3)(b);

(b) P has appealed against the decision referred to in sub-paragraph (a);

(c) a date for P's appeal has been set by the First Tier Tribunal or Upper Tribunal; and

(d) P wants to make submissions before the First Tier Tribunal or Upper Tribunal in person.

(2) P may apply to the Secretary of State for permission to be temporarily admitted (within the meaning of paragraphs 21 to 24 of Schedule 2 to the 1971 Act<sup>(3)</sup>, as applied by this regulation) to the United Kingdom in order to make submissions in person.

(3) The Secretary of State must grant P permission, except when P's appearance may cause serious troubles to public policy or public security.

(4) When determining when P is entitled to be given permission, and the duration of P's temporary admission should permission be granted, the Secretary of State must have regard to the dates upon which P will be required to make submissions in person.

(5) Where—

(a) P is temporarily admitted to the United Kingdom pursuant to this regulation;

(b) a hearing of P's appeal has taken place; and

(c) the appeal is not finally determined,

P may be removed from the United Kingdom pending the remaining stages of the redress procedure (but P may apply to return to the United Kingdom to make submissions in person during the remaining stages of the redress procedure in accordance with this regulation).

(6) Where the Secretary of State grants P permission to be temporarily admitted to the United Kingdom under this regulation, upon such admission P is to be treated as if P were a person refused leave to enter under the 1971 Act for the purposes of paragraphs 8, 10, 10A, 11, 16 to 18 and 21 to 24 of Schedule 2(4) to the 1971 Act.

(7) Where Schedule 2 to the 1971 Act so applies, it has effect as if—

(a) the reference in paragraph 8(1) to leave to enter were a reference to admission to the United Kingdom under these Regulations; and

(b) the reference in paragraph 16(1) to detention pending a decision regarding leave to enter or remain in the United Kingdom were to detention pending submission of P's case in person in accordance with this regulation.

(8) P will be deemed not to have been admitted to the United Kingdom during any time during which P is temporarily admitted pursuant to this regulation.

## **PART 7 GENERAL**

### **Alternative evidence of identity and nationality**

**29A.** (1) Subject to paragraph (2), where a provision of these Regulations requires a person to hold or produce a valid identity card issued by an EEA State or a valid passport the Secretary of State may accept alternative evidence of identity and nationality where the person is unable to obtain or produce the required document due to circumstances beyond his or her control.

(2) This regulation does not apply to regulation 11

# **Refugee or Person in Need of International Protection (Qualification) Regulations 2006**

## **1. Citation and commencement**

(1) These Regulations may be cited as The Refugee or Person in Need of International Protection (Qualification) Regulations 2006 and shall come into force on 9th October 2006.

(2) These Regulations apply to any application for asylum which has not been decided and any immigration appeal brought under the Immigration Acts (as defined in section 64(2) of the Immigration, Asylum and Nationality Act 2006) which has not been finally determined.

## **2. Interpretation**

In these Regulations—

“application for asylum” means the request of a person to be recognised as a refugee under the Geneva Convention;

“Geneva Convention” means the Convention Relating to the Status of Refugees done at Geneva on 28 July 1951 and the New York Protocol of 31 January 1967<sup>1</sup>;

“immigration rules” means rules made under section 3(2) of the Immigration Act 1971;

“persecution” means an act of persecution within the meaning of Article 1(A) of the Geneva Convention;

“person eligible for humanitarian protection” means a person who is eligible for a grant of humanitarian protection under the immigration rules;

“refugee” means a person who falls within Article 1(A) of the Geneva Convention and to whom regulation 7 does not apply;

“residence permit” means a document confirming that a person has leave to enter or remain in the United Kingdom whether limited or indefinite;

“serious harm” means serious harm as defined in the immigration rules;

“person” means any person who is not a British citizen.

## **3. Actors of persecution or serious harm**

In deciding whether a person is a refugee or a person eligible for humanitarian protection, persecution or serious harm can be committed by:

(a) the State;

(b) any party or organisation controlling the State or a substantial part of the territory of the State;

(c) any non-State actor if it can be demonstrated that the actors mentioned in paragraphs (a) and (b), including any international organisation, are unable or unwilling to provide protection against persecution or serious harm.

## **4. Actors of protection**

(1) In deciding whether a person is a refugee or a person eligible for humanitarian protection, protection from persecution or serious harm can be provided by:

(a) the State; or

(b) any party or organisation, including any international organisation, controlling the State or a

substantial part of the territory of the State.

(2) Protection shall be regarded as generally provided when the actors mentioned in paragraph (1)(a) and (b) take reasonable steps to prevent the persecution or suffering of serious harm by operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm, and the person mentioned in paragraph (1) has access to such protection.

(3) In deciding whether a person is a refugee or a person eligible for humanitarian protection the Secretary of State may assess whether an international organisation controls a State or a substantial part of its territory and provides protection as described in paragraph (2).

## **5. Act of persecution**

(1) In deciding whether a person is a refugee an act of persecution must be:

(a) sufficiently serious by its nature or repetition as to constitute a severe violation of a basic human right, in particular a right from which derogation cannot be made under Article 15 of the Convention for the Protection of Human Rights and Fundamental Freedoms<sup>1</sup>; or

(b) an accumulation of various measures, including a violation of a human right which is sufficiently severe as to affect an individual in a similar manner as specified in (a).

(2) An act of persecution may, for example, take the form of:

(a) an act of physical or mental violence, including an act of sexual violence;

(b) a legal, administrative, police, or judicial measure which in itself is discriminatory or which is implemented in a discriminatory manner;

(c) prosecution or punishment, which is disproportionate or discriminatory;

(d) denial of judicial redress resulting in a disproportionate or discriminatory punishment;

(e) prosecution or punishment for refusal to perform military service in a conflict, where performing military service would include crimes or acts falling under regulation 7.

(3) An act of persecution must be committed for at least one of the reasons in Article 1(A) of the Geneva Convention.

## **6. Reasons for persecution**

(1) In deciding whether a person is a refugee:

(a) the concept of race shall include consideration of, for example, colour, descent, or membership of a particular ethnic group;

(b) the concept of religion shall include, for example, the holding of theistic, non-theistic and atheistic beliefs, the participation in, or abstention from, formal worship in private or in public, either alone or in community with others, other religious acts or expressions of view, or forms of personal or communal conduct based on or mandated by any religious belief;

(c) the concept of nationality shall not be confined to citizenship or lack thereof but shall include, for example, membership of a group determined by its cultural, ethnic, or linguistic identity, common geographical or political origins or its relationship with the population of another State;

(d) a group shall be considered to form a particular social group where, for example:

(i) members of that group share an innate characteristic, or a common background that cannot be changed, or share a characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it, and

(ii) that group has a distinct identity in the relevant country, because it is perceived as being different

by the surrounding society;

(e) a particular social group might include a group based on a common characteristic of sexual orientation but sexual orientation cannot be understood to include acts considered to be criminal in accordance with national law of the United Kingdom;

(f) the concept of political opinion shall include the holding of an opinion, thought or belief on a matter related to the potential actors of persecution mentioned in regulation 3 and to their policies or methods, whether or not that opinion, thought or belief has been acted upon by the person.

(2) In deciding whether a person has a well-founded fear of being persecuted, it is immaterial whether he actually possesses the racial, religious, national, social or political characteristic which attracts the persecution, provided that such a characteristic is attributed to him by the actor of persecution.

## **7. Exclusion**

(1) A person is not a refugee, if he falls within the scope of Article 1 D, 1E or 1F of the Geneva Convention.

(2) In the construction and application of Article 1F(b) of the Geneva Convention:

(a) the reference to serious non-political crime includes a particularly cruel action, even if it is committed with an allegedly political objective;

(b) the reference to the crime being committed outside the country of refuge prior to his admission as a refugee shall be taken to mean the time up to and including the day on which a residence permit is issued.

(3) Article 1F(a) and (b) of the Geneva Convention shall apply to a person who instigates or otherwise participates in the commission of the crimes or acts specified in those provisions.



# European Convention on Human Rights

## *Articles 1-15*

### **ARTICLE 1**

The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention.

### **SECTION I**

#### **ARTICLE 2**

1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

3. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:

- (a) in defence of any person from unlawful violence;
- (b) in order to effect a lawful arrest or to prevent escape of a person lawfully detained;
- (c) in action lawfully taken for the purpose of quelling a riot or insurrection.

#### **ARTICLE 3**

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

#### **ARTICLE 4**

1. No one shall be held in slavery or servitude.

2. No one shall be required to perform forced or compulsory labour.

3. For the purpose of this article the term 'forced or compulsory labour' shall not include:

- (a) any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention;
- (b) any service of a military character or, in case of conscientious objectors in countries where they are recognized, service exacted instead of compulsory military service;
- (c) any service exacted in case of an emergency or calamity threatening the life or well-being of the community;
- (d) any work or service which forms part of normal civic obligations.

#### **ARTICLE 5**

1. Everyone has the right to liberty and security of person.

No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

- (a) the lawful detention of a person after conviction by a competent court;
- (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority of reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

(d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;

(e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts, or vagrants;

(f) the lawful arrest or detention of a person to prevent his effecting an unauthorized entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and the charge against him.

3. Everyone arrested or detained in accordance with the provisions of paragraph 1(c) of this article shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this article shall have an enforceable right to compensation.

## **ARTICLE 6**

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgement shall be pronounced publicly by the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

3. Everyone charged with a criminal offence has the following minimum rights:

(a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

(b) to have adequate time and the facilities for the preparation of his defence;

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

## **ARTICLE 7**

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed.

Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.

2. This article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by civilized nations.

#### **ARTICLE 8**

1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

#### **ARTICLE 9**

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or the protection of the rights and freedoms of others.

#### **ARTICLE 10**

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or the rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

#### **ARTICLE 11**

1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

#### **ARTICLE 12**

Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right.

#### **ARTICLE 13**

Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.

#### **ARTICLE 14**

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

#### **ARTICLE 15**

1. In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.

2. No derogation from Article 2, except in respect of deaths resulting from lawful acts of war, or from Articles 3, 4 (paragraph 1) and 7 shall be made under this provision.

3. Any High Contracting Party availing itself of this right of derogation shall keep the Secretary-General of the Council of Europe fully informed of the measures which it has taken and the reasons therefor. It shall also inform the Secretary-General of the Council of Europe when such measures have ceased to operate and the provisions of the Convention are again being fully executed.

## Refugee Convention

### *Article 1A, 1D, 1E, 1F, 31, 32, 33*

#### **Article 1**

definition of the term “refugee”

A. For the purposes of the present Convention, the term “refugee” shall apply to any person who:

(1) Has been considered a refugee under the Arrangements of 12 May 1926 and 30 June 1928 or under the Conventions of 28 October 1933 and 10 February 1938, the Protocol of 14 September 1939 or the Constitution of the International Refugee Organization; Decisions of non-eligibility taken by the International Refugee Organization during the period of its activities shall not prevent the status of refugee being accorded to persons who fulfil the conditions of paragraph 2 of this section;

(2) As a result of events occurring before 1 January 1951 and owing to wellfounded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

In the case of a person who has more than one nationality, the term “the country of his nationality” shall mean each of the countries of which he is a national, and a person shall not be deemed to be lacking the protection of the country of his nationality if, without any valid reason based on well-founded fear, he has not availed himself of the protection of one of the countries of which he is a national.

...

C. This Convention shall cease to apply to any person falling under the terms of section A if:

(1) He has voluntarily re-availed himself of the protection of the country of his nationality; or

(2) Having lost his nationality, he has voluntarily reacquired it; or

(3) He has acquired a new nationality, and enjoys the protection of the country of his new nationality;  
or

(4) He has voluntarily re-established himself in the country which he left or outside which he remained owing to fear of persecution; or

(5) He can no longer, because the circumstances in connection with which he has been recognized as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality;

Provided that this paragraph shall not apply to a refugee falling under section A (1) of this article who is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself of the protection of the country of nationality;

(6) Being a person who has no nationality he is, because the circumstances in connection with which he has been recognized as a refugee have ceased to exist, able to return to the country of his former habitual residence;

Provided that this paragraph shall not apply to a refugee falling under section A (1) of this article who is able to invoke compelling reasons arising out of previous persecution for refusing to return to the country of his former habitual residence.

D. This Convention shall not apply to persons who are at present receiving from organs or agencies

of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance. When such protection or assistance has ceased for any reason, without the position of such persons being definitively settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations, these persons shall ipso facto be entitled to the benefits of this Convention.

E. This Convention shall not apply to a person who is recognized by the competent authorities of the country in which he has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country.

F. The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:

(a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;

(b) he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;

(c) he has been guilty of acts contrary to the purposes and principles of the United Nations.

#### **Article 31 - Refugees unlawfully in the country of refugee**

1. The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.

2. The Contracting States shall not apply to the movements of such refugees restrictions other than those which are necessary and such restrictions shall only be applied until their status in the country is regularized or they obtain admission into another country. The Contracting States shall allow such refugees a reasonable period and all the necessary facilities to obtain admission into another country.

#### **Article 32 - Expulsion**

1. The Contracting States shall not expel a refugee lawfully in their territory save on grounds of national security or public order.

2. The expulsion of such a refugee shall be only in pursuance of a decision reached in accordance with due process of law. Except where compelling reasons of national security otherwise require, the refugee shall be allowed to submit evidence to clear himself, and to appeal to and be represented for the purpose before competent authority or a person or persons specially designated by the competent authority.

3. The Contracting States shall allow such a refugee a reasonable period 30 convention and protocol within which to seek legal admission into another country. The Contracting

States reserve the right to apply during that period such internal measures as they may deem necessary.

#### **Article 33 - Prohibition of expulsion or return ("refoulement")**

1. No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

2. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country.

## List of Commonwealth Countries by Region

(<http://thecommonwealth.org/member-countries>)

### **Africa**

Botswana  
Cameroon  
Ghana  
Kenya  
Lesotho  
Malawi  
Mauritius  
Mozambique  
Namibia  
Nigeria  
Rwanda  
Seychelles  
Sierra Leone  
South Africa  
Swaziland  
Uganda  
United Republic of Tanzania  
Zambia

### **Asia**

Bangladesh  
Brunei Darussalam  
India  
Malaysia  
Maldives  
Pakistan  
Singapore  
Sri Lanka

### **Caribbean and Americas**

Antigua and Barbuda  
Bahamas, The  
Barbados  
Belize  
Canada  
Dominica  
Grenada  
Guyana  
Jamaica  
St Kitts and Nevis  
St Lucia  
St Vincent and The Grenadines  
Trinidad and Tobago

### **Europe**

Cyprus  
Malta  
United Kingdom

### **Pacific**

Australia  
Fiji  
Kiribati  
Nauru  
New Zealand  
Papua New Guinea  
Samoa  
Solomon Islands  
Tonga  
Tuvalu  
Vanuatu

## Cases

Assessment candidates should be familiar with the following principles extracted from the case law

### Immigration Law

- Kwok On Tong - if a refusal is based on one element of the Rules, but by the time of the hearing it becomes apparent that there was some other requirement of the Rules which the appellant could not meet, that matter must be dealt with on appeal, and the parties must be allowed any appropriate adjournment in order to avoid the injustice of being taken by surprise: see RM (Kwok On Tong): HC395 para 320) India [2006] UKAIT 00039
- TD (Paragraph 297(i)(e): "sole responsibility") Yemen [2006] UKAIT 00049 - sole responsibility" is a factual matter to be decided upon all the evidence, the test being whether the parent has continuing control and direction over the child's upbringing, including making all the important decisions in the child's life
- Ishtiaq v Secretary of State for the Home Department [2007] EWCA Civ 386 - an applicant who is claiming leave to remain under the domestic violence rule can prove her case by producing cogent relevant evidence (ie not merely the forms of evidence preferred by the Home Office policy)
- EM and other (Returnees) Zimbabwe CG [2011] UKUT 98 (IAC) - in the absence of countervailing factors, residence of over 7 years with children well-integrated into the education system in the United Kingdom, is an indicator that the welfare of the child favours regularisation of the status of mother and children
- Alvi, R (on the application of English UK) v Secretary of State for the Home Department [2012] UKSC 33 - a substantive requirements that must be satisfied for an application to succeed must be laid before Parliament in the form of a proper Immigration Rules under s. 3(2) of the Immigration Act 1971
- Basnet (validity of application – respondent) Nepal [2012] UKUT 113 (IAC) (04 April 2012) - the burden was on the UKBA to prove that an applicant failed to give their authority to take a payment

### Children

- ZH (Tanzania) v Secretary of State for the Home Department [2011] UKSC 4 - a decision-maker should look to the best interests of the children as a primary consideration, asking whether the force of any other consideration outweighed it and that it would be wrong in principle to devalue what was in a child's best interests by something for which they could in no way be held to be responsible
- Mundeba (s.55 and para 297(i)(f)) [2013] UKUT 88(IAC) - The exercise of the duty by the Entry Clearance Officer to assess an application under the Immigration Rules as to whether there are family or other considerations making the child's exclusion undesirable inevitably involves an assessment of what the child's welfare and best interests require. Due regard must be had to the



UN Convention on the Rights of the Child.

- A, R (on the application of) v London Borough of Croydon [2009] UKSC 8 (26 November 2009) - the question whether or not a person is a child for the purposes of section 20 of the 1989 Children Act is a question of fact which must ultimately be decided by the court:
- EV (Philippines) & Ors v Secretary of State for the Home Department [2014] EWCA Civ 874 - A decision as to what is in the best interests of children will depend on a number of factors such as (a) their age; (b) the length of time that they have been here; (c) how long they have been in education; (c) what stage their education has reached; (d) to what extent they have become distanced from the country to which it is proposed that they return; (e) how renewable their connection with it may be; (f) to what extent they will have linguistic, medical or other difficulties in adapting to life in that country; and (g) the extent to which the course proposed will interfere with their family life or their rights (if they have any) as British citizens.

## International Protection

### *Refugee Law*

- Karanakaran [2000] Imm AR 271 - the benefit of the doubt should be given to an asylum seeker
- R v Uxbridge Magistrates' Court ex parte Adimi [2001] QB 667 - there is no absolute requirement in international law that a refugee claim asylum in the first safe country they reach
- Ahmed v Secretary of State for the Home Department [2000] INLR 1 -future conduct in the country of origin is relevant to the existence of a risk of persecution
- HJ (Iran) v Secretary of State for the Home Department [2010] UKSC 31 - it had been found that a person would be discreet in their behaviour upon a return home, the reasons for that must be considered, and if the discretion was motivated by a fear of serious harm, then they faced a well founded fear of persecution
- Danian v Secretary of State for the Home Department [1999] EWCA Civ 3000 - risks generated by actions carried out in bad faith, eg those brought about by making an unmeritorious asylum claim, do not exclude a person from refugee status
- Shah and Islam v Secretary of State for the Home Department and Immigration Appeal Tribunal and Another [1999] UKHL 20; [1999] 2 AC 629; [1999] 2 All ER 545 - persecution cannot define membership of a particular social group, that discrimination is relevant to the identification of a particular social group, and that women and homosexuals may be members of a particular social group depending on the circumstances of the society from which they come
- K and Fornah [2006] UKHL 46 - the family is a particular social group
- SB (PSG - Protection Regulations – Reg 6) Moldova CG [2008] UKAIT 00002 - "Former victims of trafficking" and "former victims of trafficking for sexual exploitation" are capable of being members of a particular social group because of their shared common background or past experience of having been trafficked
- AH (Sudan)& Ors v Secretary of State for the Home Department [2007] EWCA Civ 297 - the reasonableness of internal relocation is to be assessed by a comparison between the asylum

seeker's place of habitual residence and conditions in any place of relocation, based on the individual's own characteristics: If under those conditions the asylum-seeker cannot live a relatively normal life according to the standards of his country it will be unduly harsh to expect him to go to the safe haven

- SM (Section 8: Judge's process) Iran [2005] UKAIT 00116 - the evidence regarding the credibility of an asylum claim must be considered as a whole, notwithstanding that a factor identified in section 8 of the Asylum (Treatment of Claimants etc) Act 2004 may be present in the claim
- HK v Secretary of State for the Home Department - in many asylum cases, some, even most, of the appellant's story may seem inherently unlikely but that does not mean that it is untrue in asylum cases where much of the evidence will be referable to societies with customs and circumstances which are very different from those of which decision makers have any experience
- Gurung [2002] UKIAT 04870 - issues of exclusion may arise on appeal even though the point was not taken in the refusal letter
- KJ (Sri Lanka) v Secretary of State for the Home Department [2009] EWCA Civ 292 (02 April 2009) - mere membership of an organisation that, among other activities, commits acts contrary to the UN's purposes does not exclude the asylum seeker absent personal association with those acts
- YS (Egypt) v Secretary of State for the Home Department [2009] EWCA Civ 222 (18 March 2009) - there are no circumstances in which evidence gained from torture could be used in the refugee determination process or elsewhere in English law
- JS (Sri Lanka), R (on the application of) v Secretary of State for the Home Department [2009] EWCA Civ 364 (30 April 2009) - in order for there to be joint enterprise liability, there first has to be a common design which amounts to or involves the commission of a crime provided for in the Rome statute, that the defendant must have participated in the furtherance of the joint criminal purpose in a way that made a significant contribution to the crime's commission, with the intention of furthering the perpetration of crime
- EN (Serbia) v Secretary of State for the Home Department [2009] EWCA Civ 630 (29 June 2009) - (a) section 72 of the NIA 2002 contains rebuttable presumptions in relation to both of the relevant requirements of Article 33(2), i.e. in relation to the seriousness of the crime and in relation to danger to the community (b) the Nationality, Immigration and Asylum Act 2002 (Specification of Particularly Serious Crimes) Order 2004 was ultra vires (c) that domestic law must be moulded to comply with the Refugee Convention given its primacy in European law
- MA (Ethiopia) v Secretary of State for the Home Department [2009] EWCA Civ 289 (2 April 2009) - denial of nationality may be persecutory, depending on what rights in practice are lost
- YB (Eritrea) v Secretary of State for the Home Department [2008] EWCA Civ 360 (15 April 2008) - there is no requirement of affirmative evidence to establish the likelihood that intelligence services of repressive regimes with bad human rights records monitor the internet and demonstrations in the UK for information about oppositionist groups
- Said (Article 1D : meaning) Palestinian Territories [2012] UKUT 413 (IAC) (15 November 2012) - a Palestinian forced out of the protection of the UNRWA region by virtue of circumstances beyond their control, such as armed conflict in their refugee camp, may well be entitled to the benefits of the Refugee Convention, regardless of whether or not they also possess a well

founded fear of persecution for a Convention reason

- NS (European Union law) [2011] EUECJ C-411/10 - returns to Greece under Dublin II would breach the Charter of Fundamental Rights of the European Union
- R (on the application of TR (Sri Lanka)) v Secretary of State for the Home Department [2008] EWCA Civ 1549 and R (on the application of YH) v Secretary of State for the Home Department [2010] EWCA Civ 116 - in application for judicial review it was for the court to decide for itself whether the relevant threshold for a fresh claim is met rather than to apply Wednesbury principles in conducting the review

## Human Rights and Humanitarian Protection

### *Human Rights*

- Chahal v United Kingdom (1997) 23 EHRR 413 - Article 3 of the ECHR is absolute and available to anyone at risk of an infringement of it, irrespective of their conduct
- Ireland v United Kingdom (1978) 2 EHRR 25 - ill-treatment must attain a minimum level of severity to cross the threshold for Article 3 to be breached
- R v Secretary of State for the Home Department ex parte Limbuela and Ors [2004] EWCA Civ 540 - a denial of support and accommodation in the UK can constitute an Article 3 breach, depending on factors such as age and infirmity, illness or accident, and a lack of shelter
- N v Secretary of State for the Home Department [2005] UKHL 31 - where health issues are relied upon as preventing removal from the UK, that only the most extreme cases can succeed, for example where the claimant is dying
- GS and EO (Article 3 - health cases) India [2012] UKUT 397 (IAC) - life expectancy is dramatically shortened by withdrawal of medical treatment in the host state is in itself incapable of amounting to the highly exceptional case that engages the Article 3 duty but there are recognised departures from the high threshold approach in cases concerning children, discriminatory denial of treatment, absence of resources through civil war or similar human agency.
- RS (Zimbabwe) v Secretary of State for the Home Department [2008] EWCA Civ 839 (18 July 2008) - "humanitarian considerations" recognised by the ECtHR in N meant that a health case could succeed notwithstanding that it was not a deathbed case, and that problems caused by a deliberate withholding of medical care or food were not caught by the high threshold in N
- JA (Ivory Coast) & Anor v Secretary of State for the Home Department [2009] EWCA Civ 1353 (14 December 2009) - (a) where the Secretary of State granted permission to remain in the United Kingdom to receive health treatment, prompted initially by compassion and subsequently by a sense of moral obligation, this is relevant to the proportionality of removal, and (b) a continuously lawful entrant was not required to demonstrate exceptional circumstances as compelling as those in D v United Kingdom

- East African Asians v UK (1981) 3 EHRR 76 - discrimination based on race could, in certain circumstances, of itself amount to degrading treatment
- Rantsev v Cyprus and Russia (Application no. 25965/04) (7 January 2010) - trafficking falls within the scope of Article 4 of the Convention and that there is a procedural obligation under Article 4 to investigate alleged trafficking, trafficking in this sense being the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation
- Saadi [2002] UKHL 41 - detention for limited periods for reasons of administrative processing of asylum claims is not inconsistent with Article 5 ECHR
- MNM (00/TH/02423; 1 November 2000) - Article 6 of the ECHR (right to fair trial) is not available in proceedings relating to immigration status
- Ullah [2004] UKHL 26 - Articles of the ECHR may be relevant in terms of breaches of human rights committed abroad, but aside from breaches that involve the absolute rights, such breaches have to be “flagrant” to overcome the normal operation of immigration control
- EM (Lebanon)v Secretary of State For The Home Department [2008] UKHL 64 (22 October 2008) - removal of a child from its mother’s care might amount to a flagrant breach of their right to family life
- Huang and Others v Secretary of State for the Home Department [2007] UKHL 11 - the ultimate question for the appellate immigration authority is whether the refusal of leave to enter or remain, in circumstances where the life of the family cannot reasonably be expected to be enjoyed elsewhere, taking full account of all considerations weighing in favour of the refusal, prejudices the family life of the applicant in a manner sufficiently serious to amount to a breach of the fundamental right protected; and that on appeal an immigration judge must make up their own minds on whether a removal is disproportionate
- Razgar [2004] UKHL 27 – sets out the five stage test for approaching Article 8 claims
- Abdulaziz and Ors [1985] ECHR 7 (28 May 1985) - family life is presumed to include the relationship that arises from a lawful and genuine marriage
- Berrehab v Netherlands (1988) 11 EHRR 322 - cohabitation is not essential to the existence of family life between parents and minor children and that from the moment of the child’s birth and by the very fact of it, there exists between him and his parents a bond amounting to ‘family life’, even if the parents are not then living together
- Singh v ECO New Delhi [2004] EWCA (Civ) that family life should be given a broad meaning
- Niemietz v Germany (1992) 16 EHRR 97 - respect for private life must also comprise to a certain degree the right to establish and develop relationships with other human beings
- Chikwamba v Secretary of State for the Home Department [2008] UKHL 40 (25 June 2008) - it will be rarely proportionate to expect someone to return to their country to obtain entry clearance where there are children involved, absent a very bad immigration history

- R (Ahmadi) v Secretary of State for the Home Department [2005] EWCA Civ 1721 - the obligations under Article 8 require a state not only to refrain from interference with existing life, but also from inhibiting the development of a real family life in the future
- MS (Ivory Coast) v Secretary of State for the Home Department [2007] EWCA Civ 133 - depending on the circumstances it may be disproportionate to remove a parent from the United Kingdom while contact proceedings regarding their child remain unresolved (India [2012] UKUT 281 (IAC))
- EB (Kosovo) v Secretary of State for the Home Department [2008] UKHL 41 - the passage of time means that the expectation will grow that if the authorities had intended to remove the applicant they would have taken steps to do so, and that delay is relevant in reducing the weight otherwise to be accorded to the requirements of firm and fair immigration control
- VW (Uganda) v Secretary of State for the Home Department [2009] EWCA Civ 5 (16 January 2009) - the test for determining whether an interference with family life should be permitted is whether the UK family members can reasonably be expected to follow their removed partner to the country of removal, and that the likelihood of return via entry clearance should not be ordinarily treated as a factor rendering removal proportionate
- Beoku-Betts v Secretary of State for the Home Department [2008] UKHL 39 - third party rights should be taken into account in human rights claims and appeals
- CDS (PBS: "available": Article 8) Brazil [2010] UKUT 00305 (IAC) - temporary migrants can potentially build up private life based on genuine studies to which they have committed significant investment of time and energy.
- Miah and ors.v Secretary of State for the Home Department [2012] EWCA Civ 261 - there is no 'near miss' principle applicable when measuring whether an immigration decision is disproportionate, so that the fact that someone fails to qualify under a particular immigration rule by a narrow margin does not reduce the weight to be given to the public interest side of the proportionality balance for Article 8 purposes.
- KB (Trinidad and Togo v Secretary of State for the Home Department [2010] EWCA Civ 11 and JO (Uganda) v Secretary of State for the Home Department [2010] EWCA Civ 10 - for proportionality the approach in deportation and ordinary immigration cases must be different, as there is a stronger interest in expulsion of the individual in a deportation case.
- LD (Article 8 best interests of child) Zimbabwe [2010] UKUT 278 (IAC) - the UN Convention on the Rights of the Child is highly relevant to Article 8 ECHR
- MF (Nigeria) v Secretary of State for the Home Department [2013] EWCA Civ 1192 – in an appeal against deportation, the Tribunal must first consider the Article 8 criteria in paragraph 398-399A of the immigration rules and, if those provisions are not met, go on to assess the proportionality of the decision as required by Strasbourg jurisprudence. The insurmountable obstacles test in the rules is contrary to Article 8.
- Ogundimu (Article 8 - new rules) Nigeria [2013] UKUT 60 (IAC) - The meaning of the word 'ties' in paragraph 399A [and 276ADE], meant something more than merely remote or abstract links to the country of proposed deportation or removal, it required a real connection to life in that country. Consideration of whether a person has 'no ties' to such a country must involve a rounded assessment of all of the relevant circumstances and is not to be limited to 'social,

cultural and family' circumstances.

### **Humanitarian Protection**

- Elgafaji (Justice and Home Affairs) [2009] EUECJ C-465/07 (17 February 2009) - the protection of Article 15(c) of the Qualification Directive may run where there is a high level of "indiscriminate violence" of a volume which may extend to people irrespective of their personal circumstances and the more the applicant is able to show that he is specifically affected by reason of factors particular to his personal circumstances, the lower the level of indiscriminate violence required for him to be eligible for subsidiary protection.
- FA (Iraq) v Secretary of State for the Home Department [2010] EWCA Civ 969 - the appeal rights addressing refugee law rights of appeal extend to Humanitarian Protection too.

### **European Economic and (EEA) Free Movement Law**

- Lawrie Blum (1986) ECR 2121 - work for Community law purposes needs to be genuine and effective
- Surinder Singh Case C-370/90 - a British national who has returned to the UK having exercised Treaty rights abroad may rely on European Community law principles to bring his family with him regardless of their nationality
- GM and AM (EU national; establishing self-sufficiency) France [2006] UKAIT 00059 - a third country national family member cannot reside in the UK with an EU national child in order to establish the child's right, as opposed to assisting them to exercise an existing right, and hence an EU national child cannot establish a right of residence based upon self-sufficiency where the resources relied upon would come from the employment of a non-EU national parent/carer who has no independent right to be present in, or work in, the UK (though appreciating that this question awaits resolution by the ECJ)
- SM (India) v Entry Clearance Officer [2009] EWCA Civ 1426 (25 November 2009) - dependency in European Community law is dependency of fact rather than that of necessity
- Papajorgji (EEA spouse – marriage of convenience) Greece [2012] UKUT 00038(IAC) - there is no burden at the outset of an application on a claimant to demonstrate that a marriage to an EEA national is not one of convenience. *IS (marriages of convenience) Serbia* [2008] UKAIT 31 establishes only that there is an evidential burden on the claimant to address evidence justifying reasonable suspicion that the marriage is entered into for the predominant purpose of securing residence rights.
- Metock v Ireland (Case C 127/08; 25 July 2008) - family members of Union citizens 'who accompany them' directly must be interpreted as referring both to their family members who entered the host Member State with them and those who reside with him there in that Member State, whether they arrived before or after the Union citizen or before or after becoming his family members
- Metock v Ireland (Case C 127/08; 25 July 2008) - Directive 2004/38 precludes legislation which requires a national of a non-member country who is the spouse of a Union citizen residing in that Member State but not possessing its nationality to have previously been lawfully resident in another Member State before arriving in the host Member State, in order to benefit from the

provisions of that directive

- Bigia & Ors v Entry Clearance Officer [2009] EWCA Civ 79 (19 February 2009) - Metock means that "other family members" need not have lawfully resided in the UK or elsewhere in the Union
- Payir & Ors (External relations) [2008] EUECJ C-294/06 (24 January 2008) - the fact that a Turkish national was granted leave to enter the territory of a Member State as an au pair or as a student cannot deprive him of the status of 'worker' and prevent him from being regarded as 'duly registered as belonging to the labour force' and hence able to rely on the Ankara Agreement's provisions for Turkish workers for the purposes of obtaining renewed permission to work and a corollary right of residence.
- Aldogan (R on the application of) v Secretary of State for the Home Department [2007] EWHC 2586 (Admin) (24 October 2007) - a fraudulent asylum claim would prevent a Turkish national from relying on rights under the Ankara Agreement
- LF (Turkey), R (on the application of) v Secretary of State for the Home Department [2007] EWCA Civ 1441 (18 October 2007) - the Secretary of State is entitled to deny the applicant the benefit of the Ankara Agreement because his reliance on those provisions was only viable by virtue of breaching a prohibition on working or establishing a business
- YB (EEA reg 17(4), proper approach) Ivory Coast [2008] UKAIT 00062 (11 July 2008) - national law must not seek to define terms which are Community law terms (such as "durable relationship", which does not mean, in Community law, "living together in a relationship akin to marriage which has subsisted for two years or more")
- YB (EEA reg 17(4), proper approach) Ivory Coast [2008] UKAIT 00062 (11 July 2008) -regarding "extended family member" that the issue of documents such as residence cards and family permits is discretionary
- LG and CC (EEA Regs: residence; imprisonment; removal) Italy [2009] UKAIT 00024 (19 June 2009) - terrorism offences or threats to national security, and serial or targeted criminality, may qualify as a threat to the public making expulsion "imperative" if sufficiently serious
- Zambrano v Office National de l'Emploi (ONEm) [2011] All E R (EC) 491: Article 20 of the Treaty on the Functioning of the European Union "is to be interpreted as meaning that it precludes a member state from refusing a third country national upon which his minor children, who are European Union citizens, are dependent, a right of residence in the member state of residence and nationality of those children, and from refusing to grant a work permit to that third country national, in so far as such decisions deprive those children of the genuine enjoyment of the substance of the rights attaching to the status of European Union citizen".
- Saint Prix v UK (Case C-507/12) Article 45 TFEU must be interpreted as meaning that a woman who gives up work, or seeking work, because of the physical constraints of the late stages of pregnancy and the aftermath of childbirth retains the status of 'worker', within the meaning of that article, provided she returns to work or finds another job within a reasonable period after the birth of her child.

## Appeals and High Court Proceedings

- Devaseelan [2002] UKIAT 00702 - in second appeals the decision of the first adjudicator formed the starting point for the second determination and facts occurring since the first determination

were to be taken into account, along with events that took place prior to the first determination which had not been considered by the first adjudicator

- AH (Scope of s103A reconsideration) Sudan [2006] UKAIT 00038 - a reconsideration is to proceed by reference to the findings of fact of the original Tribunal which will be departed from only "in very exceptional cases" (on the presumption that this principle will apply to appeals in the Upper Tribunal)
- FP (Iran) v Secretary of State for the Home Department [2007] EWCA Civ 13 (23 January 2007) - there is no general principle of law which fixes a party with the procedural errors of their representative, and that Rules of Procedure which prevent parties themselves innocent of wrongdoing from having an oral hearing of their appeal may be invalid
- MB (Rule 30 Procedure Rules) DRC [2008] UKAIT 00088 (13 October 2008) - failure to serve a Reply does not prevent a party from arguing there to be no error of law in the determination
- AS (Afghanistan) v Secretary of State for the Home Department [2009] EWCA Civ 1076 (20 October 2009) - the effect of a one-stop notice is that the appeal covers not only any ground before the Secretary of State when he made the decision under appeal but also any grounds raised in response to a "one-stop notice" even if they had not been the subject of any decision by the Secretary of State and do not relate to the decision under appeal
- Nwaigwe (adjournment: fairness) [2014] UKUT 418 (IAC) - Where an adjournment refusal is challenged on fairness grounds, it is important to recognise that the question for the Upper Tribunal is not whether the FtT acted reasonably. Rather, the test to be applied is that of fairness: was there any deprivation of the affected party's right to a fair hearing?