

**Jan/07**

***IMMIGRATION DIRECTORATES' INSTRUCTIONS***

**CHAPTER 6**

**DEPENDANTS OF BUSINESSMEN,**

**SECTION 5**

**INVESTORS, WRITERS,**

**COMPOSERS OR ARTISTS**

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## 1. INTRODUCTION

Paragraph 240 of HC 395 sets out the requirements relating to spouses of persons with limited leave to enter or remain under Paragraphs 200-239. Paragraph 243 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 under the Rules for dependents other than a spouse or child to join persons admitted in these categories.*
- \* *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 200-239. Details of this concession are in Chapter 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.*

## 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 arrives 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. After-entry, 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. 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*

O Other person on limited leave to enter

#### *After entry*

B1S Extension (spouse) - excluding spouses of doctors & dentists  
 B2S Extension (spouse) - spouse of self-employed doctor or dentist  
 B1C Extension (child) - excluding children of doctors & dentists  
 B2C Extension (child) - child of self-employed doctor or dentist.

#### *After entry - indefinite leave to remain*

1DS Settlement after 5 years - spouse of self-employed doctor or dentist  
 1ES Settlement after 5 years - spouse of businessman or self-employed person  
 1HS Settlement after 5 years - spouse of investor  
 1JS Settlement after 5 years - spouse of writer, composer or artist  
 1DC Settlement after 5 years - child of self-employed doctor or dentist  
 1EC Settlement after 5 years - child of businessman or self-employed person  
 1HC Settlement after 5 years - child of investor  
 1JC Settlement after 5 years - child of writer, composer or artist

### 2.5. Refusal of leave to enter or remain

\* 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, he should normally be refused entry under Paragraph 242 or 245 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"**.

**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 L (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. After entry INDECS Codes

When the spouse/child 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) or C (for child).

When the spouse's or child's application is refused independently, the refusal code is X6.

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

- \* In accordance with Section 13(3B)(a) of the 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.

- \* A passenger seeking entry as a spouse or child in this category who holds an entry clearance cannot be refused under Paragraphs 242 or 245. See **Chapter 9, Section 3** of these instructions.

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;
- ◆ 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 241 and 244 respectively are met, a dependant may be granted indefinite leave to remain.

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

If the spouse/parent has applied for settlement but is granted *limited leave to remain*, the applicant 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 and C in respect of a child.

***I.S. Enquiries to:*** Passenger Casework Section, ISHQ  
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