

STATEMENT OF CHANGES IN IMMIGRATION RULES

*Laid before Parliament on 18 October 2004 under section 3(2) of
the Immigration Act 1971*

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18 October 2004*

STATEMENT OF CHANGES IN IMMIGRATION RULES

The Home Secretary has made the changes hereinafter stated in the Rules laid down by him as to the practice to be followed in the administration of the Immigration Act 1971 for regulating entry into and the stay of persons in the United Kingdom and contained in the Statement laid before Parliament on 23 May 1994 (HC 395), as amended. The amending statements were laid before, or presented to, Parliament on 20 September 1994 (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) and 24 September 2004 (Cmnd 6339).

These changes take effect on 25 October 2004.

1. In paragraph 132, replace “131C or 131D or 131E is met.” with “131C, 131D, 131E, or 131F is met.”.

2. In paragraph 133, replace “131C or 131D is met (unless the applicant is otherwise eligible for an extension of stay for employment under these Rules).” with “131C, 131D, 131E, or 131F is met (unless the applicant is otherwise eligible for an extension of stay for employment under these Rules).”.

3. In paragraph 134, replace subparagraph 134(ii) with “(ii) he has met the requirements of paragraph 131, 131A, 131B, 131C, 131D, 131E or 131F throughout the four year period; and”.

4. In paragraph 135DC, after “postgraduate dentist” insert “or trainee general practitioner”.

5. In paragraph 135DC(i), after “postgraduate dentist” insert “or trainee general practitioner”.

6. After paragraph 135DD insert:

“135DE. The requirements for an extension of stay as a highly skilled migrant for a participant in the Science and Engineering Graduate Scheme are that the applicant:

(i) entered the United Kingdom or was given leave to remain as a participant in the Science and Engineering Graduate Scheme in accordance with paragraphs 135O to 135T of these Rules; and

(ii) meets the requirements of paragraph 135A(i)-(iii)

135DF. The requirements for an extension of stay as a highly skilled migrant for an innovator are that the applicant:

(i) entered the United Kingdom or was given leave to remain as an innovator in accordance with paragraphs 210A to 210E of these Rules; and

(ii) meets the requirements of paragraph 135A(i)-(iii).”.

7. In paragraph 135E, replace “paragraph 135D is met” with “paragraph 135D, 135DA, 135DB, 135DC, 135DD, 135DE or 135DF is met.”

8. In paragraph 135F, replace “paragraph 135D is met” with “paragraph 135D, 135DA, 135DB, 135DC, 135DD, 135DE or 135DF is met.”.

9. For paragraph 189 substitute:

“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.”

10. In paragraph 190, for “paragraph 186(i) to (v)” substitute “paragraph 189”.

11. In paragraph 191, for “paragraph 186(i) to (v)” substitute “paragraph 189”.

12. After paragraph 210DC insert

“210DD. The requirements to be met for an extension of stay as an innovator, for a postgraduate doctor, postgraduate dentist or trainee general practitioner are that the applicant:

(i) entered the United Kingdom or was given leave to remain as a postgraduate doctor, postgraduate dentist or trainee general practitioner in accordance with paragraphs 70 to 75 of these Rules; and

(ii) has the written consent of his official sponsor to remain under the innovator category if he is a member of a government or international scholarship agency sponsorship and that sponsorship is either ongoing or has recently come to an end at the time of the requested extension; and

(iii) meets the requirements of paragraph 210(i)-(iv).

210DE. The requirements to be met for an extension of stay as an innovator, for a participant in the Science and Engineering Graduate Scheme are that the applicant:

(i) entered the United Kingdom or was given leave to remain as a participant in the Science and Engineering Graduate Scheme in accordance with paragraphs 135O to 135T of these Rules; and

(ii) meets the requirements of paragraph 210A(i)-(iv).

210DF. The requirements to be met for an extension of stay as an innovator, for a highly skilled migrant are that the applicant:

(i) entered the United Kingdom or was given leave to remain as a highly skilled migrant in accordance with paragraphs 135A to 135E of these Rules; and

(ii) meets the requirements of paragraph 210A(i)-(iv).".

13. In paragraph 210E, replace "paragraph 210D is met." with "paragraph 210D, 210DA, 210DB, 210DC, 210DD, 210DE or 210DF is met.".

14. In paragraph 210F, replace "paragraph 210D is met ." with "paragraph 210D, 210DA, 210DB, 210DC, 210DD, 210DE or 210DF is met.".

15. After paragraph 276D, insert:

“ **HM FORCES**

Definition of Gurkha

276E. For the purposes of these Rules the term “Gurkha” means a citizen or national of Nepal who has served in the Brigade of Gurkhas of the British Army under the Brigade of Gurkhas’ terms and conditions of service.

LEAVE TO ENTER OR REMAIN IN THE UNITED KINGDOM AS A GURKHA DISCHARGED FROM THE BRITISH ARMY

Requirements for indefinite leave to enter the United Kingdom as a Gurkha discharged from the British Army

276F. The requirements for indefinite leave to enter the United Kingdom as a Gurkha discharged from the British Army are that:

(i) the applicant has completed at least four years’ service as a Gurkha with the British Army; and

(ii) was discharged from the British Army in Nepal on completion of engagement on or after 1 July 1997; and

(iii) was not discharged from the British Army more than 2 years prior to the date on which the application is made; and

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

Indefinite leave to enter the United Kingdom as a Gurkha discharged from the British Army

276G. A person seeking indefinite leave to enter the United Kingdom as a Gurkha discharged from the British Army 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 a Gurkha discharged from the British Army

276H. Indefinite leave to enter the United Kingdom as a Gurkha discharged from the British Army 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 a Gurkha discharged from the British Army

276I. The requirements for indefinite leave to remain in the United Kingdom as a Gurkha discharged from the British Army are that:

(i) the applicant has completed at least four years’ service as a Gurkha with the British Army; and

(ii) was discharged from the British Army in Nepal on completion of engagement on or after 1 July 1997; and

(iii) was not discharged from the British Army more than 2 years prior to the date on which the application is made; and

(iv) on the date of application has leave to enter or remain in the United Kingdom.

Indefinite leave to remain in the United Kingdom as a Gurkha discharged from the British Army

276J. A person seeking indefinite leave to remain in the United Kingdom as a Gurkha discharged from the British Army may be granted indefinite leave to remain provided the Secretary of State is satisfied that each of the requirements of paragraph 276I is met.

Refusal of indefinite leave to remain in the United Kingdom as a Gurkha discharged from the British Army

276K. Indefinite leave to remain in the United Kingdom as a Gurkha discharged from the British Army is to be refused if the Secretary of State is not satisfied that each of the requirements of paragraph 276I is met.

LEAVE TO ENTER OR REMAIN IN THE UNITED KINGDOM AS A FOREIGN OR COMMONWEALTH CITIZEN DISCHARGED FROM HM FORCES

Requirements for indefinite leave to enter the United Kingdom as a foreign or Commonwealth citizen discharged from HM Forces

276L. The requirements for indefinite leave to enter the United Kingdom as a foreign or Commonwealth citizen discharged from HM Forces are that:

- (i) the applicant has completed at least four years' service with HM Forces; and
- (ii) was discharged from HM Forces on completion of engagement; and
- (iii) was not discharged from HM Forces more than 2 years prior to the date on which the application is made; and
- (iv) holds a valid United Kingdom entry clearance for entry in this capacity.

Indefinite leave to enter the United Kingdom as a foreign or Commonwealth citizen discharged from HM Forces

276M. A person seeking indefinite leave to enter the United Kingdom as a foreign or Commonwealth citizen discharged from HM Forces 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 a foreign or Commonwealth citizen discharged from HM Forces

276N. Indefinite leave to enter the United Kingdom as a foreign or Commonwealth citizen discharged from HM Forces 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 a foreign or Commonwealth citizen discharged from HM Forces

276O. The requirements for indefinite leave to remain in the United Kingdom as a foreign or Commonwealth citizen discharged from HM Forces are that:

- (i) the applicant has completed at least four years' service with HM Forces; and
- (ii) was discharged from HM Forces on completion of engagement; and
- (iii) was not discharged from HM Forces more than 2 years prior to the date on which the application is made; and
- (iv) on the date of application has leave to enter or remain in the United Kingdom.

Indefinite leave to remain in the United Kingdom as a foreign or Commonwealth citizen discharged from HM Forces

276P. A person seeking indefinite leave to remain in the United Kingdom as a foreign or Commonwealth citizen discharged from HM Forces may be granted indefinite leave to remain provided the Secretary of State is satisfied that each of the requirements of paragraph 276O is met.

Refusal of indefinite leave to remain in the United Kingdom as a foreign or Commonwealth citizen discharged from HM Forces

276Q. Indefinite leave to remain in the United Kingdom as a foreign or Commonwealth citizen discharged from HM Forces is to be refused if the Secretary of State is not satisfied that each of the requirements of paragraph 276O is met. ”.

16. After paragraph 320(20) insert:

“ (21) Whether or not to the applicant's knowledge, the submission of a false document in support of an application.”.

17. For paragraph 329 substitute:

“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.”

18. For paragraph 345 substitute:

“ (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.

(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.”.

19. Delete paragraph 346.

20. After paragraph 352 insert:

“

PART 12
PROCEDURE

Fresh claims

353. When a human rights or asylum claim has been refused 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.”.

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