

## CHAPTER 5

# SECTION 4 - PRIVATE SERVANTS IN DIPLOMATIC HOUSEHOLDS

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# 1. INTRODUCTION

Work permits are issued only to those with high levels of skills in short supply here, and have not been issued for domestic work since 1980. Although there is no provision in the Rules for the admission of domestic employees from abroad who have been recruited by United Kingdom residents, the Rules do provide for foreign diplomats to bring in non-EEA servants. Under certain circumstances, people from overseas coming to visit or to work here may also be permitted to bring their servants with them on a concessionary basis. ***For such cases, see "Domestic servants concession" in Chapter 17.***

## 1.1. Workers who may be classed as "servants" for the purpose of the Rules

"Servants" may include chauffeurs, gardeners, cooks and nannies if they are providing a ***personal service*** relating to the running of the employer's household.

## 1.2. Servants who do not qualify under this rule

\* Employees employed by diplomats but engaged in connection with any business in which the employer may be involved will not qualify.

\* Servants who are recruited directly to work in a mission eg. chauffeurs employed by the mission or people who perform cleaning or other duties on the mission premises do ***not*** qualify under this rule and are either exempt from control or treated as locally engaged staff. See ***Chapter 14*** "Persons exempt from control" for further advice on this subject.

***Note: Private servants of a head of mission, employed directly by the country concerned, are exempt from control. See Chapter 14 to these instructions.***

# 2. LEAVE TO ENTER AS A PRIVATE SERVANT OF A DIPLOMAT

Most passengers seeking entry in this capacity are in possession of the required entry clearance. Examination should be aimed at ensuring that there is no reason to believe that refusal is justified under Paragraph 321 of HC 395. It is therefore important to keep in mind the requirements of Paragraph 152.

## 2.1. Key points

The main points on which the immigration officer needs to be satisfied are:

- .. that the passenger holds a valid entry clearance endorsed "for employment with .....";
- .. that there is no reason to believe that false representations were made in order to obtain the entry clearance or that circumstances have changed since its issue.
- .. that refusal is not justified on the grounds of restricted returnability, medical grounds, grounds of criminal record, or on the grounds that the person is the subject of a deportation order or that his exclusion is conducive to the public good.

## 2.2. Further guidance

*ANNEX M (below) provides general guidance and sets out factors taken into account by entry clearance officers.*

*ANNEX N contains the forms issued to employers by entry clearance officers*

## 2.3. Granting leave to enter

\* Up to 12 months on Code 4, depending on the period for which the employer expects the servant to remain here.

\* Servants in diplomatic households are **not** required to register with the police.

## 2.4. INDECS

Other person on limited leave to enter

## 2.5. Refusal of leave to enter

\* Where a **non-visa national** seeks entry in this capacity without a valid United Kingdom entry clearance issued for this purpose and no compassionate circumstances exist, he should be refused entry under Paragraph 154 of HC 395.

\* A **visa national** seeking entry without a valid United Kingdom visa falls to be refused under Paragraph 320(5). See **Chapter 9, Section 2** to these instructions.

\* Where a passenger seeking entry in this capacity holds an entry clearance for this purpose, refusal may only be considered under Paragraph 321 (See **Chapter 9, Section 3** to these instructions).

\* In the case of a person returning to the United Kingdom from a temporary absence abroad, within a period for which he was previously given leave, reference **must** be made, before refusal, to **Chapter 1, Section 9, "Persons returning to resume previous leave"**.

*ANNEX O (below) provides examples of refusal formulae.*

## 2.6. On entry refusal codes

E4 Lack of required non-settlement entry clearance, including those set aside on grounds of misrepresentation, forgery, failure to disclose material facts or where a change of circumstances has removed the basis of claim to admission.

Z1 Other reasons

## 2.7. Right of appeal and corresponding refusal form

Where no entry clearance is held, there is no right of appeal against refusal of leave to enter in this capacity [Section 13(3B)(a) of the Immigration Act 1971 (as set out in Section 11 of the Asylum and Immigration Appeals Act 1993)].

Form IS 82D should therefore be used in such cases.

The **"Port Instructions for on-entry asylum applications"** provides details of the appropriate forms to use in mixed asylum/non-asylum cases.

## 3. LEAVE TO REMAIN AS A PRIVATE SERVANT OF A DIPLOMAT

The requirements to be met by a person seeking to remain in the United Kingdom in this capacity are set out in Paragraph 155 of HC 395 and **must** be referred to when reading the following advice.

**Note: The EC/Turkey Association Agreement, 1963, confers certain rights on Turkish Nationals who are already working in the United Kingdom. See section 10 to this chapter "EC/Turkey Association Agreement".**

### 3.1. Key points

Caseworkers must satisfy themselves that the applicant:

- “ entered the United Kingdom with an entry clearance for this purpose (unless they arrived before 1.10.94);
- “ is still in the same employment;
- “ meets the requirements of Paragraph 152(iii)-(v) of HC 395; and that
- “ the employer continues to be based here and supports the application.

### 3.2. Further guidance

**ANNEX M** (below) provides general guidance, including factors taken into account by entry clearance officers.

**ANNEX N** contains the forms issued to employers by ECOs

### 3.3. Granting leave to remain

- \* Extensions of up to 12 months at a time may be granted on Code 4.
- \* Servants in diplomatic households are not required to register with the police.

### 3.4. INDECS

F8 Extension - domestic servant of diplomat

### 3.5. Refusal of leave to remain

**Chapter 9, Section 1 "Adverse Decisions - General Guidance"** provides important advice about the decision making process and should be consulted whenever an application falls to be refused.

Refusal of extension of stay in this category is under Paragraph 157 of HC 395 on the grounds that each of the provisions of Paragraph 155 are not satisfied.

**ANNEX O** (below) provides examples of refusal formulae.

### 3.6. INDECS

F9 Refusal - Permit-free employment

## 4. SETTLEMENT

Under Paragraph 158 of HC 395 settlement may be granted to those who have completed 5 years in approved employment, *if it is specifically applied for*. However, if a person in this category who has been in the United Kingdom for 5 years applies for leave to remain for a *limited* period, the application should *not* be treated as one for settlement. (See *Annex F to Section 1 of this Chapter* if further information on this point is required).

### 4.1. Key points

In considering applications for indefinite leave in this capacity, caseworkers must be satisfied that the applicant:

- has spent a *continuous* period of 5 years here in this capacity;
- has met the requirements of Paragraph 155 throughout the 5 year period; and
- has produced evidence that his employer wishes the employment to continue.

### 4.2. Further guidance

The granting of settlement to a domestic servant who has spent 5 years here in "approved" employment is not dependent on the employer himself gaining settlement.

*ANNEX F to Section 1 of this Chapter* provides guidance relating to:

- \* calculating the four year period for settlement; and
- \* applicants who qualify but do not apply for settlement

### 4.3. Granting settlement

If all the above requirements have been met, settlement may be granted.

### 4.4. INDECS

1CA Settlement granted (to applicant)

### 4.5. Refusal of settlement

*Chapter 9, Section 1 "Adverse Decisions - General Guidance"* provides important advice about the decision-making process and should be consulted whenever an application falls to be refused.

Where the requirements of the Rules are not met, applications for settlement in this category should be refused under Paragraph 159 of HC 395, with reference to Paragraph 158.

*ANNEX F to Section 1 provides guidance for action where the requirements for (above) settlement are not met.*

*ANNEX O (below) provides examples of refusal formulae.*

## 4.6. INDECS

X7 Settlement refusal - premature or inappropriate application - applicant still has concurrent leave

X8 Settlement refusal - no extension of leave granted

# ANNEX M - GENERAL GUIDANCE - INCLUDING FACTORS TAKEN INTO ACCOUNT BY ENTRY CLEARANCE OFFICERS

## 1. INTRODUCTION

Applications for entry clearance from domestic servants are subject to a set procedure. They will be interviewed **on their own**, at least on their first application, to establish that they understand the terms and conditions of the employment and that they are willing to go to the United Kingdom. If their application is successful, they will be given an information leaflet explaining their rights under the United Kingdom's criminal and employment laws.

## 2. PRIVATE SERVANTS AGED UNDER 18

In order to ensure that the United Kingdom complies with EU health and safety legislation protecting minors at work, the minimum age for this category is 18. Persons under 18 seeking entry in this capacity should therefore be refused entry clearance, unless they qualify for admission under another part of the Rules.

***Particular care should be taken to ensure that suitable arrangements are made for the removal of any person under the age of 18 who is refused leave to enter. In cases of doubt, reference should be made to Passenger Casework Section.***

## 3. APPROPRIATE EMPLOYERS FOR PERSONS IN THIS CATEGORY

\* The employer must be a member of staff of a diplomatic or consular mission who **has diplomatic status**, or a member of the family forming part of the household of such a person.

\* The servant of an employee of a mission who does not enjoy diplomatic privileges and immunity will not qualify under the Rules. Under certain circumstances, however, he may qualify under the "Domestic servants concession" (**see Chapter 17**).

## 4. PREVIOUS EMPLOYMENT WITH THE SAME EMPLOYER

No minimum period of previous employment with the employer is required under the Rules.

## 5. MAINTENANCE AND ACCOMMODATION

In order to ensure that the servant will adequately maintain and accommodate himself, the entry clearance officer will require **the employer** to:

\* sign a written undertaking that he will adequately maintain and accommodate the

employee and provide him with a separate bedroom; and

\* complete and sign a statement of the main terms and conditions of the servant's employment.

The format of both the above-mentioned forms is to be found at **ANNEX N**

## **6. TERMS AND CONDITIONS OF EMPLOYMENT**

The statement of the main terms and conditions of the servant's employment referred to in the above paragraph is one of the measures introduced to protect the interests of servants employed in the United Kingdom. In addition, the employer is required to read and understand:

\* the "Notice to employers", which explains that servants are issued with a copy of the leaflet, "Information for domestic servants", setting out not only the conditions of their stay but also their legal rights in the United Kingdom; and

\* the leaflet issued to servants.

## **7. AFTER ENTRY CASES - DOCUMENTS TO BE PRODUCED**

An employer seeking an extension of stay on behalf of a domestic servant should produce:

\* a notarised statement that he is maintaining the servant without recourse to public funds and in accommodation which provides a separate bedroom; and

\* an updated statement of current terms and conditions of employment signed by the employer and employee (or, if appropriate, a copy of the original terms shown to the entry clearance officer, signed by the employer and employee to indicate that they still apply).

Form RON 145 should be used to request these documents if they are not produced on application.

## **8. CHANGE OF EMPLOYMENT**

### **8.1. Switching to this category**

Applications from persons admitted as visitors to remain here in this capacity fall to be refused, but the Protocol Department of the Foreign and Commonwealth Office should be consulted, before refusal, in case there are special circumstances. A refusal is to be made on "no switching" grounds.

Entry clearance will be refused if the entry clearance officer suspects that a person seeking entry in this capacity may intend to change his employment after entry.

### **8.2. Switching from this category**

If a person admitted as a domestic servant of a diplomat applies to remain to work for an employer who is not a diplomat or a member of his household, whether as a domestic worker or in a different job, the application should be refused.

### **8.3. Change of Employer**

It is permissible, however for a servant of a diplomat to change **diplomatic employers within the same embassy**. In such cases the employer and employee should be asked to sign a statement of the terms and conditions of the employment along the lines of the form provided at **ANNEX N**.

## **9. THE INFORMATION LEAFLET FOR DOMESTIC SERVANTS**

Whenever a person is granted leave in this capacity, regardless of whether the application was made by the employer or employee, the passport should be returned whenever possible, with a copy of the leaflet for domestic servants, in an envelope addressed direct to the employee.

Where the employer has applied on behalf of the domestic worker, an extra copy of the leaflet, together with a copy of the "Notice to Employers" should be sent under separate cover to the employer with a RON 54A to say that the employee's leave to remain has been extended.

Copies of the leaflet and notice may also be sent out in response to specific requests or enquiries. Stocks may be obtained from stationery.

### **9.1. Leaflets etc available in other languages**

**Arabic** versions of both the leaflet and the notice to employers are available and should be issued to employers who come from Saudi Arabia or the Gulf States **in addition to** English versions unless it is clear that they can write (and therefore presumably read) English well. Versions of the leaflet are also available in **Tagalog** (the local language of Filipinos) and should be sent, together with the English version, to Filipino domestics.

Limited stocks of the leaflet are also available in **Urdu, Punjabi, Bengali, Hindi, Tamil, Thai** and **Spanish** and should be sent, together with the English version, where there is evidence that the leaflet would be better understood in that language by the domestic. The file should be minuted accordingly.

## **ANNEX N - FORMS ISSUED TO EMPLOYERS BY ENTRY CLEARANCE OFFICERS**

### **1. UNDERTAKING TO BE SIGNED BY EMPLOYERS**

#### **IMMIGRATION ACT 1971**

**Undertaking as to the maintenance and accommodation of a domestic servant and confirmation of receipt of letter to employer and leaflet for servants**

#### **TO BE COMPLETED BY THE EMPLOYER**

Please complete this form in block capitals

I, ..... (name), of

..... (address),

hereby undertake that if ..... (name of employee) is granted leave to enter or remain in the United Kingdom as my servant I shall be responsible for his/her maintenance and accommodation in the United Kingdom, throughout the period of that leave and any variation of it, and that I will maintain and accommodate him/her adequately, providing him/her with his/her own separate bedroom.

I also confirm that I have read and understood the letter to employers and the leaflet for servants enclosed with it.

Signed .....

Dated .....

**FOR OFFICIAL USE ONLY**

**Certificate**

I certify that this undertaking has been signed by the employer and that a copy has been given to him/her.

Signature:

Date Stamp:

**2. STATEMENT OF THE TERMS AND CONDITIONS OF EMPLOYMENT**

**TO BE COMPLETED BY THE EMPLOYER**

**MAIN TERMS AND CONDITIONS OF EMPLOYMENT OF A DOMESTIC**

**SERVANT IN THE UNITED KINGDOM**

Before an overseas domestic worker can obtain entry clearance to accompany his or her employer to the United Kingdom he or she must be provided with a written statement of the main terms and conditions of his or her employment. Using this form helps employers to comply with that requirement.

(Name and address of employee) (Name and address of employer)

A domestic worker for the employer since ..... (starting date)

Main Terms and Conditions of Employment in the United Kingdom

1. Job Title

Main duties

Starting date

in UK

2. Rate of Pay per week/month

*Other pay*

*information*

Frequency of payment Method of payment

3. Hours of work per week

and free periods per week

4. Sleeping accommodation

5. Holidays per year

## **6. Ending the employment**

Employee must give weeks notice if the he/she decides to leave his/her job.

Employee is entitled to weeks notice if the employer decides to dismiss him/her.

Employee is employed on a fixed-term contract until (date) (if applicable)

**Issued by Employer Seen and agreed by Employee**

Signed

Date

1 copy to employee

1 copy to ECO

## **ANNEX O - REFUSAL FORMULAE**

***PLEASE NOTE: The following wordings are examples - they do not constitute an exhaustive list of all possible formulae.***

### **ON ENTRY**

"You have asked for leave to enter the United Kingdom as a private servant in the household of (name of diplomat) ...."

### **No entry clearance - non-visa national**

" but under the Immigration Rules you are required to have a valid entry clearance for this purpose and you have no such entry clearance."

### **Paragraph 154**

***\* No entitlement to appeal by virtue of Section 13 (3B)(a)***

{Refusal Code E4}

### **Visa national**

"... but under the Immigration Rules you are required to produce a passport or other

identity document endorsed with a valid and current United Kingdom entry clearance issued for the purpose for which entry is sought, and you have no such entry clearance."

**Paragraph 320(5)**

**\* *No entitlement to appeal by virtue of Section 13(3B)(a)***

{Refusal Code: E4}

**AFTER ENTRY**

"[You have applied/An application has been made on your behalf] for leave to remain in the United Kingdom as a private servant in the household of ..."

**No switching**

"... but the Secretary of State is not satisfied that you entered the United Kingdom with a valid United Kingdom entry clearance as a private servant in a diplomatic household."

**Paragraph 157 with reference to 155(i)**

**\* *No entitlement to appeal by virtue of Section 14(2A)(a)***

{INDECS Code: F9}

**No longer engaged in employment for which EC granted**

"... but [? in view of ...] the Secretary of State is not satisfied that you are still engaged in the employment for which your entry clearance was granted."

**Paragraph 157 with reference to 155(ii)**

{INDECS Code: F9}

**No longer required for the employment in question**

"... but [? in view of ...] the Secretary of State is not satisfied that your employer has certified that you are still required for the employment in question."

**Paragraph 157 with reference to 155(iii)**

{INDECS Code: F9}

**Under age**

"... but [? as you were born on .../as you have failed to produce [satisfactory] evidence of your date of birth] the Secretary of State is not satisfied that you are aged 18 or over."

**Paragraph 157 with reference to 155(iv) and 152(i)**

**\* *No entitlement to appeal by virtue of Section 14(2A)(b)***

{INDECS Code: F9}

**Employer not diplomat or member of diplomats family/household**

"... but [? in view of ...] the Secretary of State is not satisfied that [he/she] is a member

of staff of a diplomatic or consular mission who enjoys diplomatic privileges and immunity within the meaning of the Vienna Convention on Diplomatic and Consular Relations or a member of the family forming part of the household of such a person."

**Paragraph 157 with reference to 155(iv) and 152(ii)**

{INDECS Code: F9}

**Intention to work part-time**

"... but [? in view of ...] the Secretary of State is not satisfied that you intend to work full-time as a private servant in a diplomatic household."

**Paragraph 157 with reference to 155(iv) and 152(iii)**

{INDECS Code: F9}

**Other employment**

"... but [? in view of ...] the Secretary of State is not satisfied that you do not intend to take employment other than as a private servant in a diplomatic household."

**Paragraph 157 with reference to 155(iv) and 152(iv)**

{INDECS Code: F9}

**Maintenance and accommodation**

"... but [? in view of ...] the Secretary of State is not satisfied that you will be able to maintain and accommodate yourself [and your dependants] adequately without recourse to public funds."

**Paragraph 157 with reference to 155(iv) and 152(v)**

{INDECS Code: F9}

**INDEFINITE LEAVE TO REMAIN**

"[You have applied/An application has been made on your behalf] for indefinite leave to remain in the United Kingdom as a private servant in the household of..."

**Not 5 years in category**

"... but [? in view of ...] the Secretary of State is not satisfied that you have spent a continuous period of 5 years in the United Kingdom in this capacity."

**Paragraph 159 with reference to 158(i)**

{INDECS Code: X7}

**No switching**

"... but the Secretary of State is not satisfied that you entered the United Kingdom with a valid United Kingdom entry clearance as a private servant in a diplomatic household."

**Paragraph 159 with reference to 158(ii) and 155(i)**

**\* No entitlement to appeal by virtue of Section 14(2A)(a)**

{INDECS Code: F9}

**Not engaged in employment for which EC granted**

"... but [? in view of ...] the Secretary of State is not satisfied that you have been engaged in the employment for which your entry clearance was granted throughout the 5 year period you have spent in the United Kingdom in this capacity."

**Paragraph 159 with reference to 158(ii) and 155(ii)**

{INDECS Code: X8}

**Not required for the employment in question**

"... but [? in view of ...] the Secretary of State is not satisfied that your employer has certified that you were required for the employment in question throughout the 5 year period you have spent in the United Kingdom in this capacity."

**Paragraph 159 with reference to 158(ii) and 155(iii)**

{INDECS Code: X8}

**Did not intend to work full-time**

"... but [? in view of ...] the Secretary of State is not satisfied that you intended to be employed full-time as a private servant throughout the 5 year period you have spent in the United Kingdom in this capacity."

**Paragraph 159 with reference to 158(ii), 155(iv) and 152(iii)**

{INDECS Code: X8}

**Other employment**

"... but [? in view of ...] the Secretary of State is not satisfied that you did not intend to take employment other than as a private servant throughout the 5 year period you have spent in the United Kingdom in this capacity."

**Paragraph 159 with reference to 158(ii), 155(iv) and 152(iv)**

{INDECS Code: X8}

**Maintenance and accommodation**

"... but [? in view of ...] the Secretary of State is not satisfied that you were able to maintain and accommodate yourself [and your dependants] adequately without recourse to public funds throughout the 5 year period you have spent in the United Kingdom in this capacity."

**Paragraph 159 with reference to 158(ii), 155(iv) and 152(v)**

{INDECS Code: X8}

**No longer required for the employment in question**

"... but [? in view of ...] the Secretary of State is not satisfied that your employer has certified that you are still required for the employment in question."

### **Paragraph 159 with reference to 158(iii)**

{INDECS Code: X8}

### **ENTRY CLEARANCE**

"[You have applied/An application has been made on your behalf] for entry clearance to the United Kingdom as a private servant in the household of ..."

#### **Under age**

"... but [? as you were born on .../as you have failed to produce [satisfactory] evidence of your date of birth] the Secretary of State is not satisfied that you are aged 18 or over."

### **Paragraph 152(i)**

*\* No entitlement to appeal by virtue of Section 13(3B)(b)*

#### **Employer not diplomat or member of diplomats family/household**

"... but [? in view of ...] the Secretary of State is not satisfied that [he/she] is a member of staff of a diplomatic or consular mission who enjoys diplomatic privileges and immunity within the meaning of the Vienna Convention on Diplomatic and Consular Relations or a member of the family forming part of the household of such a person."

### **Paragraph 152(ii)**

#### **Intention to work part-time**

"... but [? in view of ...] the Secretary of State is not satisfied that you intend to work full-time as a private servant in a diplomatic household."

### **Paragraph 152(iii)**

#### **Other employment**

"... but [? in view of ...] the Secretary of State is not satisfied that you do not intend to take employment other than as a private servant in a diplomatic household."

### **Paragraph 152(iv)**

#### **Maintenance and accommodation**

"... but [? in view of ...] the Secretary of State is not satisfied that you can maintain and accommodate yourself and any dependants adequately without recourse to public funds."

### **Paragraph 152(v)**