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*IMMIGRATION DIRECTORATES' INSTRUCTIONS***CHAPTER 8
SECTION 4A****CHILDREN BORN IN THE UNITED KINGDOM
WHO ARE NOT BRITISH CITIZENS****1. INTRODUCTION**

Section 55 of the Borders, Citizenship and Immigration Act 2009 requires the UK Border Agency to carry out its existing functions in a way that takes into account the need to safeguard and promote the welfare of children in the UK. It does not impose any new functions, or override existing functions.

Officers must not apply the actions set out in this instruction either to children or to those with children without having due regard to Section 55. The UK Border Agency instruction 'Arrangements to Safeguard and Promote Children's Welfare in the United Kingdom Border Agency' sets out the key principles to take into account in all Agency activities.

Our statutory duty to children includes the need to demonstrate:

- Fair treatment which meets the same standard a British child would receive;
- The child's interests being made a primary, although not the only consideration;
- No discrimination of any kind;
- Asylum applications are dealt with in a timely fashion;
- Identification of those that might be at risk from harm.

This section relates to children born in the United Kingdom on or after 1 January 1983 who are not British citizens because, at the time of their birth, neither of their parents was a British citizen or settled here. Such children do not have the right of abode and are subject to immigration control. They are not here unlawfully, however, and are ***not required*** to apply for leave to remain (***see ANNEX P, paragraph 11 if further guidance is required on this point***).

Paragraphs 305 to 308 of HC 395 make provision for such children, or their parents on their behalf, to apply for their position to be regularised by the granting of leave to remain or, if they leave the United Kingdom and subsequently return, leave to enter. In addition, if a child who was born in the United Kingdom but is subject to control qualifies for leave to enter or remain under any other part of the Rules, he may be given leave in accordance with the provisions of that other part.

Where an application is received on behalf of such a child, consideration should always be given as to whether he has, since his birth, become a British citizen. In this regard, the child's birth certificate and the passports of ***both*** parents should be obtained. Where appropriate, the case should be referred to the General

Enquiries Section of Immigration and Nationality Policy Directorate (Liverpool). If the nationality and/or the immigration status of the parents cannot be established, it should be assumed that they are not British citizens or settled here, in which case the child himself is not a British citizen, does not have the right of abode, and thus is subject to immigration control.

2. LEAVE TO ENTER OR REMAIN AS THE CHILD OF A PARENT OR PARENTS GIVEN LEAVE TO ENTER OR REMAIN IN THE UNITED KINGDOM

The requirements to be met by a child seeking leave to enter or remain in this capacity are set out in Paragraph 305 in Part 8 of HC 395 and **must** be referred to when reading the following advice.

2.1. Key points

The immigration officer or caseworker needs to be satisfied that:

- ☐ the child is accompanying, joining, or remaining with a parent who has, or is being granted, **leave to enter or remain**, is a **British citizen** or who has the **right of abode**; or
- ☐ parental responsibility for the child rests solely with a local authority; and
- ☐ the child is under 18, unmarried, is not in a civil partnership and has not been leading an independent life.

2.2. Further guidance

ANNEX P (below) provides general guidance relating to this category of application, including further consideration which should be given where all the requirements of Paragraph 305 are not met.

2.3. Granting leave to enter or remain

Where all the requirements of Paragraph 305 are met:

- * A child should be granted **limited leave to enter or remain** on Code 1, in line with parents who have or are being granted limited leave. Where each parent has or is given leave for a different period, the child may be given leave in line with that granted to whichever parent has the **longer** period (which may be indefinite leave). If the parents are living apart, however, the child should be given leave in line with the parent who has day to day responsibility for him (see **ANNEX P**).

- * A child who is a foreign national over the age of 16 should be required to register with the police only where the parent(s) have limited leave in a category which requires police registration.
- * A child may be granted ***indefinite leave to enter or remain*** if at least one of his parents has been or is being granted indefinite leave, if either parent is a British citizen or has the right of abode, or if the parental rights and duties of the child have been permanently vested in a local authority.
- * A child of parents given leave to enter on Code 5N may also be given leave to enter on Code 5N if, for example, returning here to complete a visit and thus qualifying under another part of the Rules.

2.4. INDECS - leave to enter

For ***limited*** leave to enter, the appropriate category will depend on the category of the parent(s), e.g.:

STD accompanying or joining a parent who has leave as a student
 WPD accompanying or joining a parent who is a work permit holder; or
 O other person on limited leave to enter.

For ***indefinite*** leave to enter:

SCO child under 18 granted indefinite leave.

DAS dependant of a person granted asylum on admission

DEL dependant of a person granted exceptional leave to enter

2.5. INDECS - leave to remain

C1 ***extension*** - child UK born but not a British citizen
 3AA ***indefinite*** leave to remain - child UK born but not a British citizen

3. REFUSAL OF LEAVE TO ENTER OR REMAIN AS THE CHILD OF A PARENT OR PARENTS GIVEN LEAVE TO ENTER OR REMAIN IN THE UNITED KINGDOM

3.1. Refusal of leave to enter

- * Where no entry clearance is held and the requirements of Paragraph 305 are not met, the passenger should normally be refused leave to enter under Paragraph 309 (but see ***ANNEX P (below), paragraph 4,***

"Further consideration where all of the provisions of Paragraph 305 are not met").

- * 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).

ANNEX U (below) provides examples of refusal formulae.

3.2. On entry Refusal Codes

F4 Claiming admission as returning resident but not qualified

3.3. On entry right of appeal and corresponding refusal form

The normal considerations apply regarding rights of appeal when leave to enter is refused.

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.

Note: Refusal of applications for leave to remain in this capacity should be by letter. The child would not have a right of appeal under section 82 (2) (d) or (e) of the Nationality Immigration and Asylum Act 2002 as the child would not have leave to enter or remain to vary. However if a human rights claim is made while the child is in the UK, there would be an in country right of appeal in accordance with section 92 (4) (a).

ANNEX U (below) provides examples of refusal formulae.

3.5. After entry INDECS refusal codes

C5A Refusal - child UK born but not a British citizen

3.6. Applications for extensions of stay in respect of children born in the UK

Applications for leave to remain in respect of children previously given leave to enter or remain in this capacity should be considered under the provisions of the appropriate Paragraph of the Rules, depending on the circumstances of the case (eg. those relating to children of students, students of work permit holders, etc).

The normal considerations apply regarding rights of appeal when a variation of leave to enter or remain is refused. ".