

SECTION CONTENTS

**CHAPTER 14 SECTION 1
PERSONS EXEMPT FROM CONTROL**

- 1. INTRODUCTION**
- 2. PERSONS WHO ARE TOTALLY EXEMPT FROM CONTROL**
 - 2.1. Members of diplomatic missions
 - 2.2. Consular officers and employees
 - 2.3. Heads of State
- 3. PERSONS WHO ARE PARTIALLY EXEMPT FROM CONTROL**
- 4. PERSONS WHO ARE SUBJECT TO CONTROL BUT EXEMPT FROM THE REQUIREMENT TO OBTAIN LEAVE TO ENTER**
- 5. PROOF OF EXEMPTION FROM CONTROL**
- 6. DEFINITION OF "MEMBERS OF HOUSEHOLDS"**
- 7. ON ENTRY**
 - 7.1. Endorsement of passports of persons exempt from control
 - 7.2. Holders of British seamen's cards arriving as crew members
 - 7.3. Citizens of the Republic of Ireland arriving as crew members
 - 7.4. Completion of landing cards
 - 7.5. Further guidance
 - 7.6. Doubtful cases
 - 7.7. Diplomatic mission staff who are not exempt who come to notice on arrival
 - 7.8. Refusal
- 8. AFTER ENTRY**
 - 8.1. Applications for leave to remain from persons who are exempt

- 8.2. Notification of exemption
- 8.3. Further guidance
- 8.4. Persons given leave in error whilst exempt from control
- 8.5. Persons treated, in error, as being exempt from control
- 8.6. Illegal entrants

9. COMMON LAW AND SAME SEX RELATIONSHIPS (Diplomats)

- 9.1. Granting Leave to enter
- 9.2. INDECS
- 9.3. Refusal of leave to enter
- 9.4. Granting leave to remain
- 9.5. Switching
- 9.6. Applications for indefinite leave to remain

**CHAPTER 14
SECTION 1****PERSONS EXEMPT FROM CONTROL****1. INTRODUCTION**

Sections 8(2), 8(3) (as amended) and 8(4) of the Immigration Act 1971, together with the Immigration (Exemption from Control) Order 1972 (as amended) provide for the total or partial exemption from immigration control of certain persons not having the right of abode in the United Kingdom.

This instruction provides guidance about the categories of persons who enjoy total or partial exemption and how to deal with such persons on and after entry (including those who cease to be exempt whilst in the United Kingdom).

2. PERSONS WHO ARE TOTALLY EXEMPT FROM CONTROL**2.1. Members of diplomatic missions**

Section 8(3) of the Immigration Act 1971 as amended exempts from control members of diplomatic missions (see **ANNEX A "Members of diplomatic missions, private servants and locally recruited staff"** below for further guidance).

2.2. Consular officers and employees

Article 3 of the Immigration (Exemption from Control) Order 1972, made under Section 8(2) of the 1971 Act exempts from control consular officers and employees (and their families forming part of their households) of the following states with which the United Kingdom has concluded a Consular Convention:

- * Armenia; Austria; Azerbaijan; Belarus; Belgium; Bosnia-Herzegovina; Bulgaria; China; Croatia; Cuba; Czech Republic; Denmark; Egypt; France; Georgia; German Federal Republic; Greece; Hungary; Italy; Japan; Kazakhstan; Kyrgyzstan; Macedonia; Mexico; Moldova; Mongolia; Netherlands; Norway; Poland; Romania; Russia; Slovak Republic; Slovenia; Spain; Sweden; Tajikistan; Turkmenistan; Ukraine; USA; Uzbekistan and the Former Federal State of Yugoslavia.

A consular officer is any person, including the head of a consular post, entrusted in that capacity with the exercise of consular functions; a consular employee to whom the exemption applies is any person employed in the administrative or technical service of a consular post, provided that he is in the **full-time service** of the state concerned and is **not** engaged in the United Kingdom in any private occupation for gain.

2.3. Heads of State

Under Section 20(3) of the State Immunity Act 1978, Heads of State, members of their families forming part of their household and their private servants enjoy total exemption from control unless otherwise directed by the Secretary of State.

3. PERSONS WHO ARE PARTIALLY EXEMPT FROM CONTROL

Under Article 4 of the Immigration (Exemption from Control) Order 1972, the following, together with members of their family forming part of their household, are exempt from the provisions of the 1971 Act **except those relating to deportation**:

- * **Members of Governments - Article 4(a) of the above Order:** any member of the Government of a country or territory outside the United Kingdom and islands who is visiting the United Kingdom on Government business, unless the Secretary of State directs otherwise;
- * **Persons performing consular functions for the Governments of Commonwealth countries and the Republic of Ireland - Article 4(f) of the above Order:** this covers "Agents general" and their official secretaries;
- * **Persons attending a Commonwealth conference - Article 4(e) of the above Order:** any person not covered by Section 8(3) of the Act who is the representative or member of the official staff of the Government of a country attending a conference and entitled to diplomatic immunity under the Diplomatic Immunities (Conferences with Commonwealth Countries and Republic of Ireland) Act 1961. Persons exempt under this head are included in a published list compiled in connection with the appropriate conference;
- * **Consular officers or employees (other than honorary consular officers) in the service of a state with which the United Kingdom does not have a Consular Convention - Article 4(h) of the above Order,**
- * **Officials, members and employees of certain International Organisations - Articles 4(g), (k) and (l) of the above Order:** see **ANNEX B "International organisations"**;
- * **Members of the Armed Forces including NATO forces:** Section 8(4) of the 1971 Act provides exemption for members of the Armed Forces (but not members of their families). See **Chapter 15 "Armed Forces"**.

4. PERSONS WHO ARE SUBJECT TO CONTROL BUT EXEMPT FROM THE REQUIREMENT TO OBTAIN LEAVE TO ENTER

In addition to the categories of persons exempted totally or partially from control noted above, members of crews of ships and aircraft taking shore leave (Section 8[1] of the 1971 Act) are exempted from the requirement to obtain leave to enter **while remaining subject to control** under the 1971 Act (please see **Chapter 16** of these instructions).

Exemption from the requirement to obtain leave to enter does not apply to any person against whom there is a deportation order in force, or who has previously

entered the United Kingdom unlawfully and has not subsequently been given leave to enter or remain.

5. PROOF OF EXEMPTION FROM CONTROL

Before exemption from immigration control is granted, satisfactory proof of entitlement must be produced. This would normally be in the form of a letter of accreditation or authorisation from the Government or international organisation concerned. In some cases the Foreign and Commonwealth Office will issue a person with a certificate under Section 4 of the Diplomatic Privileges Act 1964 to show entitlement to immunity. Alternatively, the Foreign and Commonwealth Office may simply issue a letter of confirmation.

6. DEFINITION OF "MEMBERS OF HOUSEHOLDS"

The following may be considered as members of households:

- * spouses (except common law spouses or same sex partners see paragraph 9);
- * dependent offspring under 18;
- * dependent offspring over 18 who are still in full time education;
- * dependent relatives who formed part of the household abroad (e.g. elderly widowed parent);
- * other close relatives who have no one else to look after them (e.g. young orphaned brothers and sisters).
- * unmarried partners (common law or same sex relationships) where the relationship is recognised as durable by the sending State and is one that is akin to marriage and that the parties intend to live together in the United Kingdom for the duration of the posting.

7. ON ENTRY

7.1. Endorsement of passports of persons exempt from control

The passport of a person who is exempt from control should normally be endorsed with the immigration officer's stamp on first arrival. ***The endorsement giving indefinite leave to enter should not be made.***

7.2. Holders of British seamen's cards arriving as crew members

With the exception of a person who is the subject of a deportation order, the holder of a British seaman's card who is otherwise subject to control ***is exempt from control on the occasions on which he arrives as a member of the crew of a ship having signed on in the common travel area.*** This does ***not*** affect the immigration officer's power to examine under Schedule 2 any person, including the holder of a British seaman's card, arriving in the United Kingdom from outside the common travel area. For further information about seamen please see ***Chapter 16*** of these instructions.

7.3. Citizens of the Republic of Ireland arriving as crew members

A citizen of the Republic of Ireland who arrives in the United Kingdom as the member of a crew of a ship **having signed on in the common travel area** is exempt from the requirement to obtain leave to enter unless he is the subject of a deportation order. The immigration officer has a similar reserve power to that detailed in **paragraph 7.2.** (above). For further information about seamen please see **Chapter 16** of these instructions.

7.4. Completion of landing cards

If a passenger who does not have the right of abode and who is exempt from control has not completed a landing card the immigration officer should complete a **skeleton card** for statistical purposes. The card should indicate only the nationality and category (DP) of the passenger.

7.5. Further guidance

ANNEX A (below) *provides guidance concerning members of diplomatic missions, private servants and locally recruited staff.*

ANNEX B *provides guidance concerning employees of international organisations.*

7.6. Doubtful cases

Persons seeking entry into the United Kingdom on the basis of total or partial exemption will normally possess satisfactory proof of entitlement (see **paragraph 5**, above) but cases may occasionally arise where proof of the passenger's status is not held.

In such cases (eg. in the case of a person coming to represent an international organisation at a conference here), assuming that there is no reason to suspect deception or any other abuse of the control, it may be appropriate to place the passenger on conditions either to cover his stay or until proof of entitlement can be shown. Alternatively, it may be preferable to allow the passenger to enter on temporary admission until his status is confirmed.

7.7. Diplomatic mission staff who are not exempt who come to notice on arrival

When any person comes to notice who is seeking or has taken employment with a diplomatic mission which does not exempt him from control the immigration officer should refer the case to Border Control Policy Implementation (BCPI) **before** any decision is taken so that the case can be considered in consultation with the Protocol Department of the Foreign and Commonwealth Office.

7.8. Refusal

Persons against whom there is a deportation order in force, **or** who have previously entered the United Kingdom unlawfully, may be refused leave to enter if detected by the immigration officer at the port. Such a person who is detected after he has passed the immigration officer will fall to be treated as an illegal entrant.

A person who seeks or has gained entry by deception by claiming to be included in a collective passport issued in the United Kingdom and who, on arrival in the United Kingdom, poses as a person rightfully included in that document may be refused leave to enter if detected by the immigration officer at the port. If he has passed the immigration officer and is subsequently detected the police should be informed so that prosecution for an offence under Section 26 of the 1971 Act may be considered.

8. AFTER ENTRY

8.1. Applications for leave to remain from persons who are exempt

A person who applies for leave while still exempt should be told that there is no power to grant him leave but that if he applies when he ceases to be exempt his application will be considered (see **ANNEX C and D below, "Persons who cease to be exempt from control"**).

8.2. Notification of exemption

Where necessary, exemption status may be notified by letter (persons with total or partial exemption). Specimens of these letters are provided at **ANNEX E** below.

8.3. Further guidance

ANNEX A (below) *provides guidance concerning members of diplomatic missions, private servants and locally recruited staff.*

ANNEX B *provides guidance concerning employees of international organisations.*

ANNEX C *provides guidance concerning persons who cease to be exempt from control on or after 1 March 2000.*

ANNEX D *provides guidance concerning persons who cease to be exempt from control on or before 29 February 2000.*

ANNEX E *provides specimen letters in respect of "notification of exemption" (see **paragraph 8.2** above) and, "checks on continuing employment" (see **paragraph 8.3** above).*

8.4. Persons given leave in error whilst exempt from control

From time to time persons who are exempt from control are, on entry, given leave by mistake. Whether such a person is erroneously given indefinite leave **or** limited leave to enter, the granting of leave should normally be regarded as **a pledge of public faith**. When such cases come to light they should be dealt with as follows:

- * ***Indefinite leave to enter.*** if such a person makes enquiries about his status while he is still exempt he should be told that once he ceases to be exempt his passport will, on application, be stamped with a fresh grant of indefinite leave. On receipt of such an application the caseworker should, provided he is satisfied that the applicant has properly ceased to be exempt from control, make a fresh grant of indefinite leave (endorsed with an "ILR" stamp **not** a "no time limit" stamp) in order to put the person's status beyond doubt;
- * ***Limited leave to enter.*** the same principle as that employed for "indefinite leave" applies, except that the person, having properly ceased to be exempt, should on application be granted fresh leave on the same conditions and expiry date, **provided** that this is **not less** than 90 days from the date when he lost exempt status. (see **ANNEX C "Persons who cease to be exempt"** below).

8.5. Persons treated, in error, as being exempt from control

- * ***Examinations prior to 10 July 1988:*** under Paragraph 6(1) of Schedule 2 of the 1971 Act, (as originally in force) when a person had been examined at the port and no conditions were imposed on his stay within 12 hours of his arrival he was deemed to have been given indefinite leave to enter. This applies to persons who were **not** exempt from control but who were mistakenly treated as being exempt. When such cases come to light and there is adducible evidence of the error, the passport should be endorsed with the "no time limit" stamp. Such a decision should not be taken below HEO level (see also **"Erroneous and illegible endorsements"** in **Chapter 22, Section 5**).
- * ***Examinations on or after 10 July 1988:*** under Paragraph 6(1) of the Schedule, (as amended by the 1988 Act) where a person is examined at the port and no conditions are imposed within 24 hours of his arrival, he is deemed to have been granted 6 months leave to enter with employment prohibited rather than indefinite leave to enter. In such cases, the passport should be endorsed accordingly and returned (see also **"Erroneous and illegible endorsements"** in **Chapter 22, Section 5**).

Particular care should be taken with persons claiming to be in diplomatic employment (see **ANNEX A "Members of diplomatic missions"** below).

There is no right of appeal against these decisions (which are notified by letter).

8.6. Illegal entrants

If there is reason to believe that a person secured entry by deceiving the immigration officer about his status the case should be referred to the local enforcement office.

9. COMMON LAW AND SAME SEX RELATIONSHIPS (Diplomats)

Common law spouses and same sex partners of diplomats are **not** exempt from immigration control under section 8(3) of the Immigration Act 1971 nor do they benefit from privileges and immunities under the Vienna Convention. However, under the requirements of the Immigration Rules for unmarried partners (common law and same sex relationships), a foreign national may now seek leave to enter or remain in the United Kingdom as the unmarried partner of an accredited diplomat posted to or based in the United Kingdom for the duration of their partners posting. Such individuals will be allowed to take employment in the United Kingdom but unlike the unmarried partners of

British citizens, someone settled here will not qualify for settlement on the basis of their relationship. Further details of the requirements of the Immigration Rules for unmarried partners are contained in Chapter 8 Section 7.

In order to qualify for leave to enter under this concession the unmarried partner **of a diplomat** will have to show that:

- i) they hold a valid entry clearance endorsed "ACCOMPANYING/JOINING PARTNER (DIPLOMAT)(PARTNER'S SURNAME AND FIRST INITIAL)(XY EMBASSY)"
- ii) the relationship is recognised as durable by the sending State;
- iii) the relationship is akin to marriage and;
- iv) the couple intend to live together in the United Kingdom for the duration of the posting.

9.1. **Granting Leave to enter**

Unmarried partners of diplomats in possession of an entry clearance endorsed

"ACCOMPANYING/JOINING PARTNER (DIPLOMAT)
(PARTNER'S SURNAME AND FIRST INITIAL)(XY EMBASSY)"

and who have evidence that the partner is employed at a diplomatic mission in the UK or is arriving at the same time to take up a posting at a mission in the UK should normally be granted leave to enter code 1 for up to 3 years.

9.2. **INDECS**

CLD Common law spouse - diplomat

SPD Same sex spouse - diplomat

9.3. **Refusal of leave to enter**

Entry clearance in this category is **mandatory**.

A **visa-national** seeking entry without a valid United Kingdom entry clearance falls to be refused under Paragraph 320(5) of HC395. A **non-visa national** falls to be refused under Paragraph 320(1) of HC395.

However, where such an individual comes to light, the immigration officer should refer the case to Passenger Casework Section **before** any decision is taken so that the case can be considered in consultation with the Protocol Department of the Foreign and Commonwealth Office. (**Refusal codes and details of appeal rights are contained in Chapter 8, Section 7 paragraph 2.6 and 2.7**).

9.4. **Granting leave to remain**

There should be very few in-country applications for leave to remain as the unmarried partner of a diplomat. The only instances where an application for leave to remain should be made is where the diplomat's posting has been extended or where the

duration of the posting was not known by the immigration officer when leave to enter was granted.

In considering such applications caseworkers will need to be satisfied that the diplomat is still employed by the Mission, that the relationship is subsisting and that the couple intend to continue to live together for the remainder of the posting.

9.5. **Switching**

Entry clearance is **mandatory** and "switching" is not permitted. Such an application will fall to be refused under paragraph 322(1) of the Rules and carries a right of appeal under Section 14(1) of the Immigration Act 1971.

9.6. **Applications for indefinite leave to remain**

This concession is **not** a category that leads to settlement. Any application for ILR on this basis should be refused under Paragraph 322(1) of the Rules.

Please refer to **Chapter 8, Section 7, Paragraph 5.6** for details of refusal formulae.

For further advice on Appeals, please refer to Chapter 12.