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Family Migration – Changes to Immigration Rules 1

26th July 2012

On 13 June 2012, the Home Office published changes to the Immigration Rules (Statement of Changes to Immigration Rules HC 194). These changes relate to:

- certain family-related applications to come to or stay in the UK (see below)
- deportation cases (see the “Deportation” information sheet)
- long residence applications (see the “Long Residence Rules 2” information sheet)
- the right to respect for family and private life (see the “Article 8 – No. 2” information sheet)
- the best interests of children (see the “Children’s Best Interests 3” information sheet)
- overstayers (see the “Overstayers” information sheet)

Except for some of the changes relating to overstayers, the changes took effect on 9 July 2012. This information sheet and the “Family Migration – Changes to Immigration Rules 2” information sheet provide information about changes relating to family-related applications. However, the other changes may also be important to any particular family-related application.

Family-related applications

Before 9 July 2012, the Immigration Rules (“the Rules”) generally dealt with family-related applications to come to or stay in the UK in Part 8.

From 9 July 2012, the Rules generally deal with family-related applications in either Part 8 or in new Appendix FM. Appendix FM introduces new requirements into the Rules. These new requirements have particularly important effects for those types of applications which no longer fall to be dealt with under the Rules in Part 8, and are now in Appendix FM. New paragraphs A277 to A280 of the Rules deal with the question of whether the relevant provisions in the Rules are those in new Appendix FM or those in Part 8. Some family-related applications remain dealt with by other parts of the Rules. Those wishing to visit family members will continue to apply under Part 2 of the Rules, and most applications to come to or stay in the UK to be with a partner or parent who is a refugee or person with humanitarian protection are still generally dealt with under Part 11 of the Rules.

New Appendix FM

Appendix FM took effect on 9 July 2012. It introduced new requirements for those applying to come to or stay in the UK on the basis of their family relationship, where their applications are of one of the types now dealt with under the Rules in that Appendix (see below).

However, some of the new requirements relating to criminal convictions and other conduct apply to applications still made or considered under Part 8 and to long residence applications (see paragraph A279 of the Rules). Other requirements introduced in Appendix FM (e.g. requirements relating to relationships, immigration status, finances, English language and the length of time before a person may apply for settlement) do not apply to Part 8. Part 8 does contain requirements relating to such matters, but generally these are much less demanding. Appendix FM has introduced much more demanding requirements for the family-related applications which it covers. The “Family Migration – Changes to Immigration Rules 2” information sheet provides more information about some of these more demanding requirements.

The types of applications now dealt with in Appendix FM

Appendix FM generally applies to applications to come to or stay in the United Kingdom where the basis of the application is that:

- the applicant is the partner (spouse, civil partner, unmarried partner*, fiancé or proposed civil partner) of a British citizen or a person settled in the UK; or
- the applicant is the partner (spouse, civil partner, unmarried partner*, fiancé or proposed civil partner) of a person with refugee leave or humanitarian protection (where the relationship was formed after the refugee or person with humanitarian protection fled his or her home country); or
- the applicant had limited leave to enter or remain as the spouse, civil partner or unmarried partner* of a British citizen or person settled in the UK, and that person has died (and the applicant is applying for indefinite leave to remain); or
- the applicant had limited leave to enter or remain as the spouse, civil partner or unmarried partner* of a British citizen or person settled in the UK, and that relationship has broken down as a result of domestic violence (and the applicant is applying as a victim of that domestic violence for indefinite leave to remain); or
- the applicant is the child of either a parent who is applying to come to or stay in the UK or a parent who has limited leave to enter or stay in the UK (where the basis of the parent’s application or leave is as a parent or partner); or
- the applicant is the parent of a child who is in the UK; or
- the applicant is an adult dependent relative of either a British citizen, a person settled in the UK or a person with refugee leave or humanitarian protection.

**unmarried partners must have lived together for at least two years*

However, Part 8 continues to apply to these types of application if:

- the application was made before 9 July 2012; or
- the application is for an extension – i.e. for further leave to remain or indefinite leave to remain following a previous successful application on the same basis made before 9 July 2012 (and the applicant’s stay in the UK has continued to be on that basis).

UK Border Agency guidance

UK Border Agency guidance relating to applications which are not affected by the changes described in this information sheet is available at:

<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/IDIs/idischapter8/transitionon/transition.pdf?view=Binary>

Legal advice

The changes made to the Immigration Rules relating to family migration are complex, lengthy and not easy to understand. Those who may be affected by these Rules should seek legal advice.