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IMMIGRATION DIRECTORATES' INSTRUCTIONS

SECTION CONTENTS

**CHAPTER 1 SECTION 3
RETURNING RESIDENTS**

- 1. INTRODUCTION**
- 2. REQUIREMENTS FOR ADMISSION AS A RETURNING RESIDENT**
 - 2.1. Key points
 - 2.2. Further guidance
 - 2.3. Granting leave to enter
 - 2.4. Residents returning as visitors
 - 2.5. Doubts as to true intentions
 - 2.6. Passports newly issued in the United Kingdom
 - 2.7. Statistical Codes
 - 2.8. Refusal of leave to enter
 - 2.9. On entry Refusal Codes
 - 2.10. Right of appeal and corresponding refusal form
- 3. AFTER ENTRY APPLICATIONS FOR INDEFINITE LEAVE TO REMAIN AS A RETURNING RESIDENT**
 - 3.1. Key points
 - 3.2. Further guidance
 - 3.3. Granting indefinite leave to remain
 - 3.4. Statistical Codes
 - 3.5. Refusal of leave to remain
 - 3.6. Statistical Codes

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IMMIGRATION DIRECTORATES' INSTRUCTIONS

**CHAPTER 1
SECTION 3**

RETURNING RESIDENTS

1. INTRODUCTION

Paragraph 18 of HC 395 provides for the admission for settlement of a person who can satisfy the immigration officer that he had indefinite leave to enter or remain in the United Kingdom before he last left the United Kingdom, that he is returning to resume his residence within 2 years of his embarkation and he did not receive assistance from public funds towards the cost of leaving the United Kingdom.

For persons on limited leave returning to resume their residence see **Section 9** to this chapter.

2. REQUIREMENTS FOR ADMISSION AS A RETURNING RESIDENT

Prior entry clearance is not mandatory when a person is seeking admission to **resume his residence** within 2 years of his embarkation and it will not normally be necessary to make any further enquiries unless there is **substantial** evidence to doubt the person's true intentions or his entitlement to residence status. Even where a person has been away **for over 2 years** and is applying under Paragraph 19, entry clearance is **not** mandatory unless the person is a visa national.

2.1. Key points

The immigration officer needs to be satisfied that the passenger:

- ◆ had indefinite leave to enter or remain in the United Kingdom before they last left the United Kingdom;
- ◆ did not receive assistance from public funds towards the cost of leaving the United Kingdom;
- ◆ has not been away from the United Kingdom for longer than two years; and
- ◆ is seeking admission for the purpose of settlement.

2.2. Further guidance

The following categories do not qualify for admission under Paragraph 18 of HC 395:

- * a person whose previous stay was subject to a time limit;
- * a person who was exempt from control under or by virtue of Section 8 of the Immigration Act 1971 at the end of his previous stay;

- * a person, whose departure from the United Kingdom was financed from public funds under either Section 5(6) or Section 29 of the Act;
- * a person who is returning only for a limited period (eg. as a visitor) simply so as to show a period of residence here within 2 years of departure;
- * A person to whom the general grounds for refusal set out in Paragraph 320 of HC 395 apply.

However, a person returning temporarily to the United Kingdom is not necessarily a visitor. Many people who have their home in the United Kingdom may spend substantial periods overseas on short-term business contracts or for studies and return to the United Kingdom for only a short period during holidays. This will not disqualify a person from readmission as returning resident provided:

- * he is normally resident in the United Kingdom; and
- * at the time of admission he considers the United Kingdom to be his permanent home. and
- * he has not been away from the United Kingdom for more than two years and he intends to return to the United Kingdom for settlement in the future on completion of his employment, business or studies etc.

Paragraphs 19 and 19A (as inserted by Cm 4851) provide for the admission of a passenger in **certain circumstances** who has been away for more than 2 years if his ties with this country merit it.

ANNEX K (below) provides guidance concerning persons wishing to resume residence in the United Kingdom after an absence of more than 2 years

ANNEX M provides guidance on holders of United Kingdom passports

ANNEX O contains information about erroneous endorsements and bogus claims

2.3. Granting leave to enter

- A passenger who meets the requirements of **Paragraph 18** (or in the case of **Paragraph 19** holds a valid United Kingdom entry clearance as a returning resident **or** warrants the exercise of discretion contained in Paragraph 19), should be given admission to the United Kingdom and his passport endorsed with an open date stamp. If the passenger has been issued with a new passport, that passport should be endorsed with indefinite leave to enter.
- A passenger who does not hold an entry clearance for this purpose but is seeking entry under **Paragraph 19**, where it is likely, but it is not clear that he qualifies, **may** if appropriate, be given leave to enter Code 1 for 2 months and advised to contact the Home Office.

- **British Overseas citizens (BOCs)** who hold United Kingdom passports and have been granted indefinite leave since **1 March 1968** or have the right to readmission should be admitted free of conditions (a clear landing or ILE) in accordance with **Paragraph 17** regardless of how long they have spent outside the United Kingdom.
- **Certain British passport holders** as set out in **Paragraph 16** may be admitted freely on production of a United Kingdom passport issued in the United Kingdom or Islands or the Republic of Ireland prior to 1 January 1973, unless their passport has been endorsed to show that he was subject to control.

ANNEX M (below) provides guidance on holders of United Kingdom passports

2.4. Residents returning as visitors

Passengers who had indefinite leave when they last left the United Kingdom and who have not been away for more than 2 years occasionally seek entry not as returning residents but as **visitors**. Such passengers should be given leave to enter on Code 3 and **not** Code 5N. Full details should be given, either on the landing card or in a report, of:

- * the passenger's family circumstances, connections with the United Kingdom and future intentions;
- * the passenger's journeys to and from the United Kingdom which led to his being treated as a visitor; and
- * confirmation that the passenger was aware of the implications of the landing conditions and the fact that he will no longer be eligible to be treated as a returning resident.

2.5. Doubts as to true intentions

Where a person seeks admission as a returning resident but there are clear and substantive reasons to doubt that the person is returning to settle in the United Kingdom, the immigration officer should try to establish his true intentions. If, after further examination, it is clear that the passenger is only visiting the United Kingdom before resuming residence overseas he should be admitted as a visitor as described in paragraph 2.4 above.

2.6. Passports newly issued in the United Kingdom

Where a passenger presents a passport issued in the United Kingdom, a short examination will normally suffice to determine whether he has resided in the United Kingdom as claimed and indefinite leave to enter may therefore be granted. Where a grant of ILE or a refusal of leave to enter is inappropriate, but the passenger can satisfy the immigration officer that he has resided in the United Kingdom (but not free of conditions), leave to enter may be granted on Code 1 for 2 months. This course of action should only be used where it would not be appropriate to grant indefinite leave to

enter or to refuse leave to enter.

2.7. Statistical Codes

R - Returning resident

2.8. Refusal of leave to enter

A passenger should be refused leave to enter the United Kingdom if he does not meet the requirements of Paragraph 18 or 19 (a passenger may qualify in another capacity, but the onus will lie with him to seek entry in that capacity), or if he is the subject of a deportation order or if his exclusion from the United Kingdom is conducive to the public good under Paragraph 320(2) or 320(6) and in the case of a visa national who does not hold a valid visa issued for the purpose for which entry is sought paragraph 320(5). A passenger in possession of a valid entry clearance should be refused under Paragraph 321.

Although a returning resident may not be refused on medical grounds, he may be referred to the Port Medical Inspector if he is intending to stay for more than 6 months and falls within the criteria of Paragraph 36, and he may be admitted with a notice requiring him to report to the medical officer of Environmental Health by the Port Medical Inspector under Paragraph 38.

ANNEX P (below) provides examples of refusal formulae.

2.9. On entry Refusal Codes

F4 Claiming admission as returning resident but not qualified

2.10. Right of appeal and corresponding refusal form

Where no entry clearance is held, there is a right of appeal against refusal of leave to enter as a returning resident under Paragraphs 18 and 19 of HC 395, but only from abroad. Where a valid entry clearance is held, leave to enter may only be refused under the general grounds for refusal set out in Part 9 of the Rules (see Chapter 9 of these instructions).

Form IS 82C should therefore be used.

3. AFTER ENTRY APPLICATIONS FOR INDEFINITE LEAVE TO REMAIN AS A RETURNING RESIDENT

There is no after entry provision for a person to be given indefinite leave on the basis that he is, or was, when previously admitted, a returning resident. There may, however, be occasions when a person is given limited leave to enter and advised to contact the Home Office (see 2.3 above).

3.1. Key points

Caseworkers must satisfy themselves that the applicant:

- had indefinite leave on the last occasion he left the United Kingdom; and
- considered himself to be, and qualified for entry as, a returning resident on his previous entry to the United Kingdom; and
- submitted an application for indefinite leave to remain within his *initial* limited leave

3.2. Further guidance

ANNEX K (below) provides guidance concerning persons wishing to resume residence in the United Kingdom after an absence of more than 2 years

ANNEX L provides guidance relating to after entry applications

ANNEX N provides guidance on no time limit endorsements

See also paragraph 2.2 above.

3.3. Granting indefinite leave to remain

A person who satisfies the requirements set out in paragraph 3.1. above should normally have the time limit on his stay removed.

3.4. Statistical Codes

6B Extension - Returning resident entered on conditions, either after less than 2 years absence but on arrival cannot prove settled status or absent for over 2 years but qualifies for the use of discretion set out in Paragraph 19.

3.5. Refusal of leave to remain

The "**General guidance on adverse decisions**" at Chapter 9, Section 1 provides important advice about the decision making process and should be consulted whenever an application falls to be refused.

An application from a person who does not meet all the requirements set out in paragraph 3.1 above should be considered in the light of **all** the circumstances. However refusal will be the normal course and the exercise of discretion to grant indefinite leave outside the Rules should be limited to **exceptional** cases only, for example, where a person has lived most of his life in the United Kingdom.

A person who subsequently changes his mind and applies for indefinite leave, having, for example, been admitted as a visitor because he told the immigration officer he was

coming for a two week holiday, should normally be refused. The onus is on the applicant to show that he did not change his mind.

ANNEX P (below) provides examples of refusal formulae.

3.6. Statistical Codes

X8 Refusal - settlement - no extension of leave granted.

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