

* Since working this, I have heard that the Home Secretary cannot attend Monday's meeting. We should have to find an alternative.

250 1



Prime Minister:

The Home Secretary proposes three substantial concessions on safeguards against abuse through marriages of convenience. Do you agree to his proposals? If you wish to discuss them with the Home Secretary, the regular Monday meeting might be a convenient forum.

Yes

TF 19/11

PRIME MINISTER

IMMIGRATION RULES: HUSBANDS AND FIANCES

Following the debate on 11th November, when 50 of our party abstained on a motion to take note of the draft of new immigration rules, I have been considering what changes, if any, in those rules to suggest.

New rules have to be made, to apply to decisions taken on or after 1st January next year when the British Nationality Act 1981 will come into force. It has been known for a considerable time that the Act would be brought into force on that date and to delay its commencement now is not acceptable. New rules have to be made at the same time to avoid complete confusion in the operation of the immigration control. To allow time for orderly implementation the rules need to be laid no later than 7th December.

I remain convinced that the only sensible course in the light of the Nationality Act is to make the changes we propose in the position of husbands and fiances. If we were to revert to a policy of, in effect, preserving the present rules this would be opposed by others in our party who supported the Early Day Motion last Session. I expect this afternoon's debate in the Lords to show that there is a substantial body of opinion there which would be opposed to rules which discriminated between two groups of British citizen women. There is therefore,

? Can we not delay the final rule until after the next election? We discussed this.

I believe, a real risk that rules on these lines would not command a majority in the Lords nor even in the Commons.

There was a good deal of scepticism expressed in the Commons debate and in the Press about the effectiveness of the present tests against marriages of convenience. I believe this scepticism is misplaced. Information available from posts in the sub-continent shows that in the 12 months ending 30th September 560 fiances were refused entry clearances and that a significant proportion of these men, particularly in India, were refused because the parties had not met and thus one of the requirements of the present rules was not satisfied. In this country we are refusing leave to remain to about 150 men a year because they do not satisfy one of the marriage of convenience tests in the rules. Moreover, these tests must have a significant deterrent effect.

I believe, however, that the rules against marriages of convenience could and should be strengthened and that such strengthening would go a long way to meet the views of a good number of those who abstained on 11th November. I have three changes in mind. The first and most important would be to extend the probationary period before which a husband can obtain settlement from one year to two. At the end of each year he would have to show that the marriage was still subsisting. The change would mean extra work for the police and for immigration officers

and other Home Office staff, but it would be a visible stiffening of the rules.

Second, I propose a change in the rules governing deportation to make clear that deportation would normally be the appropriate course where enquiries found that the marriage had ended or the parties were living apart irrespective of the reasons which had led to the breakdown in the marriage.

The third change would put the onus on an applicant to show that the tests in the rules relating to marriages of convenience were satisfied. At present the onus is on the entry clearance officer or on Home Office officials and the change would strengthen our hand in considering these cases. Annex A to this minute shows the changes in the text of the rules that I have in mind.

In addition I also propose a change of presentation, though not of substance. At present the rules governing the admission of fiance(e)s are contained in Part IV of the rules under the heading of "Passengers coming for settlement". I propose that they should in future appear in Part III alongside the rules governing other categories of people, e.g. work permit holders, who are admitted for a specific period though they can, if they satisfy the appropriate tests, be granted indefinite leave to remain.

I believe these changes would tighten our controls on marriages of convenience and will be seen to represent

a significant strengthening of the rules. I ought, however, to warn colleagues that the changes, and in particular the extension of the probationary period of two years for husbands, will make life more difficult for us in the context of present and prospective cases brought at Strasbourg under the European Convention on Human Rights.

There are no proposals in this area which will command universal support within the party, but I believe the best way forward is for the Government to stand firm on the basic principles of the rules we have already presented to Parliament with the strengthening of the provisions against abuse described in this minute. I hope that you and our colleagues will agree that we should do so.

Finally, the Government's Reply to the Fifth Report of the Home Affairs Committee on immigration from the Indian Sub-Continent, which was the subject of my minute of 30th September to Francis Pym, should help the passage of the new rules in two ways: its clear rejection of the Committee's major proposal to increase the number of United Kingdom passport holders coming here from India, and its general support for the Committee's view that immigration from the sub-continent is declining. I have therefore decided to publish the White Paper setting out the Reply on 25th November, in good time before the laying of the Statement of Changes in the rules.

To take account of the current situation, I have made two changes in the draft of the White Paper that

I circulated with my earlier minute of 30th September to the Foreign and Commonwealth Secretary. The major change is that I have decided merely to take note of, rather than accept, the recommendation that a register of dependants should not be established. The detailed changes are in Annex B.

hollw

19. 11. 82

I am sending a copy of this minute to the Chief Whip who will no doubt wish to make urgent soundings within the party. I am also sending copies to the other members of H Committee, the Foreign and Commonwealth Secretary, the Attorney General and Sir Robert Armstrong.

REVISED RULES (CHANGES FROM TEXT CONTAINED IN WHITE PAPER ARE UNDERLINED)

Paragraph 50: 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 unless the entry clearance officer is satisfied:

- a) that the marriage was not entered into primarily to obtain admission to the United Kingdom; and
- b) that each of the parties has the intention of living permanently with the other as his or her spouse; and
- c) that the parties to the marriage have met.

Where the entry clearance officer is satisfied that all the conditions at (a) to (c) above apply, an entry clearance will be issued provided that the wife is a British citizen.

Paragraph 52: Fiances

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 unless the entry clearance officer is satisfied:

- a) that it is not the primary purpose of the intended marriage to obtain admission to the United Kingdom; and
- b) that there is an intention that the parties to the marriage should live together permanently as man and wife; and
- c) that the parties to the proposed marriage have met.

Where the entry clearance officer is satisfied that all the conditions at (a) to (c) above apply, an entry clearance will, subject to the maintenance and accommodation requirements of this paragraph, be issued provided the woman is a British citizen. 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.

Paragraph 126: Marriage

126. Where a man admitted in a temporary capacity marries a woman settled here, an extension of stay or leave to remain will not be granted, nor will any time limit on stay be removed unless the Secretary of State is satisfied:

- a) that the marriage was not entered into primarily to obtain settlement here; and
- b) that the parties to the marriage have met; and
- c) that the husband has not remained in breach of the immigration laws before the marriage; and
- d) that the marriage has not 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; and
- e) that the marriage has not been terminated; and
- f) that each of the parties has the intention of living permanently with the other as his or her spouse.

Where the Secretary of State is satisfied that all of the conditions at (a) to (f) above apply the husband will be allowed to remain, for 12 months in the first instance, provided that the wife is a British citizen. At the end of the 12 months' period a further extension of leave for 12 months will be granted if the Secretary of State is satisfied that all the conditions at (a) to (f) still apply. At the end of the 2 year period the time limit on the husband's stay may, subject to (a) to (f) above, be removed.

Paragraph 158: Deportation for breach of conditions or unauthorised stay

158. 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 156, before a decision is reached. Where however a man does not qualify for leave under paragraph 126 because the condition in (e) or (f) of that paragraph is not met, deportation will normally be the proper course irrespective of the reasons which led to the termination of the marriage or to one of the parties ceasing to intend to live with the other, and irrespective of the man's length of residence in the United Kingdom as a husband or fiance.

REPLY TO THE HOME AFFAIRS COMMITTEE:
AMENDMENTS

White Paper, paragraph 2: delete final sentence;

Annex, Recommendation (1), line 12: delete "accepts",
insert "notes";

Annex, Recommendation (1): delete last two
sentences, insert
"The need for a
register will be
assessed in the
light of this
development".

Immigrant Register

19 NOV 1882

