

# CHAPTER 5

## SECTION 5 - OVERSEAS GOVERNMENT EMPLOYEES

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## 1. INTRODUCTION

This instruction provides guidance concerning persons coming for full-time employment by an overseas government who **do not qualify** for exemption from the immigration control. Such persons may be admitted without work permits under Paragraph 162 of HC395.

Under Paragraph 160 of HC395 the term "overseas government employee" includes persons employed by the United Nations Organisation or other international organisation of which the United Kingdom is a member (further information about such international organisations will be found in **Chapter 14, ANNEX B, of these instructions**).

Entry clearance is mandatory for visa nationals only.

***NB: For guidance concerning persons who qualify for total or partial exemption from the immigration control, including employees of international organisations, see Chapter 14 "Persons exempt from immigration control".***

## 2. LEAVE TO ENTER AS AN OVERSEAS GOVERNMENT EMPLOYEE

The requirements to be met by a person seeking leave to enter as an overseas

government employee are set out in Paragraph 161 in Part 5 of HC 395. All these **must** be met and **must** be referred to when reading the following guidance.

The main point on which the immigration officer needs to be satisfied is that the passenger holds **either** a valid entry clearance issued for this purpose **or**, (in the case of a non-visa national who arrives without entry clearance) is able to produce evidence confirming his status as an overseas government employee.

## 2.1. Granting leave to enter

Leave to enter may be granted for up to 12 months Code 4. Dependants with entry clearance in line Code 1.

Non-Commonwealth nationals over the age of 16 should be required to register with the police.

## 2.2. INDECS

Other person on limited leave to enter

## 2.3. 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, or he is unable to produce documentary evidence confirming his status as an overseas government employee, or if he is unable to meet each of the requirements of Paragraph 161 of HC395, he should normally be refused entry under Paragraph 163 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 P** (below) provides examples of refusal formulae.

## 2.4. 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.

H1 Other reasons (eg. persons returning in this category who are refused leave to enter).

## 2.5. Right of appeal and corresponding refusal form

A non-visa national, without entry clearance, will have a right of appeal **from abroad** if refused entry in this capacity.

Form IS 82C should therefore be used.

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 AN OVERSEAS GOVERNMENT EMPLOYEE**

***It should be noted that applications from civilian employees of the US Forces are dealt with by AEAD Management Unit (see Chapter 15 "Armed Forces").***

The requirements to be met by a person seeking to remain in the United Kingdom as an overseas government employee are set out in Paragraph 164 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 continues in the employment for which he was admitted;
- “ that he can produce documentary evidence from his employer confirming his services are still required; and
- “ that he meets the requirements of Paragraph 161(ii)-(iv) and 164(i) of HC 395.

#### **3.2. Granting leave to remain**

Further leave to remain may be granted for up to 3 years Code 4 provided the requirements of the Rules are met.

Non-Commonwealth nationals over the age of 16 should be required to register with the police.

#### **3.3. INDECS**

F6 Extension - Other permit free employment

#### **3.4. 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 further leave to remain as an overseas government employee is under Paragraph 166 of HC 395 on the grounds that each of the provisions of Paragraph 164 are not satisfied.

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

### 3.5. INDECS

F9Refusal

## 4. SETTLEMENT

Under Paragraph 167 of HC 395 settlement may be granted to those who have completed 5 years here in this category, **if it is specifically applied for**. However, if an applicant who has been in the United Kingdom for 5 years applies for leave for a **limited** period, the application should **not** be treated as one for settlement. (See **Annex F** (above) in this chapter, if further information on this point is required).

The requirements to be met by a person seeking settlement in the United Kingdom as an overseas government employee are set out in Paragraph 167 in Part 5 of HC 395. All these requirements **must** be met and **must** be referred to when reading the following advice.

### 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;
- .. that he can produce documentary evidence from his employer confirming that his services are still required; and
- .. has met the requirements of Paragraph 164 throughout the 5 year period.

### 4.2. Further guidance

*ANNEX F to this chapter (above) 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 the requirements are met settlement may be granted under Paragraph 167 of HC395.

### 4.4. INDECS

1CA In own right - 5 years permit free employment, excluding doctors and dentists

### 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.

Refusal of indefinite leave to remain will be under Paragraph 168 on the grounds that each of the requirements of paragraph 167 is not met.

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

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

## 4.6. INDECS

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

X8 Settlement refusal applicant for settlement other than as a husband or wife - no extension of leave granted

## ANNEX P - 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 an employee of an overseas government..."

#### **Non-visa nationals - no entry clearance or satisfactory documentary evidence**

"... but you have neither a valid entry clearance for this purpose nor satisfactory documentary evidence of such status."

#### **Paragraph 163 with reference to Paragraph 161(i)**

{Refusal Code Z1}

#### **Visa Nationals**

"... 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."

#### **Paragraphs 320(5)**

**No entitlement to appeal where no entry clearance is held, by virtue of Section 13(3B)(a)**

{Refusal Code E4}

### AFTER ENTRY

"You have applied for leave to remain in the United Kingdom as an employee of [an overseas government/the United Nations Organisation/ ... (name of international organisation)] ..."

#### **No switching**

"... but [? in view of ...] the Secretary of State is not satisfied that you were given leave to enter the United Kingdom as an overseas government employee."

**Paragraph 166 with reference to 164(i)**

{INDECS Code: F9}

**No longer engaged in employment in question**

"... but [? in view of ...] the Secretary of State is not satisfied that you are still engaged in the employment in question."

**Paragraph 166 with reference to 164(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 166 with reference to 164(iii)**

{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 in this employment."

**Paragraph 166 with reference to 164(iv) and 161(ii)**

{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 an employee of [an overseas government/the United Nations Organisation/ ... (name of international organisation)]."

**Paragraph 166 with reference to 164(iv) and 161(iii)**

{INDECS Code: F9}

**Not an international organisation of which the UK is a member**

"... but this is not an international organisation of which the United Kingdom is a member."

**Paragraph 166 with reference to 164(iv) and 161(iii) and 160**

{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 166 with reference to 164(iv) and 161(iv)**

{INDECS Code: F9}

**SETTLEMENT**

"You have applied for indefinite leave to remain in the United Kingdom as an employee of [an overseas government/the United Nations Organisation/ ... (name of international organisation)]..."

**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 168 with reference to 167(i)**

{INDECS Code: X7}

**No switching**

"... but [? in view of ...] the Secretary of State is not satisfied that you were given leave to enter the United Kingdom as an overseas government employee."

**Paragraph 168 with reference to 167(ii) and 164(i)**

{INDECS Code: X8}

**Not engaged in employment in question**

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

**Paragraph 168 with reference to 167(ii) and 164(ii)**

{INDECS Code: X8}

**Not required for the employment in question throughout 5 years**

"... 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 168 with reference to 167(ii) and 164(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 work full-time for the [government/ organisation] concerned throughout the 5 year period you have spent in the United Kingdom in this capacity."

**Paragraph 168 with reference to 167(ii), 164(iv) and 161(ii)**

{INDECS Code: X8}

### **Other employment**

"... but [? in view of ...] the Secretary of State is not satisfied that you did not take employment other than as an employee of [an overseas government/the United Nations Organisation/ ... (name of international organisation)] throughout the 5 year period you have spent in the United Kingdom in this capacity."

### **Paragraph 168 with reference to 167(ii), 164(iv) and 161(iii)**

{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 168 with reference to 167(ii), 164(iv) and 161(iv)**

{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 168 with reference to 167(iii)**

{INDECS Code: X8}

### **ENTRY CLEARANCE**

"You have applied for entry clearance to the United Kingdom as

an employee of [an overseas government/the United Nations Organisation/ ... (name of international organisation)]

### **No satisfactory evidence of status**

"... but [? in view of ...] the Secretary of State is not satisfied that you are able to produce satisfactory evidence of your status as an overseas government employee."

### **Paragraph 163 with reference to 161(i)**

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

"... but [? in view of ...] the Secretary of State is not satisfied that you intend to work full-time for the [government/ organisation] concerned."

### **Paragraph 163 with reference to 161(ii)**

### **Other employment**

"... but [? in view of ...] the Secretary of State is not satisfied that you do not intend to take employment other than as an employee of [an overseas government/the United Nations Organisation/ ... (name of international organisation)]."

**Paragraph 163 with reference to 161(iii)**

**Not an international organisation of which the UK is a member**

"... but this is not an international organisation of which the United Kingdom is a member."

**Paragraph 163 with reference to 161(iii) and 160**

**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 163 with reference to 161(iv)**