



# Statement of changes in Immigration Rules

*Presented to Parliament  
by the Secretary of State for the Home Department  
by Command of Her Majesty  
August 1996*



# 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) and 2 April 1996 (HC 329).

These changes take effect on 1 September 1996, except for the changes contained in

- (a) paragraph 3, which take effect on 1 November 1996;
- (b) paragraph 14, which take effect on 21 October 1996; and
- (c) paragraphs 25 to 29, which take effect on 1 October 1996.

1. Paragraph 4 shall be amended by the insertion after the words "variation of leave to enter or remain" of the words ", other than an application for leave by a person seeking asylum,".

2. In paragraph 6 after the words "Asylum and Immigration Appeals Act 1993" there shall be inserted:

" "the 1996 Act" is the Asylum and Immigration Act 1996."

3. For paragraph 8 there shall be substituted:

"8. Under Sections 3 and 4 of the Immigration Act 1971 an Immigration Officer when admitting to the United Kingdom a person subject to immigration control under that Act may give leave to enter for a limited period and, if he does, may impose all or any of the following conditions:

- (i) a condition restricting employment or occupation in the United Kingdom;
- (ii) a condition requiring the person to maintain and accommodate himself, and any dependants of his, without recourse to public funds; and
- (iii) a condition requiring the person to register with the police.

He may also require him to report to the appropriate Medical Officer of Environmental Health. Under Section 24 of the 1971 Act it is an offence knowingly to remain beyond the time limit or fail to comply with such a condition or requirement."

4. In paragraphs 214 and 219 (persons intending to enter or remain for self-employment in the United Kingdom pursuant to an EC Association Agreement) for "Slovenia" there shall be substituted "Slovakia".

5. In paragraph 270 (refusal of indefinite leave to remain for a retired person of independent means) for "266" there shall be substituted "269".

6. At the end of paragraph 287 (requirements for indefinite leave to remain for the spouse of a person present and settled in the United Kingdom) there shall be added:

“and (iv) there will be adequate accommodation for the parties and any dependants without recourse to public funds in accommodation which they own or occupy exclusively; and

(v) the parties will be able to maintain themselves and any dependants adequately without recourse to public funds.”

7. For paragraph 323 there shall be substituted:

“323. A person’s leave to enter or remain may be curtailed:

(i) on any of the grounds set out in paragraph 322 (2)–(5) above; or

(ii) if he ceases to meet the requirements of the Rules under which his leave to enter or remain was granted; or

(iii) if he is the dependant, or is seeking leave to remain as the dependant, of an asylum applicant whose claim has been refused and whose leave has been curtailed under section 7 of the 1993 Act, and he does not qualify for leave to remain in his own right.”

8. For paragraph 329 there shall be substituted:

“329. Until an asylum application has been determined by the Secretary of State or the Secretary of State has issued a certificate under section 2(1)(a) of the 1996 Act, no action will be taken to require the departure of the asylum applicant or his dependants from the United Kingdom.”

9. For paragraph 331 there shall be substituted:

“331. If a person seeking leave to enter is refused asylum, the Immigration Officer will then resume his examination to determine whether or not to grant him 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.”

10. For paragraph 333 there shall be substituted:

“333. A person who is refused leave to enter following the refusal of an asylum application will be provided with a notice informing him of the decision and of the reasons for refusal. The notice of refusal will also explain any rights of appeal available to the applicant and will inform him of the means by which he may exercise those rights. Subject to paragraph 356(ii) below, the applicant will not be removed from the United Kingdom so long as any appeal which he may bring or pursue in the United Kingdom is pending.”

11. Paragraph 337 shall be deleted.

12. For paragraph 339 there shall be substituted:

“339. When a person’s leave is curtailed under section 7(1) or 7(1A) of the Asylum and Immigration Appeals Act 1993, he may at the same time be served with a notice of the Secretary of State’s intention to make a deportation order against him. Full account will be taken of all relevant circumstances known to the Secretary of State, including those listed in paragraph 364.”

13. For paragraph 340 there shall be substituted:

“340. A failure, without reasonable explanation, to make a prompt and full disclosure of material facts, either orally or in writing, or otherwise to assist the Secretary of State in establishing the facts of the case may lead to refusal of an asylum application. This includes failure to comply with a notice issued by the Secretary of State or an Immigration Officer requiring the applicant to report to a designated place to be fingerprinted, or failure to complete an asylum questionnaire, or failure to comply with a request to attend an interview concerning the application, or failure to comply with a requirement to report to an Immigration Officer for examination.”

14. For paragraph 341 there shall be substituted:

“341. In determining an asylum application the Secretary of State will have regard to matters which may damage an asylum applicant’s credibility. Among such matters are:

- (i) that the applicant has failed without reasonable explanation to apply forthwith upon arrival in the United Kingdom, unless the application is founded on events which have taken place since his arrival in the United Kingdom;
- (ii) that the application is made after the applicant has been refused leave to enter under the 1971 Act, or has been recommended for deportation by a court empowered by the 1971 Act to do so, or has been notified of the Secretary of State’s decision to make a deportation order against him or has been notified of his liability for removal;
- (iii) that the applicant has adduced manifestly false evidence in support of his application, or has otherwise made false representations, either orally or in writing;
- (iv) that on his arrival in the United Kingdom the applicant was required to produce a passport in accordance with paragraph 11(i) and either:
  - (a) failed to do so without providing a reasonable explanation; or
  - (b) produced a passport which was not in fact valid, and failed to inform the immigration officer of that fact;
- (v) that the applicant has otherwise, without reasonable explanation, destroyed, damaged or disposed of any passport, other document, or ticket relevant to his claim;
- (vi) that the applicant has undertaken any activities in the United Kingdom before or after lodging his application which are inconsistent with his previous beliefs and behaviour and calculated to create or substantially enhance his claim to refugee status;
- (vii) that the applicant has lodged concurrent applications for asylum in the United Kingdom or in another country.

If the Secretary of State concludes for these or any other reasons that an asylum applicant’s account is not credible, the application will be refused.

15. For paragraph 345 there shall be substituted:

“345. (1) In a case where the Secretary of State is satisfied that the conditions set out in section 2(2) of the 1996 Act are fulfilled, he will normally refuse the asylum application and issue a certificate under section 2(1) of the 1996 Act without substantive consideration of the applicant’s claim to refugee status. The conditions are:

- (i) that the applicant is not a national or citizen of the country or territory to which he is to be sent;
- (ii) that the applicant’s life and liberty would not be threatened in that country by reason of his race, religion, nationality, membership of a particular social group, or political opinion; and
- (iii) that the government of that country or territory would not send him to another country or territory otherwise than in accordance with the Convention.

(2) The Secretary of State shall not remove an asylum applicant without substantive consideration of his claim 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.”

16. For paragraph 346 there shall be substituted:

“346. Where an asylum applicant has previously been refused asylum during his stay in the United Kingdom, the Secretary of State will determine whether any further representations should be treated as a fresh application for asylum. The Secretary of State will treat representations as a fresh application for asylum if the claim advanced in the representations is sufficiently different from the earlier claim that there is a realistic prospect that the conditions set out in paragraph 334 will be satisfied. In considering whether to treat the representations as a fresh claim, the Secretary of State will disregard any material which:

- (i) is not significant; or
- (ii) is not credible; or
- (iii) was available to the applicant at the time when the previous application was refused or when any appeal was determined.

17. Paragraph 347 shall be deleted.

18. For paragraph 348 there shall be substituted:

“348. Special provisions governing appeals in asylum cases are set out in the Asylum and Immigration Appeals Act 1993, the Asylum and Immigration Act 1996 and the Asylum Appeals (Procedure) Rules 1996. Where asylum is refused the applicant will be provided with a notice informing him of the decision and of the reasons for refusal. At the same time that asylum is refused the applicant may be notified of removal directions, or served with a notice of the Secretary of State’s intention to deport him, as appropriate. The notice of refusal of asylum will also explain any rights of appeal available to the applicant and will inform him of the means by which he may exercise those rights.”

19. For paragraph 349 there shall be substituted:

“349. A husband or wife or minor children accompanying a principal applicant may be included in an application for asylum. If the principal applicant is granted asylum any such dependants will be granted leave to enter or remain for the same duration. The case of any dependant who claims asylum in his own right and who would otherwise be refused leave to enter or remain will be considered individually in accordance with paragraph 334 above. If the dependant has a claim in his own right, it should be made at the earliest opportunity. Any failure to do so will be taken into account and may damage credibility if no reasonable explanation for it is given. Where the principal applicant is refused asylum and the dependant has previously been refused asylum in his own right, the dependant may be removed forthwith, notwithstanding any outstanding right of appeal that may be available to the principal applicant. At the same time that asylum is refused the applicant may be notified of removal directions or served with a notice of the Secretary of State’s intention to deport him, as appropriate. The notice of refusal of asylum will also explain any rights of appeal available to the applicant and will inform him of the means by which he may exercise those rights.”

20. For paragraph 353 there shall be substituted:

“353. Where refusal of leave to enter is confirmed, the person concerned should be served with a notice informing him of the decision and of the reasons for refusal. This notice will also inform him whether he has a right of appeal under Section 13 of the 1971 Act, and if so, how the right of appeal might be exercised.”

21. For paragraph 355 there shall be substituted:

“355. Subject to Section 13(5) of the Immigration Act 1971 and Section 2(1) of the 1996 Act, a person in possession of a valid United Kingdom entry clearance or work permit who is entitled to appeal against refusal of leave to enter the United Kingdom may exercise his right of appeal before removal from the United Kingdom. If such a person sought entry through the Channel Tunnel he may, upon giving notice of appeal, be brought through the tunnel to enable him to pursue his appeal.”

22. For paragraph 356 there shall be substituted:

“356. A person who is entitled to appeal against refusal of leave to enter may exercise that right only after he has left the United Kingdom, irrespective of his national status, unless:

- (i) the person has applied for asylum; or
- (ii) the circumstances described in paragraph 354 or 355 above apply, and the Secretary of State has not issued a certificate under Section 2(1) of the 1996 Act.”

23. For paragraph 358 there shall be substituted:

“358. A person may appeal against any variation of his leave to enter or any refusal to vary it except:

- (i) when a refusal is on one of the grounds specified in Section 14(2ZA) or Section 14(2A) of the 1971 Act; or
- (ii) if the case comes under Section 14(3) of the 1971 Act following a decision taken personally by the Secretary of State and not by a person acting under his authority; or
- (iii) when a variation of leave is made by statutory instrument; or
- (iv) if leave is curtailed under Section 7(1) or Section 7(1A) of the 1993 Act.”

24. For paragraph 359 there shall be substituted:  
“359. Where an application for variation of leave to enter is refused, or a variation is made otherwise than on the application of the person concerned, or is less favourable than that for which he applied, notice of the decision and, if an appeal lies, of his right of appeal, will normally be handed to the person concerned or sent to his last known address. Applicants should therefore keep the Secretary of State informed of any change of address. The notice may alternatively be given or sent to a person who has either made the application on behalf of another, or has subsequently been appointed to act on another’s behalf in connection with an application.”
25. In paragraph 363(iii), for the word “wife” there shall be substituted the word “spouse”.
26. For paragraph 365 there shall be substituted:  
“365. Section 5 of the Immigration Act 1971 gives the Secretary of State power in certain circumstances to make a deportation order against the spouse or child of a person against whom a deportation order has been made. The Secretary of State will not normally decide to deport the spouse of a deportee where:  
(i) he has qualified for settlement in his own right; or  
(ii) he has been living apart from the deportee.”
27. For paragraph 366 there shall be substituted:  
“366. The Secretary of State will not normally decide to deport the child of a deportee where:  
(i) he and his mother or father are living apart from the deportee; or  
(ii) he has left home and has established himself on an independent basis; or  
(iii) he married before deportation came into prospect.”
28. For paragraph 367 there shall be substituted:  
“367. In considering whether to require a spouse or child to leave with the deportee the Secretary of State will take account of the factors listed in paragraph 364 as well as the following:  
(i) the ability of the spouse to maintain himself and any children in the United Kingdom, or to be maintained by relatives or friends without charge to public funds, not merely for a short period but for the foreseeable future; and  
(ii) in the case of a child of school age, the effect of removal on his education; and  
(iii) the practicality of any plans for a child’s care and maintenance in this country if one or both of his parents were deported; and  
(iv) any representations made on behalf of the spouse or child.”
29. For paragraph 370 there shall be substituted:  
“370. By virtue of Section 5(1) of the Immigration Act 1988, a person who was last given leave to enter the United Kingdom less than 7 years before the date of the decision to make a deportation order against him:  
(i) by virtue of Section 3(5)(a) of the Immigration Act 1971 (breach of limited leave); or  
(ii) by virtue of Section 3(5)(aa) of that Act (leave to remain obtained by deception); or  
(iii) by virtue of Section 3(5)(c) of that Act (as belonging to the family of a person who is or has been ordered to be deported by virtue of Section 3(5)(a)),  
shall not be entitled to appeal under Section 15 of the 1971 Act against that decision except on the ground that on the facts of his case there is in law no power to make a deportation order for the reasons stated in the notice of decision.



30. For paragraph 372 there shall be substituted:

“372. The Order also provides that a person is exempted if his limited leave has been curtailed by the Secretary of State under Section 7(1) or Section 7(1A) of the 1993 Act”.

31. Paragraphs 375 and 376 shall be deleted.

32. For paragraph 377 there shall be substituted:

“377. An appeal against a decision to make a deportation order will be heard by the Tribunal when:

- (i) the ground of the decision was that the deportation of the applicant is conducive to the public good, on other than security or political grounds;
- (ii) it is an appeal against a decision to make a deportation order against a person as belonging to the family of another person, or an appeal against a refusal to revoke such an order;
- (iii) there is a pending appeal under (ii) and the appellant is that other person and the appeal is not under section 8 of the 1993 Act.”

33. For paragraph 379 there shall be substituted:

“379. In addition to the rights of appeal mentioned above, a person who has claimed asylum may, unless paragraph 379A below applies, also appeal under Section 8 of the 1993 Act against:

- (i) a decision to make a deportation order against him by virtue of Section 3(5) of the 1971 Act; or
- (ii) a refusal to revoke a deportation order made against him by virtue of Section 3(5) or (6) of the 1971 Act; or
- (iii) directions for his removal from the United Kingdom given under Section 16(1)(a) or (b) of the 1971 Act. In such circumstances the appeal will be before a special adjudicator who will also consider any appeal under Part II of the 1971 Act.”

34. After paragraph 379 there shall be substituted paragraph 379A:

“379A. A person who has claimed asylum may not appeal under Section 8 of the 1993 Act if:

- (i) a deportation order has been made against him on the ground that it is conducive to the public good; or
- (ii) the Secretary of State has issued a third country certificate under Section 2(1) of the 1996 Act in respect of his application for asylum, and that certificate has not been set aside upon appeal.”







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