

STATEMENT OF CHANGES IN IMMIGRATION RULES

*Laid before Parliament on 31 March 2003 under section 3(2) of
the Immigration Act 1971.*

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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) and 28 July 2000 (HC 704) and 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) and 10 February 2003 (HC 389).

These changes take effect on 1st April 2003.

1. Paragraph 6 is amended as follows:

(a) after the definition of "the 2000 EEA Regulations", insert:

"**"adoption"** unless the contrary intention appears, includes a de facto adoption in accordance with the requirements of paragraph 309A of these Rules, and "adopted" and "adoptive parent" should be construed accordingly;"

(b) in the definition of "a parent", for sub-paragraph (d), substitute:

"(d) an adoptive parent, where a child was adopted in accordance with a decision taken by the competent administrative authority or court in a country whose adoption orders are recognised by the United Kingdom or where a child is the subject of a de facto adoption in accordance with the requirements of paragraph 309A of these Rules (except that an adopted child or child who is the subject of a de facto adoption may not make an application for leave to enter or remain in order to accompany, join or remain with an adoptive parent under paragraphs 297 to 303);" and

(c) after the definition of "a parent", insert:

"**"intention to live permanently with the other"** means an intention to live together, evidenced by a clear commitment from both parties that they will live together permanently in the United Kingdom immediately following the outcome of the application in question or as soon as circumstances permit thereafter, and "intends to live permanently with the other" shall be construed accordingly;"

"**"present and settled"** means that the person concerned is settled in the United Kingdom, and, at the time that an application under these Rules is made, is physically present here or is coming here with or to join the applicant and intends to make the United Kingdom their home with the applicant if the application is successful;"

"**"sponsor"** means a person in relation to whom an applicant is seeking leave to enter or remain as their spouse, fiancé(e) or unmarried partner, as the case may be, under paragraphs 277 to 295O;"

2. In paragraphs 104 to 109, delete "at an agricultural camp".
3. In paragraph 104, sub-paragraph (v), delete "and any dependants".
4. In paragraph 105, for "30 November", substitute "31 December".
5. In paragraph 107, sub-paragraph (iv), for "30 November", substitute "31 December".
6. Paragraph 108 is amended as follows:
 - (a) for "3 months", substitute "6 months"; and
 - (b) for "30 November", substitute "31 December".
7. In paragraph 116, delete sub-paragraph (ii).
8. After paragraph 135, insert:

"*Highly skilled migrants*

Requirements for leave to enter the United Kingdom as a highly skilled migrant

135A. The requirements to be met by a person seeking leave to enter as a highly skilled migrant are that the applicant:

- (i) must produce a valid document issued by the Home Office confirming that he meets, at the time of the issue of that document, the criteria specified by the Secretary of State for entry to the United Kingdom under the Highly Skilled Migrant Programme; and
- (ii) intends to make the United Kingdom his main home; and
- (iii) is able to maintain and accommodate himself and any dependants adequately without recourse to public funds; and
- (iv) holds a valid United Kingdom entry clearance for entry in this capacity.

Leave to enter as a highly skilled migrant

135B. A person seeking leave to enter the United Kingdom as a highly skilled migrant may be admitted for a period not exceeding 12 months, provided the Immigration Officer is satisfied that each of the requirements of paragraph 135A is met.

Refusal of leave to enter as a highly skilled migrant

135C. Leave to enter as a highly skilled migrant is to be refused if the Immigration Officer is not satisfied that each of the requirements of paragraph 135A is met.

Requirements for an extension of stay as a highly skilled migrant

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

- (i) has leave to enter or remain in the United Kingdom, other than as a visitor under paragraphs 40 to 56 of these Rules; and
- (ii) in the case of an applicant who has leave under paragraph 135B, has already taken during his period of leave all reasonable steps to become lawfully economically active in the United Kingdom in employment, self-employment or a combination of both; and
- (iii) meets the requirements of paragraph 135A (i)-(iii).

Extension of stay as a highly skilled migrant

135E. An extension of stay as a highly skilled migrant may be granted for a period not exceeding 3 years, provided that the Secretary of State is satisfied that each of the requirements of paragraph 135D is met.

Refusal of extension of stay as a highly skilled migrant

135F. An extension of stay as a highly skilled migrant is to be refused if the Secretary of State is not satisfied that each of the requirements of paragraph 135D is met.

Indefinite leave to remain as a highly skilled migrant

135G. Indefinite leave to remain may be granted, on application, to a person currently with leave as a highly skilled migrant, provided that he:

- (i) has had a continuous period of at least 4 years' leave to enter or remain in the United Kingdom in this capacity or has had a continuous period of at least 4 years' leave to enter or remain in the United Kingdom which includes periods of leave to enter or remain granted under paragraphs 128 to 319 of these Rules; and
- (ii) for the period of leave as a highly skilled migrant, has met the requirements of paragraph 135A (i)-(iii); and
- (iii) for any period of leave not in this capacity, has not had recourse to public funds; and
- (iv) is lawfully economically active in the United Kingdom in employment, self-employment or a combination of both.

Refusal of indefinite leave to remain as a highly skilled migrant

135H. Indefinite leave to remain in the United Kingdom to a person currently with leave as a highly skilled migrant is to be refused if the Secretary of State is not satisfied that each of the requirements of paragraph 135G is met."

9. After paragraph 210, insert:

Innovators

Requirements for leave to enter the United Kingdom as an innovator

210A. The requirements to be met by a person seeking leave to enter as an innovator are that the applicant:

- (i) is approved by the Home Office as a person who meets the criteria specified by the Secretary of State for entry under the innovator scheme at the time that approval is sought under that scheme;
- (ii) intends to set up a business that will create full-time paid employment for at least 2 persons already settled in the UK; and
- (iii) intends to maintain a minimum five per cent shareholding of the equity capital in that business, once it has been set up, throughout the period of his stay as an innovator; and
- (iv) will be able to maintain and accommodate himself and any dependants adequately without recourse to public funds or to other employment; and
- (v) holds a valid United Kingdom entry clearance for entry in this capacity.

Leave to enter as an innovator

210B. A person seeking leave to enter the United Kingdom as an innovator may be admitted for a period not exceeding 18 months, provided the Immigration Officer is satisfied that each of the requirements of paragraph 210A is met.

Refusal of leave to enter as an innovator

210C. Leave to enter as an innovator is to be refused if the Immigration Officer is not satisfied that each of the requirements of paragraph 210A are met.

Requirements for an extension of stay as an innovator

210D. The requirements for an extension of stay in the United Kingdom as an innovator are that the applicant:

- (i) was granted leave to enter or remain in the United Kingdom, other than as a Visitor under paragraphs 40-56; and
- (ii) (a) in the case of a person who was granted leave to enter under paragraph 210A, has:
 - (1) established a viable trading business, by reference to the audited accounts and trading records of that business; and
 - (2) continues to meet the requirements of paragraph 210A(i) and(iv); and
 - (3) has set up a business that will create full-time paid employment for at least 2 persons already settled in the UK; and
 - (4) has maintained a minimum five per cent shareholding of the equity capital in that business, once it had been set up, throughout the period of his stay; or
- (b) in the case of a person who was not granted leave to enter under paragraph 210A, meets the requirements of paragraph 210A (i)-(iv).

Extension of stay as an innovator

210E. An extension of stay as an innovator may be granted for a period not exceeding 30 months provided the Secretary of State is satisfied that each of the requirements of paragraph 210D is met.

Refusal of extension of stay as an innovator

210F. An extension of stay as an innovator is to be refused if the Secretary of State is not satisfied that each of the requirements of paragraph 210D is met.

Indefinite leave to remain for an innovator

210G. Indefinite leave to remain may be granted, on application, to a person currently with leave as an innovator provided that he:

- (i) has spent a continuous period of at least 4 years leave in the United Kingdom in this capacity; and
- (ii) has met the requirements of paragraph 210D throughout the 4 year period.

Refusal of indefinite leave to remain as an innovator

210H. Indefinite leave to remain in the United Kingdom as a person currently with leave as a innovator is to be refused if the Secretary of State is not satisfied that each of the requirements of paragraph 210G is met.”

10. After paragraph 276, insert:

“ *Long residence*

Long residence in the United Kingdom

276A For the purposes of paragraphs 276B to 276E:

(a) “continuous residence” means residence in the United Kingdom for an unbroken period, and for these purposes a period shall not be considered to have been broken where an applicant is absent from the United Kingdom for a period of 6 months or less at any one time, provided that the applicant in question has existing limited leave to enter or remain upon their departure and return, but shall be considered to have been broken if the applicant:

- (i) has been removed under Schedule 2 of the 1971 Act, section 10 of the 1999 Act, has been deported or has left the United Kingdom having been refused leave to enter or remain here; or
- (ii) has left the United Kingdom and, on doing so, evidenced a clear intention not to return; or
- (iii) left the United Kingdom in circumstances in which he could have had no reasonable expectation at the time of leaving that he would lawfully be able to return; or
- (iv) has been convicted of an offence and was sentenced to a period of imprisonment or was directed to be detained in an institution other than a prison (including, in particular, a hospital or an institution for young offenders), provided that the sentence in question was not a suspended sentence; or
- (v) has spent a total of more than 18 months absent from the United Kingdom during the period in question.

(b) “lawful residence” means residence which is continuous residence pursuant to:

- (i) existing leave to enter or remain; or
- (ii) temporary admission within section 11 of the 1971 Act where leave to enter or remain is subsequently granted; or
- (iii) an exemption from immigration control, including where an exemption ceases to apply if it is immediately followed by a grant of leave to enter or remain.

Requirements for indefinite leave to remain on the ground of long residence in the United Kingdom

276B The requirements to be met by an applicant for indefinite leave to remain on the ground of long residence in the United Kingdom are that:

- (i) (a) he has had at least 10 years continuous lawful residence in the United Kingdom; or
(b) he has had at least 14 years continuous residence in the United Kingdom, excluding any period spent in the United Kingdom following service of removal directions under paragraphs 8, 9, 10 10A, 12, 13 and 14 of Schedule 2 of 1971 Act or section 10 of the 1999 Act, or of a notice of intention to deport him from the United Kingdom; and
- (ii) having regard to the public interest there are no reasons why it would be undesirable for him to be given indefinite leave to remain on the ground of long residence, taking into account his:
 - (a) age; and
 - (b) strength of connections in the United Kingdom; and
 - (c) personal history, including character, conduct, associations and employment record; and
 - (d) domestic circumstances; and
 - (e) previous criminal record and the nature of any offence of which the person has been convicted; and
 - (f) compassionate circumstances; and
 - (g) any representations received on the person’s behalf.

Indefinite leave to remain on the ground of long residence in the United Kingdom

276C Indefinite leave to remain on the ground of long residence in the United Kingdom may be granted provided that the Secretary of State is satisfied that each of the requirements of paragraph 276B is met.

Refusal of indefinite leave to remain on the ground of long residence in the United Kingdom

276D Indefinite leave to remain on the ground of long residence in the United Kingdom is to be refused if the Secretary of State is not satisfied that each of the requirements of paragraph 276B is met.”

11. Paragraph 277 is amended as follows:
 - (a) for “either party to the marriage”, substitute “the applicant”; and
 - (b) after “aged under 16”, insert “or the sponsor will be aged under 18”.
12. In paragraph 281, for sub-paragraph (i), substitute:
 - “(i) (a) the applicant is married to a person present and settled in the United Kingdom or who is on the same occasion being admitted for settlement; or
 - (b) the applicant is married to a person who has a right of abode in the United Kingdom or indefinite leave to enter or remain in the United Kingdom and is on the same occasion seeking admission to the United Kingdom for the purposes of settlement and the parties were married at least 4 years ago, since which time they have been living together outside the United Kingdom; and”
13. Paragraph 282 is amended as follows:
 - (a) in the third line, after “for settlement may” insert “, in the case of a person within paragraph 281(i)(a),”;
 - (b) for “12 months”, substitute “2 years”;
 - (c) in the fourth line, after “2 years”, insert “ or, in the case of a person within paragraph 281(i)(b), indefinite leave to enter may be granted”; and
 - (d) in the final line, for “in this”, substitute “is the appropriate”.
14. In paragraph 284, sub-paragraph (i), after “limited leave to remain in the United Kingdom” insert “, other than where that limited leave is of 6 months’ duration or less.”.
15. In paragraph 285, for “12 months”, substitute “2 years”.
16. Paragraph 287 is amended as follows:
 - (a) in sub-paragraph (a)(i), for “12 months”, substitute “2 years”;
 - (b) in sub-paragraph (b)(i), for “12 months”, substitute “2 years”; and
 - (c) in sub-paragraph (b)(ii), for “12 months”, substitute “2 years”.
17. In paragraph 289A, sub-paragraph (i), for “12 months” substitute “2 years”.
18. After paragraph 289A, insert:

“Indefinite leave to remain as the victim of domestic violence

289B Indefinite leave to remain as the victim of domestic violence may be granted provided the Secretary of State is satisfied that each of the requirements of paragraph 289A is met.

Refusal of indefinite leave to remain as the victim of domestic violence

289C Indefinite leave to remain as the victim of domestic violence is to be refused if the Secretary of State is not satisfied that each of the requirements of paragraph 289A is met.”

19. After paragraph 289C and immediately below the heading “Fiance(e)s” insert:

“289AA Nothing in these Rules shall be construed as permitting a person to be granted entry clearance, leave to enter or variation of leave as a fiance(e) if the applicant will be aged under 16 or the sponsor will be aged under 18 on the date of arrival of the applicant in the United Kingdom or (as the case may be) on the date on which the leave to enter or variation of leave would be granted.”

20. After paragraph 295 and immediately below the heading "Leave to enter as the unmarried partner of a person present and settled in the United Kingdom or being admitted on the same occasion for settlement", insert:

"295AA Nothing in these Rules shall be construed as permitting a person to be granted entry clearance, leave to enter or variation of leave as an unmarried partner if the applicant will be aged under 16 or the sponsor will be aged under 18 on the date of arrival of the applicant in the United Kingdom or (as the case may be) on the date on which the leave to enter or variation of leave would be granted."

21. Paragraph 295A is amended as follows:

(a) for sub-paragraph (i), substitute:

"(i) (a) the applicant is the unmarried partner of a person present and settled in the United Kingdom or who is on the same occasion being admitted for settlement and the parties have been living together in a relationship akin to marriage which has subsisted for two years or more; or

(b) the applicant is the unmarried partner of a person who has a right of abode in the United Kingdom or indefinite leave to enter or remain in the United Kingdom and is on the same occasion seeking admission to the United Kingdom for the purposes of settlement and the parties have been living together outside the United Kingdom in a relationship akin to marriage which has subsisted for 4 years or more; and"

(b) delete sub-paragraph (iii); and

(c) delete sub-paragraph (iv).

22. Paragraph 295B is amended as follows:

(a) in the third line, after "for settlement may", insert "or, in the case of a person within paragraph 295A(i)(a),";

(b) in the fourth line, after "2 years", insert "or, in the case of a person within paragraph 295A(i)(b), indefinite leave to enter may be granted"; and

(c) in the fifth line, for "in this", substitute "is the appropriate".

23. In paragraph 295D, delete sub-paragraph (v).

24. In paragraph 295J, delete sub-paragraph (iii).

25. After paragraph 309 and immediately below the heading "Adopted Children", insert:

"309A For the purposes of adoption under paragraphs 310-316C a de facto adoption shall be regarded as having taken place if:

(a) at the time immediately preceding the making of the application for entry clearance under these Rules the adoptive parent or parents have been living abroad (in applications involving two parents both must have lived abroad together) for at least a period of time equal to the first period mentioned in sub-paragraph (b)(i) and must have cared for the child for at least a period of time equal to the second period material in that sub-paragraph; and

(b) during their time abroad, the adoptive parent or parents have:

(i) lived together for a minimum period of 18 months, of which the 12 months immediately preceding the application for entry clearance must have been spent living together with the child; and

(ii) have assumed the role of the child's parents, since the beginning of the 18 month period, so that there has been a genuine transfer of parental responsibility."

26. Paragraph 310 is amended as follows:

(a) in sub-paragraph (i), sub-sub-paragraph (f), after "child's care", for "; and", substitute "; or";

(b) in sub-paragraph (i), after sub-sub-paragraph (f), insert:

"(g) in the case of a de facto adoption one parent has a right of abode in the United Kingdom or indefinite leave to enter or remain in the United Kingdom and is seeking admission to the United Kingdom on the same occasion for the purposes of settlement; and";

(c) in sub-paragraph (iv), after "be accommodated", insert "and maintained";

(d) delete sub-paragraph (v);

- (e) for sub-paragraph (vi), substitute:
- “(vi) (a) was adopted in accordance with a decision taken by the competent administrative authority or court in his country of origin or the country in which he is resident, being a country whose adoption orders are recognised by the United Kingdom; or
- (b) is the subject of a de facto adoption; and”; and
- (f) in sub-paragraph (viii), for “marriage”, substitute “adoptive parent’s or parents’ family”.
27. Paragraph 311 is amended as follows:
- (a) in sub-paragraph (i), sub-sub-paragraph (d), after “child’s care”, for “; and”, substitute “; or”;
- (b) in sub-paragraph (i), after sub-sub-paragraph (d), insert:
- “(e) in the case of a de facto adoption one parent has a right of abode in the United Kingdom or indefinite leave to enter or remain in the United Kingdom and is seeking admission to the United Kingdom on the same occasion for the purpose of settlement; and”;
- (c) in sub-paragraph (iv), after “be accommodated”, insert “and maintained”;
- (d) delete sub-paragraph (v);
- (e) for sub-paragraph (vi), substitute:
- “(vi) (a) was adopted in accordance with a decision taken by the competent administrative authority or court in his country of origin or the country in which he is resident, being a country whose adoption orders are recognised by the United Kingdom; or
- (b) is the subject of a de facto adoption; and”; and
- (f) in sub-paragraph (viii), for “marriage”, substitute “adoptive parent’s or parents’ family”.
28. Paragraph 314 is amended as follows:
- (a) in sub-paragraph (i), sub-sub-paragraph (d), after “child’s care”, for “; and”, substitute “; or”;
- (b) in sub-paragraph (i), after sub-sub-paragraph (d), insert:
- “(e) in the case of a de facto adoption one parent has a right of abode in the United Kingdom or indefinite leave to enter or remain in the United Kingdom and is seeking admission to the United Kingdom on the same occasion for the purpose of settlement; and”;
- (c) in sub-paragraph (iv), after “be accommodated”, insert “and maintained”;
- (d) delete sub-paragraph (iva);
- (e) for sub-paragraph (v), substitute:
- “(v) (a) was adopted in accordance with a decision taken by the competent administrative authority or court in his country of origin or the country in which he is resident, being a country whose adoption orders are recognised by the United Kingdom; or
- (b) is the subject of a de facto adoption; and”; and
- (f) in sub-paragraph (vii), for “marriage”, substitute “adoptive parent’s or parents’ family”.
29. Paragraph 316A is amended as follows:
- (a) in the second line, after “for the purpose of being adopted”, insert “(which, for the avoidance of doubt, does not include a de facto adoption)”; and
- (b) in sub-paragraph (viii), after “by his parents or prospective parents”, insert “in accordance with the law relating to adoption in the United Kingdom”.

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