

CHAPTER 5
SECTION 9DEPENDANTS
OF PERSONS IN CHAPTER 5

1. INTRODUCTION

Paragraph 194 of HC 395 sets out the requirements relating to spouses of persons with limited leave to enter or remain under Paragraphs 128-193, Paragraph 197 sets out those relating to children of such persons. This section combines the guidance relating to both spouses and children.

Note:

- * *There is no provision in the Rules for dependants other than a spouse or child under 18 to join persons admitted in these categories (but see paragraph 1.1 below).*
- * *There is a concession outside the Immigration Rules for unmarried partners (common law and same sex) of persons granted LTE/R under HC 395 paragraphs 128-193. Details of this concession are in CH 8 Section 7 and should be read in conjunction with this section.*
- * *The "Under 12 Concession", set out in Chapter 8, Section 3, Annex N does not apply here.*

1.1. Entry clearance applications in respect of dependants of work permit holders who are intra company transferees

As a concession outside the Immigration Rules, entry clearance officers have the discretion to issue entry clearance to *children over the age of 18 or dependent parents of work permit holders who are intra company transferees*, provided that:

- ◆ the work permit holder is an intra company transferee who has been posted to the United Kingdom by his employer; and that the applicant:
- ◆ is genuinely dependent upon the work permit holder; and
- ◆ is, and intends to remain, part of the family unit; and
- ◆ will not seek to remain in the United Kingdom beyond any period of leave granted to the work permit holder.

Where such a dependant arrives in the United Kingdom with an entry clearance endorsed "To accompany/join...(name of work permit holder)", leave to enter should normally be granted in the same way as to dependants within the Rules.

Similarly, dependants *who arrived with an entry clearance in this capacity* and who subsequently seek leave to remain may be treated in the same way as dependants within the Rules.

This concession should not normally be applied, however, to persons who arrive without entry clearance or who seek leave to remain, having entered in another capacity.

2. LEAVE TO ENTER OR REMAIN

In cases where a dependant seeks leave to enter or remain at the same time as the person upon whom he/she is dependent, both applications fall to be considered together and it would not be appropriate to consider, for example, refusal on grounds of maintenance or accommodation independently of the main applicant.

Where a dependant seeks leave to enter or remain independently of the person of whom he is a dependant, however, the maintenance and accommodation provisions must be fully considered and, where appropriate, he should be refused independently.

2.1. Head of family absent from the United Kingdom

Where, at the time of a dependant's arrival in the United Kingdom, the person of whom he is a dependant is absent from or has not yet arrived in the United Kingdom, he should normally be refused entry. Where, however, the immigration officer is satisfied that the head of the family has had to undertake urgent business or a compelling family visit abroad, is expected to return shortly, and satisfactory arrangements have been made for the maintenance and accommodation of the dependant, leave to enter may be granted.

2.2. Switching

Entry clearance is mandatory for entry in this category. In after-entry cases, however, where the applicant was not admitted as a spouse or child, caseworkers may waive the no-switching provision in the Rules if they are satisfied that *all* the other requirements are met and that *exceptional compassionate circumstances* prevail. For UK ancestry dependants caseworkers may waive the no-switching provision in the Rules if they are satisfied that *all* the other requirements are met. Any case which falls to be refused, however, should be refused on no-switching grounds.

2.3. Granting leave to enter or remain

Leave to enter or remain should be granted on Code 1 for a period normally equal to, but in any event not in excess of that granted to the spouse/parent. Where the period of leave granted to the sponsor is not known, 2 months on Code 1 should be granted.

If the head of the family has been required to register with the police, the spouse and any children over 16 years old, who are foreign nationals, should also be required to register if granted leave to enter for over 3 months.

2.4. INDECS

On entry

- WPD Dependant of a work permit holder
 O Other person on limited leave to enter

Note: *Landing cards for dependants of ALE employees should be marked "ALE" and sent to the appropriate port.*

After entry

When the dependant is being granted leave to remain together with the main applicant, the INDECS code will be the same as that used for the main applicant, with the suffix S (for spouse), C (for child) or D (for other dependant).

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 the purpose of entry as a spouse or child of a person to whom this Chapter relates, and no compassionate circumstances exist, he should be refused entry under Paragraph 196 or 199 of HC 395, respectively.
- * 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 Z (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. Refusal of leave to remain

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

ANNEX Z (below) provides examples of refusal formulae.

2.8. After entry INDECS codes

When the dependant is being refused together with the main applicant, the INDECS refusal code will be the same as that used for the main applicant, with the suffix S (for spouse), C (for child) or D (for other dependant).

When the dependant's application is refused independently, the refusal code is X6.

2.9. On entry cases - right of appeal and corresponding refusal forms

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

Refusal form IS 82D 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. SETTLEMENT

A person who has been a dependant of a person to whom this Chapter relates may be granted indefinite leave to remain if:

- ◆ he was admitted with a valid United Kingdom entry clearance as the spouse or child of a person to whom this chapter relates (but see paragraph 2.2 above);
- ◆ the main applicant has been or is at the same time being granted indefinite leave to remain;

- ◆ the applicant has been, and will continue to be maintained and accommodated without working or recourse to public funds; and

Spouse only

- ◆ the marriage is subsisting and the couple intend to live together as husband and wife;

Child only

- ◆ he is unmarried, has not formed an independent family unit and is not leading an independent life.

3.1. Granting or refusing settlement

If the spouse/parent is to be granted settlement in this capacity and the other requirements for indefinite leave under Paragraphs 195 and 198 respectively are met, a dependant may be granted indefinite leave to remain.

If the spouse/parent's application is to be refused, the dependant's application should accordingly be refused.

If the spouse/parent has applied for settlement but is granted ***limited leave to remain***, the dependant should also be granted limited leave to remain.

3.2. INDECS

The INDECS code will be the same as that for the principal applicant, with the suffix S in respect of a spouse, C in respect of a child and D in respect of any other dependant relative.