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**CHAPTER 1
SECTION 9****CONTINUING LEAVE AND ENTRY
CLEARANCE AS LEAVE TO ENTER****1. INTRODUCTION**

The Immigration and Asylum Act 1999 received Royal Assent on 11 November 1999, providing a greater flexibility in the way leave to enter the United Kingdom may be granted. The Immigration (Leave to Enter and Remain) Order 2000 ("the Order") came into force fully on the 30th July 2000. It makes provision with respect to the giving and refusing of leave to enter the UK and also provides that a visa or other entry clearance may have effect as leave to enter the UK and in certain circumstances leave to enter or remain is not to lapse on travel outside the common travel area.

- Entry clearances issued in accordance with the Order confer leave to enter. The conditions of entry are printed onto the vignette and the leave expires when the entry clearance expires.
- Entry clearances are normally only endorsed with an open date stamp on their first presentation and not each time thereafter.
- Direct Airside Transit Visas (DATV's) do not confer leave to enter.
- An entry clearance which does not specify the conditions attached to the grant of leave to enter does not confer leave and, in such a case, if satisfied that the passenger should be granted leave to enter the immigration officer should endorse the passport with the appropriate conditions of entry.
- Leave to enter and remain does not lapse when the holder leaves the Common Travel Area (CTA), if it was conferred by an entry clearance (other than a visit visa) or by an immigration officer or the Secretary of State for more than six months where embarkation was after 30 July 2000. However, if a passenger is absent from the UK for a continuous period of more than two years, his leave will lapse.
- An immigration officer may examine a person who has arrived in the UK with leave to enter which is in force and may, by the issuing of form IS81, suspend that person's leave until the examination has been completed.

2. ENTRY CLEARANCE AS LEAVE TO ENTER**2.1. Uniform Format Visas**

From 2 October 2000 green Uniform Format Visas will continue to be issued in the following categories:

- A (Direct Airside Transit)
- B (Visitor in Transit)
- C (Visitor)

These visas contain additional information including validity dates and the conditions of entry e.g. whether the holder must register with the police or has recourse to public funds. The new red and yellow Category D entry clearance is similar in style to the UFV and covers all other types of application e.g. settlement, student etc.

Category A (Direct Airside Transit) visas do not confer leave to enter.

Categories B, C and D entry clearance (subject to the paragraphs below) have effect as leave to enter.

All new style entry clearances (except Exempt, EEA Family Permit and Certificate of entitlement) have effect as leave to enter which is activated upon passing through the arrivals control, regardless of whether that person is seen by an immigration officer.

2.2. Examination process

Although a person arriving in the United Kingdom with an entry clearance issued in accordance with the Order does not require leave to enter, an immigration officer will still be able to examine the holder at the port. This examination process should establish that the passenger is the rightful holder of the document, that the passport is genuine and that the document contains an EC which has effect as leave to enter. In addition to this examination, an immigration officer may also examine the passenger in order to establish whether any of the circumstances set out below in paragraph 2.3 apply and whether the entry clearance should be cancelled.

New style entry clearances should normally be endorsed on their first presentation only.

2.3. Suspending and Cancelling leave to enter

It is anticipated that the majority of passengers will be cleared by a brief examination. However the immigration officer may, by serving an IS81 suspend leave to enter until the examination under paragraph 2A of Schedule 2 of the Immigration Act 1971 is completed.

In respect of passengers who have arrived in the UK with leave to enter which is in force but which was granted before their arrival the immigration officer's examination is to establish:

- (i) whether there has been such a change in the circumstances of the case, since that leave was given that it should be cancelled;
- (ii) whether the leave was obtained as a result of false information given by the passenger or his or her failure to disclose material facts;

- (iii) whether there are medical grounds on which leave should be cancelled;
- (iv) whether it would be conducive to the public good for the leave to be cancelled.

Where it is appropriate to cancel the leave to enter the word CANCELLED should be stamped across the EC. The passenger may be able to return to the United Kingdom if the cancellation of the visa is not apparent to carriers. This cancellation attracts a right of appeal.

2.4. **Passengers who arrive prior to the validity of entry clearance – power to cancel entry clearance**

A passenger who arrives with a post-dated entry clearance does not yet have leave to enter which is in force. He is a person who requires leave to enter. The immigration officer should establish whether he is seeking entry on the same basis for which the entry clearance was issued. If satisfied that he qualifies for leave to enter the immigration officer may **cancel the entry clearance** using the CANCELLED WITHOUT PREJUDICE stamp and grant leave to enter.

2.5. **Passengers seeking entry for different purpose – power to cancel entry clearance**

If a passenger arrives in the UK, with an entry clearance which is capable of having effect as leave to enter but seeks entry in a different capacity from that endorsed on the entry clearance, the immigration officer should establish whether it is appropriate to grant leave to enter exceptionally without an entry clearance. He should be granted a short period of leave and advised to seek a variation of leave by applying to the Integrated Casework Directorate before his leave expires.

If the passenger is seeking entry for a different purpose than that specified in the entry clearance and the immigration officer is satisfied that the passenger does not qualify for entry, he should be refused leave to enter. The immigration officer should also consider whether to cancel the entry clearance under Article 6 (2)(a) of the Order (IND may want to insert the relevant factors for the IO to consider). This cancellation does not attract a right of appeal.

2.6. **Forged passports/ fraudulently obtained ECs**

Where a passport is forged or fraudulently obtained, or the passenger is an impostor, the passenger does not have current entry clearance having effect as leave to enter and should be treated as someone requiring leave to enter. In the case of a falsified EC, the EC is invalid and the passenger should be treated as someone requiring leave to enter. The entry clearance should be cancelled and the passenger has a right to a preliminary issue hearing if he asserts that the EC has not been falsified.

2.7. Visit Entry Clearance

All visit ECs are now multiple entry. Unlimited entries are allowed within the period of validity of the entry clearance. The leave conferred by the entry clearance is for six months, from the date stated or the remaining validity, whichever is shorter. Although entry clearances are normally valid from the date of issue, it is possible for the entry clearance officer to defer the “valid from” date for up to three months to coincide with the applicant’s travel plans.

A passenger may not remain in the UK beyond the validity of the entry clearance regardless of whether the remaining period of validity of the EC is less than six months. In some circumstances it may be appropriate to vary the leave of that person beyond the expiry of the EC. If the immigration officer varies leave in this manner, leave will lapse on departure from the United Kingdom.

3. CONTINUING LEAVE

3.1. What is continuing leave?

Leave to enter or remain in the UK granted for more than six months, no longer lapses on leaving the Common Travel Area providing embarkation was after 30 July 2000. It follows therefore that the 3(3)(b) stamp is now obsolete. A passenger arriving in the United Kingdom with continuing leave does not require leave to enter (it is already in force).

3.2. Examination Process

On arrival, the immigration officer may examine the passenger to ensure they are the rightful holder of the document, that the passport is genuine and that the document contains current leave to enter or remain that was granted for longer than 6 months. The immigration officer may also examine the passenger for the purpose of establishing the following;

- (v) whether there has been such a change in the circumstances of the case, since that leave was given that it should be cancelled;
- (vi) whether the leave was obtained as a result of false information given by the passenger or his or her failure to disclose material facts;
- (vii) whether there are medical grounds on which leave should be cancelled;
- (viii) whether it would be conducive to the public good for the leave to be cancelled.

If the immigration officer is satisfied, the passenger will be allowed to proceed. The passport will not normally be endorsed.

3.3. Suspending leave

If the immigration officer is not satisfied that the passenger should be allowed to proceed, he may, by the serving of an IS81, suspend that leave to enter until the examination is completed and on completion of that examination, cancel that leave.

3.4. **Cancellation of leave and appeal rights**

The power to cancel continuing leave is not to be exercised by an immigration officer acting on his own, the authority of a Chief Immigration Officer or an Immigration Inspector must be obtained. Where continuing leave is cancelled, the word CANCELLED should be stamped across the leave in red ink and a refusal stamp placed as near as possible to the cancelled leave. Cancellation of continuing leave attracts an in country right of appeal. The passenger should be served with an IS87(UK). Removal directions should be set for the first available flight after the ten-day period allowed for receipt of the appeal.

3.5. **Forged passports/ fraudulently obtained leave**

Where a passport is forged or fraudulently obtained, or the passenger is an impostor, the passenger does not have continuing leave and should be treated as someone requiring leave to enter. In the case of falsified continuing leave, the passenger does not have that leave and should be treated as someone requiring leave to enter. If it is appropriate to refuse entry and the passenger maintains that he is the rightful holder of the document he has the right to an appeal by way of preliminary issue hearing for the question of whether he is that person to be determined.

3.6. **Returning residents**

From 30 July 2000, passengers with indefinite leave to enter or remain will have continuing leave unless they have been absent for a continuous period of more than two years. If a passenger has been absent for more than two years, their leave is deemed to have lapsed and leave to enter is required.

Where a passenger has indefinite leave and this is continuing, the immigration officer may cancel that leave if the passenger no longer qualifies eg due to a change of circumstances. This attracts a right of appeal before removal.

If a person who has indefinite leave requests a variation of leave, the immigration officer may vary that leave if the passenger qualifies for entry in that category. The variation should be a conditional (coded) landing and the passenger's request should be recorded on the reverse of the landing card.

If a person with indefinite leave states that he is seeking entry as a visitor, the immigration officer should explain the implications of this variation of leave. If the person does not wish to make an application to vary leave, he should be allowed to proceed as a returning resident or if the immigration officer is not satisfied that he

qualifies, his leave should be suspended, pending consideration of cancellation.

4. VARIATION OF LEAVE TO ENTER/REMAIN

4.1. Request for variation of leave

For a request for variation of leave to be considered by an immigration officer, a passenger must have leave to enter or remain for more than 6 months (continuing leave). Reference should be made to the relevant section of the IDIs. The immigration officer must be satisfied that the passenger fully meets the requirements of the Immigration Rules before any request for variation of leave is granted. Passengers wishing to switch to a settlement or employment category should be advised to apply to ICD unless they hold a valid work permit in which case the port can deal.

4.2. Switching

There are no restrictions on any passenger switching to visitor status or on non-visa nationals switching to student status. However, a visa national, unless he was admitted as a student or prospective student, cannot switch to student status except where he wishes to undertake postgraduate medical or dental training.

Passengers cannot switch into the following categories:

- Fiancée
- Special Voucher
- Dependant of special voucher holder

If it is not appropriate to vary leave e.g. settlement cases requesting ILR, the passenger should be allowed to proceed, and advised to apply to the ICD. Where the passenger's leave is due to expire, a two-month extension should be granted to allow time to submit the application.

4.3. Refusal to vary leave

If a passenger does not meet the requirements of the Rules for the category he wishes to switch into, the immigration officer may need to consider whether cancellation of the current leave is appropriate e.g. if there has been a change of circumstances. If the immigration officer wishes to extend his examination, the passenger should be served with an IS81 and reference should be made to a CIO.

5. CANCELLATION FORMULAE

5.1. Ex

All cancellation formulae should start with the following:

(a) For passengers with continuing leave:

“On (date) you were given notice of (leave to enter/leave to remain in) the United Kingdom as a (category) but.....”

(b) For passengers with an EC which had effect as leave to enter:

“On (date) you were given entry clearance which had effect as leave to enter the United Kingdom on (date) but:.....”

The formula should reflect the grounds on which leave is cancelled:

1. False representations/Change of Circumstances/ Material facts not disclosed

“I am satisfied that false representations were employed or material facts were not disclosed for the purpose of obtaining the leave, or there has been such a change of circumstances in your case since the leave was granted that it should be cancelled.”

2. Medical grounds

“ I have received information from the Medical Inspector that it is undesirable to admit you to the United Kingdom for the following medical reasons (insert reasons on medical certificate). You are not settled in the United Kingdom and I am not satisfied that there are strong compassionate reasons justifying your admission. I am therefore satisfied that the leave should be cancelled on medical grounds.”

3. Exclusion conducive to the public good

“the Secretary of State has personally directed that your exclusion from the United Kingdom is conducive to the public good.”

4. Exclusion conducive to public good – immigration officer’s discretion:

- Non-conducive cases

“from information available to me, it seems right to cancel your leave on the grounds that your exclusion from the UK is conducive to the public good.”

- Non-conducive drugs cases

“ you have been found in possession of a prohibited drug contrary to Section 3(1) of the Misuse of Drugs Act 1971 and Section 170(2) of the Customs and Excise Management Act 1979 and in the light of this it seems right to cancel your leave on the ground that your exclusion from the UK is conducive to the public good.”

5. Non conducive – coming to commit a criminal offence

“I have reason to believe that you have come for the purpose of which involves the commission of a criminal offence and in light of this it seems right to cancel your leave on the ground that your exclusion from the United Kingdom is conducive to the public good.”

6. Non conducive - previous criminal conviction

“I have reason to believe that you have been convicted of the offence(s) shown below:
[insert date and place of conviction and offence]
And in the light of your conduct as evidenced by this/these offence(s), it seems right to cancel your leave on the ground that your exclusion from the United Kingdom is conducive to the public good.”

7. Non conducive – danger to public order

“I have reason to believe that you have come for the purpose of..... which will endanger the maintenance of public order, and in the light of this it seems right to cancel your leave on the ground that your exclusion from the United Kingdom is conducive to the public good.”

8. Non conducive – association

“In the light of your association with [insert name of person] who [insert reason], it seems right to me to cancel your leave to enter on the ground that your exclusion from the United Kingdom is conducive to the public good.”

5.2 **Conclusion of cancellation formulae**

All formulae should conclude as follows:

“I therefore cancel your continuing leave. If your entry clearance had effect as leave

to enter that entry clearance will cease to have effect.

5.3. Other refusal formulae

Impersonators/holders of forged documents

“You have presented a document purporting (to be a current entry clearance which has effect as leave to enter the United Kingdom) which was duly issued to you, but I am not satisfied that this is so. In the light of this I consider that your exclusion from the United Kingdom is conducive to the public good. I therefore refuse you leave to enter.”

Other reasons for refusal should also be included.

There would be a preliminary issue hearing as to whether the person has leave i.e. an in-country hearing.

Passenger arrives prior to the EC becoming effective

“You have presented an entry clearance endorsed [insert category] which will have effect as leave to enter the United Kingdom from [insert date]. However, you have presented that entry clearance before the day on which it becomes effective and I therefore cancel that entry clearance under Article 6(2)(a) of the Immigration (Leave to Enter and Remain) Order 2000. Your entry clearance has not had effect as leave to enter and therefore, you require leave to enter the United Kingdom.”

Other reasons for refusal should also be included.

There is no power for an IO to cancel leave on the basis of a person refusing to submit to medical examination or simply because leave to enter has been endorsed in error in a spurious passport. However in the case of the latter, you may be able to cancel if there were a change of circumstances since the leave was granted.

6. APPEALS

6.1. Procedure

A passenger whose continuing leave (or leave conferred by an EC) is cancelled has a suspensive right of appeal. When cancelling leave, the passenger should be served with the appropriate form from the IS82 series, IS87(UK), and one stop notices – IS74 and IS76. The passenger should be advised that they have 10 days to return their grounds of appeal and removal directions should be set for the first available flight thereafter.

If the passenger exercises his right of appeal, the port should review the grounds on

receipt. If content that the decision is sound and defensible, the immigration officer should prepare an appeal statement to be despatched in line with normal procedure.

6.2. Dismissed Appeals

If the passenger's appeal is subsequently dismissed, local records should be updated and removal directions reset.

6.3. Allowed Appeals

If the appeal is allowed, the immigration officer should serve form IS88A on the carrier, advising that they are no longer liable for the passenger's removal from the United Kingdom.

The passport should be endorsed with the conditions of entry and the immigration officer's date stamp. If the leave has *not* expired, the conditions of entry will be:

- (1) the remainder of the leave; or
- (2) the remainder of the leave the passenger held when his leave was suspended, including any permission to work; or
- (3) variation of leave, to which the passenger is entitled.

If the leave has expired, the conditions of entry will be:

- (1) the remainder of the leave that the passenger held when his leave was suspended
- (2) Variation of leave to which the passenger is entitled.