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VOLUNTARY WORKERS FROM OVERSEAS**

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**CHAPTER 17
SECTION 9****VOLUNTARY WORKERS
FROM OVERSEAS****1. INTRODUCTION**

There is no provision in the Immigration Rules for the admission of non-EEA nationals to engage in voluntary work. Work permits are only issued where a genuine vacancy exists and where particular qualifications or skills are required that are in short supply from the resident and EEA labour force. These tests will therefore normally exclude voluntary workers. However, there are a number of charitable organisations who wish to engage overseas nationals as voluntary workers. In the interests of supporting charitable work and youth mobility, the Home Office does allow non-EEA nationals to come to the United Kingdom to undertake voluntary work with certain charitable organisations in strictly defined circumstances under a concession operated outside the Rules.

The provisions are designed to enable voluntary workers to develop their own caring and leadership skills and also gain insights into the work of the charity as well as experience living in a different culture. Those entering under the concession do so for the purpose of purely voluntary activity, not for the purpose of paid employment. The concession does not permit voluntary workers to take up permanent or salaried posts within the charitable organisation they are serving, and the work involved will by its nature not be of a kind that would normally be offered at a waged or salaried rate.

There is no mandatory entry clearance requirement attached to the concession, and it is therefore possible for persons who have entered the United Kingdom in other categories (including visa nationals) to be granted leave to remain under the concession, provided that they meet all the criteria for leave under the concession.

The concession does not place a restriction on the number of times a person can enter in the category. Normally, it will be reasonable to expect that some time will have elapsed between entries in the category; it is a temporary entry category and voluntary workers should intend to leave at the end of their stay. Where a person seeks entry as a voluntary worker very soon after having spent a year in that capacity it will be important to ascertain the reasons why s/he wishes to return so soon, and that s/he is not seeking to establish him or herself permanently in the United Kingdom. It will also be important to establish that the work s/he intends to do does not involve him or her taking up any kind of post within the organisation s/he is hoping to serve; this consideration will be particularly relevant if s/he is seeking to work for the same organisation s/he served during their recent stay.

However, there may be circumstances where a voluntary worker has genuinely intended to return home at the end of one year, but during the course of the year decides that if possible s/he would like to return to the United Kingdom shortly after s/he has completed his or her year's stay, and engage in a further period of voluntary work, for his or her own cultural and developmental benefit, and because s/he wishes to make a further valuable contribution as a voluntary worker. If the Entry Clearance Officer or Immigration Officer is satisfied that s/he is genuinely seeking entry for the

purpose of voluntary work that meets the terms of the concession, and that s/he intends to return home at the end of his stay then it would normally be appropriate to grant entry.

2. LEAVE TO ENTER

A person seeking leave to enter as a voluntary worker will have to satisfy the immigration officer that he meets the requirements set out in paragraph 2.1 below. Entry clearance is not mandatory, but the passenger must be able to produce documentary evidence to show that he has been accepted for voluntary work with a charitable organisation in work that meets the requirements of the concession.

2.1. Key points

A passenger seeking leave to enter to undertake voluntary work must be able to show that:

- ◆ the activity is purely voluntary and does not involve taking up a salaried post or permanent position of any kind within the charitable organisation or entering into any arrangement that is likely to constitute a contract of employment (see Note on National Minimum Wage Legislation, point (ii) below); and
- ◆ the activity is either for a charitable organisation listed in **ANNEX B** or a registered charity or recognised body (see below) whose work meets the criteria set out in this instruction; and
- ◆ the activity is unpaid, or is not likely to be subject to payment of the National Minimum Wage [see note below on National Minimum Wage exemptions for voluntary workers and residential members of religious and other communities, *which are registered charities, whose work involves providing care*] and directed towards a worthy cause; and
 - ◆ it is closely related to the aims of the organisation; and
 - ◆ it is fieldwork involving direct assistance to those the charitable organisation has been established to help; and
 - ◆ that there are satisfactory arrangements for the passenger's maintenance and accommodation in the United Kingdom; and
 - ◆ that the passenger intends to leave the United Kingdom at the end of their stay.

NB Those who enter in the category may not during their stay have recourse to public funds, or engage in any work other than the voluntary activity for which they have been admitted.

Note on National Minimum Wage Legislation

(i) Under the National Minimum Wage Act exemption for voluntary workers, voluntary workers will not qualify for the National Minimum Wage provided that they receive no payments of money at all, or no payments other than:

- to reimburse actual expenses incurred in doing the voluntary activity, or
- to cover reasonable estimated expenses; and

they receive no benefits in kind at all, or no benefits other than:

- subsistence (for example food, laundry) which is reasonable in the circumstances in their voluntary activity,
- accommodation which is reasonable in the circumstances of their voluntary activity and
- training whose sole or main purpose is to improve the person's ability to do the voluntary activity.

(ii) Under the National Minimum Wage Act exemption for residential members of religious and other intentional communities, those who are residential members of such communities as defined in the Act do not qualify for the national minimum wage in respect of employment by the community, **as long as the community is not also an independent school or does not provides higher or further education, and that the community is a charity (or is established by a charity); that it practises or advances a belief of a religious or similar nature; and that all or some of its members live together for that purpose.** NB This exemption involves no restrictions on monetary payments or other benefits, such as training.

Some entrants under the concession for voluntary workers will be coming to do work **that is voluntary in nature** with registered charities that are recognised under the terms of the National Minimum Wage Act as religious or other intentional communities. Where the work of the community involves providing care, and the provisions of Care Standards legislation therefore need to be met by the organisation, such individuals are permitted to enter under the concession even though the arrangements for their support and accommodation may not comply with the terms of the NMW exemption for voluntary workers, but rather with the terms of the National Minimum Wage exemption for residential members of such communities, and the key requirement of the category regarding not entering into a contract of employment may be waived. (NB Those entering for this purpose must be intending to do work that is of direct assistance to those the charitable organisation has been established to help; provided that this is the case, they may enter and engage in an arrangement with the organisation that complies with the terms of care standards legislation.)

Note on subsistence payments

In addition, voluntary workers ***placed by a charity with another charitable or voluntary organisation*** can receive monetary payments for subsistence purposes. However, it should be noted that any monetary payments in respect of subsistence ***must be made in accordance with the terms of the National Minimum Wage legislation which govern the making of such payments.*** Subsistence payments are ***minimum payments*** that are needed to live on, and which are reasonable in the circumstances. Organisations should be clear about what it is that the subsistence payments are intended to cover, and whether they are appropriate.

An appropriate payment for subsistence must take into account what is reasonable in the circumstances of the specific job for which the voluntary worker is employed. Consequently, **no outline figure** can be provided as a guide to whether a payment will constitute a payment for "subsistence" or not. "Subsistence" does not include money to cover the costs of accommodation, which may only be provided as a benefit in kind. (NB The only circumstance in which subsistence payments may include employers paying money to cover the cost of accommodation is where the accommodation is a genuine expense of doing the job, for example if the voluntary worker is travelling on behalf of the charity and needs to stay in a hotel; where the charity is simply providing the worker with living accommodation that must be given as a benefit in kind, not as a payment.)

A payment in respect of "subsistence" may properly take into account the fact that a voluntary worker has to pay reasonable utility bills (for example, electricity, gas etc). There might also reasonably be provided an amount for buying food, and to meet other expenses which are reasonable in the course of day-to-day life while in the employment. These expenses might include a small amount to be spent on leisure activities, though this will depend on the circumstances. Where the voluntary worker is working in a school (and is eligible to receive subsistence payments – see note above), subsistence payments may include money to cover subsistence during school holidays.

Careful regard must be had to these factors when deciding what sum should be paid for subsistence purposes. If the sum is more than what is genuinely and reasonably needed for subsistence in the circumstances, the voluntary workers' exemption from the National Minimum Wage Act will not apply. The worker would therefore be entitled to be paid the National Minimum Wage, and would also not meet the requirements of the voluntary workers' concession as set out in these instructions.

NB An organisation may set up a separate charity to provide voluntary workers to itself.

Honoraria

Where it is deemed merited, a voluntary worker may receive an honorarium, which should consist of a one-off gift, with no expectation or obligation, and of a reasonable amount.

Guidance on National Minimum Wage

There is a minimum wage helpline run by the Inland Revenue on 0845 – 6000 678, which will advise on any national minimum wage questions. For those with access to the internet, there is an interactive guidance website "TIGER" (Tailored Interactive Guidance on Employment Rights) at www.tiger.gov.uk.

A booklet entitled "A Detailed Guide to the National Minimum Wage is obtainable from the helpline.

2.2. Granting leave to enter

Leave to enter should be granted for up to 12 months on Code 4. Relevant foreign nationals (as defined in Paragraph 324A of the Rules), aged 16 and over, and

coming for longer than 6 months, should be required to register with the police (*except* for those entering under the auspices of Community Service Volunteers).

2.3. INDECS

0 Other person on limited leave

2.4. Refusal of leave to enter

Where the passenger does not meet the requirements set out above leave to enter should **normally** be refused on the basis that it is employment for which a work permit is required under Paragraph 130 with reference to 128(i) of HC 395.

ANNEX C provides examples of refusal formulae

2.5. On entry refusal code

B1 For employment without a work permit

3. LEAVE TO REMAIN

Further leave to remain may be granted if the voluntary worker continues to meet the criteria set out above up to a maximum **total** stay of 12 months. (NB Where it has been established that the voluntary worker is receiving subsistence payments in excess of that which is genuinely and reasonably needed for subsistence in the circumstances, and that he is therefore entitled to the National Minimum Wage, he will not meet the requirements of the concession and the application should be refused.) Applications for leave to remain beyond 12 months should be refused under Paragraph 46 with reference to 44(i) of HC 395. The refusal notice should be accompanied by a covering letter explaining the applicant has been treated under a concession but the Secretary of State is not prepared to exercise discretion further.

3.1. INDECS

X3 Other reasons

3.2. Refusal of leave to remain

Where the exercise of discretion is not deemed appropriate the application should be refused in the normal way. Refusal under the visitor rules will normally be appropriate together with a covering letter stating that the Secretary of State has considered the exercise of discretion but is not prepared to exercise discretion on this occasion.

The **General Guidance on Adverse Decisions at Chapter 9, Section 1** provides important advice about the decision making process and should be consulted whenever an application falls for refusal.

ANNEX C provides examples of refusal formulae

3.3. INDECS

V5 Refusal - 6 months completed