

Statement of Changes in Immigration Rules - HC164

December 2004

Laid before Parliament on 20 December 2004 under section 3(2) of the Immigration Act 1971

Ordered by The House of Commons to be printed 20 December 2004

The Home Secretary has made the changes hereinafter stated in the Rules laid down by him as to the practice to be followed in the administration of the Immigration Act 1971 for regulating entry into and the stay of persons in the United Kingdom and contained in the Statement laid before Parliament on 23 May 1994 (HC 395), as amended. The amending statements were laid before, or presented to, Parliament on 20 September 1994 (Cmnd 2663), 26 October 1995 (HC 797), 4 January 1996 (Cmnd 3073), 7 March 1996 (HC 274), 2 April 1996 (HC 329), 30 August 1996 (Cmnd 3365), 31 October 1996 (HC 31), 27 February 1997 (HC 338), 29 May 1997 (Cmnd 3669), 5 June 1997 (HC 26), 30 July 1997 (HC 161), 11 May 1998 (Cmnd 3953), 8 October 1998 (Cmnd 4065), 18 November 1999 (HC 22), 28 July 2000 (HC 704), 20 September 2000 (Cmnd 4851), 27 August 2001 (Cmnd 5253), 16 April 2002 (HC 735), 27 August 2002 (Cmnd 5597), 7 November 2002 (HC 1301), 26 November 2002 (HC 104), 8 January 2003 (HC 180), 10 February 2003 (HC 389), 31 March 2003 (HC 538), 30 May 2003 (Cmnd 5829), 24 August 2003 (Cmnd 5949), 12 November 2003 (HC 1224), 17th December 2003 (HC 95), 12 January 2004 (HC 176), 26 February 2004 (HC 370), 31 March 2004 (HC 464), 29 April 2004 (HC 523), 3 August 2004 (Cmnd 6297), 24 September 2004 (Cmnd 6339) and 18 October 2004 (HC 1112).

These changes take effect on 1 January 2005, except for the changes in paragraphs 4, 5 & 6 which shall take effect on 21 December 2004.

1. For paragraph 57(i) substitute:

"(i) has been accepted for a course of study which is to be provided by an organisation which is included on the Department for Education and Skills' Register of Education and Training Providers, and is at either;

(a) a publicly funded institution of further or higher education; or

(b) a bona fide private education institution which maintains satisfactory records of enrolment and attendance; or

(c) an independent fee paying school outside the maintained sector; and".

2. After paragraph 257B insert:

"Requirements for leave to enter or remain as the primary carer or relative of an EEA national self-sufficient child

257C. The requirements to be met by a person seeking leave to enter or remain as the primary carer or relative of an EEA national self-sufficient child are that the applicant:

(i) is:

(a) the primary carer; or

(b) the parent; or

(c) the sibling,

of an EEA national under the age of 18 who has a right of residence in the United Kingdom under the 2000 EEA Regulations as a self-sufficient person; and

(ii) is living with the EEA national or is seeking entry to the United Kingdom in order to live with the EEA national; and

(iii) in the case of a sibling of the EEA national:

(a) is under the age of 18 or has current leave to enter or remain in this capacity; and

(b) is unmarried, has not formed an independent family unit and is not leading an independent life; and

(iv) can, and will, be maintained and accommodated without taking employment or having recourse to public funds; and

(v) if seeking leave to enter, holds a valid United Kingdom entry clearance for entry in this capacity.

In this paragraph, "sibling", includes a half-brother or half-sister and a stepbrother or stepsister.

Leave to enter or remain as the primary carer or relative of an EEA national self-sufficient child

257D. Leave to enter or remain in the United Kingdom as the primary carer or relative of an EEA national self-sufficient child may be granted for a period not exceeding five years or the remaining period of validity of any residence permit held by the EEA national under the 2000 EEA Regulations, whichever is the shorter, provided that, in the case of an application for leave to enter, the applicant is able to produce to the Immigration Officer, on arrival a valid entry clearance for entry in this capacity or, in the case of an application for leave to remain, the applicant is able to satisfy the Secretary of State that each of the requirements of paragraph 257C (i) to (iv) is met. Leave to enter or remain is to be subject to a condition prohibiting employment and recourse to public funds.

Refusal of leave to enter or remain as the primary carer or relative of an EEA national self-sufficient child

257E. Leave to enter or remain in the United Kingdom as the primary carer or relative of an EEA national self-sufficient child is to be refused if, in the case of an application for leave to enter, the applicant is unable to produce to the Immigration Officer on arrival a valid United Kingdom entry clearance for entry in this capacity or, in the case of an application for leave to remain, if the applicant is unable to satisfy the Secretary of State that each of the requirements of paragraph 257C (i) to (iv) is met."

3. After paragraph 276Q insert:

"SPOUSES OF PERSONS SETTLED OR SEEKING SETTLEMENT IN THE UNITED KINGDOM IN ACCORDANCE WITH PARAGRAPHS 276E TO 276Q (HM FORCES RULES)

LEAVE TO ENTER OR REMAIN IN THE UK AS THE SPOUSE OF A PERSON PRESENT AND SETTLED IN THE UNITED KINGDOM OR BEING GRANTED SETTLEMENT ON THE SAME OCCASION IN ACCORDANCE WITH PARAGRAPHS 276E TO 276Q

Requirements for indefinite leave to enter the United Kingdom as the spouse of a person present and settled in the United Kingdom or being admitted on the same occasion for settlement under paragraphs 276E to 276Q

276R. The requirements to be met by a person seeking indefinite leave to enter the United Kingdom as the spouse of a person present and settled in the United Kingdom or being

admitted on the same occasion for settlement in accordance with paragraphs 276E to 276Q are that:

- (i) the applicant is married to a person present and settled in the United Kingdom or who is being admitted on the same occasion for settlement in accordance with paragraphs 276E to 276Q; and
- (ii) the parties to the marriage have met; and
- (iii) the parties were married at least 2 years ago; and
- (iv) each of the parties intends to live permanently with the other as his or her spouse and
- (v) the marriage is subsisting; and
- (vi) the applicant holds a valid United Kingdom entry clearance for entry in this capacity.

Indefinite leave to enter the United Kingdom as the spouse of a person present and settled in the United Kingdom or being admitted on the same occasion for settlement in accordance with paragraphs 276E to 276Q

276S. A person seeking leave to enter the United Kingdom as the spouse of a person present and settled in the United Kingdom or being admitted on the same occasion for settlement in accordance with paragraphs 276E to 276Q may be granted indefinite leave to enter provided a valid United Kingdom entry clearance for entry in this capacity is produced to the Immigration Officer on arrival.

Refusal of indefinite leave to enter the United Kingdom as the spouse of a person present and settled in the UK or being admitted on the same occasion for settlement in accordance with paragraphs 276E to 276Q

276T. Leave to enter the United Kingdom as the spouse of a person present and settled in the United Kingdom or being admitted on the same occasion for settlement in accordance with paragraphs 276E to 276Q 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 indefinite leave to remain in the United Kingdom as the spouse of a person present and settled in the United Kingdom or being granted settlement on the same occasion in accordance with paragraphs 276E to 276Q

276U. The requirements to be met by a person seeking indefinite leave to remain in the United Kingdom as the spouse of a person present and settled in the United Kingdom or being granted settlement on the same occasion in accordance with paragraphs 276E to 276Q are that:

- (i) the applicant is married to a person present and settled in the United Kingdom or being granted settlement on the same occasion in accordance with paragraphs 276E to 276Q; and
- (ii) the parties to the marriage have met; and
- (iii) the parties were married at least 2 years ago; and
- (iv) each of the parties intends to live permanently with the other as his or her spouse; and
- (v) the marriage is subsisting; and

(vi) has leave to enter or remain in the United Kingdom.

Indefinite leave to remain in the United Kingdom as the spouse of a person present and settled in the United Kingdom or being granted settlement on the same occasion in accordance with paragraphs 276E to 276Q

276V. Indefinite leave to remain in the United Kingdom as the spouse of a person present and settled in the United Kingdom or being granted settlement on the same occasion in accordance with paragraphs 276E to 276Q may be granted provided the Secretary of State is satisfied that each of the requirements of paragraph 276U is met.

Refusal of indefinite leave to remain in the United Kingdom as the spouse of a person present and settled in the United Kingdom or being granted settlement on the same occasion in accordance with paragraphs 276E to 276Q

276W. Indefinite leave to remain in the United Kingdom as the spouse of a person present and settled in the United Kingdom or being granted settlement on the same occasion in accordance with paragraphs 276E to 276Q is to be refused if the Secretary of State is not satisfied that each of the requirements of paragraph 276U is met.

CHILDREN OF A PARENT, PARENTS OR A RELATIVE SETTLED OR SEEKING SETTLEMENT IN THE UNITED KINGDOM UNDER PARAGRAPHS 276E TO 276Q (HM FORCES RULES)

LEAVE TO ENTER OR REMAIN IN THE UNITED KINGDOM AS THE CHILD OF A PARENT, PARENTS OR A RELATIVE PRESENT AND SETTLED IN THE UNITED KINGDOM OR BEING GRANTED SETTLEMENT ON THE SAME OCCASION IN ACCORDANCE WITH PARAGRAPHS 276E TO 276Q

Requirements for indefinite leave to enter the United Kingdom as the child of a parent, parents or a relative present and settled in the United Kingdom or being admitted for settlement on the same occasion in accordance with paragraphs 276E to 276Q

276X. 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 in the United Kingdom or being admitted for settlement on the same occasion in accordance with paragraphs 276E to 276Q are that:

- (i) the applicant is seeking indefinite 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 has not formed an independent family unit; and

(iv) holds a valid United Kingdom entry clearance for entry in this capacity.

Indefinite leave to enter the United Kingdom as the child of a parent, parents or a relative present and settled in the United Kingdom or being admitted for settlement on the same occasion in accordance with paragraphs 276E to 276Q

276Y. Indefinite leave to enter the United Kingdom as the child of a parent, parents or a relative present and settled in the United Kingdom or being admitted for settlement on the same occasion in accordance with paragraphs 276E to 276Q may be granted provided a valid United Kingdom entry clearance for entry in this capacity is produced to the Immigration Officer on arrival.

Refusal of indefinite leave to enter the United Kingdom as the child of a parent, parents or a relative present and settled in the United Kingdom or being admitted for settlement on the same occasion in accordance with paragraphs 276E to 276Q

276Z. Indefinite leave to enter the United Kingdom as the child of a parent, parents, or a relative present and settled in the United Kingdom or being admitted for settlement on the same occasion in accordance with paragraphs 276E to 276Q 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 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 or being granted settlement on the same occasion in accordance with paragraphs 276E to 276Q

276AA. 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 or being granted settlement on the same occasion in accordance with paragraphs 276E to 276Q are that:

(i) the applicant is seeking indefinite leave 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 being granted settlement on the same occasion; or

(b) one parent is present and settled in the United Kingdom or being granted settlement on the same occasion and the other parent is dead; or

(c) one parent is present and settled in the United Kingdom or being granted settlement on the same occasion and has had sole responsibility for the child's upbringing; or

(d) one parent or a relative is present and settled in the United Kingdom or being granted settlement on the same occasion 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 has not formed an independent family unit; and

(iv) has leave to enter or remain in the United Kingdom.

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 or being granted settlement on the same occasion in accordance with paragraphs 276E to 276Q

276AB. 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 or being granted settlement on the same occasion in accordance with paragraphs 276E to 276Q may be granted if the Secretary of State is satisfied that each of the requirements of paragraph 276AA is met.

Refusal of 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 or being granted settlement on the same occasion in accordance with paragraphs 276E to 276Q

276AC. 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 or being granted settlement on the same occasion in accordance with paragraphs 276E to 276Q is to be refused if the Secretary of State is not satisfied that each of the requirements of paragraph 276AA is met."

4. In paragraph 277, for "the applicant will be aged under 16" substitute "either the applicant".

5. In paragraph 289AA, for "the applicant will be aged under 16" substitute "either the applicant".

6. In paragraph 295AA, for "the applicant will be aged under 16" substitute "either the applicant".

7. For paragraph 341 substitute:

"341. In determining an asylum or human rights claim, the Secretary of State will have regard to matters which may damage a claimant's credibility. Among such matters are:

(i) that the claimant has adduced manifestly false evidence in support of his claim, or has otherwise made false representations, either orally or in writing;

(ii) that the applicant has lodged concurrent claims for asylum in the United Kingdom or in another country.

If the Secretary of State concludes for these or any other reasons that a claimant's account is not credible, the claim will be refused."

8. After paragraph 353 insert:

"PART 11A

TEMPORARY PROTECTION

Definition of Temporary Protection Directive

354. For the purposes of paragraphs 355 to 356B, "Temporary Protection Directive" means Council Directive 2001/55/EC of 20 July 2001 regarding the giving of temporary protection by Member States in the event of a mass influx of displaced persons.

Grant of temporary protection

355. An applicant for temporary protection will be granted temporary protection if the Secretary of State is satisfied that:

(i) the applicant is in the United Kingdom or has arrived at a port of entry in the United Kingdom; and

(ii) the applicant is a person entitled to temporary protection as defined by, and in accordance with, the Temporary Protection Directive; and

(iii) the applicant does not hold an extant grant of temporary protection entitling him to reside in another Member State of the European Union. This requirement is subject to the provisions relating to dependants set out in paragraphs 356 to 356B and to any agreement to the contrary with the Member State in question; and

(iv) the applicant is not excluded from temporary protection under the provisions in paragraph 355A.

355A. An applicant or a dependant may be excluded from temporary protection if:

(i) 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; or

(b) he has committed a serious non-political crime outside the United Kingdom prior to his application for temporary protection; or

(c) he has committed acts contrary to the purposes and principles of the United Nations, or

(ii) there are reasonable grounds for regarding the applicant as a danger to the security of the United Kingdom or, having been convicted by a final judgment of a particularly serious crime, to be a danger to the community of the United Kingdom.

Consideration under this paragraph shall be based solely on the personal conduct of the applicant concerned. Exclusion decisions or measures shall be based on the principle of proportionality.

355B. If temporary protection is granted to a person who has been given leave to enter or remain (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.

355C. A person to whom temporary protection is granted will be granted limited leave to enter or remain, which is not to be subject to a condition prohibiting employment, for a period not exceeding 12 months. On the expiry of this period, he will be entitled to apply for an extension of this limited leave for successive periods of 6 months thereafter.

355D. A person to whom temporary protection is granted will be permitted to return to the United Kingdom from another Member State of the European Union during the period of a mass influx of displaced persons as established by the Council of the European Union pursuant to Article 5 of the Temporary Protection Directive.

355E. A person to whom temporary protection is granted will be provided with a document in a language likely to be understood by him in which the provisions relating to temporary protection and which are relevant to him are set out. A person with temporary protection will also be provided with a document setting out his temporary protection status.

355F. The Secretary of State will establish and maintain a register of those granted temporary protection. The register will record the name, nationality, date and place of birth and marital status of those granted temporary protection and their family relationship to any other person who has been granted temporary protection.

355G. If a person who makes an asylum application is also eligible for temporary protection, the Secretary of State may decide not to consider the asylum application until the applicant ceases to be entitled to temporary protection.

Dependants

356. In this part:

"dependant" means a family member or a close relative.

"family member" means:

(i) the spouse of an applicant for, or a person who has been granted, temporary protection; or

(ii) the unmarried partner of an applicant for, or a person who has been granted, temporary protection where the parties have been living together in a relationship akin to marriage which has subsisted for 2 years or more; or

(iii) the unmarried minor child of an applicant for, or a person who has been granted, temporary protection or his spouse,

who lived with the principal applicant as part of the family unit in the country of origin immediately prior to the mass influx.

"close relative" means:

(i) the parent, grandparent or unmarried adult child of an applicant for, or person who has been granted, temporary protection; or

(ii) the unmarried sibling or the uncle or aunt of an applicant for, or person who has been granted, temporary protection, who lived with the principal applicant as part of the family unit in the country of origin immediately prior to the mass influx and was wholly or mainly dependent upon the principal applicant at that time, and would face extreme hardship if reunification with the principal applicant did not take place.

356A. A dependant may apply for temporary protection. Where the dependant falls within paragraph 356 and does not fall to be excluded under paragraph 355A, he will be granted temporary protection for the same duration and under the same conditions as the principal applicant.

356B. When considering any application by a dependant child, the Secretary of State shall take into consideration the best interests of that child."