

CHAPTER 14
SECTION 1

PERSONS EXEMPT FROM CONTROL

MEMBERS OF DIPLOMATIC MISSIONS, PRIVATE SERVANTS AND LOCALLY
RECRUITED STAFF

1. MEMBERS OF DIPLOMATIC MISSIONS

Section 8(3) of the Immigration Act 1971 provides total exemption from immigration control to members of a diplomatic mission. This would include:

- * the head of a mission;
- * all members of the diplomatic staff of foreign and Commonwealth missions;
- * administrative, technical and service staffs of foreign and Commonwealth missions **provided** they were resident outside the United Kingdom, and were not present in the United Kingdom when offered the post as members of that mission; and if they have not ceased to be a member of that mission after taking up the post. (see **paragraph 3** below). This includes diplomatic couriers and members of foreign and Commonwealth missions accredited to countries outside the United Kingdom who are either passing through, or are in, the United Kingdom (and who, if visa nationals, hold the necessary visa) while proceeding to take up or return to their post or when returning to their own country, and any members of their families accompanying them or travelling to join them or to return to their country;
- * any person who belongs to the family **and** forms part of the household of the member (see **Section 1, paragraph 6** of this Chapter for a definition of a family member);
- * any person entitled to such immunity from jurisdiction conferred on a diplomatic agent (this may include senior officials of organisations to whom the United Kingdom is obliged to grant such agreements with other member states - see **Annex B "International organisations"** below)

However, a private servant employed directly by a **member of a mission** would **not** qualify for exemption (see **paragraph 2**. below).

1.1. Foreign Office Identity Cards

The Protocol Department of the Foreign and Commonwealth Office issues identity cards to foreign nationals and their families based at diplomatic missions within the United Kingdom. These cards should normally be accepted as confirmation of status and may be of assistance when a diplomat, based in the United Kingdom, or a member of his family, is encountered travelling on a newly issued passport with no indication of their

immigration status.

2. PRIVATE SERVANTS

2.1. Servants of the head of a diplomatic mission

A servant of the head of a diplomatic mission employed and paid **directly by the country concerned** is exempt from control. However, a servant who is employed and paid by the head of the mission **personally** rather than by the country in question is **not** exempt from immigration control. Such a person should be treated in accordance with the permit free provisions in Paragraphs 152 - 159 of HC 395 (see guidance in **Chapter 5, Section 4 "Private servants in diplomatic households"**).

2.2. Servants of a head of state

A private servant of a Head of State is subject to control but does not qualify for permit free employment. Such a person should be treated in accordance with the concession relating to domestic servants accompanying employers.

2.3. Servants of other members of diplomatic missions

The servants of other members of diplomatic missions should be treated in accordance with the permit free provisions in Paragraphs 152 -159 of HC 395 (see guidance in **Chapter 5 Section 4 "Private servants in diplomatic households"**).

"Other members" of diplomatic missions includes any member of a High Commission or Embassy, the Agent General of a state, province or region of a Commonwealth country, or his official secretary and any member of the staff of the Commonwealth Secretariat, or of a legation, Consulate or Vice Consulate.

2.4. Servants of persons who are employed by a member of a diplomatic mission

Private servants of persons who are **themselves** employed by a member of a diplomatic mission do **not** benefit under the permit free arrangements and therefore require work permits.

Private servants under the age of 16 are not included in the permit free arrangements and, unless they qualify for admission under another part of the Rules, they should be refused entry. When dealing with such a passenger who does not qualify for admission, the immigration officer should refer to Border Control Policy Implementation **before** removal.

3. LOCALLY ENGAGED STAFF (NON DIPLOMATS) OF DIPLOMATIC MISSIONS WORKING IN THE UK.

- * **Locally engaged staff recruited after 1 March 2000:** under the new Section 8(3A) of the 1971 Act (as substituted by Section 6 of the 1999 Act), members of missions other than diplomatic agents will only benefit from exemption if

they were resident outside the UK and were not present in the UK when offered a post as a member of a mission; and if they have not ceased to be a member of the mission after taking up the post.

Locally engaged staff recruited between 1 August 1988 and 1 March 2000 under Section 8(3) of the Immigration Act 1971, (as amended by the 1988 Act) missions were able to engage locally only persons in the above categories whose status allowed them to take employment, or persons whose appointments were formerly notified to the Protocol Department of the Foreign and Commonwealth Office under Article 10 of the Vienna Convention on Diplomatic Relations. If the Foreign and Commonwealth Office were satisfied that the persons were in bona fide employment and entitled to privileges and immunities employment was permitted. **They were, however, subject to control.** Staff recruited between 1 August 1988 and 1 March 2000 who had travelled abroad before 1 March 2000 became exempt upon their return by virtue of returning as a member of a diplomatic mission.

Locally engaged staff of missions currently in the UK **who have not acquired exempt status** by travelling abroad before 1 March 2000 are subject to immigration control. Such individuals who **travel abroad on or after 1 March 2000 will remain subject to immigration control upon their return to the UK.**

- * **Locally engaged staff recruited prior to 1 August 1988:** under Section 8(3) of the Immigration Act 1971, (as originally in force) the locally engaged members of missions in the non-diplomatic categories of administrative and technical staff and service staff, and their families, were entitled to exemption from control. The position of persons recruited in the above categories **prior** to 1 August is not affected by subsequent provisions of the 1988 Act and their exemption will continue.

3.1. Procedure on notification of appointment of locally engaged staff

Where it comes to light that an Embassy or High Commission has employed locally a person whose conditions of stay do not permit employment, enquiries should be made of the Protocol Department of the Foreign and Commonwealth Office to check notification and acceptance. Any cases of difficulty should be referred to ICC1 for advice.

If caseworkers encounter any indication that a mission is taking on an excessive number of domestic servants the matter should be brought to the attention of ICC1 so that the case may be considered with the Foreign and Commonwealth Office.

3.2. Leave to remain for non-exempt employment

When the Protocol Department of the Foreign and Commonwealth Office have confirmed notification and acceptability, leave to remain for 12 months on Code 4 for employment **at the specified mission only** may be given. Annual extensions may be given upon confirmation that employment continues. It should be noted that this category does **not** lead to settlement after 5 years.

Any proposal to refuse further leave to remain should be referred to ICC1 for discussion with the Foreign and Commonwealth Office.