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## WHITE PAPER ON THE IMMIGRATION RULES

Memorandum by the Secretary of State for the  
Home Department

1. I attach a draft White Paper containing my proposals for changing the Immigration Rules. The Ministerial Committee on Home and Social Affairs agreed at its meeting on 26 September that the draft Rules in Part II were an acceptable basis for fulfilling our commitments and for dealing with current abuses. I have made some changes to take account of the points made by my colleagues since that meeting.

## CURTAILMENT OF RIGHT TO SETTLE

2. We undertook to end the practice of allowing permanent settlement for those who come here for a temporary stay. The measures set out in the draft White Paper will, combined with the reduction we are making in the number of work permits, effectively deal with abuse in this area. I have considered further the risk of criticism from our own supporters for not restricting the settlement rights of work permit holders and their dependants. I am, however, convinced that, because of our international obligations, we cannot sensibly go further.

## DEPENDANTS

3. The changes described at paragraphs 8 and 9 of Part I meet our promise to limit the entry of parents, grandparents and children over 18 to a small number of urgent compassionate cases.

## HUSBANDS AND FIANCES

4. We promised to end the concession to husbands and male fiances. The Rules in force before the concession was introduced contained a safeguard for hardship cases which meant that women were not required to live with their husbands in countries where they might face difficulties caused by differences in race, language, customs or religion. This might easily allow the majority of Asian girls settled here to continue to bring in partners from the Indian sub-continent whom they had never seen. On the other hand, women marrying Americans, Australians or West Europeans in accordance with normal Western customs would not be able to be joined by their husbands here.

5. These difficulties are avoided by the approach set out in paragraph 10 of Part I and paragraphs 50-53 and 116-117 of Part II. This would exclude the fiances or husbands of marriages whose main purpose appeared to be to achieve settlement here. Other marriages or engagements might enable the man to qualify for entry provided that the woman was a citizen of the United Kingdom and Colonies born here. This approach should prove effective for the medium term; the main uncertainty thereafter is whether Asian girls born here, as they come to outnumber those entering from overseas, will look for marriage partners in the United Kingdom rather than from the Indian sub-continent.

#### EUROPEAN CONVENTION ON HUMAN RIGHTS

6. There is a very real risk that the proposals on husbands will be found to contravene the European Convention on Human Rights. They will also be criticised as contravening the spirit of our own sex discrimination legislation. I have considered whether our position could be made more defensible if the Rules applied equally to wives and fiancées. This would, however, cut across our commitment to the reunification of families and would be largely ineffectual because of the favourable position of women under our nationality and immigration legislation. The arguments are set out in more detail in the Annex. I would not wish to rule out some further controls on wives (particularly polygamously married ones) and fiancées in the future but I am convinced that it would be a mistake to introduce them before our nationality and patriality legislation is put on a more sensible footing.

#### TRANSITIONAL

7. The transitional arrangements proposed in paragraph 13 of Part I are necessary if we are to avoid, as I think we should, ~~accusations~~ of retrospection. They mean that the full impact of the new changes will not be felt for some time.

#### CONCLUSION

8. I invite the agreement of my colleagues to publication of the White Paper as soon as possible. The White Paper (which, of course, includes the draft Rules) will probably require to be debated before the Rules are actually made, and I propose to discuss the timing and handling of that aspect with the Chancellor of the Duchy of Lancaster and the Chief Whip. When the new Rules are laid, they will almost certainly be prayed against and there will be pressure, which I do not think we should seek to resist, for a further debate on the Prayer.

W W

Home Office

16 October 1979

PART I : THE GOVERNMENT'S PROPOSALSIntroduction

The Government will lay a statement of comprehensive new Immigration Rules before Parliament shortly. The changes which are proposed are incorporated in the draft Rules set out in Part II of this White Paper. The Government will provide an opportunity in the near future for Parliament to debate these proposals before new Rules are laid. The principal changes proposed are described in the following paragraphs and are set out in italics in the draft Rules themselves.

2. The Government intends to continue the special voucher scheme introduced in 1968 to provide for the admission of certain United Kingdom passport holders who are subject to immigration control.

Consolidation

3. The Government propose that the Immigration Rules should be consolidated to enable all the provisions affecting Commonwealth and foreign citizens, whether on or after entry, to be found in one document.

Admission for temporary stay

4. People who are admitted for temporary purposes such as visits or studies would not be eligible to remain for another temporary purpose if this carried with it the prospect of eventual settlement. It would therefore no longer be possible for someone who had entered as a visitor or student to remain for work <sup>or</sup> to set up in business or as a self employed person or as a person of independent means (paragraphs 90 and 91).

5. There would be time limits of one year and four years respectively on the total periods for which a person may be admitted or granted extensions of stay as a visitor or as a student for a succession of short courses (paragraphs 20, 94 and 99).

6. People entering as visitors would be prohibited from taking employment and refusal would be the normal course if they applied to be allowed to take work after their entry (paragraphs 20 and 91). New provisions relating to the categories of person who do not need work permits are

set out in paragraphs 31-34, 108 and 119. Certain of these categories (set out in paragraphs 31-32) would need to be in possession of an entry clearance before being allowed to enter. The dependants of students, of work permit holders, of persons admitted to set up in business, or self-employment, or as writers or artists or persons of independent means would in future be prohibited from taking employment (paragraphs 25 and 40).

7. People wishing to enter the country to set up in business or as self-employed persons or as persons of independent means would first have to be in possession of an entry clearance (paragraphs 35 and 38). People applying for entry clearance to set up in business or self-employment would need to produce evidence that they had a specified minimum amount of capital available for investment and that their activities would be likely to generate employment in this country for people already settled here (paragraphs 35-37). Persons of independent means would need to meet similar financial requirements but would in addition be required to show other reasons why they should be admitted to the United Kingdom (paragraph 38).

#### Dependants

8. No changes are proposed to the current rights of men settled here to bring over their wives and children under 18. Children aged 18 or over would qualify for settlement only where the circumstances were of the most strongly compassionate nature, although special consideration would be given to daughters under 21 who formed part of the family unit overseas and had no other relative to whom they could turn (paragraph 47).

9. Parents and grandparents aged 65 or over would, in addition to the existing requirements, have to prove that they were without other relatives in their own country to whom they could turn and that they had a standard of living substantially below that of their own country. Parents and grandparents under 65, except widows, would not qualify for entry save in the most exceptional compassionate circumstances and certain other close relatives would be in a similar position (paragraph 48).

#### Husbands and fiances

10. The restrictions on the entry and stay of husbands and fiances in paragraphs 50-53 and 116-117 of the draft Rules are designed to curtail the exploitation of marriage as a means of primary immigration. In future husbands and fiances will not be permitted to enter or remain if there is reason to believe that settlement in this country is the main

motive of the marriage. Moreover, the wife must be a citizen of the United Kingdom and Colonies born in this country.

General

11. The draft Rules in Part II contain several other changes designed to remove obscurities and anomalies and to reduce the scope for evasion. In particular, the draft Rules indicate (paragraph 88) that applications from overstayers are normally to be refused; that out of time applications need not be considered even if they meet the formal requirements of the Rules; and that any supporting evidence required must be produced without unreasonable delay. In several places references to public funds have been introduced to make it clear that people admitted in whatever capacity are expected to <sup>maintain and accommodate</sup> / themselves and any dependants from their own resources without recourse to public funds.

12. The most important of the other miscellaneous changes proposed are indicated below:

(a) it would be made clear that a person is "settled" in the United Kingdom, notwithstanding an earlier breach of the immigration laws, where his position has been regularised accordingly (paragraph 1 );

(b) the position of entry clearance officers under the Rules would be clarified (paragraph 12);

(c) the holder of an entry clearance would be liable to be refused entry if he had, by not disclosing material facts, obtained an entry clearance for which he did not qualify (paragraph 13(a) );

(d) new provisions relating to au pair girls would be restricted to nationals of West European countries. An age limit and stronger controls on "au pairs" taking employment would also be imposed (paragraphs 26 and 106).

(e) the rules on working holidaymakers would be amended to provide for an age limit of 25 and a time limit of 2 years for the holiday (paragraphs 30 and 96);

(f) the rules on political asylum and refugees would be amended to bring them more closely into line with the provisions of the Convention relating to the Status of Refugees and current practice (paragraphs 16, 64, 87, 120 and 138);

(g) an immigration officer would, when considering whether or not to grant leave to enter, be able to take into account the previous immigration history of the passenger (paragraph 67);

(h) new provisions would be introduced governing the stay of students in receipt of awards from Governments or official agencies (paragraphs 91 and 100). Such students would normally be required to leave at the end of the studies for which they were in receipt of their award;

#### Transitional

13. The new Rules would apply to all applications on which a decision is taken on or after the date on which the new Rules are laid but the Government will be prepared to consider on the basis of the present Rules all applications made before the date of publication of this White Paper. The Government will also be prepared to consider on the basis of the present Rules applications for further stay from people who before the new Rules take effect have been admitted temporarily or given leave to remain on or for marriage, for work, to set up in business or self-employment, or as persons of independent means.

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## IMMIGRATION RULES

The Home Secretary has, with effect from \_\_\_\_\_, made changes 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 statements laid before Parliament on 25 January 1973 (as amended). This statement contains the rules as so changed. ✓

### Interpretation

1. In these rules "the Act" means the Immigration Act 1971; "Immigration Officer" includes a Customs Officer acting as an Immigration Officer; and "passenger" means any Commonwealth citizen or British protected person who is required by the Act to have leave to enter and any foreign national (including a Stateless person) but does not include a member of the crew of a ship, aircraft, hovercraft or hydrofoil. "Department of Employment" includes where appropriate the equivalent Government Department for Northern Ireland. A person is "settled in the United Kingdom" when he is ordinarily resident here without having entered or remained in breach of the immigration laws, and is free from any restriction on the period for which he may remain.\* A person is also settled here if, despite having entered or remained in breach of the immigration laws, he has subsequently entered lawfully or has been lawfully granted leave to remain, is ordinarily resident here, and is free from any restriction on the period for which he may remain.

✓ The rules contained in this statement do not, however, extend to citizens of the Irish Republic, who because the Republic forms part of the Common Travel Area (see paragraph 8) are admitted freely to the United Kingdom, whether coming from within or outside that Area, except in cases where the Secretary of State decides that the exclusion of a particular person is conducive to the public good.

\* But a person entitled to an exemption under section 8 of the Act (otherwise than as a member of the home forces) is not to be regarded as settled in the United Kingdom except insofar as section 8(5) so provides.

SECTION ONE : CONTROL ON ENTRY

PART I : INTRODUCTORY

General

2. Immigration officers will carry out their duties without regard to the race, colour or religion of people seeking to enter the United Kingdom.

3. A person must, on arrival in the United Kingdom, produce on request by the Immigration Officer a valid national passport or other document satisfactorily establishing his identity and nationality.\* Everyone arriving in the United Kingdom is liable to be examined and must furnish the Immigration Officer with such information as may be required for the purpose of deciding whether he requires leave to enter and, if so, whether and on what terms leave should be given.

4. A citizen of the United Kingdom and Colonies does not require leave to enter if he or she has the right of abode in the United Kingdom under section 2(1)(a) or (b) of the Act, or by virtue of marriage to a man to whom section 2(1)(a) or (b) applies. Any other person requires leave to enter unless he has the right of abode and, in proof of that right, holds a certificate of patriality duly issued to him by a British Government representative overseas or by the Home Office.

5. A citizen of the United Kingdom and Colonies (or a British subject not possessing that citizenship or the citizenship of any other Commonwealth country or territory) who holds a United Kingdom passport

\* National identity cards, in conjunction with visitors' cards, may be accepted in lieu of passports from nationals of countries with which an agreement to that effect has been concluded; but visitors' cards are valid only for visits of 6 months or less and may not be used by passengers coming for employment. Nationals of Belgium, Denmark, France, the Federal Republic of Germany, Italy, Luxembourg and the Netherlands may use valid national identity cards instead of passports.

properly issued to him in the United Kingdom and Islands or the Irish Republic should be admitted freely, without proof of patriality, unless the passport is endorsed to show that he is subject to immigration control. Citizens of the United Kingdom and Colonies who hold United Kingdom passports wherever issued, and satisfy the Immigration Officer that they have previously been admitted for settlement in the United Kingdom, should be freely readmitted. "United Kingdom passport" includes a passport issued by the Lieutenant-Governor of the Isle of Man or one of the Channel Islands, but not one issued by or on behalf of the government of a dependent territory.

6. A passenger who produces a national passport or travel document issued by a government which is not recognised by Her Majesty's Government, or which does not accept valid United Kingdom passports for the purpose of its own immigration control, or a passport or travel document which does not comply with international passport practice, may be refused leave to enter on that ground alone.

7. Leave to enter will normally be given for a limited period. The time limit and any conditions attached - for example a condition restricting employment - will be made known to the passenger by a written notice, which will normally be given to the passenger or be endorsed by the Immigration Officer in the passenger's passport or travel document. After admission any application for extension of the time limit or variation of conditions should be made to the Home Office.

#### Common Travel Area

8. The United Kingdom, the Channel Islands, the Isle of Man and the Irish Republic collectively form a common travel area. Passengers who have been examined for the purpose of immigration control at the point at

which they entered the area do not normally require leave to enter any other part of it without further examination. A passenger arriving in the United Kingdom is to be refused leave to enter if there is reason to believe that he intends to enter any of the other parts of the Common Travel Area, and that he is not acceptable to the immigration authorities there.

#### Passengers in transit

9. Detailed examination of a passenger whose sole purpose is transit to a country outside the Common Travel Area is unlikely to be required once he has satisfied the Immigration Officer that he has both the means and the intention of proceeding at once to another country and is assured of entry there. If the Immigration Officer is not so satisfied, leave to enter is to be refused.

#### Entry clearances

10. The foreign nationals specified in the Appendix, Stateless persons, and other holders of non-national documents\* (who are collectively described in these rules as "visa nationals") must produce to the Immigration Officer a passport or other identity document endorsed with a United Kingdom visa issued for the purpose for which they seek entry, and should be refused leave to enter if they have no such current visa. Any other foreign national who wishes to ascertain in advance whether he is eligible for admission to the United Kingdom can apply to the entry clearance officer in the country in which he is living for the issue of a visa or a Home Office letter of consent; or application for a Home Officer letter of consent may be made to the Home Office on his behalf by

\* But holders of refugee travel documents issued under the 1951 Convention relating to the Status of Refugees by countries which are signatories of the Council of Europe Agreement of 1959 on the Abolition of Visas for Refugees do not require visas if coming on visits of 3 months or less.

someone in the United Kingdom. This procedure is of particular value when the claim to admission depends on proof of facts entailing enquiries in this country or overseas.

11. A Commonwealth citizen who wishes to ascertain in advance whether he is eligible for admission to the United Kingdom can apply to the entry clearance officer in the country in which he is living for the issue of an entry certificate. This procedure is of particular value when the claim to admission depends on proof of facts entailing enquiries in this country or overseas.

12. Visas, entry certificates and Home Office letters of consent are to be taken as evidence of the holder's eligibility for entry to the United Kingdom, and accordingly accepted as "entry clearances" within the meaning of the Act. Entry clearances may be granted at the appropriate British mission abroad in accordance with the provisions in this statement governing the grant or refusal of leave to enter by an immigration officer and, where appropriate, the term "entry clearance officer" may be substituted for "immigration officer" accordingly. Applications are to be decided in the light of the circumstances existing at the time of the decision except that an applicant will not normally be refused an entry clearance under paragraphs 46 or 47 solely on account of his becoming over age between the receipt of his application and the date of the decision on it.

13. A passenger who holds an entry clearance which was duly issued to him and is still current is not to be refused leave to enter unless the Immigration Officer is satisfied that:

- (a) whether or not to the holder's knowledge, false representations were employed or material facts were not disclosed, either in writing



or orally, with the result that an entry clearance was obtained for which the holder was not qualified, or

(b) a change of circumstances since it was issued has removed the basis of the holder's claim to admission, except where the change of circumstances amounts solely to the person becoming over age for entry under paragraphs 46 or 47 since the issue of the entry clearance, or

(c) refusal is justified on grounds of restricted returnability, on medical grounds, on grounds of criminal record, because the passenger is the subject of a deportation order or because exclusion would be conducive to the public good. The scope of the power to refuse leave to enter on these grounds is set out in paragraphs 15 and 70-76.

14. An Immigration Officer may examine the holder of an entry clearance so far as is necessary to determine whether any of the exceptions mentioned in paragraph 13 applies, and in determining this question may act on reasonable inferences from the results of that examination and any other information available to him. But the examination should not be carried further than is necessary for this purpose and for the purpose of deciding whether leave to enter should be given for a limited period and subject to any conditions.

#### Restricted returnability

15. A person who does not satisfy the Immigration Officer that he will be admitted to another country after a stay in the United Kingdom may be refused leave to enter. If his permission to enter another country has to be exercised before a given date, the length of his stay in the United Kingdom should be restricted so as to terminate at least 2 months

before that date. If his passport or travel document is endorsed with a restriction on the period for which he may remain outside his country of normal residence, his stay in the United Kingdom should be limited so as not to extend beyond the period of authorised absence. The holder of a travel document issued by the Home Office should not be given leave to enter for a period extending beyond the validity of that document. This paragraph does not apply to persons who are eligible for admission for settlement.

Refugees

16. Where a person is a refugee full account is to be taken of the provisions of the Convention Relating to the Status of Refugees (Cmd. 9171). Nothing in these Rules is to be construed as requiring action contrary to the United Kingdom's obligations under this Convention.

Part II of these rules deals with admission for temporary purposes, Part III with admission for employment and Part IV with admission for settlement. Part V contains special provisions concerning nationals of countries which are members of the European Economic Community. In all cases admission is subject to the possession of a valid current entry clearance where that is required by these rules and to the passenger being acceptable under Part VIII.

PART II PASSENGERS COMING FOR TEMPORARY PURPOSES

Visitors

17. A passenger seeking entry as a visitor, including one coming to stay with relatives or friends, is to be admitted if he satisfies the Immigration Officer that he is genuinely seeking entry for the period of the visit

as stated by him and that for that period he will maintain and accommodate himself and any dependants, or will, with any dependants, be maintained and accommodated adequately by relatives or friends, without working or recourse to public funds, and can meet the cost of the return or onward journey. But in all cases leave to enter is to be refused if the Immigration Officer is not so satisfied, and in particular, leave to enter is to be refused where there is reason to believe that the passenger's real purpose is to take employment or that he may become a charge on public funds if admitted.

18. Visitors may be admitted for private medical treatment at their own expense provided that in the case of a passenger suffering from a communicable disease the Medical Inspector is satisfied that there is no danger to public health. The Immigration Officer must be satisfied as to the passenger's intentions in accordance with paragraph 17 and that the maintenance and accommodation requirements of that paragraph are met. He should also take into account the Medical Inspector's assessment of the likely cost of treatment in deciding whether the passenger's means would be adequate. The passenger may be required to produce evidence that arrangements have been made for consultation or treatment.

19. Passengers admitted to the United Kingdom as visitors are free to transact business during their visit. Those wishing to establish themselves in business or self-employment in the United Kingdom must, however, comply with paragraphs 35-37.

20. The Immigration Officer should impose a time limit on the period of the visitor's stay and on that of any dependants accompanying him. A period of 6 months will normally be appropriate; but a longer period (not exceeding one year) may be allowed to a passenger who satisfies the

the Immigration Officer of his ability to maintain and accommodate himself and his dependants for that time as required by paragraph 17. The period should not be restricted to less than 6 months unless this is justified by special reasons - for example, in cases of restricted returnability (see paragraph 15), or if the passenger is due to leave the United Kingdom on a particular charter service, or in transit to another country, or if his case ought to be subject to early review by the Home Office. Visitors should normally be prohibited from taking employment.

#### Students

21. A passenger seeking entry to study in the United Kingdom should be admitted (subject to paragraph 13) if he presents a current entry clearance granted for that purpose. An entry clearance will be granted if the applicant produces evidence which satisfies the entry clearance officer that he has been accepted for a course of study at a university, a college of education or further education, an independent school or any bona fide private educational institution; that the course will occupy the whole or a substantial part of his time; and that he can, without working and without recourse to public funds, meet the cost of the course and of his own maintenance and accommodation and that of any dependants during the course.

22. An applicant is to be refused an entry clearance as a student if the entry clearance officer is not satisfied that the applicant is able, and intends, to follow a full-time course of study and to leave the country on completion of it. In assessing the case the officer should consider such points as whether the applicant's qualifications are adequate for the course he proposes to follow, and whether there is any evidence of sponsorship by his home government or any other official body. As a general rule an entry clearance is not to be granted unless the applicant proposes to

spend not less than 15 hours a week in organised daytime study of a single subject or of related subjects, and is not to be granted for the taking of a correspondence course.

23. An applicant accepted for training as a nurse or midwife at a hospital should be granted an entry clearance as a student unless there is evidence that he or she had obtained acceptance by misrepresentation or does not intend to follow the course. Doctors and dentists are admissible for full-time post-graduate study even though they also intend during their stay to seek employment in training posts related to their studies.

24. A passenger who holds a current entry clearance, or who can satisfy the Immigration Officer that he fulfils the requirements of paragraphs 21-23, may be admitted for an appropriate period depending on the length of the course of study and on his means, with a condition restricting his freedom to take employment; he should be advised to apply to the Home Office before the expiry of his leave to enter for any extension of stay that may be required. A passenger who satisfies the Immigration Officer that he has genuine and realistic intentions of studying in the United Kingdom but cannot satisfy the requirements of paragraphs 21-23 may be admitted for a short period, within the limit of his means, with a prohibition on the taking of employment, and should be advised to apply to the Home Office for further consideration of his case. Otherwise a passenger arriving without an entry clearance who is seeking entry as a student is to be refused admission.

25. The wife and children under 18 (as defined in paragraphs 44-46) of a person admitted as a student should be given leave to enter for the period of his authorised stay if they can be maintained and accommodated

without recourse to public funds. They should be prohibited from taking employment.

### "Au Pairs"

26. "Au pair" is an arrangement under which an unmarried girl aged over 17 but under 25 and without dependants who is a national of a Western European country, including Malta, Cyprus and Turkey, may come to the United Kingdom to learn the English language and to live for a time as a member of an English-speaking family.

A girl coming for full-time domestic employment requires a work permit; and a girl admitted under an "au pair" arrangement has no claim to stay in the United Kingdom in some other capacity. When the Immigration Officer is satisfied that an "au pair" arrangement has been made he may admit the passenger for a period of up to 12 months with a prohibition on her taking employment. If a passenger has previously spent time in the United Kingdom as an "au pair" girl she may be admitted for a further period as an "au pair" girl but the total aggregate period should not exceed 2 years.

For the purpose of obtaining the permit, of the holder's true age, rate and the limits for employment, or he does not intend to take the permit specified, or it has expired or is about to expire. But if the period of validity of the permit has expired the Immigration Officer will consider what the passenger is satisfied that circumstances beyond his control prevented his arrival before the permit expired and if the law is still open to him.

Office on grounds of United Kingdom ancestry

Who has proof that one of his grandparents was born in the United Kingdom and Ireland, a Commonwealth, or who wishes to take or seek representation in the United Kingdom will be granted an entry clearance for

PART III PASSENGERS COMING FOR EMPLOYMENT OR  
BUSINESS OR AS PERSONS OF INDEPENDENT MEANS

## Work Permits

27. If a passenger is coming to the United Kingdom to seek employment, or to take employment for which he has no work permit, and he is not eligible for admission under paragraphs 29-34 or Part IV, leave to enter is to be refused. Permits are issued by the Department of Employment in respect of a specific post with a specific employer. The possession of a work permit does not absolve the holder from complying with visa requirements.

28. The holder of a current work permit should normally be admitted for the period specified in the permit, subject to a condition permitting him to take or change employment only with the permission of the Department of Employment. The Immigration Officer is, however, to refuse leave to enter if his examination reveals good reason for doing so. For example, leave to enter should be refused where, whether or not to the holder's knowledge, false representations were employed or material facts were not disclosed, either in writing or orally, for the purpose of obtaining the permit, or the holder's true age puts him outside the limits for employment, or he does not intend to take the employment specified, or is not capable of doing so. But if the period of validity of the permit has expired the Immigration Officer may nevertheless admit the passenger if satisfied that circumstances beyond his control prevented his arrival before the permit expired and that the job is still open to him.

## Exception on grounds of United Kingdom ancestry

29. Upon proof that one of his grandparents was born in the United Kingdom and Islands, a Commonwealth citizen who wishes to take or seek employment in the United Kingdom will be granted an entry clearance for

that purpose. A passenger holding an entry clearance granted in accordance with this paragraph does not need a work permit and, subject to paragraph 13, should be given indefinite leave to enter.

#### Working holidays

30. Young Commonwealth citizens aged 17 to 25 who satisfy the Immigration Officer that they are coming to the United Kingdom for an extended holiday before settling down in their own countries, and that they intend to take only employment which will be incidental to their holiday, may be admitted, on the understanding that they will not have recourse to public funds, for up to 2 years provided that they have the means to pay for their return journey. Where the Immigration Officer has reason to believe that recourse to public funds is likely, he will refuse leave to enter. If a passenger has previously spent time in the United Kingdom on a working holiday he may be admitted for a further period for the same purpose but the total aggregate period should not exceed 2 years.

#### Permit-free employment

31. Passengers in the following categories, although coming for employment, do not need work permits and may, subject to paragraph 13, be admitted for an appropriate period not exceeding 12 months if they hold a current entry clearance granted for the purpose:

- a. Ministers of religion, missionaries and members of religious orders, if they are coming to work full-time as such and can maintain and accommodate themselves and their dependants without recourse to public funds. Members of religious orders engaged in teaching at establishments maintained by their order will not require work permits, but if they are otherwise engaged in teaching, permits will be required;
- b. representatives of overseas firms which have no branch, subsidiary or other representative in the United Kingdom;



- c. representatives of overseas newspapers, news agencies and broadcasting organisations, on long-term assignment to the United Kingdom.

32. Doctors and dentists coming to take up professional appointments may, subject to paragraph 13, be admitted for an appropriate period not exceeding 12 months if they hold a current entry clearance granted for the purpose. Doctors eligible for hospital employment without undertaking the Department of Health and Social Security Attachment Scheme, and dentists seeking employment in or practising their profession, should be admitted without work permits for up to 6 months if they hold a current entry clearance granted for the purpose.

33. Passengers in the following categories, although coming for employment, do not need work permits and may, subject to paragraph 13, be admitted for an appropriate period not exceeding 12 months if they hold a current entry clearance granted for the purpose or other satisfactory documentary evidence that they do not require permits:

- a. private servants (aged 16 and over) of members of the staffs of diplomatic or consular missions who have been notified as such to the Secretary of State for Foreign and Commonwealth Affairs or of members of the family forming part of the household of such persons.
- b. persons coming for employment by an overseas Government or in the employment of the United Nations Organisation or other international organisation of which the United Kingdom is a member;
- c. teachers and language assistants coming to schools in the United Kingdom under exchange schemes approved by the Education Departments or administered by the Central Bureau of Educational Visits and Exchanges or the League for the Exchange of Commonwealth Teachers;
- d. seamen under contract to join a ship in British waters;
- e. operational staff (but not other staff) of overseas owned airlines;
- f. seasonal workers at agricultural camps under approved schemes.

34. Doctors coming under arrangements approved by the Department of Health and Social Security with a view to their taking up attachments under the Department's Attachment Scheme should be admitted without work permits for up to 6 months.

Businessmen and self-employed persons

35. A passenger seeking admission for the purpose of establishing himself in the United Kingdom in business or in self-employment, whether on his own account or in partnership, must hold a current entry clearance issued for that purpose. A passenger who has obtained such an entry clearance should be admitted, subject to paragraph 13, for a period not exceeding 12 months with a condition restricting his freedom to take employment. For an applicant to obtain an entry clearance for this purpose he will need to satisfy the requirements of either paragraph 36 or paragraph 37. In addition he will need to show that he will be bringing money of his own to put into the business; that his level of financial investment will be proportional to his interest in the business; that he will be able to bear his share of the liabilities; that he will be occupied full time in the running of the business; and that there is a genuine need for his services and investment. In no case should the amount of money to be invested by the applicant be less than £100,000 and evidence that this amount or more is under his control and disposable in the United Kingdom must be produced.

36. Where the applicant intends to take over, or join as a partner, an existing business, he will need, in addition to meeting the requirements of the preceding paragraph, to show that his share of the profits will be sufficient to / maintain and accommodate him and his dependants. Audited accounts of the business for previous years must be produced to the entry clearance officer in order to establish the precise financial position, together with a written statement of the terms on which he is to enter or take

over the business. There must be evidence to show that his services and investment will create new, paid, full-time employment in the business for persons already settled here. An entry clearance is to be refused if an applicant cannot satisfy all the relevant requirements of this or the preceding paragraph or where it appears that the proposed partnership or directorship amounts to disguised employment or where it seems likely that, to obtain a livelihood, the applicant will have to supplement his business activities by employment of any kind or by recourse to public funds.

37. If the applicant wishes to establish a new business in the United Kingdom on his own account or to be self-employed he will need to meet the requirements of paragraph 35 and satisfy the entry clearance officer that he will be bringing into the country sufficient funds of his own to establish an enterprise that can realistically be expected to maintain and accommodate him and any dependants without recourse to employment of any kind (other than his self-employment) or to public funds. He will need to show in addition that the business will provide new, paid, full-time employment in the business for persons already settled here. An entry clearance is to be refused if an applicant cannot satisfy all the requirements of this paragraph and of paragraph 35.

#### Persons of independent means

38. A passenger seeking entry as a person of independent means must hold a current entry clearance issued to him for that purpose. He should, subject to paragraph 13, be admitted for an initial period of up to 12 months with a prohibition on the taking of employment. For an applicant to obtain entry clearance he will need to show that he has, under his control and disposable in the United Kingdom, a sum not less than £100,000 or income of not less than £10,000 a year. He must also be able and willing to maintain himself and support and accommodate any dependants indefinitely in the United Kingdom without working, with no assistance from any other persons and without recourse to public funds. An entry clearance is not,

however, to be granted solely because these financial conditions are met.  
In addition the applicant must demonstrate a close connection with the  
United Kingdom (including for example the presence of close relatives  
here or periods of previous residence), or that his admission would be in the  
general interests of the United Kingdom.

#### Writers and artists

39. A passenger seeking entry as a writer or an artist must hold a  
current entry clearance granted to him for that purpose. He may be  
 admitted for an initial period of up to 12 months, subject to a condition  
prohibiting his freedom to take employment. For an applicant to obtain  
 an entry clearance he will need to show that he does not intend to do  
work other than that related to his self-employment as a writer or  
artist and that he will be able to maintain and accommodate himself and  
any dependants from his own resources including the proceeds of that  
self-employment without recourse to public funds.

Dependants of persons admitted under paragraphs 27-39.

40. The wife and the children under 18 of a person admitted to the  
 United Kingdom to take or seek employment, or as a businessman, a  
self-employed person, a writer or artist or a person of independent means,  
 should be given leave to enter for the period of his authorised stay if,  
 apart from his having only limited leave to enter, the requirements of  
 paragraphs 42-46 are fulfilled. They should be prohibited from taking  
employment. No other dependants are to be admitted before the person  
is settled here.

## PART IV. PASSENGERS COMING FOR SETTLEMENT

United Kingdom passport holders

41. Where the passenger is a citizen of the United Kingdom and Colonies holding a United Kingdom passport, and presents a special voucher issued to him by a British Government representative overseas (or an entry clearance in lieu), he is to be admitted for settlement, as are his dependants if they have obtained entry clearances for that purpose and satisfy the requirements of paragraph 42; but such a passenger who comes for settlement without a special voucher or entry clearance is to be refused leave to enter.

Dependants: general provisions

42. This paragraph and paragraphs 43-49 of these rules cover the admission for settlement of the dependants of a person who is present in the United Kingdom and settled here, or who is on the same occasion given indefinite leave to enter. In all such cases (except those mentioned in the last sentence of this paragraph) that person must be able and willing to maintain and accommodate his dependants without recourse to public funds in accommodation of his own or which he occupies himself and he should give a guarantee to this effect if requested. This requirement does not apply to the admission of the wife, or a child under the age of 18, of a Commonwealth citizen who has the right of abode or was settled in the United Kingdom on the coming into force of the Act.

43. In addition, a passenger seeking admission as a dependant under this part of the rules must hold a current entry clearance granted to him for that purpose.

Wives

44. The wife of a person who is settled in the United Kingdom or is on

the same occasion being admitted for settlement is herself to be admitted for settlement if the requirements of paragraphs 4.2 and 4.3 are satisfied. A member of HM Forces based in the United Kingdom but serving overseas should be regarded for this purpose as being in the United Kingdom.

45. A woman who has been living in permanent association with a man has no claim to enter but may be admitted, subject to the requirements of paragraphs 4.2 and 4.3, as if she were his wife, due account being taken of any local custom or tradition tending to establish the permanence of the association. A woman is not, however, to be admitted under this provision unless any previous marriage by either party has permanently broken down. Nor may she be admitted if the man has already been joined by his wife, or another woman admitted under this paragraph, whether or not the relationship still subsists.

#### Children

46. If the requirements of paragraphs 4.2 and 4.3 are satisfied, children under 18, provided that they are unmarried, are to be admitted for settlement

- a. if both parents are settled in the United Kingdom, or
- b. if both parents are on the same occasion admitted for settlement, or
- c. if one parent is settled in the United Kingdom and the other is on the same occasion admitted for settlement, or
- d. if one parent is dead and the other parent is settled in the United Kingdom or is on the same occasion admitted for settlement; or

- e. if one parent is settled in the United Kingdom or is on the same occasion admitted for settlement and has had the sole responsibility for the child's upbringing, or
- f. if one parent or a relative other than a parent is settled or accepted for settlement in the United Kingdom and there are serious and compelling family or other considerations which make exclusion undesirable - for example, where the other parent is physically or mentally incapable of looking after the child - and suitable arrangements have been made for the child's care.

In this paragraph "parent" includes the stepfather of a child whose father is dead; the stepmother of a child whose mother is dead; and the father as well as the mother of an illegitimate child. It also includes an adoptive parent, but only where there has been a genuine transfer of parental responsibility on the ground of the original parents' inability to care for the child, and the adoption is not one of convenience arranged to facilitate the child's admission.

47. Children aged 18 or over must qualify for settlement in their own right unless there are the most exceptional compassionate circumstances (in which case their cases should be considered under paragraph 48).

Special consideration may, however, be given to fully dependent and unmarried daughters over 18 and under 21 who formed part of the family unit overseas and have no other close relatives in their own country to turn to. The requirements of paragraphs 42 and 43 must be met in all cases.

Parents, grandparents and other relatives

48. Widowed mothers, fathers who are widowers aged 65 or over and parents travelling together of whom at least one is aged 65 or over

should be admitted for settlement only where the requirements of paragraphs 42 and 43 and the following conditions are met. They must be wholly or mainly dependent upon sons or daughters settled in the United Kingdom who have the means to maintain their parents and any other relatives who would be admissible as dependants of the parents, and adequate accommodation for them. They must also be without other relatives in their own country to turn to and have a standard of living substantially below that of their own country. This provision should not be extended to people below 65 (other than widowed mothers) except where they are living alone in the most exceptional compassionate circumstances but may in such circumstances be extended to sons, daughters, sisters, brothers, uncles and aunts of whatever age. The requirements of paragraphs 42 and 43 must be met in any such cases.

49. Where a parent has remarried admission should not be granted under the preceding paragraph unless he or she cannot look to the spouse or children of the second marriage for support, and the children in the United Kingdom have sufficient means and accommodation to maintain both the parent and any spouse or children of the second marriage who would be admissible as dependants. The provisions of this and the preceding paragraph apply to grandparents of persons settled in the United Kingdom as they apply to parents.

#### Husbands

50. The husband of a woman who is settled in the United Kingdom, or who is on the same occasion being admitted for settlement, is to be admitted if he holds a current entry clearance granted to him for that purpose. An entry clearance will be refused if the entry clearance officer has reason to believe:



- (a) that the marriage was one entered into primarily to obtain admission to the United Kingdom; or
- (b) that one of the parties no longer has any intention of living permanently with the other as his or her spouse; or
- (c) that the parties to the marriage have not met.

A marriage to which none of (a) to (c) above applies gives a man no claim to enter but an entry clearance may be issued provided that the wife is a citizen of the United Kingdom and Colonies born in the United Kingdom.

51. A passenger who holds an entry clearance issued under the preceding paragraph should, subject to paragraph 13, be admitted for an initial period of up to 12 months provided that leave to enter shall not be refused on grounds of restricted returnability or on medical grounds.

#### Fiancés

52. A man seeking to enter the United Kingdom for marriage to a woman settled here and who intends himself to settle thereafter should not be admitted unless he holds a current entry clearance granted to him for that purpose. An entry clearance will be refused if the entry clearance officer has reason to believe:

- (a) that the primary purpose of the intended marriage is to obtain admission to the United Kingdom; or
- (b) that there is no intention that the parties to the marriage should live together permanently as man and wife; or
- (c) that the parties to the proposed marriage have not met.

Where none of (a) to (c) above applies a man has no claim to admission for the purpose of marriage but an entry clearance may be issued provided

that the woman is a citizen of the United Kingdom and Colonies born in the United Kingdom. An entry clearance should not be issued unless the entry clearance officer is satisfied that adequate maintenance and accommodation will be available for the fiance until the date of his marriage without the need to have recourse to public funds.

53. A man holding an entry clearance issued under the preceding paragraph should, subject to paragraph 13, be admitted for three months and advised to apply to the Home Office once the marriage has taken place for an extension of stay. A prohibition on employment should be imposed.

54. A man seeking limited leave to enter to the United Kingdom for marriage to a woman settled here may be admitted only if the Immigration Officer is satisfied that the marriage will take place within a reasonable time; that the passenger and his wife will leave the United Kingdom shortly after the marriage; and that the requirements of paragraph 17 are met. Where the Immigration Officer is so satisfied, the passenger may be admitted for 3 months, with a prohibition on employment.

#### Fiancées

55. A woman seeking to enter to marry a man settled in the United Kingdom should be admitted if the immigration officer is satisfied that the marriage will take place within a reasonable time and that adequate maintenance and accommodation will be available, without the need to have recourse to public funds, both before and after the marriage. She may be admitted for a period of up to 3 months subject to a condition prohibiting the taking of employment and should be advised to apply to the Home Office for an extension of stay once the marriage has taken place.

### Returning Residents

56. A Commonwealth citizen who satisfies the Immigration Officer that he was settled in the United Kingdom at the coming into force of the Act, and that he has been settled here at any time during the 2 years preceding his return, is to be admitted for settlement. Any other passenger returning to the United Kingdom from overseas (except one who received assistance from public funds towards the cost of leaving this country) is to be admitted for settlement on satisfying the Immigration Officer that he was settled in the United Kingdom when he left and that he has not been away for longer than 2 years.

57. A passenger who has been away from the United Kingdom too long to benefit from the preceding paragraph may nevertheless be admitted if, for example he has lived here for most of his life.

58. A passenger whose stay in the United Kingdom was subject to a time limit and who returns after a temporary absence abroad has no claim to admission as a returning resident. His application to re-enter should be dealt with in the light of all the relevant circumstances. The same time limit and any conditions attached may be reimposed or it may be more appropriate to treat him as a new arrival.

### PART V. NATIONALS OF EEC COUNTRIES

#### Introductory

59. Paragraphs 60-63 apply to nationals of Belgium, Denmark, France, the Federal Republic of Germany, Italy, Luxembourg and the Netherlands and their families and in relation to them override Parts II, III and IV to the extent indicated.

## General

60. When an EEC national is given leave to enter, admission should normally be for a period of 6 months, except in the case of a returning resident or the holder of a valid residence permit. No condition is to be imposed restricting his employment or occupation in the United Kingdom.

## Workers, businessmen and self-employed persons

61. An EEC national who wishes to enter the United Kingdom in order to take or seek employment, set up in business or work as a self-employed person is to be admitted without a work permit or other prior consent.

## Dependants

62. When a person is admitted in accordance with paragraph 61, the members of the family accompanying the person should be given leave to enter for the same period. The family should be regarded as consisting of the person's spouse, their children under 21, their other children and grandchildren if still dependent, and their dependent parents and grandparents.

63. Members of the family (as defined in paragraph 62) of an EEC national who has previously been admitted under paragraph 61 should be given leave to enter in order to join him in the United Kingdom.

## PART VI. ASYLUM

64. A passenger should not be refused leave to enter if the only country to which he can be removed is one to which he is unwilling to go owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion and his removal would be contrary to the provisions of the Convention Relating to the Status of Refugees.

Any case in which it appears to the Immigration Officer as a result of a claim or information given by the passenger that he might fall within the terms of this paragraph is to be referred to the Home Office for decision regardless of any other grounds which may appear to justify refusal of leave to enter.

#### PART VII. REGISTRATION WITH THE POLICE

65. A condition requiring registration with the police should normally be imposed on any foreign national aged 16 or over who is given limited leave to enter:

- (a) for employment for longer than 3 months, unless he is in one of the permit-free categories listed in paragraphs 31(a), 32, 33(a) or 34;
- (b) for longer than 6 months under the following provisions of these Rules:

- paragraph 17 (visitors)
- paragraph 21 (students)
- paragraph 26 ("au pair" arrangements)
- paragraph 35 (businessmen)
- paragraph 38 (persons of independent means)
- paragraph 39 (writers and artists)
- paragraph 50 (husbands);

- (c) under paragraphs 25 or 40 as the wife or child, or under 62 or 63 as a member of the family of a person who is required to register with the police.

66. Such a condition may also be imposed, exceptionally, in any other case where the Immigration Officer considers it necessary in order to ensure that a foreign national complies with the terms of a limited leave to enter.

## PART VIII. REFUSAL OF LEAVE TO ENTER

## General

67. A passenger who does not qualify for admission under the foregoing provisions of these rules is to be refused leave to enter. In addition, the Immigration Officer has power (subject to the restrictions contained in the next paragraph) to refuse leave to enter on any of the grounds set out in paragraphs 70-76 below. Except as provided for in paragraph 64, the fact that a passenger satisfies the formal requirements of the foregoing provisions of these rules is not conclusive in his favour. leave to enter may be refused if, for example, the passenger has not observed the time limit or conditions imposed on any grant of leave to enter or remain; if, whether or not to his knowledge, false representations have been employed or material facts not disclosed, orally or in writing, for the purpose of obtaining an entry clearance; or if a previous leave to enter or remain has been obtained by deception. But a passenger who holds a current entry clearance is not to be refused leave to enter except in the circumstances described in paragraph 13.

68. A passenger who -

- (a) is a Commonwealth citizen who was settled in the United Kingdom at the coming into force of the Act, and qualifies for readmission under paragraph 56, or
- (b) qualifies for admission under paragraph 44 or 46 as the wife or the child under 16 of a Commonwealth citizen who was settled in the United Kingdom at the coming into force of the Act and holds an entry clearance issued for that purpose,

is to be refused leave to enter only on the ground that he or she is currently subject to a deportation order.

69. The power to refuse leave to enter is not to be exercised by an

Immigration Officer acting on his own. The authority of a Chief Immigration Officer or of an Immigration Inspector must always be obtained.

### Medical

70. A passenger who intends to remain in the United Kingdom for more than 6 months should normally be referred to the Medical Inspector for examination. If he produces a medical certificate, he should be advised to hand it to the Medical Inspector. Any passenger who mentions health or medical treatment as a reason for his visit, or who appears not to be in good health or appears to be mentally or physically abnormal, should also be referred to the Medical Inspector; and the Immigration Officer has discretion, which should be exercised sparingly, to refer for examination in any other case.

71. Where the Medical Inspector advises that for medical reasons it is undesirable to admit the passenger the Immigration Officer should refuse leave to enter unless he considers admission warranted by strong compassionate reasons. He may also refuse leave to enter where the passenger declines to submit to a medical examination. And where the Medical Inspector advises that a passenger is suffering from a specified disease or condition which may interfere with his ability to support himself or his dependants, the Immigration Officer should take account of this, in conjunction with other factors, in deciding whether to admit the passenger.

72. Returning residents or the spouses and children under 18 of people settled in the United Kingdom should not be refused leave to enter on medical grounds. But where a person would be refused leave to enter on medical grounds if he were not a returning resident or the spouse or

child of a resident, or in any case where it is decided on compassionate grounds not to exercise the power to refuse leave to enter, or in any other case in which the Medical Inspector so recommends, the Immigration Officer should give the person a notice requiring him to report to the Medical Officer of Environmental Health designated by the Medical Inspector with a view to further examination and any necessary treatment.

73. The entry clearance officer has the same discretion to refer applicants for entry clearance for medical examination as an immigration officer to refer passengers to a Medical Inspector and the same principles will apply when he decides whether or not to issue an entry clearance.

#### Criminal record

74. A passenger, other than the wife or child under 18 of a person settled in the United Kingdom, who has been convicted in any country, including the United Kingdom, of an offence included in the list of extradition crimes contained in the First Schedule to the Extradition Act 1870, as amended, or an offence for which a person is returnable under the Fugitive Offenders Act 1967, is to be refused leave to enter unless the immigration officer considers admission to be justified for strong compassionate reasons.

#### Subject to deportation order

75. Any passenger who is currently subject to a deportation order is to be refused leave to enter. If he wishes to make representations, he should be advised that after his departure it will be open to him to apply for revocation of the order and, where appropriate, that he will have a right of appeal if revocation is refused.

#### Exclusion conducive to the public good

76. Any passenger except the wife and child under 18 of a person settled



in the United Kingdom may be refused leave to enter on the ground that his exclusion is conducive to the public good, where -

(a) the Secretary of State has personally so directed, or

(b) from information available to the immigration officer

it seems right to refuse leave to enter on that ground -

if, for example, in the light of the passenger's character,

conduct or associations it is undesirable to give him

leave to enter.

Country of destination on removal

77. The power to refuse leave to enter should normally be exercised so as to secure the passenger's removal to the country in which he boarded the ship or aircraft that brought him to the United Kingdom. Removal to a different country may, however, be justified by the circumstances of a particular case.

Communication with friends, etc.

78. Before removal a passenger should be given the opportunity to telephone friends or relatives in this country, or his High Commission or Consul, if he wishes to do so.

Right to apply for bail

79. Where a passenger is detained pending a decision whether to admit him he is to be notified, when 7 days have elapsed since his arrival in the United Kingdom, of his right to apply to an adjudicator for bail. To assist him in deciding whether to exercise this right he should be given facilities to communicate with friends, relatives, a legal adviser, the United Kingdom Immigrants Advisory Service or his High Commission or Consul as he may wish.

## PART IX. RIGHTS OF APPEAL

80. Where refusal of leave to enter is confirmed, the passenger should be handed a notice informing him of the decision and of the reasons for refusal. This notice will also state his right of appeal, except in cases of refusal under paragraph 76(a) in which by virtue of section 13(5) of the Act no appeal lies. If he has difficulty in understanding the notice, its meaning should be explained to him.

81. A person who claims to be patrial may appeal immediately against a decision that he or she requires leave to enter the United Kingdom if the claim is based on section 2(1)(a) or (b) of the Act, or if she is a citizen of the United Kingdom and Colonies claiming patriality by marriage to a person to whom section 2(1)(a) or (b) applies, or if he or she holds a certificate of patriality. A person who holds a current entry clearance or who is a person named in a current work permit and who is entitled to appeal against refusal of leave to enter may also appeal before he is removed from the United Kingdom. To assist him in deciding whether to appeal he should be given facilities to communicate with friends, relatives, a legal adviser, the United Kingdom Immigrants Advisory Service or his Consul or High Commission as he may wish. In such a case, if notice of appeal is lodged, the Immigration Officer should provide the adjudicator and the appellant, as soon as possible, with a written summary of the facts of the case and the reasons for the decision. When it is not practicable to supply a written statement, the representative of the Immigration Service at the hearing will outline the case.

82. In all other cases, irrespective of the passenger's national status, it should be explained to him that his right of appeal is exercisable only after he has left the United Kingdom.

85. Where a passenger is admitted but is aggrieved by a time limit or condition imposed, or it is clear that it will leave him dissatisfied, it should be explained that his proper course is to apply to the Home Office for variation of his leave, and that he will have a right of appeal if variation is refused, provided he applies before the time limit on his stay expires.

## SECTION 1.0: CONTROL AFTER ENTRY

The powers conferred by the Act are to be exercised without regard to a person's race, colour or religion.

## PART I. VARIATION OF LEAVE TO ENTER OR REMAIN

## Introductory

84. Under sections 3 and 4 of the Immigration Act 1971 an Immigration Officer, when admitting to the United Kingdom a person subject to control under that Act, may give leave to enter for a limited period and, if he does, may impose conditions restricting employment or occupation in the United Kingdom or 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 Act it is an offence knowingly to remain beyond the time limit or to fail to comply with such a condition or requirement.

85. Under section 3(3) of the Act a limited leave to enter or remain in the United Kingdom may be varied by extending or restricting its duration, by adding, varying or revoking conditions or by removing the time limit (whereupon any conditions attached to the leave cease to apply). The main purpose of this part of the Rules is to set out, in relation to the chief categories concerned, the principles on which leave to enter or remain will, on application, be varied. In the following paragraphs "leave to enter" includes leave to remain.

## Rights of appeal

86. Under section 14 of the Act a person may appeal against any variation of his leave to enter or any refusal to vary it. However, there is no appeal against a variation of leave which reduces its duration, or against a refusal to extend or remove a time limit, if the Secretary of State personally decides that the departure of the person concerned from the United Kingdom would be conducive to the public good as being in the interests of national security or of the relations between the United Kingdom and any other country or for other reasons of a political nature. There is no right of appeal either in respect of a variation made by statutory instrument. Where

- (a) an application for variation of leave to enter is refused, or
- (b) a variation is made otherwise than on the application of the persons 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 or may be so given or sent to a person who has made the application on behalf of another. If notice of appeal is given an explanatory statement summarising the facts of the case on the basis of which the decision was taken, or of the grounds for alleging that the appeal was invalid, will be sent to the independent appellate authorities who will notify the appellant of the arrangements for the appeal to be heard.

#### Stateless persons and refugees

87. Where a person is stateless or a refugee full account is to be taken of the provisions of the Convention Relating to the Status of Refugees (Cmd. 9171). Nothing in these Rules is to be construed as requiring action contrary to the United Kingdom's obligation under this Convention.

#### General considerations

88. The succeeding paragraphs set out the principles to be followed in dealing with applications for variation of leave or to remain, or, in the absence of such an application, in deciding to vary leave. In deciding these matters account is to be taken of all the relevant facts; the fact that the applicant satisfies the formal requirements of these Rules for stay, or further stay, in the proposed capacity is not conclusive in his favour. For example, refusal will be the normal course if the applicant has employed deception in obtaining leave to enter (including the giving of undertakings, express or implied, which he has not honoured, as to the duration and purpose of his stay); if he has not observed the time limit and conditions subject to which he was admitted, or given leave to remain; if in the light of his character, conduct or associations it is undesirable to permit him to remain; if he represents a danger to national security; or if he might not be returnable to another country if allowed to remain for the period for which he wishes to stay. In such circumstances it is not necessary to consider any claim by the person concerned that he satisfies the formal requirements of these Rules. Refusal of an extension of stay will also be justified where an applicant takes an unreasonable time to produce any evidence required under the Rules.

89. A person's leave to enter or remain in the United Kingdom may be curtailed if, for example, he fails to comply with any conditions attached

to the leave or, if given leave to enter or remain to follow a course of study, he fails to attend that course regularly.

90. Except as provided in paragraph 105, people admitted as visitors or students or for other temporary purposes have no claim to remain here for any other purpose. In particular, except as specified in paragraphs 117 and 119, applications to remain are to be refused where the application is to remain for a purpose for which an entry clearance is required. Applications to remain for other purposes (not including employment, which is dealt with in the next paragraph) may be granted, provided that the relevant requirements of these Rules are met, unless it appears that the applicant is attempting to remain permanently.

91. In regard to variation of leave to enter with a view to employment, the general position is that where a person wishes to come to work in the United Kingdom the employer must have obtained a work permit before the person sets out; and people admitted as visitors or students or for other temporary purposes have under these Rules no claim to stay here in employment. Applications for this purpose by people who are subject to a condition prohibiting employment or whose studies were financed by Her Majesty's Government, an international scholarship agency, or by their home government, should be refused without reference to the Department of Employment. In cases where there is no such condition, there is still no claim to remain here in employment but it may be appropriate to refer the case to the Department of Employment. Only if that Department is prepared in the particular case to approve the proposed employment may an appropriate extension of stay be granted; where the circumstances of the case are such as to make reference to the Department inappropriate (for example where any of the factors mentioned in paragraph 88 apply), or where the Department does not approve the proposed employment, an extension should be refused.

#### Crew members

92. A person who has been given leave to enter to join a ship or an aircraft as members of its crew, or a crew member who has been given leave to enter for hospital treatment, repatriation or transfer to another ship or aircraft in the United Kingdom should be granted an extension stay only when this is necessary to fulfil the purpose for which he was given leave to enter, unless he qualifies for an extension of stay in accordance with paragraph 115 or 117.

#### Visitors

93. People admitted as visitors will have satisfied the Immigration Officer that their intention was to come for a limited period. Most of them will have been admitted for a stay of 6 months; but the Immigration Officer may have authorised entry for a shorter or longer period, and will normally have imposed a condition prohibiting employment.

94. Where a visitor wishes to extend his visit, and provided that he has sufficient means to maintain himself and any dependants, without working and without becoming a charge on public funds, for the remainder of his proposed stay and intends to leave at the end of it, an extension should be granted, provided that the duration of the visit would not as a result exceed one year.

95. Where a visitor applies for an extension of stay to undergo or continue private medical treatment he should produce evidence about the arrangements made for consultation or treatment, or the progress made with the treatment, and its likely duration, and evidence that he can meet the cost of the treatment and maintain and accommodate himself and any dependants during his stay without recourse to public funds. If the evidence produced is satisfactory an extension may be granted. But an extension is to be refused if insufficient evidence of these matters is forthcoming or there is reason to believe that the treatment will be at public expense or that the applicant does not intend to leave the United Kingdom at the end of his treatment.

#### Working holidays

96. Young Commonwealth citizens who have come to the United Kingdom on a working holiday will normally have been admitted for 2 years. Young Commonwealth citizens admitted for some other temporary purpose may be granted an extension of stay as working holidaymakers provided that they meet the requirements of paragraph 30 and that their total aggregated stay, including extension as a working holidaymaker and any period spent here as a visitor or student, will not exceed 2 years.

#### Students

97. A person who satisfied the Immigration Officer that he had been accepted here for a full-time course as a student, could maintain and accommodate himself during his stay, and would leave when his studies were completed, is likely to have been admitted for an appropriate period, depending on the length of his course, with a condition restricting his freedom to take employment. If the Immigration Officer was not so satisfied, the student may have been given leave to enter for a short period, with a prohibition on employment, and advised to apply to the Home Office for a variation of his leave when he had completed his arrangements for study.

98. A student or would-be student who applies for variation of his leave for the purpose of study may, subject to paragraph 99, be granted an extension for an appropriate period if he produces evidence, which is verified on a check being made, that he is enrolled for a full-time course of daytime study which meets the requirements for admission as a student; that he has given and is giving regular attendance; and that he is able to maintain and accommodate himself and any dependants without recourse to public funds. An extension should be refused if there is reason to believe that the student does not intend to leave at the end of his studies.

99. Extensions of stay should not be granted to students who appear to be moving from one course to another without any intention of bringing their studies to a close. An extension of stay should normally be refused if it would lead to more than four years being spent on short courses. For the purpose of this paragraph a short course is one of less than two years but includes a longer course where this is broken off before being completed.

100. The stay of people whose studies are financed by Her Majesty's Government, an international scholarship agency, or by their home government, should be limited to the duration of their award. They will not thereafter normally be eligible to remain for further studies.

101. Doctors, dentists and nurses admitted as postgraduate students will be permitted to take full-time employment which is associated with their studies. Other bona fide students may, with the consent of the Department of Employment, work in their <sup>free time or</sup> vacations. Any dependants should be prohibited from taking employment. If the Immigration Officer imposed a condition prohibiting employment on someone who later establishes satisfactorily that he is engaged on a full-time course of studies, the condition may be varied to one permitting him to take approved employment. Except as mentioned in this paragraph, employment is inconsistent with student status.

#### Training and work experience

102. A person holding a permit from the Department of Employment for training on the job will have been admitted for the period specified in the permit up to a maximum of 12 months and subject to a condition restricting him to approved employment. When a trainee who is subject to such a condition applies for an extension of stay in order to continue or complete the training for which he was admitted, the application may be granted if the Department of Employment confirm that his training is continuing and that he is making satisfactory progress.



103. A person holding a permit from the Department of Employment for short-term employment not leading to additional qualifications or skills but enabling him to widen his occupational experience and in some cases also to improve his knowledge of English will have been admitted for the period specified in the permit, up to a maximum of 12 months and subject to a condition restricting him to approved employment. An application for extension of stay to continue the engagement for a further limited period will be granted only if, in exceptional circumstances, the Department of Employment approve the proposed extension.

104. Transfers from training or work experience to ordinary employment will not be allowed nor does training or employment approved under these paragraphs constitute approved employment for purposes of settlement (see paragraph 119).

105. Visitors and students may be granted extensions to stay as trainees if the Department of Employment consider the offer of training to be satisfactory and the intention to leave the United Kingdom on completion of training is not in doubt; otherwise an extension should be refused.

#### "Au pair"

106. Where the Immigration Officer was satisfied that an "au pair" arrangement had been made, the girl will normally have been admitted for up to 12 months, with a condition prohibiting her employment. Where she subsequently applies for an extension of stay in the "au pair" capacity, an extension to bring the aggregate of her periods of stay up to 2 years in an "au pair" capacity may be granted if the "au pair" arrangement is satisfactory. When an extension is granted the applicant should be informed that 2 years is the maximum period permitted. An application from a girl admitted on some other temporary basis for an extension of stay in an "au pair" capacity may be granted if she could fulfil the requirements of paragraph 26. Such an extension should be subject to a prohibition on her taking employment.

#### Work permit holders

107. A person coming here to work, and having a work permit issued by the Department of Employment, will normally have been admitted for the period specified in the permit up to a maximum of 12 months. At the end of that period an extension of stay may be granted if the applicant is still engaged in, and the employer confirms that he wishes to continue to employ him in, the employment specified in

the permit, or other employment approved by the Department of Employment. Where a permit was issued for a period of less than 12 months, an application for an extension of stay in the employment for which the permit was issued should be referred to the Department of Employment. Only if that Department is prepared in the particular case to approve the continued employment may an appropriate extension of stay be granted. In other cases, unless there is any exceptional reason to the contrary, this extension should be for a further 3 years. A corresponding extension should be granted to the applicant's wife and children, where appropriate and where the maintenance and accommodation requirements of paragraph 42 continue to be met. Cases where the applicant is no longer in approved employment should be considered in the light of all the relevant circumstances.

#### Permit free categories

108. A person admitted in accordance with paragraphs 31-34, with the exception of crew members - see paragraph 92, may be granted extensions of stay if he is still engaged in the category of employment for which he was admitted and the employer confirms that he wishes to continue to employ him. Unless there are special reasons to the contrary the extension should be for 3 years except in the case of a teacher or language assistant under an exchange scheme, in whose case the maximum period of stay should be two years, or a seasonal worker at an agricultural camp, in whose case an extension in that capacity is not to be granted beyond 30th November in any year. A corresponding extension should be granted to an applicant's wife and children where appropriate and where the support and accommodation requirements of paragraph 42 continue to be met. A person given leave to enter or remain in some other capacity has no claim to remain for permit-free employment and applications to do so should be refused.

#### Business and self-employed persons

109. People given limited leave to enter or remain in some other capacity have no claim to establish themselves here for the purpose of setting up in business whether on their own account or as partners in a new or existing business, or to be self-employed and their applications for extension of stay or leave to remain for these purposes are to be refused.

110. In considering applications for extension of stay from people admitted with entry clearances for the purpose of setting up in business or self-employment, the following factors are to be taken into account. There must be evidence that the applicant is devoting money of his own to the business proportional to his interest in it and that he is able to bear his share of any liability the business may incur. The applicant's part in the business

must not amount to disguised employment; and it must be clear that he does not and will not have to supplement his business activities by employment of any kind or by recourse to public funds. In no case should his investment in the business be less than £100,000. Evidence should be sought that the applicant is occupied full-time in the running of the business and that there is a genuine need for his services and investment. There must be evidence that his share of the profits are sufficient to maintain and accommodate him and any dependants without recourse to public funds. Audited accounts are to be produced to establish the precise financial position. There must also be evidence that his services and investment have created paid full-time employment in the business for persons already settled here. For the purposes of this paragraph business includes self-employment (other than as a writer or artist

11. An application for an extension of stay in order to remain in business or self-employment here should not be granted unless the requirements of paragraph 10 are met, in which case the applicant's stay may be extended for a period up to 12 months on a condition restricting his freedom to take employment. Further extensions should only be granted if these requirements continue to be met

Writers and artists

12. A person who was admitted as the holder of an entry clearance issued to him as a writer or an artist may be granted extensions of stay not exceeding 12 months and should be prohibited from taking employment if he can produce satisfactory evidence that he is maintaining and accommodating himself and his dependants from the proceeds of his self-employment as a writer or artist without recourse to public funds and without having resorted to employment for which a work permit is necessary. People given limited leave to enter or remain in some other capacity have no claim to remain as writers or artists and their applications for extension of stay or leave to remain for these purposes are to be refused.

Persons of independent means

13. A person who was admitted as the holder of an entry clearance issued to him as a person of independent means should be asked to provide evidence that he continues to meet the requirements of paragraph 38. If the evidence is satisfactory, the applicant may be granted an extension of stay, not exceeding 12 months, and prohibited from taking employment. People given limited leave to enter or remain in some other capacity have no claim to remain as persons of independent means and their applications for extension of stay or leave to remain in this capacity are to be refused.

Marriage

14. A woman who satisfied the Immigration Officer that she was coming to the United Kingdom for early marriage to a man settled here as defined in

paragraph 1 will normally have been admitted for 3 months subject to a condition prohibiting her from taking employment. If the marriage takes place within the 3 months period, she should be given indefinite leave to remain. If it does not, an extension of stay is to be granted only if good cause is shown for the delay and there is satisfactory evidence that the marriage will take place at an early date.

115. A woman admitted in a temporary capacity who marries a man settled here should on application be given indefinite leave to remain. If she marries a person who has only limited leave to enter, her leave should, if necessary, be varied by extending its duration so that it coincides with his.

116. Fiances arriving with entry clearances for the purpose of marriage to a woman settled here are normally admitted for 3 months. Subject to paragraph 117, if the marriage takes place within that period the man's stay should be extended for a further period not exceeding 12 months. Where an extension is granted any prohibition on the taking of employment should be removed and, subject to paragraph 117, the time limit should be removed at the end of that period. If the marriage does not take place within the initial 3 months an extension of stay is to be granted only if good cause is shown for the delay and there is satisfactory evidence that the marriage will take place at an early date thereafter. Subject to paragraph 117, a man who was admitted for a limited period as the husband of a woman settled here may have the time limit removed at the end of that period.

117. A man admitted in a temporary capacity who marries a woman settled here has no claim to remain and an extension of stay or leave to remain will not be granted, nor will any time limit on stay be removed if there is reason to believe:

- (a) that the marriage was entered into primarily to obtain settlement here; or
- (b) that the parties to the marriage have not met; or
- (c) that the husband has remained in breach of the immigration laws before the marriage; or
- (d) that the marriage has taken place after a decision has been made to deport him or he has been recommended for deportation or been given notice under section 6(2) of the Immigration Act 1971; or
- (e) ~~that~~ <sup>the</sup> marriage has been terminated; or
- (f) ~~that~~ <sup>one</sup> of the parties no longer has any intention of living permanently with the other as his or her spouse.

In cases to which none of (a) - (f) applies, consideration may be given to allowing the husband to remain, for 12 months in the first instance, provided that the wife is a citizen of the United Kingdom and Colonies born in the United Kingdom. At the end of the 12 months period the time limit on the husband's stay may, subject to (a) to (f) above, be removed.

holders of restricted travel documents and passports

118. The holder of a passport or travel document which is endorsed with a restriction on the period for which he may remain outside his country of normal residence is not to have his stay in the United Kingdom extended beyond the period of his authorised absence. And if a person's permission to enter another country is limited his stay in the United Kingdom should not be extended to come nearer than 2 months to the expiry of that permission. This paragraph does not apply to a person who qualifies for removal of the time limit on his stay.

Settlement

119. This paragraph applies to persons who were admitted or allowed to remain for one of the following purposes:

- a. approved employment;
- b. permit-free employment as described in paragraphs 31, 32 and 33(b) and (e)
- c. to set up in business
- d. in self-employment.
- e. as a writer or artist
- f. as a person of independent means

Such a person may have the time limit on his stay removed if he has remained here in that capacity for 4 years. Applications for removal of the time limit are to be considered in the light of all the relevant circumstances including those set out in paragraph 83 and, in the case of a person in employment, whether the employer wishes to continue to employ him. Applications for variation of leave to enter or remain with a view to settlement may also be received from persons given leave to enter or remain otherwise than for purposes set out above, but permission in such cases has to be limited to close relatives of persons who are settled in the UK. Particulars are set out in paragraphs 42-49.

Asylum

120. A person may apply for asylum in the United Kingdom on the ground that if he were required to leave, he would have to go to a country to which he is unwilling to go owing to well-founded fear of being

persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion. Any such claim is to be carefully considered in the light of all the relevant circumstances.

#### Right of abode

21. A Commonwealth citizen who has been given limited leave to enter may later claim to have the right of abode. If such a person establishes a claim to patriality for example by showing that one of his parents was born in the United Kingdom, the limit on his stay should be removed. If the application is refused, the person should be notified of the right of appeal against refusal of a certificate of patriality.

#### Registration with the police

22. A foreign national given limited leave to enter may be subject to a condition requiring him to register with the police. When a foreign national on whom this condition was not imposed on arrival is granted an extension of stay which has the effect of allowing him to remain in the United Kingdom for employment for longer than 3 months or otherwise for longer than 6 months, reckoned from the date of his arrival, a condition requiring registration should be imposed unless he is under the age of 16, or the extension of stay is for employment of a kind mentioned in paragraphs 31(a), 32, 33(a) or 34.

23. In response to applications for removal of the condition requiring registration it should be explained that this condition lapses when the time limit on the applicant's stay is removed, but will not be revoked before then.

#### Procedure

24. When leave to enter is varied an entry is to be made in the applicant's passport or travel document (and in his registration certificate where appropriate) and the decision may be made known in writing in some other appropriate way.

## NATIONALS OF EEC COUNTRIES

## Introductory

125. Paragraphs 126-131 apply only to nationals of Belgium, Denmark, France, Germany, Italy, Luxembourg and the Netherlands and their families and, in relation to them, override the preceding paragraphs of Part X to the extent indicated. Otherwise Parts X and XI apply to nationals of those countries as they do to the nationals of other countries.

126. Where the following paragraphs so provide, the power to vary leave to enter or leave to remain will normally be exercised by the issue to the person concerned of a residence permit, valid for the duration of his leave as varied, or by the renewal or curtailment of a permit already issued.

## Workers, businessmen and self-employed persons

127. If a person admitted for 6 months enters employment he should be issued with a residence permit. The residence permit should be limited to the duration of the employment if this is expected to be less than 12 months. Otherwise the permit should normally be for 5 years. But a permit should not normally be granted if the person has not found employment at the end of the 6 months' period for which he was admitted, nor if during that time he has become a charge on public funds.

128. If a person admitted for 6 months produces evidence by the end of that period that he has established himself in business or in a self-employed occupation he should be issued with a residence permit normally valid for 5 years. Otherwise, depending on the circumstances, he may be refused a residence permit, or he may be granted a short extension of his stay in order to complete arrangements for establishing himself in business or a self-employed occupation.

129. The duration of a residence permit or of leave to enter or remain should be curtailed if it is evident that the holder is living on public funds although capable of maintaining himself.

130. A person issued with a residence permit for 5 years should have the time limit on his stay removed after he has remained here for 4 years in employment, in business or as a self-employed person, unless, in the light of all the relevant circumstances of the case, including those set out in paragraphs 88 and 129 there are grounds for not removing the time limit. If the time limit is not then

removed, the case should be reviewed on the expiry of the residence permit. In the case of a person issued with a residence permit for employment, a renewal limited to 12 months may be appropriate if he has been unemployed for more than 12 consecutive months during the previous 5 years.

#### Families

131. Members of the family of a person to whom paragraphs 127-130 apply should be granted extensions of stay or issued with residence permits in the same terms as those relating to that person at the time in question. The family should be regarded as consisting of the person's spouse, their children under 21, their other dependent children, and their dependent parents and grandparents.

#### Settlement

132. The time limit on the stay of the following categories of persons should be removed:

- (a) a person who has been continuously resident in the United Kingdom for at least 3 years, has been in employment in the United Kingdom or any other member country of the European Economic Community for the preceding 12 months, and has reached the age of entitlement to a State retirement pension;
- (b) a person who has ceased to be employed owing to a permanent incapacity for work arising out of an accident at work or an occupational disease entitling him to a State disability pension;
- (c) a person who has been continuously resident in the United Kingdom for more than 2 years, and who has ceased to be employed owing to a permanent incapacity for work;
- (d) any member of the family (see paragraph 131) of a person in category (a), (b) or (c) above;
- (e) any member of the family of a person who, after residing continuously in the United Kingdom for at least 2 years, dies as the result of an accident at work or an occupational disease.



PART II. DEPORTATION

Habit of the power to deport

133. Under sections 3(5)-(6) and 5(1)-(4) of the Immigration Act 1971 the Secretary of State may, if he thinks fit, make a deportation order requiring a person who is not patrial to leave and to remain thereafter out of the United Kingdom:

- (i) if the person has failed to comply with a condition attached to his leave to enter or remains beyond the authorised time;
- (ii) if the Secretary of State deems the person's deportation to be conducive to the public good;
- (iii) if the person is the wife or the child under 18 of a person ordered to be deported;
- (iv) if the person, after reaching the age of 17, is convicted of an offence for which he is punishable with imprisonment and the court recommends deportation.

134. The power to deport applies generally to all people subject to control under the Act, but, under section 8(3), it does not apply to any member of a mission (within the meaning of the Diplomatic Privileges Act 1964), any person who is a member of the family and forms part of the household of such a member, and any other person entitled to the like immunity from jurisdiction as is conferred by the 1964 Act on a diplomatic agent. Under section 7 a citizen of the Irish Republic or Commonwealth citizen who has been ordinarily resident in the United Kingdom continuously since the coming into force of the Act is not liable to be deported on the ground that his deportation is conducive to the public good; and if he was ordinarily resident here on the coming into force of the Act and has been so resident for the preceding 5 years he is not liable to deportation on any ground.

Rights of appeal

135. Against the making of a deportation order on the recommendation of a court there is no appeal within the immigration appeal system; but there is a right of appeal to a higher court against the recommendation itself. An order may not be made while it is still open to the person to appeal against the relevant conviction,

sentence or recommendation, or while an appeal is pending. Nor is there a right of appeal (except as to the country of destination - see paragraph 137) where a deportation order is made on the ground that the Secretary of State deems the person's deportation to be conducive to the public good as being in the interests of national security or of the relations between the United Kingdom and any other country or for other reasons of a political nature. But such cases are subject to a non-statutory advisory procedure and the person proposed to be deported on that ground will be informed, so far as possible, of the nature of the allegations against him and will be given the opportunity to appear before the advisers, and to make representations to them, before they tender advice to the Secretary of State.

136. Where it is proposed to deport a person because it is deemed that his expulsion will be conducive to the public good on other than security or political grounds there is a right of appeal, under section 15 of the Act, direct to the Immigration Appeal Tribunal. An appeal against a decision to make a deportation order against a person as belonging to the family of another person also lies direct to the Tribunal. Where, however, the appeal is against a decision to make a deportation order for breach of condition or for remaining beyond the authorised time it will be heard by an adjudicator in the first instance - unless there is pending an appeal against a decision to make an order against a person as belonging to the family of the person alleged to have broken a condition or remained beyond the authorised time, in which case both appeals will be heard by the Tribunal. An order may not be made while it is still open to the person to appeal against the Secretary of State's decision, or while an appeal is pending.

137. In all cases of deportation the person in respect of whom the order has been or is to be made has a right of appeal against the removal directions on the ground that he ought to be removed (if at all) to a country or territory, specified by him, other than the one named in the directions.

Refugees

138. Where a person is a refugee full account is to be taken of the provisions of the Convention Relating to the Status of Refugees (Cmd. 9171). Nothing in these Rules is to be construed as requiring action contrary to the United Kingdom's obligations under this Convention.

Consideration of the merits

139. In considering whether deportation is the right course on the merits, the public interest will be balanced against any compassionate circumstances of the case. While each case will be considered in the light of the particular circumstances, the aim is an exercise of the power of deportation that is consistent and fair as between one person and another, although one case will rarely be identical with another in all material respects.

140. Most of the cases in which deportation may be the appropriate course fall into 2 main categories. There are, first, those cases which come to notice following a conviction for a criminal offence and in which it is fitting that, because of his conduct, a person should no longer be allowed to remain here; and, second, those cases in which the person is here, or is remaining here, in defiance of the immigration control.

#### Deportation following a conviction

141. In considering whether to give effect to a recommendation for deportation made by a court on conviction the Secretary of State will take into account every relevant factor known to him, including:-

- age
- length of residence in the United Kingdom
- personal history, including character, conduct and employment record
- domestic circumstances
- the nature of the offence of which the person was convicted
- previous criminal record
- compassionate circumstances
- any representations received on the person's behalf.

In certain circumstances, particularly in the case of young or first offenders, supervised departure, with a prohibition on re-entry, may be arranged as an alternative to the deportation recommended by the court provided that the person is willing to leave the country.

142. Where the court has not recommended deportation there may nevertheless be grounds, in the light of all the relevant information and subject to the right of appeal, for deportation, for curtailment of stay or a refusal to extend stay followed, after departure, by a prohibition on re-entry.

#### Deportation for breach of conditions or unauthorised stay

143. Deportation will normally be the proper course where the person has failed to comply with or has contravened a condition or has remained without authorisation. Full account is to be taken of all the relevant circumstances known to the Secretary of State, including those listed in paragraph 141 before a decision is reached.

## Deportation on conducive grounds

144. The Secretary of State has the power to deport a person if he deems it conducive to the public good. General rules about the circumstances in which deportation is justified on these grounds cannot be laid down, and each case will be considered carefully in the light of the relevant circumstances known to the Secretary of State including those listed in paragraph 141.

## Deportation of members of families

145. There is power to make a deportation order against the wife or children under 18 of a person ordered to be deported on any of the grounds mentioned in paragraphs 141-144 unless more than 8 weeks have elapsed since that person left the country following the making of an order against him. Where the Secretary of State decides that it would be appropriate to deport a member of a family as such the decision, and the right of appeal, will be notified and it will at the same time be explained that it is open to the member of the family to leave the country voluntarily if he does not wish to appeal or if he appeals and his appeal is dismissed.

146. In considering whether to require a wife and children to leave with the head of the family the Secretary of State will take account of all relevant factors known to him including -

- length of residence in the United Kingdom;
- any ties which the wife or children have with the United Kingdom otherwise than as dependants of the principal deportee;
- the ability of the wife to maintain herself and the 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;
- any compassionate or other special circumstances;
- any representations received from or on behalf of the wife and children.

147. Where the wife has qualified for settlement in the United Kingdom in her own right, for example following four years in approved employment, she has a valid claim to remain notwithstanding the expulsion of her husband and her deportation will not normally be contemplated. Where the wife has been living apart from the principal deportee it will not normally be right to include her, or any children living with her, in the deportation order.

148. Children cease to be members of the family, as defined in the Act, at 18, and their deportation will not normally be contemplated if they have spent some years in the United Kingdom and are near that age. Nor will deportation normally be appropriate if the child left the family home on taking employment and has established himself on an independent basis, or if he married before deportation came into prospect. In the case of children of school age it will be right to take into account, on the one hand, the disruptive effect of removal on their education and, on the other, whether plans for their care and maintenance in this country if one or both parents were deported are realistic and likely to be effective.

149. In some cases it may be relevant to take into account the possibility of the eventual return of members of the family to the United Kingdom after deportation. When a child reaches 18 he will cease to be subject to the deportation order and it will be open to him to qualify for re-admission under the Immigration Rules. The wife would cease to be subject to the order if the marriage came to an end, and could similarly qualify for re-admission; but her return would otherwise be dependent on revocation of the order made against her or her husband.

#### Asylum

150. In accordance with the provisions of the Convention Relating to the Status of Refugees (Cmd.9171), a deportation order will not be made against a person if the only country to which he can be removed is one to which he is unwilling to go owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular group or political opinion.

## Procedure

151 When a decision to make a deportation order has been taken (otherwise than on the recommendation of a court) a notice will be given to the person concerned, in accordance with the Immigration Appeals (Notices) Regulations 1972, informing him of the decision and of his right of appeal or facility to make representations in the case of the security and political cases subject to the advisory procedure. There is power for the Secretary of State to make a detention order, or an order restricting a person as to residence and requiring him to report to the police, pending any appeal. Where a person is detained pending an appeal, he may apply to an adjudicator for release on bail. If a notice of appeal is given, a summary of the facts of the case on the basis of which the decision was taken, or of the grounds for alleging that the appeal was invalid, will be sent to the appellate authorities who will notify the appellant of the arrangements for the appeal to be heard.

## Submission of deportation order for signature

152 If no appeal is lodged within the prescribed time limit, or if the appeal is dismissed, the order for deportation will be submitted to the Secretary of State for his signature. The submission will include a summary of the facts of the case, written confirmation (where appropriate) that the appellate authorities have dismissed the appeal and a note of any other relevant information, whether or not it was available to the courts or the appellate authorities. In a case of deportation on security or political grounds the opinions of the advisers (see paragraph 135) will be submitted to the Secretary of State for his consideration.

## Returned deportees

153. Where a person returns to this country notwithstanding that a deportation order is in force against him, he may lawfully be deported under the original order and it will normally be right to deport him. But every such case is to be considered in the light of all the relevant circumstances before the intention to enforce the order is notified to the person. He has a right of appeal against removal but solely on the ground that on the facts of the case there is in law no power to remove him from the United Kingdom.

### Arrangements for removal

154. Provision is made in the Act for the removal from the United Kingdom of a person against whom a deportation order has been made. The power should be exercised so as to secure the person's return to the country of which he is a national, or which has most recently provided him with a travel document, unless he can show that another country will receive him notwithstanding his deportation from the United Kingdom; but, in considering any departure from the normal arrangements, regard should be had to the public interest generally, and to any additional expense that may fall on public funds. The person is to be notified of his right to appeal against the removal directions on the ground that he ought to be removed (if at all) not to the country named in the directions but to a different country or territory specified by him.

### Revocation of deportation orders

155. Revocation of a deportation order does not entitle the person concerned to re-enter the United Kingdom; it renders him eligible to qualify for admission under the Immigration Rules. Application for revocation of the order may be made to the entry clearance officer or direct to the Home Office. Where the application for revocation is refused there is a right of appeal, in the first instance to an adjudicator unless the order was made against a person as belonging to the family of another person, in which case it lies to the Tribunal. But no appeal lies where the Secretary of State personally decides that continued exclusion from the United Kingdom is conducive to the public good, nor so long as the person is in the United Kingdom. Where an appeal does lie the right of appeal will be notified at the same time as the decision to refuse to revoke the order.

156. Applications for the revocation of a deportation order will be carefully considered in the light of the grounds on which the order was made and of the case made in support of the application. The interests of the community, including the maintenance of an effective immigration control, are to be balanced against the interests of the applicant, including any circumstances of a compassionate nature. In the case of an applicant with a serious criminal record continued exclusion, for a long term of years, will normally be the proper course. In other cases revocation of the order will not normally be authorised unless the situation has

been materially altered either by a change of circumstances since the order was made or by fresh information coming to light which was not before the court that made the recommendation or the appellate authorities or the Secretary of State. The passage of time since the person was deported may also, in itself, amount to such a change of circumstances as to warrant revocation of the order. Since so much depends on other relevant circumstances, it is not practicable to specify periods as appropriate in relation to particular grounds of deportation. All applications for revocation will be carefully considered when made but save in the most exceptional circumstances the Secretary of State will not revoke a deportation order which has been in force for less than 3 years.



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## APPENDIX

## NATIONALS OF FOREIGN COUNTRIES WHO NEED VISAS FOR THE UNITED KINGDOM

Europe

Nationals of Albania, Bulgaria, Czechoslovakia, German Democratic Republic, Hungary, Poland, Romania, USSR.

Asia

Nationals of Pakistan who seek admission to the United Kingdom in accordance with paragraphs 31, 32, 35, 38, 39, 40 and 42 - 53, of this statement and nationals of all other countries except Bahrain, Iran, Israel, Japan, Kuwait, Maldives Islands, Republic of Korea, Qatar, Turkey, and United Arab Emirates.

Africa

Nationals of all countries except Algeria, Ivory Coast, Morocco, Niger, Tunisia and the Republic of South Africa.

America

Nationals of Cuba.

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## ANNEX

### APPLICATION OF MARRIAGE RESTRICTIONS TO WOMEN

1. There are certain provisions in the immigration and nationality laws which would make an attempt to restrict the entry of wives ineffective in a very large proportion of cases. Women Commonwealth citizens marrying citizens of the United Kingdom and Colonies with the right of abode become patrial (i.e. have the right of abode in the United Kingdom) at once and foreign women in the same position have a right to register as citizens, whereupon they too become patrial. Added to this is the protection accorded by section 1(5) of the Immigration Act 1971 to the wives of any Commonwealth citizen settled here before 1 January 1973: they must be able to enter on the same basis as before.
2. There is also the point that we have endorsed the policy of successive Governments in committing ourselves to the reuniting of families by allowing wives and children in to join heads of household settled here. To attempt to apply new restrictions to wives now would, apart from being largely ineffective, lead to accusations of broken faith and the near certainty of an adverse decision under the European Convention on Human Rights.
3. These objections do not apply with such force to fiancées except to the extent that a great number of fiancées could put themselves in the same position as wives by persuading their prospective husbands to travel abroad and marry them. Those that did not do this, or whose prospective husbands were not our citizens, could be greatly inconvenienced by simply being required to obtain an entry clearance. There are certainly some arguments in favour of requiring fiancées to have entry clearance, but there is the substantial objection that this would add to the work of our posts overseas. And the motives behind the move could be attributed by our critics to a desire to delay, by bureaucratic sleight of hand, the entry of those entitled to come here. Although there are cases of fiancées who take advantage of the present system (by, for example, divorcing their U.K. based husband and then bringing in someone else) no figures are kept and we have little evidence at present that the move is necessary to curb a widespread abuse.
4. There is one major objection in logic to equality in restricting entry of the sexes. If people are to marry they ought to be able to live somewhere and, if we are to have any restriction at all, the natural rule is that a married couple should live in the husband's country of origin. Rules which also forbade a husband settled here to bring in his wife might have the effect, if the wife's

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country similarly forbade the entry of foreign husbands, of depriving the couple of any chance of living anywhere.

5. All this is not to say that the situation as regards the entry of fiancées is necessarily satisfactory. Quite large numbers enter annually and there seems a case for considering very carefully whether some further restrictions should be applied. There is also a problem about polygamous marriages. But the sensible course is to wait until the nationality law has been changed before making changes in this field.

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